



June 23, 2015

Julie Saare-Edmonds
Senior Environmental Scientist
PO Box 942836
Sacramento, CA 942836

RE: Adoption of Emergency Building Standards for the Department of Housing and Community Development Regarding the 2013 Green Building Standards Codes (June 12, 2015 proposed adoption)

Ms. Saare-Edmonds:

I am writing on behalf of the California Pool and Spa Association (CPSA) to provide comments relative to the June 12th draft of the Model Water Efficient Landscape Ordinance (MWELo).

CPSA is a statewide trade association that represents every segment of the swimming pool, spa and hot tub industry in California including builders, manufacturers, distributors, chemical companies, pool service professionals and retailers. The swimming pool and spa industry produces a \$5 billion dollar economic impact in California annually and creates almost 55,000 jobs. The industry is dominated by small businesses and most of the materials required to build and maintain swimming pools, spas and hot tubs are manufactured and purchased locally.

The focus of our members concerns are the proposed changes to Section 490.1 relative to the applicability of MWELo. We question whether the effect of these new definitions is to expand the application of MWELo to individual single family residences not previously covered by the ordinance in which case CPSA is opposed to such an expansion of the scope of MWELo.

Tracing back to AB 325, Chapter 1145 of the Statutes of 1990, the intent of the model ordinance was to apply to public agency and commercial developments, common areas of multi-family and single family residential developments, developer installed front yards of single family residences or model homes and developer or owner installed or contracted improvement that are subject to building or landscape permits, plan checks or reviews. These limitations, along with project square footage thresholds (5,000 square feet), practically exempted front and back yards of single family residences where there are owner installed or contracted improvements and, in our view, such limitations are consistent with the intent of the enabling legislation relative to MWELo.

To emphasize the previous point, MWELo does not apply to owner installed or contracted backyard landscape improvements for single family residences because such improvements

Protect • Educate • Promote

rarely, if ever, require a building permit, plan check or review. A single family residence backyard improvement project with landscaping and a swimming pool, spa or hot tub, or a project application for a building permit for a standalone pool has effectively been exempt from MWELO, even though the pool installation would require a building permit, because these projects do not meet the 5,000 square foot project threshold, especially since the pool decking and hardscape are not included in the project calculation to meet the minimum square foot project requirements

The draft language proposes a new definition of applicability that removes limiting terms such as "public agency projects," "private development projects" and "developer installed" which opens to question what the Department is trying to achieve by striking these terms. In addition, the Department is proposing to reduce the square foot threshold applicable to new residential projects from 5,000 square feet to 500 square feet. The combination of these drafting changes in the view of our clients will result in the application of MWELO to single family resident backyards not anticipated in the original legislation and which will produce discriminatory and unintended consequences.

For example, CPSA has already been involved in conversations with local building officials that question whether the draft MWELO changes would cause the ordinance to apply to a swimming pool permit for a pool with 500 square feet of water surface area or more. The logic is that since swimming pools are defined as a water feature by MWELO and a permit is required for the pool installation, that MWELO would be applicable. Putting aside for the moment whether swimming pools, spas and hot tubs were ever intended to be regulated by MWELO, this would produce an uneven result.

A standalone pool to be installed in a single family residence backyard that is owner installed or contracted without landscaping would be covered by MWELO under the new proposed definitions because it requires a permit and would likely meet the 500 square foot water surface threshold while an owner installed or contracted new landscaping in the same single residence backyard would not be subject to MWELO because no permit, plan check or review is required for such landscaping, even though that latter landscape plan may utilize more water than the swimming pool and hardscape. Moreover, a single family residence backyard owner installed or contracted with both a swimming pool and landscaping. This would be the case would be covered by MWELO due to the permit requirement for the pool, but because there is no credit provided under MWELO for the pool decking or hardscape or effect of a pool cover when the pool is not in use, the estimated total water use calculation would be skewed to the detriment of the yard with a pool. This is an unacceptable result.

If the CPSA interpretation of the draft proposal is correct, the public policy question is the inequity created for homeowners because the Department of Water Resources (DWR) is attempting to apply the same rules to commercial development and to tract home developer installed front yards and common areas as to the homeowners' use of their own backyards. We question whether such an approach was ever anticipated and are opposed to such an outcome.

First of all commercial landscapes are purely ornamental. They do not provide a functional use for the public. Additionally, commercial properties have sidewalks, driveways and parking lots

so it would stand to reason that the area of concern is just the remaining ground areas which are to be covered with ornamental landscape. Hence, fairly strict requirements for low water use would certainly be in order and create significant water savings with no takeaway for the public. A decorative use of lawn is certainly a worthy target for these installations and drip irrigated plants and trees, would be good for the environment and would require much less water than the grass we see all over the state in medians, shopping centers, business parks etc.

A person's home and yard, particularly the privacy of one's backyard, is an entirely different matter. Backyards for families are not purely ornamental. They are gathering spots and functional spaces for families to use and enjoy in privacy and safety. Backyards provide a safe recreation area for kids, pets and families much like parks. The discounting of the concrete area that people may or may not add to these spaces as a matter of their own discretion cannot be disregarded. If you do that you create a huge inequity for the homeowner. It would seem that a fair evaluation for residential yards would be an allowance for the total water demand of the entire yard based on its total square footage.

