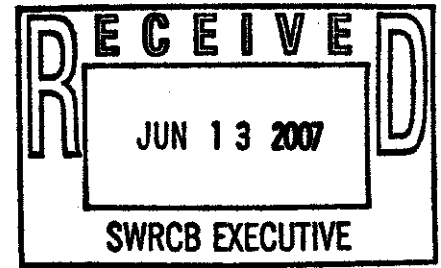


June 13, 2007



Ms. Tam Doduc, Chair  
and Members  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

commentletters@waterboards.ca.gov

**Re: Water Quality Enforcement Policy**

*Bay Area  
Clean Water Agencies*

*Bay Planning Coalition*

*California Association  
Of Sanitation Agencies*

*California Council for  
Environmental &  
Economic Balance*

*California Manufacturers  
& Technology Association*

*Chemical Industry Council*

*Chlorine Chemistry Council*

*Contra Costa Council*

*Tri-TAC*  
Sponsored by:  
League of California Cities  
California Association of  
Sanitation Agencies  
California Water  
Environment Association

*Western States  
Petroleum Association*

Craig S.J. Johns  
Program Manager

Dear Chair Doduc and Members of the State Board:

The Partnership for Sound Science in Environmental Policy (PSSEP) is an association of San Francisco area and statewide public and private entities – businesses, municipal wastewater treatment agencies, trade associations and community organizations. Many of PSSEP's members are regulated by the Water Boards and thus have a direct interest in the State Board's ongoing review of the Water Quality Enforcement Policy (WQEP).

As a general note, PSSEP welcomes and appreciates the State Board's decision to conduct a review of the WQEP, given that five years have transpired since it was first adopted, and like everything else, things change. We would encourage the State Board to conduct periodic reviews of other policies and programs under the Water Boards' purview, and suggest (as an aside) that perhaps it would be a good time and use of resources to undertake a comprehensive review of designated beneficial uses throughout the state. As you know, such designated beneficial uses are the foundation upon which all permitting, TMDL, watershed planning and even enforcement actions are based, and a review of these beneficial uses is long overdue.

The organization of these comments attempt to follow the question format contained in the Public Notice of the June 28 workshop. However, we recognize that other issues may be raised at the workshop itself and reserve the right to supplement these written comments further, should the State Board decide to proceed with formal amendments to the WQEP.

**Factors to Be Considered in Ranking Enforcement Priorities**

The fair and equitable enforcement of water quality laws and regulations throughout the Water Boards system is paramount to our mutual desire and effort to attain water quality standards and improve the overall health of the state's waters, and PSSEP supports this approach. However, the primary focus of the Water Boards' enforcement efforts should be on true and substantial threats to water quality.

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To be sure, critics of the Water Boards' enforcement efforts can (and likely will) point to various permit violations by NPDES permit holders, and argue that more needs to be done to enforce what, in many instances, are purely "technical" violations. However, dedicating limited staff resources to address these types of violations - - which typically result in little or no water quality impacts, would be an inefficient use of resources. PSSEP believes that Water Boards staff can best be utilized by focusing on violations that have significant water quality impacts. Examples of these (as identified in the CASA/Tri-TAC *et al* letter dated June \_\_) include General Permit non-filers, unauthorized spills, and chronic or repeat violators.

It is no secret that the Water Boards entire budget - - including program enforcement - - is woefully inadequate to complete the many and varied tasks that have been added through legislation over the years. Until and unless the Legislature and the Administration recognize this reality, the Water Boards must improve certain efficiencies. This is true even for enforcement.

Efficiencies can be achieved by focusing staff on discharger actions (or inaction) that result in significant impacts to water quality. The CASA/Tri-TAC *et al* letter identifies four excellent factors that the WQEP can focus on (impact/threat of the violation to water quality, chronic or repeat violations, willful violations, whether violations could have been prevented by exercising reasonable care). The main point here is that focusing on these types of actions (or inaction), the Water Boards can achieve better efficiencies and likely improve water quality.

### **Measuring Effectiveness of Enforcement Programs**

It has been suggested that "compliance rates" should be a cornerstone of the Water Boards' measurement of effectiveness. Proponents of this approach suggest that it is easy to simply keep a "scorecard" of every permit holder's violations over a given period, count up the number of total violations for a given Region, and on this basis, conclude whether a given Regional Board has an "effective enforcement program."

This simplistic approach renders nothing but numbers and cannot possibly be a true measure of enforcement effectiveness. Most problematic is the ambiguous nature of the word "compliance." What is it supposed to mean? Does the discharger have to achieve a 100% non-violation history during the 5-year cycle to be regarded as "compliant"? How does this paradigm take into account the "technical" violations (monitoring report a day late, unsigned, omitted attachment, etc.) vs. the truly "substantive" violations that have real impacts on water quality? If a discharger has 1000 different permit requirements and it has met 995 of those in a given reporting period, does this qualify as "compliance"?

Moreover, simply calculating the number of enforcement actions taken by a Regional Board is not a credible indicator of enforcement program effectiveness. For instance, if Region "X" brought 200 enforcement actions in one year, while Region "Y" only brought 20, does that mean that Region X has a ten-fold more effective enforcement program than Region Y. What if, during that same period, Region X has a higher percentage of uncompleted TMDLs, or a higher percentage of permits "backlogged", or a higher percentage of permits being appealed or

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overturned? Fundamentally, PSSEP believes that this type of "scorecard" approach to measuring enforcement effectiveness is flawed.

If the State Board favors such a "scorecard" approach, then it might make sense to include other factors that might be better indicators of water quality in a given region. For instance, keeping track (and reporting on-line and to the Legislature) the number and percentage of total permit requirements that are met each day, week, month or year would demonstrate that permit holders are doing what they are required to do. Keeping track of the total mass of each pollutant that a given wastewater treatment plant removes from water before discharge each day, week, month and year will provide the public (and the Legislature) with a better understanding of the water quality improvements attributable to permit holders throughout the state. Another important statistic to many people who pay monthly sewer utility bills would be efficiency rates of POTWs in removing pollutants for specific amounts of money. Keeping track of the number of school kids that POTWs educate about water quality and related issues through various outreach and education programs would be important because educated children today are likely to be educated and compliant permit holders as adults, down the road. Lastly, keeping tabs on the pounds (and in some cases, tons) of pollutants that wastewater treatment plants remove from wastestreams via pollution prevention programs would provide the public (and the Legislature) with a healthy understanding of the efforts made by NPDES permit holders. All of these factors are related to enforcement.

#### Website Information Availability

The advent and easy access to web-based information has created great opportunities for interested parties to monitor the actions of both the Water Boards as well as those they regulate. PSSEP believes that the Water Boards' website information available on enforcement matters is very comprehensive, and staff is to be recognized for a good job in maintaining this information. A possible improvement to the information available might include pending enforcement actions. That is, once a Regional Board has issued a notice of a proposed ACL, CDO or other enforcement action, perhaps this information could be added to the Water Boards' website.

In sum, PSSEP believes that the current WQEP should be updated, as suggested in the CASA/Tri-TAC letter, but also agree that the overall status of the Water Boards' enforcement program is sound and does not need drastic revisions. Thank you for the opportunity to provide these preliminary comments regarding the WQEP.

Sincerely,



Craig S.J. Johns  
Program Manager