

Item 4

Enforcement Update:

- (1) Discussion of Regional Enforcement Priorities;
- (2) Presentation of North Coast Regional Water Board's List of Potential Supplemental Environmental Projects and Resolution No. R1-2019-0046

Presentation Overview

- **Informational item discussing regional enforcement priorities:**
Looking back at 2018 priorities and significant accomplishments
_(25-30 minutes).
- **Informational/action item for a regional Supplemental Environmental Project list:**
Discussing requirement for a project list, and proposing
_adoption of a resolution approving an initial list and a process
_for future list maintenance (25-30 minutes).

Part One: Regional Enforcement Priorities

Background

The 2017 Enforcement Policy recommends that each year, 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.

- April 2018: we provided Office of Enforcement with a list of preliminary priorities based on EO/AEO understanding of priorities and preferences expressed by the Board in past meetings.
- June 2018: Internal management discussion to refine the list.
- July 2018: Staff presented proposed priority list for Board input and public comment. Response was positive.

2018 R1 Enforcement Priorities

- Prioritize and pursue enforcement cases for waste discharge violations associated site development and use for cannabis cultivation
- Prioritize and pursue enforcement cases for waste discharge violations associated with agricultural activities other than cannabis cultivation
- Pursue non-filers under all applicable regulatory programs
- Pursue timely enforcement on missed deadlines in existing enforcement orders
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits

Additional prioritization criteria

- 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

Unexpected significant cases outside of priorities

- High threats/significant impacts
- Egregious discharger conduct

Implementing the Priorities (August 2018 to present)

- Enforcement prioritization meetings
 - Discuss enforcement topics of interest
 - Review referred cases for prioritization and assignment
 - Does case appear to warrant penalty assessment?
 - If yes, identify prosecution team and enforcement unit lead
- Referral form developed
- Staff training
- Enforcement templates

Enforcement Briefing Memo (FY 2018-19)

Confidential – Enforcement-Privileged Document

Email to Enforcement Coordinator upon Division Chief approval
(Click on picture when form is complete)



Enforcement Recommendation: Other

Supervisor concurrence: [Click or tap to enter a date.](#) By: [Click or tap here to enter text.](#)

Division Chief approval: [Click or tap to enter a date.](#) By: [Click or tap here to enter text.](#)

AEO/EO approval: [Click or tap to enter a date.](#) By: [Click or tap here to enter text.](#)

Case information

Discharger or Responsible Party: [Click or tap here to enter text.](#)

Facility or Site Location: [Click or tap here to enter text.](#)

City: County: [Click or tap here to enter text.](#)

Watershed: [Choose an item.](#) CIWQS Place ID: [Click or tap here to enter text.](#)

Lead staff: [Click or tap here to enter text.](#) Program: [Choose an item.](#)

Regional Enforcement Priority?

Cannabis cultivation site

Non-cannabis agricultural site

Non-filer (any regulatory program)

Missed deadline in enforcement order

NPDES Stormwater permit violation

None of the above

Additional Prioritization Criteria:

Contributing to existing impairment

Threats or impacts to critical habitat

Impacts where restoration \$ has been spent

Public drinking water supply impacted

High threat/significant impacts

Egregious discharger conduct

None of the above

Page 2+: Preliminary ACL Allegations

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What is the allegation? (Discuss the violation in terms of who, what, when, where, why; include number of days of violation and/or number of gallons of waste discharged if/as applicable): [Click or tap here to enter text.](#)

What was violated? (e.g., list order(s) and include page/section/para.; unauthorized discharge to waters of state and/or U.S.; Basin Plan citation(s); etc.): [Click or tap here to enter text.](#)

What is our evidence? (describe/list supporting documents, including photos, inspection report(s), correspondence, permit/order, etc.): [Click or tap here to enter text.](#)

Have staff brought violation(s) to Discharger's attention? (If yes, provide brief explanation regarding verbal or written communication, including any informal enforcement): [Click or tap here to enter text.](#)

Discuss Harm caused by the violation(s). (describe threat or loss to beneficial uses, type/toxicity of material(s) discharged, type/extent of impacts associated with waste discharge(s), etc.) [Click or tap here to enter text.](#)

Discuss Discharger conduct. (describe culpability of the discharger in causing the violation and subsequent cooperation and cleanup efforts). [Click or tap here to enter text.](#)

