

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

STAFF REPORT FOR REGULAR MEETING MAY 12 & 13, 2005

Prepared on April 22, 2005

ITEM NUMBER: 16

SUBJECT: Enforcement Report

SUMMARY

The System for Water Information Management (SWIM) Compliance Module (database created by the State and Regional Boards) tracks violations and enforcement actions. The Compliance Module has been revised to include enhancements for tracking associated Administrative Civil Liabilities.

Any violation that is listed as "Y" for "Yes" in "Significant Violation" column, as well as being listed as an "NPDES" in the "Program Type" column, is in the process of being issued a complaint for Mandatory Minimum Penalties. So-called "nonsignificant" violations may also be triggering a complaint, but it is not possible to determine all of those cases from just reviewing this report. We track those violations on a six-month period and follow up with complaints as appropriate.

The attached report covers the period January 1, 2005, through February 28, 2005. During this time period, 130 dischargers had 211 violations. Violations normally include effluent limit violations resulting from monitoring report reviews, violations resulting from compliance inspections, missing and late reports and sewer overflows. Enforcement actions range from verbal communications by staff to formal actions adopted by the Regional Board.

ENFORCEMENT ORGANIZATION

Cal/EPA and the State Board are focusing on more aggressive and comprehensive enforcement. The State Board is working on an enforcement plan to accomplish this goal. Although the plan is still in draft form, both Cal/EPA and the State Board are already directing changes. We received word mid April that the State Board will increase its enforcement unit from three to eight people. Two of the new positions have been redirected from other activities at the State Board. The remaining three positions (3.3 PYs) will be redirected from Waste Discharge Requirement and NPDES permitting/enforcement program staff positions at the Regional Boards and from the State Board's Division of Water Quality. State Board management indicates most of its enforcement activities will be focused on these two core regulatory programs (WDRs and NPDES). Here is the redistribution table showing the increase in the State Board's enforcement unit:

Fiscal Year 2004-05									
Organization	NPDES PYs	NPDES Positions	WDR PYs	WDR Positions	Total PYs	TOTAL Positions	Percenta ge	Redistri bution	New Positions
Region 1	7.5	7.9	4.9	5.1	12.4	13.0	5%	(0.2)	12.9
Region 2	28.5	29.9	2.6	2.7	31.1	32.7	12%	(0.4)	32.3
Region 3	9.9	10.4	5.4	5.7	15.3	16.1	6%	(0.2)	15.9
Region 4	39.5	41.5	5.2	5.5	44.7	46.9	17%	(0.6)	46.4
Region 5	33.1	34.8	25.1	26.4	58.2	61.1	23%	(0.7)	60.4
Region 6	5.7	6.0	7.6	8.0	13.3	14.0	5%	(0.2)	13.8
Region 7	4.7	4.9	4.6	4.8	9.3	9.8	4%	(0.1)	9.6
Region 8	24.5	25.7	2.3	2.4	26.8	28.1	10%	(0.3)	27.8
Region 9	18.4	19.3	4.4	4.6	22.8	23.9	9%	(0.3)	23.6
DWQ	19.4	20.4	3.1	3.3	22.5	23.6	9%	(0.3)	23.3
TOTAL		200.8		68.5	256.4	269.2	100%	(3.30)	265.9

All positions (not including OSI and OCC).	269.2	-3.3
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NPDES = Tasks 101, 102, 103, 104, 105, 107
WDR = Task 126

The enforcement plan, and a memo from Cal/EPA Secretary Dr. Lloyd (both attached), also calls for the regions to have enforcement units. Actually, Dr. Lloyd's memo says, "I appreciate the challenges of dealing with nine regional boards, limited resources, and multiple priorities in dealing with enforcement issues. Nevertheless, I believe the following actions would be beneficial in regards to this matter: ...Create clear division of duties between permitting and enforcement staff, including separating Board legal counsel from enforcement

attorneys, and redirect more regulatory staff as enforcement activities are increased." Dr. Lloyd said he believed such an arrangement would be beneficial. Undersecretary Branham, at our Management Coordinating Committee meeting, clarified that Cal/EPA recognizes that there are differences among regional boards and it's more difficult to accomplish such separation with the smaller regional board staff organizations, so the Secretary's memo contains suggestions for our consideration (rather than a directive). The State

Board's draft plan says (pg 3), "...dedicated enforcement units will be established at each regional board. This will be a departure from the current organizational structure in most Regional Water Boards where enforcement staff is intermingled with other program staff." However, the State Board drafted that phrase before Jim Branham's clarification. Another significant difficulty with Dr. Lloyd's suggestion of separating legal counsel from enforcement attorneys is that while larger regions have more than one attorney, we have only one attorney. Separating her would be painful, and assigning another attorney from the State Board for every one of our enforcement cases is logistically very difficult.

In our region, we have had an enforcement coordinator, Gerhardt Hubner, with the various staff regulating "their facilities." That is, an individual staffer is primarily responsible for permitting, inspections, monitoring report review, and follow up on any violations for the dischargers assigned to that staff. This arrangement is helpful in enforcement actions because that staff member can then answer questions in an enforcement proceeding about violations they noted in inspections, etc. On the flip side, with more complicated enforcement actions, it can be difficult for a staff member to be very efficient in the nuances of enforcement if that staffer has little experience in that specific type of action (due to less frequent work in that area).

We are responding to the enforcement plan with a hybrid approach (between enforcement being spread throughout many units vs. enforcement completely concentrated in one unit) to try to capitalize on advantages of both options. We will have a permitting/enforcement unit that has three permitting staff who continue the traditional role of regulating facilities, including enforcement (but the less complicated types of enforcement) and three enforcement staff with new roles - focusing almost totally on enforcement. Other units in the office will have staff that continue with their roles of following up with violations from their dischargers

with enforcement. However, more complex cases, from anywhere in the core regulatory program, including from other units (but excluding Cleanup Units), will be picked up by these dedicated enforcement staff in the permitting/enforcement unit. The "facilities" staff will coordinate with the enforcement staff so we still have their first hand knowledge of the facts available for case development and for testifying in hearings.

This organizational shift complies with the intent of the Cal/EPA and State Board suggestions/directives, but requires minimal reassignment of staff. We currently have two vacancies to fill (one is to backfill for Scott Phillips, who has accepted a job with an engineering firm in Grass Valley and is leaving at the end of April), and one of those vacancies is in the new unit. We are proceeding with our hiring process.

RECOMMENDATION

Attached is a table of violations and enforcement actions for information only. The Board may direct staff to initiate additional action as appropriate.

ATTACHMENTS

1. Enforcement Report
2. Glossary of Abbreviation
3. Dr. Lloyd memo, March 23, 2005
4. State Board Draft Enforcement Plan, March 30, 2005