



Stormwater Enforcement

Stormwater Enforcement Workshop
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Office of Enforcement

Why should we take Enforcement?



Our goal is not enforcement, it's compliance. But without the threat of enforcement, you cannot reasonably expect compliance.

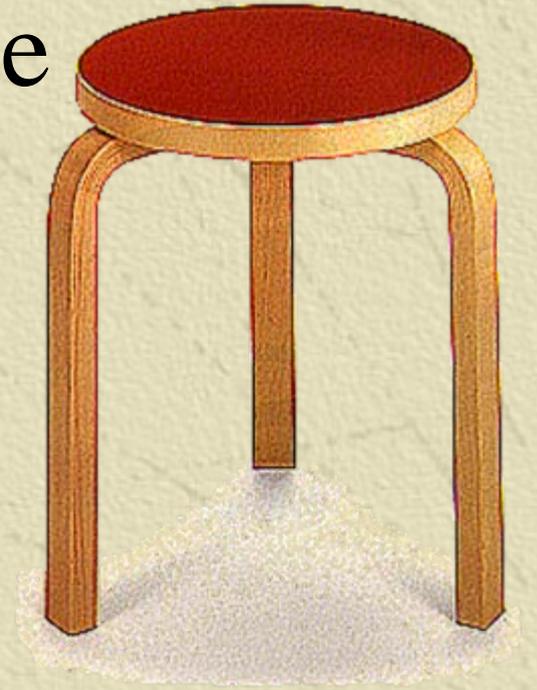
Why should we take Enforcement?



In other words,
if we're not willing to enforce our regulatory
programs, we should just go home.

The Regulatory Process

1. Establish requirements
2. Evaluate compliance
3. Take appropriate enforcement in response to non-compliance



Establish Requirements

1. Federal and State laws
2. Federal and State regulation
3. State policies and plans
4. Regional Board plans, permits, waste discharge requirements, waivers and orders

Requirements should be unambiguous and have the consequence of noncompliance clearly specified.

Enforceable Requirements

- ✦ Prohibitions
- ✦ Effluent and receiving water limits
- ✦ Provisions
- ✦ Ordered Task Schedules
- ✦ Monitoring and reporting requirements
- ✦ Operations and maintenance, contingency plans, etc



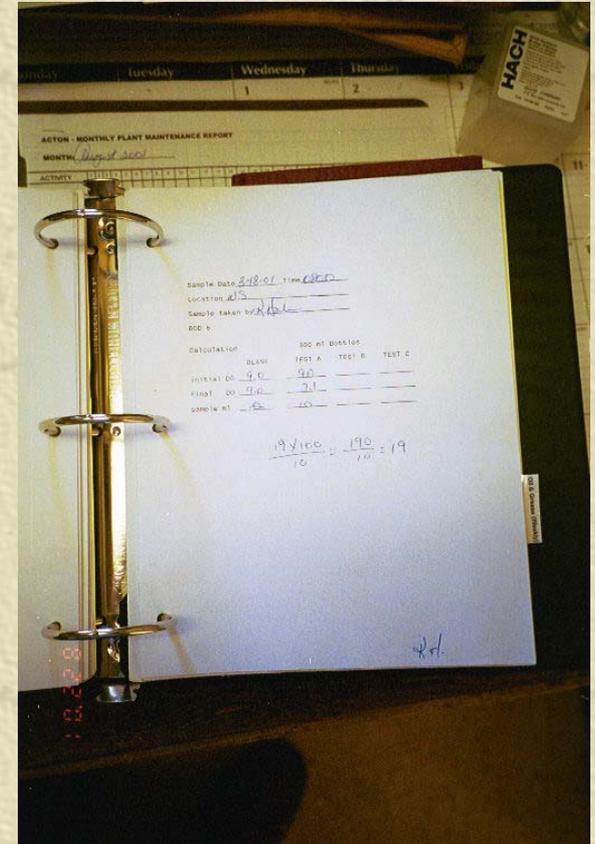
Evaluate Compliance

- ✦ Report review
- ✦ Compliance inspections
- ✦ Complaint response



Evaluate Compliance (continued)

