

STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 96-030

WATER QUALITY ENFORCEMENT POLICY

WHEREAS:

1. California Water Code (WC) Section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards shall conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC Section 13000) and shall coordinate their respective activities so as to achieve a unified and effective water quality control program in the State;
2. WC Section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC Section 13142(c) provides that State Policy for Water Quality Control shall consist of principles and guidelines deemed essential by the State Water Board for water quality control;
4. WC Section 13240 provides that Water Quality Control Plans (Basin Plans) shall conform to any State Policy for Water Quality Control;
5. The State Water Board assembled a panel, called the External Program Review Committee (Committee), composed of representatives from the regulated community, environmental groups, and other interested parties with a stake in the work of the State and Regional Water Boards to make recommendations on the conduct of the State Water Board's water quality programs.
6. One of the Committee's recommendations was that the State Water Board adopt a statewide enforcement policy that would ensure that enforcement actions throughout the State are consistent, predictable, and fair.
7. The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act; the Toxic Pits Cleanup Act of 1984; Chapters 6.67, 6.7, and 6.75 of Division 20 of the Health and Safety Code (HSC); Section 25356.1 of HSC; and Chapter 6 of Division 3 of the Harbors and Navigation Code.

8. It is appropriate to adopt a statewide water quality enforcement policy and guidelines implementing the policy to ensure statewide consistency in enforcement.
9. Adoption of this policy is categorically exempt from the California Environmental Quality Act under 14 CCR, Section 15321.
10. This policy should be periodically reviewed and revised, as appropriate.

THEREFORE BE IT RESOLVED:

- I. Enforcement actions throughout the State shall be consistent, predictable, and fair.
- II. It is the intent of the State Water Board that the enforcement actions of the Regional Water Boards be consistent with this policy and the attached implementing guidelines.
- III. Violations of waste discharge requirements (WDRs) or applicable statutory or regulatory requirements should result in a prompt enforcement response against the discharger. At a minimum, the Regional Water Board staff shall bring the following to the attention of their Regional Water Board for possible enforcement action:
  - A. For major NPDES permittees, as defined in 40 CFR Section 122.2 (July 1, 1994):
    1. Exceedence of Category 1 pollutants by 1.4 times the monthly average effluent limit for any two months in a six month period. Category 1 pollutants are defined as Group 1 pollutants listed in 40 CFR Section 123.45, Appendix A (July 1, 1994) [Appendix A];
    2. Exceedence of Category 2 pollutants by 1.2 times the monthly average effluent limit for any two months in a six month period. Category 2 pollutants are defined as Group 2 pollutants listed in Appendix A;
    3. Chronic violations where there is an exceedence of the monthly average effluent limit for any pollutant in any four months in a six month period, or exceedences of the monthly average effluent limit for any pollutant in the same season for two years in a row;

- B. Any incidence of acute toxicity which violates WDRs, Basin Plans, or other provisions of law;
  - C. Violation of narrative toxicity standards contained in WDRs or Basin Plans due to chronic toxicity;
  - D. Violations of prohibitions contained in WDRs, Basin Plans, or enforcement orders;
  - E. Failure to submit reports required in WDRs, orders, or Basin Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to cause misunderstanding and thus impede the review of the status of compliance, except when it is recognized in program workplans that some categories of self-monitoring reports will not be reviewed;
  - F. Violations of compliance schedule milestones for starting construction, completing construction, or attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or WDRs;
  - G. Failure of a publicly-owned treatment works, as defined in 40 CFR Section 122.2 (July 1, 1994), to implement its approved pretreatment program, as defined in 40 CFR Section 403.3 (July 1, 1994), as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users;
  - H. Failure to submit a Notice of Intent for coverage under the Storm Water Industrial General Permit, develop a Storm Water Pollution Prevention Plan (SWPPP), implement a SWPPP, conduct monitoring, or submit annual reports after specific notification to the discharger.
- IV. Enforcement actions should be initiated as soon as possible after discovery of the violation. If the violation continues, the Regional Water Board staff shall consider escalating their response from less formal enforcement actions, such as notice of violation letters, to increasingly more formal and severe enforcement actions, and if necessary, shall bring this to the attention of their Regional Water Board for possible escalation of enforcement action.
- V. The State and Regional Water Board staff shall cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. The aggregate enforcement authority of the Boards and Departments of the California Environmental

Protection Agency (Cal/EPA) should be coordinated to eliminate inconsistent, overlapping, and redundant efforts. The following steps should be taken by Regional Water Board staff to assist in integrated enforcement efforts:

- A. Participate in multiagency and enforcement coordination;
- B. Share enforcement information;
- C. Participate in cross-training efforts;
- D. Participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges.

VI. For spills of hazardous materials:

- A. The Regional Water Board staff shall coordinate enforcement actions with the Department of Toxic Substances Control and/or any local or county hazardous material program;
- B. The Regional Water Board staff shall consider referring spills in all but the smallest amounts to the appropriate District Attorney. If the District Attorney chooses not to pursue the case, the Regional Water Board staff shall consider issuing an administrative civil liability (ACL) Complaint.
- C. Large spills of hazardous materials should be considered for referral to the Attorney General. If necessary, the Regional Water Board staff should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted.

VII. In setting ACL amounts:

- A. Similar violations should result in similar amounts;
- B. ACL amounts should create a strong disincentive for future violations;
- C. Dischargers should not gain an economic benefit from the violations;

VIII. The State Water Board supports the use of supplemental environmental projects which are funded or implemented by dischargers in exchange for a suspension of a portion of an ACL or other monetary assessment which would otherwise

be paid directly to the State Cleanup and Abatement Account.

- IX. It is desirable to encourage self-auditing, self-policing, and voluntary disclosure of environmental violations by dischargers. Such self-auditing and voluntary disclosure of violations shall be considered by the State and Regional Water Boards when determining enforcement actions and in appropriate cases may lead to a determination to forego or lessen the severity of an enforcement action.

Falsification or misrepresentation of such voluntary disclosures shall be brought to the attention of the appropriate Regional Water Board for possible enforcement action.

- X. This policy shall be reviewed and revised, as appropriate, not later than every five (5) years.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 18, 1996.

  
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Maureen Marché  
Administrative Assistant to the Board

**DRAFT GUIDANCE TO IMPLEMENT  
THE WATER QUALITY ENFORCEMENT POLICY**

**March 29, 1996**

**STATE WATER RESOURCES CONTROL BOARD  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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NOTE: STATEMENTS THAT HAVE BEEN DELETED FROM THE POLICY, BUT THAT WILL BE RETAINED IN THE GUIDANCE ARE UNDERLINED TO INDICATE THAT THEY PREVIOUSLY APPEARED IN ***BOLD ITALICS***.

LANGUAGE THAT WILL BE DELETED FROM THIS DOCUMENT IS INDICATED IN STRIKEOUT, AND LANGUAGE THAT HAS BEEN ADDED IS **SHADED**.

ADDITIONS AND DELETIONS MADE TO THIS DOCUMENT AFTER THE MARCH 6, 1996 WORKSHOP BEGIN WITH "◆" SYMBOL AND END WITH A "◆◆" SYMBOL TO DENOTE RECENT CHANGES.

