

## **ANTITRUST COMPLIANCE STATEMENT**

The Water Quality Association is firmly committed to vigorous, free and open competition. This Antitrust Compliance Statement is designed to outline the general rules governing how WQA, as a trade association of competitors, customers, suppliers, distributors, and service providers in the residential, commercial, and industrial water treatment industry, will assist the organization, its staff and its members and clients in recognizing antitrust issues whenever they arise and will aid in ensuring ongoing compliance with the antitrust laws. This Statement and its specific directives apply in the U.S. and globally when activity occurring outside the U.S. has an impact within the U.S. No director, governor, officer, staff person or other agent or representative of WQA and no member or client company or representative of a member or client company in the conduct of WQA business shall deviate from the directives and guidance of this Statement absent a specific review by and approval of WQA general counsel. This Statement is a matter of strict policy. It is not intended to serve as a substitute for legal advice from WQA general counsel on specific antitrust questions and matters as they arise relating to the business of the association, but rather it serves as an invitation to seek it out in appropriate circumstances. Similarly, trade association member or client companies and their representatives should seek legal guidance from their own general counsel on antitrust matters relating to their activities and businesses as they interact with WQA, as directed in this Statement.

### **I. The Importance of Antitrust Compliance**

Trade associations serve many important functions, including gathering technical and trade information, supporting procompetitive standards making and certification activities, sponsoring trade shows and forums and representing the industry before Congress, state and local governments, regulatory bodies and the public. At the same time, trade associations, unless properly counseled, pose substantial antitrust risk because they bring competitors together. Under the antitrust laws, many business decisions are legal when made independently, but unlawful when made in agreement with competitors. Government antitrust authorities view trade associations as providing an environment for the development and enforcement of unlawful agreements between competitors. If suspicious behavior, such as similar or parallel price increases or decisions to restrict production or output, follows association gatherings or communications, antitrust authorities may infer the existence of an unlawful conspiracy or anticompetitive agreement.

Moreover, an agreement need not be expressed or written to violate the antitrust laws. Courts often infer illegal agreements from circumstantial evidence, such as off-hand remarks as “prices are too low” made in formal meetings, on the golf course, or at the bar. If authorities find evidence of an illegal agreement, even sound independent business and marketing justifications may not prevent antitrust liability. Accordingly, the association and its members must avoid practices that, directly or inferentially, could suggest an agreement or conspiracy prohibited by the antitrust laws.

The antitrust laws impose serious criminal and civil penalties including prison sentences of up to 10 years and fines of up to \$100 million for corporations and \$1 million for individuals. The U.S. Department of Justice aggressively seeks jail terms for individuals – one recent prison sentence was set at 5 years. In addition, the Justice Department may also seek larger fines of up to twice the gains from the illegal conduct or twice the loss to victims — one recent fine totaled \$925 million. Further, most states have their own antitrust laws and state attorneys general have recently pursued antitrust cases more vigorously.

The costs of antitrust violations do not end with government action and criminal penalties. Private parties often sue for treble damages, plus court costs and reasonable attorneys’ fees, leading to verdicts and settlements measured in the billions of dollars. Such private actions often follow on the heels of criminal investigations. Even a successful defense against private plaintiffs may cost millions of dollars and liability in private class actions could be catastrophic for the association and its members.

### **II. Specific Antitrust Risk Areas**

Given the potential costs, WQA and its members and clients must be able to recognize and avoid basic antitrust problem areas. This Statement is necessarily general and cannot address all of the possible antitrust risks that may arise in connection with association activities. They are not intended to be, nor should they be used as, a substitute for proper legal advice. If you have antitrust concerns about certain conduct or activities, avoid them and immediately seek legal advice. If antitrust problems arise with your individual firm’s activities, review those problems with your general counsel. In addition, each member’s general counsel should consult with WQA’s general counsel on any matters of concern. Learn these key problem areas and adhere strictly to their directives, cautions and guidance:

- A. Price. Agreements among competitors to fix prices are per se illegal, meaning there is no legal justification for such an agreement. Price fixing includes any agreement or understanding among competitors to raise, lower, stabilize, maintain or otherwise affect prices. Prices may be for products, services, intangibles or labor (e.g., employee wages). It does not matter that prices are decreased rather than increased, that prices are stabilized, or that the agreed upon prices are “reasonable”. An agreement need not be formal or written to be illegal; an informal or “gentlepersons’ agreement” can also violate the antitrust laws. Accordingly, members and clients should never discuss prices with a competitor.
- B. Standardization of Terms and Conditions. Association members and clients should not discuss or agree to terms and

conditions of sale. Such agreements are just as illegal as agreements upon price. Members and clients should not discuss or agree to discount amounts or percentages, credit terms, surcharges, promotions or advertising, ancillary services, hours of operation, delivery or other terms or conditions of sale.

