



STAFF REPORT

Water Board Annual Enforcement Program Update

California Regional Water Quality Control Board
Lahontan Region

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INTRODUCTION

The California Regional Water Quality Control Board, Lahontan Region (Water Board) considers enforcement a key component of its core regulatory programs to ensure water quality laws, regulations, and permits are complied with for protecting water quality and beneficial uses. The Water Board uses a combination of informal and formal enforcement actions in line with State Water Resources Control Board (State Water Board) and Regional Boards' progressive enforcement approach [State Water Resources Control Board Water Quality Enforcement Policy, effective October 5, 2017] of returning permittees and others to compliance with water quality laws, regulations, and permit conditions. The Water Board's regulatory staff plays a key role in effectively re-establishing compliance using primarily informal enforcement actions (i.e., verbal, staff enforcement letters/emails, Notices of Violation), which can typically be quickly issued and resolved using relatively minimal resources. Regulatory staff meet its compliance checking and enforcement responsibilities using core regulatory program resources, leaving the Water Board's very limited enforcement-dedicated resources for work on formal enforcement actions.

The Water Board receives enforcement-dedicated funding for nearly two full-time positions, of which approximately 0.5 PY is dedicated to programmatic/administrative activities (e.g., regularly scheduled state-wide Roundtable and regional Enforcement Committee meetings, state-wide policy and program-related projects, routine and special report development and presentation). Water Board staff focuses on using the remaining enforcement-dedicated resources for developing and implementing formal enforcement actions (e.g., cleanup and abatement orders; administrative civil liability complaints, orders, and settlements; time schedule orders; and the investigative work associated with these actions). Many formal enforcement actions and related investigative activities are resource and process intensive, sometimes involving separation of functions and typically address a limited, although critical in nature, number of violations. Therefore, staff attempts to limit pursuit of such actions to the most egregious violations and impacts to beneficial uses.

In spite of very limited enforcement-dedicated resources, 2018 saw the Water Board effectively using informal enforcement to address significant numbers of violations, successfully implementing its Supplemental Environmental Project Program, begin developing more performance-based permits with clearly stated requirements (improved enforceability), and continued to monitor most of its large facilities which have been under Water Board orders for many years. Even with these successes, there remain numerous challenges for the Water Board in enforcing the state's water quality laws, regulations, and permits. The region is large (approximately 25 percent of California's land mass) and mostly rural in nature. This creates additional challenges in assessing compliance for those facilities and projects with permit coverage, and identifying and addressing unpermitted facilities and their waste discharges. Additionally, much of the region is managed by federal agencies, which further increases the complexity of an already process-intensive enforcement program.

Looking forward, enforcement will continue to play a critical role in protecting and restoring the region's water quality and beneficial uses. Knowing that there is a greater need for enforcement, informal and formal, than resources can address, it is important that the Water Board and its staff clearly identify and follow well-defined priorities; continue building upon the region's use of informal enforcement actions; and continue identifying and implementing actions intended to improve program effectiveness and efficiency, such as the Water Board's Supplemental Environmental Project Program. This 2019 Annual Enforcement Report identifies the Water Board's primary enforcement priorities that will focus and direct staff action in 2019, demonstrates how progressive enforcement has effectively helped increase compliance and resolved violations, identifies the highest priority violations to focus limited enforcement-dedicated resources upon, and provides recommendations for program improvements.

ANNUAL PRIORITIES

Water Board Enforcement Unit staff will focus on addressing formal enforcement issues and will assist Regulatory Unit staff who are implementing informal enforcement. Given the extremely limited staff resources for the region's Enforcement Program, Water Board staff, collectively (Regulatory and Enforcement staff), plan to focus on the annual priorities discussed below.

- a. **Replacement Drinking Water** - Provide replacement water (e.g. drinking water or whole house) to affected parties when necessary based on impaired beneficial uses, with emphasis on affected disadvantaged communities. Examples where this is currently occurring include the area affected by the Barstow perchlorate plume, and areas where groundwater is affected by nitrates near dairies in the southern part of the region.
- b. **Cleanup Pollution Sources** - Direct investigations and timely cleanup of groundwater and surface water pollution sources. Examples include the South Lake Tahoe South Y PCE regional groundwater contamination, groundwater contamination associated with Pacific Gas and Electric in the Hinkley area, and groundwater contamination at various Department of Defense facilities throughout the region.
- c. **Increased Permit Compliance** - Increase inspections and monitoring and reporting activities to more completely identify instances of non-compliance with a focus on storm water discharges and projects involving discharging dredge or fill materials to the region's surface waters, including wetlands. Examples include the Upper Truckee River Restoration Project, timber harvest projects, and numerous permitted and unpermitted industrial facilities and construction projects (many in the southern part of the region).

