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Summit Partners:
- Bay Area Clean Water Agencies (BACWA)
- California Association of Sanitation Agencies (CASA)
- Central Valley Clean Water Association (CVCWA)
- California Water Environment Association (CWEA)
- Southern California Alliance of Publicly Owned Treatment Works (SCAP)

Via Electronic Mail

July 30, 2012

Charles R. Hoppin, Chair, and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

ATTN: Jeanine Townsend, commentletters@waterboards.ca.gov

SUBJECT: COMMENTS REGARDING PROPOSED OPERATOR CERTIFICATION
REGULATIONS

Dear Chairman Hoppin and Members of the Board:

On behalf of the Clean Water Summit partners, thank you for the opportunity to submit comments on the proposed revisions to the regulations governing Wastewater Treatment Plant Classification, Operator Certification, and Contract Operator Registration (the "proposed regulations"). The Clean Water Summit is a coalition of regional and statewide associations representing municipal agencies throughout California that provide wastewater collection, treatment, biosolids, renewable energy and recycled water services to millions of Californians.

Many of our member agencies own and operate treatment facilities, and are very interested in the proposed regulations, as are the individual certified operators who are members of the California Water Environment Association. The revisions to the regulations are long overdue, and we appreciate the time and effort that have been expended to update and improve the rules governing the operator certification program. We concur with many aspects of the proposed regulations, which we believe will improve program implementation. Our concerns with the proposed regulations fall into four main categories, each of which is discussed below: Definitions, Certification Requirements, Fees and Enforcement.

1. Definitions (Section 3671)

We commend the State Water Board staff for their desire to modify the regulations to "clarify ambiguities in the existing regulations." (see Notice of Proposed Regulatory Action) (NPR). However, there are several definitions that fall short of this goal and require further modification.

A. "Full time"

The definition of full time includes three separate paths. The second two alternatives seem designed to capture situations where smaller facilities may not have sufficient eligible duties to reach the minimum

hours requirements set forth in the first prong. However, as written, the other alternatives are too open-ended. “Less than an average of 40 hours” could actually mean less than one hour per week. One option would be to limit the two additional prongs of the new “full-time” to only the first year of qualifying experience for the Grade I or Grade II operator level. This would still assist smaller facilities or the small private WWTPs, while not lessening the higher grades of professional certification. Under the currently proposed regulations one could take advantage of this wording and allow less than adequately trained staff to attain Grade III – V in a relative short time frame. Limiting this to one year and then requiring the 1,800 hours for additional years of higher certification would help to ensure the integrity and professionalism of the certification.

B. “Certifying body” and “Indian Tribe”

Our concerns with these definitions relate to the issue of reciprocity for operators certified by other jurisdictions. (See Section 3689.) While we understand the need for some flexibility in hiring qualified operators from other states, we are concerned that the process and criteria used to determine qualifying certifications for reciprocity purposes will lack transparency. Therefore, we recommend that the regulations require the OOC to supply a table of “Comparable Certifications” within one year of regulation adoption and update it every two years.

2. Minimum Certification Requirements

The Summit Partners strongly support the purpose of the Wastewater Treatment Plant Operator regulations to “protect public health and the environment by providing for the effective operation of wastewater and treatment plants, including water recycling treatment plants, through the certification of wastewater treatment plant operators and the registration of contract operators.”

The primary mechanism for achieving this purpose is the efficient and effective certification of competent operators. California has an excellent track record of safe and effective operations of wastewater treatment plants, and relaxation of the minimum certification requirements should only be undertaken where there is a sound supporting rationale. The Summit Partners strongly encourage the State Water Board to revise the regulations within the context of maintaining minimum competencies necessary to protect public health and the environment.

Certification is based on three pillars: Experience, Education, and Examination. Each of these pillars is necessary to ensure the minimum competency of operators throughout the state as they operate complex treatment systems. Maintaining the certification standard ensures that all operators possess the knowledge, skills, and abilities necessary to protect the public health and the environment and ensure the public’s confidence.

a. Experience

It takes time in the field to become expert in a wastewater facility and learn the ropes. It is reasonable to expect an individual to spend at least one year in the field working before qualifying to become a journey level operator. There are no shortcuts in the training of operators; time is required to become a proficient operator of the complex technologies used in wastewater treatment.

