

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
General	14	1 General	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.	Negligence and intent are well defined in law, so further clarification in the Enforcement Policy is not needed.
General	4	1 General	CASQA supports the intent of the draft Policy and believes that it offers an improved approach for determining priority violations as well as necessary framework for supporting more consistent statewide enforcement. However, the Policy is generally directed at traditional point source discharges and does not fully consider how the Policy would be used to enforce stormwater permits.	Noted.
General	3	1 General	California Coastkeeper Alliance expressed the need for SWRCB and RWQCB to significantly expand their policy, "...establish a clear, consistent statewide approach to the prioritization of enforcement targets, based on treats and adverse impacts to beneficial uses." Furthermore, CCA suggest inclusion of: a specific process for enforcing waivers of waste discharge requirements, a clear process for identifying and taking action against non-filers, particularly where entire categories of pollutant discharges are unregulated, a process for improving permit specificity, development of innovative solutions to the problem of staff-intensive collection of fines and penalties, and integration of enforcement efforts from various agencies.	These are requests to expand the scope of the proposed policy. The current scope of the policy is appropriate for the issues it is intended to address. Moreover, it may be appropriate to consider the suggested topics as their own policies rather than combining their consideration into one, overarching, multifaceted policy.
General	8	1	CPR agrees with the WQEP positive elements and would like to again commend the Board Staff. CPR supports the fact this draft still contains language stating the Water Boards will pursue enforcement consistent with the goals identified in CalEPA's Intra-Agency Environmental Justice Strategy. CPR also supports the use of language stating that dischargers would not be subject to the imposition of MMPs for failure to submit a monitoring report for a quarter during which no discharges occurred.	No response needed.
General	9	1	The LACFCD recommends the State Board should emphasize "tools such as providing assistance, training, guidance, and incentives," which the Policy acknowledges to "work very well in many situations." (pg.1, Policy 1). The "more forceful approach" of an enforcement action cannot break through technology barriers, practical realities, and funding constraints. They suggest the Policy recognize that a cooperative approach is essentially the only approach for especially challenging water quality issues such as urban runoff control.	The Policy is not intended to address the issue raised by this comment.

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General	11	1	Commenter states, "This looks like a good policy."	Noted.
General	10	1	In general the Sanitation Districts agree with the overall intent and scope of the new version of the Draft Policy, including the development of a more transparent process for selecting enforcement priorities, assessing penalties, and balancing inter-regional consistency with the flexibility needed to reflect individual circumstances.	Noted.
General	17	1	The State Water Board and State Water Board staff are to be commended on the process utilized to revise this very important policy. RCRC sincerely appreciates the multiple opportunities to present verbal and written comments. While not all of our comments have resulted in changes to the document, we have duly noted a number of changes that have been made that address our concerns.	Noted.
General	9	2	LACFCD suggest Policy modification to distinguish between public entities and private entities in making enforcement decisions. This distinction should inform the prioritization of enforcement actions, the amount of proposed penalties, and the availability and extent of supplemental environmental projects. Unlike private entities, for public entities there is no profit motivation to maximize returns by minimizing environmental compliance costs.	The public or private status of an entity can be considered at various stages of an enforcement action. However, the absence of a "profit motivation" does not mean that a public entity can not threaten water quality to the same degree as a private entity.
General	11	2	The commenter states " the proposal seems balanced and fair and should be adopted." He makes a recommendation that "something needs to be included that would get the enforcement done in cases like when a phone utility has a conduit pipeline running under a bridge deck across a creek, the pipe has a hole in it and has been leaking into the creek for 4 years or so but the phone company won't repair the pipe so it won't leak any more. Something in the enforcement policy needs to be significant enough to get the phone companies attention. The fines option maybe necessary here and the fines may need to be large."	The policy is not intended to address a specific enforcement issue or a specific industry. That said, there are multiple tools in this enforcement policy that may be used to address a situation such as the one referenced in this comment letter.
General	8	7	Submission of reports required by a permit should not be required until the permitted activity has commenced.	This issue goes to the language of the permit and is outside the intended scope of this Policy.
General	8	8	Written communications should be sent via certified mail to both the Director of Public Works and the City Manager in order to ensure that communications come to the attention of appropriate management-level personnel within a city.	Written communications to municipalities are provided to whoever is identified in the applicable permit or authorization. Any municipality concerned about compliance issues, particularly reporting issues, should have a system in place to warn compliance staff with various compliance deadlines and due dates.

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General	21	14	In addition to their written comments, WSPA proposed various language changes in the form of an underline/strikeout markup of the draft Policy.	The written comments detail many of the suggested changes in their underline/strikeout markup of the Policy. Where these comments were accepted, the text was changed accordingly. Where these comments were rejected, it was because the suggested change was either not necessary or was inconsistent with the intended directives of this Policy.
General	4	13.a	SEP language The Policy states "the credit permitted for a SEP generally should not exceed 25% of the total monetary assessment." The commenter recommends that this restriction be removed from the Policy.	This letter addresses a prior version of the Policy, and is no longer relevant. The section on SEPs was removed and adopted as a separate Policy.
General	4	18.b	CASQA recommends the Water Boards analyze their use of existing tools and look for opportunities for optimizations. The analysis should include answering questions such as: - Stormwater permit non-filers – Should penalties for non filers be more severe? - Response timelines – Should Water Boards have to meet response deadlines? - Following through – How complete is the Water Boards follow-through? How many Notices of Violations actually result in correcting the problem?	The Policy was developed subsequent to this letter. This letter and others were generally considered in the development of the revised Policy. The questions to which this letter responds related generally to Water Quality enforcement activities, not specifically targeted to language in the proposed Enforcement Policy.
General	4	19.b	CASQA recommends the Water Boards consider using CASQA's Progressive Approach.	The Policy was developed subsequent to this letter. This letter and others were generally considered in the development of the revised Policy. The questions to which this letter responds related generally to Water Quality enforcement activities, not specifically targeted to language in the proposed Enforcement Policy.  Nothing in the proposed policy precludes consideration of the recommendation made by CASQA. The policy is not designed to address level of detail recommended by this comment.
General	4	21.b	CASQA recommends the Water Boards develop an Enforcement Consistency Guidance document to accompany the Policy that would identify how one selects the types of enforcement action and what criteria should be used.	The Policy was developed subsequent to this letter. This letter and others were generally considered in the development of the revised Policy. The questions to which this letter responds related generally to Water Quality enforcement activities, not specifically targeted to language in the proposed Enforcement Policy.  The recommendation for the development of a guidance document to identify how the enforcement staff selects the type of enforcement action and what criteria should be used, goes beyond the intended scope of this Policy document. The development of guidance to aide in the implementation of this policy is not precluded by the proposed policy.

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I.Fair, Firm, And Consistent Enforcement	4	6.a	Need to Fully Consider Stormwater-Related Issues CASQA recommends that the SWRCB consider how the Policy should be applied to stormwater management and other challenging areas of regulatory oversight.	The draft Policy, as written, applies to stormwater management and other challenging areas of regulatory oversight.
I.Fair, Firm, And Consistent Enforcement	4	7.a	Need for Additional Guidance to Achieve Statewide Consistency CASQA strongly agrees that enforcement should be "fair, firm, and consistent" which is consistent with the goals, objectives, and actions proposed in the January 2008 Draft Strategic Plan Update. However, CASQA is concerned that the current of permissive language ("should") is not consistent with the language in the Draft Strategic Plan Update's Objective 7.1. CASQA recommends SWRCB review the Policy language against the Strategic Plan Update language and modify the draft Policy language so that it provides the direction necessary to ensure statewide consistency.	The draft Policy was prepared with the goal of enhancing consistency throughout the State. We believe the draft it is greatly improved over the 2002 Policy and will help to ensure enforcement will be fair, firm and consistent.
I.Fair, Firm, And Consistent Enforcement	4	8.a	SWRCB should pare down the document to just address the policies and develop an accompanying Enforcement Consistency Guidance document. The Guidance document would provide the detail necessary or ensure that the Policy is interpreted in a similar manner throughout the state.	In anticipation of adoption of this Policy, the Office of Enforcement has planned training for Regional Board staff on its implementation. The recommendation for the development of a guidance document goes beyond the intended scope of this Policy document. The development of guidance to aide in the implementation of this policy is not precluded by the proposed policy.
I.E.Small Communities	8	2	CPR is concerned about the limited definition of "small communities." Such a definition may be appropriate for the service population of a small POTW with a revenue stream: however it is certainly not appropriate for small communities struggling to achieve compliance with water quality regulations. CPR requests new language in the proposed enforcement policy recognizing both the existing POTW-dependent definition of "small communities" and a new definition of small MS4 communities as two distinct categories. Furthermore, the WQEP should recognize that for stormwater compliance any city with a population of less than 50,000 is a small city - which is consistent with the definition of "small entity" in the Regulatory Flexibility Act. This definition best represents the realities of municipal stormwater management.	See response to California Stormwater Quality Association Comment 3

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I.E.Small Communities	17	2	The May 6, 2009 draft version of the proposed Enforcement Policy clarified that small communities ("small and/or disadvantaged communities"), as well as disadvantaged communities, may benefit from informal enforcement and/or compliance assistance as the first step taken to return a community to compliance unless extenuating circumstances apply. It is with some dismay that we note that the July 14, 2009 draft proposed Enforcement Policy deleted the "and/or", thus limiting informal enforcement and/or compliance assistance to small disadvantaged communities. We believe that this change, which would limit informal enforcement and/or compliance assistance to small disadvantaged communities, is in direct conflict with the State Water Board's Small Community Wastewater Strategy. We believe that small, as well as small disadvantaged communities, should be offered the opportunity to correct the violations in lieu of enforcement.	See Response to BACWA/CASA/CVCWA/SCA of POTWs/Tri-Tac Comment 5
I.E.Small Communities	4	3	Small Communities (Section 1.e.) This section of the Policy only addresses publicly owned treatment works and sewage collections systems that serve small communities and does not address the municipal stormwater equivalent (Phase II communities). CASQA recommends that the Policy also address small community stormwater programs (Phase II communities) with this section.	This section was amended to establish complete consistency with the Water Boards' Small Community Wastewater Strategy. This section is not, however, intended to address the municipal stormwater Phase II communities. We note that the definition of a small MS4 is not dependant on a population threshold, and the universe of MS4s is quite large.
I.E.Small Communities	2	5	Small and/or Disadvantaged Communities Should Receive Compliance Assistance consistent with Existing State Water Board Policy Prior draft versions of the proposed policy stated that, generally, "informal enforcement and/or compliance assistance will be the first steps taken to return a small and/or disadvantaged community to compliance" The proposed version of the policy would delete the "and/or" and limit the communities, to which informal enforcement and compliance assistance would be the first steps taken, to those that are both small and disadvantaged. This change is inconsistent with the Water Board's Small Community Compliance Strategy, which specifically addresses small "and/or" disadvantaged communities. We urge the Board to restore the language making clear that informal enforcement and/or compliance assistance are to be the first steps for small communities and disadvantaged communities	This language was amended so that it is now consistent with the definition of small communities found in the Water Boards' Small Community Wastewater Strategy.