Enforcement Briefing: (Summarize case and reason for formal enforcement referral)

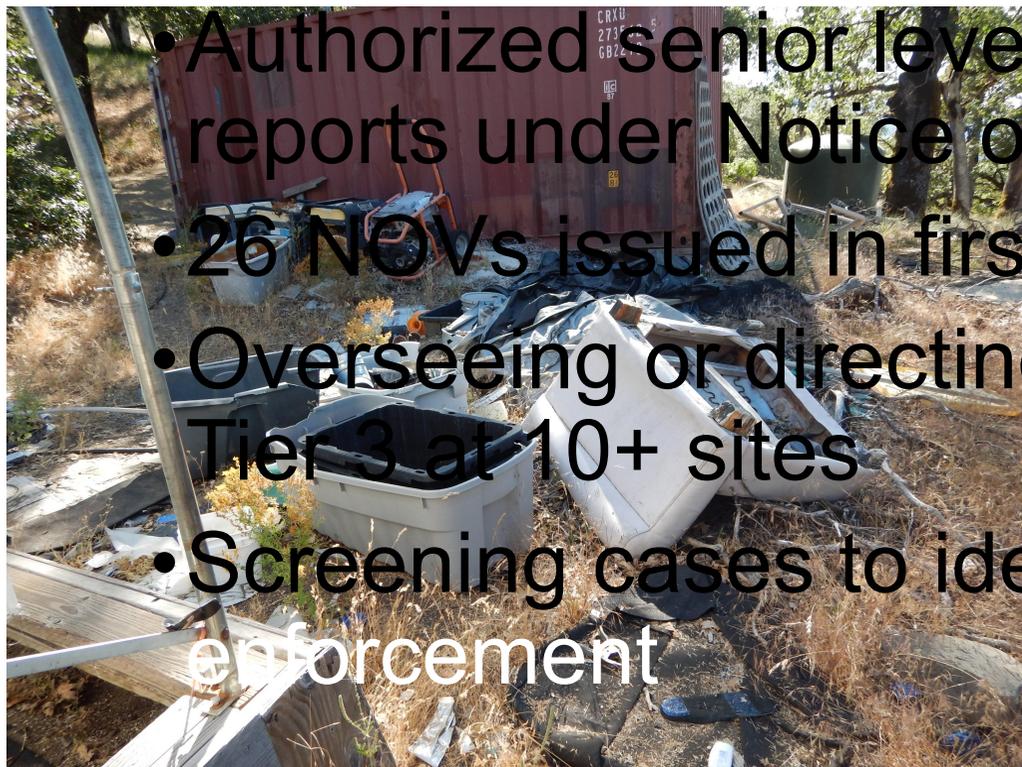
[Click or tap here to enter text.](#)

2019 Review

- What were our enforcement accomplishments?
- Should we modify the 2018 list of enforcement priorities?
- Recommendations for 2019 list.

Enforcement Accomplishments

Cannabis Enforcement



- Authorized senior level staff to transmit inspection reports under Notice of Violation
- 26 NOVs issued in first quarter of fiscal year 2019-20
- Overseeing or directing active cleanup under CAO or Tier 3 at 10+ sites
- Screening cases to identify those needing progressive enforcement