We are concerned that too much discretion is given to the Office of Operator Certification, without sufficient guidelines, to certify experience from numerous facilities as ‘qualifying’. Once an individual is granted ‘qualifying experience’, he or she can substitute education for additional years of experience, thereby avoiding minimum time-in-grade learning the wastewater treatment process.

The Department of Public Health regulations for Water Treatment Operators, in contrast, require that, regardless of advanced education, actual experience in the treatment plant is required for its certificate program. (See Cal. Code Regs., tit. 22, §§ 63750.65, 63800.) Other education and other experience may be helpful, but there still must be a minimum of time spent in the particular field of expertise.

Suggested Changes to Proposed Regulations:

- i. Section 3684: Remove/Strike experience credit for Lab Procedures or Safety Procedures. This experience is not credible for Plant Operations.
- ii. Section 3684: Allow maximum of 1 year experience to be granted by the OOC after individuals pass a certification examination. This will ensure, if other suggestions are implemented, that no Operator will obtain Grade V certificate without at least 1 year of in-plant experience while being regulated by the SWRCB and OOC.

b. Education

Advancing minimum education requirements is important to ensure the public’s confidence in the Operator Certification Program. We support the proposed requirement that Grade I Operators should have a High School Diploma or GED equivalent.

We also believe the State Water Board should establish a new requirement for Continuing Education so operators stay current with evolving technologies and best practices. The Summit Partners suggest a program similar to that used by the California Water Environment Association (CWEA) for its Technical Certification Program or the California Department of Public Health for Water Treatment Operators (Cal. Code Regs., tit. 22, § 63840).

Suggested Change to Proposed Regulations:

Add Continuing Education requirement for all Operators, similar to California Water Environment Association’s Technical Certification Program and California Department of Public Health for Water Treatment Operators.

c. Examination

California has built a strong certification program over the last 75 years, dating back to the inception by the California Water Environment Association in 1937 and through the State’s leadership after the Clean Water Act in the early 1970’s. Improvements are needed, but the

principles remain the same as in the past. The examination process is meant to ensure a consistent competency is met by all operators of the same Grade based on the same body of knowledge.

While the Office of Operator Certification has discretion in accepting Experience and Education qualifications from other certifying bodies, the Examination is unique to California, in that it reflects the regulatory requirements and specific environmental protection expectations by our public that may not exist to the same degree for other certifying bodies. In order to ensure integrity of the certification, the waiver of examination for Grade III, IV, and V allowed in Section 3689 should be based upon a true comparison of examinations with other certifying bodies. For example, California utilizes long-form math and essay questions for these higher grades to test real-world situations.

A job/task analysis for each grade of operator is appropriate at this time and will serve to update the common set of Knowledge/ Skills/Abilities (KSAs). Afterward, the existing repository of test questions should be updated and validated to represent the newly revised KSA's. The Summit Partners stand ready to assist the State with this effort, knowing it is not an easy task. We have volunteers who can lend expertise through the Advisory Committee or through CWEA to help the State's leadership in this area.

In the interest of improving efficiency, the maximum turnaround time for the State Water Board to provide "pass/fail" information to test takers should be reduced from 90 days to 45 days so that agencies and operators can more quickly adapt to changing staffing levels after retirements or organizational changes. Lastly, we continue to support the long-form essay and math questions for Grades III, IV, and V to fully test these operators in areas that will be expected of them as they ascend to leadership roles at the various plants. At the same time, we believe significant improvements can be made by shifting to computer-based testing for Grade I and II exams, streamlining the test and reducing labor requirements for grading and providing quicker results to the participants. The Summit Partners, and in particular, CWEA, are ready to assist the Office of Operator Certification and leverage past successes with its Technical Certification Program for the benefit of Plant Operators.