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## GUIDANCE TO IMPLEMENT THE WATER QUALITY ENFORCEMENT POLICY

This document is intended to clarify the State Water Resources Control Board's (State Water Board's) policy on enforcement and to provide general guidance to the Regional Water Quality Control Boards (Regional Water Boards), their staff, the regulated community and the general public. Statements which appear in **bold italics** indicate an actual statement of State Water Board policy intended to be implemented by the State and Regional Water Boards or their staff. The remainder of the document is intended as guidance.

Where the word "should" is used in a policy statement (**bold italics**), it is intended that the State and Regional Water Boards or their staff exercise their discretion, and that they be prepared to justify whatever decision is made or action is taken. ~~Where the word "should" is used in a non-policy statement, it is intended to suggest a response which need not be justified.~~

Where the word "shall" is used in a policy statement (**bold italics**) requiring that State or Regional Water Board staff act or bring a matter to the attention of their respective Board, it is not intended to ~~place the same requirement on that Board~~ mandate that the State or Regional Water Board itself take any enforcement action. ~~Unless otherwise specified, it is intended that the State or Regional Water Boards exercise their discretion in pursuing enforcement actions.~~

### INTRODUCTION

The State Water Board and Regional Water Boards exercise the regulatory and adjudicatory powers of the State of California in the field of water resources. One of these powers is the implementation of statutes and programs to protect the quality of the waters of the State. Timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the State have clean water. **It is the policy of the State Water Board that enforcement actions throughout the State shall be consistent, predictable, and fair.** In their review of State and Regional Water Board activities, the External Program Review's Regional Board Consistency Task Force specifically recommended that the State Water Board adopt a statewide enforcement policy that would ensure this.

Enforcement serves many purposes. First and foremost, it assists in keeping the State's waters clean. Swift and sure enforcement orders can prevent threatened pollution from occurring and can promote prompt cleanup and correction of existing pollution problems. It ~~assures~~ **ensures** compliance with State and Regional Water Board orders. Enforcement not only protects the public health and the environment, but also creates an "even playing

field", ~~assuring-ensuring~~ that dischargers who ~~display good "citizenship"~~ comply with the law are not placed at a competitive disadvantage by those who do not ~~comply~~. It will also deter potential violators and, thus, further protect the environment.

Other benefits result from a strong enforcement program. Monetary remedies, an essential component of an effective enforcement program, provide a funding source for needed cleanup projects, provide compensation for the often unquantifiable damage pollution causes the environment, and ensure that polluters do not gain a substantial economic advantage from violations of water quality laws.

The State and Regional Water Boards have a wide array of enforcement options at their disposal. Enforcement actions ~~may be considered~~ ~~are available~~ ♦♦ to address many circumstances, including but not limited to the following:

- o Violation of an effluent limit, receiving water limit, or discharge prohibition contained in an order or Water Quality Control Plan (Basin Plan) adopted by the State Water Board or a Regional Water Board.
- o An unauthorized spill, leak, fill, or other discharge.
- o Failure to perform an action required by the State Water Board or a Regional Water Board, such as submittal of a self-monitoring or technical report, or completion of a cleanup task by a specified deadline.

The procedures set forth in this document are not intended to be a substitute for the sound discretion of the State and Regional Water Boards in enforcement matters. Enforcement determinations are complicated decisions based ultimately on experience and professional judgement. Rather, the purpose of this document is to provide a framework within which such decisions may be better made.

In deciding which course of action should be pursued, Regional Water Board staff should consult with their supervisors and with legal counsel assigned to the Regional Water Board. The Regional Water Board's legal counsel is its expert on most aspects of enforcement, including precedents and conformity with existing laws, regulations, and guidance.

It is important to note that enforcement of the State's water quality statutes is not solely the purview of the State and Regional Water Boards and their staff. State law allows for members of the public to ~~petition the State or Regional Water Boards to consider any matter within their jurisdiction,~~ ~~including petitioning~~ bring enforcement matters to attention of the State and Regional Water Boards and authorizes aggrieved persons to petition ♦♦ the State Water Board to review any action or inaction by the Regional Water Board. In addition, the Water

Code provides for public participation in the issuance of orders, policies and water quality control plans.

## I. DISCOVERY OF VIOLATION

Violation of waste discharge requirements (WDRs), enforcement orders, or applicable provisions of law administered by the State or Regional Water Boards can be discovered through discharger self-monitoring reports (SMRs), compliance inspections, facility reporting, complaints, or file review. Unauthorized discharges, those for which WDRs have not been issued, are most commonly discovered through complaints and interagency notifications.

### A. SELF-MONITORING REPORTS

The State and Regional Water Boards ensure compliance with WDRs by requiring all dischargers to implement a monitoring and reporting program and to periodically submit SMRs. Reporting frequency for regulated dischargers will depend on the nature and effect of the discharge. Most dischargers, however, are required to submit SMRs monthly.

### B. COMPLIANCE INSPECTIONS

Compliance inspections are conducted on-site by the Regional Water Board staff under the authority provided in Water Code Sections 13267 and 13383. Compliance inspections address compliance with WDRs; laboratory quality control and assurance; record keeping and reporting; time schedules; best management plans; and any other pertinent provisions. The inspections are also used as a verification of the accuracy of the discharger's SMR. In addition, the U.S. Environmental Protection Agency (USEPA) has authority to inspect facilities which discharge to surface waters.

### C. DIRECT FACILITY REPORTING

Dischargers with regulated facilities are generally required to report to the Regional Water Board by phone, usually immediately or within 24 hours, followed by a written report and a discussion in the next SMR, when certain events occur, such as:

- o Bypass of raw or partially treated sewage from a treatment unit or discharge of wastewater from a collection system.
- o Treatment unit failure or loss of power which threatens to cause a bypass.
- o Any other operational problems which threaten to cause significant violations of WDRs or impacts to receiving waters.

### D. COMPLAINTS

Often information regarding an actual or potential violation or unauthorized discharge is obtained through telephone or written notification from a member of the public, another public agency

or an employee working at a regulated facility. Complaints may also involve nuisance conditions, such as noxious odors that extend beyond a wastewater treatment plant boundary.

**E. FILE REVIEW**

WDRs frequently mandate completion of tasks, which the dischargers must confirm by submission of appropriate reports to the Regional Water Boards. Failure to submit the reports or to complete the required tasks may be the basis for initiating enforcement.