- ✦ Report review
 - ◆ Honor system
 - ◆ Received on time and complete
 - ◆ Violations recorded
 - ◆ Appropriately signed



Evaluate Compliance (continued)

✦ Report review – Falsification

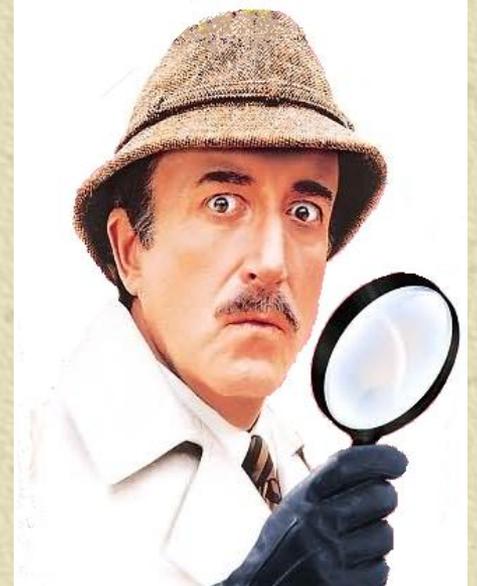
- ✦ Knowingly falsifying or withholding information
- ✦ Investigate within 30 days
- ✦ Protect confidentiality of complainant
- ✦ Consider referral to DA, AG or US Attorney
- ✦ Follow-up inspections



Evaluate Compliance (continued)

✦ Compliance inspections

- ✦ Purpose is to verify compliance
- ✦ Prepare – review file
- ✦ Should be unannounced
- ✦ Scope of inspection documented
- ✦ A bad inspection is worse than no inspection



Evaluate Compliance (continued)

✦ Compliance inspections - Reports

- ◆ Essential tool for follow-up enforcement
- ◆ May be used as evidence
- ◆ Document:
 - Who, What, When,
Where, Why and How
- ◆ Be clear and factual
- ◆ Let reader reach own conclusions



Evaluate Compliance (continued)

✦ Complaint response

- ✦ Many sources:
 - Public, other agency, angry neighbor, employee (whistleblower)
- ✦ Keep some details confidential
- ✦ Investigate and document resolution



Take Appropriate Enforcement

- ✦ Timely
- ✦ Similar for similar violations
- ✦ Informs the violator
- ✦ Results in return to compliance
- ✦ May require remediation of damage
- ✦ Serves as deterrent
- ✦ Progressive enforcement



"How long do we have to get in compliance?"

REGIONAL BOARD – Informal Enforcement Actions

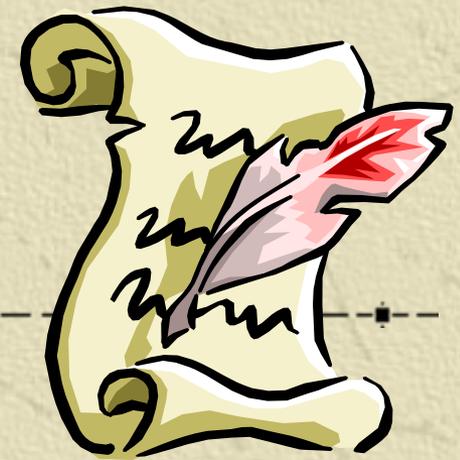
✦ Verbal

✦ Staff enforcement
letter

✦ Notice of Violation
(NOV)



REGIONAL BOARD – Formal Enforcement Actions



-
- ✦ Notice to Comply [SB/RB]
 - ✦ Technical Reports and Investigations
 - 13267 [SB/RB], 13383 [SB/RB]
 - ✦ Time Schedule Order (TSO) [RB]
 - 13300- Regular TSO
 - 13308 – TSO with stipulated penalties
 - ✦ Cleanup and Abatement Order (CAO) [SB/RB]
 - ✦ Cease and Desist Order (CDO) [RB]
 - ✦ Administrative Civil Liability (ACL) [SB/RB]
 - ✦ Referral to DA or AG

