



**2010**

**WATER CODE SECTION 13385(o)**

**ENFORCEMENT REPORT**

**July 1, 2011 UPDATE**



STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

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**Acronyms**

ACL	Administrative Civil Liability
CAA	(State Water Pollution) Cleanup and Abatement Account
Cal EPA	California Environmental Protection Agency
CAFO	Concentrated Animal Feeding Operations
CAO	Cleanup and Abatement Order
CDO	Cease and Desist Order
CIWQS	California Integrated Water Quality System
CTR	California Toxics Rule
CWA	Clean Water Act
DA	District Attorney
EO	Executive Officer
EPL	Expedited Payment Offer
LID	Low-Impact Development
MMP	Mandatory Minimum Penalties
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NPS	Non-Point Source
NOV	Notice of Violation
O&M	Operations & Maintenance
OE or Office	Office of Enforcement
PCS	Permit Compliance System
PY	Personnel Year
POTW	Publicly Owned Treatment Works
QA/QC	Quality Assurance/Quality Control
RCRA	(Federal) Resource, Conservation, and Recovery Act
SEP	Supplemental Environmental Project
SIC	Standard Industrial Classification
SIU	Special Investigations Unit
SMCRA	Surface Mining Control and Reclamation Act
SMR	Self-Monitoring Report
SSMP	Sewer System Management Plan
SSO	Sanitary Sewer Overflow
TSO	Time Schedule Order
US EPA	U.S. Environmental Protection Agency
UST	Underground Storage Tanks
Water Boards	State and Regional Water Boards
WDR	Waste Discharge Requirements
WQBEL	Water Quality Based Limitation
WWTP	Wastewater Treatment Plant

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## I. Introduction

This report addresses violations of Waste Discharge Requirements (WDRs) for discharges to surface water during calendar year 2010. Discharges to surface water are issued a combined WDR/NPDES permit. This report updates the tables and figures presented in the Annual 13385 (o) report with data populated in CIWQS and SMARTS II as of July 1, 2011.

The [NPDES Permit Program](#) controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Typical point source discharges include discharges from: municipalities or publicly owned treatment works (POTWs), industrial facilities, and urban areas regulated under the Storm Water Program. The NPDES program is delegated to the State Water Board in accordance with the United States Environmental Protection Agency’s approval, and is implemented through Chapter 5.5 of the California Water Code.

The State and Regional Water Boards administer the NPDES program. The nine Regional Water Boards lie within different watersheds and are as follows (see back cover for map and details):

- Region 1 – [North Coast Regional Water Board](#)
- Region 2 – [San Francisco Bay Regional Water Board](#)
- Region 3 – [Central Coast Regional Water Board](#)
- Region 4 – [Los Angeles Regional Water Board](#)
- Region 5 – [Central Valley Regional Water Board](#) (With Offices in Redding [5R], Sacramento [5S] and Fresno [5F])
- Region 6 – [Lahontan Regional Water Board](#) (With offices in South Lake Tahoe [6A] and Victorville [6B])
- Region 7 – [Colorado River Basin Regional Water Board](#)
- Region 8 – [Santa Ana Regional Water Board](#)
- Region 9 – [San Diego Regional Water Board](#)

California Water Code, Chapter 5.5 implements provisions of the federal Water Pollution Control Act and establishes a regulatory program for discharges to surface water. This report summarizes information regarding violations of waste discharge requirements to surface waters pursuant to Water Code, Chapter 5.5, Section 13385(o), and enforcement actions taken by the State and Regional Water Quality Control Boards (Water Boards) in response to those violations.

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[California Water Code Section 13385\(o\)](#)

The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

- (1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.
- (2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.
- (3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

This is the third quarterly update of the year 2010 report to meet the requirements in section 13385(o) of the California Water Code to continuously report and update enforcement information. This report and the supporting metadata are available at the Water Board's Internet Web site under “enforcement”.

The Water Boards use the California Integrated Water Quality System (CIWQS) database to track violations and the resulting enforcement actions. The CIWQS database contains information on violations and enforcement actions that have occurred since July 1, 1999. On September 21, 2009, NPDES Stormwater data was migrated from CIWQS to a new stormwater database named SMARTS II.

Most of the tables in this report are available for continuous public use through the State Water Board's Internet site. Use of live, public reports allows the public access to violation and enforcement data from all dischargers regulated by the Water Boards, and gives the user control over how to sort and filter this data to meet specific information needs. These public reports can be found on the Water Board's Web site at: [http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/publicreports.shtml](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml).

The Water Boards' 2010 Annual Enforcement Report is also available at [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/](http://www.waterboards.ca.gov/water_issues/programs/enforcement/).

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## II. Violations of Waste Discharge Requirements

This section presents a compilation of the number of violations of waste discharge requirements in the previous year.

### NPDES Wastewater

Wastewater facilities discussed in this report are those facilities that are permitted to discharge pollutants to surface waters and include sewage treatment plants, food processors, oil refineries, power plant cooling waters, pulp and paper mills, mining operations, fish hatcheries, etc. During this reporting period, there were 1,898 active wastewater facilities regulated by [NPDES](#) waste discharge requirements in California. These facilities are divided into two categories:

- Major facilities – Facilities with an average daily discharge greater than 1 million gallons per day or those that pose a high degree of threat to water quality;
- Minor facilities – Facilities with an average daily flow less than 1 million gallons per day and that have a lower threat to water quality.

The waste discharge requirements (“NPDES permits” or “permits”) are issued as individual permits or as general permits. Dischargers eligible for coverage under a general permit must enroll and agree to comply with the conditions of the general permit. A summary of active NPDES facilities by category and Regional Water Board is shown in Table 1.

**Table 1: NPDES Wastewater Permits by Category and Regional Office**

Regional Offices				
	Major Facilities Individual Permits	Minor Facilities		Total
		Individual Permits	General Permit Enrollees	
<b>1</b>	<b>15</b>	<b>30</b>	<b>15</b>	<b>60</b>
<b>2</b>	<b>51</b>	<b>32</b>	<b>196</b>	<b>279</b>
<b>3</b>	<b>22</b>	<b>17</b>	<b>71</b>	<b>110</b>
<b>4</b>	<b>45</b>	<b>72</b>	<b>441</b>	<b>558</b>
<b>5</b>	<b>56</b>	<b>109</b>	<b>177</b>	<b>342</b>
5F	7	22	19	48
5R	14	37	39	90
5S	35	50	119	204
<b>6</b>	<b>3</b>	<b>11</b>	<b>15</b>	<b>29</b>
6A	1	6	7	14
6B	2	5	8	15
<b>7</b>	<b>8</b>	<b>17</b>	<b>39</b>	<b>64</b>
<b>8</b>	<b>21</b>	<b>13</b>	<b>295</b>	<b>329</b>
<b>9</b>	<b>43</b>	<b>17</b>	<b>73</b>	<b>133</b>
<b>Total</b>	<b>264</b>	<b>318</b>	<b>1,322</b>	<b>1,904</b>

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Table 2 lists the total number of violations of NPDES permits by Regional Water Board office for each of the past nine years. The table shows a generally consistent number of violations statewide although this does not track for all of the Regional Water Board offices. The increase in the number of violations from the year 2003 is in part explained by increased diligence in recording violations. Data for 2010 is still incomplete since monitoring reports are still being reviewed by the regional boards.