Suggested Changes to Proposed Regulations:

- i. Section 3701: Reduce grading time from 90 days to 45 days

3. Enforcement

The Summit Partners have concerns with various enforcement provisions of the draft regulations (i.e., proposed Article 9), including Sections¹ 3709, 3711.1, 3712, 3712.1, and 3714. For the following reasons, we respectfully request that you delete or modify these provisions as suggested below. Our comments and suggested changes focus primarily on the need for timely resolution of disputed issues and certainty regarding compliance requirements and civil liability to ensure that wastewater treatment facilities will be staffed and operated in a manner that complies with the law and protects public health and the environment.

¹ As used in this letter, "Section" refers to a section of the proposed regulations unless otherwise provided.

A. Section 3709 Should Be Deleted, as it Is Unnecessary and Duplicative and May Conflict With the Water Code

Section 3709 pertaining to the imposition of administrative liability is unnecessary and duplicative, may create confusion regarding compliance requirements, and has the potential to become inconsistent with the Water Code. For example, the stated purpose of Section 3709 is to implement “sections 13627.1, 13627.2, and 13627.4 of the Water Code, which were added to the Water Code by chapter 422, statutes of 2002.” (Initial Statement of Reasons at p. 37.) However, regulations are unnecessary to “implement” these Water Code sections, as they already authorize the State Water Board to impose civil liability as proposed in Section 3709. The grounds for administrative liability and penalty amounts provided for in Section 3709(b) and (c) are found in existing law at Water Code sections 13267.1 and 13627.2. In addition, Section 3710 would serve to describe these grounds in greater detail. Moreover, Water Code section 13627.4 specifically authorizes the State Water Board to impose civil liability on these and other grounds in accordance with the statutory provisions identified in Section 3709(a). In fact, the State Water Board (including the Executive Director on the State Water Board’s behalf) has consistently issued civil liability on the grounds and within the amounts stated in Section 3709.²

Accordingly, adoption of Section 3709 would fail to satisfy the requirement that a regulation be necessary to effectuate the purpose of a statute or other provision of law. (See Gov. Code, §§ 11349(a), 11349.1(a)(1); see also Cal. Code Regs., tit. 1, § 10.) Adoption of Section 3709 would also fail to satisfy the requirement that a regulation not serve the same purpose as (i.e., duplicate) a state statute. (See Gov. Code, §§ 11349(f), 11349.1(a)(6); Cal. Code Regs., tit. 1, § 12.)

Further, restating the existing statutory grounds for legal liability in State Water Board regulations is likely to result in confusion among the regulated community. In particular, such an approach gives the appearance that the State Water Board is expanding existing compliance requirements and associated liability in Section 3709 when presumably this is not the case. Operators and others subject to any newly adopted regulations must have reasonable certainty with regard to compliance expectations. (See Gov. Code, §§ 11349(c), 11349.1(a)(3); Cal. Code Regs., tit. 1, § 16; see also *In the Matter of the Petition of Aerojet General Corp. et al.*, No. WQ 80-4 (March 20, 1980) at p. 34; *In the Matter of the Petitions of National Steel and Shipbuilding Co. et al.*, Order No. WQ 98-07 (Sept. 17, 1998) at p. 15.)

Because Section 3709 would merely duplicate existing statutory law (i.e., Wat. Code, §§ 13627.1, 13627.2, and 13627.4), the section could become inconsistent with any future amendments to that statutory law. For example, were the Legislature to amend Water Code sections 13627.1 and 13627.2 to increase the maximum penalty amounts, the State Water Board’s regulations would squarely conflict with any such an amendment.

For the foregoing reasons, we request that you delete Section 3709 in its entirety.

² See e.g., *In the Matter of Mr. Charles Grace*, Order WQ 2011-0016-EXEC, Imposing Operator Certification Discipline Pursuant to Settlement Agreement (Oct. 12, 2011); *In the Matter of Mr. Michael Popichak*, Order WQ-2011-0017-EXEC (Oct. 12, 2011); *In the Matter of Tito Balling*, Order WQ-2009-0002-EXEC, Imposing Administrative Civil Liability and Operator Certification Discipline Pursuant to Settlement Agreement (April 14, 2009).

