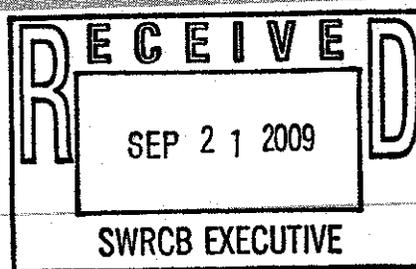


commentletters - comment letter - enforcement policy

**From:** "Ferris, Miles" <mferris@srcity.org>  
**To:** <commentletters@waterboards.ca.gov>  
**Date:** Monday, September 21, 2009 9:01 AM  
**Subject:** comment letter - enforcement policy



### Comment Letter – Enforcement Policy

The purpose of this letter is to comment on the State Water Resources Control Board's (State Water Board) proposed revised Water Quality Enforcement Policy (WQEP). Specifically, the City of Santa Rosa (City) seeks to comment on a new provision added to the latest version of the WQEP circulated for public comment.

#### *The Policy Should Not Limit the Scope of State Water Board Review Specified by Statute.*

The most significant proposed revision to the WQEP is the addition of language stating that the State Water Board will "defer" to the Regional Water Boards' calculations of administrative liability amounts under the policy. (Proposed WQEP at p. 11.) The proposed language is very troubling, in that the State Water Board would be artificially and inappropriately constraining the scope of review afforded to aggrieved persons under the Water Code. (Water Code section 13320.) The statute provides that the State Water Board "may consider any relevant evidence which in the judgment of the State Board should be considered to effectuate and implement" legislative policies and may find that the Regional Water Board's action was "inappropriate or improper." (Ibid.) The State Water Board does not act as a strictly appellate body, limited to ruling on the legal correctness of a challenged Regional Water Board action under a highly deferential standard. Rather, the State Water Board has broad authority to review, modify and remand Regional Water Board quasi-adjudicatory actions on both legal and policy grounds. We are not aware of any other area of review where the State Water Board has self-imposed such a significant constraint on its authority.

The State Water Board's stated goal of "consistent" enforcement will not be well-served if the Board declines to subject administrative civil liability assessments to scrutiny. Civil liability amounts for similar violations could vary significantly by region, and even within a single region, due to discretion decisions made by Regional Water Board staff, yet these decisions would be afforded a presumption of correctness. Moreover, such abstention is unnecessary, given that State Water Board review is discretionary and not automatic. The State Water Board is free to consider and assess the strengths of individual petitions on their merits, and can decline to hear those that do not raise issues worthy of review. There is no need to establish a blanket approach of deference to the Regional Water Boards' calculations when significant rights and obligations are at issue.

For the reasons set forth above, the City suggests the following proposed language change to the WQEP at page 11 (revision in strike-out format):

"The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments, as well as those obtained through settlement. ~~In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.~~"

Thank you for consideration of the City's comments.

Sincerely,

Miles Ferris

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