



MMP Initiative Update

May 2011

MMP Initiative Status Update – May 2011

This report provides an update on the State and Regional Water Boards (Water Boards) Mandatory Minimum Penalty (MMP) Enforcement Initiative¹. The initial report, which relied on information through March 31, 2009, was published in May 2009 and can be found at:

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

This update uses information current as of May 2011, and includes information on cases handled by both the State and Regional Water Boards.

The enforcement activities consist of 147 Administrative Civil Liability (ACL) complaints and 274 expedited payment letters. Out of the 421 enforcement actions initiated, 382 have been completely resolved or settled and total \$25,288,478 in liabilities², broken down as follows:

- \$ 14,855,232 as liabilities paid or due to the State Water Board's Cleanup and Abatement Account;
- \$ 7,896,000 as credits for completion of Compliance Projects (CP) at facilities serving small communities with financial hardship; and
- \$ 2,537,246 as credits for Supplemental Environmental Projects (SEP).

There are approximately 39 facilities with 2,868 unresolved violations (i.e. are disputed or outstanding), with an associated minimum potential liability of \$8,648,612. Three (3) of those facilities with a total of 45 alleged violations have not responded to Notices of Violations. Figure 1 shows a breakdown of the above-referenced liabilities.

¹ The primary purpose of the Initiative was to address violations that had occurred prior to December 31, 2007 but had no enforcement action taken to resolve them. The Initiative eventually included some violations occurring after December 31, 2007 where it was efficient to address all outstanding MMP violations by a facility at the time the enforcement action was initiated. As result, the total number of violations that are reported on as addressed or resolved from one MMP report to another can vary slightly based on reporting limitations in the Water Boards' compliance data system which can only report current information, not historic information as of a certain date.

² In the March, 2010 update, there were 450 facilities reported as having potential violations subject to mandatory minimum penalties. However, as a result of staff evaluations of information submitted in response to the notice of violation contained in the expedited payment letters, and the changes to the application of mandatory minimum penalties resulting from the passage of SB 1284, effective January 1, 2011, the number of facilities with violations addressed by the Initiative has dropped.