**Table 2: Number of Violations of NPDES Wastewater Permits 2000 to 2010**

Regional Offices											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1	931	624	443	503	713	482	394	363	741	218	215
2	544	480	279	244	276	245	348	295	237	175	180
3	353	387	305	214	414	407	417	467	139	147	147
4	2,135	2,419	2,564	2,907	2,137	2,080	2,650	2,361	2,541	2,270	1,810
5F	281	231	508	424	287	221	269	285	206	128	96
5R	251	97	117	74	82	146	166	109	60	150	185
5S	1,041	760	956	900	1,532	2,308	2,264	1,906	2,300	2,669	3,293
6A	10	11	22	8	8	3	1	3	39	105	64
6B	5	10	21	25	22	13	119	51	65	46	67
7	148	207	231	334	177	190	262	298	292	176	298
8	458	296	201	110	222	243	167	150	157	61	109
9	557	221	160	256	652	218	374	405	221	71	32
<b>Total</b>	<b>6,714</b>	<b>5,743</b>	<b>5,807</b>	<b>5,999</b>	<b>6,522</b>	<b>6,556</b>	<b>7,431</b>	<b>6,693</b>	<b>6,998</b>	<b>6,216</b>	<b>6,496</b>

Table 3 provides a comparison of the average number of violations per facility in violation.

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**Table 3: Number of Violations per Wastewater Facility for 2010**

Regional Office	NPDES Facilities	Facilities with 1-25 violations during 2010	Facilities with more than 25 violations during 2010	Total Violations	Average Number of Violations per facility in violation
1	60	26	3	215	7.41
2	279	39	3	180	4.29
3	110	19	3	147	6.68
4	558	239	9	1,810	7.30
5F	48	18	1	96	5.05
5R	90	31	3	185	5.44
5S	204	56	24	3,293	41.16
6A	14	8	1	64	7.11
6B	15	5	2	67	9.57
7	64	14	4	298	16.56
8	329	41	2	109	2.53
9	133	16	1	32	1.88
<b>Total</b>	<b>1,904</b>	<b>512</b>	<b>56</b>	<b>6,496</b>	<b>Average: 9.58</b>

The data in Table 3 indicate an uneven distribution of the average number of violations per facility among the different Regional Water Board offices. The reasons for this variability include differences in facility-specific requirements, differences in Regional Water Board office processes, the priority assigned to report review and data entry, and the differences in rates of compliance among dischargers.

A breakdown of the violation types and the number of violations identified as priority violations is presented in Table 4. A more detailed description of each violation category is provided in [Appendix B](#). Violations vary from not submitting monitoring reports on time to acute toxicity violations. The Water Boards identify priority violations based on criteria identified in the [Water Quality Enforcement Policy](#)<sup>1</sup>. A priority violation represents a greater threat to water quality than other violations. Forty five percent of NPDES wastewater violations have been identified as priority violations in 2010.

It is important to note that the term “priority” violation used in this context is different than “serious” violations discussed in the following section on mandatory minimum penalties. The term “serious” violation is defined in sections 13385(h) and 13385.1 of the California Water Code. All “serious” violations are considered priority violations, but not all priority violations are “serious” violations.

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<sup>1</sup> Dated/adopted November 17, 2009 & approved by OAL on May 20, 2010.

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**Table 4: NPDES Wastewater Violations by Category for 2010**

Description of Violation Category (See Appendix B)	Non-Priority Violations	Priority Violations	Total	% of Total
Category 1 Pollutant	371	1,819	<b>2,190</b>	<b>34%</b>
Category 2 Pollutant	370	926	<b>1,296</b>	<b>20%</b>
Reporting	972	271	<b>1,243</b>	<b>19%</b>
Effluent	285	730	<b>1,015</b>	<b>16%</b>
Other Requirement	231	44	<b>275</b>	<b>4%</b>
Monitoring	134	47	<b>181</b>	<b>3%</b>
Surface Water	100	31	<b>131</b>	<b>2%</b>
Acute Toxicity	31	17	<b>48</b>	<b>1%</b>
BMP	35	3	<b>38</b>	<b>1%</b>
Unauthorized Discharge	19	12	<b>31</b>	<b>0%</b>
Groundwater	19	1	<b>20</b>	<b>0%</b>
Failure to Pay Fees	10	0	<b>10</b>	<b>0%</b>
Sanitary Sewer Overflow	4	5	<b>9</b>	<b>0%</b>
Other Violations	6	3	<b>9</b>	<b>0%</b>
<b>Total</b>	<b>2,587</b>	<b>3,909</b>	<b>6,496</b>	<b>100%</b>

The current enforcement policy, effective May 20, 2010, established a new process for ranking enforcement priorities based on the actual or potential impact to the beneficial uses or the regulatory program and for using progressive levels of enforcement, as necessary, to achieve compliance.

According to the enforcement policy, the Water Boards shall rank violations and then prioritize cases for formal discretionary enforcement action to ensure the most efficient and effective use of available resources. The policy establishes three ranks, Class I, Class II and Class III for violations being the Class I violations those with the highest priority for enforcement. A description of the different ranking is included in [Appendix A](#).

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The CIWQS database was modified on July 12, 2010 to allow the regional boards to include the prioritization rank described in the policy. Because of the middle of the year implementation, violations entered in the system before July 12, were classified using the previous criteria (priority/non priority) and violations entered after that date included the new ranking (I, II, III). The system also allows for violations to be entered unclassified (U) or unranked until staff determines the proper rank of the violation. The following table shows the same information as Table 4 but with the current ranking information for violations entered before and after July 12, 2010.

**Table4a: NPDES Wastewater Violations by Ranking for 2010**

Regional Board	Class I	Class II	Class III	Pending Classification	Priority		Total
					Not Priority	Priority	
1	12	137	16	9	30	11	215
2	0	55	21	17	63	24	180
3	2	73	16	20	25	11	147
4	15	185	260	994	261	95	1,810
5F	2	39	20	16	19	0	96
5R	10	116	42	5	11	1	185
5S	22	1,877	176	266	115	837	3,293
6A	14	22	1	21	5	1	64
6B	10	30	1	23	3	0	67
7	1	178	1	13	48	57	298
8	6	2	5	60	36	0	109
9	0	4	4	3	14	7	32
<b>Total</b>	<b>94</b>	<b>2,718</b>	<b>563</b>	<b>1,447</b>	<b>630</b>	<b>1,044</b>	<b>6,496</b>

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## **NPDES Stormwater**

The [Stormwater Program](#) has five categories of dischargers subject to the federal Stormwater permit requirements. At the time of this report, nearly 25,000 facilities or permittees are regulated by NPDES stormwater permits in California. Below is a brief description of the five categories:

- **Industrial Activities** – The Industrial Storm Water General Permit Order 97-03-DWQ ([General Industrial Permit](#)) is an NPDES permit that regulates discharges associated with 10 broad categories of industrial activities other than construction. In general, discharges from manufacturing, transportation, and recycling facilities are subject to this permit.
- **Construction Activities** – Dischargers whose projects disturb one or more acres of soil or are part of a larger common plan of development or sale are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity ([Construction General Permit - CGP - Order No. 2009-0009-DWQ](#))<sup>2</sup>. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade or capacity of the facility. Typical CGP permit coverage lasts about 1 year, so this permit program sees a lot of turnover. Because construction activities are temporary and the most prevalent pollutant problem is sediment discharges, the State Water Board has adopted this permit separate from the General Industrial Permit,.
- **Linear Stormwater Facilities** –Underground/Overhead Projects disturbing at least 1 acre but less than 5 acres (including trenching and staging areas) are covered by the Statewide General Permit for Storm Water Discharges Associated with Construction Activity from Small Linear Underground/Overhead Projects ([Small LUP General Permit](#))
- **Municipal Stormwater Phase I Facilities** – The Municipal Storm Water Permits regulate storm water discharges from municipal separate storm sewer systems (MS4s). Under [Phase I](#), which began in 1990, the Regional Water Boards have issued NPDES MS4 permits to permittees serving populations greater than 100,000 people. Many of these permits are issued to a group of co-permittees encompassing an entire metropolitan area.
- **Municipal Stormwater Phase II Facilities** – Under [Phase II](#), the State Water Board adopted a General Permit for the Discharge of Storm Water from Small MS4s (WQ Order No. 2003-0005-DWQ) to provide permit coverage for smaller municipalities (10,000 to 100,000 people), including non-traditional small MS4s which are governmental facilities such as military bases, public campuses, prisons and hospital complexes.