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II.Enforcement Priority For Discretionary Enforcement Actions	21	2	The Policy makes no distinction i between those violations that are subject to mandatory enforcement under Water Code Section 13385(h) and (l) and those that are more appropriately the subject of discretionary enforcement. WSPA suggests revisions to the introductory discussion of Section II to clarify that the criteria for prioritization of enforcement actions apply only to those acts that are the subject of discretionary enforcement. Where MMPs are applicable, WSPA strongly believes that the Water Boards Expedited Settlement Program should continue to be available to resolve alleged violations on this basis, obviating any need for ranking or prioritization of these violations.	The prioritization proposal addresses violations that are subject to discretionary penalties. Violations that are subject to MMPs are a subset of these violations. It is important for the Water Boards to understand the nature of the violations that they are addressing pursuant to the prioritization proposal which evaluates threats to water quality and the regulatory program.
II.Enforcement Priority For Discretionary Enforcement Actions	4	2	Stormwater Program Violations CASQA is concerned that regional interpretations of the Policy may lead in inconsistent enforcement of stormwater program violations. CASQA recommends that the Policy include specific language and examples describing violations associated with discharges of stormwater.	This is a policy document so examples of what constitutes violations were omitted in this version. This policy is not intended to include, nor does it prevent the development of guidance on, the implementation of the policy.
II.Enforcement Priority For Discretionary Enforcement Actions	21	3	The policy should be revised to clarify that the ranking of violations is a separate function from the actual calculation of a proposed ACL. While this may state the obvious, there is considerable overlap in the factors that are considered for purposes of ranking violations and those that influence the amount o the penalty in a given case	We believe the policy is sufficiently clear that the ranking of violations under this section is separate from the consideration of factors for the assessment of civil liabilities.
II.Enforcement Priority For Discretionary Enforcement Actions	21	4	The strength of the evidence in the record and the amount and availability of resources likely needed to bring a case to a successful conclusion are important considerations in deciding whether to bring a discretionary enforcement action in the first instance. These factors are mentioned under the heading "Enforcement Priorities for Individual Entities" but should be introduced here as they pertain generally to staff's ability to successfully prosecute a case.	The reference to consideration of "strength of evidence in the record to support the enforcement action" is properly placed in the section regarding prioritization of cases on which to pursue enforcement. It should not be considered earlier in the process when staff are ranking violations.
II.Enforcement Priority For Discretionary Enforcement Actions	10	9	Section 2.g of the Class 2 Violations section identifies a "failure to pay fees, penalties, or liabilities with 120 days of the due date" as a Class 2 violation. The Sanitation Districts' staff is unclear if the "due date", in the case of permit fees, is the date as listed on the invoice of 120 days from the date the invoice is received by the Discharger and requests further explanation of this term. The Sanitation Districts are concerned because, at times, invoices have been received after the due date listed on the invoice. Dischargers should not be penalized for invoices that have not received in a timely manner.	This is a Policy document and therefore is not meant to address issues with this level of specificity.

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II.Enforcement Priority For Discretionary Enforcement Actions	4	11.a	Section 4 still refers to "priority" violations instead of the revised approach of using the three classes (Classes 1, 2, and 3). CASQA recommends that this older language be updated to reflect the new classes of priority and that the State Water Board considers the following when updating the language: - The Policy should be consistent throughout when referring to the significance of violations (i.e., the classification as Class 1, 2, or 3) rather than "priority" violations. □ - Section 3 should be entitled, "Determining the Significance of Violations" □ - Section 3.a should be entitled "Class 1 Violations"	This letter addresses a prior version of the Policy. The older language was already updated in the current draft. The reference to "priority" violations was revised where necessary.
II.A.Ranking Violations	14	1	The July 14, 2009 draft Policy 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. 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 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.	Under the previous policy, every violation was treated as a priority, this Policy differentiates between violations for the purposes of determining what violations should be prioritized for enforcement. Should a matter be brought for formal enforcement, the information leading to the prioritization of the violation will be addressed and available to the discharger.
II.A.Ranking Violations	15	1	Violations Susceptible to assessment of MMPs, All violations susceptible to assessment of MMPs should be included as Class 1 priority violations	The prioritization proposal addresses violations that are subject to discretionary penalties. Violations that are subject to MMPs are a subset of these violations. It is important for the Water Boards to understand the nature of the violations that they are addressing pursuant to the prioritization proposal which evaluates threats to water quality and the regulatory program. Further, the Policy states that "Class 1 priority violations are those that pose an immediate and substantial threat to water quality and that have the potential to cause significant detrimental impacts to human health or the environment". All violations that are susceptible to assessment of MMPs do not meet this criteria.
II.A.Ranking Violations	15	2	Acute Toxicity Violations: All violations of acute toxicity requirements should be included as Class I priority violations	The intent of the Policy is for staff to make case-by-case determinations as to whether violation of an acute toxicity requirement "poses an immediate and substantial threat to water quality" and has ". . . the potential to cause significant detrimental impacts to human health or the environment".

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II.A.Ranking Violations	4	4	Ranking Violations CASQA recommends that the Policy provide a series of examples of Class I, II, and III violations for the various regulatory programs, including the stormwater program, to clearly identify how the ranking process should be utilized to ensure that there is fair, firm and consistent enforcement statewide.	This is a Policy document, so examples of what constitutes violations were omitted in this version. This Policy is not intended to provide, nor does it prevent the development of, guidance on the implementation of the policy.
II.A.Ranking Violations	21	5	WSPA strongly believes that the basis for all enforcement decisions, including the classifications of violations should be a matter of public record. The ACL documentation should detail not only the facts and circumstances that support the penalty calculation, but the facts and circumstances that support the decision to issue an ACL Compliant in the first instance. The classification of the underlying violation(s) is a critical aspect of this decision.	The comment conflates two different processes. One for ranking violations and one for presenting information in support of a formal enforcement action. Should a matter be brought for formal enforcement, the information leading to the prioritization of the violation will be addressed and available to the discharger.
II.A.Ranking Violations	10	6	Provide explanation for term "violations" in section 1.a of the Class 1 Violations and sections 2.i of the Class 2 Violations sections. Section 1.a of the Class 1 Violations section and section 2.i of the Class 2 Violations section both identify "significant measured or calculated violations" of water quality. The Sanitation Districts are unclear if the "violation" is referring to a permit requirement or effluent limit, a violation of water quality objectives, or water quality criteria as measured in receiving waters. For the purpose of clarity, we recommend that the State Water Board reword this section to clarify that the intended meaning is a "violation of a permit requirement of effluent limit" that has a lasting effect on a "water quality objective or promulgated water quality criteria attainment in receiving waters." They also are unclear what type of violations fall into the "calculated" violations category and recommend that this phrase be explained or defined as well.	The commenter states that the "...Districts are unclear if the "violation" is referring to a permit requirement or effluent limit, a violation of water quality objectives, or water quality criteria as measured in receiving waters." The reference to "violation" is meant to be broad and, in fact, is inclusive of all the types of violations suggested by the commenter. The language proposed by the commenter is overly restrictive.
II.A.Ranking Violations	21	6	Section II.A - Ranking Violations: WSPA proposes minor modifications to the criteria that are used to distinguish among Class I, Class I, and Class III violations. Specifically, WSPA believes that in cases involving actual discharges, the Water Boards must have evidence demonstrating the water quality effects of the alleged violations in the receiving waters (outside any mixing zone or zone of initial dilution, if applicable).	The commenter has confused the tasks of ranking violations with taking enforcement. The Water Boards must have evidence when pursuing enforcement against a discharger, not during the preliminary effort of ranking violations. To the extent that this comment clarifies the text (i.e. adding the words "in the receiving waters" to II.A.1.a and II A.2.i, and II.A.3.f) the Policy has been updated.

