January 30, 2009

Via Electronic and U.S. Mail

Taryn Stokell
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
tstokell@waterboards.ca.gov

SUBJECT: **COMMENTS REGARDING THE DRAFT WATER QUALITY ENFORCEMENT POLICY**

Dear Ms. Stokell:

On behalf of the above clean water associations, we are pleased to present our comments on the draft State Water Resources Control Board Water Quality Enforcement Policy (WQEP) dated December 18, 2008. We appreciate the additional time provided for submitting written comments, which has allowed us to coordinate our input into a single set of comments for your review.

As you know, our associations provided detailed comments in February 2008 on the previous draft of the WQEP. The revised draft differs significantly from the prior version, and we understand that it reflects the work of an Executive Steering Committee consisting of State Water Board management and two Executive Officers from the Regional Water Boards, which considered the public comments and recommended changes. We commend the Water Boards for devoting significant resources and effort to getting this policy right. We are mindful of the challenges inherent in devising a policy that increases consistency among the regions and improves transparency for the public while preserving the flexibility and exercise of judgment that are critical to fair and effective enforcement.

We offer our comments in the spirit of assisting the State Water Board in crafting a WQEP that appropriately balances these goals. This letter addresses the key issues that we believe must be resolved for a workable policy, and the attachment details additional language revisions that we believe are needed for clarity and consistency with other policies and laws.

- ***Per Gallon Amounts Should Not Be Included in the Baseline Calculation of ACL Amounts for Violations of Numeric Effluent Limitations.***

Application of a per gallon assessment makes sense as a starting point for calculating an ACL amount for unauthorized discharges. For permitted discharges with dozens of effluent limitations where only a single parameter is exceeded, however, the per gallon approach not only generates absurdly high maximum penalties, it is also not reflective of the nature of the violation. For example, an exceedance of a copper effluent limitation for a single day in a 30 million gallon per day discharge yields a base liability amount of $3.9 million. This creates a skewed picture of the level of liability that could be warranted, and leaves both the Water Boards and the regulated community open to criticism for insufficiently aggressive enforcement. For publicly owned treatment works (POTWs), the prospect of this level of enforcement liability is especially troubling, as violations of effluent limits for both conventional and toxic pollutants are at times beyond the control of the POTW. We recommend that the State Water Board establish a different approach to calculating ACL amounts for effluent limit violations.

Specifically, we recommend that the Policy state that the starting point for an ACL for NPDES effluent limit violations be the mandatory penalty required by statute. (Wat. Code section 13385(h), (i).) The Regional Water Board should consider the nature and circumstances of the violation (e.g. the environmental impact, if any) and the conduct of the discharger (e.g. whether the violation was willful or negligent) in deciding whether to pursue discretionary liability above the mandatory amount. In cases where the facts and circumstances justify a higher penalty, the mandatory penalty amount should be adjusted upward.

For non-NPDES effluent limitation violations, to which the mandatory penalties do not apply, we also recommend a different approach in which a minimum liability is first calculated and then increased *or* decreased where the facts and circumstances warrant.

- ***The Policy Should Not Discourage Water Recycling***

The State Water Board is poised to adopt a Recycled Water Policy that establishes ambitious goals for increasing the use of recycled water for irrigation and groundwater recharge. Aspects of the draft WQEP could inadvertently frustrate those goals by creating a framework in which penalties for unauthorized discharges of highly treated recycled water are calculated in the same manner as other unauthorized spills of sewage or partially treated effluent. To ensure that the WQEP does not disproportionately penalize recycled water discharges, we recommend that a maximum amount of $0.10 to $0.50, depending upon the treatment level of the water, be used with the factor from Table 2, similar to the $2.00 per gallon maximum suggested for sewage spills and stormwater. (Draft WQEP at p.11.)[1] We also recommend that the $2.00 per gallon maximum for stormwater encompass municipal stormwater as well as construction.

