



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

JUN 28 2007

Ms. Tam Doduc, Chair  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

RE: June 28, 2007 Workshop: "Policy Direction on Water Quality Enforcement"

Dear Chair Doduc and Board Members:

Thank you for the opportunity to provide suggestions for updating the State Water Resources Control Board's 2002 Water Quality Enforcement Policy. I have outlined a number of approaches that EPA has found useful for managing its compliance and enforcement program. I encourage you to consider adoption of these approaches in the update of the Board's Enforcement Policy. My staff will continue to work with SWRCB staff to provide more detailed explanations of EPA's enforcement policies, priorities and performance measures.

#### **Data Management**

As a general matter, the Policy should be updated to include an expanded discussion of the use of modern information technology tools to effectively track NPDES Program data. This is especially important given that the State discontinued use of the State Water Information Management (SWIM) system in 2005. Currently the State does not have an effective means for tracking basic information such as inspections and enforcement actions at NPDES permitted facilities. An effective water enforcement program should be based on thorough knowledge of the universe of permitted facilities, and given the huge amount of information to be tracked, it's critical that modern data management technology be used.

At the national level, EPA is transitioning State NPDES data into the modernized ICIS-NPDES data system. It is important that California provide complete NPDES data to ICIS-NPDES so that California's compliance and enforcement activities can be part of this national data set and available to the public through EPA's web site.

#### **Enforcement Priorities**

The Board's 2002 Policy identifies several enforcement priorities based on magnitude and frequency of violations. This approach is similar to EPA's use of the Quarterly Noncompliance Report (QNCR) and Watch List. In fact, the Board's Policy references, but does not adopt EPA's QNCR as a priority setting measure. The QNCR identifies facilities in significant noncompliance (SNC) based on the magnitude and frequency of effluent limit violations. EPA uses the Watch List to identify facilities that

have patterns of noncompliance, including repeat SNC, but have not been addressed with an appropriate enforcement action. We urge the Board to adopt EPA's QNCR and Watch List tools for identifying enforcement priorities. Because the QNCR and Watch List are integrally linked, we think the Board would find it useful to manage both in the Board's Office of Enforcement.

EPA is in the process of expanding our SNC criteria to include significant violations at storm water dischargers, concentrated animal feeding operations (CAFOs) and for sanitary sewage overflows (SSOs). EPA's traditional SNC list is generated through computerized examination of discharge monitoring reports. In contrast the new SNC criteria are based on findings from field inspections. We urge the Board to adopt SNC criteria for storm water, CAFOs and SSOs.

The Board's Policy also references EPA's measure for taking timely and appropriate enforcement against SNC facilities. We suggest that the Board adopt EPA's timely and appropriate standard and develop procedures to ensure that Regional Board enforcement actions meet this standard.

While the QNCR and Watch List establish a baseline for EPA's enforcement response, EPA has adopted a variety of other approaches to establish additional priorities for compliance assistance and enforcement. For example, over the years, EPA has identified sectors of regulated dischargers for focused attention. The sectors are selected based on patterns of noncompliance and impact to the environment. For the last three years, EPA has focused its compliance and enforcement efforts on storm water dischargers, concentrated animal feeding operations and sanitary sewer overflows. We have developed strategies for each of these sectors that identify goals for improving compliance and reducing environmental impacts along with measures for achieving these goals. These strategies are available on EPA's web site at:

<http://epa.gov/compliance/data/planning/priorities/index.html>.

Another priority setting scheme is to focus enforcement efforts on impaired watersheds. Coupling a watershed focus with a sector target can be a very effective approach to improving compliance and improving water quality. As an example of this approach, in response to concerns about beach closures, EPA recently directed our inspection and enforcement resources to sanitary sewer overflows from collection systems along the coast in Southern California. In yet another example, this year we are targeting industrial storm water dischargers located at the State's largest ports.

### **Measures of Effectiveness**

We suggest that the Board consider a number of measures that EPA uses to assess the effectiveness of its enforcement programs. EPA's most straightforward measure is to simply count the number of enforcement actions and the amount of penalties collected. To measure the effectiveness of our enforcement and compliance assistance programs, EPA tracks compliance rates. Enforcement efficiency is measured by tracking the timeliness of enforcement taken in response to significant noncompliance. In an effort to measure the environmental improvements resulting from our enforcement actions, EPA

now calculates the pollutant reduction required by our enforcement actions (in terms of pounds of specific pollutant discharge eliminated annually) and the dollar value of injunctive relief. EPA has developed standardized formulae for making the pollutant reduction calculations. The reductions are documented in case conclusion data sheets for each enforcement action. We will provide these formulae and procedures to Board staff. Finally, EPA measures progress in completing the goals established for each of our sector specific priorities. For example, we are now assessing our progress in achieving the goal of ensuring that 100% of large sewage collection systems have in place adequate management, operations and maintenance programs. Next year, we will measure our progress in achieving the goal of addressing 50% of the medium sized collection systems.