- d. **Targeted Actions** - Focused enforcement efforts addressing specific waste discharge and facility/industry categories. Examples may include bringing unpermitted auto recyclers into compliance with NPDES Industrial Storm Water Discharge Program requirements, and working jointly with the Department of Toxic Substances to bring Department of Defense (DOD) facilities into compliance with regulations to protect human health and the environment.
- e. **Informal Enforcement** - Continue addressing violations using the lowest effective level of enforcement following the principles of progressive enforcement. Examples for how progressive enforcement may be conducted with a discharger include beginning with a phone call or field meeting at the site, then issuing a staff enforcement letter or Notice of Violation, and as conditions and responses dictate, potentially elevating to formal enforcement action such as an Administrative Civil Liability Complaint or a Cleanup and Abatement Order.
- f. **Formal Enforcement Action** – Quickly initiate formal enforcement actions targeting Class A violations related to adverse impacts to human health, aquatic habitat/resources, and that undermine the integrity of the Water Board’s regulatory programs.

PROGRESSIVE ENFORCEMENT

Because of the Water Board’s resource limitations, the backbone to enforcement in the Lahontan Region is primarily borne by the Water Board’s regulatory staff working in the core regulatory programs, such as NPDES Wastewater, NPDES Storm Water, Department of Defense, Non-Point Source, Waste Discharge Requirements, and Land Disposal. The Regulatory Unit staff routinely work directly with permittees, dischargers, and the public to handle permitting issues, conduct routine compliance inspections, review monitoring and technical reports, and answer public questions about specific activities under the Water Board’s authority. When Regulatory Unit staff identifies non-compliance, informal enforcement has proven to be our most efficient and effective method to restore compliance. However, the Regulatory Unit staff also are underfunded which adversely affects the Water Board’s Enforcement Program.

Informal enforcement is the Water Board’s most effective way to quickly resolve violations. Tables 1 and 2, below, show the numbers and types of informal and formal enforcement actions taken by the Water Board between from January 1, 2015 through December 31, 2018. The numbers in Table 2 (Formal Enforcement Actions) do not include time schedule orders or technical reporting requirements incorporated into permits or non-enforcement investigative orders.

Table 1 - Informal Enforcement Actions (2015 – 2018)

	Year				Total
	2015	2016	2017	2018	
Notice of Violation	13	5	2	7	27
Staff Enforcement Letter	46	49	23	43	161
Verbal Communication	49	89	30	31	199
Total Informal Enforcement Actions	108	143	55	81	387
Underway Informal Enforcement Actions	10	5	9	18	42
Completed Informal Enforcement Actions	98	138	46	63	345

Table 2 - Formal Enforcement Action (2015-2018)

	Year				Total
	2015	2016	2017	2018	
13267 Investigative Order (Enforcement)	2	0	0	0	2
Administrative Civil Liability	1	2	0	0	3
Cease and Desist Order	1	0	0	0	1
Cleanup and Abatement Order	1	1	1	0	3
Expedited Payment Letter	0	5	1	0	6
Time Schedule Order (Enforcement Orders Only)	1	0	0	0	1
*1st Annual Report Notice of Non-Compliance (Storm Water Report)	0	65	189	0	254
*2nd Annual Report Notice of Non-Compliance (Storm Water Report)	0	30	40	59	129
Notice to Comply	0	4	1	0	5
*Notice of Stormwater Non-Compliance (General WDR Certification)	71	0	0	0	71
Stipulated Penalty	0	1	0	0	1
Total Formal Enforcement Actions	77	108	232	59	476
Underway Formal Enforcement Actions	53	39	75	30	197
Completed Formal Enforcement Actions	24	69	157	29	279

*Low-level formal enforcement actions similar to Notice of Violation (informal enforcement action)

The tables actually show more formal enforcement actions than informal enforcement actions being taken during the 2015-2018 time period. The reason for this is Water Board staff's targeted effort to increase compliance with annual reporting requirements for the NPDES Storm Water Industrial and Construction General Permits. The Water Code requires staff to issue up to two Notices of Non-Compliance followed by a

followed by a mandatory minimum penalty, if the enrollee does not submit the required annual report. The Enforcement Policy identifies Notices of Non-Compliance as formal enforcement actions, but they are more on par with Notices of Violation (informal enforcement action). If these low-level formal enforcement actions were removed from Table 2, then informal enforcement actions would outnumber formal enforcement actions by a 16 to 1 ratio.

