

DECONSTRUCTING ENFORCEMENT

A Primer on Water Quality Enforcement

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OFFICE OF ENFORCEMENT

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Water Quality Enforcement

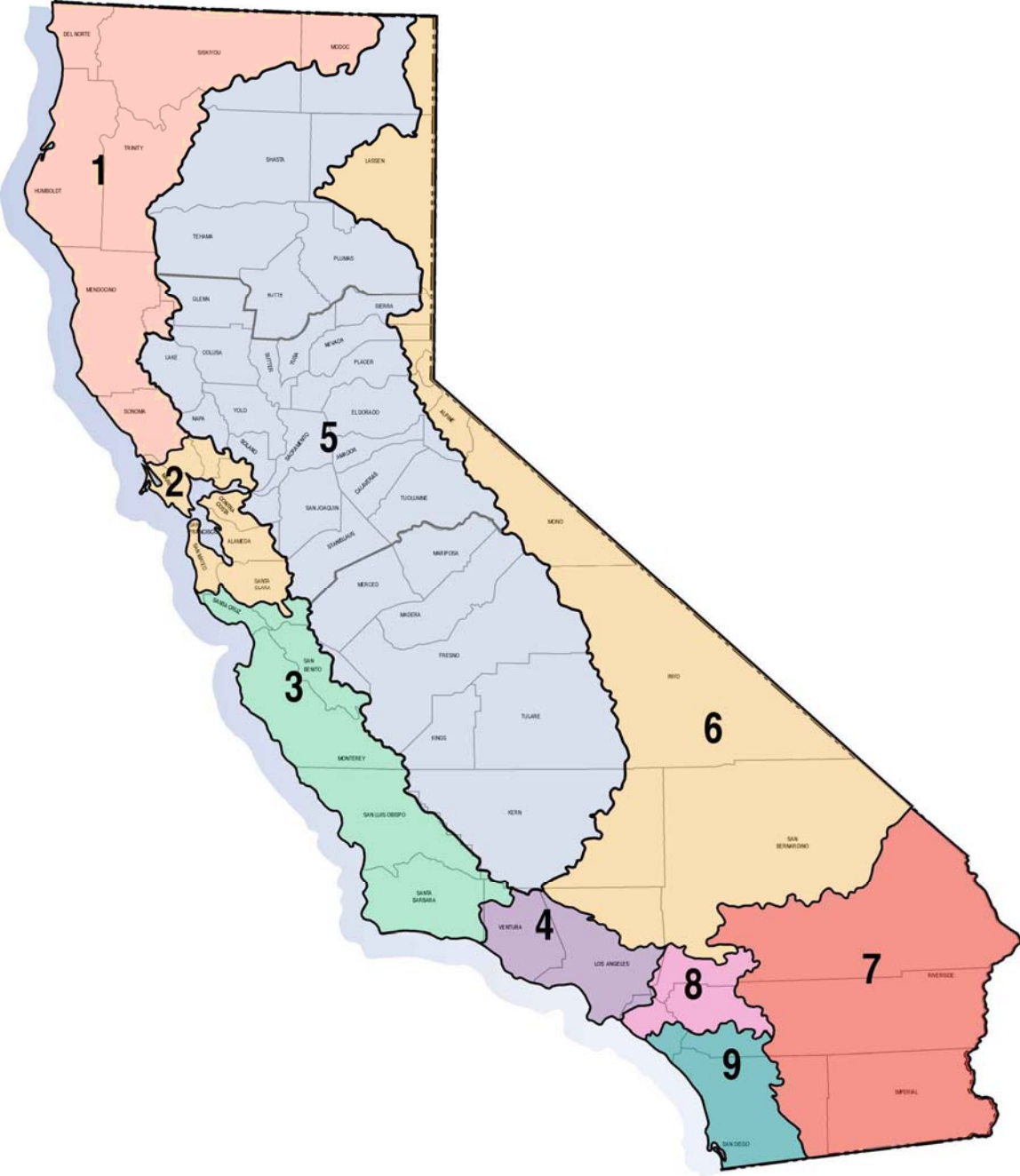


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Water Boards

STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

Introduction

The State Water Resources Control Board and its nine Regional Water Quality Control Boards have broad responsibilities in protecting surface and ground water quality while balancing competing demands on our water resources. This balance is established through our programs which allocate water rights, adjudicate water right disputes, develop statewide and regional water quality control plans, and establish water quality standards.

Enforcement Highlights

FY 2007-2008

Regional Board enforcement staff:

64

Regional Board compliance staff:

94

State Board enforcement staff:

18

Regulated facilities:

39,692

Inspections conducted:

3,763

Violations documented:

15,177

Facilities with one or more violations:

2,970

Informal enforcement actions taken:

2,706

Formal enforcement actions taken:

283

Administrative Civil Liability actions:

106

Penalties assessed:

\$19 million

Violations receiving enforcement:

8,643¹

¹ Annual Enforcement Report, FY 07-08, released April 21, 2009 covering compliance and enforcement activities for core regulatory programs.

Water Quality Enforcement

The Water Boards' regulatory effort promotes compliance by ensuring permits are enforceable, by conducting inspections, reviewing discharger self-monitoring reports, investigating complaints, and addressing non-compliance with enforcement.

The California Water Boards' enforcement program concentrates on:

- ✓ Documenting and tracking violations.
- ✓ Initiating formal and informal enforcement.
- ✓ Coordinating enforcement with law enforcement and government regulatory agencies.
- ✓ Monitoring and reporting the Water Boards' enforcement actions.

The Water Boards investigate complaints by identifying allegations of noncompliance with state and federal water quality protection laws, regulations, and permits. There are many investigative techniques that an investigator can use, depending on the case-specific circumstances. Reviewing files, consulting with local agency staffs, interviewing, inspecting, and reviewing records are some of the techniques used. The Water Boards attempt to coordinate investigations with other regulatory agencies. Consulting and coordinating with other government agencies can be time consuming, but can provide valuable information for investigations, and can consolidate resources.

The *Water Quality Enforcement Policy* established the framework for taking enforcement actions. The current version of the policy is dated February 2002 and a revised version is scheduled for State Water Board consideration on Nov. 17, 2009.

There are many legislatively mandated and elective reports that the Water Boards publish to inform the public of Water Boards' performance with enforcement activities. Among the reports are the following:

- **California Water Code section 13385, subdivision (o)** – requires the State Water Board to continuously report and update information on its Web site, but at a minimum, annually on or before Jan. 1, about its enforcement activities. The required information includes all of the following:

- The number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations;

- The formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions; and

- An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

- **Annual Enforcement Report** - To present a more comprehensive view of the Water Boards' enforcement activities and to identify enforcement goals and priorities, the Water Boards will prepare an annual integrated water quality enforcement report that will, at a minimum, address the following subjects:

--Budgetary and staff resources available for water quality enforcement at the Water Boards, as compared to the total resources for the regulatory programs and activities that they support, and the types of enforcement actions taken with those enforcement resources during the reporting period.

--All enforcement information required by statute must be reported to the public every year.

--The effectiveness of the Water Boards' compliance and enforcement functions using metrics such as those identified in the *Annual Enforcement Report* (to the extent that the information is available in the Water Boards' database).

The quarterly updated California Water Code section 13385(o) report is available at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

Other Enforcement Reports are available at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

Progressive Enforcement: An Overview

The Water Boards use progressive enforcement that incorporates limited enforcement resources efficiently and effectively.

The following are examples of informal and formal Regional Water Boards' enforcement responses.