To demonstrate the inequity of this situation, let's use a comparison of two backyards. Use as an example two homeowners with 2,500 square foot backyards that would each like to install a 20 by 25 foot area of lawn or a pool (500 square feet) for their children to play on, toss a ball, put up a swing set, play with the dog, or swim. Homeowner A proposes to put in this area a pool with a cover and 2,000 square feet of pavers, cement and redwood decking for BBQ's outdoor entertaining, patio furniture, sun bathing etc. Homeowner B is not much into backyard entertainment and plans on putting in his 500 square foot area, a small 10 by 10 patio and the rest of his yard he is going to put in a mixture of trees, typical landscaping including grass and sprinklers along with some drought resistant plants. Homeowner B will actually be using far more water than Homeowner A. Homeowner A will only be topping off his pool, which will have a low evaporation rate because of his cover, whereas Homeowner B will be watering his 1,900 square feet of landscaping. Because the current formulas throw out the hardscape and do not contain credits for pool covers for Homeowner A, he will be denied his pool and Homeowner B, the one using far more water, will be enjoying his lawn.

If this is the approach DWR intends, it will result in challenges to its authority, evasion of the ordinance, gaming the system and abuse by the underground economy. For all of these reasons, CPSA recommends that swimming pools and spas be removed from the definition of water feature under MWEL. Swimming pools and spas are quite different that artificial ponds, lakes, waterfalls and fountains that are typically utilized in commercial landscape designs and common areas of multi-family housing or tract home developments.

It is black letter law that a state agency's promulgation of regulations is limited by the scope of the enabling legislation. We cannot find a single reference to swimming pools and spas, let alone water features in AB 325 or AB 1881, Chapter 559 Statutes of 2006, or in any committee or floor analysis, letters of support or opposition or enrolled bill reports. There are no other indications that there was any legislative intent to include swimming pools and spas in the legislation that was so clearly aimed at addressing irrigation and drought resistant plants.

AB 2717, Chapter 682 Statutes of 2004, required the California Urban Water Conservation Council “to convene a stakeholders workgroup to develop, evaluate and recommend proposals for improving the efficiency of water use in new and existing urban irrigated landscapes in the state.” Representatives to this stakeholders workgroup were listed in the bill: “Representatives of the Department of Water Resources, State Water Resources Control Board, California Bay-Delta Authority, United States Bureau of Reclamation, California Landscape Contractors Association, manufacturers or designers of irrigation equipment, Green Industry Council, building and construction industry, urban water suppliers, recognized advocacy groups, the League of California Cities, the California State Association of Counties, and the University of California. As shown, the scope of the stakeholder group was only efficiency of water use and urban irrigated landscapes. The pool and spa industry had no indication or notice that these proposals would include the industry. Not only that, but the list of representatives to be included by statute does not name or indicate any person associated with the pool and spa association.

After the stakeholders meetings and the report was produced, AB 1881 was passed to put in place the proposals developed. AB 1881 set forth a list that the model ordinance needed to include to reduce water use. More specifically: (1) Include provisions for water conservation and the appropriate use and groupings of plants, (2) Provide a landscape budget component that establishes the maximum amount of water to be applied through the irrigation system, (3) Encourage the capture and retention of storm water, (4) Include provisions for the use of automatic irrigation systems and irrigation schedules, (5) Include provisions for onsite soil assessment and soil management plans that include grading and drainage to promote healthy plant growth and to prevent excessive erosion, (6) Promote the use of recycled water, (7) Seek to educate water users on the efficient use of water, (8) Encourage the use of economic incentives to promote efficient water use, (9) Include provisions to minimize landscape irrigation overspray and runoff, and (10) Include provisions for landscape maintenance practices that foster long-term water conservation including performing routine irrigation system repair and adjustments, conducting water audits, and prescribing the amount of water applied per landscaped area. The pool and spa industry had no reason to believe that this new model ordinance would apply to them, because the list provided only included irrigation, plants, use of recycled and storm water, education and economic incentives regarding water efficiency. Nothing listed in AB 1881 indicates a legislative intent that pools or spas would be regulated under MWELo.

Standalone spas and hot tubs are covered when not in use and average only approximately five percent of water loss annually as a result. Swimming pools, by necessity, have substantial amounts of decking or hardscape, usually between 1 ½ to 3 times the surface water of the pool which must be included in any analysis of water use by swimming pools. Swimming pools can also be installed with covers that will prevent 70% to 90% of water evaporation. Despite these facts, MWELo contains no credits for either covers or decking that would mitigate the water allowance calculation when these structures are included in a landscape design.

Eliminating swimming pools, spas and hot tubs from the definition of water features would resolve any question that MWELo applies to a permit application for a standalone pool in a single family residence or that MWELo applies to an owner installed or contracted backyard landscape design, with or without a swimming pool, spa or hot tub if the project threshold is reduced to 500 sq. ft., as proposed by the draft ordinance.

Alternately, notes should be added to MWELO that clearly indicate that the ordinance does not apply to swimming pools, spas and hot tubs or water features except when they are a part of a public agency or commercial landscape design or part of a developer installed landscape design plan for the common areas of a multi-family residential development or tract home development or model home in a residential tract development. This would clarify the questions raised in the body of these comments above.

In conclusion, CPSA believes that MWELO was never intended to be applied to single family homeowners including a homeowner who desires to include a pool, spa or hot tub in their backyard. The proposed draft regulations are an unprecedented expansion of the scope of MWELO and will result in unanticipated effects likely including litigation, evading and abuse of the regulations, and growth in the underground economy. These unintended consequences can be avoided by either specifically exempting swimming pools, spas and hot tubs from the definition of water features or clearly exempting swimming pools, spas, and hot tubs when they are installed in single resident family homes. This would continue the intent of MWELO as envisioned by the Legislature upon the enactment of MWELO and avoid the discriminatory effect of the proposed draft.

Should you have any questions or concerns regarding CPSA's concerns regarding the draft version of MWELO or CPSA's proposed amendments to the new draft regulations please feel free to contact us. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Norwood". The signature is fluid and cursive, with a large initial "J" and "N".

John Norwood
President & CEO