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II.A.Ranking Violations	10	7	Change "may" to "will" in section 2.b of the Class II Violations Section; Section 2.b of the Class II Violations section identifies "violations of acute or chronic toxicity requirements where the discharge may adversely affect fish or wildlife." The Sanitation Districts are concerned that the use of the word "may" in this section will result in every violation of acute or chronic toxicity testing being characterized as a Class II violation, regardless of whether actual receiving water impacts occur. Therefore, they recommend that the term "may" be changed to "will."	The language change suggested by the commenter would be descriptive of a Class I violation. Use of the word "may" is intentional in that it is not meant to describe definite impacts to fish or wildlife (a Class I violation), but only possible impacts to fish or wildlife.
II.A.Ranking Violations	10	8	An inadvertent failure to comply with monitoring requirements or submit information should be treated as a Class III violation. If the intent (as stated during the workshop) is to differentiate between (1) Class II and Class III violations related to monitoring and (2) an information submittal based on the nature of the information (i.e. how critical it is), then they suggest that this factor be reworded, because it currently uses terminology related to the culpability of the discharger instead of the information.	Negligent and inadvertent failures with regard to monitoring requirements may be Class II or Class III violations, depending on the severity of the failure. Knowing or Willful failures with regard to monitoring requirements are Class I violations. No change is recommended.
II.B.Enforcement Priorities for Individual Entities	21	7	Section II.B - Enforcement Priorities for Individual Cases (Entities): WSPA proposes a number of modifications to this subsection, including changing the title to "Enforcement Priorities for Individual Cases" (rather than "Entities"). As drafted, this section is confusing, as a number of the criteria have nothing to do with the entity responsible for the violation and relate more to the violation itself.	While many of the criteria apply to the case as well as the entity, a few apply strictly to the entity. For this reason, the title of the section is appropriately titled "Enforcement Priorities for Individual Entities".
II.D.Setting Statewide and Regional Priorities	21	8	Section II.D - Setting Statewide and Regional Priorities: Consistent with the comment noted previously, the State Board's annual review of its enforcement priorities should be conducted in a public process, and its annual enforcement report should be a public document.	Board actions are taken after public notice. The enforcement reports are public documents.
II.D.Setting Statewide and Regional Priorities	4	15.b	a. CASQA recommends the Water Boards prioritize their efforts on the regulatory programs that are characterized by low levels of compliance and are resulting in little corrective action.  b. Additionally, Water Boards should prioritize their efforts on referrals received from local agencies.	The Policy was developed subsequent to this letter. This letter and others were generally considered in the development of the revised Policy. The questions to which this letter responds related generally to Water Quality enforcement activities, not specifically targeted to language in the proposed Enforcement Policy.  a. The Water Board level of compliance review is not the focus of this policy.  b. Proposed prioritization process allows for input from local agencies but does not allow local agencies to dictate Water Board priorities.

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II.E.Mandatory Enforcement Actions	1	3	Lack of Notification Requirement The draft states that "mandatory actions should be taken, within 18 months of the time that the violations qualify as MMP violations." The Regional Water Board should be required to notify the permit holder of the alleged violation within 30 days from the time that the alleged violation occurred. This would allow the permittee an opportunity to resolve the alleged violation by filing the report before the penalty compounds.	The statute does not require notice of violation as a precondition to the assessment of mandatory minimum penalties, including those based on a failure to report. The Board lacks the legal authority to modify the statutory requirements as suggested.  The "action" referred to in the Policy is the action to assess mandatory minimum penalties, and does not address any other notification issue.
II.E.Mandatory Enforcement Actions	1	4	Calculating MMPs The draft Enforcement Policy continues to maintain the current processes for compounding penalties. We believe that adequate notification and a single penalty, if warranted, should eliminate future failures to file monitoring reports. ACWA encourages the State Board to adopt such policy language.	The Board lacks the legal authority to establish the policy as recommended.
II.E.Mandatory Enforcement Actions	21	9	Section II.E - Mandatory Enforcement Actions: This subsection suggests that individual violations may be the subject of both mandatory enforcement under the MMP program and supplemental discretionary enforcement. Absent heightened or unusual circumstances that warrant discretionary enforcement in lieu of MMPs, MMPs represent an appropriate enforcement response.	By law, certain violations are subject to mandatory minimum penalties or discretionary penalties. Once an enforcement election is made, the other option is precluded. The policy will not preclude consideration of discretionary penalties.
III.Enforcement Actions	3	1	CCA recommends deleting the proposed change that limits tracking in the State's enforcement database of violations return to compliance only "where appropriate." Also, limiting the amount of the information collected will move the State and Regional Water Boards backwards in this laudable effort.	The inclusion of "where appropriate" as a policy statement is intended to address situations where a return to compliance date can not be ascertained such as single event illegal discharge, it does not otherwise impact the Water Board's data base or otherwise move the Water Boards "backward" in obtaining compliance information.
V.B.Oil Spills	3	2	CCA recommends, a specific reference should be added with regard to coordinating with the Department of Fish and Game pursuant to their own enforcement authorities. The pilot Los Angeles Regional Water Board integrated enforcement effort with DFG is an example of how better coordination can enhance and leverage the enforcement efforts of the two agencies overall.	The suggested language is unnecessary. Moreover, the comment misapprehends the status of the "pilot project" with the Department of Fish and Game.

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V.C.General	4	9.a	Modification of Compliance Assurance CASQA recommends that referrals from local agencies (especially non-filers) should be a priority. However, Section II does not recognize Referrals from Local Agencies as a Compliance Assurance aspect. Also, CASQA recommends that the Water Boards recognize this important compliance assurance reporting mechanism that is required in most municipal NPDES stormwater permits.	This letter addresses a prior version of the Policy, and is no longer entirely relevant. It should be noted, however, that language in the current draft policy specifically includes recognition of local agencies in Section V. C. as follows: "The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority."  It should also be noted that, while the prioritization process does not allow local agencies to dictate Water Board priorities, it does allow for input from local agencies.
VI.Monetary Assessments In ACLs	21	1	In its earlier comments, WSPA voiced support for the establishment of a statewide panel comprised of senior level staff from the Water Boards that would be charged with calculating the amount of administrative penalties. Because there appears to be consensus in favor of the calculation methodology described in the draft Policy, WSPA has reviewed this alternative and prepared a mark-up of the policy	Noted.
VI.Monetary Assessments In ACLs	9	3	LACFCD states in spite of the multiple steps and factors in the Penalty Calculation Methodology, the methodology remains vague. They recommend, the State Board must evaluate the effect application of this methodology would have on real-world violations. They suggest, the regulated community and the general public need to know if proposed penalties would be higher under this new policy.	This methodology has been developed over the course of several months by working with enforcement representatives from all the Water Boards. The policy is not intended to address the specific details of every violation. The Penalty Calculation Methodology provides a framework for consistently characterizing and assessing penalty amounts.
VI.Monetary Assessments In ACLs	14	3	The proposed liability assessment protocol used to calculate fines includes a "Deviation from Standard" factor that defines a noncompliant discharge event as "Minor", "Moderate", or "Major". The purely narrative definitions are subjective. 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.	Numeric criteria would vary widely depending on the particular violation. The current narrative approach provides general consistency without unnecessarily complicating the approach.
VI.Monetary Assessments In ACLs	4	5	Monetary Assessments in Administrative Civil Liability (ACL) Actions (Section VI) CASQA recommends that the Policy provide a series of examples of monetary assessments for the various regulatory programs, including the stormwater program, to clearly identify how the assessment process should utilized.	The text spells out how the process should be utilized. This is a policy document, so examples of how to undertake calculations were not included in this version. This policy is not intended to provide, nor does it prevent the development of, guidance on implementation of the policy .

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VI.Monetary Assessments In ACLs	10	10	Section 5 of the Draft Policy promotes a discharger centric burden of proof standard ("the defendant must demonstrate that the penalty should be less than the statutory maximum"). The discussion fails to include of reference the fact that the Regional and /or State Water Boards, as the prosecuting agencies, possess the burden to justify the type of enforcement action and penalty imposed, and must make findings supported by evidence in the administrated record. If the Draft Policy is going to address the legal issue of burden of proof, this aspect should be included in the discussion.	This statement notes how penalty assessments have often been addressed by the courts.
VI.Monetary Assessments In ACLs	10	12	Modify the use of the MCL example in Step 1. Factor 1 The Draft Policy assigns a Factor of 3 or 4 for "moderate" and 4 for "more than moderate" threats to beneficial uses, and providing examples. Among these are the following two specific examples, respectively, to describe "moderate" and "more that moderate" threats: "material contribution to MCL exceedences for drinking water supplies." The inclusion of these examples as requiring Factors of 3 and/or 4 is problematic, and will result in overly punitive penalties. Regional Water Boards have incorporated State Water Board Resolution 88-69 into their Basin Plans, applying the MUN beneficial use to all waters in California. Therefore, many water bodies that are considered "drinking water supplies" for purposes of water quality regulation are not, in fact, used for drinking water. These MCL examples should be removed from the Draft Policy in favor of a more site-specific determination of whether a particular violation presents an actual moderate or above moderate threat to beneficial uses.	These sections have been modified to focus on impacts to beneficial uses.
VI.Monetary Assessments In ACLs	10	13	Proposed consideration of recycled water during ACL assessment Although the maximum per gallon assessment for recycled water was set at an amount less than that for sewage spills (\$2.00/gallon), the Sanitation Districts believe that \$1.00/gallon is disproportionate to the degree of risk (compared with raw sewage), given that recycled water has already been treated and thus is relatively benign. They recommend a maximum amount of \$0.10/gallon - \$0.50/gallon for recycled water, depending on the level of treatment, unless actual adverse impacts to beneficial uses are observed.	The policy is intended to provide a consistent approach to violations while recognizing that there are differences in the quality and impact of the violations. The policy already allows for a lower amount for spills of recycled water. Other factors in the policy may be used where the actual impact in a particular case is relatively small.