B. Section 3711.1 Should Be Modified in the Interest of Timely Resolution of Disputed Issues

Section 3711.1 would specify procedures related to the appeal of a decision by the Office of Operator Certification (OOC) to the Deputy Director of the Division. The second sentence of Section 3711.1(a) would authorize the Deputy Director to allow additional time for the OOC to file a recommendation. In the interest of timely resolution of disputed issues, we request that you delete this sentence. In the alternative, we request that you amend the provision to cap the additional amount of time that may be allowed at 10 days. Presumably, the OOC has the information necessary to make a recommendation within the initial 30-day period, as the OOC investigated the matter and commenced the enforcement action. However, as a matter of fairness, if the OOC is given additional time to build its case, the appellant should have the opportunity to request additional time to file an appeal, as well as an opportunity to reply to any new evidence or issues raised in the OOC recommendation.

Section 3711.1(b) would provide the Deputy Director up to 90 days from receipt of an appeal to issue a final decision. This represents up to 30 days of additional time as compared to existing regulations. (Cal. Code Regs., tit. 23, § 3712.) While we appreciate the State Water Board's desire to allow the Deputy Director sufficient time to give the matter on appeal full consideration, we also understand that staffing and other constraints may result in the State Water Board being unable to meet its own regulatory and statutory deadlines. We request that you amend Section 3711.1 to allow an appellant to file with the State Water Board a petition for review of the discretionary decision made by the OOC in the event the Deputy Director does not issue a final decision within 75 days.

Section 3711.1(c) states: "The Deputy Director of the Division may at any time, on the Deputy Director's own motion, issue a Final Division Decision." We support the Deputy Director having the authority to review enforcement matters where an appeal has not been timely filed. (See Initial Statement of Reasons at p. 39.) However, we believe that this provision should require that any such decision must be issued within 45 days after the time for an appeal of a decision by the OOC to the Deputy Director has passed. We also believe that the provision should not use the phrase "own motion," as this generally refers to the State Water Board's review of actions or inactions of the regional water quality control boards. (Wat. Code, § 13320(a) ["The state board may, on its own motion, at any time, review the regional board's action or failure to act".].)

For these reasons, the Summit Partners recommend that Section 3711.1 be revised as follows:

§ 3711.1. Action by the Deputy Director of the Division.

(a) The Office of Operator Certification may file a recommendation regarding an appeal with the Deputy Director of the Division within 30 days of receiving a copy of the appeal. ~~The Deputy Director may allow additional time for the Office of Operator Certification to file a recommendation.~~ The Office of Operator Certification shall provide a copy of its recommendation to the appellant.

(b) The Deputy Director of the Division shall review the evidence

and any recommendation filed by the Office of Operator Certification and shall make a Final Division Decision within ~~75~~⁹⁰ days of receipt of the appeal. The Final Division Decision shall inform the appellant that the decision is final and conclusive unless the appellant petitions the State Water Board for review in accordance with the provisions of section 3711.2.

(c) In the event that the Deputy Director of the Division does not issue a Final Division Decision within 75 days of receipt of the appeal, the appeal shall be deemed dismissed. Where an appeal is deemed dismissed, the appellant may file a petition for review of the decision made by the Office of Operator Certification in accordance with section 3711.2. The petition shall be in writing and shall be received by the State Water Board no later than 30 days after the date that the appeal was deemed dismissed.

(d)(e) The Deputy Director of the Division may, within 45 days after the time for an appeal of a decision by the Office of Operator Certification pursuant to Section 3711 has passed at any time, on the Deputy Director's own motion, issue a Final Division Decision.

C. Requesting Reconsideration of a Proposed Disciplinary Action Letter Should Be Optional

Section 3712 would require the party subject to a disciplinary action letter issued by the Office of Enforcement (OE) to request reconsideration by the Director of the OE before the State Water Board may review the action. Section 3712 should be revised to allow, but not require, a party to request such reconsideration since the reconsideration process would significantly delay the resolution of disputes. For example, Section 3712(b) would allow a party up to 45 days from the date of the disciplinary action letter to request reconsideration. After receipt of the request, the Director of the OE would have up to 90 days under Section 3712.1(a) to make a final decision. As a result, a wastewater treatment facility or appellant may have to wait more than 4.5 months before the Director of the OE reaches a decision and any further action may be taken.