Informal Enforcement: An informal enforcement action brings a violation to a dischargers' attention and provides the opportunity for compliance. After identifying a violation, staff discusses the allegation with the discharger. The initial contact includes the conditions which must be corrected to prevent new or more discharges.

Based on the discharger's first response, staff may opt to take no action, follow up with site visit(s) to confirm compliance and/or provide technical assistance, or continue with more enforcement. Staff will notify other agencies, if a violation falls within their jurisdiction.

Notice of Violation (NOV): For chronic violations, staff will mail a NOV to the site operator or legal representative that includes a description of the allegations, a summary of enforcement options including the potential daily or per gallon maximum ACL, and request a written response. As soon as the NOV starts, staff time significantly increases. At this stage the case is evaluated for enhanced enforcement such as imposing an administrative civil liability or other formal enforcement measure.

Verbal Enforcement Actions: The discharger is told about the violations, and how the violation will be corrected. If the discharger's response is unsatisfactory, staff may escalate their enforcement.

Formal Enforcement Actions: Regional Water Board staff may take formal enforcement in place of, or in addition to, informal enforcement. Continued noncompliance is a priority violation and should trigger formal enforcement.



The Water Boards use progressive enforcement or escalating actions that incorporates limited enforcement resources efficiently and effectively. Initially, the Water Board prioritizes identified violations and prioritizes violations.

The following activities are examples of some enforcement options:

- ✓ **Notice to Comply (NTC):** A NTC is the only time when the Water Boards can issue citations for minor violations. A minor violation is weighed by the danger the violation poses to, or the potential that the violation has, for endangering human health, safety, or the environment. If, after two notices, the discharger fails to file the applicable document(s), a mandatory civil liability will be assessed. (Water Code § 13399 (e) and (f)).
- ✓ **Investigative Orders:** Staff can conduct investigations and require monitoring reports from any discharger. Failure to comply with requirements becomes a priority violation and may result in an ACL. (Water Code §§ 13267(b), 13383.)
- ✓ **Cleanup and Abatement Orders (CAO):** A CAO may be issued to any alleged discharger, or potential discharger in violation of a stormwater permit or other orders issued by the Water Boards. The CAO requires the discharger to cleanup the waste or stop the waste. (Water Code § 13304.)
- ✓ **Cease and Desist Orders (CDO):** CDOs are administrative orders against dischargers to stop polluting or face tougher legal penalties. (Water Code § 13305.)
- ✓ **Administrative Civil Liability (ACL) Complaints and Orders:** ACLs are fines administratively imposed by a Regional Water Board. Preparing a formal action is time consuming.

Enforcement in Key Water Quality Protection Programs

1. Unauthorized Discharges from Publicly Owned Treatment Works & Sanitary Sewer Systems;
2. Construction and Industrial Stormwater Permits;
3. Nonpoint Source Discharges;
4. Streambed Alterations;
5. Mandatory Minimum Penalties for NPDES Permit Violations;
6. Site Cleanup and Brownfields;
7. Combined Animal Facilities;
8. Irrigated Agriculture;
9. Non Chapter 15 Enforcement;
10. Operator Certification; and
11. Underground Storage Tanks (Leak Prevention).

Chapter 1. Unauthorized Discharges from Publicly Owned Treatment Works (POTWs) & Sanitary Sewer Systems

Background: Discharges of treated wastewater to surface waters from POTWs are regulated under National Pollutant Discharge Elimination System permits (NPDES). NPDES permits are issued by the Water Boards. The waste limitations are based on the water quality standards of the receiving waters, and, the beneficial uses (swimming, boating, fishing, and recreation) of those waters. (§ 402 Clean Water Act.)



Wastewater Treatment Plant.

A wastewater spill or unauthorized discharge from a POTW that has not been treated has the potential to pollute the receiving water's beneficial uses and is prohibited under a NPDES permit. Spills from municipally operated and maintained sanitary sewer systems that convey sanitary and industrial wastewater are regulated by the State Water Board, Order No. 2006-0003-DWQ.

Some Regional Boards are more aggressive in regulating Sanitary Sewer Overflows (SSO). For example, the Santa Ana Regional Water Board adopted waste discharge requirements before adoption of the state SSO order for those municipalities branching to the Orange County Sanitation Districts. The San Diego Regional Water Board has more requirements under its SSO order. Their order prohibits discharges that create a nuisance as defined in *California Water Code (CWC) § 13050(m)*, besides the state SSO order.

A spill can occur for many reasons; some examples are:

- Operator errors that cause an overflow from a treatment unit;

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- Maintenance activities that require low-flow conditions, but exceed the time limit; or
- Lack of treatment capacity because of inadequate facility capacity, ill-timed maintenance, or treatment unit failures because of inadequate maintenance.

Spills and overflows from wastewater conveyance systems that discharge into a water of the United States or that create a nuisance are violations of the SSO Order. Generally, if the spill or overflow causes a discharge to a tributary to waters of United States (such as a storm drain or natural stream), they are considered violations of the SSO Order. However, discharges to a storm drain system that is tributary to a flood control system (which is tributary to a water of the United States) may not be a violation of the SSO Order if there is no discharge of pollutants to waters of the United States. For example, if the spill is to a storm drain that is tributary to a detention basin and the spill is fully contained in the basin and if the spill did not create a nuisance, then it is not a violation of the SSO Order.

Identification of Violations

POTW Violations: The discovery of unauthorized spills from a POTW can occur in many ways. An integral aspect of an NPDES permit is the self-monitoring/reporting requirements. These requirements are in place to ensure compliance with effluent discharge standards imposed on the facility, and also include the requirement to notify a Regional Water Board of noncompliance, such as spills, in an established time.

The majority of the POTWs comply with their NPDES permit requirements to notify a Regional Water Board of a spill. When they do not, as has occurred, detection of an unauthorized spill by staff can still occur. Inspections by staff that turn up irregularities in treatment system operation or monitoring report data are used to discover violations. Also, tip-offs from POTW facility staff have led to significant and time-intensive investigations for Regional Water Board staff. Citizen complaints also help in detection.

Sanitary Sewer Violations: Self-reporting spills from sewer systems are the backbone of compliance with the SSO Order. A municipality operating a sewer system must begin an incident response, and immediately notify a Regional Water Board and the California Emergency Management Agency.

Once staff finds out about a spill, an investigation into the incident follows. If a discharger does not provide information, a Regional Water Board's executive officer can require information be provided. (CWC § 13267.)

Challenges: The underlying premise in the NPDES program is discharger self-monitoring and the requirement to report spills. Dischargers must be forthcoming and timely in reporting spills to the Regional Water Boards.

In instances where sanitation agencies have tried to hide spill incidents within a treatment facility, or were slow to report, the Water Boards staff may incur significant investigative costs. These events may be indicative of ineffective or incompetent treatment operation, or they could indicate that the treatment facility lacks sufficient capacity to maintain compliance in all operational conditions. Regional Water Board staff faces the challenge of

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discovering spills that go unreported and then having to investigate the circumstances and extent of the incident.

Developing formal enforcement because of overflows from a sanitary sewer system can use up significant staff resources. Any overflow of sewage that discharges to waters of the United States is a violation of the SSO Order, and is subject to civil liability penalties. (CWC § 13385(a)).

Spotlight on the Santa Ana Regional Water Board

In 2002, the Santa Ana Regional Water Board adopted *Order No. R8-2002-0014, Waste Discharge Requirements for Sewage Collection Agencies in Orange County within the Santa Ana region*. This order sought to address the pollution to the ocean beaches within Orange County from sanitary sewer overflows (SSO). This order served as the precursor to the Statewide General Waste Discharge Requirements for Sanitary Sewer Overflows, *State Water Resources Control Board Order No. 2006-0003-DWQ*.