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VI.Monetary Assessments In ACLs	14	2 General	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.	The previous penalty section of the enforcement policy was not a mechanism based on numeric limits. Moreover, the proposed penalty calculation methodology is based on the factors that the Water Boards are required by law to evaluate, and is not intended to address the specific details of every violation. The Penalty Calculation Methodology provides a framework for consistently characterizing and assessing penalty amounts.
VI.A. Penalty Calculation Methodology	7	1	Policy Should Not Limit the Scope of Review By The State Water Board. Recommends striking language on page 11 stating the State Board will "defer" to the Regional Water Boards calculations of ACL amounts. The civil liability amounts for similar violations could vary significantly by region, or even within a region, yet these decisions would be afforded a presumption of correctness. Moreover, State Board abstention from reviewing these decisions is unnecessary, given that State Board review is discretionary and not automatic. There is no need to establish a blanket approach of deference to the Regional Water Board's calculations.	See Response to BACWA/CASA/CVCWA/SCA of POTWs/Tri-Tac Comment 1
VI.A. Penalty Calculation Methodology	2	1	Policy Should Not Limit the Scope of Review By The State Water Board. Recommends striking language on page 11 stating the State Board will "defer" to the Regional Water Boards calculations of ACL amounts. The civil liability amounts for similar violations could vary significantly by region, or even within a region, yet these decisions would be afforded a presumption of correctness. Moreover, State Board abstention from reviewing these decisions is unnecessary, given that State Board review is discretionary and not automatic. There is no need to establish a blanket approach of deference to the Regional Water Board's calculations.	The Board retains authority to review penalty determinations based on error of law or abuse of discretion. The Board language is designed to indicate that the Board does not want or intend to review mere disagreements regarding the amount of penalty that a regional board has determined to impose using the methodology in this policy. The deference expressed in this policy is consistent with law.
VI.A. Penalty Calculation Methodology	14	3 General	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 public review (via e-mail or the State's website).	The scenarios were used for internal analysis of the proposed methodology, and portions of the methodology have changed since that time. Substantial staff time would be required to conform all scenarios to the current methodology language and to prepare them for public use.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A. Penalty Calculation Methodology	3	3	CCA recommends the Water Boards delete the newly added word "unfair," which would limit the Board's ability to correct any "competitive advantage obtained from noncompliance." Also, stating any competitive advantage that was "obtained" from noncompliance" is by definition "unfair."	The addition of the term "unfair" is consistent with and is a more complete statement of the type of improper advantage that a business could realize from noncompliance with water quality requirements. Moreover, the use of the term "unfair" is consistent with other statutory enforcement schemes such as the Unfair Competition Law (Business & Professions Code section 17200 et seq.)
VI.A. Penalty Calculation Methodology	10	3	Policy Should Not Limit the Scope of Review By The State Water Board. Recommends striking language on page 11 stating the State Board will "defer" to the Regional Water Boards calculations of ACL amounts. The civil liability amounts for similar violations could vary significantly by region, or even within a region, yet these decisions would be afforded a presumption of correctness. Moreover, State Board abstention from reviewing these decisions is unnecessary, given that State Board review is discretionary and not automatic. There is no need to establish a blanket approach of deference to the Regional Water Board's calculations.	See Response to BACWA/CASA/CVCWA/SCA of POTWs/Tri-Tac Comment 1
VI.A. Penalty Calculation Methodology	15	3	Deference to the Regional Water Boards on Petitions: It is inappropriate for a violator to challenge the use of the methodology in a petition if the Policy requires use of the methodology. Rather, a petition can challenge the amount of the civil liability that is derived from the use of the methodology. Recommends changing the language accordingly.	Additional language is unnecessary to the extent that it seeks to limits challenges to the amount of the civil liability.
VI.A. Penalty Calculation Methodology	16	4	The proposed Enforcement Policy sets out a methodology for calculating penalties that is overly restrictive and does not necessarily create consistency in the final result. The proposed methodology does not allow the user to account for particulars of individual situations which are typically addressed using best professional judgment. We do not think that the proposed methodology can be modified in a way that will accommodate the variability in the types of dischargers, discharges, and violations that we and other regions encounter, and hope that the State Water Board will consider affording the Regional Water Boards greater flexibility in setting penalties for violations within their regions.	Noted. No Policy change is proposed.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A. Penalty Calculation Methodology	18	4	Steps 2 and 3-Deviation from Standard: The Regional Water Boards' enforcement coordinators' understanding of how "Deviation from Standard" would be applied remains unclear even after numerous discussions about the topic and testing of case scenarios. We recommend that "Deviation from Standard" be better defined.	"Deviation from Standard" has been changed to "Deviation from Requirement," and the explanation has also been clarified..
VI.A. Penalty Calculation Methodology	20	4	Penalty Calculation Methodology, Steps 2 and 3-Deviation from Standard: The Regional Water Boards' enforcement coordinators' understanding of how "Deviation from Standard" would be applied remains unclear even after numerous discussions about the topic and testing of case scenarios. We recommend that "Deviation from Standard" be better defined.	Please see response to the San Francisco Bay Regional Water Board's Comment 4.
VI.A. Penalty Calculation Methodology	16	5	We believe that the changes proposed by the Regional Water Board enforcement coordinators are an improvement and we support the changes proposed by the enforcement staff of Region 2 and other Regions.	Noted.
VI.A. Penalty Calculation Methodology	21	10	Section VI.A - Penalty Calculation Methodology (General): WSPA strongly disputes the notion, as set forth in the draft Policy, that "the defendant must demonstrate that the penalty should be less than the statutory maximum." WSPA is aware of no case law that supports this assertion and believes such an approach would constitute a major (and inappropriate) change in enforcement policy.  Further, WSPA does not believe it is realistic for the Water Boards to try to redress "unfair competitive advantage" as indicated in the Policy. As a legal principle, this transcends avoided or deferred costs, and requires highly sophisticated economic proof. The Water Code does not identify this as a relevant factor in assessment of penalties, and it is doubtful whether the Water Boards have the resources or expertise to make such determinations.	Quoted section is taken out of context. However case law does support the proposition in the assessment of liability for violations of environmental laws the maximum penalty is presumed appropriate. State of California v. City and County of San Francisco (1979) 94 Cal.App.3d 522, 531-532; see also People v. Wilmhurst, supra; Rich v. Schwab (1998) 63 Cal.App.4th 803, 816-817 We believe that unfair competitive advantage is a subset of economic benefit. Moreover, such factor, if demonstrated, could also be a considered under "Other Matters as Justice May Require".

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A. Penalty Calculation Methodology	10	11	<p>Improper requirements to recoup economic benefit in Porter-Cologne/WDR enforcement actions</p> <p>The Draft Policy states "the Porter-Cologne Act requires that civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. This statement appropriately captures Porter-Cologne requirement that economic benefit be recouped for penalties issued in response to violations of Clean Water Act related orders, including NPDES permits, as required by Water Code Section 13385(e), but improperly infer the same requirement of violations of permits or orders issued solely pursuant to the Porter-Cologne Act.</p> <p>For these reasons, the phrase on page 10 should be revised as follows "Moreover, as discussed below, the Porter-Cologne Act requires that "economic benefit or savings," if any, be recovered for violations of orders issued pursuant to the Federal Water Pollution Control Act and that "economic benefit or savings," if any, be considered in assessing civil liability for violations of the Porter-Cologne Act or orders issued there under."</p> <p>In addition, page 11 of the Draft Policy recommends that any assessment of administrative liability should "Fully eliminate any economic advantage obtained from non-compliance." As noted above, economic benefit is only a consideration in assessing penalties for orders issued solely under Porter-Cologne. This bullet point should be revised to reflect the statutory differences between civil penalties assessed for violation of Clean Water Act and Porter-Cologne related orders. To be consistent, Step 8 on page 22 should also be revised accordingly.</p>	<p>The wording will be changed to reflect that the law does not require recovery of EB in all ACLs. However, it is intended that this policy require that economic benefit be recovered in all such penalty actions.</p>
VI.A. Penalty Calculation Methodology	21	12	<p>Section VI.A - Penalty Calculation Methodology, Steps 6 - 9:</p> <p>a. WSPA suggests switching Step 6 and Step 8 as they appear in the draft, and adding a new Step 8 reflecting the final penalty calculation before consideration of a violator's ability to pay.</p> <p>b. WSPA is very strongly opposed to the notion that a violator's ability to pay, by itself warrants upward adjustment of a calculated penalty under any circumstances. WSPA acknowledges that deterrence is a legitimate goal of a civil penalty scheme, but believes that penalties should be increased for this purpose only rarely, under the rubric of "other factors that justice may require".</p>	<p>We disagree with the comment regarding organization of the Steps in the methodology. Regarding ability to pay, this is one of the factors that must be considered in setting the amount of the penalty. While ability to pay does not represent a maximum amount, 13385(c) does state that economic benefit represents a minimum amount.</p> <p>Regarding upward adjustment of penalty in response to Ability to Pay; We believe that this language is acceptable as it is advisory, rather than compulsory.</p>

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 1 - Potential Harm Factor for Discharge Violations	20	1	Step 1 - Potential Harm Factor for Discharge Violations: We recommend revising the description of values under Factors 1 and 2 to reduce the uncertainty in interpreting how to assign a value to a given violation and to make the definitions more inline with the Water Boards' mission.	Please see response to the San Francisco Bay Regional Water Board's Comment 1.
VI.A.Step 1 - Potential Harm Factor for Discharge Violations	18	1	Step 1 - Potential Harm Factor for Discharge Violations, Factors 1 and 2: We recommend revising the description of values under Factors 1 and 2 to reduce the uncertainty in interpreting how to assign a value to a given violation and to make the definitions more inline with the Water Boards' mission.	Policy text was clarified in accordance with these suggestions.
VI.A.Step 1 - Potential Harm Factor for Discharge Violations	18	2	Step 1 - Potential Harm Factor for Discharge Violations, Factor 3: We recommend adding wording to Factor 3 so that evaluations of whether a discharge is susceptible to cleanup or not will be considered in concert with whether cleanup was actually performed.	"Whether the discharge is susceptible to cleanup" and "voluntary cleanup efforts undertaken" are separate considerations under the Water Code, and the current approach maintains this separation.
VI.A.Step 1 - Potential Harm Factor for Discharge Violations	20	2	Step 1 - Potential Harm Factor for Discharge Violations, Factor 3: We recommend adding wording to Factor 3 so that evaluations of whether a discharge is susceptible to cleanup or not will be considered in concert with whether cleanup was actually performed.	Please see response to the San Francisco Bay Regional Water Board's Comment 2.
VI.A.Step 1 - Potential Harm Factor for Discharge Violations	15	4	Recommends revising the description of values under Factors 1 and 2 to reduce the uncertainty in interpreting how to assign a value to a given violation and make the definitions more inline with the Water Board's mission:	See response to San Francisco Regional Water Quality Control Board Comment 1