Informal enforcement actions designated as “Historical” typically indicate the discharger took action to return to compliance in response to the enforcement action, preventing further water quality degradation and/or adverse impacts to beneficial uses from continuing. Verbal communication and staff enforcement letters/emails in many instances provide a discharger with immediate, constructive feedback regarding instances of non-compliance, allowing the discharger to quickly respond and return to compliance. Such interaction typically takes place through a phone call or during an inspection and takes less than an hour to complete. A Notice of Violation, while typically reserved for more significant instances of non-compliance and takes additional time to issue (40 hours), is also an effective informal enforcement action for documenting and addressing non-compliance. Compare those time commitments to a range of 100 hours (simple) – 500 hours (more complex) for a Cleanup and Abatement Order and a range of 500 hours – 1,000 hours to bring a Cease and Desist Order or Administrative Civil Liability to the Water Board for a contested hearing. These time estimates do not include the time to implement the formal enforcement orders, which is also substantial. Informal enforcement can also strengthen cooperation between the Water Board and the regulated community, leading to greater water quality and beneficial use protection. Whereas, formal enforcement actions can be much more contentious and litigious in nature. These are some of the factors that account for an approximately 89 percent resolution rate for informal enforcement actions and an approximately 58 percent resolution rate for formal enforcement actions.

Regulatory staff is not limited to just informal enforcement when addressing instances of non-compliance. There have been and will continue to be situations when our Regulatory Unit staff finds it is more effective to use the Water Board’s regulatory authority in combination with formal enforcement actions to resolve compliance issues. Regulatory staff has on several occasions developed Waste Discharge Requirements (WDRs) that incorporate requirements for submitting technical reports (Water Code section 13267) and establish compliance schedules or Time Schedule Order (TSO) (Water Code section 13300) as an effective means to getting dischargers under permit and addressing significant system deficiencies. The outcome of such action is improved protection of the region’s water resources and their beneficial uses. Permit writing takes a considerable amount of time, sometimes upwards of several hundreds of hours for one individual permit, but the Water Board views these permitting actions as critical and the most effective method to ensure long-term compliance with the applicable water quality regulations.

Tables 1 and 2 also reflect how vulnerable the Water Board's Enforcement Program is to changes in staffing and/or resources. Table 1 shows a significant decrease in informal enforcement actions beginning in 2017 and continuing into 2018. Table 2 shows a similar decrease in 2018. This decreasing trend is due to the significant staff turnover the Region experienced for the past two years and the resulting influx of new staff. It is anticipated that informal and formal enforcement activity will begin to increase again provided staffing and resources remain stable.

Enforcement Unit staff use our limited enforcement-dedicated resources to update several statewide violation-related databases, generate monthly unauthorized spill report, compile a quarterly enforcement report, and work closely with the State Water Board's Office of Enforcement to develop formal enforcement actions, such as Cleanup and Abatement Orders, Ceases and Desist Orders and Administrative Civil Liability Complaints (ACL). Formal enforcement, specifically assessment of penalties under an Administrative Civil Liability (ACL) Complaints or a related settlement, are the types of formal enforcement actions that take considerable time (resources). Because of the resource limitations, the Enforcement Unit staff must work closely with the Office of Enforcement (OE) to carry the formal enforcement actions forward. The OE has recently been increasing its technical staff (Engineers, Geologists, Scientists), who can assist the Lahontan and the other regional boards with formal enforcement actions.

Formal enforcement, especially ACLs, take considerable staff resources to bring to a formal hearing before the Water Board. The average time to issue an ACL Complaint and bring it before the Water Board at a hearing takes about 500 hours – 1,000 hours of collective staff time. This time includes the data collection needed for supporting evidence, the justification and supporting documentation for the ACL penalty calculator, and the documents needed to present a contested hearing before the Water Board. Often, Enforcement Unit staff find it advantageous to bring settlements before the Water Board in lieu of an ACL Order and contested hearing. The settlement process has the potential to streamline resolution of alleged violations. A newly proposed element in the settlement process is to include a workshop on a Proposed Settlement Agreement. In this type of workshop, the Discharger and the Water Board Prosecution Team would discuss the key elements of the settlement in a public setting and obtain Water Board member input on the potential settlement. Staff anticipates incorporating the workshop into the settlement process for some complex and/or high-value settlement proposals.

