



San Diego Regional Water Quality Control Board

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EMAIL TRANSMITTAL



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In reply refer to: GENERAL:cclemente

Subject: San Diego Water Board Comment Letter- Water Quality Enforcement Policy

Ms. Townsend:

The San Diego Water Board respectfully submits the following comments on the Draft 2016 Water Quality Enforcement Policy. I appreciate the opportunity to comment, along with the added clarity provided in the penalty calculation section of the proposed draft, and acknowledge the State Board's challenge in trying to strike a balance between specificity and flexibility.

Our comments are summarized in the table below. If you have any questions or would like to discuss the comments, please contact me at 619-521-3371 or Chiara.Clemente@waterboards.ca.gov.

Respectfully,

Chiara Clemente
Regional Enforcement Coordinator

cc:
CJ Croys-Schooley, cj.croys-schooley@waterboards.ca.gov

page #	Paragraph #	Text	Comment
3	I.G. Environmental Justice and Disadvantaged Communities	The Water Boards shall promote enforcement of all health and environmental statutes within their jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state...	The Draft Policy should be modified to reflect any changes that need to be made as a result of Senate Bill 839, which requires each of the Boards, Departments and Offices in CalEPA to participate and have representatives in a cross-media enforcement unit and requires that the unit take enforcement actions that are focused on disadvantaged communities.
5-6	II.A. Ranking Violations	<p>Class I priority violations are those that pose an immediate and substantial threat to water quality and/or that have the potential to individually or cumulatively cause significant detrimental impacts to human health or the environment. Class I violations ordinarily include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Discharges causing or contributing to exceedances of primary maximum contaminant levels in receiving waters with a beneficial use of municipal and domestic supply (MUN); <input type="checkbox"/> Unauthorized discharges of sewage, regardless of level of treatment, within 1,000 feet of a municipal water intake; <input type="checkbox"/> Discharges exceeding water quality based effluent limitations for priority pollutants as defined in the California Toxics Rule by 100 percent or more; <input type="checkbox"/> Discharges causing or contributing to demonstrable detrimental impacts to aquatic life and aquatic-dependent wildlife (e.g., fish kill); <input type="checkbox"/> Discharges violating acute toxicity effluent 	<p>There appears to be a disconnect between the Class I narrative definition and the bulleted examples listed for inclusion. In some examples the criteria may not necessarily result in a significant threat to water quality or beneficial uses. In other examples, the criteria are not sufficiently inclusive. There is also inconsistency among the examples, where some examples refer to the circumstances of the violation while others refer to the circumstances of the impacts.</p> <p>A particular violation's threat to water quality and its impact to human health and/or the environment is largely dependent on the regional context. This is recognized in the draft enforcement policy (page 1, first bullet). Therefore, it is recommended that the bulleted examples be excluded from the draft policy.</p> <p>As an alternative, the Policy could direct the Regional Boards to identify regional criteria for Class 1 violations.</p> <p>Or, if the State Water Board insists on inclusion of bulleted examples, the San Diego Water Board suggests the following alternative examples:</p>

		<p>limitations;</p> <ul style="list-style-type: none"> <input type="checkbox"/> Unauthorized discharges from Class II surface impoundments; <input type="checkbox"/> For discharges subject to Title 27 requirements, failure to implement corrective actions in accordance with WDRs; <input type="checkbox"/> Unpermitted fill of wetlands exceeding 0.5 acre in areal extent; <input type="checkbox"/> Discharge of construction materials to receiving waters with beneficial uses of COLD, WARM, and/or WILD; and, <input type="checkbox"/> Discharges causing or contributing to in-stream turbidity in excess of 100 nephelometric turbidity units (NTU) in receiving waters with beneficial uses of COLD, WARM, and/or WILD, except during storm events. <p>Violations involving recalcitrant parties who deliberately avoid compliance with water quality regulations or Water Board orders are also considered Class I priority violations because they pose a serious threat to the integrity of the Water Boards' regulatory programs. All other violations are Class II violations.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Violations that cause or threaten to cause water diverted for drinking water supplies to be rendered unusable for municipal and domestic use, or to require additional or modified treatment for continued use; <input type="checkbox"/> Violations that cause or threaten to cause a considerably increased level of cancer or disease risk to a human population by way of drinking water, consumption of contaminated fish or shellfish, or contact recreation; <input type="checkbox"/> Violations that cause or threaten to cause considerable detrimental impacts to aquatic life and aquatic-dependent wildlife (e.g., fish kill or unacceptable disease risk); <input type="checkbox"/> Violations that cause or threaten to cause considerable detrimental impacts to receiving waters with aquatic or riparian beneficial use areas; <p>Also, as a procedural caution, modifications to the current violation classification system</p> <p>1) will require modifications to the various violation tracking databases (i.e. CIWQS, SMARTS, and Geotracker) so that the violations can be properly tracked, queried, and reported on.</p> <p>2) may result in an increase in Class 1 violations, which absent additional enforcement resources, would compromise our ability to meet the Performance Measure of addressing all Class 1 violations with a formal enforcement action.</p>
6	<p>II.B. Case Prioritization for Individual</p>	<p>In determining the importance of addressing the violations of a given entity, the following non-exclusive factors should be considered:</p>	<p>Section I.G and Senate Bill 839 require the Boards to evaluate enforcement actions focused on Disadvantaged Communities.</p>

