



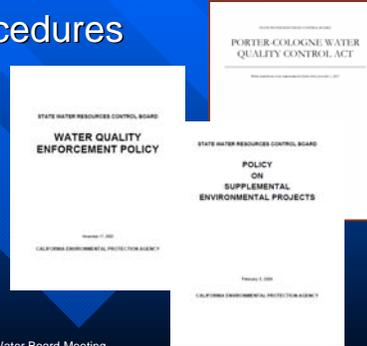
# Update of Central Valley Regional Water Quality Control Board Compliance and Enforcement Activities

## 2008-2009 Enforcement Report

28 January 2010

# Introduction

- Review of Enforcement
- Policies and Procedures
- Status and achievements
- Challenges
- Next steps



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Good morning Mr. Chairman, members of the Board. My name is Dan Radulescu. I am the Enforcement Coordinator for the Central Valley Region for the last two years. This is my second enforcement update report presentation.

I would like to welcome to our meeting Mr. Reed Sato, Director of the State Water Board's Office of Enforcement, and staff from his office, who accepted to participate to our meeting and provide an overview of the recent policies adopted by the State WaterBoard.

I believe the state of the region in enforcement continues to be very strong despite a number of challenges. However, that does not mean that there are no areas where we look for enhancements and improvements internally and externally in partnership with Office of Enforcement, Cal-EPA, U.S. EPA and the other Water Boards. This morning, I will highlight:

- Reasons for evaluating enforcement activities
- A brief overview of policies and procedures
- Current status and achievements and progress made from the previous report
- Challenges
- And next steps designed to improve and enhance our enforcement efforts

This report is a continuation of the updates that we made in March of 2005, August of 2006 and January 2008. Copies of those presentations are available on our website. We also include routine updates of our enforcement activities in the EO reports so you are by now familiar with much of the data that I will present.

# Dischargers Have No Right to Discharge Pollutants Without A Permit

- Protecting the environment is an important national goal
- Both Federal and State law gives us broad authority and discretion
- Enforcement is a priority

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It is significant to recognize that protecting the environment is an important national goal and that both federal and state law do not recognize a right to discharge pollutants without a permit and allow the degradation of the quality of the receiving waters.

The Clean Water Act is recognized as a tough law and it has very ambitious goals. Since its adoption more than 37 years ago we made significant progress but there is still plenty work to do.

In addition, state law gives us broad authority and discretion to take appropriate action in a fair, consistent and balanced manner tailoring enforcement responses based on the specifics of the case, particularities of our region and in concordance with the existing policies of the State Water Board.

Governor Schwarzenegger's Action Plan for California's Environment, the Cal/EPA Strategic Vision, State Water Board's Strategic Plan established a management priority of improving enforcement activities and outcomes. The Strategic Vision specifies: "Enforcement of the law must be consistent, predictable, fair, and equitable. There can be no equivocation or hesitation in the pursuit of individuals or businesses violating laws that protect human health and the environment."

## Central Valley Region Facts

- Nearly 40 % of State's Land area
- 18% of State's population
- 2/3 of State's drinking water
- Nearly 30 million acre-feet of reservoir storage



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Before I enter into the details of my presentation I would like to present a brief reminder of some of the impressive statistical facts about our region.

It covers about 60,000 sq. miles or almost 40% of the State, if Central Valley would be a state, it would be the 20<sup>th</sup> largest state of the Union by land mass;

18% of State's population lives here but it is still expected a significant growth in the next decade despite the current economic conditions;

In our Region there are 36 of 58 counties;

The largest west coast estuary;

2<sup>nd</sup> largest contiguous groundwater basin in US;

The majority of water quality issues faced throughout the state, such as discharges from dairies, irrigated lands, waste land application, timber harvest are in the Central Valley; if there is an issue throughout all of California, except ocean outfalls, we have to address it in our region too.

The Valley still faces high growth rates but that also brings serious concerns about water demands and the waste disposal associated with this growth.

There is significant effort to meet the challenges in front of us, and we have to balance our resources among competing priorities

# Central Valley Region Facts

## Program caseloads

- 190 individual NPDES Dischargers
- 1,400 dairies
- 1,375 clean up cases
- 2,300 UST cases
- 1,775 Non-15 WDRs
- 25,000 participants ILRP
- 6,200 storm water dischargers
- other

■ Total: >41,000

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As you can see from this slide we regulate a significant number of dischargers.

While the amount of staff time being spent on each discharger varies, we do have to prioritize our efforts to assure that our enforcement efforts are directed at those dischargers having the most impact on water quality.