- C. Product Standardization. Associations generally may create minimum performance and safety standards. However, such standards must be properly developed and administered. If they are arbitrary, exclude competitors from a market, or unreasonably limit consumer choices, the standards may be illegal.
- D. Allocation of Markets and Customers. It is also per se illegal for competitors to agree to divide or allocate territories or customers. Association members and clients should never discuss or agree to allocate geographic areas, product or service markets or customers. In addition, members and clients should not agree to bid only certain prices to competitors' customers or not to solicit those customers.
- E. Group Boycotts. It is unlawful for competitors to agree to refuse to deal with certain customers or suppliers. Although each company ordinarily has a legal right to deal with (or refuse to deal with) whomever it chooses, this right must be exercised independently (i.e., unilaterally). Members and clients should never suggest to competitors that they should not sell to or buy from another entity. Such practices as circulating credit information among competitors may be permissible. However, members and clients must not expressly or implicitly agree not to deal with firms with adverse reports or to impose certain credit terms or conditions. Before developing or implementing "policy statements" that call upon customers or suppliers to deal with members in a uniform or specified way, members should consult with general counsel. Such agreements may raise serious antitrust concerns.
- F. Petitioning National, State and Local Governments. Competitors have a constitutional right to jointly petition national, state and local government entities including legislatures, administrative agencies, courts and executive heads and their departments. However, this right has limits. Members and clients must petition the government in good faith, should not lobby the government on frivolous grounds to intimidate competitors or to disrupt their business, and should not collectively approach public officials in a competitive setting, such as in commercial or government or procurement activities, absent explicit governmental directive.
- G. Trade Association Membership and Exclusions. A trade association may establish reasonable membership requirements including a reasonable definition of an industry. Membership requirements should be objective and should not discriminate unfairly against certain applicants. An association's decision on membership and participation may implicate the antitrust laws if it excludes parties who qualify for membership from a program or activity that creates a significant competitive advantage. A trade association should admit all qualified applicants on a non-discriminatory basis and permit them to freely and equitably participate in all association activities. Moreover, an association should allow both members and non-members to participate in programs that create a competitive advantage for participants. Different dues or fees may be charged for non-members, so long as association costs, value and operations investment reasonably support those dues or fee differences.

### III. Trade Association Activities

Trade associations, while a vital and essential part of our free enterprise economy, create antitrust concerns simply because they bring competitors together. It is the responsibility of WQA and its members and clients to ensure that the association's activities are conducted in full compliance with the antitrust laws. Accordingly, the following practices are in place and will be followed at WQA:

1. WQA's procompetitive mission, purposes and goals are stated clearly and directly in its articles of incorporation, bylaws and policies and WQA's continuing policies review will so direct.
2. WQA, through its leadership, staff and general counsel, will ensure association activities operate in strict compliance with this Statement. This will include reviewing agendas, minutes, and significant statements and correspondence before they are sent to members, clients or made public.
3. WQA leadership, staff and general counsel will ensure appropriate attendance at or coverage for all association meetings.
4. Written agendas ordinarily will be created for each meeting and distributed to attendees in advance. Approved agendas are to be followed at each meeting and minutes taken. Generally, subjects not reflected in the agenda should not be discussed unless they are clearly appropriate or guidance has been obtained.
5. WQA membership is available to all eligible parties under the association's written membership definition and will continue.
6. WQA members, clients and all associated with WQA have been and will continue to be made aware of their responsibilities under the antitrust laws and this Statement.

WQA members and clients should avoid even the appearance of anticompetitive activity. In particular, WQA members and clients engaged in WQA business or activities must always follow these important rules:

1. Members and clients should never discuss prices or other conditions of sale with competitors or other association members.
2. Members and clients should avoid informal association meetings, particularly where WQA staff or general counsel is not present.
3. Generally, members and clients should communicate with each other on association matters through leadership, staff and general counsel, not through unsupervised or unvetted direct contact.
4. Members and clients should not discuss or take collective action against competitors, suppliers, or customers. If legitimate problems on WQA business or activities arise with such parties, members should direct those problems to staff or general counsel for appropriate action.
5. When writing memoranda or correspondence for WQA purposes, business or activities, members and clients should take special care to be accurate and avoid using language that could later be misinterpreted.
6. Members and clients should recognize that this Statement and the antitrust directives apply to formal and informal WQA gatherings and activities such as golf outings, receptions, and dinners. They also apply worldwide; antitrust authorities increasingly scrutinize all trade association activities in the United States and abroad.

#### IV. Avoiding Antitrust Problems

Every WQA member and client should be aware of potential antitrust concerns and take immediate action if problems arise. Several simple rules can help reduce antitrust risk. First, if you are concerned about the propriety of certain actions or discussions, immediately consult general counsel. Second, know the agenda of any meeting involving competitors in advance and do not participate in any meeting where prices, terms and conditions of sale, or other antitrust sensitive matters will be discussed. Whenever you believe a prohibited topic is being discussed, immediately and firmly object and stop the discussion. If the discussion continues, immediately and conspicuously withdraw from the group, even if this means leaving in the middle of a meeting or an event. Mere silence is not enough; make a scene and identify the issues as one the antitrust laws. You should immediately report any inappropriate conduct or discussions to WQA staff and general counsel. Finally, members and clients should always make their own independent business decisions apart from the trade association, and those competitive decisions should never carry any appearance or suggestion of an unlawful agreement with competitors.

#### VI. Conclusion

The antitrust laws and government enforcement policies may change from time to time based on new court decisions or other events. In addition, nearly every state has its own antitrust laws, which may differ in material respects from the federal antitrust laws. Accordingly, members and clients should consult their general counsel or inform WQA's general counsel whenever antitrust or related concerns covered by this Statement arise.