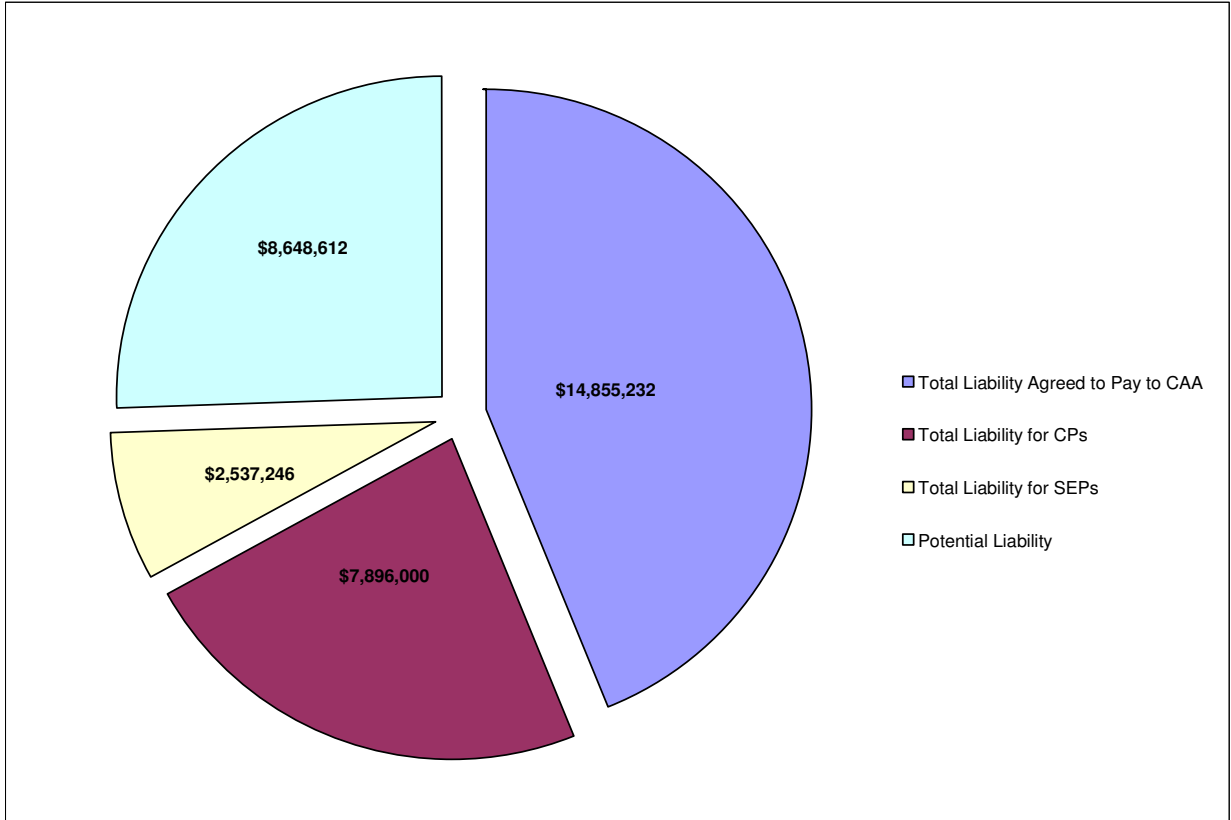


Figure 1: Assessed Liability Breakdown

Background

In early 2008, the Water Boards implemented an initiative to substantially reduce the backlog of MMP violations. Through this initiative, Water Boards’ staff identified over 12,000 backlogged MMP violations at more than 450 facilities occurring between January 1, 2000 and December 31, 2007. To date, 100% of the backlogged violations have been initially addressed through the use of Expedited Payment Letters (EPLs) or Administrative Civil Liability Complaints (ACLs). While these processes served to provide a notice of violation to the discharger, they did not always result in the complete resolution of the alleged violation(s).

Facilities Response to Expedited Payment Letters and Administrative Civil Liability Complaints

Water Board staff has continued to aggressively follow up on these violations. As seen in Table 1, 99% of the facilities have responded to the enforcement actions.

Table 1: Summary of Facilities Responded to EPL or ACL

Region	Facilities with Violations	Facilities Responded to Action	Percent Facilities Responded
1	16	16	100
2	33	33	100
3	24	24	100
4	225	222	99
5	89	89	100
6	2	2	100
7	15	15	100
8	4	4	100
9	13	13	100
Total	421	418	99

Violations

The four categories for the violations relative to this MMP Initiative are described below. Please note that these terms used here are different from the “violation status” used in CIWQS.

- “Dismissed” – The discharger was notified of the alleged violation but with further information or review, Water Board staff determined that the violation is not subject to an MMP penalty or that there is no violation.
- “In Dispute” – The discharger has been notified of the alleged violation and has affirmatively notified the Water Boards that it disputes the violation.
- “Resolved (Paid or Agreed to Pay)” – The discharger has not disputed the alleged violation and has paid or agreed to pay the MMP amount or fund either a Supplemental Environmental Project or a Compliance Project.
- “Outstanding (No Response from Discharger)” – Water Board staff sent written notification to the discharger of the alleged violations (usually through an expedited payment offer) but there has been no response from the discharger.

A summary of the MMP violations status by Region is detailed in Table 2. The “Total Violations” column represents all violations from January 2000 thru May 2011 for the facilities in the MMP Initiative.

Table 2: Summary of Violation Status

Region	Facilities w/ MMPs	Total Violations	Violations Dismissed	Violations in Dispute	Agreed to Pay	Outstanding
1	16	550	95	17	438	0
2	33	153	42	0	111	0
3	24	175	39	5	131	0
4	225	4,691	1,007	1,444	2,195	45
5F	21	852	0	0	852	0
5R	9	131	0	0	131	0
5S	59	4,471	7	1,323	3,141	0
5 Total	89	5,454	7	1,323	4,124	0
6	2	112	0	0	112	0
7	15	368	46	72	250	0
8	4	148	0	0	148	0
9	13	750	0	0	750	0
Total	421	12,401	1,236	2,861	8,259	45

Of the facilities with unresolved enforcement actions, 36 facilities have affirmatively disputed 2,861 violations and 3 facilities have not responded to notification of 45 violations. The Regions are being encouraged to schedule these matters for enforcement hearings. Water Board Staff has also determined that 123 facilities have had all or some of their violations dismissed resulting in 1236 dismissed violations³.

Resolved MMPs

If the discharger has agreed to the assessed MMP liability, they may either pay the amount or agree to fund an appropriate project. Facilities that serve a small community with financial hardship may qualify to conduct a Compliance Project that would allow them to use penalty money for facility improvements that would return the facility to compliance with State standards. A discharger may implement a Supplemental Environmental Project at the discretion of a Water Board. Table B-1 in Appendix B indicates the number of facilities in each Region that have either paid or agreed to fund a SEP or CP.

Table 3 shows the distribution of liabilities for each Region.

³ There may be an overlap between a facility with a disputed violation and a facility with dismissed violations.

