

Department of Water and Power



the City of Los Angeles

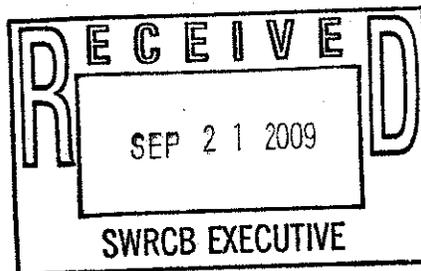
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September 4, 2009

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
Office of Enforcement
1001 "I" Street
Sacramento, CA 95814



Dear Ms. Townsend:

Subject: Comments on State Water Resources Control Board (State Board)
Draft Water Quality Enforcement Policy (July 14, 2009)

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to comment on the July 14, 2009, draft Water Quality Enforcement Policy. LADWP understands the challenges inherent to applying an enforcement policy to an environment as diverse and vast as California's. LADWP takes very seriously its role in preserving and protecting the environment while providing its services to the citizens of Los Angeles. LADWP understands that a rigorous enforcement policy is a critical element in maintaining surface water quality and to that end, appreciates the efforts being made by the State Board in revising the enforcement policy. To reiterate our previous comments submitted for the Draft Enforcement Policy (dated May 6, 2009), LADWP continues to have a general concern regarding the mechanism that the State Board will use to differentiate between "negligence" and "intent". LADWP requests the inclusion of specific language in the Enforcement Policy to clearly distinguish those activities which lead to violations that are inadvertent versus those that are the result of willful disregard. Additionally, as mentioned in our previous comment letter, the proposed mechanism for assessing penalties replaces a mechanism based on numeric limits and considerations to one that includes narrative and subjective determining variables. A mechanism based on subjective criteria can only increase the variability of penalty determinations and thus impedes the goal of implementing a uniform enforcement action policy.

Water and Power Conservation ... a way of life

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As stated in our previous comment submission, it was conveyed at the January 16, 2009, Enforcement Policy Workshop that the State Board hosted a meeting attended by staff members of the Regional Water Quality Control Boards that included a "try out" of the proposed penalty calculation mechanism. It was also conveyed that using the proposed enforcement narrative, the theoretical fines calculated by the different regional staffers for different scenarios were remarkably consistent (+/- 10%). LADWP would like and suggests that the scenarios and their respective calculations be made available for the public review (via e-mail or the State's website).

LADWP has the following comments on specific issues.

Comment 1. - Section II. Enforcement Priorities for Discretionary Enforcement Actions, pp 4-7

The previous policy (dated February 19, 2002) detailed "Priority" specific violation types, grouped pollutants and provided specific numeric and narrative guidelines. In general, priority violations were well defined by numeric and narrative guidelines for defined sets of pollutants and actions/non-actions, respectively.

The draft document (dated July 14, 2009) includes three levels of prioritization: Class I, Class II, and Class III (Class I being the most serious violation).

This new determination system is significantly more general and interpretative than its predecessor. The language defining each Class is highly subjective. For example, discerning between discharges that pose threats that are "significant" versus those that are "moderate, indirect, or cumulative" (i.e., Class I vs. Class II) appears arbitrary without defined parameters and limits to draw distinctions. Several language uses in the prioritization language are problematic; specifically:

A. Class I Priority Violations, Item F: "falsification of information" submitted to the Water Boards or "intentional withholding of information" required by applicable laws, regulations, or enforceable orders.

B. Class II Violations, Items D and E: "negligent or inadvertent failure to comply with monitoring requirements" and "negligent or inadvertent failure to submit information."

LADWP requests that the Water Board make transparent the methodology to be utilized to establish a finding of intentional information withholding, and similarly, a finding of a negligent failure to submit information. The framework or process to be used to determine whether this behavior and/or action would pose a "moderate" or "significant" threat to water quality appears to be missing and, at present, wholly subjective. The

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previous enforcement policy (February 19, 2002) provides guidelines that are well defined. LADWP suggests that the format for determining the prioritization be continued along the same guidelines as the February 19, 2002, policy.

Comment 2- Section VI-Monetary Assessments in Administrative Civil Liability (ACL) Actions, Step 2- Assessments for Discharge Violations, p 15.

The current Draft Water Quality Enforcement Policy includes language that infers that treated recycled water is a waste. While LADWP understands that its inclusion in this section appears to be related to the release of untreated and/or partially treated "recycled water", which according to the Water Code Section 13050, subdivision (n), is defined as treated at a level less than "disinfected tertiary 2.2 recycled water", the Policy does not specify the treatment level and the subsequent water quality criteria that would subject the release of recycled water to enforcement action. Tertiary treated water is treated for re-use to potable water standards and does not present the same threat to surface water quality as construction storm water runoff and/or sewage spills. Recycled water that has been treated to tertiary standards has been approved by the California Department of Public Health for multiple purposes, including irrigation and groundwater recharge, and is not a threat to public health and safety. This section refers to "the release of recycled water" and that the subsequent water quality enforcement would be based on the quantity of recycled water released. This would imply that the release of treated recycled water is a waste and possibly hazardous. The release of tertiary treated recycled water is equivalent to a release of potable water. Therefore, LADWP believes that enforcement and fines are not warranted for treated recycled water. LADWP requests that all references to the release of recycled water be removed from this section.

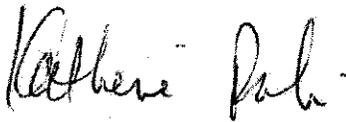
Comment 3- Section VI-Monetary Assessments in Administrative Civil Liability (ACL) Actions, pp 10-25.

The assessment protocol used to calculate fines includes a "Deviation from Standard" factor that defines a non compliant discharge event as "Minor", "Moderate", or "Major". The amount of a fine levied is predicated on this designation coupled with the "Potential Harm Factor" score, which is determined by the scoring of the following three factors: 1) Harm or Potential Harm to Beneficial Uses; 2) Chemical, Biological, or Thermal Characteristics of the Discharge; and 3) Susceptibility to Cleanup or Abatement . The purely narrative definitions of each are again, subjective. Consequently, according to Table 1 on page 15 of the proposed enforcement policy, an assessed monetary fine may vary by a multiplier of 200 depending on the interpretation of narrative standards. LADWP suggests that the State Water Resources Board propose numeric criteria to differentiate between the provided tiers, as it represents the only mechanism onto which an equitable enforcement policy may be applied.

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Once again, LADWP appreciates the opportunity to provide input on the second draft of the enforcement policy and looks forward to working with the State Board toward its implementation. If you have any questions regarding these comments, please feel free to contact Mr. Larry Kerrigan of LADWP's Wastewater Quality Compliance Group at (213) 367-4425.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Rubin".

Katherine Rubin
Manager of Wastewater Quality and Compliance

LNK:rp
c: Mr. Larry Kerrigan