

**State of California  
California Regional Water Quality Control Board  
Santa Ana Region**

**October 31, 2014**

**INFORMATION ITEM**

**ITEM:** 6

**SUBJECT:** Enforcement Program Update

**DISCUSSION:**

The Regional Board's enforcement program is a key component of the region's regulatory programs to ensure water quality protection. The California Water Code (Water Code) provides the Regional Board the authority to implement and enforce water quality protection programs and to take appropriate enforcement actions for non-compliance.

In 2006, the State Water Board created the Office of Enforcement to oversee the statewide enforcement program. At that time, the State Board also required each of the Regional Boards to establish an enforcement section that would be independent of other regional programs. In November 2009, the State Water Board adopted a statewide Water Quality Enforcement Policy (Enforcement Policy). The Policy not only addresses the enforcement component of the Regional Board's regulatory program, but also strives to apply a statewide methodology and consistent approach to the process and development of enforcement actions. The goal of the Policy is for enforcement "...to be fair, firm, and consistent throughout the State, while recognizing the unique facts of each case." The Policy can be found at the following web link:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11709.pdf)

**SUMMARY OF ENFORCEMENT TOOLS**

As discussed in the Enforcement Policy, the Water Code provides the Regional Board with a number of enforcement remedies for violations of permit requirements or for discharge violations. Enforcement actions, summarized below, could include the following:

**Technical Reports and Investigation – Water Code §13267**

The Regional Board may require technical or monitoring reports from any person who has discharged, discharges or is suspected of having discharged or who proposes to discharge waste that may affect the water quality of waters within the region. The Regional Board must ensure that the costs of the technical report is justified prior to issuance of a Water Code §13267 Investigative Order.

**Time Schedules Order (TSO) - Water Code §13300, §13308**

The Regional Board may issue a Time Schedule Order when a discharge is taking place or threatening to occur that will cause a violation of a Regional Board

requirement. A Time Schedule Order typically requires a discharger to submit a detailed compliance plan and schedule to obtain compliance.

**Cease and Desist Orders (CDO) - Water Code §13301, §13303**

The Regional Board issues Cease and Desist Orders to dischargers violating or threatening to violate any waste discharge requirement or prohibitions established by the Regional Board or State Board.

**Cleanup and Abatement Order (CAO) - Water Code §13304**

The Regional Board may order any person who has discharged wastes that cause or threaten to cause a condition of pollution or nuisance to cleanup and abate the effects of the discharge or to take appropriate remedial action.

**Administrative Civil Liability Complaint (ACLC) – Water Code §13323, §13385**

The Regional Board may issue an Administrative Civil Liability complaint (ACLC) to those who violate enforcement orders of the Board, or who, in violation of any order, prohibition or requirement of the Board, discharge wastes into waters of the State. An ACLC may also be issued in cases where a person fails to submit reports requested by the Board or when a person discharges waste without first having filed the appropriate Report of Waste Discharge (ROWD). In addition, ACLCs may be issued for violations of any Regional Board prohibition or requirement implementing specified sections of the Clean Water Act or any requirement in an approved pretreatment program.

**[Storm Water] Mandatory Minimum Penalty (MMP) – Water Code §13339.33**

Pursuant to the Storm Water Enforcement Act of 1998, upon issuance of two notices of noncompliance, the Regional Board is required to assess mandatory penalties for 1) the failure of a storm water discharger to submit an annual report or 2) failure of a storm water discharger to obtain coverage under appropriate waste discharge requirements.

**[NPDES] Mandatory Minimum Penalty (MMP) – Water Code §13385(h), §13385(i)**

The Regional Board is required to assess mandatory penalties for specified violations of NPDES permits for both serious and non-serious violations including, but not limited to, violations of effluent limitations, failure to submit monitoring reports or failure to file a report of waste discharge. The minimum assessment for each violation is \$3,000; however, the Board has the discretion to assess higher penalties.

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPS)**

As an alternative to depositing monetary assessments from enforcement actions into the state's Cleanup and Abatement Account (CAA), the Enforcement Policy and the Policy on Supplemental Environmental Projects recognize that such assessments may be used for important and valuable water quality improvement projects within the region in which the enforcement action was taken. SEPs are projects that enhance and protect water quality, enhance the beneficial uses of the waters of the state, provide a benefit to the public at large, and that, at the time they are funded, are not otherwise required by a State Board or Regional Board permit or would be greatly accelerated by the funding provided by the assessments from the enforcement action. Generally, approximately fifty percent of the assessed amount from most enforcement actions, excluding staff costs, is available for SEP funding. The SEP Policy can be found at the following link:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/rs2009\\_0013\\_sep\\_finalpolicy.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf)

In 2006, the Regional Board updated the SEP list and created a master list of Regional Board approved SEP projects posted on the Regional Board's website. Regional Board staff is currently in the process of soliciting and updating the SEP list. As noted in the summary of enforcement actions below, a number of SEP projects have been approved and implemented within the region.