We regulate

- close to one third of the individual National Pollutant Discharge Elimination System (NPDES) permits statewide (190);
- almost 1,200 facilities in the Non 15 Waste Discharge Requirement Program, nearly a third of the statewide total, with additional facilities pending Waste Discharge Requirements or waiver;
- in the Site Assessment and Cleanup Program we currently regulate about 410 facilities (which includes an aggregate total of approximately 1,300 individual sites);
- the Underground Storage Tank Program directly regulates 1,100 sites and provides oversight for an additional 1,550 sites;
- the Region's Storm Water Program regulates seven cities/urban areas with NPDES permits under Phase I, and 57 municipalities under Phase II, oversees 4,000 construction sites and 2,500 industrial stormwater sites, and manages the Caltrans Statewide Storm Water Permit for operations in our region; on average we handle over 1,200 water quality certifications; the Region's Irrigated Lands Regulatory Program is working to address waste discharges from over seven million acres of irrigated lands (with an aggregate of over 25,000 participants);
- there are approximately 1,500 confined animal facilities in the Region, approximately 80% of statewide caseload and we oversee over 1,000 Timber Harvest projects.

The overall total of the individual entities we currently regulate exceeds 41,000 individual dischargers of various sizes with a staff of 248 persons.

# Data Management

Databases			
CIWQS	GEOTRACKER	SMARTS	OTHER
Non 15	UST	Storm Water	Irrigated Lands
NPDES	Clean Up	Core Regulatory Program	
T27			
CAFOs			
Timber Harvest			
Water Quality Certification			

Core Regulatory Programs



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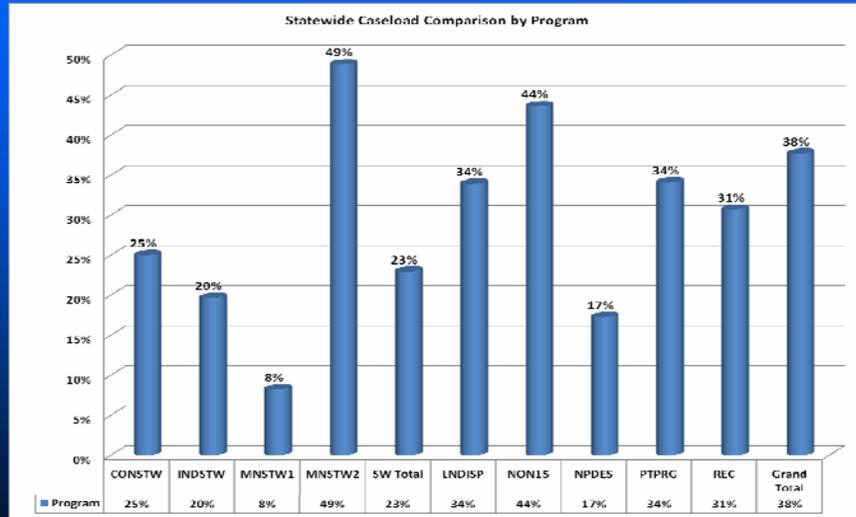
I will switch quickly to a description of our data management tools.

We use a number of databases, with different level of sophistication and integration to keep track of our activities. California Integrated Water Quality System, GEOTRACKER, Storm Water Multiple Application and Report Tracking System or SMARTS, and other local databases. Just recently, due to its size and specific needs, the storm water program is transitioning to the new SMARTS data module.

I also want to make a clarification about the meaning of “core regulatory” programs, which includes NPDES permittees with discharges to surface waters; Non Chapter 15 discharges to land permits; Title 27 discharges to land permits, including landfills; Dairies; Water Quality Certifications, storm water permittees, etc. The other regulatory programs include Above and Underground Storage Tanks, Clean up sites, Irrigated Lands Regulatory Program.

Data management is an important component of our activities, because it allows us to keep track and evaluate the effectiveness of our activities and it also allows us to be transparent and communicate to the public how we perform.

# Central Valley Region Facts



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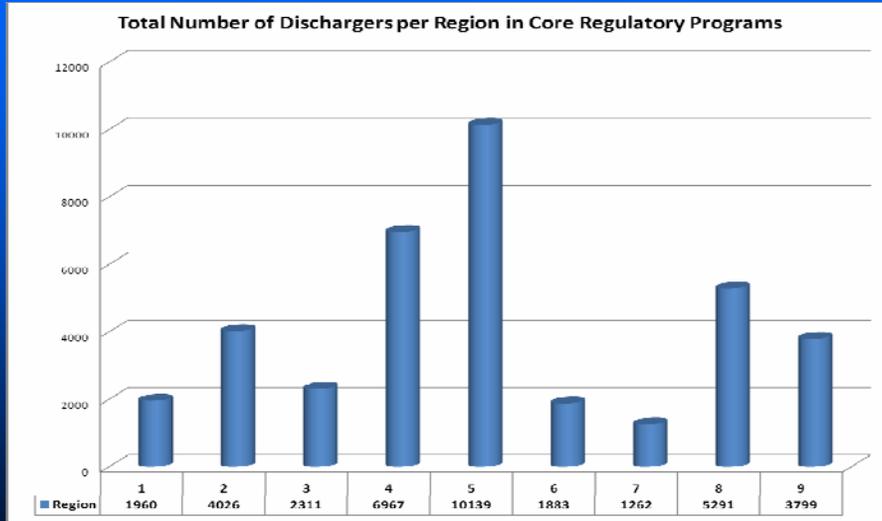
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Going back to Central Valley Region facts, the caseloads handled by the Regional Board staff in our core regulatory programs are impressive. For example, based on current data available in CIWQS we handle 54% of statewide Water Quality Certifications, 25% of all storm water dischargers, 20% of all major NPDES permits and 17% of all NPDES permits, 34% of all Title 27 Land Disposal sites and 44% of all Non-Chapter 15 permits. The same high percentages apply for the other regulatory programs, such as Underground Storage Tanks, Clean Up sites, Timber Harvest, etc.