Therefore, we recommend that Section 3712 be revised as follows:

§ 3712. Requests for Reconsideration of Proposed Disciplinary Action Letters.

(a) A proposed disciplinary action letter is final and conclusive and constitutes a Final Office of Enforcement Decision unless the applicant, operator, provisional operator, or operator-in-training being disciplined requests that the Director of the Office of Enforcement reconsider a proposed disciplinary action letter issued by the Office of Enforcement.

(b) Requests for reconsideration shall be in writing and shall be received by the Director of the Office of Enforcement within 45 days of the date of the proposed disciplinary action letter.

(c) A request for reconsideration shall contain:
(1) the name, address, telephone number, and email address (if available) of the requestor;
(2) a copy of the proposed disciplinary action letter;
(3) a full and complete statement of the reasons why the proposed disciplinary action letter is erroneous, inappropriate, or improper; and
(4) the specific action that the requestor seeks from the Director of the Office of Enforcement.

(d) An applicant, operator, provisional operator, or operator-in-training subject to a proposed disciplinary action letter shall not be required to request reconsideration in accordance with this section as a precondition to seeking review of a Final Office of Enforcement Decision pursuant to section 3712.2.

D. Section 3712.1 Should Be Modified in the Interest of Timely Resolution of Disputed Issues

Section 3712.1(a) would provide the Director of the OE up to 90 days after the receipt of a request for reconsideration to issue a Final Office of Enforcement Decision. As previously mentioned, we understand that staffing and other constraints may result in public agencies being unable to meet their regulatory and statutory deadlines. We therefore request that you add a provision stating that after the 90-day period has passed, the request for reconsideration is deemed denied and the appellant may file a petition for review of the proposed disciplinary action in accordance with Section 3712.2. Further, for reasons similar to those stated in section 3.D of this letter, we ask that you revise the “own motion” review provisions of Section 3712.1(b) as suggested below.

We request that the State Water Board revise Section 3712.1 as follows:

§ 3712.1. Action by the Director of the Office of Enforcement.

(a) The Director of the Office of Enforcement shall review the evidence and make a Final Office of Enforcement Decision within 90 days of receipt of the request for reconsideration. The Final Office of Enforcement Decision shall inform the requestor that the decision is final and conclusive unless the requestor petitions the State Water Board for review in accordance with the provisions of section 3712.2.

(b) In the event that the Director of the Office of Enforcement does not issue a Final Office of Enforcement Decision within 90 days of receipt of the request for reconsideration, the request shall be deemed dismissed. Where a request is deemed dismissed, the requestor may file a petition for review of the decision made by the Office of Enforcement in accordance with section 3712.2. The petition shall be in writing and shall be received by the State Water Board no later than 30 days after the date that the request was deemed dismissed.

~~(c)(b)~~ The Director of the Office of Enforcement may, within 45 days after the time for a request for reconsideration pursuant to section 3712 has passed at any time, on the Director's own motion, issue a Final Office of Enforcement Decision.

E. Section 3714 Should Specify Timeframes Within Which the State Water Board Must Take Action

Section 3714 would specify the actions that the State Water Board or its Executive Director may take in response to receiving a petition for review filed in accordance with Section 3711.2 or Section 3712.2. However, Section 3714 does not specify any timeframes in which the State Water Board or Executive Director must act. In the interest of timely resolution of disputes and certainty regarding compliance requirements and civil liability, we request that you revise Section 3714 as follows:

§ 3714. Action by the State Water Board on a Petition.

(a) The State Water Board may:

(1) ~~at any time,~~ refuse to review the Final Division Decision or Final Office of Enforcement Decision if the fails to raise substantial issues that are appropriate for review;

(2) deny the petition upon a finding that the Final Division Decision or Final Office of Enforcement Decision was appropriate and proper;

(3) set aside or modify the Final Division Decision or Final Office of Enforcement Decision; or

(4) take any other action the State Water Board deems appropriate.

