

Attachment 2
Enforcement Action Descriptions

Enforcement Action	Description of Enforcement Action
Administrative Civil Liability (ACL) Complaint	<p>Under the authority of the California Water Code (CWC), the State or Regional Water Boards may issue administrative civil liability (ACL) complaints when a discharger(s) has allegedly caused a violation. ACL complaints may be issued when a discharger(s) (1) violates permit requirements, (2) submits late or incomplete reports, (3) falsifies or withholds information, (4) fails to meet time schedules, or (5) causes an unauthorized waste discharge to surface water or groundwater. The first step in the formal enforcement process is the issuance of an ACL complaint by the Water Board's Assistant Executive Officer. The ACL complaint describes the violations that are alleged, the CWC provisions authorizing the imposition of liability, and the evidence that supports the allegations. The ACL complaint includes a proposed penalty that is established by following the ACL penalty calculation methodology included in the State Water Board Water Quality Enforcement Policy; see https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf. The ACL penalty calculation methodology only applies to discretionary ACLs. Mandatory minimum penalties (MMPs) are required for specified violations of NPDES permits as described in CWC Section 13385, subdivisions (h) and (i) and Chapter VII of the Enforcement Policy and the penalty associated with MMPs are fixed.</p> <p>Upon receipt of an ACL complaint, the discharger(s) may waive its right to a public hearing and pay the liability; negotiate a settlement; or appear at a Board hearing to dispute the ACL complaint. It is the policy of the Water Board that a 30-day public comment period shall be posted on the Board's website prior to the settlement or imposition of any ACL, including MMPs, and prior to settlement of any judicial civil liabilities. All such actions are posted on our website for 30 days; see http://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/index.shtml for current postings. If the discharger(s) waives its right to a public hearing and pays the liability, a third party may still comment on the ACL complaint at any time during the public comment period. Following review of the comments, the Executive Officer or his delegate may withdraw the ACL complaint. An ACL complaint may be redrafted and reissued as appropriate. If there are no proposed changes to the ACL complaint after the 30 day public comment period the ACL complaint is sent to the Executive Officer for signature. After the Executive Officer signs the ACL complaint it becomes a final ACL order.</p>
Administrative Civil Liability (ACL) Order	Once the Executive Officer or Water Board issues the ACL order, the order imposing the ACL becomes effective and payment of the penalty is required 30 days from the date on which the order is issued. As stated in Resolution

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	<p>No. R3-2014-0043, the Water Board delegated to its Executive Officer the authority to settle matters of ACLs in amounts not exceeding \$300,000 on behalf of the Water Board. The Water Board also delegated its Executive Officer the authority to act on behalf of the Water Board as a hearing officer to hold evidentiary hearings and issue orders concerning MMP ACLs in any amount.</p> <p>The discharger(s) may petition the ACL order. The petition must be received by the State Water Board within 30 days of the Water Board action. Actions taken by the Executive Officer, pursuant to authority delegated by the Water Board, are considered final actions by the Water Board and are also subject to the 30-day time limit. When a petition is filed with the State Water Board challenging an ACL assessment, the assessment is not due or owed during the State Water Board review of the petition. In all other cases, the filing of a petition does not stay the obligation to comply with the Water Board order.</p>
Cleanup and Abatement Orders	<p>Cleanup and abatement orders (CAOs) pursuant to CWC section 13304 can be issued by the Water Board or the Executive Officer or Assistant Executive Officer as allowable under appropriate delegation of authority circumstances. CAOs may be issued to any person who has discharged or discharges waste into the waters of the state in violation of any waste discharge requirement or other order or prohibition issued by a Water Board or the State Water Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance (discharger). The CAO requires the discharger to clean up the waste or abate the effects of the waste, or both, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A CAO may also include requirements for the provision of replacement water for polluted water supplies.</p>
Proposed and Settled Expedited Payment Letter (EPL) Program	<p>An expedited payment letter (EPL) is a conditional offer to settle an ACL that provides a discharger with an opportunity to accept responsibility for and resolve outstanding violations subject to MMPs by waiving the right to a public hearing and providing full payment of the accrued mandatory penalties identified in the payment letter. The discharger can avoid the issuance of a formal enforcement action and settle the alleged violations identified in a notice of violation (NOV) that is included with the EPL by accepting the EPL offer. By settling the MMPs through the expedited payment program, Water Board enforcement staff will forego issuance of a formal ACL complaint and the potential implementation of a public hearing process, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV. The expedited payment program does not address liability for any violation that is not specifically identified in the NOV. Once the discharger signs the</p>

