



MMP Initiative Update

March 2010

MMP Initiative Status Update – March 2010

This report provides an update on the State and Regional Water Boards (Water Boards) Mandatory Minimum Penalty (MMP) Enforcement Initiative. 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 December 15, 2009. The enforcement statistics as of that date are as follows:

The enforcement activities consist of 135 Administrative Civil Liability (ACL) complaints and 315 expedited payment letters. Out of the 450 enforcement actions initiated, 254 have been completely resolved or settled which resulted in total liabilities of \$ 18,868,150:

- \$ 9,694,904 as liabilities paid or due to the State Water Board's Cleanup and Abatement Account;
- \$ 7,827,000 as credits for completion of Compliance Projects (CP) at facilities serving small communities with financial hardship; and
- \$ 1,346,246 as credits for Supplemental Environmental Projects (SEP).

There are approximately 196 facilities with 7,290 unresolved violations, with an associated minimum potential liability of \$21,870,000. However, once the new Water Quality Enforcement Policy is approved, 2,295 reporting violations at approximately 40 facilities may be exempted from MMPs. The remaining MMP violations could generate an additional \$14,982,000 in liabilities. Resource constraints have prevented the Water Boards from resolving these remaining violations more expeditiously. Figure 1 shows a breakdown of the liabilities.

