

Regional Water Quality Control Board
North Coast Region
Executive Officer's Summary Report
October 7, 2020

ITEM: 6

SUBJECT: Enforcement Update: Discussion of Regional Enforcement Priorities for 2022-2023 (Jeremiah Puget, Jordan Filak, and Zane Stromberg)

BOARD ACTION: This is an informational item only; no formal action will be taken by the Regional Water Board.

BACKGROUND: On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted the 2017 Water Quality Enforcement Policy (Enforcement Policy), which became effective October 5, 2017. The Enforcement 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.”

In October 2020, North Coast Region enforcement staff presented to the Board, proposed enforcement priorities for the year, and accepted comments from the Board and members of the public. Following the Board meeting, staff finalized a list of priorities, which included:

- Prioritize and pursue enforcement cases for waste discharge violations associated site development and use for cannabis cultivation without applicable permits.
- Prioritize and pursue enforcement cases for waste discharge violations associated with agricultural activities other than cannabis cultivation.
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.
- Pursue timely enforcement on missed deadlines in existing enforcement orders.
- Prioritize and pursue regulatory oversight and enforcement for violations of NPDES storm water permits.

Staff also incorporated screening criteria to assist in prioritizing cases, recommending that higher priority for formal enforcement be placed on violations where one or more of the following criteria are met:

- Violation has resulted in threats/impacts to critical habitat.
- 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.

- Violation has resulted in impacts to a public drinking water supply that serves a disadvantaged or severely disadvantaged community or a community with financial hardship.
- Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.

The Region may also pursue enforcement for unexpected significant cases outside of these priorities including, but not necessarily limited to those that involve high threats, significant impacts, or egregious discharger conduct. Staff noted that the enforcement priority list has proven beneficial in helping to focus limited resources, and that the priorities had fit well with the types of violations encountered over the course of the past two years.

Discussion: During the October 2020 presentation the board provided support for staff's proposed enforcement priorities. Also, at the October 2020 board meeting Enforcement Unit staff reported to the Board that recent momentum in overall enforcement accomplishments was likely to continue and increase. Indeed, they have increased by approximately 25 percent since July 31, 2020. Following the last update to the Board, between August 1, 2020 and September 9, 2022, Regional Water Board staff issued a total of 331 enforcement actions including, but not limited to:

- 244 Notices of Violation (NOVs)
- 28 Notices of Non-Compliance (NNCs)
- 11 Cleanup and Abatement Orders¹ (CAOs)
- 9 Administrative Civil Liability Complaints (ACLCs)
- 6 Administrative Civil Liability Orders (ACLOs)
- 2 Expedited Payment Letters (EPLs) for Mandatory Minimum Penalties (MMPs)²

Currently, Regional Water Board staff is engaged in over 100 active enforcement cases. The 2017 Enforcement Policy re-affirms the principle of progressive enforcement, which contemplates an escalating series of actions beginning with NOVs and compliance assistance, followed by increasing levels of enforcement, where necessary culminating in a complaint for civil liabilities or other formal enforcement. Regulatory program staff has dual responsibility in both permitting and compliance assistance, while Enforcement Unit staff is generally involved after program staff recommends further formal enforcement. At this time, Enforcement Unit staff is supporting 17 formal enforcement cases in confidential settlement negotiations. Most of these cases are with the NPDES Wastewater Unit (11 cases), while other significant formal actions have been initiated by

¹ Cleanup Orders may also include Investigative Order Pursuant to California Water Code section 13267.

² For violations of the California Water Code and federal Clean Water Act associated with wastewater treatment facilities.

the NPDES Storm Water Program (four cases) and the Non-Point Source & Surface Water Protection Division (one case)³.

The Fiscal Year 2022/2023 Division Work Plan for the Cannabis and Enforcement Division identifies two Performance Targets for the Enforcement Unit. These are shown in the bullets below followed by a narrative summary of the status of achieving these targets.

- Target 1: 80 percent of Class A priority violations will result in Formal Enforcement or an Investigative Order Pursuant to California Water Code section 13267 within 18 Months of Discovery.
 - There are currently five violations under further investigation from 2021, including in the following programs: NPDES wastewater (1); NPDES storm water (2); Non-Point Source (1); and Cannabis (1).
- Target 2: Zero facilities with over \$12,000 in MMPs (\geq five violations) not assessed within 18 months of accrual.
 - 11 facilities were identified in the Work Plan as requiring action to be completed by June 20, 2023. To date, four ACLOs (i.e., Stipulated Orders) have been adopted, one expedited payment letter has been issued, and six active cases are still in settlement negotiations.

Meeting these metrics, while implementing the philosophy and priority of supporting disadvantaged communities by pursuing compliance projects and supplemental environmental projects, will take a significant portion of the Enforcement Unit's staff time. Balancing permitting tasks, complaint response, and compliance assistance also take a significant amount of regulatory program staff time. Consequently, enforcement priorities and screening criteria are instrumental in directing our agency's efforts towards formal enforcement and effective regulation.

Summary: Staff recommend the enforcement priorities and screening criteria for the North Coast Region for 2022-2023 remain unchanged from those utilized over the past several years. Regional Water Board staff continues to implement our enforcement authorities in a fair and consistent manner in accordance with the 2017 Enforcement Policy, which emphasizes the progressive approach. Regional Water Board staff would like to take this opportunity to gather feedback from the Board, our partnering agencies, and the public on our enforcement priorities and the screening criteria we apply to assist in prioritizing our cases for further formal enforcement.

Recommendation: N/A

Supporting Documents: N/A

³ A summary of these cases can be found in the Executive Officers Report / Enforcement Report, item 8 on this agenda.