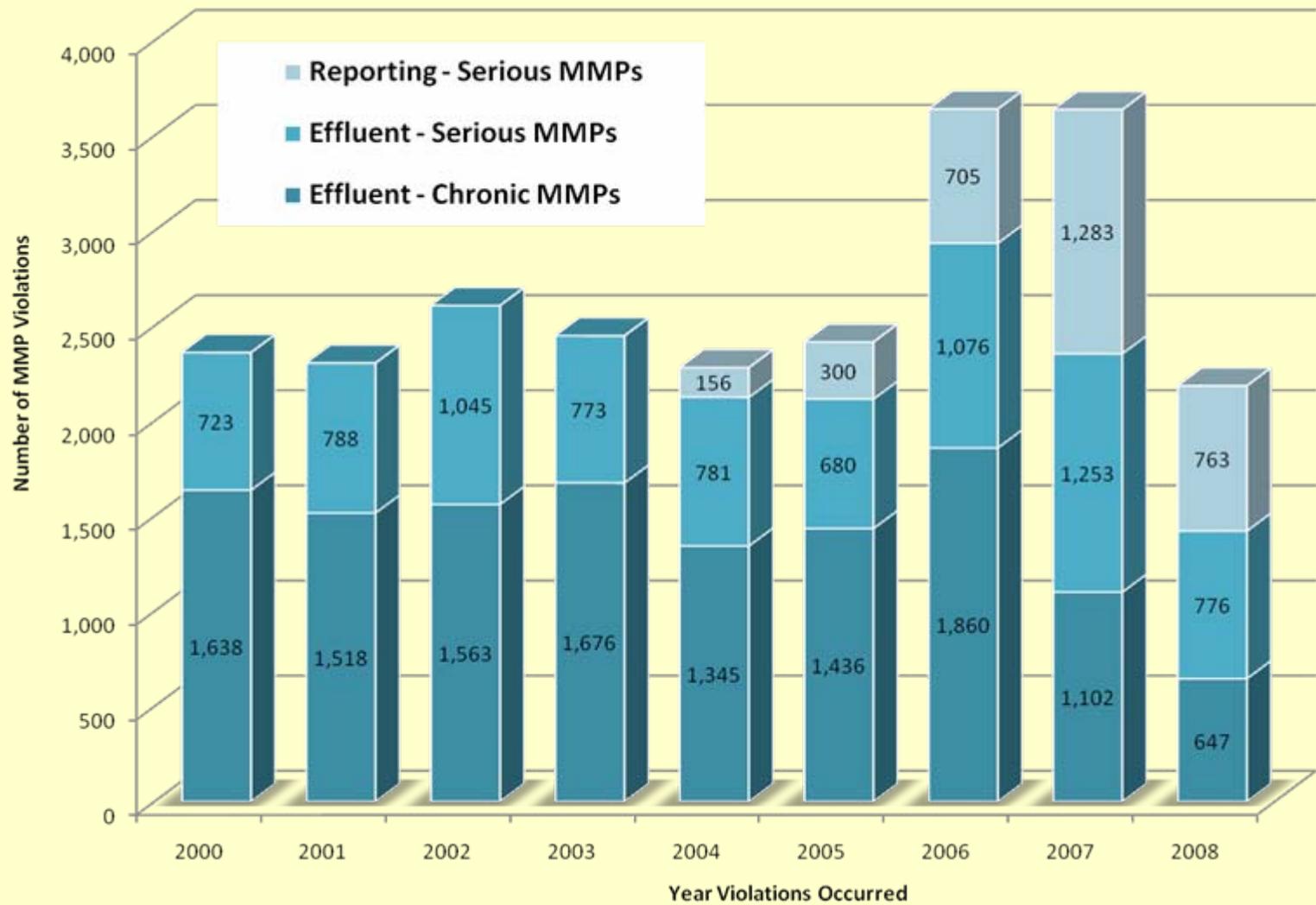


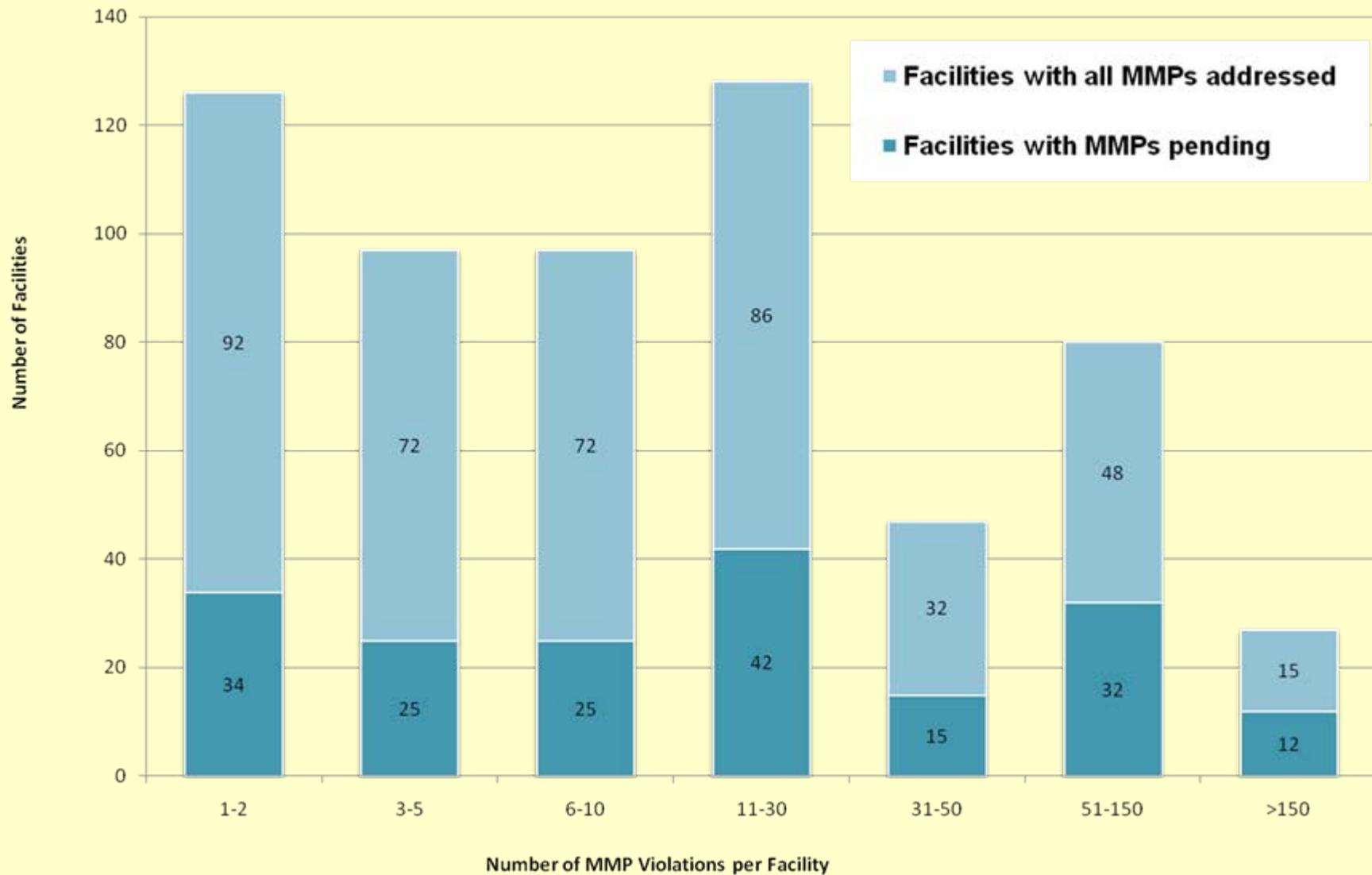
Update on the 2008 Statewide Initiative for Mandatory Minimum Penalty Enforcement

**State Water Resources Control Board
April 21, 2009**

MMP Statute in a Nutshell

- Water Code section 13385 mandates the imposition of mandatory minimum penalties (MMPs) for specified violations of NPDES permits as follows:
 - Serious Reporting Violations
 - Serious Effluent Violations
 - Chronic Violations
- Mandatory minimum penalty is \$3,000 for each violation





STATUS OF MMP VIOLATIONS AT THE START OF THE INITIATIVE

- 2007 13385(o) Enforcement Report indicated 7,880 MMP violations occurred between January 1, 2000 and December 31, 2007 (backlog period)
- As of June 1, 2008, CIWQS showed approximately 7,203 MMP violations occurred during backlog period had not received an enforcement action initiated to resolve the violation

