CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

RESOLUTION NO. R9-2014-0046

CLARIFYING THE CIVIL LIABILITY ASSESSMENT POWERS AND DUTIES DELEGATED TO THE EXECUTIVE OFFICER

WHEREAS:

1. The Porter-Cologne Water Quality Control Act (Porter-Cologne Act, California Water Code, Division 7, section 13223) allows the Regional Water Boards to delegate to their Executive Officer any of their powers and duties under the Porter-Cologne Act, except for the following:

    a. The promulgation of any regulations;
    b. The issuance, modification, or revocation of any water quality control plan, water quality objective, or waste discharge requirement;
    c. The issuance, modification, or revocation of any cease and desist order;
    d. The holding of any hearing on water quality control plans; and
    e. The application to the Attorney General for judicial enforcement, but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13302, 13304, and 13340.

2. Resolution No. R9-2005-0271 delegates to the Executive Officer all of the powers and duties of the San Diego Regional Water Quality Control Board (San Diego Water Board or Board) under the Porter-Cologne Act, except those expressly prohibited from delegation, as listed above. While authorized by Resolution No. R9-2005-0271 to carry out administrative liability or penalty actions, the Executive Officer historically has not exercised this authority, instead bringing administrative liability or penalty actions to the Board for its consideration and resolution.

3. Certain types of administrative liability or penalty actions, such as mandatory penalties sought pursuant to California Water Code (CWC) sections 13385 (h) and (i) and 13399.33, typically generate minimal public interest, have a standard rather than complex penalty assessment, and individually tend to present a minor threat to Beneficial Uses or the circumstances of the violation otherwise indicate a minor potential for harm. The administrative staff time required to prepare most mandatory penalty matters for consideration at Board hearings, however, often far exceeds the proposed liability or penalty amount.

4. In furtherance of efforts to alleviate the administrative burden associated with resolving uncontested mandatory penalty actions within the Region, in February 2011 the San Diego Water Board endorsed the use of Expedited Payment Letters (EPLs) by the Executive Officer. This effort has been effective for the majority of mandatory penalty cases issued since that time. As an example, all five of the mandatory minimum penalty assessments issued in 2013 were resolved through the use of EPLs; reducing Prosecution Staff time by an estimated 300 hours as compared to the estimated hours associated with bringing the same matters for consideration before the Board. The total of the penalties imposed through these five assessments was $21,000.

5. Success of the EPL process to achieve fair, effective, and efficient resolution of administrative civil liability and mandatory penalty actions, while continuing to provide due process and public transparency, demonstrates the value and desirability of the Executive Officer exercising discretion to impose civil liability in select penalty actions.

6. In efforts to increase efficiency, the Board desires to uphold the Practical Vision Values of Leadership, Stewardship, Communication, and Transparency by maintaining community accessibility to pending and completed actions.

THEREFORE, BE IT RESOLVED THAT:

1. The delegation of authority to the Executive Officer set forth in Resolution No. R9-2005-0271, and any previous actions that address the matter of delegation pursuant to CWC section 13223(a), are unaffected by this resolution and remain in effect.

2. Moving forward, the San Diego Water Board desires that its Executive Officer, in his or her discretion, exercise the following authorities:

    a. Hold evidentiary hearings for mandatory minimum penalty complaints issued pursuant to Water Code section 13385, subsections (h) and (i);
    b. Hold evidentiary hearings for mandatory penalty complaints issued pursuant to Water Code section 13399.33;
    c. Hold evidentiary hearings for administrative civil liability complaints to recover unpaid permit fees;
    d. Approve or reject settlement orders imposing administrative civil liability under Water Code sections 13385,13350, or 13308 up to $500,000; and
    e. Hold evidentiary hearings for administrative civil liability complaints imposing liability for non-discharge violations under Water Code sections 13385,13350, or 13308 up to $500,000.

3. Without affecting the scope of the delegation of authority in Resolution No. R9-2005-0271 or the specific authorities recognized in Paragraph 2, above, the San Diego Water Board nevertheless directs the Executive Officer, in the exercise of these authorities, to bring the following types of civil liability matters to the attention of the San Diego Water Board at a public board meeting or by other appropriate communication:

    a. Matters of a unique or unusual nature;
    b. Matters involving significant policy questions;
    c. Highly controversial matters;
    d. Matters known or believed to involve a substantial risk of litigation; and
    e. Any matter that a San Diego Water Board Member requests to be brought to the attention of the Board.

4. It is the intention of the San Diego Water Board to review the effectiveness of this resolution every two years and consider any revisions that may be deemed necessary or desirable.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on May 14, 2014.

David W. Gibson
Executive Officer