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 1 - Potential Harm Factor for Discharge Violations	9	6	LACFCD suggests there is an overall lack of examples to indicate how the various factors in this methodology should be applied. For instance, step 1, factor 1, is designed to rate "Harm or Potential Harm to Beneficial Uses" on a 0-5 scale. There is little in the way of examples, however, of how various types of violations would rate on the scale. This impact analysis does not evaluate whether the aquatic life impacted is sensitive and relatively high valued species, such as native species in an estuary, or relatively lower valued, ubiquitous and resilient species, such as carp in drainage channel. Beach closures are proposed as another metric, but 100 yards of a single beach would merit the same rating as a closure of 60 miles of beaches. Similarly, no distinction between precautionary beach closure and beaches that are closed because of actual exceedances of water quality objectives. There is also no distinction between beach closures during high-use summer months and lower-use winter months. Also, lack of guidance in step 4.	The wording of this section has been changed to provide greater clarity. The policy is not intended to address the degree and circumstances of each specific impact to beneficial uses. Rather, it is left to the discretion of each Regional Board how to address this level of detail.
VI.A.Step 2 - Assessments for Discharge Violations	13	1	Page 16 - First Change. The last paragraph of Step 2 repeats the last two sentences of the immediately preceding paragraph; the last paragraph should be deleted in its entirety.	Text was corrected.
VI.A.Step 2 - Assessments for Discharge Violations	10	2	The proposed Policy calls for the maximum per gallon penalties allowed under statute to be used as the starting point for determining liability. In the case of non-NPDES WDR discharges for POTWs, this would lead to potentially exorbitant penalties. Since the per gallon penalty amounts could be unreasonably high for what may be a relatively inconsequential violation, we recommend that the policy be amended to specify that the adjusted base liability for non-NPDES WDR effluent violations be calculated on a per day basis as the starting point, rather than a per-gallon basis. Use of the maximum per day liability of \$5000 as a starting point for penalty calculation will result in liabilities more commensurate with the severity of these violations.	See Response to BACWA/CASA/CVCWA/SCA of POTWs/Tri-Tac Comment 3
VI.A.Step 2 - Assessments for Discharge Violations	14	2	The draft Policy includes language that infers that treated recycled water is a waste. 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. The draft Policy implies that treated recycled water is a waste and possibly hazardous. 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.	While tertiary treated wastewater may not pose the same threat as some discharges, it may still pose a threat depending on where and when it is discharged. Enforcement is discretionary, so no penalty is required to be assessed where it is deemed unnecessary to address the violation.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 2 - Assessments for Discharge Violations	2	2	Proposed Liability Calculation for Recycled Water Releases Should Be Revised In Order Not To Discourage Use of This Important Alternative to Water Supply. Although they appreciate that the policy sets a lower per gallon threshold for recycled water spills, they remain concerned that the policy would still generate ACL amounts for recycled water releases that are disproportionate to the potential environmental harm. Requests reduction of penalty for recycled water from \$1.00/gallon to \$0.50/gallon	The proposed policy provides a balanced approach to addressing the potential exposure of facilities managing recycled water to civil liability for violations of the Water Code.
VI.A.Step 2 - Assessments for Discharge Violations	18	3	Step 2 - Assessments for Discharge Violations: We recommend changing the presentation of Table 1 ("Per Gallon Factor for Discharges") and Table 2 ("Per Day Factor for Discharges") to clearly identify steps in table values, by grouping and labeling potential harm factors within each "step", and to improve flexibility of use, by consolidating individual harm factor values into ranges of values to a range of values within each "step" (example shown below). While values in the table have been consolidated into ranges for each upward step in the harm level, values in the table itself have not been changed.	Grouping discrete values in Tables 1 and 2 will allow more flexibility at the expense of greater consistency. We do not recommend grouping the values in these tables into ranges.
VI.A.Step 2 - Assessments for Discharge Violations	20	3	Step 2 - Assessments for Discharge Violations, Tables 1 and 2: We recommend changing the presentation of Table 1 ("Per Gallon Factor for Discharges") and Table 2 ("Per Day Factor for Discharges") to clearly identify steps in table values, by grouping and labeling potential harm factors within each "step", and to improve flexibility of use, by consolidating individual harm factor values into ranges of values to a range of values within each "step" (example shown below). While values in the table have been consolidated into ranges for each upward step in the harm level, values in the table itself have not been changed.	Please see response to the San Francisco Bay Regional Water Board's Comment 3.
VI.A.Step 2 - Assessments for Discharge Violations	2	3	The proposed Policy calls for the maximum per gallon penalties allowed under statute to be used as the starting point for determining liability. In the case of non-NPDES WDR discharges for POTWs, this would lead to potentially exorbitant penalties. Since the per gallon penalty amounts could be unreasonably high for what may be a relatively inconsequential violation, we recommend that the policy be amended to specify that the adjusted base liability for non-NPDES WDR effluent violations be calculated on a per day basis as the starting point, rather than a per-gallon basis. Use of the maximum per day liability of \$5000 as a starting point for penalty calculation will result in liabilities more commensurate with the severity of these violations.	The policy is amended to allow for per gallon and/or per day assessment for discharge violations as provided by statute, and to clarify that effluent limit violations should be addressed on a per day basis.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 2 - Assessments for Discharge Violations	15	5	Steps 2 and 3 - Deviation from Standard Recommends better defining Standard of Deviation (beneath Tables 1, 2, and 3)	Please see response to San Francisco Regional Water Quality Control Board Comment 4
VI.A.Step 2 - Assessments for Discharge Violations	4	6	Step 2 - Per Gallon and Per Day assessment Discharge Violations CASQA is concerned with this portion of the Policy because it seems to directly equate stormwater discharges with sewage spills. CASQA recommends that, instead of trying to address non-compliant discharges of stormwater in the same way as sewage spills, the Board should refine the existing approach for stormwater- related ACLs to ensure that there is a defined economic methodology within the Policy so that there is consistent enforcement statewide. CASQA recommends the following: - Define a methodology or set of methodologies for determining the economic benefit for construction sites, industrial facilities, and municipalities - Determine the liability based on the following factors o Determine base calculations by days of violations and not per gallon charges o Ensure recovery of economic benefits and staff costs to the extent required by law, estimating economic benefits as appropriate for municipal stormwater permittees - Consideration of the adjustment factors (Step 4)	The policy is intended to provide a consistent approach to violations while recognizing that there are differences in the quality and impact of the violations. Setting a different approach for each type of violation or discharger would result in a less consistent approach statewide.
VI.A.Step 2 - Assessments for Discharge Violations	21	11	Section VI.A - Penalty Calculation Methodology, Step 2: a. WSPA provides revised language for this section to correct a perceived implicit direction to assess penalties on both a per day and per gallon basis, contrary to the Water Code.  b. WSPA proposes that the provisions of the draft Policy pertaining to high volume discharges (e.g., sewage spills and storm water discharges) be expanded to include industrial dischargers that have continuous NPDES discharges in excess of 750,000 gallons per day. WSPA recommends that in circumstances where a Water Board has determined that MMPs do not represent an adequate enforcement response, per gallon penalties should be capped at \$0.50 per gallon to avoid unnecessarily punitive and confiscatory penalties.	a. The policy cannot authorize penalties that are not consistent with the law, and does not authorize both a per day and per gallon penalty unless authorized by law.  b. We have no information to suggest that the industrial discharge referenced in this comment is the same as wastewater or stormwater discharges.
VI.A.Step 2 - Assessments for Discharge Violations	10	14	Provide Clarification of Deviations from Standards (Step 2) It is unclear which category (minor, moderate, or major) will be assigned for the exceedance of technical of a numeric effluent limitation. They suggest that exceedance of technical limits only be categorized as minor, if pursued using discretionary authority.	There is room for discretion in determining the extent to which a particular effluent limit violation represents a deviation from the standard of compliance with the effluent limitation.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 3 - Per Day Assessments for Non-Discharge Violations	13	2	Page 16 - Second Change. The second sentence of the first paragraph of Step 3 begins with "These are violations include,...". The word "are" should be deleted.	Text was corrected.
VI.A.Step 3 - Per Day Assessments for Non-Discharge Violations	18	5	We recommend allowing for the penalty calculation methodology to be revised and amended as necessary before the next revision of the Policy by including specific language in the Policy to revisit the methodology within an approximately 2-year timeframe. We request that the Office of Enforcement take responsibility in the interim for tracking statewide penalty assessments for non-discharge violations and for working with enforcement coordinators on developing more reasonable base values for Table 3 and/or an alternative approach for non-discharge violation penalty assessments.	Reconsideration of any portion of this policy may be done at by the Board at any time. We do not recommend that a 2-year limitation be included in the Policy. If the Board deems such tracking and reconsideration is appropriate, they may direct staff to track and report on this information.
VI.A.Step 3 - Per Day Assessments for Non-Discharge Violations	20	5	<p>Step 3 - Per Day Assessments for Non-Discharge Violations: The potential harm values proposed in Table 3 result in high-end penalties because the base penalty generated by Table 3 for non-discharge violations will be ratcheted upward due to discharger conduct factors associated with these types of violations. The enforcement coordinators have not been able to perform sufficient peer review of any adjustments for Table 3. We therefore do not recommend revising Table 3 at this time, but do recommend that Table 3 be amended before the Policy is next revised (on an approximate 5-year timeframe).</p> <p>We recommend allowing for the penalty calculation methodology to be revised and amended as necessary before the next revision of the Policy by including specific language in the Policy to revisit the methodology within an approximately 2-year timeframe. We request that the Office of Enforcement take responsibility in the interim for tracking statewide penalty assessments for non-discharge violations and for working with enforcement coordinators on developing more reasonable base values for Table 3 and/or an alternative approach for non-discharge violation penalty assessments.</p>	Please see response to the San Francisco Bay Regional Water Board's Comment 5.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 3 - Per Day Assessments for Non-Discharge Violations	15	6	Recommends allowing for the penalty calculation methodology to be revised and amended as necessary before the next revision of the Policy by including specific language in the Policy to revisit the methodology within an approximately 2-year timeframe. Requests that the Office of Enforcement take responsibility in the interim for tracking statewide penalty assessments for non-discharge violations and for working with the Regional Water Boards' enforcement coordinators on developing more reasonable base values for Table 3 and/or an alternative approach for non-discharge violation penalty assessments.	Please see response to San Francisco Regional Water Quality Control Board Comment 5
VI.A.Step 4	12	2	Multiple Instances of the Same Violation; KB Home expressed the proposed Policy sets forth the circumstances in which multiple violations are treated as a single violation. The failure to file a required report during a period when there has been no discharge should be treated as a single violation. It would be helpful if the Board would clarify that failure to file a report when there has been no discharge should be treated as a single violation. If the Board believes that the foregoing listed circumstances do not apply to the failure to file a report of non-discharge, KB Home respectfully requests the Board to add that category to the list.	Agree in part, though no change is proposed. Failure to file a single report is a single violation, except as specified in CWC 13385.1(a)(1).
VI.A.Step 4	12	3	KB Home states under the proposed Policy, for violations that last longer than 30 days, the daily assessment can be less than the calculated daily assessment if the Water Board makes one of three findings. KB Home believes that these criteria make sense, and should be retained to avoid the assessment of penalties that grossly exceed the nature of the violation.	Noted.
VI.A.Step 4	2	4	Good faith efforts to Eliminate Noncompliance Should be a Factor Used to Modify Initial Liability In using the "History of Violations" adjustment factors in Table 4, the Water Boards should consider the discharger's good-faith efforts to eliminate the non-compliance.	Dischargers are reasonably expected to take steps necessary to comply with their discharge requirements. This should not be a mitigating factor in an enforcement action.
VI.A.Step 4	9	4	LACFCD suggests the regional boards should limit their review of a discharger's history of violations to violations that occurred during the previous 5 years, this timeframe is consistent with the U.S. EPA Clean Water Act Civil Penalty Policy	There is no reason to limit this consideration to 5 years. If there were a period of several years of compliance, it would not generally be considered a history of repeat violations.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 4	9	5	LACFCD recommends, a maximum amount of much less than \$2.00 per gallon should be used to assess civil penalties for municipal stormwater violations for the following reasons: the maximum per-gallon amount for releases of municipal stormwater under step 2 (pg.16) of this methodology should be less than the maximum per-gallon amount for sewage spills and releases of stormwater from construction sites. The volume of water discharged from municipal storm sewers is vastly greater than even the largest sewage spills, but stormwater has fewer contaminants. The amount of stormwater discharged from construction sites is very small by comparison. Furthermore, the operators of sanitary sewer collections systems and construction sites have more control over the entry of pollutants into their discharge.	While we recognize that there will be some unusual circumstances where very large volumes of stormwater may occur from a variety of sites, these outlying instances may be addressed under "Other Matters As Justice May Require".
VI.A.Step 4	10	15	Cleanup and Cooperation factor (Step4) should be used to recognize cleanup efforts A discharger who voluntarily returns to compliance, undertakes aggressive cleanup efforts and/or corrects environmental damage should be recognized for the efforts undertaken, when penalties are calculated. Therefore, a lower cleanup and cooperation adjustment factor should be included. They recommend that the cleanup and cooperation factor range from 0.25 to 1.5 instead of the current range 0.75 to 1.5.	Disagree. The dischargers should always undertake aggressive cleanup efforts and/or correct environmental damage caused by the discharge.
VI.A.Step 4	10	16	History of Violations (step 4) factor should be applied on a case-by-case basis. Adjustments for prior history of violations may disproportionately affect POTW's. Penalties should not be increased by 10% simply due to the fact that prior violations have occurred, unless they are indicative of an ongoing problem that has not been properly addressed.	The commenter notes that this factor should be applied on a case-by-case basis, and that is exactly what is directed by this penalty calculation methodology. Penalties will not be increased by 10% simply due to the fact that prior violations have occurred. They are to be increased by 10% if there is a "history of repeat violations".