Enforcement Action Types

Future Compliance vs. Past Violations

✦ Actions that direct future compliance

- ✦ Notice to Comply (NTC)
- ✦ 13267 Letters, CAOs, CDOs
- ✦ Time Schedule Orders – 13300, 13308
- ✦ Revision of WDRs

✦ Actions that address past violations

- ✦ Rescission of WDRs
- ✦ ACL
- ✦ Referral to AG or District Attorney

Notice to Comply [SB/RB staff]

- ✦ Water Code Section 13399
- ✦ Only enforcement option for “minor violations” as defined
- ✦ “fix-it-ticket” – quick and easy
- ✦ Requires correction within 30 days or less
- ✦ Limits future enforcement if violation is corrected

Technical Reports and Investigations

- ✦ WC sections 13267 [SB ED/RB EO or AEO] and 13383 [SB ED/RB EO or AEO]
- ✦ Authority to conduct investigations and require technical or monitoring reports
- ✦ Examples: MRPs, Cleanup workplans, investigation workplans
- ✦ Has specific requirements and findings

Section 13300 Time Schedule Orders [RB EO/AEO]

- ✦ Water Code Section 13300
- ✦ Traditional time schedule orders - rarely used
- ✦ Require discharger action by time certain
- ✦ CDOs may be preferable
- ✦ Water Code does not include ACL authority for violations of 13300 TSOs

13308 Time Schedule Orders [RB EO/AEO]

- ✦ Must first violate or threaten to violate enforcement Order
- ✦ 13308 TSO similar to CAO, but specifies time schedule with specified penalty within order if violate time schedule
- ✦ Essentially only means of collecting penalties from federal agencies
- ✦ Must Still Issue ACL to collect

Cleanup and Abatement Orders [SB ED/RB EO or AEO]

- ✦ Water Code section 13304, H&S Code 25296.10
- ✦ Typically used where a discharge or threatened discharge of waste has occurred and clean up may be practical
- ✦ Typically most expeditious action (as with 13267 order)
- ✦ Usually requires submittal of tech report, cleanup or abatement and a time schedule
- ✦ Has specific requirements and findings

Cease and Desist Orders [RB]

- ✦ Water Code 13301
- ✦ Issued by Board, not EO
- ✦ Discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the Regional or State Board
- ✦ Often issued to dischargers with chronic non-compliance problems

Cease and Desist Orders — (continued)

- ✦ Can impose a connection ban
- ✦ Compliance may involve extensive capital improvements or operational changes
- ✦ Section 4477 of the Government Code prohibits all state agencies from entering into contracts of \$5,000 or more for the purchase of supplies, equipment, or services from any nongovernmental entity who is the subject of a CDO which is no longer under review and which was issued for violation of WDRs or discharge prohibitions...

Administrative Civil Liability

✦ Violation of Water Code or an Order of the Board

- ✦ WDRs/NPDES permits
- ✦ CAOs (CWC 13304 and H&SC 25296.10)
- ✦ CDOs
- ✦ Basin Plan Prohibitions
- ✦ 13267(b) orders
- ✦ Spills
- ✦ 13308 Orders
- ✦ WQ Certifications



Administrative Civil Liability

(continued)

-
- ✦ Most common code sections are 13268, 13350, 13385
 - ✦ EO/AEO issues ACL Complaint
 - ✦ Must offer hearing within 90 days, though discharger may waive right to hearing
 - ✦ EO/AEO may resolve or modify the Complaint prior to the hearing
 - ✦ Complaint is either resolved by EO/AEO or is brought to the Board as an ACL Order
 - ✦ Effective 30 days after Board issuance

Administrative Civil Liability

Mandatory Stormwater Penalties

- ✦ Failure to Submit a Notice of Intent for Coverage under the appropriate storm water NPDES permit.

