

Regulatory Language

Section 672, Title 14, CCR is to be added as follows:

§672.1. Dreissenid Mussel Control and Prevention.

(a) Definitions.

For the purposes of sections 672, 672.1 and 672.2 of these regulations, the following definitions apply:

(1) "Control" is any activity ~~that prevents or minimizes~~ **intended to eradicate or prevent** the movement of adult or veliger dreissenid mussels from a waterbody by any means.

.....No further changes to the original proposed subsection (a)(2)

(3) "Conveyance" is any item that may contain or carry adult or veliger dreissenid mussels including, but not limited to, vehicles, watercraft, containers, and trailers. Conveyance does not include water supply **systems**, facilities and infrastructure.

(4) "Detected" means:

A) There has been an observed presence of one or more adult dreissenid mussels, or;

B) There has been an observed presence of one or more veliger dreissenid mussels that ~~have~~**has** been verified by the best available laboratory methodologies.

.....No further changes to the original proposed subsections (a)(5) to (11), (b)(1) to (2)

(b) General Permit Provisions.

(3) This permit does not authorize the collection of live **or dead** dreissenid mussels.

.....No further changes to the original proposed subsections (b)(4) to (5)

(c) Permit Application.

An applicant for a new permit, renewal of an existing permit, or amendment to an existing permit, must submit a completed application on Dreissenid Mussel Permit Application, DFW 1014 (NEW ~~09/25/1404/10/15~~), incorporated by reference herein. Application forms are available on the department's website.

.....No further changes to the original proposed subsection (c)(1)

(2) Denial. The department may deny the issuance, renewal or amendment of a permit if any of the following occurs:

(A) The department determines that the application or other documents submitted do not support the applicant's stated purpose or use for the dreissenid mussels.

(B) The department determines that the possession, importation, shipment or transportation of dead dreissenid mussels as proposed is not in the best interest of the ~~state~~**State**.

(C) The permittee has failed to comply with terms and conditions of a permit or any provision of the Fish and Game Code or regulations adopted pursuant thereto.

.....No further changes to the original proposed subsections (d) and (e)

NOTE: Authority: Fish and Game Code Sections 702 and 2301. Reference: Fish and Game Code Section 2301.

Section 672.1, Title 14, CCR is to be added as follows:

§672.1. Dreissenid Mussel Control and Prevention.

(a) Control Plan.

If a public or private agency that operates a water supply system detects dreissenid mussels, ~~they~~the agency shall immediately begin developing a dreissenid mussel control plan and implement measures to prevent further spread.

.....No further changes to the original proposed subsections (a)(1) to (7)

(8) Any public or private agency that violates this section by failing to submit a control plan, revision, or annual report is subject to a maximum penalty of \$1,000 that shall be imposed administratively by the department. The administrative penalty and appeal process are described in section ~~682672.2~~.

(b) Prevention Program.

It is unlawful for any person, or federal, state, or local agency, district or authority that owns or manages a reservoir, as defined in section 6004.5 of the Water Code, where recreational, boating, or fishing activities are permitted, to operate without developing and implementing a dreissenid mussel prevention program that meets the requirements of this subsection.

(1) Dreissenid mussel prevention programs shall include, at a minimum, a report summarizing the following:

(A) An assessment of the vulnerability of the reservoir for the introduction of both adult and veliger dreissenid mussels.

(B) A monitoring program to detect the presence of adult and/or veliger dreissenid mussels.

(C) Management of recreational activities to prevent the introduction of mussels and ~~that keeps to keep~~ them from being moved from the waterbody if present, that includes public education and outreach.

.....No further changes to the original proposed subsections (b)(2) to (5)

(6) Any person, or federal, state, or local agency, district or authority that violates this section by failing to submit a prevention program, revision, annual report, or fails to report a new discovery of dreissenid mussels as required by Fish and Game Code section 2301, subdivision (e) is subject to a maximum penalty of \$1,000 that shall be imposed administratively by the department. The administrative penalty and appeal process are described in section ~~682~~**672.2**.

.....No further changes to the original proposed subsections (c)(1) to (4)

(c) Inspection of Conveyances.

(5) In addition to any other penalty provided by law, any person who violates this section, section 2301 of the Fish and Game Code, or any verbal or written order issued pursuant to these sections, or who resists, delays, obstructs, or interferes with the implementation of these sections, is subject to a penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), that shall be imposed administratively by the department. Any such person shall be issued an Administrative Penalty Citation Form DFW 1016 (NEW ~~05/07/14~~**04/10/15**), incorporated by reference herein. The owner of any conveyance involved in the violation or quarantine may be held responsible for the violation, impoundment, or quarantine. In determining the amount of the penalty, the department may consider the willfulness of the action or failure to act, the nature and gravity of the action or failure to act, including the potential impacts on public safety, recreation, or natural resources of the state, the history of past acts or failures to act, and any other relevant factors as justice may require. The administrative penalty and appeal process is described in section 672.2 of these regulations.

NOTE: Authority: Fish and Game Code sections 702, 2301 and 2302. Reference: Fish and Game Code section 2301 and 2302.

Section 672.2, Title 14, CCR is to be added as follows:

§672.2. Dreissenid Mussel Penalty and Appeal Procedures.

(a) Penalties.

This section applies to violations of sections ~~s 672 and~~ 672.1 of these regulations.

.....No further changes to the original proposed subsections (a)(1) to (5),

(b) Appeal Procedure.

This subsection shall govern appeals when a person requests an appeal of the imposition of administrative penalties.

(1) A person wishing to appeal a decision of the department shall file a written request for an appeal with the department's Office of the General Counsel, ~~which~~ **and the** request shall be postmarked no later than 30 calendar days after the department's

issuance of the notification of penalty assessment. The time limit for filing a request for an appeal shall be deemed jurisdictional and may not be waived. A request for an appeal shall specifically set forth the decision being appealed and the legal and factual grounds for the appeal. The request for an appeal may include a request for an oral hearing. The request for an appeal and any subsequent written submittals shall be signed by the appellant under penalty of perjury.

.....No further changes to the original proposed subsections (b)(2) to (9),

NOTE: Authority: Fish and Game Code sections 702, 2301 and 2302. Reference: Fish and Game Code sections 2301 and 2302.