GOALS OF THE INITIATIVE

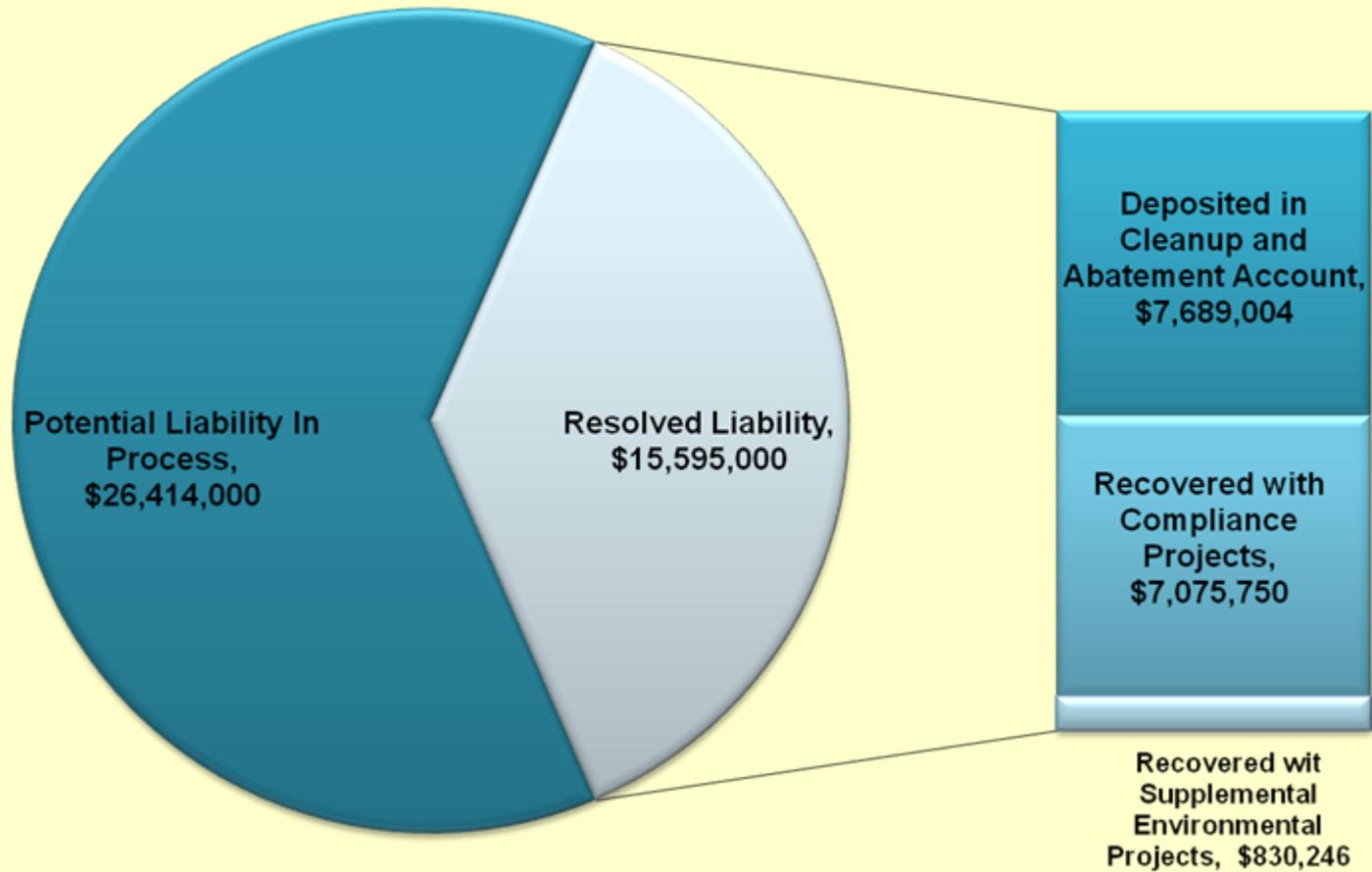
1. Eliminate or substantially reduce the MMP enforcement backlog by December 31, 2008
2. Validate the MMP violations in CIWQS
3. Identify enforcement issues with the MMP Process

MMP Initiative Outputs & Outcomes

- As of March 31, 2009, the State and Regional Board have addressed approximately 13,812 violations from 455 facilities statewide. MMP backlog turned out to be 12,219 violations.
- Enforcement activities have resulted in the following:
 1. \$ 7,689,504 as liabilities paid (or to be paid) to the Cleanup and Abatement Account
 2. \$ 7,075,750 as payments towards Compliance Projects
 3. \$ 830, 246 as suspended liabilities for Supplemental Environmental Projects
- If remaining MMP violations in process are resolved in the Water Boards' favor, it would generate an additional \$ 26,414,000 in liabilities.