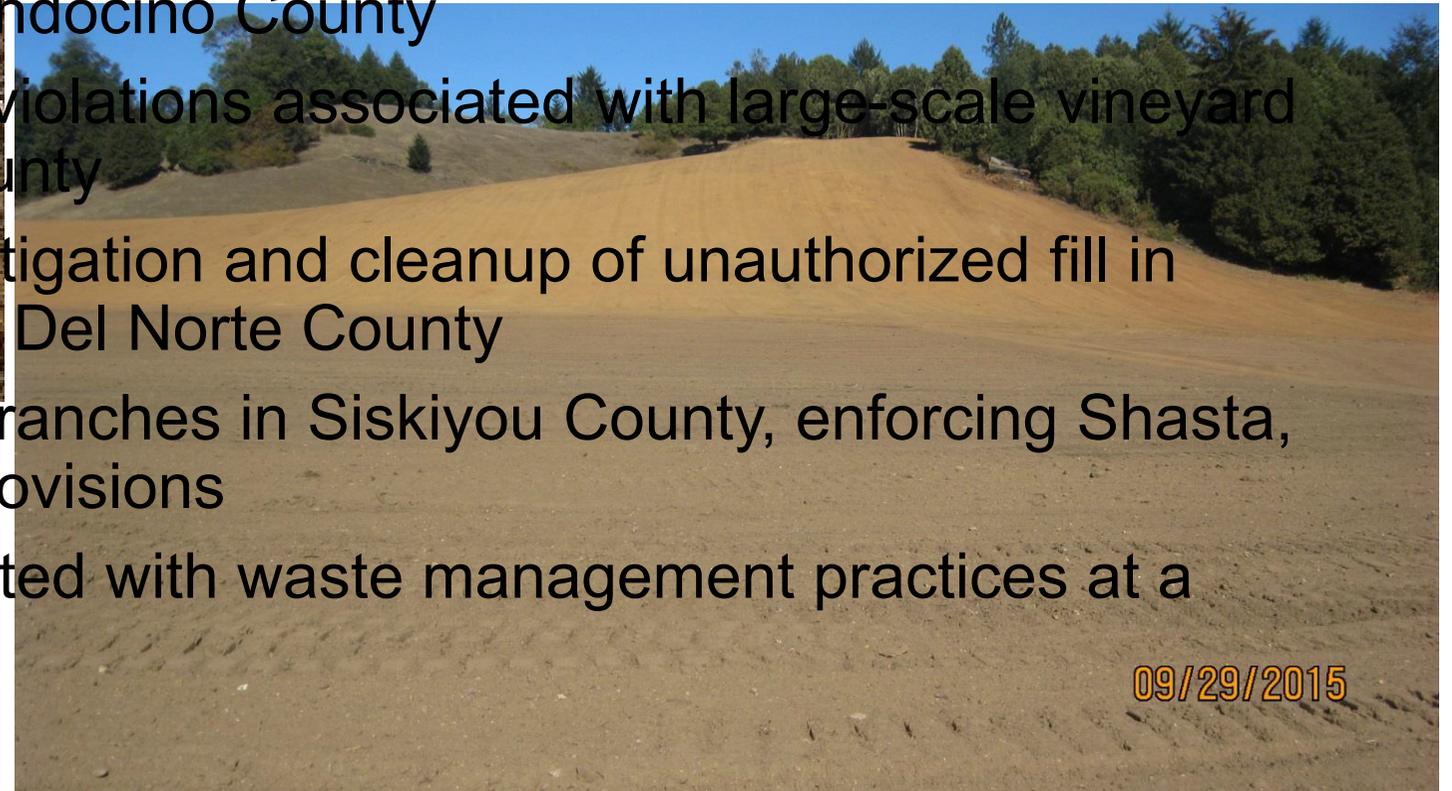




Non-Cannabis Agriculture



- \$3.2 million settlement resolving violations associated with large-scale vineyard development in Mendocino County
- NOV & CAO issued for WQ violations associated with large-scale vineyard development in Sonoma County
- Continued oversight of investigation and cleanup of unauthorized fill in surface waters on a ranch in Del Norte County
- Informal enforcement at 3-5 ranches in Siskiyou County, enforcing Shasta, Scott, and Klamath TMDL provisions
- Formal enforcement associated with waste management practices at a dairy in Humboldt County