## II. ENFORCEMENT TRIGGERS

*Violations of WDRs or applicable statutory or regulatory requirements should result in a prompt enforcement response against the discharger. It is recognized, however, that Regional Water Board resources are limited, and that resources may be best used and water quality may be best protected by focusing on violations and discharges that pose the greatest threat to human health and the environment. What follows is an outline of violations and discharges that should trigger an immediate enforcement response from the Regional Water Board. Regional Water Boards are encouraged to ensure that violations of WDRs or unauthorized discharges of waste not listed below also receive an appropriate enforcement response. At a minimum, the Regional Water Boards staff shall consider enforcement action for bring the following to the attention of their Regional Water Board for possible enforcement action:*

### A. POLLUTANTS

*For major NPDES permittees, as defined in 40 CFR Section 122.2 (July 1, 1994), the enforcement criterion is: exceedence of Category 1 pollutants by 1.4 times the monthly average effluent limit for any two months in a six month period; or exceedence of Category 2 pollutants by 1.2 times the monthly average effluent limit for any two months in a six month period. Category 1 and Category 2 pollutants are defined as Group 1 and Group 2 pollutants respectively, as listed in 40 CFR Section 123.45, Appendix A (July 1, 1994). The Categories are shown in Attachment 1.*

### B. CHRONIC VIOLATIONS

*For major NPDES permittees, as defined in 40 CFR Section 122.2 (July 1, 1994), the enforcement criterion for chronic violations is exceedence of the monthly average effluent limit for any pollutant in any four months in a six month period, or exceedence of the monthly average effluent limit for any pollutant in the same season for two years in a row.*

### C. TOXICITY

*Regional Water Boards staff shall ~~consider enforcement action for bring~~ any incidence of acute toxicity which violates WDRs, Basin Plans, or other provisions of law to the attention of their Regional Water Board for possible enforcement action. Where acute toxicity can be shown to be the result of failure of a discharger to exercise normal care in handling, treating, or discharging waste, an enforcement action with a monetary assessment should be issued.*

*Similarly, ~~staff shall bring enforcement action shall be considered for~~ violations of narrative toxicity standards contained in WDRs or Basin Plans due to chronic toxicity to the*

attention of their Regional Water Board for possible enforcement action♦♦. Regional Water Boards should develop enforcement triggers to implement narrative toxicity standards due to chronic toxicity. The Regional Water Boards enforcement provisions will remain in effect until the State Water Board adopts either statewide plans or a policy with provisions for enforcement of narrative toxicity standards. Regional Water Boards must amend their toxicity enforcement provisions and criteria to conform to such statewide plans or policies after they are adopted.

#### D. PROHIBITIONS

~~The Regional Water Board staff shall consider enforcement action for bring ♦♦ violations of prohibitions contained in WDRs, Basin Plans, or enforcement orders ♦to the attention of their Regional Water Board for possible enforcement action♦♦.~~ The level of response and whether that response is a formal enforcement should depend on the degree of discharger culpability, environmental damage, independent action by the discharger to correct the violation, etc.

#### E. SPILLS

Spills generally refer to unauthorized discharges and are considered to be significant violations of State law and basin plans. Because the significance of the spill in terms of environmental impact depends on the amount of material spilled, the nature of the spilled material, size of the affected water body, or the proximity of the spill to a water body (if the spill was not directly to the water body) Regional Water Boards have discretion to determine the appropriate enforcement level and monetary liability. In making this determination Regional Water Boards may consider actions taken by the discharger to immediately notify appropriate authorities, and to initiate cleanup and other actions to minimize potential effects of the spill.

#### F. FAILURE TO SUBMIT REPORTS

In some cases, reports required by WDRs, Cease and Desist Orders, Cleanup and Abatement Orders, and Basin Plans measure progress in implementing long-term corrective actions intended to achieve permanent compliance with permits, Basin Plans, and state and federal laws and regulations. ~~Failure to submit reports required in WDRs, orders, or Basin Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to cause misunderstanding and thus impede the review of the status of compliance are serious violations ♦which staff shall bring to the attention of their Regional Water Board for possible enforcement action that shall result in consideration of an enforcement action by a Regional Water Board staff.~~ An exception to this will occur when it is recognized in program workplans that some categories of self-monitoring reports will not be



~~reviewed~~ ♦♦ Violations of these types of reporting requirements should include monetary assessments.

#### G. COMPLIANCE SCHEDULES

Violations of compliance schedule milestones for starting construction, completing construction, or attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or WDRs shall result in ~~consideration of an staff bringing the matter to the attention of their Regional Water Board for possible~~ ♦♦enforcement action.

#### H. PRETREATMENT PROGRAM IMPLEMENTATION

~~An enforcement response shall be considered for Staff shall bring~~ ♦♦failure of a publicly-owned treatment works, as defined in 40 CFR Section 122.2 (July 1, 1994), to implement its approved pretreatment program, as defined in 40 CFR Section 403.3 (July 1, 1994), as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users♦ to the attention of their Regional Water Board for possible enforcement action♦♦. This includes pretreatment program compliance schedules.

#### I. STORM WATER PROGRAM

Discharges of storm water associated with industrial activities require compliance with the General Industrial Activities Storm Water Permit. Failure to submit a Notice of Intent for coverage under the general permit, develop a Storm Water Pollution Prevention Plan (SWPPP), implement a SWPPP, conduct monitoring, and submit annual reports after specific notification to the discharger are significant violations and shall warrant ~~consideration of an enforcement response staff bringing the matter to their Regional Water Board for possible enforcement~~ action♦♦.

### III. TYPES OF ENFORCEMENT ACTIONS

The State and Regional Water Boards have a variety of enforcement tools to use in response to non-compliance by dischargers. This section describes the range of options and discusses procedures that are common to some or all of these options.

An enforcement action is any informal or formal action taken to address an incidence of actual or threatened non-compliance with existing regulations or provisions designed to protect water quality. Formal enforcement actions fall into two basic categories: those that direct future actions by dischargers and those that address past violations. Actions which generally direct future action include imposition of time schedules and issuance of Cease and Desist Orders and Cleanup and Abatement Orders. Actions taken to address past violations include rescission of waste discharge requirements, administrative civil liability, and referral to the Attorney General or District Attorney. In some instances, both types are used concurrently to deal with a specific violation (e.g., discharger has had past violations but has not yet corrected the problem).

~~◆The discharger named in an enforcement action can be difficult to determine.~~ Determination of who is responsible for a particular violation can sometimes be difficult. ◆ For a regulated discharge, the discharger is usually the same individual to whom the WDRs were issued. For unauthorized discharges, the discharger is usually the property owner, tenant, or lessee. The Regional Water Board's legal counsel should be consulted where determination of the discharger is in question.

~~Enforcement actions shall should be initiated as soon as possible after discovery of the violation. If the violation continues, the Regional Water Board staff shall consider escalating its their response from less formal enforcement actions, such as notice of violation (NOV) letters, to increasingly more formal and severe enforcement actions, and if necessary, shall bring this to the attention of their Regional Water Board for possible escalation of enforcement action.~~

Any person ~~◆adversely affected aggrieved◆~~ by an action or failure to act by a Regional Water Board may petition the State Water Board to review the decision. The petition must be received by the State Water Board within 30 days of the Regional Water Board action or refusal to act, or 60 days after a request has been made to the Regional Water Board to act. In addition, the State Water Board may, at any time and on its own motion, review any action or failure to act by a Regional Water Board.

#### A. INFORMAL ENFORCEMENT

For minor violations, the first step is usually informal enforcement action. Staff should contact the discharger by phone and document the conversation in a follow-up letter. Staff

should inform the discharger of the specific violations, discuss how and why the violations occurred, and discuss how and when the discharger will come back into compliance. This step can be deleted for significant violations, such as repeated or intentional illegal discharges, falsified reports, etc.

The NOV letter is an informal enforcement action. The purpose of a NOV letter is to bring a violation to the discharger's attention and to give the discharger an opportunity to correct the violation before formal enforcement actions are taken. Continued noncompliance should trigger formal enforcement action.