PRIORITIZING CLASS A VIOLATION

The 2017 Enforcement Policy has revised the violation classification system from three categories (1, 2, and 3) to two categories (A and B). Class A violations are those that “potentially pose an immediate and substantial threat to beneficial uses and/or that have the potential to individually or cumulatively cause significant detrimental impacts to human health or the environment.” The Enforcement Policy also provides direction regarding how to prioritize Class A violations for action. In line with the Enforcement Policy and Water Board direction, Enforcement Unit staff will first focus on addressing violations linked to adversely affected municipal and domestic water supplies, especially

those of disadvantaged communities. This means taking enforcement action that provides replacement water as quickly as possible in fulfillment of the state's Human Right to Water. Staff will then turn its attention towards addressing pollutant source control and groundwater cleanup. Staff will also prioritize action against Class A violations that are linked to damaging or destroying aquatic ecosystems.

RECOMMENDATIONS

1. **Speed Up Formal Enforcement** – Many formal enforcement actions (e.g., Cleanup and Abatement Orders (CAOs), Cease and Desist Orders (CDOs), ACLs) can be or are process heavy. The combination of extensive documentation, evidence gathering and production, and procedural steps tied to developing a formal enforcement action, such as an ACL Complaint, typically has taken hundreds of hours to complete. Other state agencies, such as the California Air Resources Control Board, have more efficient enforcement processes. Speeding up the lengthy timelines for CAO, CDOs, and ACLs will help resolve violations more quickly and will send a stronger message of serious enforcement to other permittees, dischargers, and the public. The formal enforcement steps must follow strict due process and other legal steps, so the best way to speed these formal enforcement actions is to add more staff. Additional staff will help to minimize or even prevent what is now an inevitable backlog of cases requiring formal enforcement action to resolve. If additional staff cannot be added to work on formal enforcement, then other ideas to speed up the timelines may be needed.
2. **Expedite Minor Violation Fines Process** – Resolving repeated minor violations, such as one of the lower priority Class B violation types (implementing/maintaining best management practices), can take as much time to resolve as major violations being addressed by an ACL Complaint, due to multiple follow-up inspections and informal enforcement, and documentation/database management. A simple “Fix-It” type ticket to levy relatively minor fine amounts (i.e., \$500 – \$5,000) for repetitive minor violations could reduce the demand on staff resources and prevent waste discharges and additional and significant enforcement from occurring. Such an enforcement tool could free up resources allowing Regulatory Unit staff and Enforcement Unit staff to address other violations that are currently out of reach due to resource limitations. Developing such an enforcement tool should be a state-wide effort to promote consistent use and process.
3. **Increase Active Groundwater Cleanup** – We want to increase the pace and scale of active groundwater remediation sites because most drinking water for the Lahontan Region comes from ground water supplies. The region has groundwater pollution from various types of sites, including Department of Defense bases, dairies, waste water treatment plants, dry cleaners, land disposal sites, and petroleum fueling stations. Providing regulatory oversight at active groundwater cleanup sites consumes considerable time from our Regulatory Unit staff, since they have to review regular monitoring reports, review subsurface investigation workplans, and evaluate hydrogeologic information to assess the remediation. Examples include

regulatory oversight for many cases, including Pacific Gas & Electric Co. hexavalent chromium cleanup in Hinkley, South Lake Tahoe Y PCE contamination affecting and threatening more than 70 percent of drinking water supply for South Lake Tahoe, perchlorate and nitrate pollution in the Barstow area that has affected private water supply wells serving disadvantaged communities, and nitrate pollution that has caused Golden State Water Company to shut down its Bradshaw Well Field in Barstow. It will be necessary to elevate the cleanup element of groundwater contamination cases to a higher priority, as staff has done for this coming year, and dedicate resources for future years.

4. **Expand Core Regulatory Programs** – Over the past decade, resources for Regulatory Unit staff have been increasingly divided to address an influx of new regulatory programs, policies, and general orders for the Water Boards to implement without accompanying resources. The demand for additional enforcement is also contributing to the further dilution of resources for Regulatory Unit staff and is not being countered at all due to the region’s severely limited enforcement-dedicated resources. Additional resources for the Water Board’s Core Regulatory Programs (e.g., NPDES, WDR, Land Disposal, UST, Non-Point Source) would allow Regulatory Unit staff to better address the currently known non-compliance associated with regulated facilities, and to begin addressing the non-compliance associated with unregulated facilities and waste discharges that are known and have yet to be identified.
5. **Additional Enforcement Staff** – Though most of our enforcement actions are performed by our Regulatory Unit staff, the 1.9 PY for Enforcement Unit staff can only chip away at some enforcement tasks. By adding at least 3.0 PY staff to the Enforcement Unit, we will be able to more readily resolve significant violations, increase the deterrent effect of quick formal enforcement, begin to address the dischargers that refuse to enroll under or to comply with the numerous general orders that have been issued by the State Water Board, all of which will provide for better protection and more rapid restoration of water quality and the beneficial uses of the region’s water resources.

