

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Wednesday, July 11, 2018
Regional Water Board Office
Santa Rosa, California

ITEM: 7

SUBJECT: Update on Regional Water Board Enforcement Priorities (Yvonne West/Diana Henriouille)

BOARD ACTION: This is an informational item. No action will be taken by the Regional Water Board.

BACKGROUND: On April 4, 2017, the State Water Resources Control Board adopted the 2017 Water Quality Enforcement Policy (Policy). The Policy, which became effective October 5, 2017, revised the previous 2010 Water Quality Enforcement Policy. The 2017 Policy includes a prioritization process for enforcement actions, revisions to the methodology for calculating administrative civil liabilities (ACLs), changes to reflect recently-adopted legislation and Water Board policies addressing environmental justice and the human right to water, and a more transparent description of the discretionary enforcement prioritization process. At the May 2017 Regional Water Board meeting, Cris Carrigan, Director of the Office of Enforcement, provided the Board with an update on the Enforcement Policy, including a review of the 2017 Policy.

With respect to enforcement prioritization, the 2017 Policy indicates that “[o]n a biennial basis, the State Water Board Office of Enforcement will propose statewide enforcement priorities, with the expectation that some proposed statewide enforcement priorities will become statewide enforcement initiatives. These initiatives may be based on types of violations, individual regulatory programs, particular watersheds, or any other combined aspect of the regulatory framework in which an increased enforcement presence may be required on a statewide or multi-regional basis.”

In addition, the 2017 Policy recommends that on an annual basis, enforcement staff for each Regional Water Board “seek input at a regularly noticed public meeting of the Regional Water Board and consider identifying general enforcement priorities based on input from members of the public and Regional Water Board members within thirty (30) days thereafter.”

Over recent years, staff of the North Coast Region have periodically presented to the Board a review of the region's enforcement efforts and priorities, most recently at the January 2015 Board meeting. As reported at that time, the staff of the enforcement unit, renamed the Compliance Assurance unit, had been devoting increased time and new staff resources towards developing a program to regulate waste discharges associated with cannabis cultivation.

Those efforts continued over the next three years with the Board's adoption of Order No. R1-2015-0023 in August 2015, and subsequent staff implementation of the Order, as well as ongoing outreach and education, enforcement, interagency coordination, and hiring and training staff to build an expanding new program.

From 2016 to the present, the North Coast Region's cannabis program has expanded into first one and then two new cannabis regulatory units, leading to creation of a new division housing units Cannabis Regulatory Unit 1, Cannabis Regulatory Unit 2, and Compliance Assurance. Meanwhile, dedicated enforcement staff within the division have continued to work both on complex cannabis cleanup and enforcement cases, as well as officewide non-cannabis enforcement efforts. As reported at the January 2015 Board meeting, such efforts included, and have continued to include investigating, tracking, and addressing water quality related complaints; regularly assessing mandatory minimum penalties (MMPs) for NDPES dischargers; assisting staff throughout the office with high level enforcement efforts; coordinating with other agencies; and assisting in officewide enforcement priorities and prioritization efforts. Given limited staff resources, enforcement staff have needed to prioritize enforcement-related work. Over the past three years, staff's continued efforts have reduced MMP backlog, increased officewide enforcement capabilities, and allowed this region to participate in a number of complex enforcement cases in coordination with staff of other state, local, and/or federal agencies. Entering a new fiscal year with an expansion and reorganization nearly complete, a review and discussion of statewide and regional enforcement priorities is timely.

DISCUSSION: In April 2018, the Office of Enforcement posted on its website statewide and regional enforcement priorities for the year.

https://www.waterboards.ca.gov/water_issues/programs/enforcement/priorities.html

State Board priorities for statewide enforcement include the following:

- Promote enforcement and compliance assistance in Disadvantaged Communities and communities with financial hardship.
- Focus on a method for prioritizing and prosecuting enforcement cases for discharge violations of the industrial and construction general stormwater permits.
- Focus on using all available regulatory tools, including enforcement tools, to compel responsible parties to provide replacement water to those whose drinking water supply is contaminated by nitrate.

Reflecting both statewide priorities as well as priorities and preferences expressed to staff by the Board in Regional Board meetings and discussions, our staff identified the following enforcement priorities for Region 1:

- Coordinate enforcement and compliance assistance efforts in Disadvantaged Communities and communities with financial hardship to seek resolution of water quality violations, to improve/protect the quality and beneficial uses of waters within those communities.

- Prioritize and pursue enforcement cases for discharge violations associated with site development and use for cannabis cultivation.
- Identify, prioritize, and pursue enforcement cases for discharge violations associated with agricultural activities other than cannabis cultivation.

The posted enforcement priorities are preliminary, subject to change or refinement both in response to internal input as well as input from the Board and the public. Over the longer term, we expect that the region's enforcement priorities will change from year to year as regional permitting/regulatory priorities change.

Since posting the preliminary enforcement priorities in April, regional enforcement staff have consulted with executive and program managers and unit/division managers throughout the office to identify additional programmatic enforcement priorities and suggest changes to the posted general regional priorities. These internal discussions have led to the following suggested revisions:

- Remove the first listed enforcement priority: coordinating enforcement and compliance assistance efforts in Disadvantaged Communities and communities with financial hardship.

Staff propose this revision because enforcement and compliance assistance staff already routinely coordinate our efforts in such circumstances for communities throughout the region. The majority of the communities in the North Coast Region qualify as Disadvantaged Communities and/or communities with financial hardship, and it is a fundamental objective in our settlement negotiation efforts with such communities to identify projects and, at times, funding, to assist those communities in making corrections to their collection/treatment systems to correct conditions that lead to water quality violations.

- Retain the second and third listed enforcement priorities:
 - Prioritize and pursue enforcement cases for discharge violations associated with site development and use for cannabis cultivation.
 - Identify, prioritize, and pursue enforcement cases for discharge violations associated with agricultural activities other than cannabis cultivation.
- Add the following new enforcement priorities:
 - Pursue non-filers under all our applicable regulatory programs.
 - Take timely followup enforcement, including progressive enforcement and/or penalty assessment, where appropriate, on missed deadlines for all active enforcement orders.
 - Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits.

- Add a group of criteria to be used by staff to further prioritize violations within the general priority categories. That is, higher priority for formal enforcement will be placed on violations where one or more of the following criteria are met:
 - Violation has resulted in threats/impacts to critical habitat for a listed endangered or threatened species;
 - Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring;
 - Violation is contributing to a watershed impairment; and
 - Violation has resulted in impacts to a public drinking water supply.

Staff also recognized that regardless of posted enforcement priorities at any time, there are certain types of events/violations that automatically warrant timely formal enforcement. Such violations include, but are not necessarily limited to those where there is a high threat/impact to public health, safety, and/or infrastructure, and cases where discharger/responsible party actions contributing or leading to the violations is particularly egregious.

In today's presentation, Yvonne West, newly appointed director of the Office of Enforcement, will provide a review of the significant revisions to the enforcement policy and an overview of possible future/upcoming topics for enforcement updates to the Board. Diana Henriouille, lead of the Compliance Assurance Unit, will provide a focused interactive discussion with the Board on the preliminary regional enforcement priorities currently posted and suggested changes described above. Staff will seek input from the Board and the public on regional enforcement priorities and preferred topics for future enforcement updates.

Recommendation: N/A

Supporting Documents: None.