# Central Valley Region Facts



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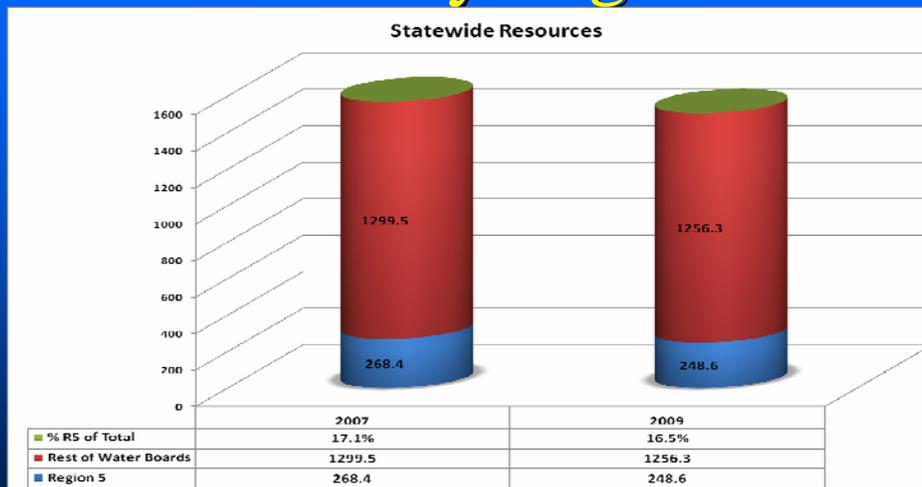
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Furthermore, this slide confirms that in the core regulatory programs the Central Valley Water Board has the highest aggregate active caseload of all the Water Boards.



# Central Valley Region Facts



■ State Water Resources Control Board - Analysis of Vacancies 11 January 2010

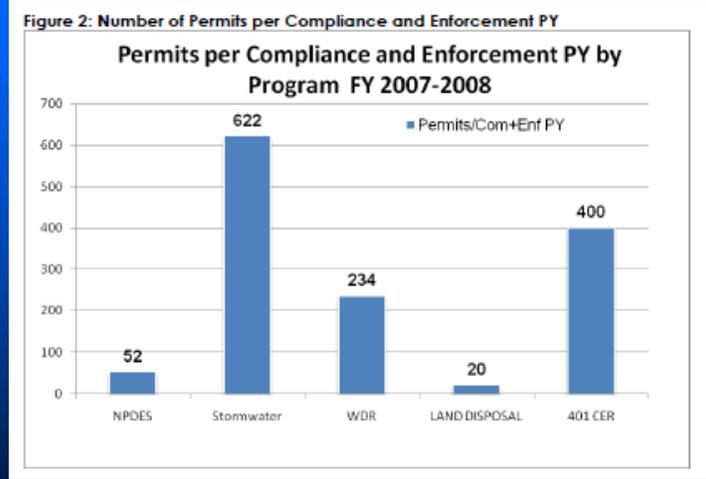
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Although we handle these impressive caseloads only 17% of the total statewide workforce in the Water Boards system is allocated to our Region. These figures represent statewide total number of employees comparison, our region's resources are shown as the blue bar of the graph while the brown top portion represent the resources allocated to the rest of the Water Boards.

# Central Valley Region Facts



■ Source: 2007-08 Annual Enforcement Report

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Another way to view this is to consider the number of individual dischargers each staff person is responsible for, to determine compliance and take appropriate enforcement when necessary. Although the values identified here represent statewide averages, this slide is representative for our region's caseload averages too.

## Reasons for Review of Policies and Procedures

- Governor's Action Plan for the Environment
- Cal EPA Enforcement Assessment
- U.S. EPA Enforcement Review
- Public Awareness

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Why the attention to enforcement?