An NOV letter should be signed by the Executive Officer and should cover the following points: description of specific violations, summary of applicable enforcement options (including maximum ACL), and a request for a written response. The letter should always go to the discharger named in the Regional Water Board order, even if staff normally deals with a consultant. See Attachment 2 for an example of a NOV.

A special form of the NOV letter is the Field Notice of Violation, a form used by Regional Water Board staff in the field (Attachment 3). This form describes the violation and requests corrective action as appropriate. The purpose is to alert the discharger immediately to the violation and the potential for civil liability.

#### **B. TIME SCHEDULE ORDER**

Pursuant to Water Code Section 13300, actual or threatened discharges of waste in violation of requirements can result in imposition of a time schedule which sets forth the actions a discharger shall take to correct or prevent the violation.

#### **C. CEASE AND DESIST ORDERS**

Cease and Desist Orders (CDOs) are adopted pursuant to Water Code Sections 13301-13303. CDOs are normally issued to dischargers regulated by WDRs and often remain in force for years.

CDOs are typically issued to regulate dischargers with chronic non-compliance problems. These problems are rarely amenable to a short-term solution; often, compliance involves extensive capital improvements or operational changes. The CDO will usually set a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. CDOs may also include restrictions on additional service connections (referred to as a "connection ban") to community sewer systems. These have been applied to sanitary sewer systems but can be applied to storm sewer systems, as well. Violations of CDOs should trigger further enforcement in the form of an ACL or referral to the Attorney General for injunctive relief or monetary remedies.

**D. CLEANUP AND ABATEMENT ORDERS**

Cleanup and Abatement Orders (CAOs) are adopted pursuant to Water Code Section 13304. CAOs are generally issued to dischargers that are not being regulated by WDRs. With the exception of ground water cleanups, CAOs are typically short-lived enforcement orders.

CAOs are issued by the Regional Water Board, or by the Executive Officer under delegation from the Regional Water Board pursuant to Water Code Section 13223. Executive Officer-issued CAOs should be used when speed is important, such as when a major spill or upset has occurred and waiting until the Regional Water Board can meet to approve a CAO would be inappropriate. Regional Water Boards should keep an accurate record of staff oversight costs for CAOs since dischargers are liable for such expenses. If staff costs are not recovered voluntarily or through civil court actions, the amount of the costs constitutes a lien on the affected property and foreclosure may be used. Violations of CAOs should trigger further enforcement in the form of an ACL or referral to the Attorney General for injunctive relief or monetary remedies.

**E. MODIFICATION OR RESCISSION OF WASTE DISCHARGE REQUIREMENTS**

In accordance with the provisions of the Water Code, and in the case of NPDES permits, the Federal Water Pollution Control Act, the Regional Water Board may modify or rescind WDRs in response to violations. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a wastewater treatment plant.

**F. ADMINISTRATIVE CIVIL LIABILITY**

Administrative civil liability (ACL) means monetary assessments imposed by a Regional Water Board. The Water Code authorizes ACLs in several circumstances:

<u>Water Code Section</u>	<u>Type of Violation</u>
13261	Failure to furnish report of waste discharge or to pay required fees.
13265	Unauthorized discharge of waste.
13268	Failure to furnish technical report.
13308	Failure to comply with time schedule.
13350	Intentional or negligent violation of CDO; CAO; WDRs; or Regional Water Board prohibition (Basin Plan), which results in pollution, or unauthorized release of any petroleum product.
13385	Violation of NPDES permit, Basin Plan Prohibition, etc.

Water Code Sections 13323-13327 describe the ACL process to be used. The Water Code authorizes Regional Water Board Executive Officers to issue an ACL Complaint. The Complaint describes the violation, proposes a specific monetary assessment, and sets a hearing date (no more than 60 days after the Complaint is issued).

The discharger may either waive their right to a hearing or appear at the Regional Water Board hearing to dispute the Complaint. In the latter case, the Regional Water Board has the choice of dismissing the Complaint, adopting an ACL order (ACL amount need not be the same as in the Complaint), or adopting a different enforcement order (e.g. referral to Attorney General).

ACL actions are intended to address past violations. If the underlying problem has not been corrected, the ACL action should be accompanied by a Regional Water Board order to compel future work by the discharger (e.g. CAO or CDO). One exception involves late reports, where a revised submittal deadline could have the effect of encouraging further delay for some dischargers.

#### **G. REFERRALS TO ATTORNEY GENERAL OR DISTRICT ATTORNEY**

The Regional Water Board can refer violations to the state Attorney General or ask the appropriate county District Attorney to seek criminal relief. In either case, a superior court judge will be asked to impose civil or criminal penalties. In some cases, the Regional Water Board may find it appropriate to request the U.S. Attorney's Office to review potential violations of federal environmental statutes, including the Clean Water Act, Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act.

##### **1. Attorney General**

The Attorney General can seek civil enforcement of a variety of Water Code violations, essentially the same ones for which the Regional Water Board can impose ACL. Maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the court instead of the Regional Water Board. The Attorney General can also seek injunctive relief in the form of a restraining order, preliminary injunction, or permanent injunction pursuant to Water Code Sections 13262, 13264, 13304, 13331, 13340 and 13386. Injunctive relief may be appropriate where a discharger has ignored enforcement orders.

For civil assessments, referrals to the Attorney General should be reserved for cases where the violation merits a significant enforcement response but where ACL is inappropriate. For example, when a major oil spill occurs, several state agencies can seek civil monetary remedies under different state laws; a single civil action by the Attorney General is more effective than numerous individual actions. A violation (or series of violations) with major public health or water quality impacts

should be considered for referral, in order to maximize the monetary assessment because of its effect as a deterrent. Referral for recovery of natural resources damages under common law theories, such as nuisance, may also be appropriate.

Normally, a case should not be recommended for referral to the Attorney General unless it has been informally determined that the Attorney General is able and willing to handle the case. Even with the Attorney General in the lead role, referrals often consume considerable staff time, especially if staff members are requested to testify at trial.

The majority of cases referred are settled out of court, although the process takes many months (or years). Since the Regional Water Boards gained the authority to impose ACL for substantial amounts, fewer cases need be referred to the Attorney General.

## 2. District Attorney

District Attorneys may seek civil or criminal penalties under their own authority for many of the same violations the Regional Water Board pursues. ~~With prior delegation of the Regional Water Board, the Executive Officer may send cases to the District Attorney without Regional Water Board approval, unlike referrals to the Attorney General.~~ While the Water Code requires a formal Regional Water Board referral to the Attorney General, the Regional Water Board's Executive Officer may bring matter is not precluded from bringing appropriate matters to the attention of a District Attorney. ~~A major area where District Attorney referrals are used involvement should be considered~~ is for unauthorized releases of hazardous substances. In most of these cases, the Regional Water Board is not the lead agency, and the referral action is intended to support the local agency that is taking the lead (e.g. county health department or city fire department). In many cases, Regional Water Board staff lacks the time to prepare an enforcement action, and a District Attorney referral is another option to seeing the matter pursued. Many District Attorney offices have created ~~strike task~~ forces specifically staffed and equipped to investigate environmental crimes including water pollution. ~~These task forces may ask for Regional Water Board support which should be given within available resources~~

In addition to the criminal sanctions and civil fines, the District Attorney often pursues injunctive actions to prevent unfair business advantage. The law provides that one business may not gain unfair advantage over its competitors by using prohibited tactics. A business that fails to comply with its WDRs or an enforcement order competes unfairly with other businesses that obey the law.