Between Jan. 1, 2000 and Aug. 31, 2001, the Orange County Health Officer closed parts of Seal Beach, Sunset Beach, Bolsa Chica State Beach, Huntington Harbour, Huntington City Beach, Huntington State Beach, Newport Beach, Newport Slough, and Newport Coast to body contact recreation 31 times. Beach closings and postings could not be linked to any single source. However, we felt the majority of the closures were a result of SSOs. Since most SSOs are preventable, we concluded that imposing waste discharge requirements on those agencies that operated sanitary sewer systems within the area would help to reduce beach closures.

Order No. R8-2002-0014, and the subsequent adoption of the Statewide SSO order, has had a significant effect in reducing postings and beach closures. The findings of the *2007 Annual Ocean and Bay Water Quality Report* published by the County of Orange Health Care Agency, Environmental Health Ocean Water Protection Program reported that the number of sewage spills reported had decreased five consecutive years from 2003 to 2007. In 2007, the total number of ocean beach and bay waters in Orange County was the lowest number of closures since 1993.

Chapter 2. Construction & Industrial Stormwater Permits

Background: On Nov. 16, 1990, the US EPA issued regulations for stormwater discharges. (40 CFR Parts 122, 123, and 124.)

These regulations require facility operators (where discharges of stormwater is associated with *industrial activity*²) to get a National Pollutant Discharge Elimination System (NPDES) permit and to use Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT)³ to eliminate or reduce industrial stormwater pollution through a Storm Water Pollution Prevention Plan (SWPPP⁴). The State Water Board has issued a General Industrial NPDES Permit and a General Construction NPDES Permit.



A construction site near water.

To get Industrial Permit coverage facility operators must file a Notice of Intent (NOI). The Industrial Permit requires that an annual report be completed every July 1. Facility operators may participate in a group monitoring program.

If there is clearing or grading that results in any soil disturbance of one acre or more of land, coverage under the Construction Permit is required. Property owners or developers must file a NOI with the State Water Board and prepare a site-specific plan before starting

² Construction activity falls under the federal definition of “industrial activity.”

See 40 CFR 122.26(b)(14)(x).

³ BAT/BCT as defined in sections 301 and 402 of the federal Clean Water Act.

⁴ A SWPPP “specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.” (Permit, Fact Sheet, page 1) See also page 6 of the Fact Sheet for greater SWPPP details.

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construction. Every year, construction sites must self-certify compliance with the Construction Permit, or notify a Regional Water Board of its noncompliance.

Processing Violations: The Water Boards have two sections of the *Water Code* to prosecute violations:

- The *Storm Water Enforcement Act of 1998* (Water Code § 13399.25 et seq.).
- Water Code § 13385(a).

Identifying Violations: Potential violations are identified by staff or by third parties. For instance, staff can receive complaints from the public and/or municipalities. Most citizen complaints are referred to a municipality for enforcement under its stormwater authority. If the municipality fails to have the legal authority, or the alleged violation is substantial or chronic, staff may take enforcement action.

Activities to identify potential violations include:

- **Inspections:** Staff inspects sites that have a high potential for stormwater pollution, have been noncompliant, have discharged to an impaired water body, or have received complaints.
- **Annual Reports/Compliance Certifications:** Every July 1, Industrial Permit and Construction Permit enrollees must turn in reports documenting their pollution prevention activities and monitoring results.
- **Investigative Orders:** Staff may issue an investigative order to the operator requiring information to determine if there is compliance with the stormwater permit. (Water Code § 13267 or § 13383).

Violation Types:

- **Failure to Pay Annual Fees:** Every year active stormwater enrollees are invoiced for a fee. The State Water Board issues late notices. Regional Water Board staff conducts follow-up enforcement for failure to pay annual fees after the second notice.
- **Failure to Enroll:** Regional Water Board staff becomes aware of alleged non-filers (those operators who by law are required to enroll under the stormwater program but fail to submit a NOI) through various sources (a municipal compiled list, public complaints, and staff field investigations).
- **Permit Violations:** The most common allegation of storm water permits violations include illicit discharges, failure to prepare a SWPPP, failure to adequately install BMPs, and failure to conduct monitoring. Regional Water Board staff receives complaints from government agencies and citizens. Regional Water Board staff records alleged permit violations during field inspections.

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Special Options for Enforcement: Many incidents of stormwater and non-storm water urban runoff can be referred the local municipality for investigation or can be jointly investigated with the municipality. Municipalities with strong water quality ordinances can be a partner in prosecuting stormwater enforcement. By building working relationships with municipalities, the staff can focus enforcement resources on high priority cases.

Challenges: The most significant challenge facing the Regional Water Boards is the lack of adequate resources to assess compliance with the General Industrial and Construction Stormwater Permits. Some relief may be seen by electronically submitting self-monitoring reports and clarity within reissued General Permits, but with thousands of enrollees, the Regional Water Boards must prioritize cases for enforcement.

Spotlight on the San Diego Regional Water Board

In the last five years the San Diego Regional Water Board has adopted about 80 ACL orders for Construction Stormwater Permit violations, many of which involved failure to pay annual fees. Because of the time involved in bringing an administrative case before the Regional Water Board, staff costs exceed the penalty amount. Yet the Regional Water Board was successful in getting a strong message out to stormwater permit enrollees that failing to pay fees would not be tolerated. In turn, dischargers who pay fees on time have increased.

ACLs for serious violations usually result in larger liability amounts and demand significantly more staff resources to prepare and defend. Complex construction enforcement cases can take 6-to-12 months to prosecute and incur staff costs of \$100,000.

Typical ACLs for Construction stormwater cases in the San Diego area involve multiple charges such as failing to develop a SWPPP, failing to provide best management practices, discharging sediment to waters of the United States, failing to file NOIs, and failing to submit reports. Liabilities have ranged from \$23,900 to \$1.2 million.

Over time, the Regional Water Board has established a consistent range for imposing per-day liability for these alleged violations:

- Failure to file NOIs: assessed liabilities range from \$28 to \$600 per day.
- Failure to develop SWPPP: assessed liabilities range from \$100 to \$10,000 per day.
- Failure to submit reports: assessed liabilities range from \$4.50 to \$100 per day.
- Sediment discharges: assessed liabilities range from \$5,000 to \$10,000 per day.

Chapter 3. Nonpoint Source Violations

Background: The Nonpoint Source (NPS) program is organized by six land use categories:

- Agriculture
- Forestry
- Urban areas
- Marinas and recreational boating
- Hydromodification
- Wetlands/riparian areas/vegetated treatment systems

The goal of the nonpoint source program is to prevent or control nonpoint pollution so that none of the beneficial uses are harmed by pollution. Staff uses many tools to achieve this goal, including outreach and education, individual and general permits, technical assistance to landowners, response to complaints, and progressive enforcement.



Photo Courtesy of Region 1
North Coast Regional Board staff monitor waterway.

Identifying Violations: Nonpoint source violations are identified through monitoring and surveillance activities, during inspections to permitted facilities or to those seeking permits.

Challenges: Nonpoint source enforcement efforts have proven to be particularly challenging and resource intensive for several reasons including:

- Nonpoint source pollution, once created, can be difficult and costly to control.
- There are limited qualified professionals to help dischargers with water quality compliance.
- Local governments do not have grading ordinances or land disturbance policies, so there is limited local control over activities leading to nonpoint source violations.