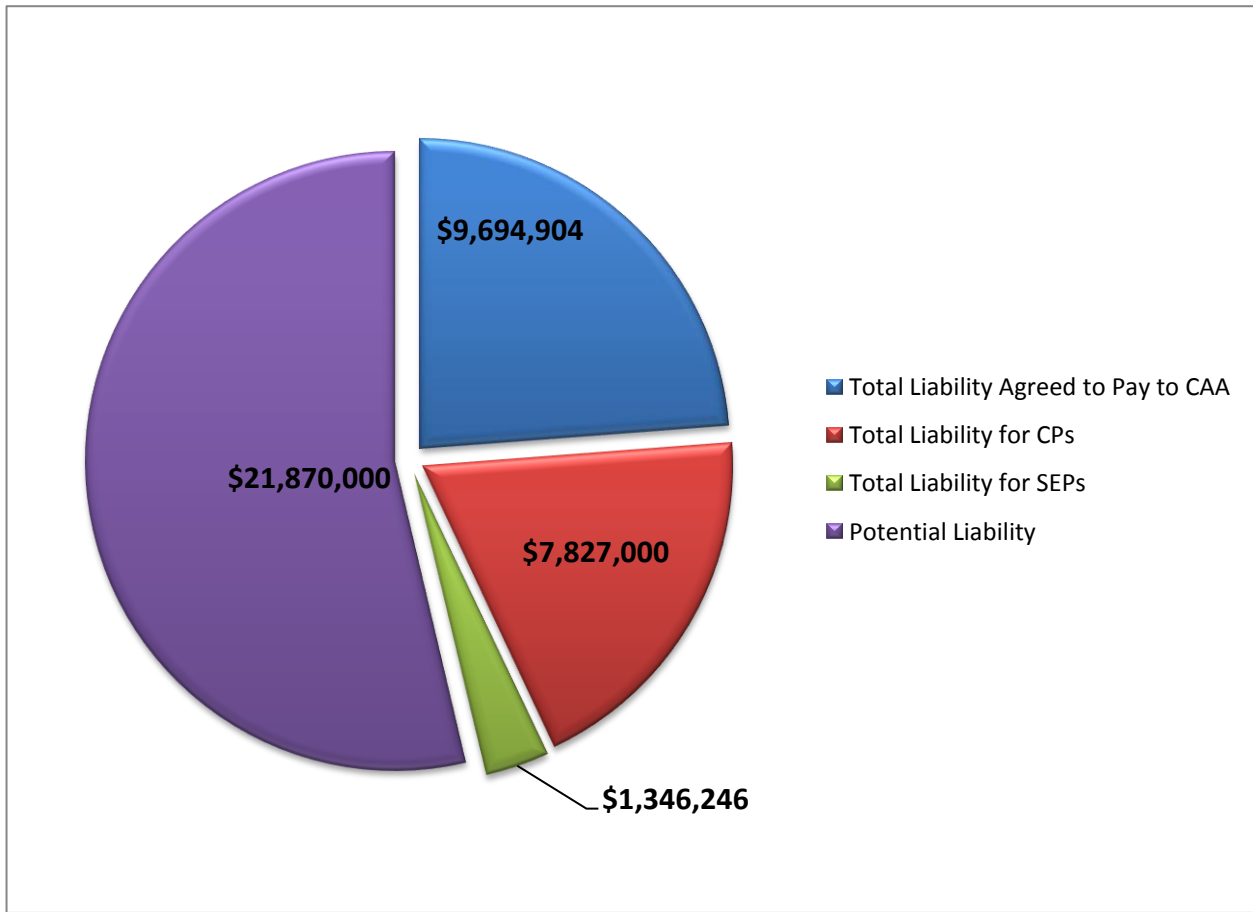


Figure 1: Assessed Liability Breakdown

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. By March 31, 2009, ninety-nine percent (12,219 of 12,348) of the backlogged violations had been initially addressed through the use of Expedited Payment Letters (EPLs) or ACLs. These two processes effectively served to notify the discharger of the alleged violation(s).

Facilities Response to Expedited Payment Letters and Administrative Civil Liability Complaints

Since March 31, 2009, Water Board staff has continued to aggressively follow up on these violations. Currently, all facilities targeted for enforcement actions as part of the MMP Initiative have been sent an initial enforcement document (EPL or ACL) by the Water Boards. As seen in Table 1, over 90 percent of the facilities have responded to the action.

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	252	229	91%
5	91	91	100%
6	2	2	100%
7	15	15	100%
8	4	4	100%
9	13	13	100%
Total	450	427	95%

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 of violations from January 2000 to December 2009 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	29	133	311	0
2	33	151	30	12	109	0
3	24	175	11	36	128	0
4	252	6,490	331	4,925 ¹	1,023	289
5R	9	131	0	0	131	0
5F	22	667	0	476	191	0
5S	60	4,484	7	1,336	3,141	0
5 Total	91	5,282	7	1,812 ²	3,463	0
6	2	112	0	0	112	0
7	15	379	46	83	250	0
8	4	148	0	0	148	0
9	13	750	0	0	750	0
Total	450	14,037	454	7,001	6,294	289

Of the facilities with unresolved enforcement actions, 132 facilities have affirmatively disputed 7,001¹ violations and 23 facilities that have not responded to 289 violations. Water Boards staff has also determined that 41 facilities have had all or some of their violations dismissed resulting in 454 violations³. While some of those violations may be resolved based on the new Water Quality Enforcement Policy, currently awaiting approval by the Office of Administrative Law (OAL), the remainder will need to be resolved by formal enforcement action. The Regions are being encouraged to schedule these matters for enforcement hearings.

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.

¹ Approximately 2,295 violations in dispute may ultimately be resolved as not subject to MMPs if the new Water Quality Enforcement Policy is adopted by the Office of Administrative Law. This policy allows certain types of reporting violations to be excluded from consideration for MMPs. The total value of those violations is \$6,885,000.

² Two facilities account for approximately 84% of Region 5's unresolved MMP violations; formal enforcement is pending against both facilities.

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

Table 3 shows the liability and project summary for each Region.