### 3. Civil versus Criminal Actions

Enforcement actions taken by the Regional Water Board are civil actions. In cases where there is reason to believe that specific individuals or entities have engaged in criminal conduct, the Regional Water Board or Executive Officer may request that criminal actions be pursued by the District Attorney. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment.

It is not expected or desired that Regional Water Board staff will attempt an in-depth analysis of whether environmental criminal conduct has occurred in each individual case. While criminal statutes differ, many require some type of intent or knowing behavior on the part of the violator. This intent may be described as knowing, reckless, or willful. In addition to the required intent, criminal offenses consist of a number of elements, each one of which must be proven. Determining whether the required degree of intent and each of the elements exists often involves a complex analysis. If a potential environmental criminal matter comes to the attention of staff, consultation with Regional Water Board management and counsel should take place first before making any contact with other enforcement authorities.

When evaluating whether a case should be referred for criminal investigation, particular attention should be given to the degree of intent and the gravity of the violation. A good rule of thumb is that if the conduct appears to be intentional or reckless and constitutes a serious threat to human health or the environment, careful consideration should be given to pursuing the case criminally.

#### H. SPECIAL SITUATIONS

##### 1. Violations at State or Federal Facilities

For violations caused by a department or other entity of the State of California, the Executive Officer shall ~~should~~ notify the director or head of the department or entity and the Executive Director of the State Water Board of the nature of the violation, the actions needed to abate or clean up the discharge, and the potential of a State or Regional Water Board enforcement action. Depending upon the significance of the violation and/or the willingness and ability of the department to comply, an enforcement action (ACL, CAO, or CDO) may be issued to correct the violation and to deter future violations.

Violations at federal facilities shall ~~should~~ be handled similarly. Due to sovereign immunity, however, the State cannot obtain penalties from federal agencies for past violations (e.g., no ACLs) under most circumstances. One significant exception is provided by the Federal Facilities Compliance Act of 1992, which

allows the States to penalize federal agencies, under specified circumstances, for violations of state hazardous waste management requirements. In addition, under Water Code Section 13308 a Regional Water Board may seek ACL, up to a maximum of \$10,000 per day of violation, against federal facilities for violation of a time schedule order, which was adopted to ensure future compliance with an existing enforcement order.

## 2. Integrated Enforcement

~~The State and Regional Water Boards staff shall cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. When the Regional Water Boards become aware of a potential violation of another agency's requirements, that agency shall should be notified.~~ The aggregate enforcement authority of the Boards and Departments of the California Environmental Protection Agency (Cal/EPA) should be coordinated to eliminate inconsistent, overlapping and redundant efforts. The following steps shall should be taken by Regional Water Board staff to assist in integrated enforcement efforts: participate in multi-agency ~~strike forces and enforcement coordination groups;~~ share enforcement information; participate in cross-training efforts; participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges.

The exchange of information among the Boards and Departments is especially important. Recent case law imputes the knowledge of each state agency to all others. Cal/EPA will be maintaining a data base for information on all enforcement actions. Quick and accurate filing of enforcement data with the State Water Board and Cal/EPA is essential.

## 3. Oil Spills

Responses to oil spills to marine or estuarine waters shall should be coordinated through the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR). OSPR staff may pursue enforcement action administratively or through referral to the local District Attorney, and, in such cases, the Regional Water Board generally should not invest staff time in a parallel effort. Staff should assist in an investigation by providing documentation, sampling, etc. If the discharger has not prepared a plan acceptable to the Regional Water Board to prevent recurrence, the Regional Water Board should request such a technical report under Water Code Sections 13267 or 13383.

Major oil spills, those in excess of 10,000 gallons, usually involve a number of governmental jurisdictions. Such spills should be brought to the Regional Water Board for consideration of referral to the Attorney General for recovery of civil monetary remedies and damages.



Oil spills to inland (fresh) waters are not within the jurisdiction of OSPR. If formal enforcement actions are taken, they are usually enforced by either the county District Attorney under either the Fish and Game Code or Health and Safety Code, or by the Regional Water Board under the Water Code. In general, if the District Attorney is interested in pursuing the case, the Regional Water Board should consult with the District Attorney before pursuing its own enforcement action to avoid any potential double jeopardy issues. However, staff should always request that any settlement include recovery of staff costs and any actions that appear necessary to prevent recurrence of a spill and to mitigate damage to the environment.

#### **4. Hazardous Materials Spills**

Hazardous materials are those meeting the criteria specified in Title 22, Division 4.5, Chapter 11, California Code of Regulations. ~~The Regional Water Board staff shall coordinate enforcement actions with the Department of Toxic Substances Control and/or any local or county hazardous material program.~~ Spills constitute unlawful disposal of hazardous waste pursuant to the Health and Safety Code. ~~The Regional Water Board staff shall consider referring spills in all but the smallest amounts to the appropriate District Attorney,~~ (generally in the 100-10,000 gallon range). ~~If the District Attorney chooses not to pursue the case, the Regional Water Board staff shall consider issuing an ACL Complaint unless the spill was very small or limited in impact.~~ Due to the nature of the materials discharged, the Regional Water Board staff should consider issuing the ACL Complaint in an amount at or near the legal maximum.

*Large spills of hazardous materials, 10,000 gallons or more, should be treated like large oil spills, and ~~shall should be considered for referral to the Attorney General.~~ If necessary, ~~the Regional Water Board staff shall should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted.~~ In addition, such spills may constitute the unlawful disposal of hazardous waste pursuant to the Hazardous Waste Control Act (Health and Safety Code Section 25100 et seq.) and, in most cases, should be investigated in conjunction with the Department of Toxic Substances Control.*

#### **5. Spills of Nonhazardous Materials**

Spills of materials that do not meet the formal criteria as being hazardous can still be highly toxic, such as some petroleum hydrocarbons or detergents, or of only limited toxicity, such as corn syrup. For this reason, such spills must be evaluated case-by-case for enforcement.

## 6. Storm Water Discharges

As compliance with the State Water Board's General Industrial Activities Storm Water Permit has costs associated with it, industries that are currently in compliance are at an economic disadvantage as compared to industries that are not. The imposition of ACL for noncompliance with the General Industrial Activities Storm Water Permit will be based on factors required by statute, including the costs that the facility avoided by not complying. These costs include: the annual fee, the cost of Storm Water Pollution Prevention Plan development, the cost of implementing best management practices, and the cost of monitoring and reporting. ACL will be in addition to the requirement of submitting a notice of intent to comply with the permit along with the first year's annual permit fee. ACL may be assessed by either the State Water Board or the Regional Water Boards.