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VI.A.Step 8	10	4	Proposed economic benefit provisions, Step 8 of the Monetary Assessments in ACL has considerable uncertainty inherent in its calculation, particularly in the case of economic benefit realized by a public agency, the Sanitation Districts request that State Water Board modify the Draft Policy to allow flexibility in its use. Also, the BEN model should not be used to set a minimum penalty level for public agencies for the following reasons: 1) the calculations of any economic benefit value is subject to substantial variability, 2) In many cases, the permittee actually incurs a negative economic benefit when the construction of facilities needed for compliance are commenced at a later date, 3) the premise of economic benefit rests on the potentially erroneous assumption that a permittee did not exercise "due care" and failed to take appropriate measures at the appropriate time to prevent violations, and 4) usage of the BEN model does not consider the difference between dischargers who are public agencies and dischargers who are private entities.	Determination and recovery of economic benefit is a central principle for ensuring an even playing field in enforcement. Consistency and fairness require that public agencies be treated in the same manner as any discharger. USEPA's BEN model is widely used to estimate the economic benefit of delaying or avoiding the costs of compliance.
VI.A.Step 8	10	5	The Sanitation Districts also request that the state water Board allow expenditures made as part of "good faith efforts" by dischargers to come into compliance with permit requirements, prior to the issuance of an ACL Order, be considered in calculating economic benefits. Currently, the language of the Draft Policy does not appear to allow these prior efforts to comply to be considered when calculating what the State water Boards consider to "economic benefit."	The impact of cleanup and cooperation on the proposed penalty are addressed in the policy. However, both the current and the proposed enforcement policy state that economic benefit should not be adjusted to accommodate these costs. These are costs that occur as a result of the violation, and are not directly related to the delayed or avoided costs of compliance.
VI.C. Other Administrative Civil Liability Settlement Components	10	17	Remove Reference to Civil Code Section 1542 from the Draft Policy In order to settle a complaint for administrative civil liabilities, it is sufficient to obtain a full and final release "of all claims alleged in the complaint." Since the settlement of "all claims alleged in the complaint" is a special release, a waiver of Civil Code Section 1542 is often not necessary so settle those claims. On rare occasions, however, there is a request for 1524 waivers when there is a concern their mat be some unknown consequences of a know claim, and there is a desire to make clear that the settlement covers all such consequences. Therefore, the sentence disallowing Civil Case Section 1542 waivers in all circumstances should be removed from the Draft Policy and, instead this issue should be negotiated between parties based on the nature of the particular settlement.	We evaluated the risk of allowing for the negotiation of CC 1542 waivers and determined that, as a matter of policy, it is inappropriate for a regulatory agency in an enforcement action to waive the protections of CC 1542. We are unaware of any situation in which such a waiver would be necessary or appropriate from the standpoint of the Water Boards.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VII.Mandatory Minimum Penalties for NPDES Violations	19	1	The District strongly endorses the comments provided to the SWRCB by the Association of California Water Agencies. Calling a late report or a discharge that did exceed discharge limitations a "serious violation", that carries a \$3,000 mandatory minimum penalty per month for each late report, is extreme and does not fit the common rule of thumb that the "penalty fit the crime." A smaller penalty, adequate to get a discharger's attention, should be sufficient.	See response to Association of California Water Agencies, Comments 2 and 4.
VII.Mandatory Minimum Penalties for NPDES Violations	8	3	CPR requests the addition of a new component of Chapter VII that provides an alternative to assessing MMPs for small cities in urban areas with MS4 stormwater permits. Further, the small entity alternative to assessing MMPs should not be restricted to the "financial hardship" criteria used for POTW serving small communities.	The Board lacks the legal authority to make changes to the statutory criteria for assessing MMPs.
VII.Mandatory Minimum Penalties for NPDES Violations	8	4	CPR recommends staff should improve the methodology for written communications to municipalities. Also, that the policy be revised such that failure to submit a report will be considered a single violation unless the State or Regional Water Board has provided written notice to the municipality or agency regarding the outstanding report. They respectfully request that the State Board require this notification prior to compounding a penalty.	<p>It is unclear which type of enforcement action this comment is directed to.</p> <p>To the extent that the comment is intended to address the assessment of MMPs for reporting violations, the Water Boards do not propose to address the calculation of MMPs for violations of Water Code section 13385.1 in this policy. There is no statutory requirement of a prior notice as a condition for the imposition of MMPs. To address the issues raised by this comment, the commentator should seek a statutory amendment to Water Code 13385.1.</p> <p>To the extent that the comment is intended to address discretionary assessment of liability or other enforcement actions, the circumstances of a discharger are factors that must be evaluated in the assessment of an appropriate liability.</p>
VII.Mandatory Minimum Penalties for NPDES Violations	8	5	Penalties should not be cumulative unless there has been prior notice by the Board of the alleged failures	See response to Coalition for Practical Regulation's Comment 4

