

**PROPOSED AMENDMENTS
TO THE
CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD
CHAPTER 6. RULES GOVERNING REVIEW BY STATE BOARD
OF ACTION OR FAILURE TO ACT BY REGIONAL BOARD**

INITIAL STATEMENT OF REASONS

FEBRUARY 2014

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

INITIAL STATEMENT OF REASONS

CHAPTER 6: Rules for Review by State Water Board of Action or Failure to Act by Regional Water Boards

SECTION 2050.5. COMPLETE PETITIONS; RESPONSES; TIME LIMITS.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE PROPOSED REGULATIONS ARE INTENDED TO ADDRESS

The State Water Board has the discretion to either review or dismiss petitions filed pursuant to Water Code section 13320. The number of petitions received by the State Water Board each year has increased significantly since the State Water Board adopted its petition regulations over 30 years ago. In the last several years, the State Water Board has lacked the resources to process every petition quickly. As a result, many petitioners lack certainty about whether the State Water Board will dismiss their petitions or adopt an order upholding, setting aside, modifying, or remanding the regional water quality control board's action or failure to act, or directing the regional water quality control boards to take some action requested by the petitioner.

SPECIFIC PURPOSE OF THE PROPOSED REGULATIONS

The proposed amendments will provide petitioners with certainty regarding the timing and status of their petition, so that petitioners can choose whether to seek judicial review of a regional water quality control board order or decision under Water Code section 13330.

NECESSITY OF THE PROPOSED REGULATIONS

Water Code section 13320 provides that within 30 days of a regional water quality control board's action or failure to act under specified sections of the Water Code, an aggrieved person may petition the State Water Board to review that action or failure to act. The State Water Board has adopted a regulation (23 Cal. Code Regs. § 2050.5, subd. (b)), which provides that the State Water Board will review and act on a petition within 270 days of mailing a notification that responses to the petition may be filed with the State Water Board, or the petition will be deemed dismissed by operation of law. However, neither the Water Code nor the State Water Board regulations specify how long the State Water Board may take to determine whether to mail the notification. As a result, an aggrieved person is put in the position of waiting an indeterminate length of time before the 270-day time period begins. The proposed amendments are necessary to place time limits on the State Water Board to mail a notification that responses to the petition may be filed with the State Water Board, which will start the 270-day review period.

The proposed amendments will specify that the State Water Board must either mail the notification within 90 days of receipt of the petition, or the petition will be deemed dismissed by operation of law. 90 days is proposed because it is the minimum amount of time necessary to evaluate a new petition for completeness. A longer period is not needed to make this evaluation.

If the State Water Board does not mail the notification within 90 days, the proposed amendments further specify that the petition be deemed dismissed by operation of law unless a petition is being held in abeyance pursuant to subdivision (d) of section 2050.5. This exception to the dismissal by operation of law is necessary for petitions that are held in abeyance because

when a petition is placed in abeyance the petitioner is attempting to resolve the underlying dispute with the regional water quality control board without action by the State Water Board or the courts.

For petitions received by the State Water Board before the effective date of the proposed amendments that are not being held in abeyance and for which the State Water Board has not mailed the notification, the proposed amendments provide either 120 days, 240 days, or one year from the effective date of the proposed amendments to mail the notification, depending on when the State Water Board received the petition. If the State Water Board does not mail the notification within the 120-day, 240-day, or one-year period, the proposed amendments provide that the petition will be deemed dismissed by operation of law. The 120-day, 240-day, and one-year periods are necessary because this is the minimum amount of time necessary to evaluate the existing back log of petitions for completeness on a first-in first-out basis. Longer periods of time are not needed to make this evaluation.

SECTION 2051. DEFECTIVE PETITIONS.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE PROPOSED REGULATIONS ARE INTENDED TO ADDRESS

The State Water Board has the discretion to either review or dismiss petitions filed pursuant to Water Code section 13320. The State Water Board proposes a minor clarification to the regulation that governs incomplete petitions that are not amended by the petitioner in a timely manner (23 Cal. Code Regs. § 2051, subd. (b)). The current regulation states that the petition shall be dismissed if it is incomplete. The use of the term “dismissed” improperly suggests that the petitioner may then seek judicial review of the regional water quality control board’s action.

SPECIFIC PURPOSE OF THE PROPOSED REGULATIONS

The purpose of the proposed amendments is to make clear that incomplete petitions will be deemed withdrawn instead of dismissed.

NECESSITY OF THE PROPOSED REGULATIONS

The current regulation states that the petition shall be dismissed. The use of the term “dismissed” improperly suggests that the petitioner may then seek judicial review of the regional water quality control board’s action. “Deemed withdrawn” is more appropriate in this context, because the petitioner failed to file a complete petition. It would not be appropriate to allow the petitioner to seek judicial review in this circumstance, since the petitioner failed to exhaust its administrative remedy by filing a complete petition.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS

Except for an Economic Impact Assessment, the State Water Board did not rely on technical, theoretical, or empirical studies, reports, or similar documents in proposing the amended regulations.

The proposed amendments do not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ALTERNATIVES TO THE
REGULATIONS/EVIDENCE WITH RESPECT TO BUSINESS IMPACT

The State Water Board has prepared an Economic Impact Assessment and determined that the proposed amendments will not have a significant adverse economic impact on business. The amendments pertain to procedures before the State Water Board and do not impose any financial obligations on the business community or otherwise affect the cost of doing business. The State Water Board did not consider any alternatives to the proposed regulations. The State Water Board did not identify any alternatives that would lessen any adverse impact on small business.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed amendments do not unnecessarily duplicate or conflict with federal regulations. A review of the Code of Federal Regulations did not indicate the existence of duplicative or conflicting law.