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<sup>2</sup> Effective July 1, 2010.

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Stormwater permits are generally issued as individual permits to the Phase 1 MS4s and as general permits to the other categories. Dischargers eligible for coverage under a general permit must enroll and agree to comply with the conditions of the general permit. Table 5 shows active NPDES stormwater facilities by category and Regional Board.

**Table 5: NPDES Stormwater Permittees by Permit Type and Regional Office**

Regional Offices	Construction	Industrial	Municipal	Total
1	186	355	22	<b>563</b>
2	910	1,326	108	<b>2,344</b>
3	467	393	37	<b>897</b>
4	1,218	2,770	100	<b>4,088</b>
5F	511	524	23	<b>1,058</b>
5R	209	192	8	<b>409</b>
5S	991	1,151	66	<b>2,208</b>
6A	207	64	5	<b>276</b>
6B	266	179	5	<b>450</b>
7	230	167	19	<b>416</b>
8	1,004	1,564	95	<b>2,663</b>
9	998	780	78	<b>1,856</b>
<b>Total</b>	<b>7,197</b>	<b>9,465</b>	<b>566</b>	<b>17,228</b>

Table 6 lists the number of violations of NPDES stormwater permits by Regional Water Board office for the past ten years.

**Table 6: Number of Violations of NPDES Stormwater Permits 2000 to 2010**

Regional Offices	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1	57	55	49	89	12	6	6	87	102	77	66
2	130	10	61	63	5	7	6	291	260	194	66
3	15	25	88	28	202	397	46	58	242	71	38
4	243	1,252	1,141	686	497	273	225	154	1,229	777	101
5F	13	5	6	9	105	300	241	13	164	10	1
5R	58	20	128	28	151	46	40	71	72	70	23
5S	180	44	57	193	367	476	546	377	378	696	434
6A	25	32	68	53	81	42	71	25	21	82	42
6B	46	67	13	1	0	2	7	9	28	7	58
7	50	11	21	0	50	2	1	41	34	36	7
8	550	750	389	266	289	455	286	432	342	364	607
9	162	297	596	404	383	155	136	202	164	80	92
<b>Total</b>	<b>1,529</b>	<b>2,568</b>	<b>2,617</b>	<b>1,820</b>	<b>2,142</b>	<b>2,161</b>	<b>1,611</b>	<b>1,760</b>	<b>3,036</b>	<b>2,464</b>	<b>1,535</b>

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A breakdown of the construction and industrial stormwater violations by violation type and priority is shown in Table 7. Approximately, 7.3 percent of NPDES stormwater violations in 2010 have been identified as priority violations.

**Table 7: NPDES Stormwater Violations by Category for 2010**

Description of Violation Category (See Appendix B)	Non-Priority Violations	Priority Violations	Total	% of Total
Reporting	580	38	<b>618</b>	<b>40%</b>
Deficient BMP Implementation	488	39	<b>527</b>	<b>34%</b>
Unauthorized Discharge	257	13	<b>270</b>	<b>18%</b>
Incomplete/Insufficient SWPPP	78	10	<b>88</b>	<b>6%</b>
Failure to Pay Fees	7	0	<b>7</b>	<b>0%</b>
Other Requirement	8	6	<b>14</b>	<b>1%</b>
Effluent	0	3	<b>3</b>	<b>0%</b>
Hydro Modification	0	0	<b>0</b>	<b>0%</b>
Stormwater Non-filer	0	1	<b>1</b>	<b>0%</b>
Surface Water	3	0	<b>3</b>	<b>0%</b>
Category 1 Pollutant	0	2	<b>2</b>	<b>0%</b>
<b>Total</b>	<b>1,421</b>	<b>112</b>	<b>1,533</b>	<b>100%</b>

Most of the violations documented in the stormwater program are reporting violations. Most violations, other than reporting, in the stormwater program are discovered through site inspections. Ensuring compliance with stormwater NPDES permit requirements for the nearly 17,000 permitted stormwater activities require a large field presence.

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### **Compliance and Enforcement at Federal Facilities**

Federal facilities include facilities owned or operated by the federal government. These include national parks, Department of Energy facilities, Department of Defense (DOD) facilities, etc. DOD facilities fall under one of the following three categories:

- Active bases where the military currently conducts operations,
- Base Realignment and Closure (BRAC) installations which are being cleaned up and prepared for transfer to communities and to other federal, state, and local agencies, and
- Formerly Used Defense Sites (FUDS) which are properties that DOD once owned, operated or leased.

**Table 8: Federal Facilities Regulated Under the NPDES Program by Region**

Regional Offices	Federal Facilities Regulated Under the NPDES Construction Stormwater Program	Federal Facilities Regulated Under the NPDES Industrial Stormwater Program	Federal Facilities Regulated Under the NPDES Wastewater Program	Total
1	8	1	1	<b>10</b>
2	27	25	6	<b>58</b>
3	24	6	1	<b>31</b>
4	16	24	6	<b>46</b>
5F	10	5	2	<b>17</b>
5R	14	1	3	<b>18</b>
5S	27	12	8	<b>47</b>
6A	11	2	0	<b>13</b>
6B	5	4	0	<b>9</b>
7	17	3	5	<b>25</b>
8	11	13	3	<b>27</b>
9	63	17	9	<b>89</b>
<b>Total</b>	<b>233</b>	<b>113</b>	<b>44</b>	<b>390</b>

Regional Offices	Violations in 2010 for Federal Facilities Regulated Under the NPDES Construction Stormwater Program	Violations in 2010 for Federal Facilities Regulated Under the NPDES Industrial Stormwater Program	Violations in 2010 for Federal Facilities Regulated Under the NPDES Wastewater Program	Total
1	0	0	0	<b>0</b>
2	0	0	0	<b>0</b>
3	0	1	0	<b>1</b>
4	3	0	36	<b>39</b>
5F	0	0	2	<b>2</b>
5R	1	0	2	<b>3</b>
5S	7	1	8	<b>16</b>
6A	2	0	0	<b>2</b>
6B	0	0	0	<b>0</b>
7	0	0	6	<b>6</b>
8	3	0	0	<b>3</b>
9	1	0	19	<b>20</b>
<b>Total</b>	<b>17</b>	<b>2</b>	<b>73</b>	<b>92</b>

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### III. Summary of Enforcement Actions Taken for Violations

This section presents information on formal and informal compliance and enforcement actions taken for each violation.

#### **NPDES Wastewater**

Enforcement actions taken in response to violations include both informal and formal actions. An informal enforcement action is any enforcement action taken by Water Board staff that is not defined in statute, such as staff letters and notices of violation. Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation such as Cleanup and Abatement Orders. [Appendix C](#) describes the enforcement options used by the Water Boards.