Minimum \$5,000 plus recovery of staff costs

- ✦ Failure to submit an annual report or construction certification

Minimum \$1,000 plus recovery of staff costs

- ✦ Must first send two 30 day Notices of Noncompliance (60 day total) requesting NOI/Annual Report/Certification

Referrals to the Attorney General

- ✦ Appropriate for most serious violations
- ✦ Usually Board issued
- ✦ Requires public hearing in some cases (13268, 13350 ACLs)
- ✦ May be done in closed session in some cases (13385 ACLs)
- ✦ Allows for greater ACLs (2 to 10 times higher)

Referrals to the Attorney General (continued)

- ✦ AG may also seek injunctive relief (e.g. restraining order, preliminary injunction, or permanent injunction)
- ✦ Injunctive relief may be appropriate in emergency situations, or where a discharger has ignored enforcement orders or does not have the ability to pay a large ACL.

Coordination with DA or US Attorney

- ✦ District Attorneys, City Attorneys, USEPA, or U.S. Attorneys may seek civil or criminal penalties under their own authority for some of the same violations the RWQCB pursues. A request by the RWQCB is not required.
- ✦ A RWQCB can request prosecution or investigation and should cooperate with a prosecutor but the criminal action is not controlled by, or the responsibility of, the RWQCB.
- ✦ Not an official referral.

Determining ACL Amounts

- ✦ Mandatory Minimum Penalties
- ✦ Statutory Minimums/Maximums
- ✦ Factors to Consider
 - Discharge
 - Discharger
 - Economic Benefit



Economic Benefit



✦ What is Economic Benefit?

An economic benefit is any savings or monetary gain derived from the acts or failure to act that resulted in the violation.

✦ Why consider Economic Benefit?

- Polluters should not profit from environmental violations
 - Level playing field - the cost of doing business
 - May be statutorily required
- ✦ ACL should always substantially exceed the Economic Benefit. Otherwise, dischargers should just wait until you catch them.

Settlement / Appeal of Enforcement Actions

✦ Settlement of ACLs

- ✦ Complaint Issued - Board Hearing Within 90 days
- ✦ Reduction of the Amount
- ✦ Supplemental Environmental Projects
- ✦ Compliance Projects

✦ Regional Board Actions may be petitioned to the State Board within 30 days of issuance

✦ Appeal to the courts

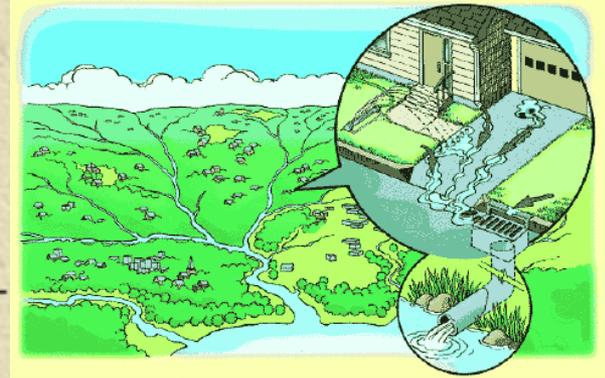
Supplemental Environmental Projects

✦ What is a SEP?

A project that enhances the beneficial uses of the waters of the State, provides a benefit to the public at large, and would not otherwise be required of the discharger.

- ✦ May suspend some of all of the ACL amount (subject to statutory limitations)
- ✦ Must go above and beyond obligation of discharger
- ✦ Must have connection or “nexus” to violation
- ✦ Can require much staff time to oversee

Compliance Projects



✦ What is a Compliance Project?

A project that is designed to address problems related to the violation and bring the discharger back into compliance in a timely manner.

✦ Unlike SEPs, Compliance Projects are “otherwise required of discharger”.

✦ Can be require much staff time to oversee

✦ Must be additive to original ACL amount

✦ For MMPs

- small, poor community

- designed to correct the violations within five years

- Can offset MMP amount

Balance

Enforcement cannot protect water quality without a strong foundation of enforceable requirements and a reliable process for determining compliance with those requirements.



Enforcement Contacts

- ✦ RB Enforcement Coordinators
- ✦ State/Regional Board Enforcement Roundtables
- ✦ County/Regional Task Forces
- ✦ District Attorneys and CDAA
- ✦ USEPA and USEPA CID

