

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

STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 9-10, 2006

Prepared on January 18, 2006

ITEM NUMBER: 29

SUBJECT: Authority to Settle Administrative Civil Liability Complaints

DISCUSSION

The Executive Officer (EO) has the authority to settle administrative civil liability complaints. However, the Board has discretion to direct the EO to bring ACL matters before the Board for a decision or direction, and the EO has discretion to decide to set a hearing in appropriate cases, even where a discharger agrees to a settlement.

Several years ago, the Board provided direction to the EO regarding settling administrative civil liability complaints. Specifically, the Board directed the EO that it was acceptable to settle cases where the discharger was willing to settle and waive a hearing, and the settlement amount was less than \$25,000. The Board wished to hear any cases that were more than \$25,000. The exceptions are: 1) mandatory minimum penalty cases, which the EO can settle regardless of the amount, and 2) Supplemental Environmental Project proposals.

In the ensuing years, penalty amounts have generally increased. Also, with some cases where the EO did settle the case without a hearing (there have actually been very few if mandatory minimum penalty cases are excluded), the EO notified the Board of the disposition of the case, and the Board commented on the amount of the penalty for future reference. These comments provide guidance for determining future complaint amounts.

With increasing penalty amounts, and with Board meetings that are frequently very long, it makes sense to raise the amount of complaints that the EO should settle without board approval or a hearing. Of course, with higher complaint amounts, it is less likely dischargers will settle

without a hearing, so the net effect of raising the amount may be limited. However, an increase is warranted, and \$300,000 is appropriate. Traditionally, even for complaints for less than \$25,000, there is a hearing if the discharger proposes to settle the complaint by performing supplemental environmental projects (SEPs). However, we have enough experience with SEPs now that the Board should direct the EO to settle smaller SEPs (up to \$300,000) without prior Board approval.

The EO has the authority to delegate his powers. (Water Code §7.) The EO would delegate his settlement authority to the Assistant Executive Officer for cases in which the AEO was supervising the Prosecution Team. Due to the separation of functions issue, we will have more cases where either the EO or AEO would be unable to participate in settlement discussions.

The Board could provide limited input regarding settlements without having a hearing or public meeting. The Chair could provide input on a settlement agreement before it becomes final. The Chair could also appoint another Board member to do so. Any Board member (including the Chair) acting in this settlement capacity would have to recuse himself or herself if the matter later came before the Board (for example, if the settlement fell apart), unless the discharger and other designated parties agreed otherwise. Multiple Board members could not participate in settlement discussions in the same case, since public meeting requirements would apply. (Gov. Code §11121(b).)

The Board will still be able to provide feedback to the EO or AEO on settled cases after the

settlement becomes final, to assist with future case complaint amounts.

RECOMMENDATION

Direct the Executive Officer to exercise his authority as he sees fit, to settle cases up to and including \$300,000, whether or not the settlement involves SEPs. Enforcement cases with a proposed penalty amount of more than \$300,000 will need to come before the Board for a hearing or proposed settlement.

Direct the Executive Officer to delegate this authority to the AEO when the AEO is supervising the Prosecution Team.