

Water Quality Enforcement and SEP Policies

Water Quality Coordinating Committee

October 26, 2009



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Office of Enforcement

WQ Policy Development

- February 2002 – Current Enforcement Policy
- June 2007 – Staff Workshop
 - September 2007 – Stakeholder Meeting
 - February 2008 – Board Workshop
 - Formed Exec Steering Committee
 - January 2009 – Staff Workshop
 - February 2009 Adopted SEP Policy
 - June 2009 - Board Workshop
 - October 2009 - Hearing

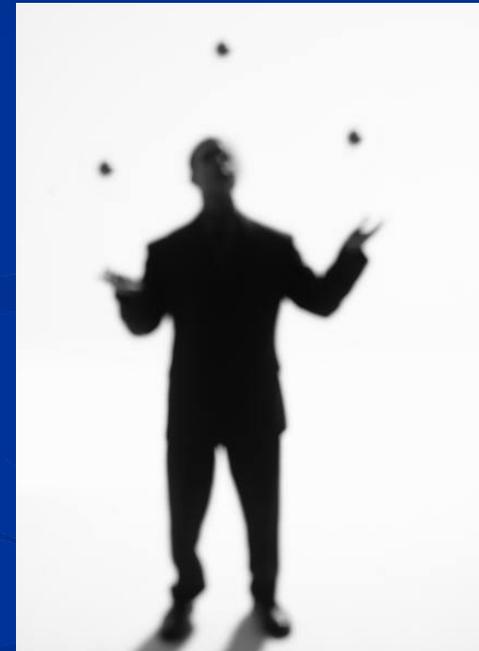


Overview of Significant Changes

- Sect 1E - Small Communities
- Sect 2 - Enforcement Priorities
- Sect 4 - SWRCB Enforcement Action
- Sect 6 - Monetary Assessments in ACLs
- Sect 7 - Mandatory Minimum Penalties
- Sect 8 - Compliance Projects
- Sect 9 - Enhanced Compliance Actions
- Sect 11 - Violation and Enforcement Data
- Sect 12 - Enforcement Reporting and Performance Measures

Enforcement Priorities for Discretionary Actions

- Framework for Prioritizing Violations:
3 Classes
- Criteria Based on Threat to Human Health,
Water Quality, or Integrity of Regulatory
Program
- Annual Enforcement Priorities
- Automated Violation Prioritization by
January 2012



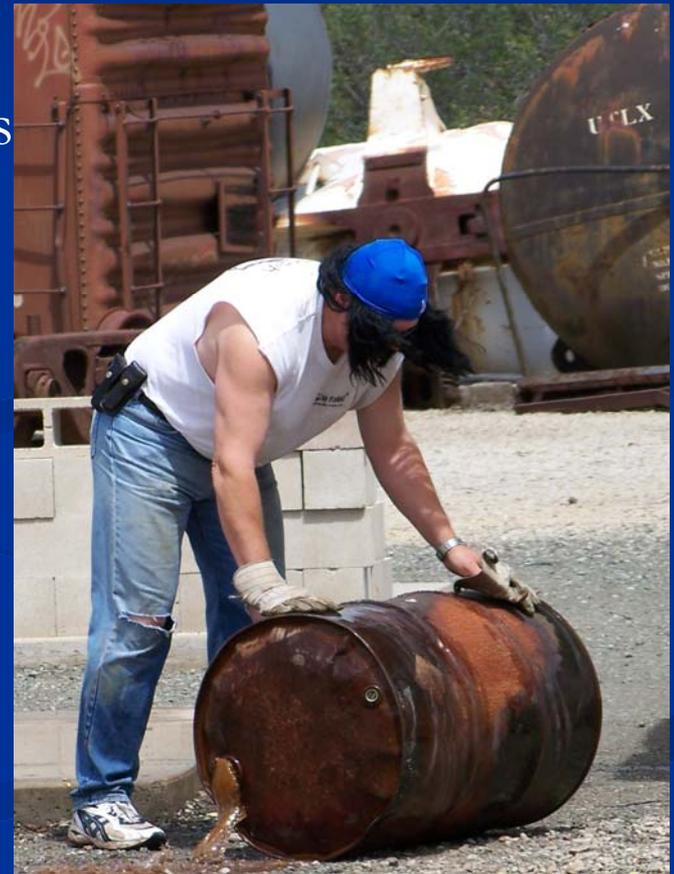
State Water Board Enforcement Action



- Petitions
- Statewide or Multi-Regional General Permits
- Requested by Regional Water Board
- Regional Water Board Unable to Take Action
- Regional Water Board Hasn't Taken Action for Class I Priority Violation
- Exec. Director Determines Necessary and Appropriate

