



WESTERN PLACER
WASTE MANAGEMENT AUTHORITY

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Public Comment
Water Quality Enforcement Policy
Deadline: 10/18/16 12:00 noon

October 18, 2016

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
commentletters@waterboards.ca.gov



**RE: COMMENTS ON AMENDMENTS TO THE STATE WATER RESOURCES
CONTROL BOARD'S WATER QUALITY ENFORCEMENT POLICY**

Dear Ms. Townsend,

The Western Placer Waste Management Authority (WPWMA) appreciates the opportunity to comment on the proposed amendments to the Water Board's Water Quality Enforcement Policy (Policy). The WPWMA is a joint powers authority comprised of Placer County and the cities of Roseville, Rocklin and Lincoln. The WPWMA provides recycling and waste disposal services to these communities as well as the cities of Auburn and Colfax and the Town of Loomis via its Materials Recovery Facility, composting facility and Western Regional Sanitary Landfill.

The WPWMA respectfully submits the following comments on the proposed amended Policy:

1. Section I.C. Consistent Enforcement

This section states that the "Policy does not require a Water Board to compare a proposed penalty to other actions that it or another Board has taken, or to make findings about why the assessed or proposed penalty amounts may differ." Penalties should be consistent and related to the nature of the violation regardless of the type of facility or the ability of a facility to pay the penalty.

2. Section I.E. – Progressive Enforcement

This section defines Progressive Enforcement as "an escalating series of actions beginning with notifications of violations". It further states that, "for some violations, an informal response such as a phone call, email or staff enforcement letter is a sufficient first step to notify the discharger that the violation has been identified, and to encourage a swift and complete return to compliance." Informal notifications such as phone calls, emails or site visits should be instituted prior to the issuance of a Notice of Violation (NOV), and that an NOV should be issued only after a facility has failed to comply with an informal notification to correct a potential violation.

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The Policy also defines an NOV as an “informal notification” in the same category as a phone call or email. An NOV should be considered a formal notification that begins the enforcement action process.

3. Section II. Enforcement Priorities for Discretionary Enforcement Actions

This section establishes an Enforcement Coordinator appointed by each Regional Water Board to assist with implementing the Policy and prioritizing enforcement cases. It appears that the involvement of Enforcement Coordinators in evaluating the enforcement process is intended to provide fair and consistent enforcement. However, their involvement may not improve transparency as it appears that much of the prioritization and evaluation process may be protected by attorney-client privilege.

Overall, the Policy seems to provide little recourse to facilities to challenge an NOV or Administrative Civil Liability (ACL). The newly identified Enforcement Coordinators be available as an initial point of contact prior to formal enforcement action to provide a more transparent, fair and potentially less subjective process.

4. Section II.B. – Case Prioritization for Individual Entities

This section identifies eleven factors for considering the importance of addressing a facility’s violation, including “whether the action is likely to encourage similarly situated members of the regulated public to voluntarily identify, and avoid or correct similar violations”. Increasing the priority of an enforcement action on one facility to set an example or influence other facilities to comply does not seem to reflect the Policy’s goals of “fairness and consistency”. Violations should be evaluated based on their potential to impact water quality, not to influence compliance of other facilities.

5. Section VI. Monetary Assessments in Administrative Civil Liability (ACL) Actions

Subsection A dictates that “Fairness does not require the Water Boards to compare an adopted or proposed penalty to other actions.” It seems that “fairness” would require that an ACL imposed by the Water Board be compared to other similar actions to avoid subjective and inconsistent ACL assessments. Again, penalties should be consistent and related to the nature of the violation.

Step 8 of the Penalty Calculation Methodology allows for the inclusion of Water Board staff investigation and enforcement costs in an ACL. While staff time spent on a specific enforcement action will have to be documented, a limit should be set on the number of staff hours that can be included in the ACL.

JEANINE TOWNSEND
WATER QUALITY ENFORCEMENT POLICY
OCTOBER 18, 2016

We appreciate your consideration of these comments and proposed revisions. Should you have any questions, please contact me at eoddo@placer.ca.gov or (916) 543-3984.

Sincerely,



Eric Oddo, PE
Environmental Engineering Program Manager

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