## 7. Solid Waste Facilities

Provisions were added to the Public Resources Code (PRC) in 1995 which impact on enforcement activities at solid waste facilities:

- (a) Where a Regional Water Board has issued, or is likely to issue an enforcement action against a solid waste facility, they must provide a statement to the local enforcement agency, the Solid Waste Management Board, the air pollution control district and the Department of Toxic Substances Control, if the violation involves the jurisdiction of that agency. This statement must be provided at least 10 days prior to the date of issuance of an enforcement order which is not an emergency, within five days from the date of issuance of an enforcement order for an emergency, or within 15 days of the discovery of a violation of a state law, regulation, or term or condition of a solid waste facilities permit for a solid waste facility, which is likely to result in an enforcement action. The statement must provide an explanation of and justification for the enforcement action, or a description of the violation (PRC Section 45019).
- (b) The appropriate Regional Water Board must inspect a solid waste facility within 30 days of receipt of an enforcement action or proposed enforcement action from one of the above agencies if such action stems from a complaint concerning a solid waste facility and if a water quality violation is at issue (PRC Section 45020).
- (c) If a Regional Water Board receives a complaint concerning a solid waste facility, which is not within its jurisdiction, it must refer the complaint to the appropriate state agency within 30 days (PRC Section 45021).
- (d) If a Regional Water Board receives a complaint concerning a solid waste facility, either directly or by referral from

another state agency, it shall either take appropriate enforcement action, refer the complaint to the Attorney General, the district attorney, or city attorney, whichever is applicable, or provide, within 60 days, to the person who filed the complaint a written explanation as to why enforcement action is not appropriate (PRC Section 45022).

(e) Regional Water Board enforcement activities at solid waste facilities shall comply with the following (PRC Section 45020):

- (1) Enforcement activities shall eliminate duplication and facilitate compliance.
- (2) Facility operators must be notified before administrative civil liability (ACL) is imposed.
- (3) Prior to imposing ACL, and upon the request of a solid waste facility operator, the Regional Water Board must meet with the operator to clarify regulatory requirements and to determine how the operator could come into voluntary compliance. The operator may request a meeting with all agencies involved in the enforcement matter.
- (4) The Regional Water Board must consider the factors listed in PRC Section 45016 in determining the appropriate enforcement action.

#### IV. DETERMINING ACL AMOUNTS

The Water Code gives the Regional Water Board substantial discretion in setting ACL amounts. How this discretion is exercised is based upon several factors, some of which relate to the discharger and some of which relate to the discharge itself. The Regional Water Board is required to consider ten factors when setting ACL amounts but has latitude in how it applies and weighs each factor. This discretion is helpful, since no two cases are alike, but this often results in significant staff effort to recommend a reasonable ACL amount. In addition, maximum potential penalties ~~assessments~~ are huge for some violations. Setting ACL amounts at or near the maximum often is not practical nor is it always good public policy.

One goal of this policy in calculating ACL amounts is consistency. **Similar violations should result in similar amounts**; dischargers should have some idea of their potential exposure. Another goal is deterrence; **ACL amounts should create a strong disincentive for future violations**. Finally, **dischargers should not gain an economic benefit from the violations**.

##### A. MINIMUM AND MAXIMUM ACL AMOUNTS

The Water Code establishes maximum ACL amounts for each type of violation. These amounts are expressed as a function of violation duration (dollars per day) or violation magnitude (dollars per gallons discharged). Maximum ACL amounts range from \$1,000 to \$10,000 per day and \$10 per gallon. (See Attachment 4).

Water Code Section 13350 also establishes minimum ACL amounts for certain violations. These amounts are either \$100 or \$500 per day of violation. The Regional Water Board is required to impose these minimum amounts unless it makes express findings based upon the factors specified in Water Code Section 13327.

##### B. FACTORS TO BE CONSIDERED

Section 13327 of the Water Code requires the Regional Water Board to consider ten factors when determining the amount of ACL:

"(T)he nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require."

The first three factors relate to the environmental significance of the violations. The remaining factors deal with the character, actions and economic worth of the violator. These factors should be used not only in determining an appropriate ACL amount, but also in deciding whether an ACL should be issued at all. Below is a discussion of some common issues for the ten factors, followed by a matrix for use as a guide in determining monetary assessments. (Note that several of the factors have been grouped together).

### **1. Nature, Circumstance, Extent, and Gravity of Violation and Degree of Toxicity**

These factors address the magnitude and duration of a violation. More fundamentally, they address the impact of a violation and its effect on beneficial uses, including public health and water quality. This factor should be weighted heavily in calculating ACL amounts.

There are different methods to define the gravity of different types of violations. For spills, the main concern is the volume, duration, and toxicity of the material spilled. For effluent limit violations, the concern is the violation's significance (e.g., how much above the effluent limit). For time schedule violations, the length of the delay and its effects on overall compliance are the primary issues.

### **2. Degree of Culpability**

Higher ACL amounts should be set for intentional or negligent violations than for accidental, non-negligent violations. Showing intent or negligence is not always easy. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.

### **3. Prior History of Violations**

Higher ACL amounts should be set in cases where there is a pattern of previous violations. If the Regional Water Board has already imposed ACL for past violations, then ACL for additional violations of the same type should be substantially higher. However, a Regional Water Board cannot ~~penalize~~ ~~impose ACL on a~~ discharger more than once for the same violation.

### **4. Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken**

These two factors relate to cleanup efforts. The ACL amount should be reduced to reflect good-faith efforts by the violator to clean up wastes or abate the effects of waste discharges. In many cases, the violation is not amenable to cleanup or abatement, such as a regulated discharge to surface waters in

excess of effluent limits or a time schedule violation for site investigation. In these cases, the ACL amount is unaffected by the cleanup or abatement factor.

#### **5. Economic Savings**

Dischargers should not enjoy a competitive advantage because they flout environmental laws. Assessments for Water Code violations should at a minimum take away whatever economic savings a firm or agency gains as a result of those violations.

Economic savings fall into two categories: (1) deferred capital spending and (2) reduced or avoided costs of operation and maintenance (O&M). To estimate economic savings, the first step is to identify which capital improvement projects or O&M activities were delayed or avoided. The second step is to estimate these capital and O&M costs and express them as a present value.

Cost data may often be obtained from the discharger, especially when the discharger explains what it did to prevent future recurrence of the violations. If the discharger does not volunteer this cost information, staff can require it via a Water Code Section 13267 or 13383 request. Financial management programs can convert capital and O&M costs into an economic savings estimate.

Savings from deferred capital spending is calculated based on the amount of interest that could have been earned on the capital funds during the delay period. Savings from O&M activities are calculated for the entire delay period and expressed as a present value.

#### **6. Ability to Pay and Ability to Continue in Business**

Normally, assessments are not set so high as to put firms out of business or seriously harm their ability to continue in business. In a similar sense, government agencies have finite resources to pay assessments, notwithstanding their broad powers to raise revenue. At issue is how the Regional Water Boards calculate a firm's (or agency's) ability to pay.

Draft USEPA guidance provides one possible method for analyzing affordability. See 1994 "Draft Economic Guidance for Water Quality Standards Workbook" by USEPA. The draft guidance suggests analyzing four factors: liquidity (short-term ability to pay bills); solvency (long-term ability to pay bills); leverage (current debt load and ability to borrow additional funds); and earnings (how pollution-related costs affect profitability).