	Entities	
<ol style="list-style-type: none"> 1. Significance of the entity's violation(s) as assessed in Step 1; 2. Whether the entity has avoided the cost of compliance and therefore gained a competitive economic advantage and/or economic benefit; 3. History of the entity: <ol style="list-style-type: none"> a. Whether the violations have continued over an unreasonably long period after being brought to the entity's attention and are reoccurring; b. Whether the entity has a history of noncompliance; and, c. Compliance history of the entity and good-faith efforts to eliminate noncompliance; 4. Evidence of, or threat of, pollution or nuisance caused by violations; 5. The magnitude of impacts of the violation(s); 6. Case-by-case factors that may mitigate a violation; 7. Impact or threat to high priority watersheds or water bodies (e.g., due to the vulnerability of an existing beneficial use or an existing state of impairment); 8. Potential to abate effects of the violations; 9. Strength of evidence in the record to support the enforcement action; 10. Availability of resources for enforcement; and, 11. Whether the action is likely to encourage similarly situated members of the regulated public to voluntarily identify, and avoid or correct similar violations. 	<p>Section II.A creates a ranking process to ensure that the most egregious violations (Class I) are addressed with formal enforcement actions; some of the factors proposed here are redundant to the proposed Class I criteria (e.g. recalcitrant parties).</p> <p>Section II.C requires that the Boards identify regional enforcement priorities and statewide enforcement priorities and initiatives.</p> <p>This section (II.B) provides additional criteria for consideration when prioritizing enforcement cases.</p> <p>Together, the sections create mixed messages as to what and how the Boards should select enforcement cases. At a minimum, the non-exclusive factors listed in this section should also include consideration of Class I violations, Environmental Justice, and other regional/statewide enforcement priorities.</p> <p>We propose the following alternative language:</p> <ol style="list-style-type: none"> 1. Class 1 Violations; 2. Environmental Justice considerations; 3. Regional/ Statewide enforcement priorities; 4. Whether the entity has avoided the cost of compliance and therefore gained a competitive economic advantage and/or economic benefit; 5. The magnitude of impacts of the violation(s); 6. Discharger's history of compliance and/or voluntary corrective actions; 	

			<p>7. Strength of evidence in the record to support the enforcement action;</p> <p>8. Availability of resources for enforcement; and,</p> <p>9. Whether the action is likely to encourage similarly situated members of the regulated public to voluntarily identify, and avoid or correct similar violations.</p>
7	<p>III. Enforcement Actions</p>	<p>For every enforcement action taken, the discharger's return to compliance should be tracked in the Water Board's enforcement database. See Appendix A for additional information.</p>	<p>Please consider that not all formal enforcement actions specify a return to compliance. For instance, monetary penalties that are not part of a stipulated agreement only require the timely payment of the penalty. And finally, as a cautionary note, the various databases that track enforcement (i.e. CIWQS, SMARTS, and Geotracker) will require updates to ensure this goal is achieved.</p> <p>Therefore, we suggest the following alternative language... "All enforcement actions and their applicable compliance milestones shall be tracked in the Water Board's enforcement databases."</p>