These and other measurement tools used by EPA are available on our web site at <http://cfpub.epa.gov/compliance/resources/publications/data/tools/>. EPA's 2006 enforcement report illustrates how these performance measures are used to explain our enforcement accomplishments to the public. The report is available on EPA's web site at <http://www.epa.gov/compliance/resources/reports/accomplishments/oeca/fy06accomplishment.pdf>.

#### **Public Access to Enforcement Information**

We applaud the Board's use of its web site to make Board documents and decisions available to the public. We urge the Board to expand public access by making all enforcement actions and inspection reports readily available on its web sites. It is also useful to provide the public with complete information about the compliance status of regulated dischargers. I encourage the Board to examine EPA's Enforcement and Compliance History Online web site (<http://www.epa-echo.gov/echo/>) as a model for displaying compliance data and statistics on inspection and enforcement actions.

#### **Enforcement Tools**

The Regional Boards have been quite successful in issuing mandatory minimum penalty orders against noncompliant dischargers. Unfortunately, the MMP orders lack requirements for implementing injunctive relief measures necessary to return facilities to compliance. We suggest that the Board adopt a policy that calls for addressing ongoing violations with a Cease and Desist Order or Time Schedule Order that establishes a schedule for returning to compliance. Where appropriate, the compliance orders should be coupled with a penalty action.

#### **SWRCB Oversight of Compliance and Enforcement Activities**

Finally, we urge the Board to take an active role in overseeing the compliance and enforcement activities of the Regional Boards. The State Board could advance enforcement efforts by developing statewide priorities and goals, tracking Regional Board inspection and enforcement outputs, measuring the States progress in achieving its compliance goals and communicating enforcement accomplishments to the public.

#### **Specific Comments**

Page 5 - The section entitled "Compliance Assurance" should be updated throughout to document how information management technology will be used to track

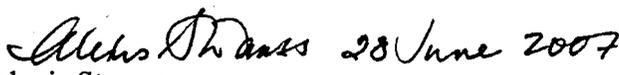
Compliance Assurance activities. For example, SMRs must be entered into a data management system that allows for automated determinations of non compliance with NPDES permit conditions rather than relying on manual review of voluminous SMR forms. Also, compliance inspections must be tracked in a data management system that enables the State to track inspection findings and ensure that the State has an ongoing, thorough field presence.

Page 7 - The section entitled "Determining Priority Violations" should be updated to include a discussion of the "CWA Watch List." There should be a discussion of how the State manages the Watch List and ensures that NPDES permittees with a pattern of repeated violations are addressed. This should include a description of the process State Board enforcement staff utilize to consult with their counterparts in the Regional Boards to ensure that appropriate follow up actions are taken. The mention of the QNCR should be updated and expanded to similarly describe how State Board enforcement staff will work with their Regional Board counterparts to ensure there is follow up actions for facilities in significant non-compliance with permit conditions.

Page 48 - Enforcement Reporting - Note that the following text needs to be updated: *"The report format will be produced by the State Water Information Management (SWIM) data system and the RWQCBs will utilize the SWIM to track and monitor discharger's violations and RWQCB's enforcement activities. Utilization of the SWIM data system by the RWQCBs is essential for the SWRCB's compliance with California Water Code section 13385 (m), which requires statewide reporting of violations to the Legislature."* Given that the State no longer utilizes SWIM and there is not a State system enabling reliable reporting on permit violations, the Policy should be updated to discuss the preparation of reports on State enforcement activities. As noted above, State tracking of inspections and enforcement actions needs to be improved to enable to production of standardized reports on both Regional and State-wide compliance assurance and enforcement activities.

Thank you for considering our comments. Ken Greenberg, the manager of our Clean Water Act Compliance Office, is available to work with your staff to provide further explanation of EPA's enforcement policies and measures.

Sincerely,

  
Alexis Strauss  
Director  
Water Division

cc: Dorothy R. Rice, Executive Director, SWRCB  
Reed Sato, Director, Office of Enforcement, SWRCB