

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING May 3, 2012

Prepared on March 22, 2012

ITEM NUMBER: 9

SUBJECT: Enforcement Report

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DISCUSSION

Violations Listing

Staff uses the California Integrated Water Quality System (CIWQS) to track Water Board data, including violations and enforcement actions. Attachment 1 is a CIWQS list of violations by dischargers between December 1, 2011, and January 31, 2012. CIWQS has a sewer system overflow (SSO) module that provides tracking and reporting of such spills.

Summary of Enforcement Activities

The following information summarizes significant enforcement actions taken by the Water Board during the period between February 1, 2012, and February 29, 2012.

Expedited Payment Letters

City of El Paso de Robles, San Luis Obispo County

Enforcement Policy Discussion

In November 2009, the State Water Resources Control Board adopted the Water Quality Enforcement Policy, which became effective on May 20, 2010. The 2009 Enforcement Policy replaced the 2002 Enforcement Policy. The State Water Board also adopted a separate Supplemental Environmental Project Policy. The two policies can be found on the State Water Board's website:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final1117_09.pdf

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf

The Enforcement Policy states that its goal is to

“protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most efficient, effective, and consistent manner. In adopting this Policy, the State Water Board intends to provide guidance that will enable Water Board staff to expend its limited resources in ways that

openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits.”

The Enforcement Policy discusses violation priorities and ranking, the various types of enforcement actions, mandatory minimum penalties, and data collection and reporting. It also includes a methodology for calculating penalty amounts. The intent of the penalty calculation methodology is to “provide a consistent approach and analysis of factors to determine administrative civil liability.” The methodology is based upon the factors the regional water boards and the State Water Board must, pursuant to the Water Code, consider when determining the amount of liability to assess.

The next few paragraphs describe the methodology in more detail. Much of this text was written by Brian Thompson of the San Francisco Bay Regional Board. Staff will be available at the Board Meeting to discuss the methodology and answer questions.

Basic Structure of the Penalty Methodology

There are two parts to the basic calculation of liability: (1) the steps taken to calculate the base liability and (2) the steps taken to calculate the final liability.

In general, the steps for calculating the base liability are based on factors associated with the violation, including the factors required by statute such as the nature, extent, gravity, and circumstances of the violation; toxicity of a discharge and its susceptibility to cleanup and abatement; discharger conduct; and history of violations. The steps for calculating the final liability consider other factors associated with the case, including other factors required by statute such as the discharger’s ability to pay and continue in business, economic benefit, and maximum and minimum penalties.

Penalty Factors Input into the Methodology

The functional part of the penalty methodology is the evaluation of penalty factors and the assessment of values that are input into the methodology to calculate the liability. Within each step (or main factor) of the methodology, there are more specific penalty factors and sub-factors that are assessed to calculate the base and final liabilities. For the base liability, these factors are illustrated in the first two charts of Attachment A (provided as Attachment 3 to this report). The first chart is for non-discharge violations, which involve administrative- or procedural-type violations such as not obtaining a permit or submitting a report late, and the second chart is for discharge violations. For the final liability, the factors are illustrated in the third chart. The factors input into the methodology are highlighted in these illustrations and, when applicable, there are page and table references to where the factor is discussed in the Enforcement Policy. For your convenience, a copy of the penalty methodology section of the Enforcement Policy (Section VI) is provided in Attachment 4.

Changing a Proposed Liability

At an ACL hearing, the Board may decide to change a liability proposed by enforcement staff. Modifications to a proposed liability must be explained and be consistent with the penalty methodology. Assuming that the facts surrounding the violations are not in dispute, the Board and its advisory team should consider the following steps:

- 1) Identify a penalty factor or factors that the Board wishes to modify based on hearing testimony or evidence provided.
- 2) Select an alternative input value.
- 3) Check the Enforcement Policy to ensure that the alternative value remains within the allowable range and to verify that the definition is consistent with what was learned through hearing testimony.
- 4) Recalculate the final liability and cross-check that the liability remains compliant with the Policy or statute (e.g., liability at least ten percent more than the economic benefit, and within minimum and maximum liabilities).

Supplemental Environmental Projects

An SEP is a project completed or funded by a discharger to satisfy part of a monetary assessment imposed in an ACL order in lieu of paying the liability in cash. The SEP Policy specifies criteria that a project must meet. The criteria include the following:

- A SEP must consist of measures that go above and beyond the otherwise applicable obligations of the discharger. The SEP shall not be an action, process, or product that is otherwise required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s).
- The SEP shall directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State.
- A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff. Any indirect benefits provided to members, staff, or family shall be only those that are enjoyed by the public generally. A SEP shall not benefit or involve friends of members, staff, or family where there could be an appearance of undue influence, suggesting an actual or apparent conflict of interest for the Water Boards.
- As contemplated by this policy, a SEP is a project or group of projects, the scope of which is defined at the time the SEP is authorized by a Water Board. The placement of settlement funds into an account or fund managed by a Regional Water Board that is not an account or fund authorized by statute or otherwise allowed by the State Water Board is not permissible. If a Regional Water Board wishes to establish any fund that is designed to receive money that is paid by a discharger to resolve a claim of liability under the Water Code, the Regional Water Board should obtain the express authorization of the State Water Board. Such authorization will be subject to conditions that the State Water Board may place on such a fund.

The Central Coast Water Board has long supported dischargers' use of SEPs. They can be an effective method of improving water quality outside of the Board's standard programs. However, oversight of SEPs requires Board resources. As the Board's staff resources have shrunk, staff is constantly prioritizing tasks and looking for areas to conserve resources. Staff now recommends that the Board not approve typical SEPs on a routine basis, but allow willing dischargers to fund two existing projects. These projects are the Low Impact Development Institute and the Central Coast Ambient Monitoring Program (CCAMP). Both of these projects already have existing staff oversight and have funding mechanisms already in place to easily supplement through SEPs. The director of the State Water Board Office of Enforcement has already approved the Low Impact Development Institute as an SEP and is currently considering CCAMP approval.

RECOMMENDATION

This report is for Board information; the Board may provide direction to staff.

ATTACHMENTS

1. Violation List
2. List of Abbreviations
3. Attachment A:
 - Input Factors for Calculating a Base Liability for Non-Discharge Violations
 - Input Factors for Calculating a Base Liability for Discharge Violations
 - Factors to be Considered for the Final Liability Calculation
4. Enforcement Policy (Section VI)

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