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VII.Mandatory Minimum Penalties for NPDES Violations	8	6	There should not be multiple violations for failure to submit the same report for multiple reporting periods	See response to Coalition for Practical Regulations Comment 4
VII.Mandatory Minimum Penalties for NPDES Violations	13	7	<p>The July 14 draft of the Policy does not propose any revisions regarding how MMPs are calculated. Under the current interpretation that is being applied, monthly late report penalties overlap with other quarters for which reports have not been filed, resulting in substantial penalties, particularly where a permittee is completely unaware of any violation and the Regional Board is under no compulsion (for at least 18 months under the revised draft Policy) to inform the permittee of the violations.</p> <p>The current interpretation also conflicts with the provision of Water Code section 13385(h)(1), which imposes a mandatory minimum penalty of \$3,000 for "each serious violation". Under principles of statutory interpretation, where such a conflict exists, the conflicting statutes should, where possible, be harmonized. Here, the two statutes can be harmonized by reading the two statutory provisions together to apply a single penalty of \$3,000 for each quarterly report that is not timely filed, rather than the continuing accrual of \$3,000 penalties for each subsequent month.</p>	The Water Boards do not propose to address the calculation of MMPs for violations of Water Code section 13385.1. Moreover, Water Code section 13385.1 clearly indicates that each thirty-day period in which the required report is late, is a new violation for the purposes of assessing an MMP. To address the issues raised by this comment, the commentator should seek a statutory amendment to Water Code 13385.1.
VII.Mandatory Minimum Penalties for NPDES Violations	21	13	<p>Section VII - Mandatory Minimum Penalties:</p> <p>a. WSPA believes it is useful to include a brief summary of the types of violations that are eligible for resolution under the MMP program.</p> <p>b. WSPA believes that, to avoid undue delay in the pursuit of MMPs, the Policy should be revised to impose an outside time limit of 36 months on any administrative action to recover MMPs. WSPA supports the recommendation in the Policy as drafted that these actions be brought within an 18 month period.</p>	<p>a. We have added summary language regarding MMPs to Section VII.</p> <p>b. We do not intend to change the time limits for action.</p>

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VII.A. Timeframe for Issuance of Mandatory Minimum Penalties (MMPs)	6	1	<p>a. The City of La Verne strongly objects to both the 18 month time limit and the \$30,000 threshold before a MMP should be issued. They recommend a much reduced period to consider noticing a violator and issuing MMPs if the purpose is truly to gain compliance.</p> <p>b. The \$30,000 threshold is also artificial and will do nothing to promote the prompt issuance of MMPs.</p>	<p>a. The policy addresses the timeframe by which to bring an enforcement action to enforce an MMP considering competing enforcement priorities and limited staff resources. The MMP statutes do not require notification of a violation by the Water Boards before a violating discharger is liable and the Policy will not include a requirement that may be misconstrued as an amendment of a discharger's liability under the statute. □</p> <p>b. The penalty amount identified is for 10 MMP violations. Based on information about the number of violations that are addressed with mandatory minimum penalties and in consideration of the limited enforcement resources, \$30,000 is a reasonable guidance point.</p>
VII.A. Timeframe for Issuance of Mandatory Minimum Penalties (MMPs)	13	3	<p>a. An eighteen month time limit for issuance of MMPs is simply too long of a delay in enforcement, particularly where the MMPs compound and overlap at \$3,000 per month, as is the case for the failure to file a discharge monitoring report.</p> <p>b. In addition, that aspect of the proposed policy is inconsistent with the legislative intent underlying Water Code Section 13885.1. An alleged violation that constitutes a "serious violation" because of its assumed severe environmental consequences requires more timely enforcement to more promptly remedy that "serious violation."</p>	<p>a. The policy addresses the time-frame by which to bring an enforcement action to address an MMP, considering competing enforcement priorities and limited staff resources. The MMP statutes do not require notification of a violation by the Water Boards before a violating discharger is liable and the Policy will not include a requirement that may be misconstrued as an amendment of a discharger's liability under the statute. One solution is for a discharger to take responsibility for monitoring the discharger's reporting obligations.</p> <p>b. The legislative history does not equate "serious violation" with "assumed severe environmental consequences". In fact, the statute provides no guidance or direction as to when an MMP enforcement action should be initiated in response to a violation.</p>
VII.A. Timeframe for Issuance of Mandatory Minimum Penalties (MMPs)	13	4	<p>The Total Mandatory Penalty to Trigger Expedited MMP Issuance Should be Reduced. A trigger of \$30,000 is too high to trigger MMP issuance.</p>	<p>The penalty amount identified is for 10 MMP violations. Based on information about the number of violations that are addressed with mandatory minimum penalties and in consideration of the limited enforcement resources, \$30,000 is a reasonable guidance point.</p>
VII.A. Timeframe for Issuance of Mandatory Minimum Penalties (MMPs)	13	5	<p>While subdivision (k) of Water Code section 13385 specifically identifies small, rural communities with financial hardship for special treatment, for purposes of application of the Policy's expedited MMP issuance set forth in Subdivision (A) of Section VII, we believe that the same expedited treatment should apply across the board to any community that faces financial hardship under the applicable criteria.</p>	<p>The policy for addressing expedited MMP issuance is based on statutory requirements and a consideration of available enforcement resources to address MMP violations as well as other important enforcement priorities.</p>

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VII.A. Timeframe for Issuance of Mandatory Minimum Penalties (MMPs)	15	7	Expediting MMP Issuance: Due to staff's limited enforcement resources and competing enforcement priorities, we believe that stating "The Water Boards shall expedite MMP issuance if . . . ", is unnecessarily restrictive. They recommend revising the referenced language to read "The Water Boards should expedite MMP issuance if ..."	This language is intended to be Policy, not mere guidance.
VII.B.MMPs for Small Communities	16	3	The proposed Enforcement Policy also unnecessarily restricts the use of compliance projects to those publicly owned treatment works "that depend primarily on residential fees." For example, the College of the Redwoods and the Crescent City Harbor District are both examples of entities within the North Coast Region that would not be able to complete compliance projects for mandatory minimum penalties under the proposed changes to the policy, but these entities provide valuable services, have limited funding, and routinely encounter difficulties making large investments in their facilities.	Policy language has been updated such that it no longer restricts the use of compliance projects to those POTWs "that depend primarily on residential fees." Instead, the State Water Board will continue to make the determination of whether a POTW, that does not depend primarily on residential fees to fund its wastewater treatment facility, is serving a small community for purposes of California Water Code section 13385 (k)(2)
VII.B.MMPs for Small Communities	2	7	A. The Associations support the proposal to delegate to the Regional Water Boards the determination of whether a POTW meets the criteria for a small community with a financial hardship pursuant to Water Code Section 13385 (k).  B. With regard to the population threshold, we request that the policy include a footnote that recognizes the Legislature may amend the Water Code to revise the definition of a small community and that the policy will be implemented in accordance with any statutory requirements	A. Noted.  B. This is not necessary. Policy can not trump standards imposed by statute.
VII.D.Defining a "Discharge Monitoring Report" in Special Circumstances Under California Water Code 13385.1	12	1	Defining a Discharge Monitoring Report When There is No Discharge to Surface Waters KB Homes agrees with the proposed Policy's analysis that where there has been no discharge, the failure to file a discharge monitoring report is not a "serious violation" . . . A report of the lack of a discharge is not a "discharge monitoring report" because there is nothing to monitor, so such would not ensure compliance with effluent limitations.	Noted.
VII.D.Defining a "Discharge Monitoring Report" in Special Circumstances Under California Water Code 13385.1	1	1	We concur with the proposed language regarding applying MMPs to those situations that do not involve any discharge.	Noted

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VII.D.Defining a "Discharge Monitoring Report" in Special Circumstances Under California Water Code 13285.1	6	2	The City of La Verne objects to the text of the third paragraph of section D.2. This paragraph should be deleted in its entirety due to the presumption of guilt implied.	The presumption is appropriate in the face of a failure by the discharger to provide the report which the permit obligates the discharger to provide.
VII.D.Defining a "Discharge Monitoring Report" in Special Circumstances Under California Water Code 13385.1	1	2	Applying MMPs To Those Situations Involving Discharges That Do Not Exceed Discharge Limitations: In those cases where discharges did occur but did not exceed discharge limitations, there were no violations and therefore no penalties would be avoided by not filing the quarterly monitoring report. It would be consistent with the legislative history of the Enforcement Policy to find that, under these circumstances, the failure to file a monitoring report in a timely manner does not constitute a "serious violation" under section 13385.1 . . . And therefore MMPs wouldn't be appropriate. If the Board concludes that currently it lacks the authority to establish such policy, ACWA encourages the State Board to pursue necessary amendments to existing statutory language.	The Board lacks the legal authority to establish the policy as recommended.
VII.D.Defining a "Discharge Monitoring Report" in Special Circumstances Under California Water Code 13385.1	13	6	The final Assembly Report of AB 1541 states that the intent of that statute is to punish dischargers who hide Clean Water Act violations. However, where effluent limitations are not exceeded, there is no underlying permit violation to be disclosed and, accordingly, there is nothing for the discharger to hide by failing to submit its monitoring report. Therefore, where no effluent limitation is exceeded, the failure to file a quarterly discharge monitoring report is not a "serious violation" and MMPs should not be imposed. In this regard, if the State Board concludes that it lacks the authority to establish such revisions to the Policy, we encourage the State Board to see statutory revisions.	See Response to Association of California Water Agencies Comment 2

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VIII.Compliance Projects (CPs)	5	1	Issuance of an ACL complaint is often the mechanism by which the Board grabs the attention of the recalcitrant, and the 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. 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.	<p>We acknowledge that many facilities are often competing for limited financing. However, allowing a discharger to use penalty moneys for such compliance projects, except where allowed by statute, creates a perverse incentive whereby violations and the resulting penalties may be viewed either as a necessary way secure needed funding, or a disincentive to comply until caught. Certain communities may become content to wait until they receive a sizable penalty before addressing needed improvements, if they believe that such penalties will be suspended to bring such facilities back into compliance.</p> <p>This comment is contrary to the concept of deterring violations through issuance of appropriate penalties. Moreover, if a Regional Water Board believes that a penalty action, in and of itself, is too harsh under the circumstances, it can ameliorate the penalty pursuant to the factors in the proposed penalty calculation methodology, and/or issue orders such as CDOs, CAOs, and TSOs to put the facility on a compliance track with the threat of penalties if noncompliance is not corrected.</p>
VIII.Compliance Projects (CPs)	16	1	The current policy removes the ability to use compliance projects outside of the context of settling mandatory minimum penalties. We do not agree with this change. We have successfully used the issuance of administrative civil liability complaints against recalcitrant dischargers to encourage compliance with existing orders. To settle these complaints, the discharger agrees to do whatever it was that they had failed to do, and in exchange, we dramatically reduce the amount of the complaint.	Noted
VIII.Compliance Projects (CPs)	5	2	The Board believes that the Draft Enforcement Policy places a minor restriction on the use of Compliance Projects under California Water Code section 13385 the 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 keyed to the issuance of the enforcement order authorizing the Compliance Project, not the violations.	Policy language has been changed to make the deadline for completion of the compliance project within 5 years of the date of the assessment of the MMP.

