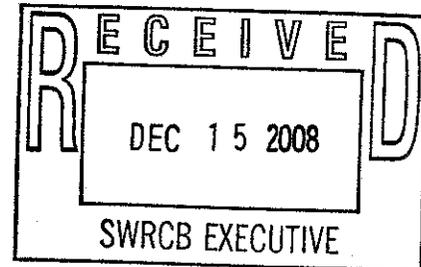




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December 15, 2008

Tam Doduc, Chair and Members
State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



VIA ELECTRONIC MAIL: commentletters@waterboards.ca.gov

Re: Comment Letter – Policies on SEPs and Use of the CAA for Regional Water Quality Improvement Projects

Dear Chair Doduc and Board Members:

On behalf of the California Coastkeeper Alliance (CCKA), which represents 12 Waterkeepers spanning the coast from the Oregon border to San Diego, I welcome the opportunity to submit these comments on the above-described Policies. CCKA and its member Waterkeepers actively work to ensure full enforcement of state and federal water quality laws. Accordingly, the manner in which these proposed Policies will increase compliance with water quality laws is of great interest to our organizations.

We addressed Supplemental Environmental Projects (“SEPs”) in our letter to the Board dated February 7, 2008 on the Draft Water Quality Enforcement Policy. In that letter, we stated that many areas of the state have experienced significant water quality benefits resulting from the implementation of SEPs. For example, as a result of a settlement for an 841,000-gallon sewage spill that closed beaches in Los Angeles County for many days, nearly \$2.5 million was provided for SEPs in Los Angeles County, including a project that would directly improve beach water quality in the vicinity of the closed beaches. A SEP program with clear conditions that tie the funds to the area impacted will ensure positive regional impacts on the ground, in the areas affected by the pollution. Accordingly, we support the language in the proposed Policy setting conditions on when and how SEPs may be granted and implemented.

We request in addition that the Policy include more specific conditions with regard to necessary transparency in the process, to ensure that needed oversight (which had been lacking, as per the Audit report below) occurs. For example, the Policy proposes annual reporting of a list of projects; more frequent and detailed updates that are project-specific as they are being implemented would better ensure the necessary public accountability. More specific articulation of needed transparency and oversight is also important because of funding concerns. It has been the experience of some that SEP implementation can be held up because of funding needed for staff oversight. More clarity in the process, and recommendations on how to obtain additional funding for oversight as needed, are important to ensure the integrity of the process in ensuring clean water.

We also ask that the Policy explain in more detail how it addresses the comments raised in the December 2003 State Auditor Report on SEPs (<http://www.bsa.ca.gov/pdfs/reports/2003-102.pdf>). Among other things, the Audit Report concludes that:

there is no correlation between the amount of fines collected by a given regional board and the amount the regional board receives from the state board. Over the last five fiscal years, 1998–99 through 2002–03, the regional boards collected about \$26 million from fines and the state board has either spent or committed to spend \$24.9 million for water quality improvement projects throughout the State.... While the regional boards have three options for either recovering at least a portion of the money, or otherwise retaining some of the benefits of their enforcement actions, not all the regional boards are fully utilizing these options.... Finally, the state board's staff does not always obtain written information on proposed water quality projects before submitting them to the state board for review. As a result, staff does not always fully analyze the proposed water quality projects and the state board may not be able to make a fully informed decision regarding which projects are the best use of state funds.

The Policy would benefit greatly from specific information on how the Policy addresses the concerns raised in the Audit Report. This would include, but not be limited to, a discussion of the State Board's own formal procedure for deciding on which projects to fund, as recommended in the Audit Report (at page 33). If the Policy fails to respond specifically to the Audit Report's recommendations, we ask that it be held over and revised to do so.

In the past, questions have been raised by Board staff as to whether SEPs "reward" illegal behavior by the violator by allowing them to point to a beneficial project that arose from their violation penalties. As indicated above, the position of the environmental community and more than a few Regional Boards has in fact been that SEPs can be an excellent way to ensure that the benefits of fines stay in the region affected, and that these benefits outweigh a potential and hypothetical boost in public opinion of the violator that may or may not occur as a result of the SEP. One related issue, however, that seems to have been relatively overlooked is the structure of the current Cleanup and Abatement Account fine collection process, which moves money out of the regions, and its impact on increasing the desirability of local SEPs. If the Cleanup and Abatement Account process were modified as described below, perhaps there would be less pressure to increase the relative amount of funds allocated to SEPs, assuaging State Board staff concerns.

Accordingly, while we support the reservation of 50% of the funds deposited into the Cleanup and Abatement Account (CAA) for "regional water quality improvement projects," we believe consideration should be given to making that figure higher, to support greater enforcement activity (which could feed back more funds overall into the CAA, thus potentially leaving the same gross amount for the more rural regions with less enforcement opportunities but significant water quality issues). Further discussion of the range of uses for such funds, as was provided in the SEP Policy, also would be helpful in ensuring that the funds are put to their highest and best use. Such increased specificity in the CAA Policy also would aid regional boards in applying for such funds, as some regions have not been as active as they could be in seeking these monies (see discussion in Audit Report).

These "improvement project" funds, however, should not come at the expense of enforcement program funding. We strongly recommend that the State Board carefully review the calculation of "funds for reimbursement of staff costs for investigation and enforcement," which are to be deducted off the top of the CAA. It has been our experience that these reimbursement figures are significantly less than the actual enforcement costs incurred, putting further pressure on regional enforcement programs and

creating an enforcement disincentive. Enforcement costs first and foremost need to be reimbursed in full before monies are redirected elsewhere.

Another significant concern is the undefined authorization of allocations for State Board use of CAA monies, which creates an unbounded loophole that essentially eviscerates the ability of regional boards to plan their enforcement activities for the year (particularly if enforcement costs are not re-examined as recommended above). Specifically, paragraph a. of the CAA Policy would allow the State Board not only to appropriate funds in an "emergency" (which is undefined), but also when any "other significant need for funding anywhere in California" arises. We strongly object to this language, which would allow an unlimited amount of CAA money to flow to the State Board, creating a significant disincentive for enforcement in the regions. The State Board is authorized to take enforcement actions; if there are statewide issues of such significance, the State Board should increase the number of completed enforcement actions that it undertakes and make its own statewide contributions to the CAA.

For similar reasons, we also have concerns with the language in paragraph b. of the CAA Policy, which would deduct SEP funds from the amount of the assessment reserved in the CAA for regional board water quality improvement projects. If the language in paragraph a. above stands, the regional boards will have no choice but to increase the number of SEPs used, to ensure that the maximum amount of collected fines is put to use locally. This result would be contrary to State Board staff's prior assertions that such practices "reward" local violators. SEPs, the CAA, and incentives and support for regional enforcement all need to be considered as a package. While joining these policies in one hearing helps in this regard, further attention should be made to examining the likely overarching results from the proposed language in each category of fines and project funding for each Policy.

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Thank you for the opportunity to comment on these proposed Policies. Our comments are grounded in our objective to ensure full compliance with state and federal water quality laws. We recommend the changes above with that goal in mind. Please do not hesitate to call if you would like to discuss these comments further.

Sincerely,



Linda Sheehan
Executive Director