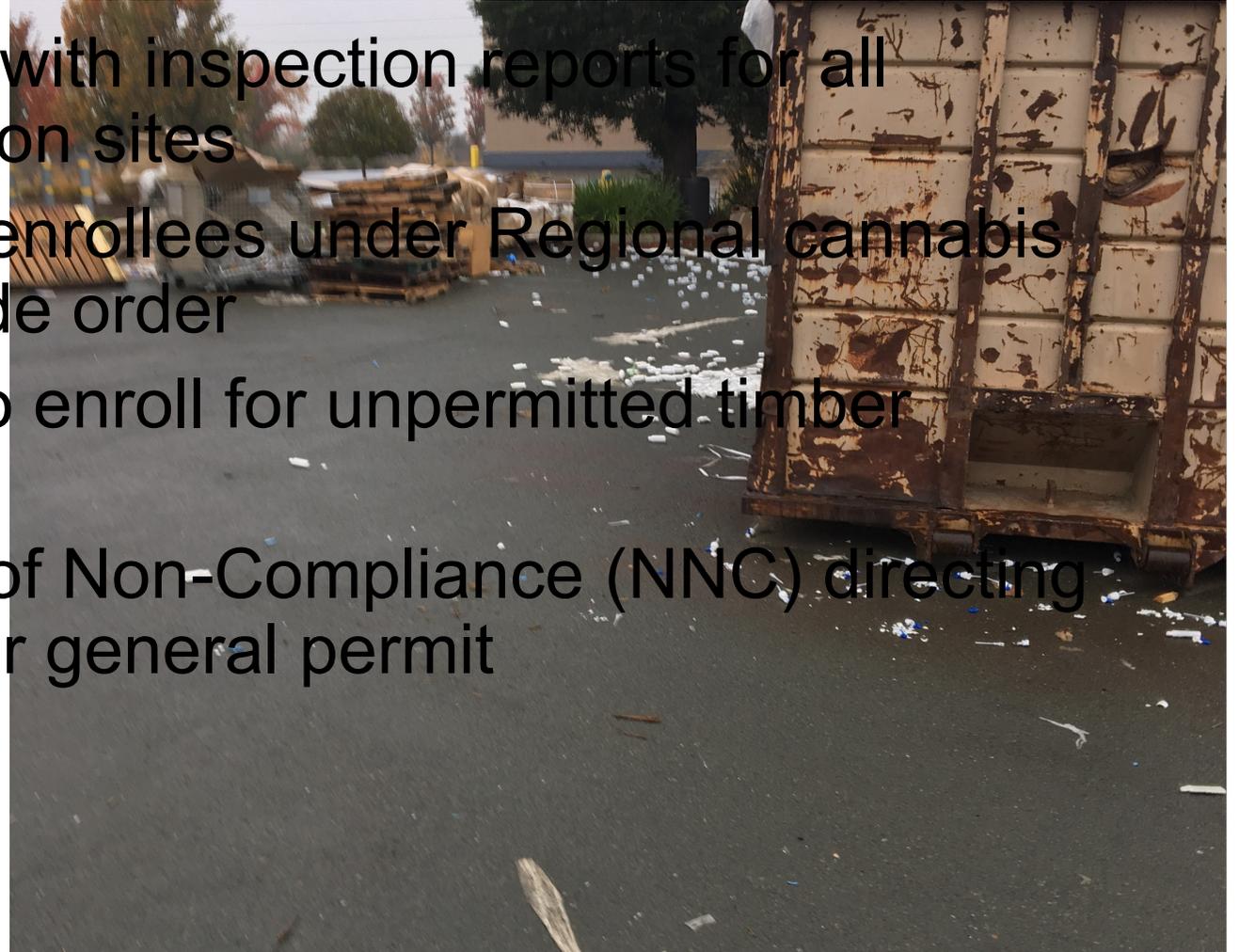
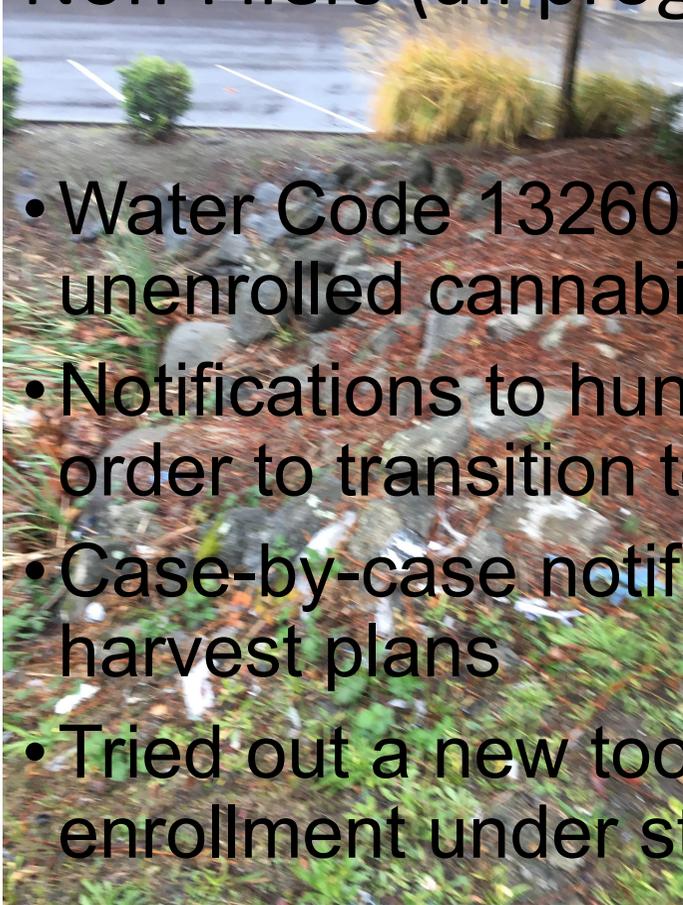