Mandatory Minimum Penalty Amounts 2000-2008, Potential and Resolved



Special Issues with Effluent Violations

Discharger Unfamiliarity with Permit Requirements

- No understanding of consequences of violating permit conditions
- No regard for reason samples are collected

Ambiguity in Permit Conditions

- Difficulty interpreting permit requirements
- Unenforceable permits

Special Issues with Reporting Violations

- I. Failure to file monitoring reports by the NPDES permit deadline
- II. No discharge to surface waters, No report
- III. Limited term discharge – Limited purpose discharge

Challenges to Late Reporting

High Penalty Amounts for Late Reporting

- Ex: \$30,000 MMP due for one-year period for 1Q report

Reporting Deadline	1Q 2006	2Q 2006	3Q 2006	4Q 2006
+ 30 days	X			
+30 days	X	X		
+30 days	X	X	X	
+30 days	X	X	X	X
X = MMPs assessed				

Additional Enforcement Issues

- I. Unauthorized Exemptions
 - “Dismissed” violations
 - Three or fewer chronic violations
 - Late reporting violations once report is received

- II. Unrecorded/Misrecorded Reporting Violations
 - Failure to report over multiple months/quarters



Regional Offices	Effluent Chronic MMPs	Effluent Serious MMPs	Reporting Serious MMPs	Total
1	913	554	140	1,607
2	955	851	1	1,807
3	556	258	2	816
4	4,124	2,948	1,687	8,759
5F	890	226	59	1,175
5R	120	49	1	170
5S	3,000	2,056	1,315	6,371
6A	5	1	-	6
6B	132	12	-	144
7	688	399	-	1,087
8	899	133	3	1,035
9	504	409	-	913
Total	12,786	7,896	3,208	23,890

Initiative Impacts on Other Enforcement Activities

- Redirection of enforcement resources in every region with a significant backlog
 - Ex: Los Angeles Regional Water Quality Control Board – Other enforcement priorities not addressed
- Improved understanding of issues related to MMP enforcement
- Identification and improved understanding of data entry issues related to violation tracking

Recommendations

Proposed Statutory Changes Recommended by SWRCB:

- Water Quality Improvement Initiative (WQII) proposes new Water Code section 13385.5 to allow dischargers to pay \$2,500 for timely, self-reported, effluent violations
- WQII recommends an amendment to Water Code section 13385.1 to limit liability for failure to file a discharge monitoring report to three separate serious violations for a POTW serving a small community

OE Staff Recommendations

Statutory Changes:

- Expand proposed changes to section 13385.1 to include all dischargers

Policy Changes:

- Define “Discharge Monitoring Report” for special circumstances:
 1. No discharge to surface waters
 2. Discharger fails to conduct any monitoring during the monitoring period

OE Staff Recommendations

Operational Changes:

- Compliance review prior to permit renewal
- Train dischargers on basic permit requirements
- Increased use of electronic self-monitoring reports and discharger disclosure of violations
- Utilize efficient enforcement formats to address and resolve MMP violations

Conclusion

- The Initiative was a success:
 - Reduced the MMP backlog and is in process to resolve all backlogged violations
 - Improved the quality of the violation data in CIWQS
 - Educated Water Board staff on MMP enforcement challenges
 - Made the regulated community aware of its obligations to reduce violations subject to MMPs
- State and Regional enforcement staff worked cooperatively and collaboratively on a clear and consistent goal

Next Steps

- Long-term improvement in the Water Board's ability to address MMP violations depends on:
 1. Implementing recommendations
 2. Obtaining additional enforcement resources
- 13385 (o) Report and Quarterly Updates will demonstrate whether Initiative has long-term beneficial impacts