Formal enforcement action cases involving separation of functions (e.g., Cease and Desist Orders, ACLs, TSOs) would also truly benefit from resources that are dedicated to fulfilling Advisory Team responsibilities, which can be considerable for complex or controversial enforcement cases. Currently, Advisory Team members rely upon resources from the regulatory program related to the alleged violations, in order to conduct their business. This approach, which is necessary due to the region’s limited enforcement-dedicated resources, either delays progress on priority work in the related non-enforcement program, or slows progress on the enforcement case, or both. Resources dedicated to Advisory Team functions would need to be in addition to those identified, above, for Enforcement Unit staff.

6. **Improve Quality of Evidence** – Over the past decade, the statewide Enforcement Policy has undergone two updates involving significant revisions. Though the changes have been improving Policy implementation, many individual cases brought before the Water Board for enforcement consideration during this same time period have been lacking adequate evidence to support the proposed formal enforcement action and its requirements. The lack of sufficient evidence has shifted an enormous workload to the Water Board’s Advisory Team, significantly increasing the amount of time to issue the enforcement action and increasing the adverse impact upon non-enforcement program resources, as discussed in the paragraph above. In a number of past cases, the Advisory Team spent countless hours writing new orders and requirements because the Prosecution Team’s proposal was not sufficiently supported by the evidence provided. Improving the quality of evidence for enforcement actions is a critical task for the Enforcement Unit staff and is a priority on all enforcement cases.

7. **Expand Participation in SEP Policy Agreements** – Enforcement Unit staff has to date established SEP Partnership Agreements with partnership organizations covering the Mojave River Basin and Antelope Valley and surrounding areas in the south, and covering the Carson River, Lake Tahoe, and Truckee River Basins in the north. Such partnerships should prove most valuable due to the demand for Water Board enforcement activity involving SEPs in those areas. We would now like to develop similar partnership in the Owens Valley and Susan River/Honey Lake areas. While the demand for enforcement activity involving SEPs has historically been lower in the Owens Valley and Susan River/Honey Lake areas than the above-reference areas, Enforcement Unit staff can see a potentially increasing need for such partnerships in the future.

8. **Continue Enforcement at Lowest Effective Level** – The Enforcement Policy and the Water Board’s direction to staff is to have the discharger return to compliance using the lowest effective enforcement action (progressive enforcement). The Water Board’s Regulatory Unit staff typically responds to most of the region’s non-compliance with water quality laws, regulations, and permit conditions. Regulatory Unit staff rely heavily upon and effectively address the majority of non-compliance they respond to with informal enforcement actions. There are two reasons for this. The first is that the Regulatory Unit staff is in the best position due to their facility knowledge, experience, and working relationships to work with dischargers and permittees to quickly return dischargers/permittees to compliance. Additionally, the Enforcement Unit staff’s enforcement-dedicated resources (1.9 PYs) are already inadequate to address the current demand for formal enforcement actions, especially considering that up to 0.5 PY of the 1.9 PYs are needed to meet statewide databases maintenance requirements, reporting requirements, and meeting requirements (programmatic and administrative activities). It is one of our priorities to resolve violations at the lowest effective level and our Regulatory Unit are performing quite well on that task, and would do even better with additional resources.

9. **Obtain Technical Assistance from Office of Enforcement** – Since formal enforcement is a priority and takes a considerable amount of staff resources, obtaining help from technical staff in the State Water Board’s Office of Enforcement (OE) could help us more readily process formal enforcement, such as ACLs and Mandatory Minimum Penalties. The technical assistance from OE could help Water Board staff to compiling evidence, calculating liability amounts, and writing the technical justifications to support the penalty calculator and the penalty methodology. Enforcement Unit staff anticipate drawing upon OE’s technical staff more heavily than it has done in the past.

10. **Prioritize Actions Related to Department of Defense Facilities** – The Department of Defense (DoD) bases, such as Edwards Air Force Base, George Air Force Base, China Lake Naval Air Weapons Station, Sierra Army Depot, and Marine Corps Logistics Base, each have numerous groundwater pollution issues. Work at these DoD facilities is typically slow because of the many layers of document submittal and review, involving US EPA, compliance with accepted Federal Facility Agreements, and requirements in adopted Records of Decision. Implementation of remedies and cleanup can be delayed by the lengthy time involved in working with all the federal and state partners and following all the various protocols and dispute-resolution process. To better protect the groundwater resources in the region, the Water Board should prioritize actions related to DoD facilities to ensure the groundwater resources are cleaned up and human and environmental health protected and/or restored.