09/29/2015



Non-Filers (all programs)

- Water Code 13260 directive with inspection reports for all unenrolled cannabis cultivation sites
- Notifications to hundreds of enrollees under Regional cannabis order to transition to statewide order
- Case-by-case notifications to enroll for unpermitted timber harvest plans
- Tried out a new tool: Notice of Non-Compliance (NNC) directing enrollment under storm water general permit



Enforce missed deadlines

- Administrative infrastructure and training: tracking database, SMARTS and CIWQS competency & discipline
- Identify and take appropriate action on cases with missed deadlines
- Clarify expectations regarding deliverables and/or deadlines
- Step up communication on pending deadlines (for example, reminders for deliverables for Projects underway, ongoing reminders and communication with dischargers implementing cleanup and abatement actions)

File Message Help Acrobat Tell me what you want to do

Delete Archive Reply Reply All Forward Quick Steps Move Tags Editing Speech Zoom ISO

Action Required. Penalty Project Milestone Due for Reg Measure 393172, Order No. R1-2013-0060 for College of t...



ciwqshelp@waterboards.ca.gov
To Nancy.Robinson@waterboards.ca.gov; Henrioulle, Diana@Waterboards
Cc Henrioulle, Diana@Waterboards; Foster, Lori@Waterboards
Retention Policy WB 90-Day Outlook Entire Mailbox (90 days)

Reply Reply All Forward

Tue 10/1/2019 4:00 AM

Expires 12/30/2019

Two weeks from today, a project milestone for Reg Measure 393172, Order No. R1-2013-0060 for College of the Redwoods, POTW will become past due. CIWQS will supersede the project milestones and create a liability for the project amount if the milestone status is "not complete." The Fee Unit of the Division of Administrative Services will send an invoice to the discharger for failing to complete the penalty project.

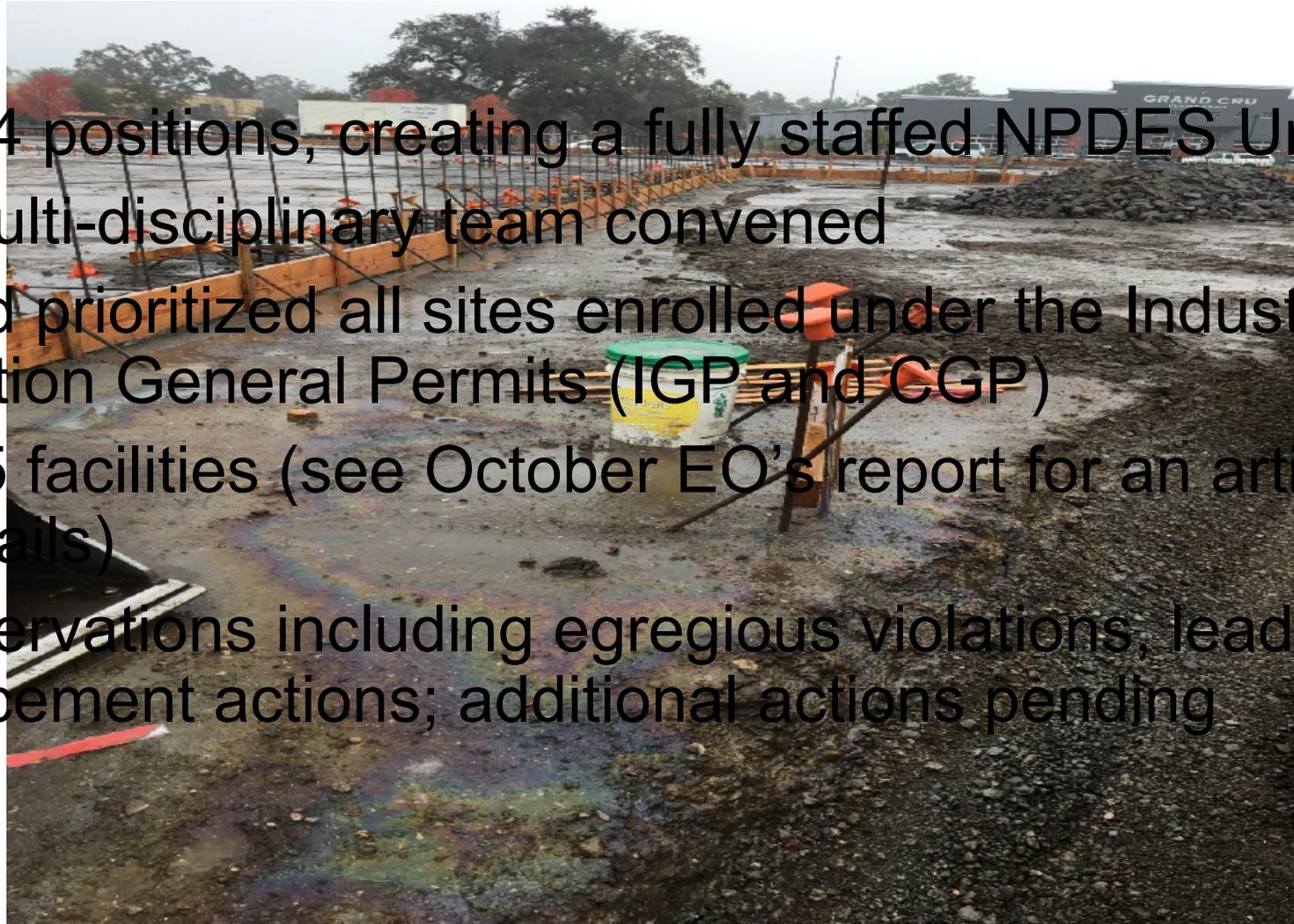
Milestone ID [47032977](#), Submit Status Report is due on 10/15/2019.

