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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
EXECUTIVE SECRETARY

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(Committee on Legislation-Action)
(Legal and Claims Committee-Action)
(Special Committee on Water Quality
and Environmental Compliance-Information)

To: Board of Directors

From: General Manager

Subject: Policy Principle Regarding Standard for Criminal Liability in
Environmental Statutes

Report

SUMMARY

Previously your Board authorized Metropolitan support for Supreme Court review of the Ninth Circuit Court of Appeals' opinion in United States v. Weitzenhoff; a ruling that significantly broadens criminal liability for violations of permits issued under the Federal Clean Water Act (CWA). The Supreme Court has declined to review this ruling and as such the current standard for criminal liability requires only knowledge of the act, it does not require knowledge of permit conditions or the law, or specific intent to violate the applicable law or permit condition. Reauthorization of the CWA, currently being debated in Congress, is an opportunity to take a first step in returning to a traditional criminal liability standard where intent is an element of knowing criminal violations.

BACKGROUND

Criminal liability provisions in environmental statutes and as adjudicated by the courts have gradually expanded over time. Existing criteria at both the federal and State levels preclude virtually all reasonable defenses for an individual or entity acting without criminal intent. Recent legal precedent at the federal level expands criminal liability in the Clean Water Act to include instances where the only knowledge required for criminal conviction is that an action took place, not that the action violated a permit condition or statutory requirement (United States v. Weitzenhoff). Other federal environmental statutes have similar language with respect to criminal penalties (for example: Clean Air Act, Resource Conservation and Recovery Act) and the precedent could easily be expanded to cover these statutes. California law, as interpreted by California Courts,

is no less stringent where the standard is one of "know or should have known." As such, dedicated public servants innocently doing their jobs may be faced with criminal penalties for well-meaning acts.

Non-compliance under environmental statutes need not be intentional. The number and complexity of requirements is staggering. Even the most diligent companies with effective compliance programs may fail to implement a new rule on its effective date. Furthermore, vague or complex regulatory requirements are often subject to varied interpretations. As such, good faith efforts to comply may result in inadvertent non-compliance. In addition, routine actions undertaken to comply with one environmental statute may inadvertently violate another; particularly in an emergency situation involving restoration of essential public services.

Current debate over reauthorization of the CWA provides an opportunity to clarify in federal law that "knowing violation" means knowledge of the violation as well as knowledge of the action. However, addressing the issue in federal statute must be recognized as being a first step in addressing the issue overall since very stringent California laws and regulations would be unaffected.

POLICY QUESTION/ ISSUE

Should Metropolitan support return to a standard for environmental criminal liability for "knowing violations" such that the standard contains a distinct element of intent to violate a law, regulation, or permit requirement in order to protect Metropolitan and its employees from unjust criminal sanctions?

POLICY OPTIONS

1. Advocate language in the Clean Water Act and other environmental statutes to clarify that criminal intent is an element of a knowing violation and therefore a prerequisite for establishing criminal liability. It should be stressed that this position does not promote a radical change in statute or criminal liability criteria; but rather, a clarification of what "knowingly" has traditionally been interpreted to mean.
2. Support efforts led by others with similar interests (trade associations) to amend or clarify criminal liability provisions in the Clean Water Act and other environmental statutes.

3. Support limited amendment or clarification of Clean Water Act and other environmental statutes to provide relief from criminal penalties for essential public services and their employees. This could be even more narrowly focused to cover only those activities or operations that are directly related to providing essential services.
4. Remain neutral assuming others will be working to address the issue.
5. Oppose efforts to weaken criminal penalties in environmental statutes.

Recommendation

It is recommended that your Board adopt policy option 1 as described above.

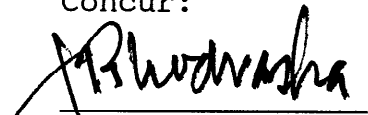
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Submitted by:



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Concur:



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