[1] The Water Code provides definitions that may be useful here. See Water Code section 13529.2(c) (defining tertiary treated recycled water) and (d) (defining secondary treated recycled water). For recycled water that has been

- ***The Approach to Establishing ACL Amounts Should Incentivize Voluntary Cleanup***

As proposed, the adjustment factors do not appropriately encourage voluntary cleanups. Once a discharge violation occurs, it is important that potential environmental and human health impacts be avoided through containment and prompt cleanup actions. The draft WQEP proposes only a 0.75 multiplier when there is a high degree of cleanup and cooperation. We recommend instead a 0.25 or 0.50 multiplier be available for cases where a discharger goes to great lengths to contain and clean-up a spill, thereby avoiding potential harm to the environment. Another option would be to apply a formula for cleanups that provides a scale of credit depending upon the amount of the spill that is recovered or cleaned up. For example, where the base multiplier is 25% and 30% of a spill were cleaned up, the formula would be:

Cleanup multiplier = base multiplier (.25) + (.7) = .95

- ***The Policy Should Clearly Distinguish the Calculation of Economic Benefit for Surface Water and Other Violations.***

The WQEP continues to blur the role of economic benefit in calculating ACLs for non-surface water violations. Under the Clean Water Act, economic benefit is one factor to be considered in determining the appropriate penalty for violations. In 2000, the California Legislature amended Water Code section 13385(e), which applies to surface water discharges, to specify that "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The Legislature did not, however, similarly amend Water Code section 13351. While economic benefit is clearly relevant to assessing a penalty amount under Section 13351 we believe it is appropriately one of multiple factors to be considered in imposing liability.[2]

In addition, we are concerned about the assumptions and methodology that will be used to calculate economic benefit for public agencies under both Water Code section 13385 and section 13351. As discussed at the workshop, we do not believe it is appropriate to take the cost of advanced treatment, for example, and consider this the "avoided cost" of not preventing an effluent limit violation. As drafted, however, there is nothing in the WQEP to preclude that approach. In contrast, the existing WQEP specifies that the first step in calculating economic benefit is to "[d]etermine those actions required by an enforcement order or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent the violation." This captures the range of actions that *should have been* taken rather than the entire universe of

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treated using advanced technology such as reverse osmosis, we recommend that the maximum per gallon amount be set at zero.

[2] We understand from comments at the workshop that references to the Munipay model for use in calculating economic benefit will be removed from the WQEP. We concur that Munipay is not designed to calculate benefit but rather to estimate a community's ability to afford major infrastructure investments.

actions that *could possibly have been taken* without regard to either their feasibility or affordability. We recommend that the language from the existing WQEP be retained. Additionally, at the workshop, staff acknowledged that there are circumstances in which a public agency does not accrue any economic benefit, and this possibility should be explicitly stated in the Policy as well. For example, if a community was unable to afford the needed system improvements to prevent the violations, then it should be recognized that no economic benefit accrued.

- ***The Policy Should Provide Additional Guidance Regarding Mandatory Minimum Penalty Provision.***

We appreciate that the draft WQEP provides greater detail regarding mandatory minimum penalties (MMPs). We believe the Policy should go further, however, and address a number of issues that remain subject to varying Regional Water Board interpretation. To assist in consistent and clear application of the law to NPDES permit holders throughout the State, we recommend that the Policy be amended to:

- Specify that in order to trigger MMPs for "repeat violations," the violations must be of the same pollutant parameter. Water Code section 13385(i)(1)(a) requires that an MMP for "chronic" violations be assessed where a discharger exceeds "a waste discharge requirement effluent limitation" four times in any period of six consecutive months. To date, the interpretation of this provision has been that any combination of effluent limitation violations triggers the penalty. In other words, a violation of a copper effluent limitation, a violation of a TSS limit, a violation of a temperature limit, and a violation of a coliform limitation would result in an MMP. However, this interpretation is arbitrary and has no basis.

  For several reasons, the better interpretation of this section is that the chronic violations must be of the same pollutant parameter to result in liability because:

  (1) The purpose of allowing three violations without penalty is to allow the discharger to identify and correct the problem that led to the violations. Applying the provision to unrelated effluent limitations does not serve this purpose, as the causes of the violations may be similarly unrelated and the timing of separate violations merely coincidental. Further, under this approach, a discharger could get a penalty for "repeat" or "chronic" violations based upon a single sampling event on a single day; and

  (2) The MMP law incorporates by reference federal regulations (see Water Code §13385(h)(2) referencing Appendix A to 40 C.F.R. §123.45), which provide that "effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis" and, similar to the MMP law, "chronic violations must be reported … if the monthly average permit limits are exceeded any four months in a

six-month period." This federal regulation supports the suggested approach to addressing truly chronic violations; and

(3) The statute refers to violations of "a" waste discharge effluent requirement. The use of the word "a" rather than the word "any" indicates that the Legislature intended to penalize repeat violations of a single effluent limitation; and

(4) Each of the other three categories of violations under subsection (i)(1) is very specific—one must fail to file the same report four times, etc.