Please review the record to determine if an update is needed.

Email Auto-Generated from CIWQS on 10/01/2019 |

Storm Water

- Filled/refilled 4 positions, creating a fully staffed NPDES Unit
- Cross-unit, multi-disciplinary team convened
- Reviewed and prioritized all sites enrolled under the Industrial and Construction General Permits (IGP and CGP)
- Inspected 115 facilities (see October EO's report for an article with more details)
- Range of observations including egregious violations, leading to several enforcement actions; additional actions pending



Consequences of Inadequate BMP's



The Enforcement Unit

- Enforcement is a function, not a program; our efforts are driven by regional needs, priorities, and commitments
- Current staffing (2 Engineering Geologists (cannabis), 2 Environmental Scientists (general enforcement), 1 Water Resource Control Engineer (cannabis), 1 Scientific Aide (general), 1 VACANCY: Sr. Environmental Scientist (Cannabis Enforcement Specialist)
- Evolution in duties since formation in May 2005
- Current enforcement performance targets:
 - 100% of facilities with over \$12,000 in Mandatory Minimum Penalties (5 or more violations) have MMPs assessed within 18 months of accrual.
 - 100% of Class I Priority violations (as defined by Enforcement Policy) have formal enforcement or a 13267 investigative order issued within 18 months of discovery.
- Our enforcement unit is a workshop for developing, testing, and refining enforcement tools and procedures

Review of 2018 Enforcement Priorities List

- The list appears to be germane to water quality issues in our region
- The list is helpful for internal & external audiences
- We like having a list, and we like the list we have
- The list helps enforcement unit staff to focus efforts and staff training/development

Adaptive Management

(Proposed Changes to the List for 2019)

Make this change (one deletion and one addition) to the list of priorities:

- ~~Pursue non-filers under all our applicable regulatory programs.~~
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.

Make this addition to the list of screening criteria:

- Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.

Questions and Comments

Part Two: Supplemental Environmental Project (SEP) List

Definition: What is an SEP?

A Supplemental Environmental Project, or SEP, is “an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty.”

(2017 SEP policy, effective May 3, 2018).