The State and Regional Water Boards have a strong policy with respect to enforcement. In addition, the Governor, Cal/EPA, and the State Water Board support strong enforcement. For example, the Governor's Action plan for the Environment provides:

“Strict law enforcement is vital to assure environmental protection, prevent polluters from achieving unfair competitive advantage against complying competitors, send a message of public values, and establish conditions conducive to creativity and participation in voluntary initiatives.”

A few years ago, Cal EPA performed a survey on enforcement conducted by the Boards, Departments and Offices. Some of the findings included,

Strengths:

Water Boards have clear administrative enforcement authority, and make good use of this authority – particularly in view of the very limited resources dedicated to enforcement tasks.

The additional focus should be on:

- Increasing compliance rates
- Reducing risks to the environment
- Better data analysis and information availability

In 2007, USEPA reviewed enforcement activities performed in our region on behalf of the State of California for a nationwide enforcement status report. In its report, U.S. EPA concludes that we are performing excellent in enforcement in the NPDES program from a nationwide perspective. The report however identified that we have to improve our data tracking and data management capabilities. As a response, we significantly improved our data management in partnership with the State Water Board staff.

Public awareness and interest in our performance is another reason to evaluate and discuss our policies and procedures.

# Regional Water Quality Control Boards – What Do We Do?

Primary Functions:



- Planning
- Regulation
- Enforcement

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The foremost responsibility of the Regional Water Boards is to implement water quality laws, plans and policies to protect public health and the environment. Primary functions include, broadly speaking, Planning, Regulation and Enforcement. In our today's presentation we are addressing only the enforcement aspects of our activities.

## Enforcement: An Integral Component of Regional Board's Activities

- An enforcement action is typically the conclusion of a set of activities
  - Compliance determination
    - Monitoring report review
    - Compliance inspection
    - Field surveillance
  - Complaint investigation

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Typically, an enforcement action may be initiated by an inspection, a public complaint, a monitoring report review, field surveillance activities, etc. However, most of the times it is the conclusion of a sequence of activities and represents only the tip of the iceberg of those activities. It is not unusual that staff may spend hundreds of hours of work on a difficult enforcement case alone. That does not take into account the permitting, compliance determination activities preceding the enforcement action or the additional staff time that will be spent following up after the enforcement action is initiated to assure compliance with Board's actions.

## Basis for Enforcement

- The law prohibits discharging wastes without a permit
- Permits and Basin Plan contain conditions and provisions that must be complied with



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The law prohibits in general the discharges of pollutants without a permit unless there is a specific exemption.

Permits, orders and conditional waivers include: prohibitions, discharge specifications, provisions, task schedules, monitoring requirements. There are also conditions and prohibitions in the Basin Plan that must be complied with.

These form broadly the basis for enforcement.

**Why Enforce?**

Our chief goal is compliance. However, without a strong enforcement program, you cannot reasonably expect compliance.

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Our main goal is compliance. The permits are tailored to address specific water quality issues and protect beneficial uses. We depend on the dischargers to perform a self-evaluation of their performance and report to us if they meet the conditions of the permits or not. However, we need a strong enforcement program that verifies the level of compliance by all dischargers, determine if those that may need permits comply with the law, and take immediate enforcement when public health or the environment is in imminent danger of negative impact.

## Enforcement Goals

- Protect Public Health and the Environment
- Prevent Pollution
- Promote Prompt Cleanup of Existing Pollution
- Deterrence

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The goals of the enforcement are to protect public health and the environment, prevent pollution, promote prompt cleanup of existing pollution. In addition our enforcement activities serve as a deterrence for those that are tempted to lower their standard of compliance or ignore the law.

## Enforcement Goals

- Level Playing Field
- Compensatory Measure for Environmental Damage
- Encourage Self Compliance

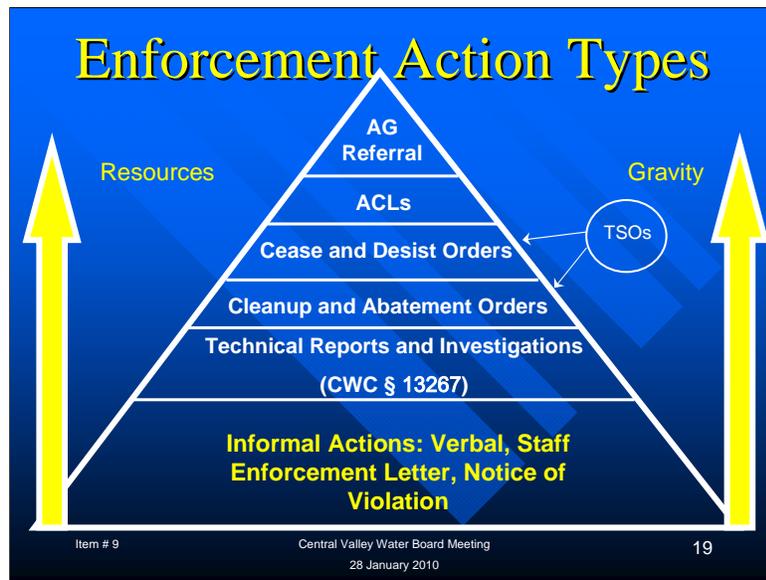
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We also strive to assure a level playing field – by this we mean that dischargers not complying should not gain unfair economic advantage over those complying, and our actions need to be consistent (those in like circumstances are treated alike).

