

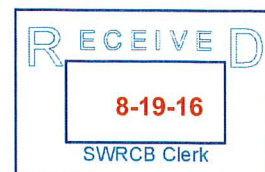


California League of Food Processors

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August 19, 2016

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
(submitted via e-mail)



RE: Proposed Amendments to the State Water Board Water Quality Enforcement Policy

Dear Ms. Townsend:

The California League of Food Processors (CLFP) appreciates the opportunity to provide comments regarding changes proposed by the State Water Resources Control Board to the agency's Water Quality Enforcement Policy. Many food processors have Storm Water Industrial General Permits or Waste Discharge Requires and could be affected by changes in the Policy.

Clear, consistent, and fairly constructed enforcement policies are essential to the State Water Board to provide effective guidance to its enforcement staff, to the regulated entities, and to other stakeholders. However, several changes have been proposed by the Board to the Policy that, in CLFP's view, will make implementation of the policy more arbitrary and less fair. CLFP requests that the Board consider the following comments regarding the draft policy:

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- Under the existing policy, dischargers that do *not* have a history of violations can receive some consideration when the Board calculates penalties for new violations. In those cases, the "History of Violations" factor multiplier could be set at a value of less than 1 at the discretion of the Board. The revised draft stipulates that dischargers with no history of violations would be assigned a factor of 1, eliminating the option of acknowledging a good compliance history with a lesser factor. CLFP requests that the draft be revised to allow the enforcement staff the discretion to assign multipliers of less than 1 to acknowledge past compliance and cooperation.
 - Under the existing policy, dischargers with a track record of violations could be assigned a "History of Violations" factor of up to 1.5 to increase the severity of the penalty. The revised draft only states that "...the Water Board should consider adopting a multiplier above 1.1" with no reference to the 1.5 ceiling. This proposed change does not provide the regulatory staff with sufficient guidance as to appropriate maximum penalty levels, and without a prescribed ceiling unreasonably high arbitrary factors could be assigned.
 - Under existing policy, some consideration can be given by enforcement staff in situations where the infraction was due to unavoidable, non-negligent, non-intentional violations. A "Culpability Factor" of less than 1 could be assigned in these cases, reducing the penalty level. The revised draft sets a minimum multiplier of 1.0, eliminating the discretion of the Board to reduce the
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penalty. CLFP believes that the current policy should be retained, that fairness dictates that some allowance should be made for mistakes that are beyond the control of the discharger.

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- Appendix A, Section C, of the Policy provides guidance regarding informal enforcement actions, and CLFP would like to emphasize the importance of using this compliance option. Dischargers are required to submit various (and often voluminous) monitoring reports and other information to the Regional Water Board on a regular basis. But, due to the workload, those reports may not be carefully reviewed by regulatory staff for months, or years. Dischargers should not receive unreasonable penalties due to these delays. Minor reporting errors or exceedances may not be noticed for a long period of time, compounding the problem and the potential penalties for non-compliance. The Board needs to develop a better real-time permit compliance monitoring system that will quickly notify dischargers and Board staff regarding any errors, omissions, or anomalies in their reports so corrective action can be taken in a timely manner. In those cases, prompt informal enforcement action is most appropriate course and would be the most efficient way to prevent more serious problems.

CLFP looks forward to working with Board staff regarding the proposed changes to the Enforcement Policy. If you have any questions regarding CLFP's comments pertaining to this issue, please contact me.

Regards,



Rob Neenan
President/CEO

CC: CJ Croyts-Schooley, State Water Board