- Specify that, for violations involving effluent limitations expressed as "rolling" averages or medians, a new rolling average should be calculated following an exceedance. The OCC currently advises Regional Water Boards that where the permit specifies that an effluent limitation is to be computed on a rolling basis, there will be "violations for each new time period that the average or median was exceeded." The problem with this approach is that a single sample result yields multiple penalties where the averaging period "straddles" the exceedance. We are aware of at least one discharger that received 21 penalties for a single sample because of the way in which the period of the rolling average was specified. To prevent the unfairness and multiple counting under this circumstance of a single data point, the Policy should direct the Regional Water Boards when enforcing this type of effluent limit, to "start over" with a new rolling average following an exceedance. This logic is similar to that applied with regard to repeat and serious violations, where the State Water Board has recognized the unfairness of "double counting" violations.

- ***The Policy Should Provide Flexibility for Small Communities***

We appreciate the State Water Board's recognition of the economic challenges faced by small communities in their efforts to comply with environmental laws and regulations. We strongly support the WQEP language encouraging informal enforcement and/or compliance assistance before taking more aggressive enforcement actions. We believe that it is important that the WQEP recognize that informal compliance actions should be the first enforcement actions for all dischargers whenever possible.

The attachment also contains several recommendations to help small and/or disadvantaged communities. Through this and other State Water Board policies and actions, the impact on small communities will need to be evaluated, and solutions that are both protective of the environment and sensitive to small community needs will need to be sought.

- ***The Process for Establishing Enforcement Priorities Should be More Transparent.***

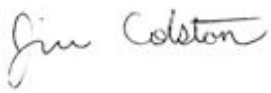
We agree that the State and Regional Water Boards should identify and evaluate overarching enforcement priorities annually. (Draft WQEP at p. 7.) It is important that the

public and the regulated community have an opportunity to review and weigh-in on these proposed priorities. The policy should specify that enforcement priorities should be established following public review and comment.

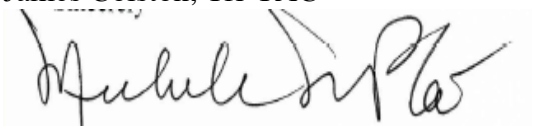
Thank you for the opportunity to provide our comments. We would be pleased to meet with you to discuss our recommendations. Please contact Roberta Larson at telephone number (916) 446-7979, or via email to blarson@somachlaw.com.

Sincerely,

Roberta Larson, CASA



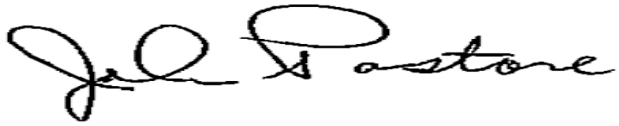
James Colston, Tri-TAC



Michele Pla, BACWA

Debbie Webster, CVCWA

David Greenwood, CWEA



John Pastore, SCAP

Kyra Emanuels Ross, League of California Cities

ATTACHMENT 1
DETAILED COMMENTS/PROPOSED LANGUAGE CHANGES

Draft WQEP at p. 2:

Section 1 of the draft WQEP is titled "Fair, Firm and Consistent Regulation and Enforcement." We recommend deleting the word "regulation" from this title, as it suggests that standardizing orders and other requirements are embraced within the WQEP. This type of regulatory consistency is beyond the scope of the Policy.

Proposed language changes:

I. Fair, Firm and Consistent ~~Regulation and~~ Enforcement

Draft WQEP at p. 4:

In section II.A.1.a., we recommend deleting the last part of the phrase to clarify the concern is impacts on water quality and beneficial uses, rather than technical violations of objectives or criteria. We also request clarification of what is meant by "calculated" violations, and what types of things fall into this category.

Proposed language changes:

a. Significant measured or calculated violations of permit limits, with lasting effects on water quality ~~objectives or promulgated water quality criteria.~~

Draft WQEP at p.5:

Included in the list of Class II violations is "violations of acute or chronic toxicity testing where the discharge may adversely affect fish or wildlife." (Subsection b.) Toxicity tests serve as a diagnostic tool, and not every toxicity test equates to an enforceable requirement.

Proposed language changes:

Violations of acute or chronic toxicity ~~testing~~ permit requirements where the discharge may adversely affect fish or wildlife.