**Table 9: NPDES Wastewater Violations Compared to Completed Enforcement Actions**

Regional Offices	2007			2008			2009			2010		
	Total Violations	w/ Enforcement	% w/ Enforcement	Total Violations	w/ Enforcement	% w/ Enforcement	Total Violations	w/ Enforcement	% w/ Enforcement	Total Violations	w/ Enforcement	% w/ Enforcement
1	363	220	61%	741	625	84%	218	40	18%	215	36	17%
2	295	261	88%	237	192	81%	175	162	93%	180	136	76%
3	467	168	36%	139	64	46%	147	104	71%	147	67	46%
4	2,361	1,157	49%	2,541	1,210	48%	2,270	891	39%	1,810	517	29%
5F	285	190	67%	206	170	83%	128	88	69%	96	28	29%
5R	109	109	100%	60	59	98%	150	144	96%	185	152	82%
5S	1,906	1,830	96%	2,300	1,923	84%	2,669	2,223	83%	3,293	3,096	94%
6A	3	0	0%	39	34	87%	105	92	88%	64	15	23%
6B	51	27	53%	65	47	72%	46	21	46%	67	21	31%
7	298	293	98%	292	291	100%	176	173	98%	298	267	90%
8	150	120	80%	157	40	25%	61	30	49%	109	6	6%
9	405	382	94%	221	194	88%	71	57	80%	32	23	72%
<b>Total</b>	<b>6,693</b>	<b>4,757</b>	<b>71%</b>	<b>6,998</b>	<b>4,849</b>	<b>69%</b>	<b>6,216</b>	<b>4,025</b>	<b>65%</b>	<b>6,496</b>	<b>4,364</b>	<b>67%</b>

	More than 90% of violations with completed enforcement
	Between 80% and 90% of violations with completed enforcement
	Less than 80% of violations with completed enforcement

Table 9 shows the number of violations recorded from 2007 to 2010. It also lists the number of violations for which there is a completed enforcement action entered in CIWQS (enforcement is still pending for some, but not all, of these violations). The percentages at the bottom of the table show each violation category as a percentage of the total number of violations and the percentage of violations linked to an enforcement

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action. While the Water Boards’ enforcement authorities are significant, resource levels generally preclude enforcement against every violation. The appropriate level of enforcement response is described in the Water Board’s [enforcement policy](#).

As noted, there can be a significant lag in the time between the discovery and reporting of a violation, and the resulting enforcement action. This is due to available staffing and the time it takes to pursue enforcement, particularly for complex enforcement cases. Also, minor violations may be resolved before enforcement is taken. As a result, the percentage of violations where enforcement has been taken is lower for more recent violations, and tends to increase as time goes by and additional actions are taken for past violations. The data for 2010 will likely change significantly since not all violations have yet been recorded for 2010.

### **NPDES Stormwater**

Table 10 show the number of stormwater violations for the last four years. It also lists the number of stormwater violations addressed by enforcement actions. The percentages at the bottom of the table show the total number of violations receiving enforcement as a percent of the total number of violations.

**Table 10: NPDES Stormwater Violations Compared to Completed Enforcement Actions**

Regional Offices	2007			2008			2009			2010		
	Total Violations	w/ Enforcement	% w/ Enforcement	Total Violations	w/ Enforcement	% w/ Enforcement	Total Violations	w/ Enforcement	% w/ Enforcement	Total Violations	w/ Enforcement	% w/ Enforcement
1	87	61	70%	102	94	92%	77	68	88%	66	60	91%
2	291	280	96%	260	254	98%	194	174	90%	66	48	73%
3	58	51	88%	242	235	97%	71	70	99%	38	34	89%
4	154	124	81%	1,229	901	73%	777	730	94%	101	78	77%
5F	13	9	69%	164	158	96%	10	5	50%	1	1	100%
5R	71	69	97%	72	69	96%	70	68	97%	23	23	100%
5S	377	337	89%	378	365	97%	696	684	98%	434	422	97%
6A	25	8	32%	21	12	57%	82	8	10%	42	17	40%
6B	9	1	11%	28	13	46%	7	0	0%	58	44	76%
7	41	38	93%	34	33	97%	36	36	100%	7	7	100%
8	432	394	91%	342	305	89%	364	327	90%	607	510	84%
9	202	171	85%	164	139	85%	80	75	94%	92	86	93%
<b>Total</b>	<b>1,760</b>	<b>1,543</b>	<b>88%</b>	<b>3,036</b>	<b>2,578</b>	<b>85%</b>	<b>2,464</b>	<b>2,245</b>	<b>91%</b>	<b>1,535</b>	<b>1,330</b>	<b>87%</b>

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	More than 90% of violations with completed enforcement
	Between 80% and 90% of violations with completed enforcement
	Less than 80% of violations with completed enforcement

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Data from SMARTS II.

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#### IV. Mandatory Minimum Penalties (MMPs) Update

##### *Summary of MMP Violations and MMP Enforcement Actions*

According to the CIWQS database, 28,678 violations subject to mandatory minimum penalties occurred between January 1, 2000 and June 31, 2011. Of these, 25,603 (96 percent) are recorded as having received a minimum or greater penalty. Some portion of the reported effluent violations may qualify for statutory exemptions.

Table 11 shows the number of violations that have been identified by each Regional Water Board office by violation type. [Appendix D](#) provides a list of every facility with violations subject to mandatory minimum penalties.

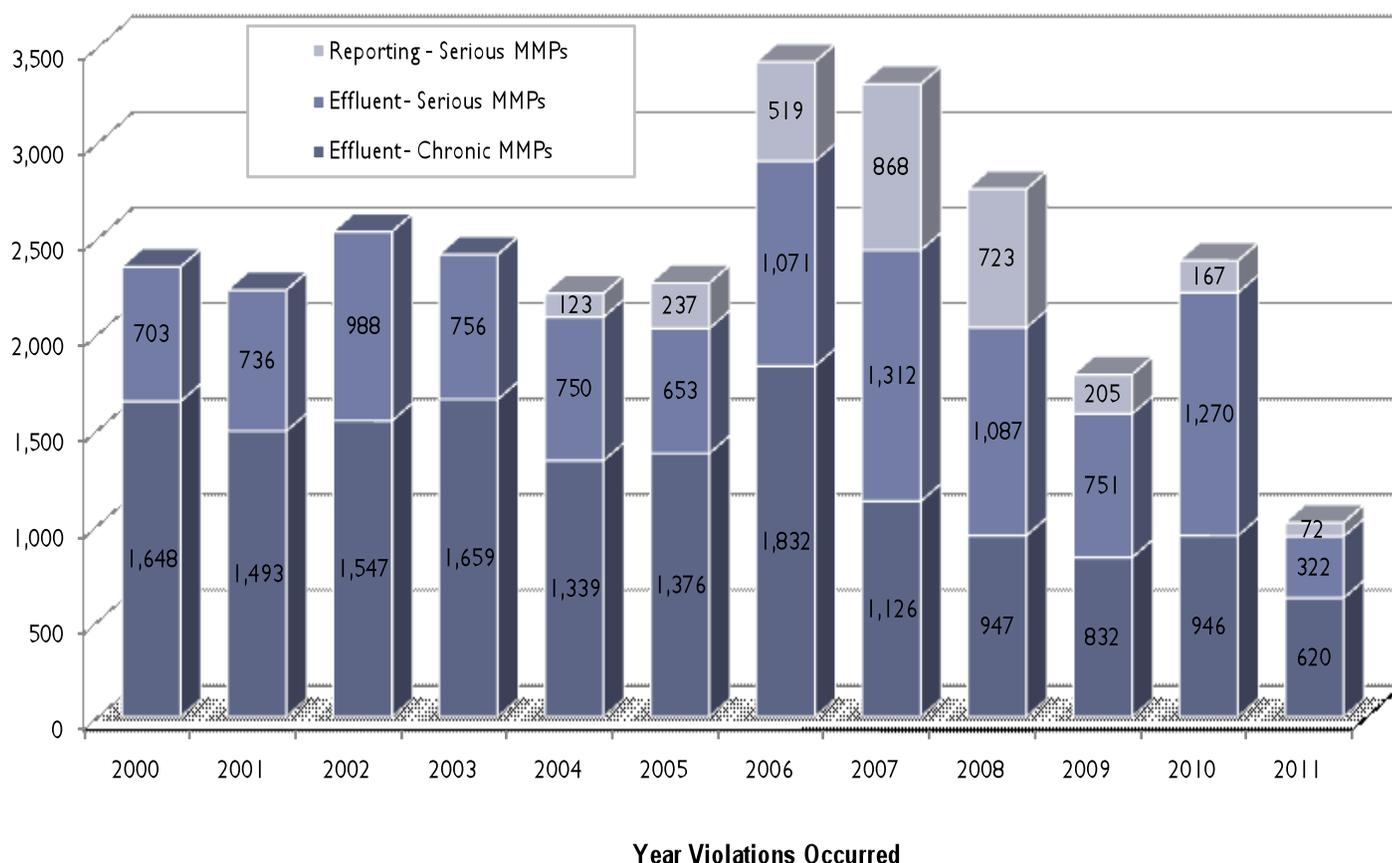
**Table 11: Violations Subject to MMPs by Violation Type from January 2000 to June 2011**