~~For local governments, the 1994 draft USEPA economic guidance suggests that an assessment less than one percent of total household incomes for the affected community can be considered~~

~~affordable. Another approach would be to compare the proposed assessment with the local government's annual budget.~~

#### **7. Other Matters as Justice May Require**

This factor affords the Regional Water Board wide discretion. However, it applies only to matters not already addressed in the list above and it should be used primarily for any considerations that are specific to the violator. This factor can also be used as a basis for recovery of staff costs incurred in the ACL process. Staff costs should be added to the ACL amount derived from the other ACL factors to come up with the total ACL amount. Details on deriving staff costs are given below.

Finally, litigation considerations may justify a reduction in the amount due to applicable precedents, competing public interest considerations, or the specific facts or evidentiary issues pertaining to a particular case.

#### **ASSESSMENT MATRIX**

After an analysis of the above factors, the following matrix should be used as a guide to determine the appropriate ACL assessment based upon the determined level of "Environmental Significance" and "Compliance Significance". The overlap in the amounts in the matrix is intended to allow for flexibility in the amount assessed. The "Environmental Significance" relates to the violation itself: the gravity of the violation(s)--nature, circumstances, extent, and degree of toxicity of the discharge; and whether the discharge is susceptible to cleanup or abatement. The "Compliance Significance" deals with the discharger: voluntary cleanup efforts undertaken by the violator; the violator's prior history of violations; and the violator's degree of culpability.

After consulting the following matrix: the final amount to be assessed may be decreased by the violator's ability to pay and the effect on the violator's ability to continue in business; and the final amount to be assessed may be increased or decreased by other matters as justice may require. This should include recovery of staff costs. If the amount assessed is less than the minimums specified in Water Code Section 13350, findings based on consideration of the above factors to justify such an assessment are required.

Assessment Matrix			
COMPLIANCE SIGNIFICANCE (DISCHARGER)	ENVIRONMENTAL SIGNIFICANCE (DISCHARGE)		
	MINOR	MODERATE	MAJOR
MINOR	\$100 - \$2,000	\$1,000 - \$20,000	\$10,000 - \$100,000
MODERATE	\$1,000 - \$20,000	\$10,000 - \$100,000	\$50,000 - \$200,000
MAJOR	\$10,000 - \$100,000	\$50,000 - \$200,000	\$100,000 to maximum amount

Examples of violations which correspond to the above categories may be found in Attachment 5.

### C. RECOVERY OF STAFF COSTS

Enforcement orders issued under Water Code Section 13304 and ACL orders shall should address recovery of staff costs incurred in preparing the enforcement action, since most enforcement consumes significant amounts of staff time. Water Code Section 13304 explicitly allows the recovery of staff costs which are incurred in connection with a CAO. As discussed above, staff costs should also be considered as one of the "other matters as justice may require" when calculating ACL assessments.

CAOs should always include a provision that the Regional Water Board may seek recovery of staff costs, including costs for any staff investigation and oversight of cleanup, associated with the order. Below is an example of cost-recovery language:

"Pursuant to Section 13304 of the Water Code, the discharger is hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order. The discharger shall reimburse the Board upon receipt of a billing statement for those costs."

### D. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

*The State Water Board supports the use of supplemental environmental projects which are funded or implemented by dischargers in exchange for a suspension of a portion of an ACL or other monetary assessment, which would otherwise be paid directly to the State Cleanup and Abatement Account.*  
Supplemental projects should mitigate damage done to the environment by the discharger, and usually should involve the



restoration or enhancement of wildlife and aquatic habitat or beneficial uses in the general vicinity of the violation. However, projects may also consist of less direct environmental benefits, such as preparation of certain kinds of studies or an industry specific public awareness activity. Generally, acceptable projects should fall into one of five categories: pollution prevention, pollution reduction, environmental restoration, environmental auditing, and public awareness.

Supplemental environmental projects may be considered if: (1) violations are corrected through actions to ensure future compliance; (2) deterrence objectives are served by payment of an appropriate monetary assessment; (3) there is an appropriate relationship between the nature of the violation and the environmental benefits to be derived from the supplemental project; and (4) the project is not otherwise required or would not proceed in the absence of the proposal.

Supplemental environmental projects shall ~~should~~ only consist of measures that go above and beyond the obligation of the discharger to voluntarily undertake measures necessary to assure compliance with permits and regulations. For example, sewage pump stations should have basic reliability features to minimize the occurrence of sewage spills. A mitigation project following a pump station spill should not include installation of these basic reliability features nor should credit be given for the money spent on cleanup.

Supplemental environmental projects shall ~~should~~ not equal the total amount of the ACL assessment. Except in very minor cases, the ACL order should require a cash payment (to the State Cleanup and Abatement Account) of a portion of the ACL amount, which includes staff costs. The purpose of this is to deter future non-compliance. The supplemental project costs should equal or exceed the remainder of the ACL amount. Therefore, the total ACL package may include a monetary assessment, the supplemental project, plus staff costs.

The supplemental environmental project shall ~~should~~ be clearly described in the ACL order, including a detailed description of the mitigation project and a completion deadline; if the discharger fails to complete the project by this time, then the discharger must ~~should~~ pay the ACL amounts which were previously suspended to the State Cleanup and Abatement Account. This feature provides the discharger an incentive for prompt implementation of mitigation projects. If the discharger completes the mitigation in a timely manner, this portion of the ACL may be suspended.

ATTACHMENT 1 - Pollutant Categories

**POLLUTANT CATEGORIES**

**Category 1 Pollutants** - These are pollutants for which the enforcement criterion is 1.4 times the effluent limit for exceedences of monthly average effluent limits which occur two months in a six month period.

**Oxygen Demand**

Biochemical Oxygen Demand  
Chemical Oxygen Demand  
Total Oxygen Demands  
Total Organic Carbon  
Other

**Solids**

Total Suspended Solids  
Total Dissolved Solids  
Other

**Nutrients**

Inorganic Phosphorous Compounds  
Inorganic Nitrogen Compounds  
Other

**Detergents and Oils**

Methylene blue active substances  
Nitrilotriacetic acid  
Oil and Grease  
Other detergents or algicides

**Minerals**

Calcium  
Chloride  
Fluoride  
Magnesium  
Sodium  
Potassium  
Sulfur  
Sulfate  
Total Alkalinity  
Total Hardness  
Other Minerals

**Metals**

Aluminum  
Cobalt  
Iron  
Vanadium

**Category 2 Pollutants** - These are pollutants for which the enforcement criterion is 1.2 times the effluent limit for exceedences of monthly average effluent limits which occur two months in a six month period.

**Metals**

All metals not specifically listed under Category 1.

**Inorganics**

Cyanide  
Total Residual Chlorine

**Organics**

All organics not specifically listed under Category 1.

SAMPLE NOTICE OF VIOLATION

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

\_\_\_\_\_ REGION

In the matter of:        )  
                                  )  
                                  )  
                                  )  
                                  )  
                                  )  
                                  )  
                                  )  
                                  )  
                                  )

NOTICE OF VIOLATION

No. \_\_\_\_\_

YOU ARE HEREBY NOTIFIED THAT:

On    (date)   , you were notified of the following violations:

\_\_\_\_\_ Staff review of self-monitoring reports submitted pursuant to Monitoring and Reporting Program indicated that your discharge was in violation of effluent limitations or other waste discharge requirements in Order No. \_\_\_\_\_.