In case of environmental damage the discharger has the responsibility to take remedial measures and we aim to promote and encourage self compliance by all our dischargers.



This slide is a simplistic depiction and an engineer's view of what is a complex process. I hope the lawyers in the room will excuse the liberties we took to assemble this diagram. I will draw your attention to a number of points. Please also keep in mind the number of individual dischargers that we regulate currently as presented before. I will go slowly since there is a lot of information on this one slide:

**First**

•Enforcement can be classified as **informal** which forms the base of the pyramid or **formal** which tend to be higher order activity.

**Informal actions** include verbal communications by staff, written communications (staff enforcement letters) and notices of violation. Through Water Code section **13267** Orders, which are formal actions, the Regional Water Board may require a discharger who discharges, or who proposes to discharge waste to furnish, on request, under penalty of perjury, technical or monitoring program reports that may be needed to determine the status of the discharge or proposed discharge of waste.

Consistent with State Water Board Enforcement Policy we use a **progressive enforcement approach**; generally we start at a lower or informal level which is cost effective and in many cases very effective in bringing about compliance. If compliance is not achieved, we move to increasingly more stringent actions until the discharger is in compliance. That is the “gravity” arrow. This arrow also reflects that if we are facing an egregious violation or significant threat to public health or the environment we will generally start with a more significant enforcement action, higher up in the pyramid, it also does not mean that we will move linearly from one enforcement action type to another, but we will use the appropriate tools to escalate the level of enforcement.

**Second point** from this pyramid – resources. The higher up the pyramid we go, the greater the associated staff time and resources to conduct an action it will be. Please also keep in mind the ancillary activities such as data management. In light of our limited resources, we have to continuously balance our efforts between permitting, planning, compliance and enforcement activities and prioritize our responses.

**Third point** – the base of the pyramid reflects the category of enforcement where we take the greatest number of actions. This is **informal** enforcement (staff spends a significant amount of time conducting informal enforcement). There are fewer actions in quantity as we move higher up the pyramid. As you note the bulk of the pyramid is composed by informal actions and 13267 investigative orders.

The rest of the actions identified in the top layers of the pyramid are in the Water Code and are formal enforceable orders and include Time Schedule Orders which provides dischargers time schedules to come into compliance under certain conditions.

**Fourth point** – As I already mentioned, the Water Code is powerful and well crafted in that it provides a wide variety of tools to the Regional Board for addressing the wide variety of violations and circumstances we encounter, and provides the flexibility to carefully tailor enforcement responses that are most appropriate to the situation and will be the most efficient and effective.

# Success Stories

- MMP Enforcement Initiative
- Supplemental Environmental Projects List

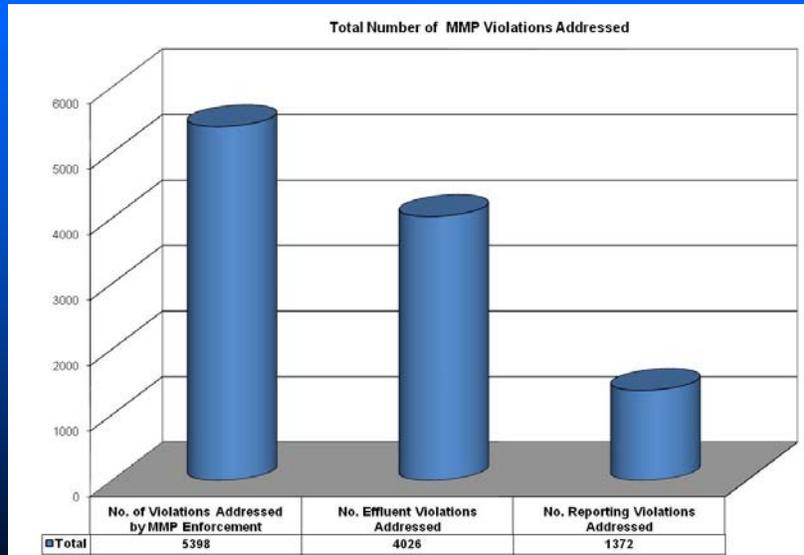
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A couple of the most significant achievements since the last report are the successful conclusion of the MMP Enforcement Initiative initiated by the Water Boards in Spring of 2008 and the adoption by the Board of the criteria for accepting projects on the Regional Board's Supplemental Environmental Projects List in order to facilitate and expedite formal enforcement activities, when appropriate, while providing additional opportunities for enhancing the quality of the waters in our region.