The potential exists for minor and/or non-critical infractions of monitoring requirements that would cause a permit holder to not "completely comply with the monitoring requirements" described Subsection 2.d, therefore causing a Class II monitoring violation, or at minimum, confusion between Class II and Class III monitoring violations. To better define the difference between the Class II and Class III monitoring violations, we recommend replacing the word "completely" with the word "substantially".

Proposed language changes:

d. Negligent or inadvertent failure to ~~completely~~ substantially comply with monitoring requirements as required by applicable laws, regulations, or enforceable orders, such as not taking all the samples required;

Draft WQEP at p. 6:

Even a POTW with a very high compliance rate still may have a history of violations or which would exclude some minor exceedances from being considered Class III violations as currently described in the WQEP due to the continuous nature of their discharges. In addition, a discharger may make significant efforts and eliminate a specific problem or problematic area, yet still have unrelated violations due to other circumstances. When evaluating the history of violations, the efforts of the discharger should be factored into what is classified as a chronic problem.

Proposed language change for Subsection 3, last sentence in first paragraph:

Class III violations should only include violations by dischargers who are first time or infrequent violators and are not part of a pattern of chronic or multiple violations where good-faith efforts have not been taken to eliminate noncompliance.

Regarding Subsection 3.c., we question whether the 30-day limit would provide enough time for a Regional Water Board to review, consider and accept an alternative payment schedule. Similar to the filing of a petition, we recommend the language be modified to allow the "filing" or submittal of an alternative payment schedule.

Proposed language changes to Subsection 3.c:

c. Failure to pay fees, penalties, or liabilities within 30 days of the due date, unless the discharger has filed a timely petition pursuant to California Water Code Section 13320 for review of the fee, penalty or liability, or filed a timely request for an alternative payment schedule ~~has been accepted by~~ with the Regional Water Board for its consideration.

Draft WQEP at p. 7:

We note that the development of an automated system for generating enforcement priorities in Section C is potentially problematic, as it is generally not possible to reduce all of the relevant factors and nuances to a computer program. We recommend that this be used as a screening tool, and that stakeholders be involved in development of the algorithms.

Draft WQEP at p. 8-9:

The draft WQEP provides that the State Water Board may pursue enforcement action directly. Formal enforcement action, however, is a quasi-adjudicatory proceeding, and requires that proposed actions be subject to a fair hearing before a neutral decision-maker. For example, where the Regional Water Board proposes to adopt a cease and desist order, the alleged violator has a right to an on-the-record adjudicatory hearing before the Regional Water Board and the right to petition the State Water Board to review the Regional Water Board action. The same rights and process must be afforded to entities against whom the State Water Board proposes to enforce. The WQEP should clarify the hearing and petition process applicable to enforcement actions taken directly by the State Water Board.

Draft WQEP at p. 10:

The draft policy states that "any assessment of administrative liability" should "ensure that the amount of liability assessed for of [sic] noncompliance meaningfully exceeds the cost of compliance." This statement fails to take into account that in many cases, this is simply not appropriate. For example, if a publicly owned treatment works intermittently violates an effluent limitation for salinity, compliance with that objective could require construction of reverse osmosis treatment, at a cost of millions of dollars. It would not be good public policy to suggest that the appropriate liability for those effluent violations would be in the millions of dollars. We suggest eliminating this sentence.

Proposed language changes:

~~Ensure that the amount of liability assessed for of noncompliance meaningfully exceeds the cost of compliance;~~

Draft WQEP at p. 11-13:

As noted in our comment letter, we are very concerned that the policy may unfairly penalize unauthorized discharges of highly treated recycled water. Similarly, the application of a per gallon assessment to permitted discharges results in a highly disproportionate ACL amount. We recommend the following language changes to address these concerns:

Proposed language changes:

General Approach:

Step 2. Per Gallon and Per Day Assessments for Discharge Violations – With the exception of exceedances of NPDES permit effluent limitations, ~~F~~for discharges resulting in violations, use Table 1 and Table 2 to determine Per Gallon and Per Day Assessments. Depending on the particular language of the ACL statute being

used, either or both tables may be used. Multiply these factors by the maximum per gallon and/or per day amounts allowed under statute for the violations involved. For sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of $2.00 per gallon should be used with the factor from Table 2 to determine the per gallon amount for sewage spills and stormwater. For spills of recycled water, a maximum amount of $ 0.10 or $0.50 per gallon should be used with the Factor from Table 2. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

Potential Harm Factors:

0 = discharged material is relatively benign – (e.g., the chemical characteristics of the discharged material are relatively benign, and pose a negligible risk of harm, such as recycled water or treated effluent).