\_\_\_\_\_ Staff inspection of your facility revealed conditions which violate your Waste Discharge Requirements in Order No. \_\_\_\_\_.

\_\_\_\_\_ Observations of your facility revealed conditions which violate . . . .

\_\_\_\_\_ Technical or Monitoring Reports required by Order No. \_\_\_\_\_, or requested in a letter dated    (date)    have not been received on time (Due date:    (date)   ).

As of \_\_\_\_\_ (date), the above violations had not been satisfactorily corrected. This Notice of Violation serves as a final notice to correct the above violations by \_\_\_\_\_ (date). If you fail to correct the above violations by this date, the Board shall take appropriate enforcement actions authorized by the Porter-Cologne Water Quality Control Act (Div. 7 of the Water Code, commencing with Section 13000), including the possible assessment of civil liabilities of (amount of liability) per day of violation, or referral to the State Attorney General for judicial sanctions.

This Notice is based on the following specific circumstances:

EXAMPLES

1. A self-monitoring report for the month of May 1994 was not submitted to the Regional Water Quality Control Board, Region \_\_\_\_\_.
2. On September 2, the Regional Water Quality Control Board inspector observed seepage from your landfill. The seepage was flowing into a drainage ditch which runs along the southeast boundary of your property and is ultimately tributary to \_\_\_\_\_.  
Order No. \_\_\_\_\_ prohibits any discharge of wastes and leachate to surface waters.

STATE OF CALIFORNIA

California Regional Water Quality Control Board

Telephone:

\_\_\_\_\_ Region

FAX:

(ADDRESS)

**FIELD NOTICE OF VIOLATION**

**I. INCIDENT INFORMATION**

Incident Date: \_\_\_\_\_ Time: \_\_\_\_\_ Previous Occurrence: Yes \_\_\_ No \_\_\_

Material: \_\_\_\_\_ Volume: \_\_\_\_\_

Location: \_\_\_\_\_

Phone Number: \_\_\_\_\_ City/County: \_\_\_\_\_

Description of Incident: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Waters Impacted: \_\_\_\_\_

Extent of Impact: \_\_\_\_\_

Responding Agencies: \_\_\_\_\_

Contacts: \_\_\_\_\_

\_\_\_\_\_

**II. VIOLATION SECTION**

On \_\_\_\_\_, at \_\_\_\_\_, you were advised of the following Water Code Section violation(s):

- ( ) 13264 Unauthorized discharge of waste to State waters
- ( ) 13304 Discharge of waste in violation of waste discharge requirements or other orders or Basin Plan Prohibitions
- ( ) 13350 Unauthorized release of petroleum products to State Waters
- ( ) 13385 Discharge to State waters without a permit

**III. CORRECTIVE ACTIONS SECTION**

You are hereby notified that the violations must be satisfactorily corrected immediately. You are requested to submit a report within five (5) working days describing the incident, volume discharged, and cleanup or other measures undertaken to correct the violation.

You are advised that you may be subject to civil liability due to violation of the State Water Code Section(s). Failure to correct the above violations may result in an enforcement action, leading to Administrative Civil Liability including liabilities of up to \$10,000 per day or more. Your response actions and cooperation will be taken into account in assessing the amount of any civil liability as a result of this violation.

I acknowledge receipt of this Notice of Violation.

RECIPIENT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

(NOTE: Signing this document is not an admission of guilt.)

RWQCB STAFF NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

(Note to staff: Attach Table of Maximum Civil Liability)

## ATTACHMENT 4 - Maximum Civil Liability Amounts

## MAXIMUM CIVIL LIABILITY AMOUNTS

Water Code Section	Violation	Maximum Liability if Imposed by:	
		Board	Court
13261(b)	Failure to furnish a report of waste discharge or pay fee	\$1,000 per day	\$5,000 per day
13261(d)	Willful submission of a false report, withholding information, or failure to furnish report of waste discharge for hazardous waste	\$5,000 per day	\$25,000 per day
13265(b)	Discharge of waste without Board-issued WDR or WDR waiver after notification by Board	\$1,000 per day	\$5,000 per day
13265(d)	Discharge of hazardous waste without Board-issued WDR or WDR waiver	\$5,000 per day	\$25,000 per day
13268(b)	Failure to furnish a technical or monitoring program report	\$1,000 per day	\$5,000 per day
13268(d)	Knowing failure or refusal to furnish a technical or monitoring report if discharging hazardous waste	\$5,000 per day	\$25,000 per day
13308	Time schedule violation	\$10,000 per day	
13350	Intentional or negligent violation of CDO or CAO; intentional or negligent waste discharge in violation of WDR or other Board order or prohibition; or intentional or negligent release of petroleum product: (d) there is a discharge and a CAO (e) there is a discharge and no CAO (f) there is no discharge but Board order is violated	\$5,000 per day \$10 per gallon \$1,000 per day	\$15,000 per day \$20 per gallon \$10,000 per day
13385	Violates NPDES permit, or Basin Plan prohibition, program requirements, etc.	\$10,000 per day and \$10 per gallon, for amounts not cleaned up in excess of \$1,000 gallons (net)	\$25,000 per day and \$25 per gallon, for amounts not cleaned up in excess of \$1,000 gallons (net)

Notes: "Hazardous waste" is defined in H&SC Section 25117; "hazardous substance" is defined in H&SC Section 25140 as well as Section 311(b)(2) of Clean Water Act (surface water discharges).

## ATTACHMENT 5 - Assessment Matrix Examples

- 1.) Compliance Significance: Moderate  
 Environmental Significance: Minor

A single-walled fiberglass tank containing 2,500 gallons of citric acid (pH 3.2) is stored without secondary containment at a beverage production and bottling facility. A forklift hits and breaks the tank and 1,000 gallons of the contents flow into a storm drain tributary to an estuary. The operator takes swift abatement and remedial steps to contain the spill. Minimal impact is made to waters of the state.

- 2.) Compliance Significance: Moderate  
 Environmental Significance: Moderate

Five years ago, volatile organic compounds (VOCs) were discovered in the soil and groundwater beneath a plating shop and at other site locations of a facility. The Regional Water Board issued a Cleanup and Abatement Order (CAO) with a time schedule for soil and groundwater investigation and remediation. To date, the plating company has conducted initial site investigation, but is in violation of its CAO time schedule for a complete investigation, site remediation, and source control. A previous ACL was issued to this facility for violation of the same CAO two years ago. The Company is in violation of its CAO for 347 days.

- ~~3.) Compliance Significance: Minor  
 Environmental Significance: Minor~~

~~Extensive grading is made at a construction site without adequate erosion control measures and monitoring. Following a period of heavy rainfall, sediment laden runoff is discharged from the site into a storm drain. Minor impacts are made to the receiving water.♦♦~~



**LISTING OF ACRONYMS**

ACL	Administrative Civil Liability
Cal/EPA	California Environmental Protection Agency
CAO	Cleanup and Abatement Order
CDO	Cease and Desist Order
DFG	Department of Fish and Game
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and Maintenance
OSPR	Oil Spill Prevention and Response (unit of DFG)
SMR	Self-Monitoring Report
SWPPP	Storm Water Pollution Prevention Plan
USEPA	U.S. Environmental Protection Agency
WDR	Waste Discharge Requirements