Monetary Assessments in Administrative Civil Liabilities

- Goals
 - Fair and Consistent Liability Amounts
 - Fully eliminate any economic or competitive advantage obtained from noncompliance;
 - Relationship to
 - The gravity of the violation
 - The harm to beneficial uses
 - Integrity of the regulatory programs
 - Deter future violations, both for the violator and for the discharger community



Mandatory Minimum Penalties

- 18 Month Timeframe for Issuance
 - Expedited for Small Community or When > \$30,000
- Policy Statements Defining a Discharge
Monitoring Report
- Delegation to Regional Boards for “compliance project” qualification for certain facilities
- Retention of SWRCB determination for other facilities such a school districts

Publicly Owned Treatment Works Serving a Small Community

- Small Community
 - County Designated Rural, or
 - Community Population 10,000 or less
- Financial Hardship
 - Median Household Income < 80% CA MHI, or
 - Unemployment rate 10% or More, or
 - 20% of Residents Below the Poverty Level



Enforcement Reporting and Performance Measures

- List of All Legislatively Mandated and Elective Enforcement Reports
- Performance Measures



Addressing LAO Concerns Regarding SEPs

- Use of SEPs by Regions reduces funding available for Statewide projects
- Regions regularly permit SEPs in excess of 50% of the total monetary value of the assessed liability
- State Water Board should have a role in SEP fiscal oversight
- SEP data should be publicly available
- Use of trust funds to hold funds for future SEPs should be addressed

Supplemental Environmental Project Policy Revisions

Goal of Proposed Revisions to SEP Policy:

- To allow the Regional Water Boards to continue to utilize SEPs when resolving enforcement actions, while also insuring that a reasonable portion of monetary liability assessments from every civil liability enforcement action is available for statutorily-authorized purposes and priorities as determined by the State Water Board.
- To require greater accountability for those engaged in SEPs so that the Water Boards and the public can have confidence that the SEPs resulted in an actual project with actual environmental benefit.

Summary of Proposed Revisions:

1. Limits the amount of a SEP relative to the overall discretionary monetary assessment to 50% (after repayment of enforcement costs). The 50% limit can be exceeded with approval of the Director of the Office of Enforcement State Water Board.

Cap is consistent with LAO recommendation

Cap is inconsistent with Cal/EPA limitation of 25%

Summary of Proposed Revisions (continued)

2. Prevents Regional Boards from establishing SEP accounts which they manage independently of the State Water Board without express approval.
3. Provides that SEPs can be audited.
4. The cost of Water Board oversight, if any, of the SEP is not included in the value of the SEP.
5. Discharger will be required to pay for SEP oversight as a condition of SEP acceptance, including cost of oversight by Water Board staff or oversight by a third party. Other provisions are included that reduce the costs of Water Board oversight.

Summary of Proposed Revisions (continued)

6. Requires that SEPs be fully completed before discharger satisfies its obligation.
7. Refines the list of acceptable SEPs to emphasize the nexus requirements for a SEP and promote SEPs that enhance compliance or remedy adverse environmental impacts from water quality violations.
8. SEPs addressing education are clarified to identify compliance training and compliance education for regulated entities or enforcement personnel.

Summary of Proposed Revisions (continued)

8. Requires recovery of economic benefit enjoyed by discharger from its noncompliance in the penalty portion of any settlement in which a SEP is utilized.
9. Creates annual reporting obligations for Water Boards regarding the status of SEPs.

Current Status

1. OAL approved
2. Office of Enforcement has drafted settlement language for use with SEPs under new policy
3. Division of Administrative Services is developing billing mechanism for oversight costs incurred by regional board staff in overseeing SEP implementation