

Item 11A - HEARING & DECISION



ADOPTION OF REGULATIONS REGULAR RULEMAKING

Presenter: Curt Taras

May 23, 2014

BOARD ACTION



- Conduct the public hearing to amend the Board's regulations for evidentiary hearings, enforcement actions, and reconsideration.
- Accept and respond to public comments concerning the proposed regulations.
- Consider Approval of Resolution 2014-21 adopting the proposed revisions to the regulations

BACKGROUND



- Senate Bill 753 became law on January 1, 2014

- The bill amended the Water Code to allow the Board to:
 - Order administrative fines for code violations
 - File liens to collect abatement costs
 - Use a progressive three-step enforcement process
 - Notice of Violation
 - Cease and Desist Order
 - Enforcement Hearing
 - Enforcement Order

EMERGENCY REGULATIONS



- Senate Bill 753 also required the Board to adopt emergency regulations to implement the new enforcement authorities.
- The Board approved the submission of the Emergency regulations to the Office of Administrative Law (OAL) at the November 22, 2013 Board Meeting.
- The Emergency Regulations were made effective on January 8, 2014.
- The proposed text of the permanent regulations is the same as the text of the emergency regulations.

REGULATIONS TEXT



- **Proposed Regulations Regarding Evidentiary Hearings**
 - Section 13, Evidentiary hearings may now be conducted before a Board committee whereas previously they could only be held before the Board or a designated hearing officer.

REGULATIONS TEXT



- **Draft Regulations Regarding Enforcement Actions**
 - Section 20, Purpose and Authority, is amended to add administrative penalties, liens, and collection of attorney's fees to the list of authorities the Board holds.
 - Section 21, Conduct Subject to Enforcement, is added to explain what actions by the public are subject to enforcement.
 - Section 22, Settlement of Violations, is added to explain how a settlement of a violation in the enforcement process can be reached and then approved by the Board.
 - Section 23, Delegation of Enforcement Authority, is added to explain how the authority to issue Notices of Violation may be delegated to the Department of Water Resources or to local maintaining agencies with their acceptance.

REGULATIONS TEXT



- **Draft Regulations Regarding Enforcement Actions**
 - Section 24, Board Approval of Cease and Desist Orders, is added to explain the public meeting where a cease and desist order may be contested.
 - Section 25, Enforcement Order Hearing Procedures, is added to describe the process under which an enforcement order hearing is to be conducted .
 - Section 26, Maintenance Activities, is amended to state that removal of abandoned property is not subject to enforcement procedures and to further define what “abandoned property” is.
 - Section 27, Emergency Action, is added to allow the Board to take emergency abatement actions and hold a hearing 30 days following the abatement if requested.

REGULATIONS TEXT



- **Draft Regulations Regarding Enforcement Actions**
 - Existing Section 23, Notice of Violation, is deleted because these rules are now in the Water Code.
 - Existing Section 24, Cease and Desist Orders Issued by the Executive Officer, is deleted because the Water Code no longer makes a distinction between Cease and Desist Orders issued by the Executive Officer and those issued by the Board.
 - Section 28, Permit Revocation, is amended to make the revocation hearing procedures the same as enforcement hearing procedures.
 - Section 29, Lien Procedures, is added to explain how a lien is to be recorded against a property and the lien hearing procedures to contest it.

REGULATIONS TEXT



- **Draft Regulations Regarding Reconsideration**
 - Renumbered Section 30, Reconsideration, is amended to state any person seeking judicial review of a permit must first seek reconsideration.
 - Renumbered Section 30, Reconsideration, is amended to state enforcement orders are not subject to reconsideration but are subject to judicial review.

PRE-HEARING PROCESS



The pre-hearing process for implementing permanent regulations was completed as follows:

- Initial Statement of Reasons was drafted in February 2014
- Noticing Documents Filed with OAL in March, 2014
- Notice of Proposed Rulemaking was published April 4, 2014
- Rulemaking Documents were Web-posted and Distributed
- 45 Day Public Comment Period
- Written Comments were due @ 5:00 PM May 20, 2014
- Public Hearing @ 1:00 PM May 23, 2014

CONDUCTING THE HEARING



The hearing process for implementing permanent regulations:

- Comments: Oral and Written Comments are permitted.
- Documentation: by transcript, recording, or minutes.
- Responses To Comments:
 - a) Accept the comment, and change the proposed text.
 - b) Reject the comment , and explain reasons for no change.
- If the regulations text is unchanged or only has non-substantial changes, Board may adopt the regulations.
- If substantial changes are made, the revised text is redistributed and an additional 15 –day comment period is held.

FOLLOWING ADOPTION



Following adoption of the Regulations staff will prepare the:

- Final Rulemaking File, Binder of all documents.
- Final Statement of Reasons
 - Comment Response Letters
 - Hearing Transcript
- Department of Finance Signature
- Submission to the Office of Administrative Law (OAL)
 - 30 day review for conformance with Administrative Procedures Act
 - If approved, filed with Secretary of State and published.
 - If rejected, returned to Board for revisions and distributed for an additional 15 Day – comment period.

PUBLIC COMMENTS



The Board received the following comments to the initial draft of the Emergency Regulations:

- CA Central Valley Flood Control Association
 - Author: Scott Shapiro
 - Dated: December 30 , 2013
 - Comments: 15 Accepted: 14 Explanation: 1

- California Farm Bureau
 - Author: Justin Fredrickson
 - Dated: December 2, 2013
 - Comments: 5 Accepted: 1 Explanation: 4

STAFF RECOMMENDATION



Board Staff is recommending the Board:

- Determine that all comments received by the Board concerning the proposed regulations have been considered and responded to either in a written response letter or in testimony at the public hearing which has been recorded in the written transcript of the meeting.
- Approve Resolution 2014-21 adopting the proposed Text of Regulations for revisions to the California Code of Regulations Title 23, Division 1 related to evidentiary hearings, enforcement actions, and reconsideration.
- Direct the Executive Officer to prepare the final rulemaking record which includes a final statement of reasons stating any changes, if any, made to the initial statement of reasons and a summary and response to comments.
- Direct the Executive Officer to submit the final rulemaking record to the California Office of Administrative Law to be reviewed and made effective.

NEXT STEPS TIMELINE



- May 28 - Write Final Statement of Reasons
- May 30 - Obtain Hearing Transcript
- May 30 - Complete Final Rulemaking File
- June 2 – Submit to Department of Finance
- June 5 - Obtain Department of Finance Signature
- Submit to the Office of Administrative Law (OAL)
 - 30 day review for conformance
 - Regulations made Effective and Published
- If delayed, request 90 day extension of Emergency Regulations
 - Placeholder Item on June 27, 2014 agenda
 - Potential delay at Finance due to State Budget work.
 - OAL can also request revisions, requiring extension.