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- Many dischargers have land but limited money, so compliance can be slow and difficult even in cases with cooperative dischargers.
- It is much easier to create a non point source violation than to correct it.
- In some cases, politics can interfere with effective enforcement efforts.
- The resource damage caused by nonpoint source violations can be extensive; it may take years to correct a problem and restore the damage, so staff follow-up resources can be extensive.

The best options are to prevent problems, or to catch developing problems as early as possible and to take swift action to address them.

Spotlight on the North Coast Regional Water Board

Nonpoint source enforcement has been a success and a challenge in the North Coast area. This Regional Water Board was one of the first to issue penalties or recommend judicial action for nonpoint source violations.

Many of its early cases addressed the water quality harm because of improperly developed vineyards. The vineyard program combines outreach and education –one on one and with other agencies, grape grower industry groups, and grape growers; new project review; pre-development consultations; multi-agency enforcement efforts; and a number of high profile enforcement cases. The program has raised the water quality awareness in the grape growing community and has helped to reduce the magnitude and frequency of water quality problems from vineyards. In the past decade, the North Coast Regional Water Board has referred many nonpoint source cases to the District Attorney in Sonoma County and Mendocino County and/or to the State Attorney General.

What staff has learned is that a multifaceted effort is successful. However, it also requires a significant time and resources to ensure success.

Five of the six counties which lie within the North Coast area have active enforcement or environmental crimes task forces comprised of resource protection and law enforcement agencies. Through this forum, agencies can advise task force members of cases which are or may be of interest to other agencies, identify cases which warrant multiple agency response or coordination, determine whether particular cases or dischargers warrant referral to the District Attorney or Attorney General, and identify patterns of noncompliance which warrant preventive outreach or education.

Chapter 4. Streambed Alterations

Background: Many projects that the Water Boards become involved with fall into a category called streambed alteration projects. These projects involve excavating within and/or discharging dredges and/or fill materials into lakes, streams, creeks, rivers, and wetlands. These projects often result in temporary and/or permanent alteration to surface waters and water quality.

The harm to streambeds can include:

- Destructing wildlife habitat, including areas such as spawning and rearing habitat for salmon and steelhead trout.
- Diminishing the public's viewing enjoyment and swimming and boating experiences within our waterways as they become increasingly cloudy with sediment.
- Increasing water treatment costs to remove suspended sediment from rivers and streams that provide citizens and industries their drinking water, and process water supplies.

Many of these projects can alter a small section of a waterway, the damage (e.g., flooding, erosion, channel migration resulting in property damage, reduction in groundwater recharge) can be substantial, and extend far beyond project boundaries.

The Water Boards have many permitting options to regulate streambed alteration projects. The goal of any option is to avoid the discharge to the surface water in the first place, and to minimize unavoidable discharges and mitigate the harm.

The Water Boards coordinate permitting activities with other agencies, such as flood control/management districts; state agencies (Department of Fish and Game, State Lands Commission, Boating and Waterways); and federal agencies (U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service).

Identification of Violations: Water Board permit compliance is typically evaluated using a combination of inspections, and reviewing project and mitigation reports. Staff responds to complaints about permitted projects, unauthorized discharges of fill materials to surface waters, and other unauthorized surface water-altering activities.

Special Options for Enforcement: Given the many different agencies that have oversight responsibilities on the state's surface waters, there is ample opportunity to coordinate and share enforcement of the state's water quality protection laws and regulations. For example, the Water Boards can coordinate with the Department of Fish and Game to more effectively impose penalties greater than either agency working independently could do. Coordinating with other resource agencies also allows each agency to extend limited resources by distributing the enforcement workload among agencies, rather than each agency acting independently on the same cases. Such coordination does not always happen, but it is available and the Water Board staff is working toward improving coordination with other agencies.

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Challenges: One of the challenges facing the Water Boards are small dumping incidents that tend to plague many of the state's creeks and streams. Many of our streams and rivers have become dumping grounds for excess fill material, and it is often difficult to track down who is responsible. In many cases, dumping is being done by multiple parties acting independently of one another.

Another challenge is addressing the amount of unauthorized/unpermitted grading and excavation in the state's streams, rivers, and wetlands. Much of this is associated with smaller developments, or from preparing land for a variety of other uses (e.g., agriculture, building location, and drainage control). The number of such cases presents a challenge, and addressing the damage on the project site and potentially up and downstream of the project site can take significant time and financial resources.

In many cases, property owners are not aware of the requirements, or aware of how the project could have been done to avoid harming water quality, which has to be mitigated because of poorly designed projects.

Spotlight on Lahontan Regional Water Board's Enforcement Activities

The Lahontan Regional Water Board is addressing unauthorized/unpermitted streambed alterations in several ways. Staff is working with local governments and interest groups to improve public awareness of the harm associated with alterations, in addition to the permitting requirements. Several of the local governments have developed their own streambed alteration regulations and are enforcing them. This allows more of these cases to be addressed than if the Regional Water Board were acting alone. Staff is working on developing easy to understand information that identifies the benefits and value of the area's surface waters, many of which are ephemeral. Staff is hoping that by increasing the public's awareness of the benefits and value of such waterways, people will be less likely to look at them as convenient dumping grounds.

The Lahontan Regional Water Board is also tackling unauthorized streambed alterations by taking enforcement against the more egregious violators. The efforts include addressing the damage done by the unauthorized activity through the use of Cleanup and Abatement Orders, and imposing fines to act as a deterrent to others. Staff is also improving its coordination with other resource agencies. In one case, the Water Board's coordination with Department of Fish and Game resulted in stabilizing a failed dam and restoring fish passage. The result was a remediation project that met both agencies' objectives. Both state agencies also consulted with the U.S. Army Corps of Engineers, which minimized its regulatory involvement, allowing the stabilization and the fish passage project to move forward quickly. Both state agencies have continued to coordinate inspections and follow up to ensure compliance with settlement agreement requirements between the Regional Water Board and the property owner.

Chapter 5. Evaluating Violations for Assessing Mandatory Minimum Penalties

Background: The *California Water Code* was amended in January 2000 requiring assessment of a mandatory minimum penalty of \$3,000 for “serious” or “chronic” violations of NPDES permits. (CWC § 13385 (h) and (i); and as amended in § 13385.1.) A serious violation is defined as any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, a Group II pollutant by 20 percent or more, or failure to file a discharge monitoring report for each 30 days the report is late.

The Water Boards are required by California Water Code §13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in six consecutive months:

- (1) Violates effluent limitations;
- (2) Fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (3) Files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (4) Violates a toxicity effluent limitation where the WDR does not contain pollutant-specific effluent limitations for toxic pollutants.

Many times issuing MMP administrative liability action may not be the end of the job. The statute allows that in case of small communities with financial hardship starting compliance projects may offset a part or the entire MMP liability. These projects may take up to five years to build and staff must continue to follow the progress of the project for many months after the initial enforcement action was issued.

In case of regions with many small communities, there is an added effort to continue following up the MMP orders allowing for projects instead of payment.

Also, Regional Water Boards may issue enforcement orders, such as CDOs or TSOs, containing interim effluent limits, with permits containing final effluent limits. In this case, the statute allows for certain exemptions from MMPs. If the discharge complies with the interim effluent limitations in a CDO or TSO, but the discharge violates the final limits contained in the permit, the statute allows these violations to be exempt from MMPs. In the case of regions with many CDOs or TSOs, staff expends considerable effort to discover, record and exempt these violations from MMPs. Since these exemptions are not revenue generating, they may not be accounted for as MMP-related activities so the effort spent to determine and record them might not be recognized.

Identifying violations: Monitoring reports from NPDES dischargers are screened for an initial determination of compliance. This initial review ranges from 20 minutes to 2 days depending on the complexity of the permit. Dischargers with many violations have the file reviewed for a compliance history.