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	acceptance and waiver form, the EPL is posted for a 30 day public comment period. If no comments are received within the 30-day period and no new material facts become available, the Executive Officer will execute the EPL acceptance and waiver as a settlement agreement and stipulation for entry of ACL order assessing the uncontested MMP amount pursuant to Water Code section 13385. In lieu of paying the entire MMP assessment to the State Water Board Cleanup and Abatement Account, the discharger may elect to use part of the penalty to fund a supplemental environmental project.
Notices of Stormwater Non-compliance (NNC)	Notices of stormwater noncompliance (NNCs) - The Stormwater Enforcement Act of 1998 (Wat. Code, section 13399.25 et seq.) requires that each Water Board provide a notice of noncompliance to any stormwater dischargers who have failed to file a notice of intent to obtain coverage, a notice of non-applicability, a construction certification, or annual reports. If, after two notices, the discharger fails to file the applicable document, the Water Board typically issues an ACL complaint against the discharger.
Notice of Violation (NOV)	A notice of violation (NOV) letter is the most significant level of <u>informal</u> enforcement action and should be used only for confirmed violations. The NOV letter shall include a description of the specific violation(s), a summary of potential enforcement options available to address noncompliance (including potential ACL assessments), and a request for a certified, written response by a specified date that either confirms the correction of the violation or identifies a date by which the violation will be corrected. The NOV can be combined with a request for technical information pursuant to CWC section 13267. The summary of potential enforcement options must include appropriate citations to the CWC and must specify that the Water Board reserves the right to take any enforcement action authorized by law. When combining NOVs and CWC section 13267 requests, it should be noted that only requests made pursuant to section 13267 can be petitioned to the State Water Board.
Other – Time Schedule Orders and Cease and Desist Order	<p>Section 13300 time schedule orders (TSOs) - Pursuant to CWC section 13300, a Water Board can require the discharger to submit a time schedule that sets forth the actions the discharger will take to address actual or threatened discharges of waste in violation of requirements. Typically, the schedule, after any appropriate adjustments by the Water Board, is memorialized in an order. TSOs can be implemented as either an individual enforcement order or as part of another order (e.g., waste discharge requirements or CAO).</p> <p>Section 13308 TSOs - CWC section 13308 authorizes the Water Board to issue a prescribed compliance schedule and associated civil penalties if compliance is not achieved in accordance with the time schedule. The Water Board may issue a 13308 TSO if there is a threatened or continuing violation of a cleanup and abatement order, cease and desist order, or any requirement issued under CWC sections 13267 or 13383. The penalty must</p>

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	<p>be set based on an amount reasonably necessary to achieve compliance and may not contain any amount intended to punish or redress previous violations. The 13308 TSO provides the Water Boards with their primary mechanism for motivating compliance, and if necessary, assessing monetary penalties against federal facilities. Orders under this section are an important tool for regulating federal facilities.</p> <p>Cease and desist orders (CDOs) are adopted by the Water Board pursuant to California Water Code sections 13301 and 13303. CDOs may be issued to dischargers violating or threatening to violate WDRs or prohibitions prescribed by the Water Board or the State Water Board. CDOs are often issued to dischargers with chronic non-compliance problems. These problems are rarely amenable to a short-term solution. Often, compliance involves extensive capital improvements or operational changes. The CDO will usually contain a compliance schedule, including interim deadlines, interim effluent limits and a final compliance date. CDOs may also include restrictions on additional service connections to community sewer systems and combined stormwater/sewer systems.</p>

Additional information on violations, enforcement actions, and mandatory minimum penalties is available to the public from the following on-line sources:

State Water Board Office of Enforcement webpage:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

California Integrated Water Quality System (CIWQS):

http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml

State Water Board GeoTracker database:

<https://geotracker.waterboards.ca.gov/>