Given the way that the Water Boards have interpreted what it means to "contribute" to exceedance of an MCL or water quality standard, we are concerned that *any* excursion above an MCL in a discharge could cause a violation to be deemed a moderate threat, even where the contribution was undetectable.

Proposed language change:

3 = moderate threat to beneficial uses – (e.g., observed impacts to aquatic life, short term restrictions on the use of a water body such as beach closures, material contribution to MCL exceedences for drinking water supplies).

Beaches are automatically closed when there is a sewage spill in the vicinity. Nearly all beach closures are for a minimum of two days due to the nature of testing for bacterial indicators. The tests require a minimum of 24-48 hours to get a presumptive result. The County Health Departments will not reopen beaches until that presumptive test shows that a portion of the beach was not contaminated. Thus, even where the monitoring results show NO detectable beach contamination the beach will close for the minimum two days.

Proposed language change:

4 = above moderate threat to beneficial uses – (e.g. observed and substantial impacts to aquatic life, beach closures of more than ~~one~~ two days, causes short term MCL exceedences for drinking water supplies).

Draft WQEP at p. 16:

In Step 3, factors to be considered to determine the harm values for Table 3 are given. Under the major harm description, the WQEP directs that non-discharge violations involving headwaters to be considered major. This blanket approach may unfairly target dischargers in mountainous regions of the State, by automatically assigning a major harm factor if they discharge at or near headwaters.

Proposed language changes:
Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge~~s~~ violations involving particularly sensitive habitats~~, such as headwater areas, should~~ may be considered major.

Draft WQEP at p. 17:

Table 4, Adjustment for Cleanup and Cooperation:

As proposed, the adjustment factors do not appropriately encourage voluntary cleanups. Once a discharge violation occurs, it is important that potential environmental and human health impacts be avoided through containment and prompt cleanup actions. We recommend instead a 0.25 or 0.50 multiplier be available for cases where a discharger goes to great lengths to contain and clean-up a spill, thereby avoiding potential harm to the environment.

Proposed language changes:

Alternative 1:

Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between ~~0.75~~ 0.25 to 1.5 with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.

Alternative 2:

Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should be calculated using the following formula:

Multiplier = 0.25 x percent of spill released to the environment that was not cleaned up or contained.

~~result in a multiplier between 0.75 to 1.5 with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent~~.

Table 4, History of Violations:

As stated earlier, POTWs with a very high compliance rate still may have a history of violations. When evaluating the history of violations, the efforts of the discharger should be factored into what is classified as a chronic problem. In addition, small or disadvantaged communities can have chronic compliance issues due the costs and ultimate inability to adequately fund the necessary improvements to address the violation. We recommend making this adjustment factor discretionary for small or disadvantaged communities.

Proposed language changes to Table 4:

History of Violations	Prior history of violations. Where there is a history of repeat violations and good-faith efforts have not been taken to eliminate noncompliance, the amount of the initial liability should be increased by a minimum of **10%** to reflect this. This adjustment factor is discretionary for small or disadvantaged communities.

Draft WQEP at pgs. 17 and 18:

The Draft WQEP provides for multiple violations to be considered as a single violation. We recommend discretion be expanded to allow Water Boards to consider other factors including single operational upsets that cause multiple day violations, including non-contiguous multiple day violations that are directly related to the initial cause of the violation(s). Currently, single operational upsets may provide relief for a number of parameters, but incur penalties for every day of the upset. Interruptions in longer-lasting violations can occur due to the biological nature of wastewater treatment, unsuccessful "fixes" to the problem, natural fluctuation that may occur due to sampling, flow changes, etc.

Proposed language changes:

- A single operational upset where violations occur on multiple days.

- The violation occurs on separate days but the violation is a violation that continues ~~uninterrupted~~ for more than one day.

Draft WQEP at p. 20:

Staff cost of investigation and enforcement can be substantial to a small community, especially when Water Board assistance is needed to bring a facility into compliance. The WQEP should allow the Water Boards to waive the cost of investigation and enforcement for small or disadvantaged community.

Proposed language changes:

The costs of investigation and enforcement are "other factors that justice may require" and should be added to the liability amount. These cost include… Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and indirect costs. Water Boards have the discretion to waive the cost of investigation and enforcement for small or disadvantaged communities.