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	\$633,000	\$118,000	\$276,000	\$399,000	\$1,426,000
2	\$327,000	\$0	\$0	\$36,000	\$363,000
3	\$329,500	\$70,500	\$0	\$108,000	\$508,000
4	\$2,724,000	\$0	\$0	\$15,642,000 ⁴	\$18,366,000 ⁴
5R	\$87,000	\$0	\$306,000	\$0	\$393,000
5F	\$327,000	\$0	\$246,000	\$1,428,000	\$2,001,000
5S	\$2,277,249	\$146,751	\$6,999,000	\$4,008,000	\$13,431,000
5 Total	\$2,691,249	\$146,751	\$7,551,000	\$5,436,000	\$15,825,000
6	\$170,380	\$165,620	\$0	\$0	\$336,000
7	\$416,875	\$441,875	\$0	\$249,000	\$1,107,750
8	\$267,000	\$177,000	\$0	\$0	\$444,000
9	\$2,135,900	\$226,500	\$0	\$0	\$2,362,400
Total	\$9,694,904	\$1,346,246	\$7,827,000	\$21,870,000⁴	\$40,738,150⁴

The total amount of liability that has been agreed to be paid to the Cleanup and Abatement Account (CAA) is \$9,694,904. In addition, the Regional Boards have authorized \$1,346,246 in SEPs. Facilities that have qualified to conduct a CP have proposed projects that are equivalent to \$7,827,000 in liability. Therefore, the total resolved liability is \$18,868,150.

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 \$21,870,000 in potential liability.

However, if the updated Water Quality Enforcement Policy is approved by OAL, Region 4 plans to change the status of 2,295 MMP violations to non-MMP violations, further reducing the potential liability the Water Boards may receive. If the policy is adopted the corrected potential liability is \$14,982,000.

Table 4 includes the amounts where the discharger has agreed to pay all or a portion of the liability, and the amount that has actually been paid. Of the liabilities that have agreed to be paid, over 85% of the funds have been collected to this account. However, one facility in Region 1 has received an ACL for

⁴ This amount would be reduced by \$6,885,000 if 2,295 reporting violations addressed by the new enforcement policy are treated as not subject to MMPs.

\$453,000 for effluent violations, but has filed for bankruptcy. Assuming this liability will not be collected, the adjusted percentage for the total liability collected is over 90%.

Table 4: Regional Summary of Liability Payment

Region	Total Liability Agreed to Pay to CAA	Total Liability Paid to CAA	% Liability Collected
1	\$633,000 ⁵	\$103,500	16%
2	\$327,000	\$294,000	90%
3	\$329,500	\$329,500	100%
4	\$2,724,000	\$2,169,000	80%
5R	\$87,000	\$87,000	100%
5F	\$327,000	\$265,000	81%
5S	\$2,277,249	\$2,262,249	99%
5 Total	\$2,691,249	\$2,614,249	97%
6	\$170,380	\$170,380	100%
7	\$416,875	\$397,875	95%
8	\$267,000	\$267,000	100%
9	\$2,135,900	\$2,010,662	94%
Total	\$9,694,904	\$8,356,166	86%

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.

Further Notes

A majority of the facilities that have not responded to the action are located in Region 4. Currently, State and Regional Water Board staff are working together to determine if the discharger has responded with a dispute of the alleged violations. If the discharger has responded in the form of a dispute, then this will increase the “Facilities Responded to Action” in Table 1.

⁵ One facility that has accrued \$453,000 in liability has filed for bankruptcy and the Water Boards are pursuing collection of liability through a collections agency.

Appendix A

(Please see Attached MS Excel File "Appendix_A_2010")

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	9	\$103,500	3	\$118,000	2	\$276,000
2	25	\$294,000	0	\$0	0	\$0
3	14	\$329,500	1	\$70,500	0	\$0
4	95	\$2,169,000	0	\$0	0	\$0
5R	4	\$87,000	0	\$0	5	\$306,000
5F	18	\$265,000	0	\$0	1	\$246,000
5S	44	\$2,262,249	3	\$146,751	13	\$6,999,000
6	1	\$170,380	2	\$165,620	0	\$0
7	8	\$397,875	5	\$441,875	0	\$0
8	4	\$267,000	3	\$177,000	0	\$0
9	11	\$2,010,662	4	\$226,500	0	\$0
Total	233	\$8,356,166	21	\$1,346,246	21	\$7,827,000