# MMP Enforcement Initiative



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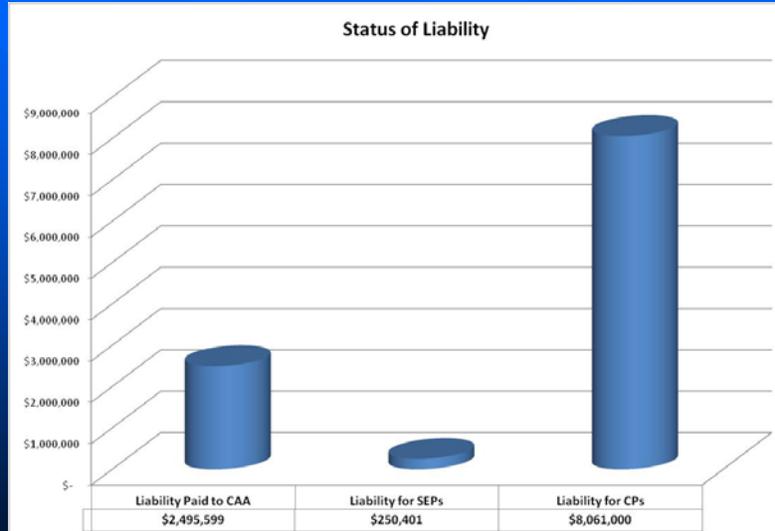
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In spring of 2008 the Water Boards launched the MMP Enforcement Initiative with the goal to address a backlog of NPDES permit violations that were not assessed the mandatory minimum penalty, since 2000, when the MMP statute took effect. A statewide effort was initiated to deal with this backlog. The Central Valley Water Board initiated the effort to address the MMP backlog in 2007 and accelerated it during the 2008 and 2009 calendar years.

Due to this effort, a backlog of over 6,500 violations has been addressed through issuance of 92 individual enforcement actions. The total amount of liabilities assessed exceed \$16 million.

# MMP Enforcement Initiative



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The vast majority of MMP violations have been resolved through payment or implementation of Compliance Projects. The Central Valley Water Board has the highest concentration of Small Communities with Financial Hardship among all the Water Boards. The MMP statute allows these communities to offset the liability for MMPs through the implementation of Compliance Projects that will lead to improvements in the level of treatment for the municipal wastewater treatment plants. Twenty-two small communities in our region took advantage of this opportunity and have agreed to implement CPs. A number of dischargers also decided to implement Supplemental Environmental Projects to offset a certain portion of the liability. For a number of enforcement actions settlement discussions are currently under way.

# Success Stories

## ■ Supplemental Environmental Projects List

The screenshot displays the website for the California Environmental Protection Agency's Central Valley Regional Water Quality Control Board. The page is titled "Enforcement" and features a sidebar with navigation links such as "Home", "About Us", "Public Notices", "Board Info", "Board Decisions", "Water Issues", "Public Comment", and "Press Room". The main content area is titled "Enforcement" and includes a section for "Supplemental Environmental & Regional Water Quality Improvement Projects List". This section contains text explaining the criteria for accepting proposals for projects that can be accepted on the Regional Board's Supplemental Environmental Project (SEP) and Regional Water Quality Improvement Projects (RWQIP) List. It also provides links to "Click here for SEP/RWQIP Criteria, 62 KB, PDF (ESC\_103) - (updated on 17 December 2009)" and "List of Accepted Supplemental Environmental Projects, 42 KB, PDF (ESC\_105) - (updated on 17 December 2009)".

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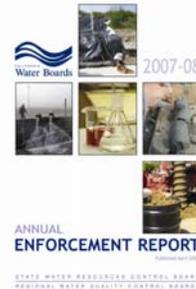
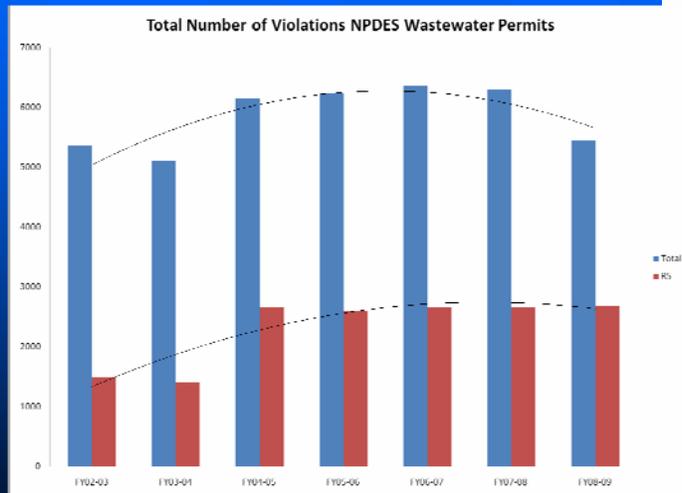
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As part of our enforcement actions we use Supplemental Environmental Projects in lieu of a portion of the monetary penalty when appropriate and if the projects are of good quality. SEPs are projects that enhance the beneficial uses of the waters of the state. SEPs can be a good means to retain resources within the region for water quality work, but these can require a significant amount of staff time. As mentioned already, the Board adopted the resolution that clarifies the criteria for projects to be accepted on the RB's SEP List, that is in conformance with the new SEP Policy. The SEP List may aid in expediting and streamlining the settlement of formal enforcement actions. A number of projects have been already accepted and implemented there are some currently under review.