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VIII.Compliance Projects (CPs)	16	2	<p>a. Because of the fact that many of our communities are small and find it difficult to afford upgrades to their facilities, we think that it is only fair to allow small communities to further finance an ongoing capital intensive project that upgrades their facilities with funds that must be spent on a compliance project.</p> <p>b. Section VIII(3) should be changed to allow the assessment of MMPs to be applied to any construction of new facilities or upgrades or repairs of existing facilities that was already begun before the assessment of the civil liability.</p> <p>C. Subsection (d) of that section is too restrictive because it requires that an enforcement order be in effect for the project. This would unfairly penalize a small community that had taken the step to upgrade their facilities on their own initiative and not under the pressure of an enforcement order. Because of the limited resources of many of our communities, we would like to be able to offer these communities that are involved in very expensive upgrades to their facilities the ability to apply the money that would be spent on compliance projects to their existing capital improvement projects.</p>	<p>a. Compliance projects are authorized pursuant to Water Code section 13385(k) in lieu of MMPs against POTWs serving small communities. If the manner of correcting a violation which is subject to MMPs is through a capital intensive project or upgrade, those costs may be offset. Because compliance projects are designed to correct the violation (see Wat. Code, § 13385(k)(a)(A)), it would be inconsistent with the statute to set aside MMPs for costs incurred with general capital improvements or facility upgrades not undertaken in response to the violation</p> <p>b. This comment is not entirely clear. The commenter states that Section VIII(3) "appears to only allow a penalty to be applied to a CP that was previously begun prior to the assessment" but then suggests a change that reiterates their concern; "This should be changed to allow the assessment of MMPs to be applied to any construction of new facilities or upgrades or repairs of existing facilities that was already begun before the assessment of the liability." We believe the commenter has misread Section VIII(3). Section VIII(3) provides guidance in the event that the implementation date of the compliance project precedes the assessment of the MMP. Section VIII(3) does not place any other limitations on the use of compliance projects. Section VIII(3) already permits what the commenter is suggesting, so long as the compliance project is designed to correct the underlying violation that is subject to mandatory minimum penalties.</p> <p>c. Again, we believe the commenter has misinterpreted the requirements of Section VIII(3)(d). That provision simply requires that, where implementation of the compliance project began prior to the assessment of MMPs, the completion date of the compliance project be specified by an enforcement order adopted at or before the time the penalty is assessed. The reason for this requirement is to ensure that the compliance project is completed within five years from the date of the violation giving rise to mandatory minimum penalties. Section VIII(3)(d) does not require that an enforcement order be in effect in order to offset MMPs with the costs of a compliance project.</p>
VIII.Compliance Projects (CPs)	15	8	<p>Water Code section 13385 (k): The reference to Water Code section 13385 (k) in this section should make it clear that this subdivision only applies to a POTW serving a small community with a financial hardship, as determined by the State Water Board.</p>	<p>We believe that the proposed language is unnecessary and that reference to the statute is more appropriate.</p>

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
VIII.Compliance Projects (CPs)	15	9	Definition of Compliance Project Correct the grammatical error in number 6 on pg 31 so that it states "A CP is a project that the discharger IS otherwise obligated to perform, independent of the ACL."	Policy was changed to correct this error.
IX.Enhanced Compliance Action (ECAs)	10	18	Modify the Enhanced Compliance Action (ECA) limitation to encourage ECAs ECAs should be encouraged, especially since they can result in water quality benefits that may not otherwise occur. By limiting the amount of the ECA to only the amount in excess of any economic benefit plus an additional amount consistent with the factors for monetary liability assessment, the State Water Board is discouraging these types of projects, as the amount allowed toward an ECA may not be enough to accomplish capital or operational improvement in most cases. A more appropriate limitation for ECAs is 50% of the assessed penalty, so similar limitation.	The goal of the enforcement policy is not to "encourage" enhanced compliance projects but to make them available as legitimate settlement mechanisms for administrative liability action under certain limited circumstances.
XII.Enforcement Reporting	4	16.b	To assess the effectiveness of the State's enforcement programs, CASQA recommends the Water Boards focus on permittees' compliance with permit provisions. CASQA recommends the Water Boards generally not use environmental quality indicators for assessing the effectiveness of the State's enforcement programs related to stormwater.	The Policy was developed subsequent to this letter. This letter and others were generally considered in the development of the revised Policy. The questions to which this letter responds related generally to Water Quality enforcement activities, not specifically targeted to language in the proposed Enforcement Policy.  The proposed indicators for effectiveness are broad and do not preclude the considerations raised by this comment.
XII.Enforcement Reporting	4	17.b	CASQA recommends the Water Boards develop and disseminate an annual report on their enforcement activities.	The Policy was developed subsequent to this letter. This letter and others were generally considered in the development of the revised Policy. The questions to which this letter responds related generally to Water Quality enforcement activities, not specifically targeted to language in the proposed Enforcement Policy.  The Water Boards now publish an annual enforcement report. The Water Boards also have initiated the publication of performance measures and each region's progress in meeting those performance measures.
XII.Enforcement Reporting	4	20.b	The apparent lack of a readily available comprehensive annual report on the Water Boards enforcement program makes it hard to identify inconsistencies. CASQA recommends such reports be generated and provided to the public.	See response to California Stormwater Quality Association comment 17.b

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Appendix A	15	10	Combining NOV's and 13267 Orders: Based on guidance they received from OCC to separate informal enforcement actions such as NOV's from Regional Board Orders (since NOV's are not petitionable to the State Water Board and 13267 are petitionable to the State Water Board); Recommends that this section be revised to suggest that NOV's and 13267 orders not be combined.	Added language distinguishing between the petition status of the two enforcement actions but otherwise no other modifications are necessary. This is not a directive to combine NOV's and 13267 requests in all cases.
Appendix A	4	10.a	Need for Linkage between Violation Priorities and Enforcement Actions CASQA recommends that Section 4 be revised so that it provides a seamless and clear linkage between the classes of violation and the range of enforcement actions that could be utilized. In addition, the priority for enforcement efforts should be based on the significance classification of Class I, II, or III.	This letter addresses a prior version of the Policy, and is no longer entirely relevant. We agree that the classification of violations should be a factor in prioritizing cases for enforcement, however there are other factors that must also be considered and are included in Section II. B. - Enforcement Priorities for Individual Entities.
Appendix A	4	12.a	"Formal Enforcement Actions" section □ There are several sections that should not be included as a formal enforcement actions, rather, they should be included in another section that describes the enforcement process and/or other actions that staff can take as a result of noncompliance: - Section C.3 – Technical reports and Investigations – These are not strictly enforcement statuses. - Section C.8 – Modification or Rescission of Waste Discharge Requirements – This not strictly an enforcement action as much as it is a result of non-compliance. - Section C.11 – Referrals – This should be in a section that describes the process for enforcement. Therefore, CASQA recommends that these sections be moved into another section of the document that describes other requirements that the Water Boards can require to, in part, help avoid or supplement an enforcement action.	This letter addresses a prior version of the Policy, and is no longer entirely relevant. The referenced section is now Appendix A of the draft Policy. The section on "Referrals" was removed, however we disagree that the sections on "Technical Reports and Investigations" and "Modification or Rescission of Waste Discharge Requirements" are improperly located in this Appendix.

Policy Category	Commenter ID	Comment ID	Comment Summary	Comment Response
Appedix B	2	6	<p>Recommended Performance Measures For Evaluating Compliance Rates Should Be Based on Overall Permit Compliance.</p> <p>We are concerned this method of measurement will create an unbalanced picture of actual compliance with the Water Board's programs. For example a facility with one violation of a single parameter would be considered out of compliance using the proposed measure - even if it's in compliance with all other permit provisions and is in compliance 99% of the time with the one parameter exceeded.</p>	<p>The intent of this comment is to establish the universe of compliance points within each permit as the basis from which an "average" would be calculated. This would assume that all compliance points are evaluated during an inspection in order to generate a legitimate average (there can be upwards of 1000 compliance points in a single permit). The question of how to address non-evaluated compliance points, continuous violations of the same permit provisions and many other critical criteria would have to be addressed to normalize this data. This approach would be extremely complicated and represent a departure from the criteria used by US EPA. Compliance rates are currently displayed in groupings of 1-11 violations, 11-25 violations and greater than 25 violations (see 13385 reports at: <a href="http://www.waterboards.ca.gov/water_issues/programs/enforcement/">http://www.waterboards.ca.gov/water_issues/programs/enforcement/</a>). No change to the Policy is recommended.</p>
Appedix B	4	14.a	<p>Modification of Enforcement Reporting</p> <p>CASQA recommends that Section 8 of the Water Quality Enforcement Policy be modified to incorporate effectiveness assessment metrics in addition to implementation reporting in Water Board enforcement reports.</p>	<p>This letter addresses a prior version of the Policy. Appendix B of the draft Policy incorporates effectiveness assessment metrics in addition to implementation reporting in Water Board enforcement reports.</p>