Identifying violations requires comparing the discharge monitoring reports (DMR) with the permit limits and narrative requirements. The permit often needs to be clarified. Validation of effluent limits must be done, requiring complex calculations of data, such as rolling averages or other mathematical analysis to determine compliance. Review of analytical reports from certified laboratories may be necessary.

After a violation is validated, the information is entered into the California Integrated Water Quality System (CIWQS) database. The time required for this task varies, depending on the number of violations. For a simple case, entry can take 20 minutes; a more complicated facility with hundreds of violations can take one week for data entry.

Notices of Violation (NOV): Notices of Violation are issued seeking a discharger's response to a NOV. It is reviewed, and modifications might be made so the discharger can show that a violation is incorrect. Issuing NOVs and evaluating discharger responses is a critical step in determining violations, as errors will be weeded out, vague permit language is highlighted, or areas of disagreement between the discharger and staff are ironed out.

Enforcement Options Unique to MMP Issues: After making a final noncompliance determination, administrative enforcement orders have been used to address the violations. Staff conducts an analysis of the dischargers' compliance history to determine if a MMP is the right enforcement tool or if a fine is more appropriate.

A MMP may be recommended, or one is issued with a time schedule or clean up and abatement order. There can be cases where the minimum penalty is not recommended, and a higher amount is proposed through an administrative civil liability complaint. As an alternative, staff can use an expedited payment process where a discharger is notified of the violation and provided with an opportunity to resolve the violations through a process which avoids an ACL but uses a stipulated order and waiver of hearing to secure the discharger's obligation to pay. This expedited payment process was used in the State Water Board's 2008 initiative to reduce the backlog of MMP violations without enforcement.

Spotlight on the Los Angeles Regional Water Board

The Los Angeles Regional Board was faced with a large backlog of MMP violations at the beginning of the MMP initiative. More than 3,401 violations were identified. The violations are a result of having more than 600 NPDES permits in the Los Angeles Regional Water Board with limited compliance and enforcement resources.

To address this backlog, staff received help from the State Water Board staff. State Water Board staff helped review program files to identify violations and enter the data into CIWQS in the early stages of the initiative (June/July 2008). With 255 facilities with violations, the enforcement responsibilities to address these violations through the Expedited Payment Plan were divided between the State Water Board and the Regional Water Board.

To act on the backlogged cases, the MMP initiative was given a top priority. The enforcement staff was redirected to reviewing backlogged monitoring reports, CIWQS data entry and developing expedited payment letters. This redirection affected the Regional Water Board staff's ability to focus on other enforcement work, such as addressing complaints, other non-MMP violations and discretionary enforcement, sanitary sewer overflows, NPDES compliance inspections and reviewing current monitoring reports.

Many issues were tackled throughout the initiative, such as the legal interpretation of late reports subject to MMPs, SEP requests while the State Water Board policy was modified, delays caused by the Arcadia lawsuit, CIWQS data entry/data quality problems, and the lack of late report data or missing report data in CIWQS. Also, Regional Water Board staff has assisted the State Water Board staff in answering technical questions raised by dischargers for letters issued by the Office of Enforcement.

As of Oct. 8, 2009, the Regional Water Board had issued 154 Expedited Payment Letters, and has resolved 76 cases, with \$1.581 million collected. The State Water Board has issued an additional 101 Expedited Payment Letters and resolved 27 cases, with \$342,000 collected on behalf of the Regional Water Board. The remaining cases are ongoing, some with policy issues relating to late reports pending the State Water Board hearing on the Enforcement Policy, others with SEP requests in process, and cases that are targeted ACL complaints once a hearing panel has been scheduled. As of Oct. 8, 2008, the Los Angeles Regional Water Board had 459 outstanding MMP violations which require enforcement, and 755 reporting violations which are on hold pending the adoption of the Water Quality Enforcement Policy which may clarify that these are not violations subject to MMPs.

Chapter 6. Site Cleanup & Brownfield Programs

Background: The Site Cleanup and Brownfield programs use *Water Code sections 13267 and 13304* to require the investigation and cleanup of sites with polluted soil, soil gas, and groundwater. Improper industrial chemical handling practices caused unauthorized waste discharges. Examples of unauthorized waste discharges include leaks or spills from aboveground or underground storage tanks, dry cleaning equipment, sewer lines, and industrial processes. Common pollutants include solvents, petroleum products, and metals. Most of the sites originated since the Gold Rush through the 1980s. New unauthorized discharges have occurred since the 1980s, but are less common because of improved industrial chemical handling practices.

Identifying Violations: Staff typically manages between 20 and 40 cleanup cases and review one to 10 reports per case annually. Staff tracks report dates and cleanup schedules manually or through GeoTracker (the electronic case-management database for the cleanup programs). A violation of a *Water Code section 13267* or *section 13304* occurs when an investigation, cleanup, or monitoring report is submitted late or is not submitted at all.

Notifying Dischargers: If a violation occurs, staff contacts the discharger and discusses the allegations and how the discharger will correct the problem. If the violation is not corrected, staff sends a notice of violation letter describing the violation and the potential enforcement.

The next level of enforcement is typically a monetary penalty issued as an ACL complaint. It is rare to refer violations of *Water Code section 13267* orders and CAOs to the Attorney General for civil liability since the penalties available under ACLs usually gain compliance. If a criminal action is suspected, such as falsifying reports, the case may be referred to a District Attorney for criminal prosecution.

Challenges: The cases that require formal enforcement often involve small businesses that do not have the resources to complete the required investigation and cleanup, have little understanding of environmental laws and regulations, and in some cases, may have difficulty communicating. These small businesses require a lot of staff resources to ensure compliance with a CAO.

Another difficult enforcement situation is when two adjacent properties have discharges and each discharger is pointing at its neighbor as the primary responsible party. Cleanup progress can be slowed down by access disputes and/or litigation. In these situations, enforcement actions are required against both dischargers. Many sites are surrounded by, and may involve residential communities. Public outreach is an important part of case management.

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Spotlight on SF Bay Regional Water Board's Enforcement Activities

In the last 5 years, SF Bay Regional Water Board has imposed four ACLs for violations from its site cleanup programs. Three ACLs involved a failure to submit required investigation or cleanup reports, in violation of underlying Water Code section 13267 or section 13304 orders. One of the ACLs involved an unauthorized solvent spill during building demolition, in violation of Water Code requirements.

Date	Discharger	Violation	Violation days	ACL amount
May-06	TWC Storage (Sunnyvale)	W.Code	8	40,000
Sep-07	Travis - 162 San Lazaro (Sunnyvale)	13267	753	20,000
Sep-07	Medeiros - 154 S Lazaro (Sunnyvale)	13267	768	20,000
Oct-08	Pete's Stop (San Jose)	CAO	789	25,000

In the three late-report ACL cases, the violation was caused or contributed to by the discharger's limited financial resources and unfamiliarity with our regulatory program.

Chapter 7. Confined Animal Facility Operations

Background: Confined animal facilities are regulated under the Land Disposal Regulations. The Title 27 language does not rely on other land disposal regulations.⁵ Enforcement at confined animal facilities in the Central Valley has historically focused on discharges of dairy wastewater to surface water.

There have been few enforcement actions taken against non-dairy confined animal facilities such as feedlots or poultry facilities for runoff from corrals or lagoons that have entered surface water. Enforcement against dairies is the bulk of the regulatory actions taken, because of the many dairies in the Central Valley (in excess of 1,400) and the quantity of waste generated at most dairies.