### **SUMMARY OF RECENT ENFORCEMENT ACTIONS**

The approach that Regional Board staff takes with Administrative Civil Liability Complaints (ACLCs) (and other enforcement actions) is to work with the responsible party and our Office of Enforcement attorney to arrive at a mutually agreeable outcome that is consistent with the Water Boards' Enforcement Policy, recovers cost savings associated with noncompliance and staff's investigation costs, and provides a sufficient deterrent to future violations. Early settlement of ACLCs, prior to a hearing before the Regional Board, reduces the burden on staff resources that would otherwise be spent preparing for a Regional Board enforcement hearing, reduces the amount of time spent by the Regional Board members at Regional Board meetings and provides assurance to both responsible parties and Regional Board staff on the outcome of the enforcement action.

In order to provide the public the opportunity to comment on enforcement actions that are settled without a Regional Board hearing, a list of proposed and/or pending Regional Board enforcement actions noticed for public comments is maintained on the Regional Board's website. Once the public comment period has concluded (usually a 30-day comment period), the appropriate enforcement action takes effect and the discharger must comply with the requirements specified in the settlement document. The list of publicly noticed enforcement actions can be found at the following link:

[http://www.waterboards.ca.gov/santaana/public\\_notices/enforcement\\_actions.shtml](http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml)

During the last 12 months, staff has engaged in a variety of enforcement actions. The table below is a list of those actions that have concluded the enforcement process.

<b>Enforcement Date</b>	<b>Enforcement Action &amp; Penalty</b>	<b>Discharger</b>	<b>Summary of Violation(s)</b>	<b>Supplemental Environmental Project (SEP)</b>
September 1, 2014	Administrative Civil Liability, Order No. R8-2014-0050 \$60,000	CarbonLITE Industries, LLC	Violated Industrial General Permit by discharging wastes to waters of the US	No SEP
July 7, 2014	Administrative Civil Liability, Order No. R8-2014-0036 \$351,600	Riverside Co. Flood Control & Water Conservation Dist.	Violated CWC 13376 by applying aquatic pesticides without a permit	50% of penalty to Eastern Municipal Water Dist. to support sewer installation in Quail Valley
June 17, 2014	Administrative Civil Liability, Order No. R8-2014-0029 \$6,000	California Department of Fish & Wildlife	Violated CWC 13267(b) by failing to furnish technical or monitoring program reports	No SEP
June 16, 2014	Mandatory Minimum Penalty, Order No. R8-2014-0028 \$24,000	California Steel Industries, Inc.	Violated permit effluent limitations	50% of penalty to Inland Empire Waterkeeper to support "The Chino Basin/Santa Ana River Restoration Project"
May 15, 2014	Mandatory Minimum Penalty, Order No. R8-2014-0023 \$1,750	All Metal Recycling	Violated Order No. R8-2012-0012 by failing to submit a timely annual report	No SEP
May 8, 2014	Mandatory Minimum Penalty, Order No. R8-2014-0021 \$75,000	Western Riverside County Regional Wastewater Authority	Violated effluent limits required by Order No. R8-2008-0005	50% of penalty to Orange County Water District to support the "Quantification of Effectiveness of Treatment Wetlands in the Removal of Chemical Contaminants"
May 8, 2014	Mandatory Minimum Penalty, Order No. R8-2014-0024 \$1,750	Ardus International	Violated Order No. R8-2012-0012 by failing to submit a timely annual report	No SEP
May 8, 2014	Mandatory Minimum Penalty, Order No. R8-2014-0027 \$1,750	Fortus Property Group	Violated Order No. 2009-0009-DWQ by failing to submit a timely annual report	No SEP

<b>Enforcement Date</b>	<b>Enforcement Action &amp; Penalty</b>	<b>Discharger</b>	<b>Summary of Violation(s)</b>	<b>Supplemental Environmental Project (SEP)</b>
March 14, 2014	Time Schedule Order R8-2014-0025	Enrollees under General Permit for groundwater dewatering/cleanup in the San Diego Creek/Newport Bay watershed.	TSO extension of expiration date for compliance with Selenium effluent limitations in Order No. R8-2009-0069	No SEP
March 14, 2014	Time Schedule Order R8-2014-0026	City of Irvine	TSO extension of expiration date for compliance with Selenium effluent limitations in Order No. R8-2009-0070	No SEP
February 10, 2014	Water Code 13267 (Investigation) Order	First Warner Properties, LLC & California Environmental Engineering, LLC	An order to conduct additional investigation, conduct proper remedial activities & submit results	No SEP
December 6, 2013	Cleanup and Abatement Order No. R8-2013-0048	Ideal Uniform Rental Service	An order to submit a work plan, feasibility study and remedial action plan for groundwater cleanup.	No SEP

**RECOMMENDATION:**

This is an information item that does not require Board action.