



# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, PE, Chair



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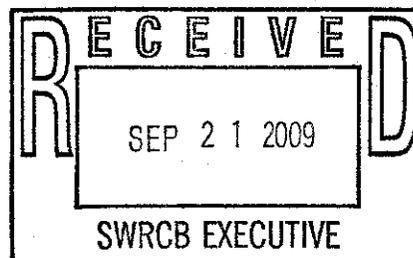
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10/20/09 Bd. Hearing  
Water Quality Enf. Policy  
Deadline: 9/21/09 by 12 noon

21 September 2009

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

VIA EMAIL ONLY



## COMMENTS ON THE DRAFT ENFORCEMENT POLICY

Dear Ms. Townsend:

The Central Valley Water Board thanks the State Board for the opportunity to comment on the Draft Enforcement Policy. In addition to informal comments that have already been made, the Central Valley Water Board would like to make additional comments to address aspects of the current Draft Enforcement Policy that relate to the use of Compliance Projects. As currently written, the Draft Enforcement Policy limits the Board's discretion to utilize tactics that have been proven to be incredibly effective in bringing Dischargers into compliance with orders issued by the Board.

It is an unfortunate reality that there are many unsophisticated Dischargers who fail to take action on Board-issued orders because they feel, for whatever the reason, that the Board lacks the ability or motivation to enforce the provisions of these orders. While it is difficult to generalize, many of these dischargers have very limited resources, and choose to expend these resources elsewhere. Many times this is the case for small, economically-depressed communities.

Issuance of an ACL Complaint is often the mechanism by which the Board grabs the attention of the recalcitrant discharger, and then forces them to come into compliance. In circumstances where a discharger is receptive to performing the tasks required under the order, and where the decision to ignore the order was based on both a failure to appreciate the consequences of non-compliance and a lack of available resources, the Board would rather have the discharger perform the past-due tasks than impose penalties. The Central Valley Water Board accomplishes this by settling the Complaint through the issuance of an ACL Order that suspends the assessed liability, provided that the discharger comes into full compliance with the order in a reasonable timeframe. If the discharger fails to come into compliance, then the suspended penalty becomes due immediately.

This mechanism is specifically allowed in the context of mandatory minimum penalties imposed under California Water Code section 13385, but has also been utilized by the Board in the context of discretionary penalties. Although the current Enforcement Policy allows the Board to use this tool, the Draft Enforcement Policy does not. The Board believes that this is an oversight that should be corrected.

**California Environmental Protection Agency**



In addition, the Board believes that the Draft Enforcement Policy places a minor restriction on the use of Compliance Projects under California Water Code section 13385 that may have great significance for certain small communities. Specifically, the Draft Enforcement Policy states that, "The deadline for completion of the project is within 5 years of the date of the first of the violations underlying the penalty to be suspended." The Board believes the 5-year deadline should be keyed to the issuance of the enforcement order authorizing the Compliance Project, not the violations. Absent the certainty that the Compliance Project will satisfy the Board in lieu of the imposition of mandatory minimum penalties (certainty only issuance of an ACL Order could provide), these dischargers will hesitate to commit funds to plant improvements when they could be faced with a steep penalty.

Thank you for your receipt of these comments. If you have any questions regarding these comments, please contact me at (916) 464-4839 or Dan Radulescu at (916) 464-4736.

Sincerely,



PAMELA C. CREEDON  
Executive Officer

cc: Reed Sato, Office of Enforcement  
Regional Board Enforcement Coordinators (all regions)

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