Photo courtesy of Region 5

Confined animal facilities have been regulated under the Land Disposal Regulations since 1984.

Identifying Violations : Violations come to the staff's attention several ways:

- Citizen complaints through the California Environmental Protection Agency (CalEPA) reporting system, by email, or phone calls to staff. These complaints are usually ongoing problems that have been seen by neighbors.
- Off-property discharges reported by the irrigation districts, or when district staff sees dairy waste entering either distribution or drainage canals.
- Department of Fish and Game (DFG) wardens may identify off-property discharges during patrols.
- Regional Water Board staff patrol the most susceptible drainages after rain storms make discharges likely.

⁵ Subchapter 2 states that discharge of facility wastewater to surface waters is allowed with an NPDES permit. It also says that the standards are minimum requirements, and Regional Water Boards shall impose additional requirements to prevent harm to water quality or of beneficial uses.

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- There are scheduled joint inspections with DFG staff, using a DFG airplane and Regional Water Board staff as spotters in the air, and DFG and Board staff on the ground to investigate problems flagged from the air. These special inspections occur during the rainy season, depending on the availability of the DFG airplane.

Once discharges are determined to be dairy wastewater, the discharge is traced upstream to identify the source. Samples and photographs are taken above, below, and at the point of off-property discharge. The dairy owner/operator is then contacted, shown the problem in the field, and ordered to correct the problem immediately.

Special Enforcement Options: Using Task Forces

Information on a discharge is given to the Northern Dairy Task Force for prosecution through a District Attorney's Office. This referral process has developed through the cooperation with the task force that dates back more than a decade and has been successful in leveraging limited resources. If the local prosecutor will not pursue a case, an ACL can be developed. The penalty is viewed by the task force members to encourage compliance by the discharger and deterring similar noncompliance by others.⁶

⁶ In May 2007, the Central Valley Regional Water Board adopted a General Order for Existing Milk Cow Dairies that covers most of the dairies in Region 5. The General Order contains requirements for submittal of documents by deadlines, as well as requirements for on-site operations. Enforcement for failure to file documents and for poor on-site operations is expected to be in the form of NOVs and ACLs.

Chapter 8. Irrigated Agriculture

Background: The *California Water Code* authorizes the Water Boards to conditionally put aside, or waive, waste discharge requirements (WDRs) if it is in the public interest. Through the years, the Regional Water Boards have issued waivers for more than 40 categories of discharges.



Irrigation ditches water fields in the Central Valley.

Although waivers are conditional, traditionally, waivers had a few conditions. They required that discharges not cause violations of water quality objectives, but did not require water quality monitoring. Senate Bill 390 required the Regional Water Boards to review their existing waivers and to renew them or replace them with WDRs. Under Senate Bill 390, waivers not reissued expired on Jan. 1, 2003. To comply with the law, the Regional Water Boards adopted revised waivers. The most controversial waivers were those for discharges from irrigated agriculture. This section focuses on irrigated agriculture waivers in the Central Coast Regional Water Board (R3); the Central Valley Regional Board (R5) and the Colorado River Regional Water Board (R7).



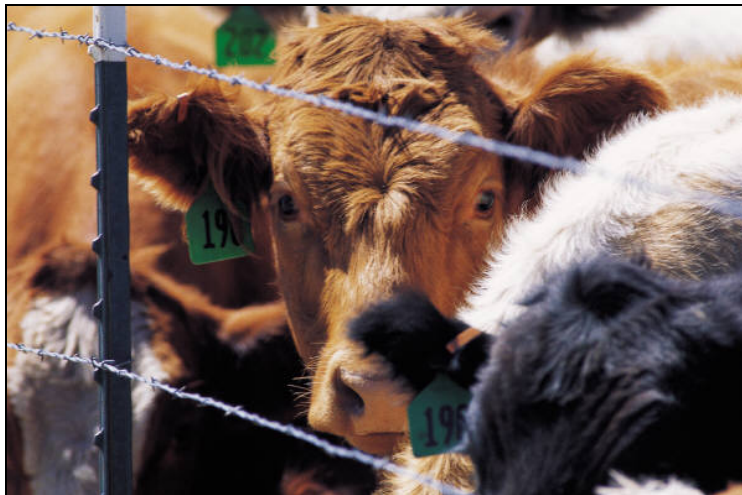
Sprinklers water fields and the runoff is regulated.

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Region 3: The Central Coast Regional Water Board issued a conditional waiver of waste discharge requirements for discharges from irrigated lands in July 2004. The waiver applies to all irrigated lands used for producing commercial crops. Enrollees are required to complete 15 hours of farm water quality education, develop farm water quality management plans that identify management practices, and apply the management practices. Enrollees must perform water quality monitoring individually or as part of a cooperative program.

Region 5: On Sept. 21, 2006, the State Water Board adopted a fee schedule that included fees for conditional waivers for discharges from irrigated agricultural lands. There are more than 7 million acres of irrigated lands and 21,000 miles of agricultural channels and agriculturally dominated waterways in the Central Valley. More than 28,000 growers, with more than 70,000 parcels encompassing more than 5 million acres are enrolled in Coalition Groups. The participation level is good, but there are still thousands of acres without regulatory coverage.

Region 7: In 2001 and 2002, the Colorado River Basin Regional Water Board adopted Sedimentation/Siltation TMDLs for the Alamo and New rivers in Imperial County. This was followed by a conditional prohibition of sediment discharge in 2005. These regulations cover about 478,000 acres of farmland receiving more than 2.5 million acre-feet of Colorado River water annually. Staff works with the Imperial County Farm Bureau to determine compliance with the voluntary Total Maximum Daily Load Compliance Program.



Confined dairy animals produce waste discharges.

This TMDL program allows agricultural operations to start a self-regulated compliance approach to nonpoint source rules and farm bureau staff manages grower participation information. It is a grassroots educational and technical assistance program for farmers with the goal of encouraging best management practices to reduce silt and agricultural chemicals from runoff water.

The waiver contains many components with which compliance can be determined. In the first few years of the waiver program, staff focused on the paper requirements. More recently, staff has been performing on-farm inspections to determine compliance with provisions requiring management practices.

Comparing Enforcement Actions: The Central Coast Regional Board staff has issued many notices of violation to increase compliance with enrollment and monitoring requirements. As a result, many dischargers enrolled, but there are still non-filers. Five ACLs were issued in December 2007 for failing to enroll. All five dischargers are now in compliance.

At this stage of the program, the Central Valley Regional Water Board staff has issued more than 2,000 section 13267 Orders to non-participating growers. These Orders require growers submit a technical report that staff use to determine if regulatory coverage must be obtained. Unresponsive growers face NOVs and ACL Complaints. Many NOVs have been issued, along with five ACLs to growers for not responding to NOVs. One complaint was withdrawn; one was paid in full; and the other three were settled.

Central Valley Regional Water Board staff investigated several complaints of pollution discharges from irrigated lands. These investigations resulted in NOVs that required the dischargers to start improved pollution management practices and work cooperatively with their coalitions to prevent future discharges (or join coalitions, if applicable). To date, no enforcement action beyond NOVs has been necessary for these incidents.

Central Valley Regional Board staff issued NOVs to the coalitions for late report submittals and failure to comply with Monitoring and Reporting Program procedures. To date, no enforcement action beyond NOVs has been necessary for the coalitions.

Colorado Basin Regional Board staff has issued letters to growers for failure to update Farm Plans. In May 2005, four ACLs were issued to farm owners for failing to enroll in the program. The ACLs were dismissed after the farmers enrolled in the program. About 99% of growers are enrolled in the program.