Per SEP Policy: to include a proposed project in a settlement as an SEP, Water Board staff should:

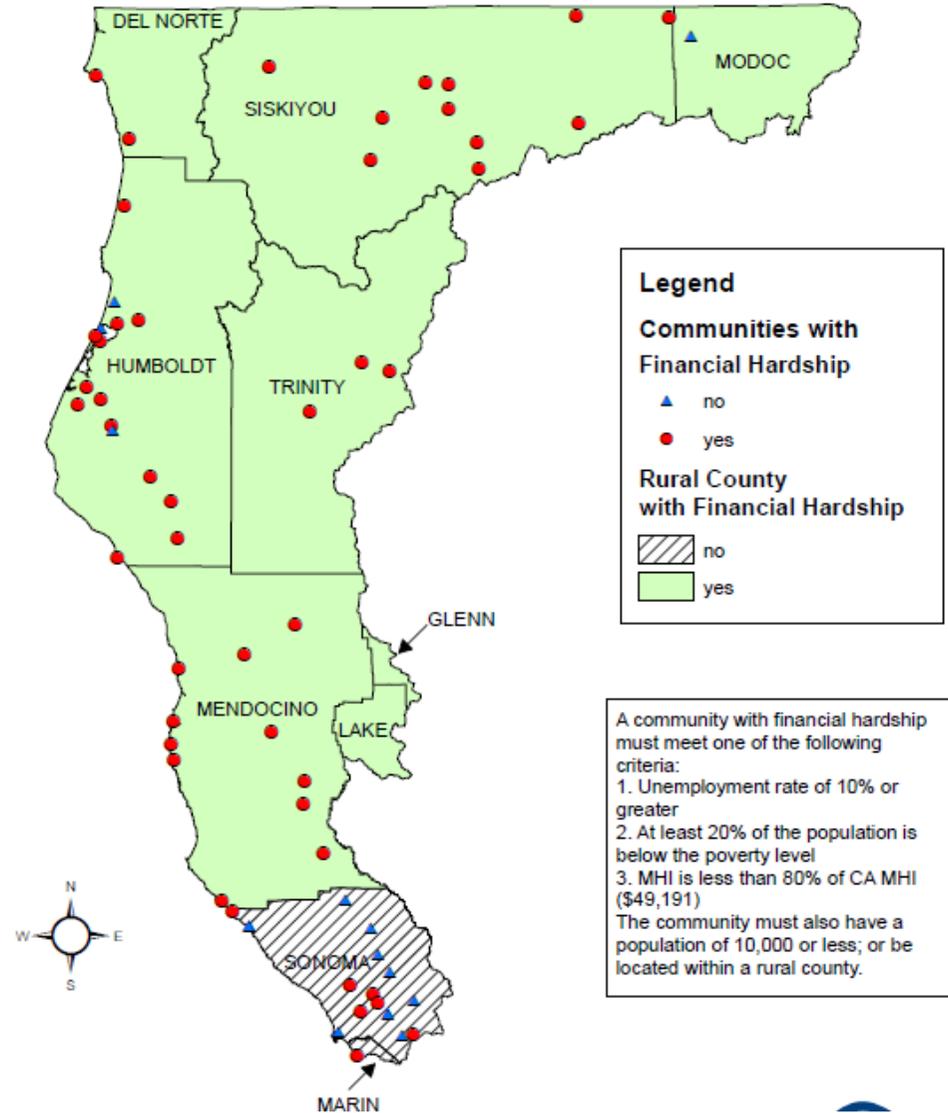
- Ensure that the project conforms to the basic definition of a SEP (SEP Policy sect. III)
- Ensure that all legal guidelines are satisfied (sect. IV)
- Ensure that the project fits within one or more of the designated categories (sect. V) and is not prohibited (sect. VI)
- Ensure that solicitation and selection criteria are used in choosing the SEP (sect. VII)
- Ensure that all requirements for settlements that include a SEP are satisfied (sect. VIII)
- Ensure that all additional requirements for stipulated orders that include a SEP are satisfied (sect. IX)

Section IV. Legal Guidelines – mandatory that SEP policies include:

- A public process to solicit potential SEPs from Disadvantaged Communities
- An allowance that up to 50 percent of an administratively-imposed civil liability be eligible
- Compilation of an annual list of SEPs that may be selected by settling parties to settle a portion of an administratively-imposed civil liability
- A consideration of the relationship between the location of the violation and the location of the proposed SEP

Figure 2: North Coast Region Communities with Financial Hardship
(Enforcement Policy Criteria)

Region 1 Financial Hardship



Building a Project List

The SEP Policy requires, in part, that “Regional Water Boards solicit and evaluate SEP proposals in their jurisdictions and post on their websites a list of potential SEPs. “

- May 2019: sent nearly 400 solicitation letters to govt. agencies, NGOs, tribes, and colleges
- May-August: received proposals, ideas, and queries
- September 2019: screened and put together the list and resolution

Considerations

- Projects must meet SEP Policy criteria
- There is no guarantee of funding
- Full eligibility check not possible until a settlement is under development
- A settling party is not restricted to using a project from the list, but can also propose an SEP at the time of a specific Administrative Civil Liability settlement.

