

POLICY NUMBER: 8

NAME OF POLICY: Administrative Appeals Policy

LAST REVISED: November 18, 2021

PREVIOUSLY REVISED: N/A

PURPOSE: Policy Establishing the Administrative Appeals Procedures Applicable to Certain Determinations of the General Manager

POLICY:

I. Application

Pursuant to the East Bay Dischargers Authority (Authority) Amended and Restated Joint Exercise of Powers Agreement (JPA) effective July 1, 2020, the General Manager is authorized to make certain determinations which affect the rights and responsibilities of the Authority member agencies.

In particular, the General Manager is authorized to determine whether a Failure of the Transport System has occurred and which member agencies are responsible for an unpermitted discharge or other permit violation.

In the event the General Manager makes such a determination, the affected member agencies will have the right to appeal the determination to the Authority's Commission, pursuant to the procedures set forth in this Policy. In no event will a member agency's decision to pursue an appeal impact its obligation to immediately comply with any remediation measures imposed by a regulatory agency. The affected member agency must implement the remediation measures before pursuing, or concurrent with, any appeal.

II. Stage 1: Preliminary Request for Reconsideration

Prior to submitting an appeal to the Commission, the member agency must present a written request for reconsideration to the General Manager. The request must be submitted within 60 days of the date the agency receives notice of the General

Manager's initial determination and must include data and documentation supporting the member agency's position. Any member agency disputing the General Manager's determination that a Failure has occurred in the Transport System must provide an engineering report to support its position.

The General Manager will review all data and documentation and provide the member agency with a written Final Determination.

III. Stage 2: Commission Appeal

Within 30 calendar days of the date of the General Manager's Final Determination at the conclusion of Stage 1, the affected member agency may submit a written appeal to the Commission. The Commission, by unanimous approval, may extend this time period upon a showing of good cause. The written appeal should include a brief summary of the member agency's position, document compliance with the Stage 1 reconsideration procedures, and include the date of the Commission meeting at which the member agency requests the Commission hear the appeal. In no event will the Commission hear an appeal more than 90 calendar days from the date the member agency files its appeal.

The written appeal must include a brief statement of the basis for appeal for inclusion in the Commission's agenda packet. An agency may not raise any matters on appeal that were not presented to the General Manager for reconsideration in Stage 1.

The General Manager will prepare a summary of the basis for his/her determination, including supporting data and documentation, for inclusion in the Commission's agenda packet.

IV. Stage 3: Consideration of the Appeal by the Commission

The Commission will hear the appeal at a public meeting and, upon consideration of the statements and facts presented, will make its determination. The determination of the Commission is final.

V. Dispute Resolution

For any dispute which is within the scope of this Policy, exhaustion of these administrative appeals procedures (Stages 1-3) is a prerequisite to pursuing the dispute resolution procedures of Section 19 of the JPA. Upon completion of these administrative appeals procedures, a member agency will be deemed to have met its obligation to informally negotiate to resolve the dispute, as described in Section 19 of the JPA, and the member agency may proceed directly to non-binding mediation, arbitration, or judicial determination.

VI. Waiver

The Commission may suspend or waive the requirements of this Policy in any instance. when the Commission deems it in the best interest of the Authority to do so.

Administrative Appeals Procedures Summary Chart