Regional Offices	Effluent		Reporting Serious MMPs	Total
	Chronic MMPs	Serious MMPs		
1	1,136	700	142	<b>1,978</b>
2	954	778	3	<b>1,735</b>
3	664	347	1	<b>1,012</b>
4	4,771	4,028	1,381	<b>10,180</b>
5F	1,097	301	59	<b>1,457</b>
5R	274	150	4	<b>428</b>
5S	3,949	3,070	1,320	<b>8,339</b>
6A	133	24	0	<b>157</b>
6B	154	25	1	<b>180</b>
7	728	435	0	<b>1,163</b>
8	1,028	147	3	<b>1,178</b>
9	477	394	0	<b>871</b>
<b>Total</b>	<b>15,365</b>	<b>10,399</b>	<b>2,914</b>	<b>28,678</b>

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Figure 1 shows MMP violations since 2000 by violation type. We see a variation through the years. There is significant increase in the count of violations in 2006 due to the greater emphasis on documentation of serious violations for late reports, especially within the Los Angeles Regional Water Board as a result of implementation of the statewide initiative for MMP enforcement. MMPs for late reports began in 2004 with the addition of section 13385.1. The graph also indicates a significant reduction in the number of reporting violations probably due to better compliance as a result of formal and informal actions and information provided to dischargers regarding mandatory minimum penalties for late reports.

**Figure 1: NPDES Wastewater MMP Violations 2000-2011**



\* Data for 2011 is incomplete.

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Table 12 shows the number of violations that are being addressed through the enforcement process by Regional Water Board office.

**Table 12: Status of Violations Subject to MMPs from January 2000 to June 2011**

Regional Offices	MMPs Addressed with Administrative Civil Liability (1)	MMPs Resolved with Court Order	MMPs Addressed with Expedited Payment Offer (2)	Violations without Completed MMP Enforcement	% Without	Total
1	1,633	0	14	331	17%	<b>1,978</b>
2	1,656	0	39	40	2%	<b>1,735</b>
3	729	22	110	151	15%	<b>1,012</b>
4	4,082	3,288	1,769	1,041	10%	<b>10,180</b>
5F	1,363	0	0	94	6%	<b>1,457</b>
5R	211	0	0	217	51%	<b>428</b>
5S	7,562	7	0	770	9%	<b>8,339</b>
6A	123	0	0	34	22%	<b>157</b>
6B	161	0	4	15	8%	<b>180</b>
7	981	0	0	182	16%	<b>1,163</b>
8	958	0	21	199	17%	<b>1,178</b>
9	842	28	0	1	0%	<b>871</b>
<b>Total</b>	<b>20,301</b>	<b>3,345</b>	<b>1,957</b>	<b>3,075</b>	<b>11%</b>	<b>28,678</b>

(1) MMP Addressed with ACL" which includes both pending ACL activities triggered by a complaint and completed ACL activities resolved with an ACL order or settlement.

(2) Expedited payment offer issued under the 2008 MMP initiative. The term "addressed" means that some action has been initiated regarding the MMP violation, not that the violation has been resolved.

Table 13 lists the number of facilities in each Regional Water Board office that have one or more MMP violations, the number of facilities for which MMPs have been issued for all MMP violations, and the number of facilities that would require at least one enforcement action to cover any outstanding MMP violations. As shown, 236 or more enforcement actions would be necessary to cover the 3,075 violations remaining subject to MMPs. This is a significant improvement from the 491 actions needed at the beginning of calendar year 2008.

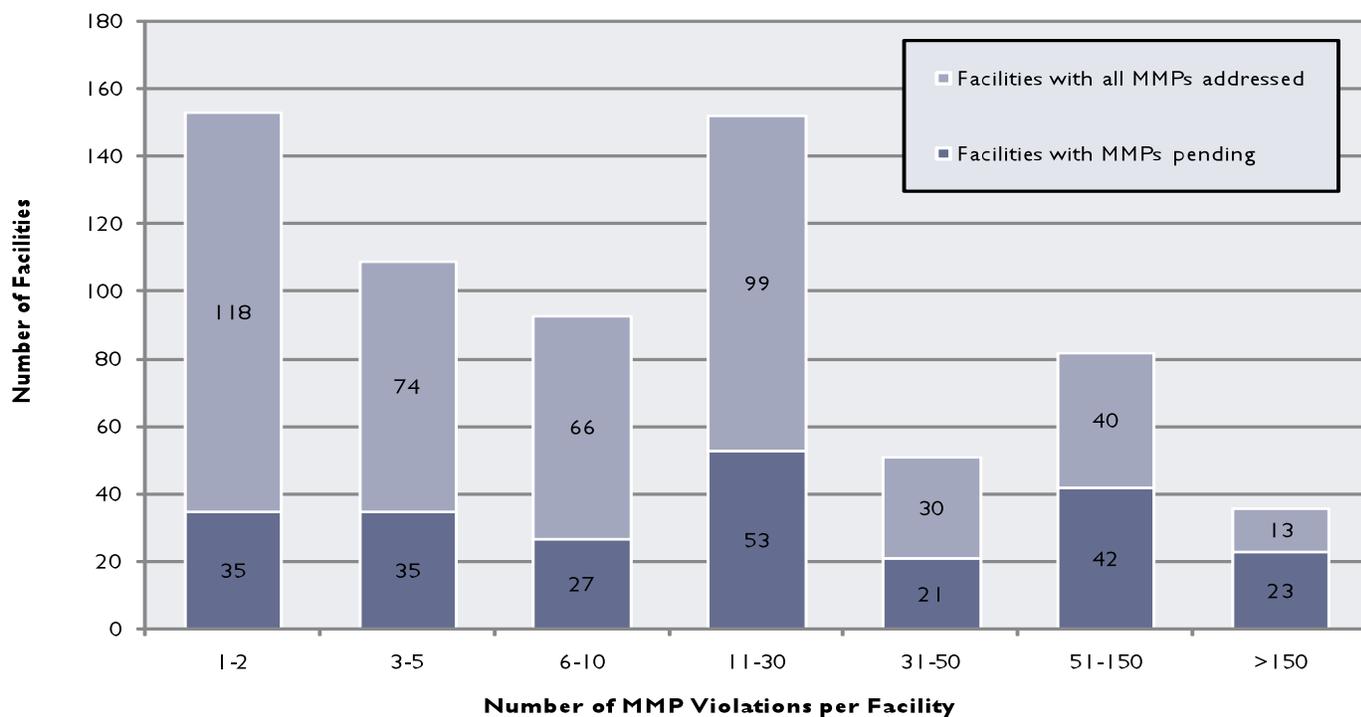
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**Table 13: Facilities with MMP Violations and Pending Enforcement Actions  
January 2000 to June 2011**

Regional Offices	Facilities with all MMP penalties issued	Facilities with pending MMP penalties	Total
1	14	21	35
2	67	19	86
3	16	17	33
4	225	89	314
5F	17	7	24
5R	7	19	26
5S	62	27	89
6A	0	3	3
6B	1	3	4
7	2	19	21
8	8	11	19
9	23	1	24
<b>Total</b>	<b>442</b>	<b>236</b>	<b>678</b>

Figure 2 displays the distribution of facilities by the number of MMP violations with and without completed enforcement. The numbers indicate that of the 678 facilities that incurred in MMP violations, 355 or 53% have incurred ten or fewer MMP violations, and 118 facilities or 17% have more than fifty MMP violations each. Figure 2 also reveals that the percentage of facilities with all MMPs addressed varies depending on the number of MMP violations per facility.