Draft WQEP at p. 22:

As an overarching policy, the WQEP directs Regional Water Boards not to adjust the economic benefit for expenditures by the discharger to abate the effects of the cost to come into or return to compliance. This directive is contrary to provisions that have been allowed in the MMP statutes for small, disadvantaged communities where penalties can be directed towards capital improvement projects to correct the violations. Allowing penalties to be used for improvement projects that correct violations is an appropriate means of assistance for small or disadvantaged communities. The WQEP should recognize that basing a liability on economic benefit might not be appropriate for small or disadvantaged communities.

Suggested language changes to be added at the end of Step 8:

For small or disadvantaged communities, the Economic Benefit adjustment as described in this step is discretionary. The Water Board may consider adjusting the assessment of economic benefit based on the costs for expenditure to comply or abate a violation for small or disadvantaged communities.

Draft WQEP at p. 23:

While we agree that it is helpful for the policy to recognize that settlement may be an acceptable resolution to an enforcement matter, we are concerned that the policy goes beyond outlining appropriate settlement considerations to dictating specific terms. The policy would preclude releases under Civil Code section 1542, which is a matter for determination by Water Board counsel in the context of particular settlements. Although we believe it is preferable for all parties that the sentence prohibiting section 1542 waivers be deleted outright and this issue be left to be determined on a case-by-case basis, a potentially acceptable alternative would be to rephrase this sentence in a positive manner (i.e. "Settlement should generally provide for a full and final settlement and release of those claims and violations alleged in the complaint.").

Proposed language changes:

As far as the scope of the settlement is involved, the settlement resolves only the claims which are made or could have been made based on the specific facts alleged in the administrative civil liability complaint. ~~A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.~~

Draft WQEP at p. 24:

We have been concerned for some time about the long lag time for assessment of mandatory minimum penalties (MMPs). We are pleased to see that the policy calls for issuing MMP complaints within eighteen months. We note, however, that the previous version of the policy provided for assessment of MMPs within seven months, and with very few exceptions, this did not occur. We hope that the State Water Board will ensure that the proposed policy timeframes are adhered to by the regions to the greatest extent practicable.

Draft WQEP at p. 26:

Census data, which is compiled only every ten years, is not the most accurate method of estimating population. Census tracts do not always match up precisely with jurisdictional boundaries of the POTW service area. There are other methods preferred by demographers, including the Department of Finance methodology, which involves estimating housing unit occupancy. We are concerned that the alternative criteria to justify using data different than census data may create a barrier to using other acceptable methods for qualifying as a small community, specifically in regard to the "number of people actually served." We recommend the WQEP allow POTWs to use readily available data to justify the using different data than block group data and that the requirement to consult with the State Water Board be removed and left to the Regional Water Board's jurisdiction.

Proposed language changes:

… Justification must include a map of the service area boundaries, a list of properties~~,~~ and/or the number of households served; a reasonably justifiable estimate of the number of people ~~actually~~ served by the POTW, and any other information requested by the Regional Board. ~~The Regional Water Board shall consult with the State Water Board when making a determination based on these additional site-specific considerations.~~

Draft WQEP at p. 27-28:

The draft WQEP sets forth policy in regard to the criteria for compliance projects, some of which is beyond the requirements of Water Code section 13385(k).[3] For example, the draft WQEP does not allow grant funds to be used to pay for a portion of the penalty that is suspended. Although in concept it may appear that allowing grant funding is contrary to the purpose of the penalty, the reality is that some small communities cannot afford to pay the large penalties, are in dire need of the facilities to comply with permit requirements, and cannot afford to pay some or all of the mounting MMPs. The WQEP should allow the Regional Board some discretion with regard to allowing grant funds as part of a compliance project and provide maximum flexibility with regard to using penalties for compliance projects.

Proposed language changes:

2. The discharger must spend an amount of money on the CP that is equal to or greater than the amount of the penalty that is suspended. In general, grant funds may be only used for the portion of the cost of the CP that exceeds the amount of the penalty to be suspended. However, in appropriate circumstances the Regional Water Board may allow all or a portion grant funds to offset the penalty.

3. Where the implementation of the CP began prior to the assessment of a mandatory minimum penalty, the penalty, or portion thereof, may be suspended under these conditions:

[3] CWC Section 13385(k) requires the compliance project to be in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section of the Water Code.