The information about the SEP list is maintained on our web site as required by the SEP Policy.

# Current Status



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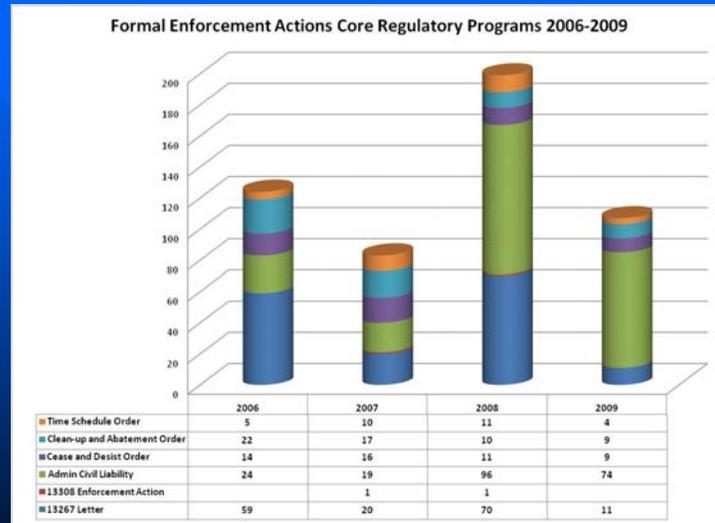
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Next, I would like to guide you through a number of slides that will show the status of enforcement actions in our region in the context of a statewide perspective. This information is publicly available on our web site and on the State Water Board web site.

Based on the data available in CIWQS, when looking at one of the core regulatory programs, NPDES, there is a jump in violations and enforcement tracking on a statewide basis that includes our Regional Board's. This jump is parallel with our transition to a new data management system, CIWQS, in mid 2005, followed by a leveling off in the following years. The spike in numbers after 2005 may be related to the increase in capturing MMPs violations which have leveled off since then due to the fact that dischargers become more aware of compliance needs and perhaps fine tuned their processes.

In addition this jump mirrors our reorganization leading to the creation of a new compliance and enforcement unit. There was also a concomitant effort to deal with the NPDES permits backlog.

# Current Status



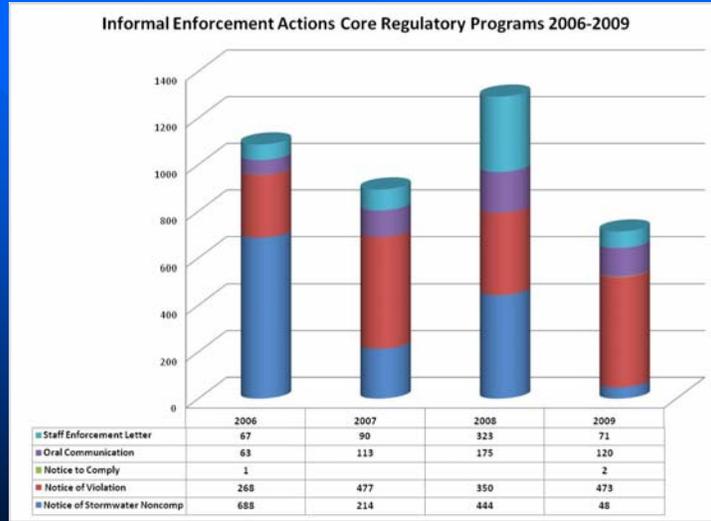
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This graph represents the formal enforcement actions undertaken by our Regional Board in the last four calendar years and include the ACLs issued between 2007 and 2009 to address the backlog of MMP violations. I believe the numbers speak for themselves.