**Figure 2: Distribution of Facilities by Number of MMP Violations**

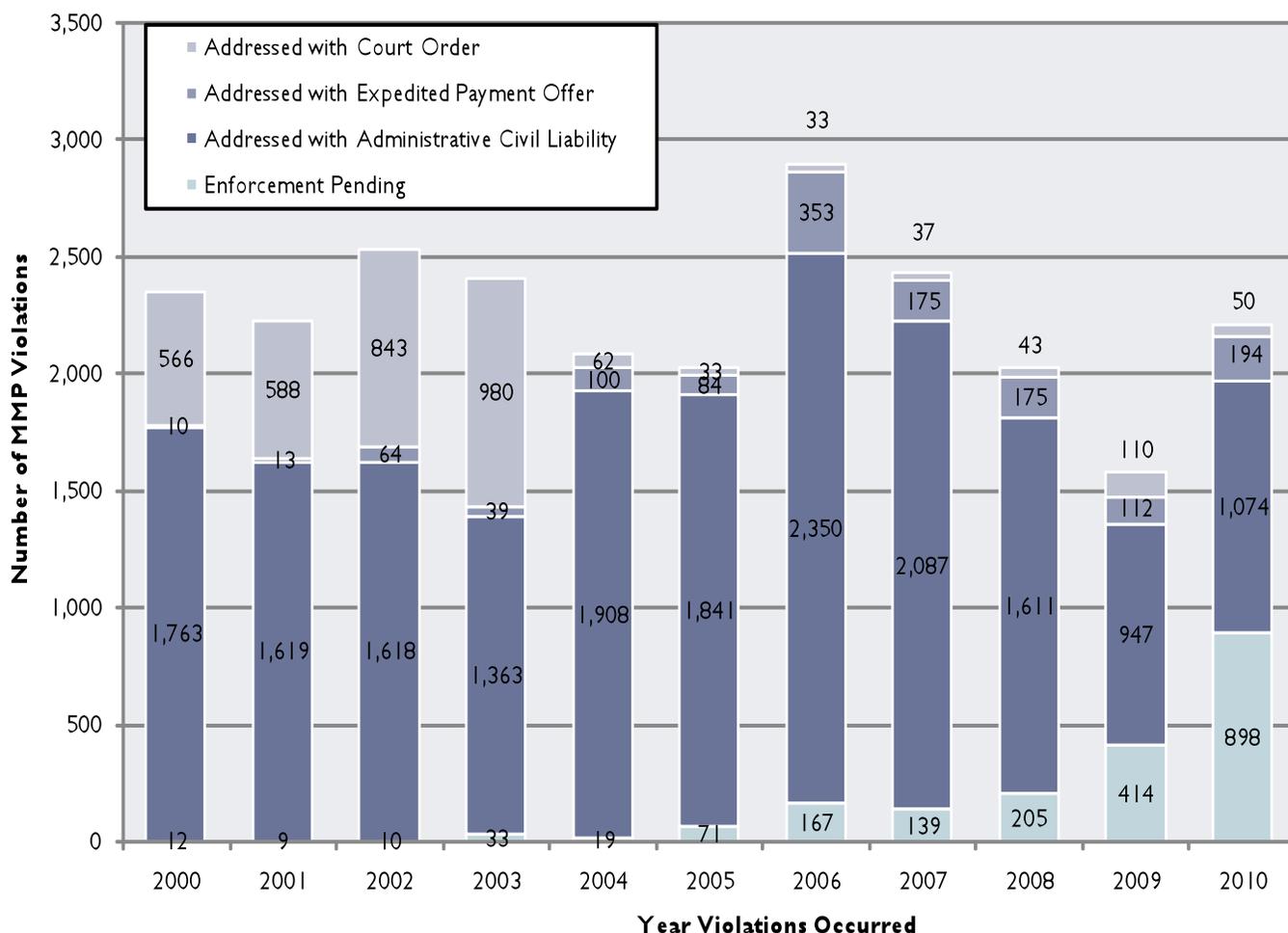


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**Enforcement of Mandatory Minimum Penalties on Effluent Violations**

Early trends in MMP violations indicated an overall reduction in the number of violations at NPDES facilities. We believed that the reduction was partly a result of increased compliance due to the deterrent effect of MMPs. Data for 2003 and 2004 showed an increase in violations, but we believe this is partly due to an increased emphasis on recording and collecting these mandatory penalties. Additionally, the introduction of MMPs for reporting violations in 2004 put a greater emphasis on reviewing and tracking monitoring reports. The Regional Water Boards generally prioritize MMP issuance to facilities with greater compliance problems because of the staff costs associated with issuing ACLs. While MMPs were intended to be a streamlined process for penalty issuance, these penalties are often challenged by dischargers and can consume as much staff time as an ordinary ACL complaint assessing discretionary penalties.

**Figure 3: NPDES Wastewater MMP Effluent Violations 2000-2010 by Enforcement Type**



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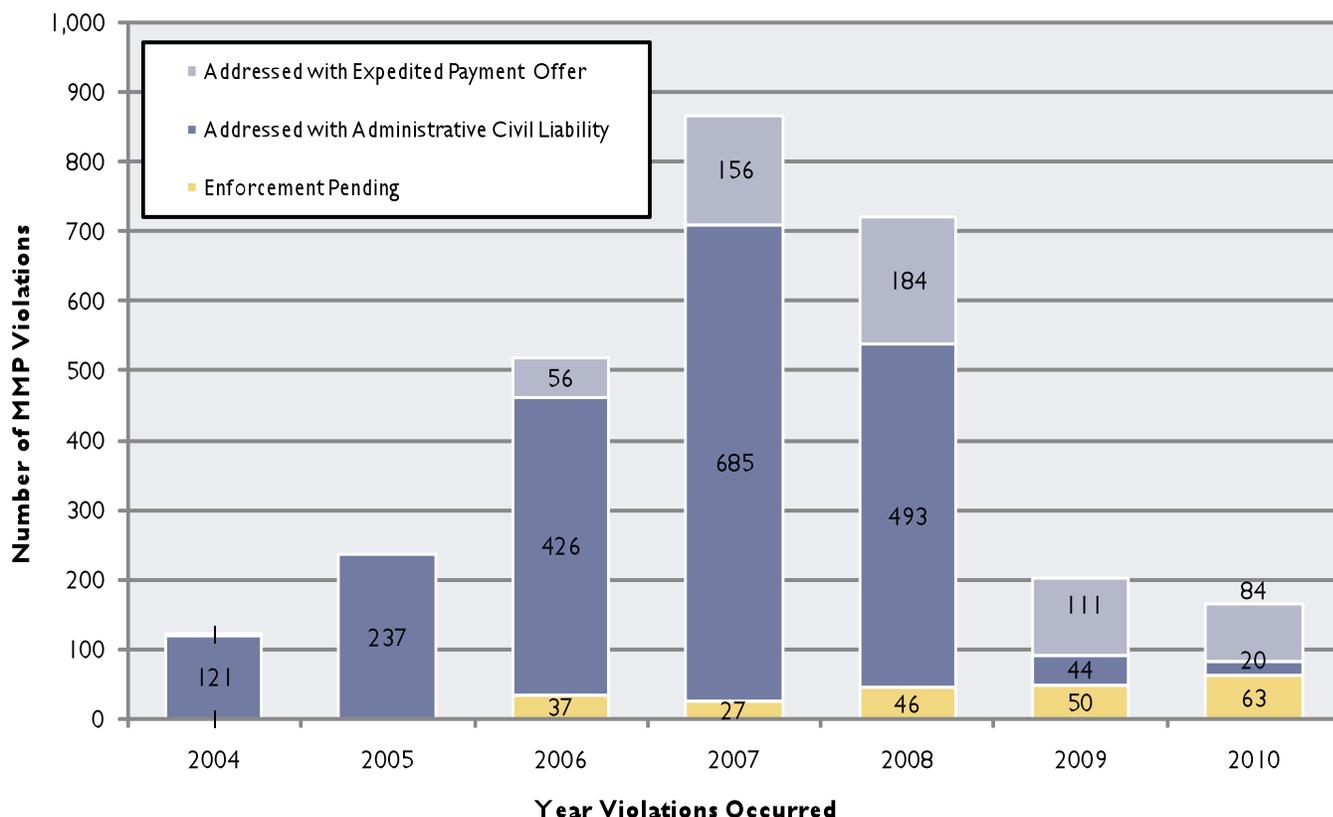
**Enforcement of Mandatory Minimum Penalties on Serious Late Reporting Violations**

