



May 30, 2007

Reply to:

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Via E-mail & First-Class Mail

Ms. Tam M. Doduc, Chair & Members
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814

Attention: Ms. Song Her, Clerk to the Board
commentletters@waterboards.ca.gov

Re: **Comment Letter – SRF Policy**

Dear Chair Doduc & Members of the Board:

The California Association of Sanitation Agencies (CASA), the Southern California Alliance of POTWs (SCAP), and Tri-TAC appreciate the opportunity to comment on the recently issued notice of a proposed amendment to the *Policy for Implementing the State Revolving Fund (SRF) for Construction of Wastewater Treatment Facilities*. Specifically, the proposed amendment relates to the current policy pertaining to timely compliance with the Performance Certification/Corrective Action Report requirements and, specifically, assessment of penalties for noncompliance with Performance Certification requirements. SCAP is a non-profit association organized to ensure that regulations affecting local public agencies are reasonable and in the best interest of the public. Tri-TAC is a technical advisory group jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. CASA is a statewide association of cities and special districts providing wastewater collection, treatment, and water recycling services to millions of Californians. The constituent agencies of Tri-TAC, SCAP, and CASA serve most of the sewered population in California. As discussed more fully below, Option No. 3, the implementation of administrative procedures, is the preferred option from our perspective.

It is our understanding that the issue before the State Water Board arose due to the identification of six agencies (with a total of ten loan projects) that had not complied with the Performance Certification requirements within the 15-month window following completion of construction. It is also our understanding that there were 62 projects that fully complied with these requirements during the same period. The Staff Report points out that in September 2006, penalties for the 10 projects were considered, but were not adopted by the Board, and that instead the Board requested staff to “recommend a penalty that is consistent with the circumstances associated with each project and reasonably reflects the need for the Project Performance Report and Certification, or Corrective Action Report.”

The crux of the matter is that under the current SRF Policy, disproportionately large penalties are required to be levied against the loan recipients, none of who appeared to be intentionally or willfully ignoring SRF program requirements. Nor did their failure to certify their projects in a timely manner adversely affect water quality. In fact, when brought to their attention, all six agencies took steps to remedy the situation and, other than paying the fines, have now complied with the Performance Certification requirements. Moreover, we believe that not only does the punishment not fit the crime, but, as stated in the Staff Report, the current SRF penalty requirement contained in the Policy exceeds their statutory authority and may be unlawful. In general, the State Water Board has a history of applying reasonable consequences that are commensurate with the circumstances. We believe that the same principle should be applied here.

In the context of the Staff Report, three of the seven options presented (Nos. 4, 5, and 7, which includes the existing policy) involve the levying of fines and should be dismissed from further consideration, both because there does not appear to be any supporting legal authority for monetary penalties and because fines are not necessary to compel compliance. Option No. 6, the elimination of all penalties, would solve the immediate problem of the fines, but does not provide any administrative remedies for ensuring compliance with SRF program requirements. Thus, it should also be eliminated from further consideration, since it is reasonable for the State Water Board to clearly state its expectations, procedures and consequences with respect to program reporting requirements, and simply eliminating the penalties does not address this need.

Option No. 1, the retention of a portion of the loan balance, would certainly provide agencies with a strong incentive to comply with the Performance Certification requirements. Unfortunately, it does so in an overly punitive fashion by penalizing all agencies, not just those which fail to comply with the Performance Certification requirements. Agencies would be required to carry the retention for up to 15 months and/or obtain some type of bridge financing. The added cost of doing this lessens the benefit of participating in the SRF program, hurting the overall long-term viability of the program. If the problem was widespread and more than an administrative issue, this solution might make sense; however, given the limited nature of the problem that has

been identified, this solution would unfairly penalize compliant program participants and therefore should be eliminated from further consideration.

Option No. 3, the implementation of administrative procedures, is the preferred option from our perspective. The real problem is agencies “falling through the cracks” and inadvertently failing to comply with all of the SRF program requirements. None of the six agencies that failed to submit the Performance Certification did so deliberately. In fact, when made aware of the noncompliance, all six took steps to correct the situation and are now in compliance. Thus, additional administrative procedures should be developed to ensure that agencies are aware of the requirements and are given timely notice of any missed deadlines so that appropriate corrective steps can be taken. If an agency continues to fail to correct the problem, more stringent steps can then be taken.

We recommend that the administrative procedures begin with the first annual SRF loan repayment, which is due 12 months after the completion of construction (a full three months before the Performance Certification is due). The State Water Board staff already sends out a reminder letter regarding that payment; the same letter could also contain a reminder regarding the Performance Certification. If an agency still fails to submit the required documentation, a meeting should then be held between the respective staffs to determine the cause for non-compliance. At the discretion of the State Water Board staff, a compliance time schedule could then be established for submitting the documentation. Failure to comply with the time schedule should result in one of the following two monetary disincentives being implemented.

- For agencies with other on-going loans, the suspension of future disbursements (Option No. 2).
- For agencies having no other loans in process, steps could be taken to accelerate the repayment of the existing loan.

In conclusion, CASA, SCAP, and Tri-TAC recognize the need for agencies to comply with all of the requirements of the SRF program but urge the State Water Board to address the problem by assisting loan recipients to comply in the first instance, rather than by levying harsh penalties that will only discourage agencies from using the SRF program. Simple improvements in administrative procedures appear likely to address the issue in most if not all instances. It would cause great damage to the SRF program and to agencies’ ability to comply with water quality regulations if punitive provisions such as those in Option 1 were implemented across the board. Therefore, we urge you to pursue a modified version of Option 3, as described above.

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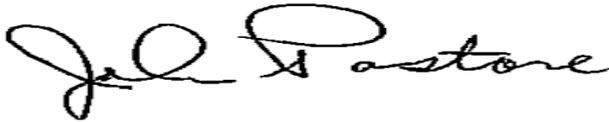
If you have any questions about our position and recommendations, please contact Dave Bruns, Chair, Tri-TAC Subcommittee on Finance, at (562) 908-4288, x-2704 or dbruns@lacs.org. Thank you for your consideration of our comments.



Roberta Larson, CASA
Director, Legal and Regulatory Affairs
CASA



Charles V. Weir
Chair
Tri-TAC



John Pastore
SCAP

cc: Dave Bruns, Tri-TAC Subcommittee on Finance
Ahmad Kashkoli, State Water Board staff