Chapter 9. Waste Discharge Requirement (WDR) Program

Background: The Waste Discharge Requirement Program regulates all point source discharges to land that do not require full containment, do not involve confined animal facilities, and do not involve a discharge of a pollutant to a surface water. More than 1,200 discharges in the Central Valley are regulated under the WDR Program. Many more sites have received waivers of WDRs under this program because of the lack of resources, inadequate training, and inadequate financial means to support the compliance activities.

Types of discharges: The WDR Program includes many types of facilities and dischargers. Dischargers range in sophistication from municipalities employing certified wastewater treatment operators to mobile home parks where a maintenance crew oversees the wastewater discharge. This range can lead to challenges in enforcement because of the lack of resources, inadequate training, and inadequate financial means to support the compliance assurance activities, especially for small facilities.

The facilities regulated under the WDR Program include:

- Sewage from municipal treatment plants, private utility treatment plants, small private treatment plants and larger septic tank/ leachfield systems serving commercial, industrial, and residential developments.
- Production of recycled water from municipal sewage and the distribution and use of recycled water by many types of users.
- Treatment and discharge of domestic sewage sludge and biosolids.
- Discharge of processing wastewater from sand and gravel and other mining operations that are not subject to Title 27.
- Discharge of industrial wastewater from power plants, or oilfield production. Discharge of wastewater, waste residuals, treated sludge, and recycled water from food processing plants and operations (packing, cooling, peeling, dicing, fermenting, brining, canning, etc.) for milk, cheese, tomatoes, olives, wine, and other fruits and vegetables.
- Discharge of wastes from minor surface water dredging projects and all discharges to dredging to surface waters that are not waters of the United States.



Mining operators produced a legacy of pollution.

- Waste from water supply treatment plants.
- Treated water supplies for aquifer storage and recovery projects, and similar disposition of untreated water supplies and stormwater used for groundwater replenishment and water banking projects.
- Treated groundwater at leaking underground storage tanks and spill sites.

Discharge Methods: Intentional discharge allowed under a permit occurs from disposal ponds, seepage pits, leachfields, from spreading or spraying onto the land surface, and from injection into groundwater. Incidental release occurs from collection systems, sumps, treatment units, and surface impoundments (evaporation ponds) of varying construction, and from surface applications (such as a golf course) and recycled water.

Assessing Compliance: Staff assesses whether a discharger is in compliance with its permit three ways:

- Reviewing technical and monitoring reports;
- Inspecting the facility, and
- Responding to complaints

Technical and Monitoring Reports: Self-monitoring reports are the key way staff to checks compliance with waste discharge requirements, and for dischargers to prove compliance.

What must be monitored and the frequency of reporting are specified in the Monitoring and Reporting Program of each permit. Also, special investigations and studies can be required through technical reports. Because of staffing limitations, the Sacramento office reviews about 28 percent of the monitoring reports. Violations are entered into CIWQS as they are determined.

Inspections: Inspecting regulated sites provides valuable information because staff can validate the conditions in the self-monitoring reports, make their own observations and identify problems and discuss issues and answer questions with a facility operator.

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Inspections are the only way to evaluate system maintenance. Inspections are performed by priority, with high-risk sites and registered complaints receiving more attention. Unfortunately, because of staffing limitations, only 10% of the facilities are inspected annually and the recent reduction in resources may lower this percentage even more.

After staff return from the field, they prepare an inspection report and transmit it to the discharger. If violations are noted, then the cover letter becomes a Notice of Violation, with an order to address the issues and report back. This works well for problems that can be easily corrected, or a misunderstanding of the reporting requirements. The inspection and any violations and enforcement actions, are entered into CIWQS when the inspection report is mailed.

Complaints: Staff receives complaints in many ways; from the Cal/EPA public complaint process, from other agencies, from an elected official, or from the public. Spill notification from the discharger and/or Governor's Office of Emergency Services can be another way to file a complaint. Within the Non15 program, many odor complaints are received, especially in the summer because of food processing waste discharges, or in the fall when storage ponds tend to "turn over" with the change in temperature. Staff receives complaints of sanitary sewer overflow wastewater spills. Each complaint is evaluated and prioritized. Because of limited staffing resources, staff cannot inspect each facility after receiving a complaint. Instead, the local county health department may be called, or we may call the discharger to (especially if it is recurring and staff has been to the site). In the case of a SSO, staff will ensure that the discharger is working to stop the spill, clean it up, and has notified the health agencies.

Enforcement Options: Staff follow the progressive enforcement model, beginning with the lower-level NOVs or CWC § 13267 letters, before progressing to the five major enforcement actions available (Cleanup and Abatement Order, Cease and Desist Order, Time Schedule Order, Administrative Civil Liability, and a connection restriction).

Enforcement in the Non15 program is more subjective than for the NPDES or Title 27 programs, which have specific regulations. For example, before staff are authorized to begin with a major enforcement action, they may be questioned whether the discharger was allowed time to comply, whether enough lower-level enforcement actions were taken, or if it would be more appropriate to rewrite the permit than to enforce it, whether the required monitoring is appropriate, whether the assessment of groundwater effects is accurate, and whether a finding of a discharge of designated waste is appropriate. Enforcement against rural small communities will consider their limited resources.

Preparing Cleanup and Abatement Orders is also time-consuming. Although staff time is saved because an executive officer signs most CAOs, it still takes 4-6 months to complete most CAOs. The process includes briefing management and receiving approval to proceed, writing a draft order, review and edits by at least the senior and supervisor, review by the Regional Board attorney, sending the document to the discharger and the public for a 30-day review, reviewing the comments, working with the discharger and their attorney to resolve the issues; revising the order at least once, in-house review by all parties, usually a short review by the discharger, a final briefing to management, and possibly changes requested by

management. If the issues cannot be settled, then the matter will be scheduled for a Board Hearing.

Spotlight on the Central Valley Regional Water Board

Formal enforcement within the WDR Program generally involves one or more of the following priority violations: violation of a specific prohibition, failure to submit a required report, failure to comply with a time schedule, violation of a water quality objective or authorized lesser limitation in groundwater, discharge without waste discharge requirements, failure to monitor as required, failure to pay fees and liabilities, nuisance conditions, and submittal of false information.

Many of the formal enforcement actions in the WDR Program issued by the Central Valley Regional Water Board involve the lack of adequate treatment, storage and disposal capacity, and sewer system infiltration and inflow issues that caused or may cause unauthorized spills. A recently adopted action that illustrates many of the issues in this chapter can be found at: http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/penn_valley/penn_valley_cdo.pdf

Chapter 10. Operator Certification

Background: The State Water Board regulates the operators of publicly owned wastewater treatment plants (WWTPs).⁷ All operators of public WWTPs must be certified by the Office of Operator Certification. Contractors who operate a public WWTP must be registered by the Office of Operator Certification.



Wastewater Treatment Plant where operators are certified.

Operators must meet the requirements, and must pass an exam to qualify for certification. The State Water Board has authority to take administrative enforcement action against operators for reasons including, but not limited to: operating without valid certification; employing fraud or deception in the course of operating a WWTP; failing to use reasonable care or judgment in the operation of a WWTP; inability to perform operating duties properly, or willfully or negligently violating the WWTP's permit. Uncertified operation may result in administrative civil liability up to \$100 a day and other violations can bring penalties of up to \$5,000 a violation.

The State Water Board has limited authority over the owners of WWTPs through the Operator Certification Program. Permit violations are handled by other programs within the Water Boards. The responsibility for investigating violations and bringing enforcement lies with the OE at the State Water Board.