Prompt and complete submission of self monitoring reports is a priority for the Water Boards because monitoring reports are the main instrument to ensure compliance with effluent limits and monitoring requirements in NPDES permits.

Compliance rates for reporting violations vary significantly among regions and type of dischargers. Typically, most major dischargers submit their monitoring reports on time.

Figure 4 displays the distribution and number of reporting violations over time and with the level of enforcement received.

**Figure 4: NPDES Wastewater Late Report Serious Violations 2004-2010 with Level of Enforcement Received**



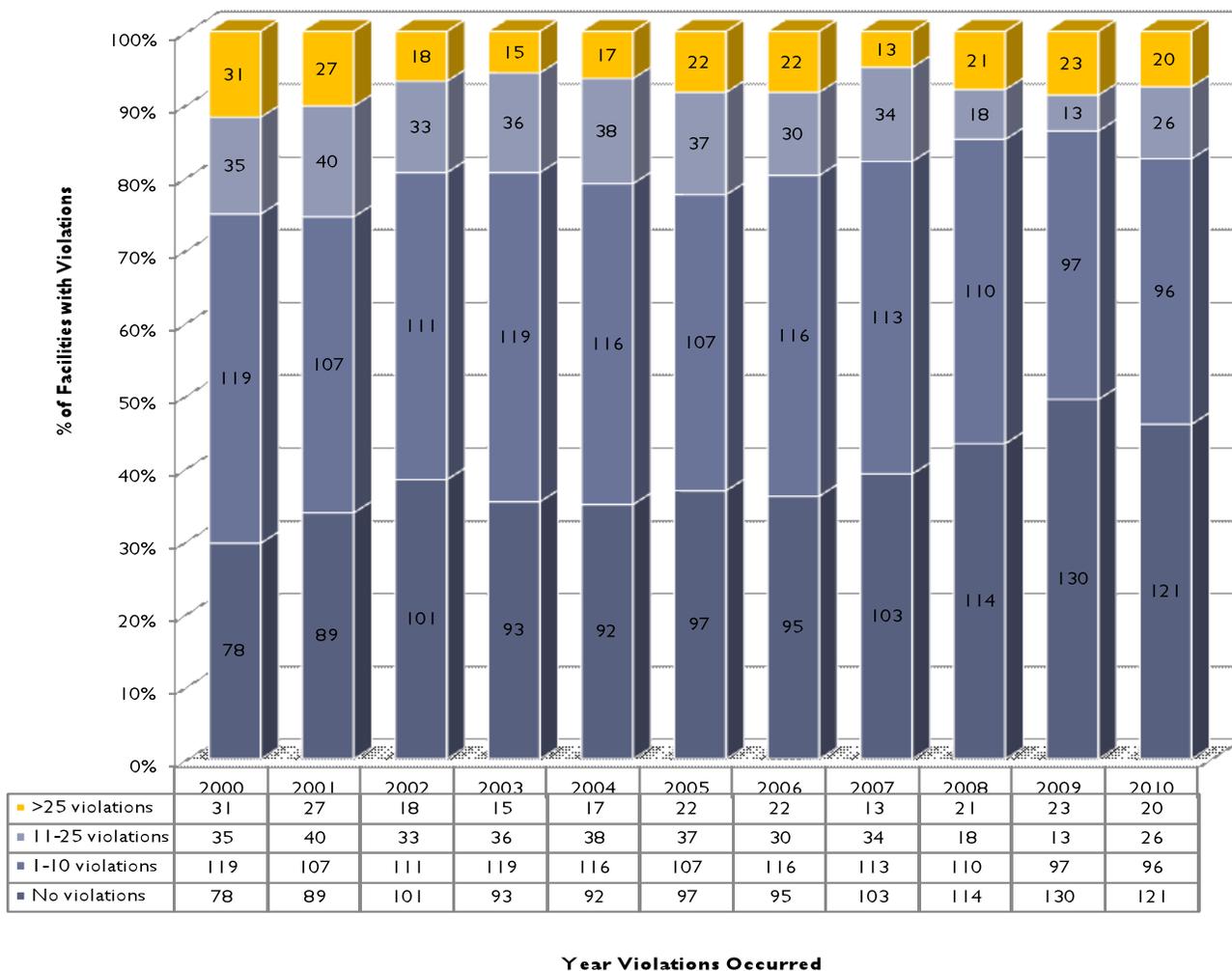
The graph also indicates a significant reduction in the number of reporting violations probably due to better compliance as a result of formal and informal actions and increased awareness by dischargers regarding mandatory minimum penalties for late reports.

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**Compliance Rates for Major Facilities**

A key performance measure for the Water Board’s enforcement program is the compliance rate with requirements. Of special significance, because of their threat to water quality is the compliance rate for NPDES Wastewater Major Facilities. Figure 5 shows that compliance rates among Major NPDES wastewater facilities are improving overtime. Not only has the total number of Major facilities with violations recorded been reduced but the number of facilities with more than 25 violations during the year has seen a significant reduction, going from 31 in the year 2000 to only 13 in 2007 and 20 in 2010. Figure 5 displays the distribution of the number of NPDES major facilities with no violations, the number of major facilities with one to 10 violations, the number of major facilities with 11 to 25 violations and the number of major facilities with more than 25 violations.

**Figure 5: Number of NPDES Wastewater Major Facilities 2000-2010. Compliance Rates**



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## Appendix A: Ranking Violations<sup>3</sup>

The first step in enforcement ranking is determining the relative significance of each violation. The following criteria will be used by the Water Boards to identify and classify significant violations in order to help establish priorities for enforcement efforts.

### ***Class I Priority Violations***

Class I priority violations are those violations that pose an immediate and substantial threat to water quality and that have the potential to cause significant detrimental impacts to human health or the environment. Violations involving recalcitrant parties who deliberately avoid compliance with water quality regulations and orders are also considered class I priority violations because they pose a serious threat to the integrity of the Water Boards' regulatory programs.

Class I priority violations include, but are not limited to, the following:

- a. Significant measured or calculated violations with lasting effects on water quality objectives or criteria in the receiving waters;
- b. Violations that result in significant lasting impacts to existing beneficial uses of waters of the State;
- c. Violations that result in significant harm to, or the destruction of, fish or wildlife;
- d. Violations that present an imminent danger to public health;
- e. Unauthorized discharges that pose a significant threat to water quality;
- f. Falsification of information submitted to the Water Boards or intentional withholding of information required by applicable laws, regulations, or enforceable orders;
- g. Violation of a prior enforcement action-- such as a cleanup and abatement order or cease and desist order--that results in an unauthorized discharge of waste or pollutants to water of the State; and
- h. Knowing and willful failure to comply with monitoring requirements as required by applicable laws, regulations, or enforceable orders because of knowledge that monitoring results will reveal violations.