(b) The Executive Director may, on behalf of the State Water Board, refuse to review the Final Division Decision or Final Office of Enforcement Decision if the petition fails to raise substantial issues that are appropriate for review or deny the petition upon a finding that the Final Division Decision or Final Office of Enforcement Decision was appropriate and proper.

(c) No later than 90 days after the date of the receipt of a petition filed in accordance with section 3711.2 or 3712.2, the State Water Board, or the Executive Director on behalf of the State Water Board, shall decide whether to refuse to review the petition or whether to take further action on the petition, and shall inform the petitioner in writing of the decision.

~~(d)(e)~~ Except where an evidentiary hearing is required by law, the State Water Board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both before taking final action on the petition.

~~(e)~~ If a hearing is held, it shall be conducted in accordance with California Code of Regulations, title 23, chapter 1.5, article 2.

4. Fees

The Summit Partners agree that the OOC should be user-funded, provided that the fees are not diverted to other programs. It is important to be transparent and upfront with expenditures charged to the OOC. The proposed increases in fees for applications, examinations, and renewal present a significant burden. The State Water Board staff is proposing an increase of nearly 80% to operators and 350% for contract operators at a time when municipalities and individuals are hard pressed to find additional funds. Additionally, the higher fees may be a deterrent to people contemplating entering the wastewater field.

Examination fees vary for the different grades based on the amount of time to prepare and grade the exams. We understand the rationale for this proposal. Grade 1 and 2 exams are similar in nature and should be priced together. Grade 3, 4, and 5 exams are similar in nature and should also be priced together. This will simplify the budgeting process for agencies and is reflective of the actual work done by the State Water Board.

The same logic does not apply, however, to the proposed application fees. As proposed, these fees will also vary for the different grade levels based on the amount of time to review education and experience of each individual. But the time to review applications does not get progressively get harder with advancing grade level. We believe Grade 1 and 2 application fees should be the same and the application fees for Grade 3, 4, and 5 should be the same.

Certificate renewals do not vary significantly based on the grade level. We believe the renewal fees should be the same for each grade level and reduced to cover the cost only. Based on the current services provided, it costs considerably less to administer a renewal of an existing certificate as it does to administer and grade the exam. We believe all renewal fees should be the same, no more than \$100, based on the level of service provided.

The registration fee for contract operators is increasing 350%. This fee requires annual renewal, as opposed to biannual renewal for operators. These fees are passed on to the individual wastewater treatment plants that rely on contract operators, often due to the economic hardship of hiring full-time operators. The proposed change represents a sizeable burden for these agencies. We believe the renewal fee of \$350/year plus \$75/employee is unwarranted. The registration fee should be consistent with the fees imposed on a Grade V Operator in Article 10.

Suggested Changes to Proposed Regulations:

- i. Article 10: Section 3717: Application Fees for Grade 1 and 2 should be the same at \$80. Application Fees for Grade 3, 4, 5 should be the same at \$130.
- ii. Article 10: Section 3717: Examination Fees for Grade 1 and 2 should be the same at \$80. Examination Fees for Grade 3, 4, 5 should be the same at \$250.
- iii. Article 10: Section 3717: Renewal Fees for all Grades 1-5 should

	be the same at no more than \$100 for the stated service of issuing a renewed certificate.
iv.	Article 12: 3719 Wastewater Treatment Plant Contract Operator Registration Fees capped at no more than that of a Grade V Operator in Article 10. The Renewal Fee should be no more than \$100, in keeping with our recommendation for Grade V renewals. The Renewal fee for each Operator that works for a Contract Operator should not be more than \$50/year.
v.	Article 10: Section 3717: Fees for Provisional Operators should be consistent with those of other Operators in Article 10.

Thank you for the opportunity to review and comment on the proposed regulations. We hope that the State Water Board will work closely with the Operator Certification Advisory Committee to further refine these regulations prior to adoption. If you have any questions regarding our concerns, please contact Roberta Larson, CASA's Executive Director, at (916) 446-0388.

Sincerely,



James Kelly, Executive Director
Bay Area Clean Water Agencies



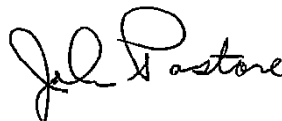
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