Identifying Violations: Violation information comes from sources including whistleblowers or former employees of WWTPs, the Office of Operator Certification, or the regional Water Boards. Usually, the investigator begins with a file review, and then may conduct

⁷ Chapter 9 of Division 7 of the California Water Code.

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phone interviews, in-person interviews and will often coordinate with a Regional Water Board to conduct a site inspection.

Enforcement Options: The investigator writes up a summary report and works with legal staff and recommends the level of enforcement. If the allegations are unsubstantiated the case is closed with no enforcement action. In some cases, formal enforcement action is not warranted and a warning letter or other informal enforcement is taken. When formal administrative enforcement action is warranted, OE issues a disciplinary letter and/or an administrative civil liability. If the owner, operator or contract operator disagrees with OE's findings or proposed action, they can to appeal the case to the Division of Financial Assistance, then to the State Water Board, and finally to the courts.

OE can begin administrative enforcement action against a contract operator for reasons including, but not limited to: employing an uncertified operator; submitting false or misleading information on an application; willfully or negligently causing or allowing a violation of the WWTP's permit; or failing to use reasonable care in the management or operation of a WWTP. Administrative sanctions include revocation, suspension or downgrading an operator's certificate or a contract operator's registration.

If the investigation reveals that a crime occurred, OE will refer the case to the District Attorney's office or to the Attorney General's office for criminal enforcement.

Spotlight on Operator Certification Enforcement

The Special Investigations Unit investigated a case against Tito Balling, a certified WWTP operator who is the chief plant operator many small WWTPs in the Central Valley. Our investigators found evidence that Mr. Balling violated multiple provisions of the WWTP operator requirements, including not providing adequate supervision to the trainees under him, allowing uncertified operators to operate the WWTPs, allowing permit violations to occur and failing to use care and good judgment. In April 2009, the State Water Board settled the case against him for a \$10,000 penalty and downgraded his WWTP operator certification.

Chapter 11. Underground Storage Tank Leak Prevention

Background: The State Water Board administers four programs for underground storage tanks.⁸

The four programs are:

- UST Leak Prevention
- Tank tester licensing
- UST cleanup
- UST Cleanup Fund



Old underground storage tanks.

The UST Leak Prevention program is carried out by Certified Unified Program Agencies (CUPAs) and Participating Agencies (PAs). The State Water Board relies on these agencies to ensure compliance at UST facilities.

The strongest enforcement provisions exist for UST construction and monitoring requirements, with minimum penalties of \$500 and maximum penalties of \$5,000 allowed by statute for each day of a violation. With 37,000 USTs statewide, the majority of staff resources are devoted to enforcement of UST construction and monitoring requirements with the objective of protecting water quality by preventing releases from the USTs.

The *Health and Safety Code* provides civil enforcement authority for UST construction and monitoring violations to the State Attorney General, district attorney and city attorney. Local agencies that carry out the UST construction and monitoring requirements have the authority to bring administrative enforcement actions for UST construction and monitoring requirements. The State Water Board does not have independent administrative authority to bring a UST enforcement case, and so it must refer cases to the Attorney General's Office for enforcement. Referral to the Attorney General is most efficient if the UST owner or operator

⁸ Chapters 16, 17, and 18 of Division 3 of Title 23, California Code of Regulations, the Health & Safety Code, and Porter-Cologne Water Quality Control Act.

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has violations in multiple jurisdictions. If the case involves a single jurisdiction, the State Water Board may ask the district attorney or city attorney to handle the matter.

Identifying Violations: Local agencies and/or informants refer a case or make a complaint against an individual or company. Complaints are tracked in a database and an investigator from OE is assigned to follow-up. The investigator reviews the file and attends inspections to document and secure evidence. An inspection may take one or more days to complete per underground storage tank system. A thorough investigation examines all accessible parts of the underground storage tank system and reviews the facility compliance history. In multi-jurisdictional investigations, OE may issue a confidential *Enforcement Alert* to local agencies to see if similar violations by the same owner or operator are occurring in other counties.

Enforcement Options: OE enters violation information into a tracking database which calculates minimum and maximum penalties based on the number of violations, number of days the violation occurred, number of USTs in violation, and associated penalty amounts.

UST enforcement cannot be pursued administratively by the Water Boards. Therefore, OE relies on outside prosecuting agencies, primarily the Attorney General's Office, to pursue enforcement against noncompliant facilities. Once a case is accepted by a prosecuting agency, the OE investigator provides technical assistance. Technical assistance includes file reviews and inspections, updating the investigation report and putting violations into the database, and attending hearings and depositions.

Spotlight on UST Enforcement

The UST Enforcement Unit is assisting the State Attorney General's office and 12 District Attorney's throughout central and northern California in prosecuting Golden Gate Petroleum Co., Bay Area/Diablo Petroleum Co., Westgate Petroleum Co. and Dennis O'Keefe (together "GGP") for extensive violations of the UST construction and monitoring requirements of Health and Safety Code, Chapter 6.7 and Title 23, California Code of Regulations, Chapter 16. A complaint was filed in Contra Costa County Superior Court on Nov. 26, 2007, seeking injunctive relief and civil penalties in excess of \$50 million.

The UST Enforcement unit led the investigation against GGP, organizing a coordinated effort to gather evidence of violations across multiple counties. UST investigators collected and reviewed inspection records and other facility files from each of the 12 county agencies with primary UST regulatory authority and created an extensive database detailing the violations discovered from the file review. Also, UST investigators performed site inspections to confirm ongoing violations. As a result of the evidence gathered, the State Attorney, with the various local prosecutors, secured a preliminary injunction against several GGP UST facilities on Nov. 12, 2008. The case is ongoing.

Chapter 12. Acronyms

ACL	Administrative Civil Liability
BMPs.....	Best Management Practices
CAA.....	State Water Pollution Cleanup and Abatement Account
Cal EPA.....	California Environmental Protection Agency
CAFO.....	Concentrated Animal Feeding Operations
CAO	Cleanup and Abatement Order
CDO	Cease and Desist Order
CIWMB	California Integrated Waste Management Board
CIWQS	California Integrated Water Quality System
CSD	Community Services District
CTR	California Toxics Rule
CUPA	Certified Unified Program Agencies
CWA.....	Clean Water Act
CWC.....	California Water Code
DA.....	District Attorney
DFG.....	Department of Fish and Game
DMR.....	Discharge Monitoring Reports
EO	Executive Officer
ICC	International Code Council
LID	Low-Impact Development
MMP	Mandatory Minimum Penalties
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NPS.....	Non-Point Source
NOV	Notice of Violation
NTC.....	Notice to Comply
O&M	Operations & Maintenance
OE	Office of Enforcement
Pas.....	Participating Agencies
PCS	Permit Compliance System

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PY.....	Personnel Year
POTW	Publicly Owned Treatment Works
PUD	Public Utilities District
QA/QC.....	Quality Assurance/Quality Control
RCRA	Federal Resource, Conservation, and Recovery Act
SEP.....	Supplemental Environmental Project
SIC.....	Standard Industrial Classification
SIU	Special Investigations Unit
SMCRA	Surface Mining Control and Reclamation Act
SMR	Self-Monitoring Report
SSMP	Sewer System Management Plan
SWPPP	Storm Water Pollution Prevention Plan
SSO	Sanitary Sewer Overflow
TSO	Time Schedule Order
US EPA.....	U.S. Environmental Protection Agency
UST	Underground Storage Tanks
Water Boards.....	State and Regional Water Boards
WDR	Waste Discharge Requirements
WQBEL	Water Quality-Based Limitation
WWTP.....	Wastewater Treatment Plant