# Current Status



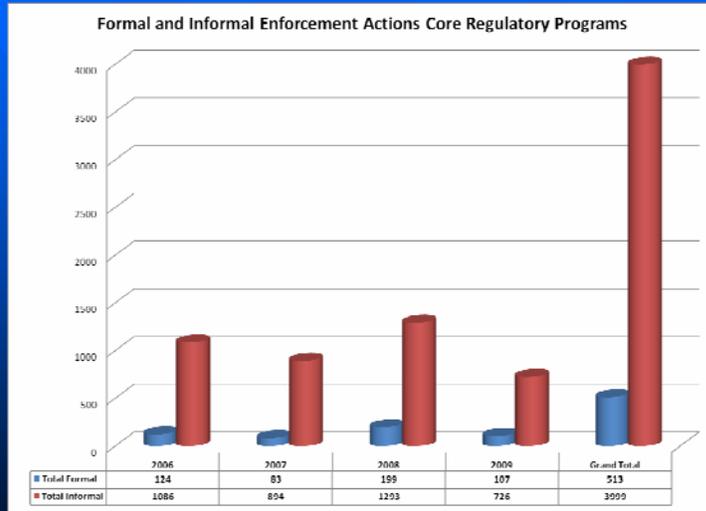
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Similarly, although this graph represents informal actions from the core regulatory programs in the last four calendar years. I included the storm water non compliance notices in this category. The numbers seem lower for 2009 but that is due incomplete data due to the transition to the new storm water data management module.

# Current Status



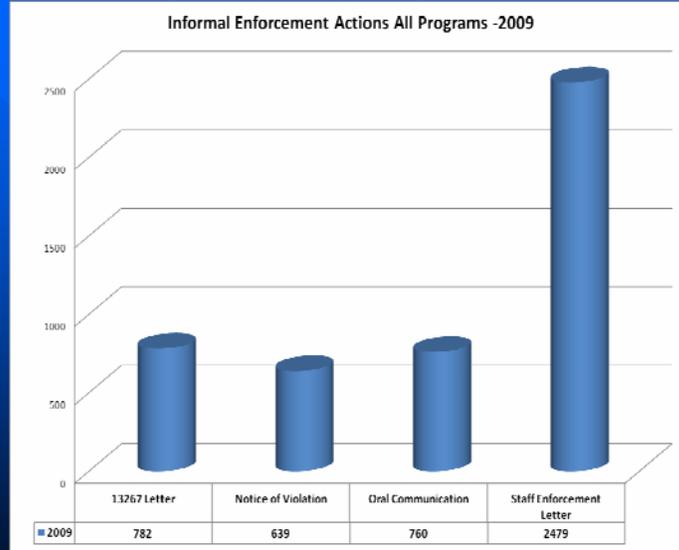
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This chart provides confirmation regarding the balance between formal and informal enforcement actions as I stated in the “pyramid” slide. Most of the formal actions from all programs are captured in this graph. Again, the seemingly lower count for 2009 informal actions is due to incomplete data from the Storm Water Program. However, the four year total graph at the right of the chart is very revealing.

# Current Status



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Furthermore, when aggregating data from all the data management sources for all programs for informal activities, (unfortunately I tracked this data more closely only starting in 2009) the counts themselves are even more impressive and they are reflective of the level of effort staff expended to bring about compliance.

# Next Steps

- Prioritization
- Data Management – transition to electronic SMR submittal
- Transition to the new policies
- Resources
- Transparency

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Although our performance was strong, we know there are certain areas where there is room for improvement. Some of the areas we intend to focus are:

Prioritization of our enforcement responses. We hope that the new Enforcement Policy with its new features will allow us to prioritize the violations and that will enhance our ability to also prioritize our enforcement responses. We will continue to use and enhance our internal processes and procedures to achieve this goal.

Data Management and the transition to the new electronic submittal system of the NPDES self monitoring reports.

In addition, we need to transition to implementing the requirements of the new policies adopted by the State Water Board, however some of those efforts will be outlined by Mr. Sato later on.

Resources remain a constant challenge in these difficult budgetary times.

We will continue to work with the dischargers that make efforts to maintain an adequate level of compliance and we will not hesitate to take action by using the progressive enforcement approach against those that will attempt to lower their standard.

We will continue to strive for firm but fair and balanced enforcement and we will continue to focus our attention on the critical water quality issues confronting our region. We will continue to keep the public aware of our activities and enhance our information dissemination tools.

We welcome your guidance and recommendations if our strategy is meeting the expectations and goals set out for our region.

# Questions?



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In conclusion I would summarize that the state of the region on enforcement is strong. Our region continues to be a leader and a top performer in many areas of compliance and enforcement although we face challenges of significant magnitude and complexity.

If there are any inaccuracies in this presentation the responsibility is all mine. I thank you very much for your attention and I am ready to answer any of your questions.

I would like to introduce Mr. Reed Sato, Director of the Office of Enforcement at the State Water Board, that will provide us with a brief overview of the new policies adopted by the State Water Board.