Table 3: Summary of Liability Distribution

Region	Total Liability Agreed to Pay to CAA	Total Liability for SEPs	Total Liability for CPs	Potential Liability for Unresolved MMPs	Regional Total (Settled & Potential) Liability
1	\$822,000.00	\$310,000.00	\$276,000	\$18,000	\$1,426,000
2	\$333,000	\$0	\$0	\$0	\$333,000
3	\$332,500	\$70,500	\$6,000	\$15,000	\$424,000
4	\$6,636,000	\$0	\$0	\$4,494,000	\$11,130,000
5F	\$1,315,500	\$999,000	\$246,000	\$0	\$2,560,500
5R	\$87,000	\$0	\$306,000	\$0	\$393,000
5S	\$2,277,249	\$146,751	\$6,999,000	\$3,994,000	\$13,417,000
5 Total	\$3,679,749	\$1,145,751	\$7,551,000	\$3,994,000	\$16,370,500
6	\$170,380	\$165,620	\$0	\$0	\$336,000
7	\$478,703.00	\$441,875.00	\$63,000	\$127,612	\$1,111,190
8	\$267,000	\$177,000	\$0	\$0	\$444,000
9	\$2,135,900	\$226,500	\$0	\$0	\$2,362,400
Total	\$14,855,232	\$2,537,246	\$7,896,000	\$8,648,612	\$33,937,090

The total amount of liability that has been agreed to be paid to the Cleanup and Abatement Account (CAA) is \$14,855,232. In addition, the Regional Boards have authorized \$2,537,246 in SEPs. Facilities that have qualified to conduct a CP have proposed projects that are equivalent to \$7,896,000 in liability. Therefore, the total resolved liability is \$25,288,478.

In addition to the settled enforcement actions, there are also facilities that are disputing violations or have not responded to the Water Boards. If the disputed and outstanding violations are collected, this would represent \$8,648,612 in potential liability.

Table 4 details the percentage of liability collected in cases where the discharger has agreed to pay all or a portion of the liability. Of the liabilities that dischargers have agreed to pay, 74% of the funds have been collected.

Table 4: Regional Summary of Liability Payment

Region	Total Liability Agreed to Pay to CAA	Total Liability Paid to CAA	% Liability Collected
1	\$822,000	\$304,000.00	37
2	\$333,000	\$318,000.00	95
3	\$332,500	\$332,500.00	100
4	\$6,636,000	\$3,425,000.00	52
5F	\$1,315,500	\$1,281,000.00	97
5R	\$87,000	\$87,000.00	100
5S	\$2,277,249	\$2,277,249.00	100
5 Total	\$3,679,749	\$3,645,249	99
6	\$170,380	\$170,380.00	100
7	\$478,703	\$459,703.00	96
8	\$267,000	\$267,000.00	100
9	\$2,135,900	\$2,025,662.00	95
Total	\$14,855,232	\$10,947,494	74

Challenges

MMP violations are recorded and tracked in the Water Boards’ California Integrated Water Quality System (CIWQS) database. CIWQS has the ability to filter queries for certain regions, organization, county, city, or date range. However, tracking of all violations in CIWQS, and subsequent tracking of those violations that have been addressed by an EPL or an ACL is limited by staff data entry. Furthermore, CIWQS has limitations on how MMP data can be aggregated into a summary reports.

Secondly, when a discharger disputes an MMP liability, CIWQS has no way of capturing the status of the dispute. If a discharger responded to the action and CIWQS cannot record the response, then it may seem that the discharger has not responded to the action.

Appendix A

(Please see Attached MS Excel File "MMP Backlog Update")

Appendix B

Table B-1: Regional Resolutions to MMPs

Region	Facilities Paid to CAA	Total Liability Paid to CAA	Facilities w/ SEP	Total Liability for SEPs	Facilities w/ CP	Total Liability for CPs
1	12	\$304,000	4	\$310,000	2	\$276,000
2	28	\$318,000	0	\$0	0	\$0
3	15	\$332,500	1	\$70,500	1	\$6,000
4	132	\$3,425,000	0	\$0	0	\$0
5F	19	\$1,281,000	1	\$999,000	1	\$246,000
5R	4	\$87,000	0	\$0	5	\$306,000
5S	44	\$2,277,249	3	\$146,751	13	\$6,999,000
6	1	\$170,380	2	\$165,620	0	\$0
7	10	\$459,703	5	\$441,875	1	\$63,000
8	4	\$267,000	3	\$177,000	0	\$0
9	13	\$2,025,662	4	\$226,500	0	\$0
Total	282	\$10,947,494	23	\$2,537,246	23	\$7,896,000