List of projects & ideas received to date

- 1) Eel River Recovery Project: Chamise and Woodman Creek Community Conservation and Restoration Pilot Project
- 2) Shasta Valley Resource Conservation District: Shasta River Water Quality Monitoring Program
- 3) Scott River Watershed Council: Scott River Watershed Stewardship Project
- 4) San Francisco Estuary Institute: Russian River Regional Monitoring Program
- 5) Shasta Valley Resource Conservation District: Shasta River Fish Passage Barrier Improvements
- 6) Mendocino County Resource Conservation District: List of 11 projects under development for planning and/or implementation, Spring 2019
- 7) Humboldt County Division of Environmental Health: Investigation of existing onsite wastewater treatment systems located adjacent to surface waters in Humboldt County that are impaired for nitrogen or pathogen indicators.
- 8) No sponsor (suggested by Matt St. John, Executive Officer): a project to place portable toilets at locations adjacent to the Russian River and its tributaries with significant recreational use and/or transient occupancy.
- 9) No sponsor (suggested by several staff): provide rural road construction and maintenance training for contractors, consultants, and landowners throughout the Region.

Screening

- Does it improve, protect, or reduce risks to public health or the environment? (SEP Policy section III)
- What kind of project is it? (7 categories) (sect. V)
- Confirm that the project does not appear to be ineligible (sect. VI)
 - General public educational/awareness project
 - General cash contribution
 - General cash donation
 - Project unrelated to Water Boards' mission
 - Studies/assessments/monitoring not consistent with SEP policy criteria
 - Project that has already been committed to
 - Project will be profitable to settling party
 - Raw materials only
 - Not a complete/discrete action
 - Completion depends on others beyond control of implementer and/or discharger
 - Project is a legal obligation of a third party (third party compliance project)

Additional eligibility requirements

- Settling party must retain full responsibility (sect. VI)
- Project must be clearly defined for adequate nexus and transparency (sect. VI)
- Cannot directly benefit Water Board members, staff, or family of members and staff (sect. VIII)
- Cannot benefit or involve friends of members, staff, or family where there is actual or apparent conflict of interest for Water Boards (sect. VIII)
- Cannot be managed or administered by Water Boards (sect. VIII)
- Settlement agreement must include a detailed scope of work, budget, time schedule, performance standards, and identified performance measures or indicators (sect. IX)

Proposed list (agenda package attachment 3.a.)

| Agency/Organization | Project/Concept | Watershed | Project Category | Cost |
|--|--|-----------------|--------------------------|------------|
| Shasta Valley Resource Conservation District (RCD) | Shasta River Fish Passage Barrier Improvement Project | Shasta | ERP | \$35,000 |
| Scott River Watershed Council | Scott River Watershed Stewardship Project | Scott | PP, PR, AA, and ERP | ~\$90,000 |
| Shasta Valley RCD | Shasta River Water Quality Monitoring Program | Shasta | AA | \$157,412 |
| Eel River Recovery Project (ERRP) | Chamise and Woodman Creek Community Conservation and Restoration Pilot Program | Middle Main Eel | PP, PR, ERP, AA, and ECP | ~\$250,000 |

Proposed process

- The SEP list will be open indefinitely for continuous submission of SEP proposals;
- The Board delegates authority to the EO to revise the SEP list;
- Staff will periodically (at least quarterly) review SEP proposals and recommend to the EO additions to the list;
- Staff will periodically (at least annually) contact parties with listed SEPs to determine whether the projects should remain on the list and/or require modifications; and
- Staff will periodically (at least annually) provide the Board with an update regarding projects added, removed, modified, or used in settlement of an enforcement case.

Proposed Resolution No. R1-2019-0046

- Approves the initial list
- Delegates authority to the Executive Officer to make future changes to the list
- Directs the Executive Officer and/or staff to report at least annually on the status, use, and any changes made to the list, procedures, and process

Questions and Comments.