### ***Class II Violations***

Class II violations are those violations that pose a moderate, indirect, or cumulative threat to water quality and, therefore, have the potential to cause detrimental impacts on human health and the environment. Negligent or inadvertent noncompliance with water quality regulations that has the potential for causing or allowing the continuation of an unauthorized discharge or obscuring past violations is also a class II violation.

Class II violations include, but are not limited to, the following:

- a. Unauthorized discharges that pose a moderate or cumulative threat to water quality;
- b. Violations of acute or chronic toxicity requirements where the discharge may adversely affect fish or wildlife;
- c. Violations that present a substantial threat to public health;

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<sup>3</sup> From page 4 Water Boards' enforcement policy

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

- d. Negligent or inadvertent failure to substantially comply with monitoring requirements as required by applicable laws, regulations, or enforceable orders, such as not taking all the samples required;
- e. Negligent or inadvertent failure to submit information as required by applicable laws, regulations, or an enforceable order where that information is necessary to confirm past compliance or to prevent or curtail an unauthorized discharge;
- f. Violations of compliance schedule dates (e.g., schedule dates for starting construction, completing construction, or attaining final compliance) by 30 days or more from the compliance date specified in an enforceable order;
- g. Failure to pay fees, penalties, or liabilities within 120 days of the due date, unless the discharger has pending a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty, or liability, or a timely request for an alternative payment schedule, filed with the Regional Water Board;
- h. Violations of prior enforcement actions that do not result in an unauthorized discharge of waste or pollutants to waters of the State;
- i. Significant measured or calculated violations of water quality objectives or promulgated water quality criteria in the receiving waters; and
- j. Violations that result in significant demonstrated impacts on existing beneficial uses of waters of the State.

**Class III Violations**

Class III violations are those violations that pose only a minor threat to water quality and have little or no known potential for causing a detrimental impact on human health and the environment. Class III violations include statutorily required liability for late reporting when such late filings do not result in causing an unauthorized discharge or allowing one to continue. Class III violations should only include violations by dischargers who are first time or infrequent violators and are not part of a pattern of chronic violations.

Class III violations are all violations that are not class I priority or class II violations. Those include, but are not limited to, the following:

- a. Unauthorized discharges that pose a low threat to water quality;
- b. Negligent or inadvertent late submission of information required by applicable laws, regulations, or enforceable orders;
- c. Failure to pay fees, penalties, or liabilities within 30 days of the due date, unless the discharger has pending a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty or liability; or a timely request for an alternative payment schedule, filed with the Regional Water Board;
- d. Any "minor violation" as determined pursuant to California Water Code section 13399 et seq. (see Appendix A. C.1a);
- e. Negligent or inadvertent failure to comply with monitoring requirements when conducting monitoring as required by applicable laws, regulations, or enforceable orders, such as using an incorrect testing method;
- f. Less significant (as compared to class II violations) measured or calculated violations of water quality objectives or promulgated water quality criteria in the receiving waters; and
- g. Violations that result in less significant (as compared to class II violations) demonstrated impacts to existing beneficial uses of waters of the State.

## Appendix B: Listing and Description of Violation Types Used in the CIWQS Data System

Category 1 pollutant – Category 1 pollutants as defined by USEPA include:

<u>Oxygen Demand</u> Biochemical Oxygen Demand Chemical Oxygen Demands Total Organic Carbon Other	<u>Detergents and Oils</u> MBAS NTA Oil and Grease Other detergents or algaecides
<u>Solids</u> Total Suspended Solids (Residues) Total Dissolved Solids (Residues) Other	<u>Minerals</u> Calcium, Chloride, Fluoride, Magnesium, Sodium, Potassium, Sulfur, Sulfate, Total Alkalinity, Total Hardness, Other Minerals
<u>Nutrients</u> Inorganic Phosphorus Compounds Inorganic Nitrogen Compounds Other	<u>Metals</u> Aluminum, Cobalt, Iron, Vanadium

Category 2 pollutant – Category 2 pollutants as defined by USEPA:

Metals (all forms) - Other metals not specifically listed under Group I

Inorganics - Cyanide, Total Residual Chlorine

Organics - All organics are Group II except those specifically listed under Group I.

Other effluent violation – Any violation of an effluent requirement not cover under Category 1 or Category 2.

Chronic Toxicity – Violation of a chronic toxicity effluent requirement.

Acute Toxicity – Violation of an acute toxicity effluent requirement.

Violation of Non-effluent Permit Condition – Violation of any permit condition not pertaining to effluent requirements.

Reporting – Late report, failure to submit a report, or a report that is either not complete or contains errors.

Monitoring – Failure to conduct required monitoring

Compliance schedule – Failure to comply with a compliance schedule in a permit. This does not include schedules in an enforcement order likes a Cease & Desist and Time Schedule Orders.

Sanitary Sewer Overflow – Any spill from a sanitary sewer collection system or pump station.

Unauthorized Discharge – Any discharge other than allowed by WDRs that is not a sanitary sewer overflow.

Unregulated Discharge – Discharge from a site not currently under WDRs.

Groundwater – Any release to groundwater that violates permit conditions or basin plan prohibitions.

BMP – Failure to implement proper best management practices.

SWPPP – Failure to complete or update a stormwater pollution prevention plan.

Failure to obtain permit – Failure to obtain the appropriate permit prior to discharge or regulated activity.

Other Codes – Violations of codes sections other that the California Water Code.

Enforcement Action – Failure to comply with a previous enforcement order by not meeting its requirements, its time schedule, or failure to pay penalties.

Basin Plan Prohibition – Violation of any basin plan prohibition.

## Appendix C: Types and Classification of Enforcement Actions

Type of Enforcement Action	Description	Classification
Expedited Payment Offer	A conditional offer that provides a discharger with an opportunity to resolve any outstanding violations subject to mandatory minimum penalties by acknowledging them and providing full payment of the accrued mandatory penalties identified in the payment letter	Informal
Verbal Communication	Any communication regarding the violation that takes place in person or by telephone.	Informal
Staff Enforcement Letter	Any written communication regarding violations and possible enforcement actions that is signed at the staff level.	Informal
Notice of Violation	A letter officially notifying a discharger of a violation and the possible enforcement actions, penalties, and liabilities that may result. This letter is signed by the Executive Officer.	Informal
Notice to Comply	Issuance of a Notice to Comply per Water Code Section 13399.	Formal
13267 Order	A letter utilizing Water Code Section 13267 authority to require further information or studies.	Formal
Clean-up and Abatement Order	Any order pursuant to Water Code Section 13304.	Formal
Cease and Desist Order	Any order pursuant to Water Codes Sections 13301-13303.	Formal
Time Schedule Order	Any order pursuant to Water Code Section 13300.	Formal
Administrative Civil Liability (ACL) Complaint	ACL Complaint issued by the Executive Officer.	Formal
Administrative Civil Liability (ACL) Order	An ACL Order that has been imposed by the Water Board or SWRCB.	Formal
Settlement	A settlement agreement per California Government Code Section 11415.6.	Formal
Referral	Referral to the District Attorney, Attorney General, or USEPA.	Formal
Referred to a Task Force	Any referral of a violation to an environmental crimes task force.	Formal
Referral to Other Agency	Any referral to another State Agency.	Formal
Third Party Action	An enforcement action taken by a non-governmental third party and to which the State or Water Board is a party.	Formal
Waste Discharge Requirements	Any modification or rescission of Waste Discharge Requirements in response to a violation.	Formal