



Item 7

Update on Regional Water Board Enforcement Priorities

Yvonne West/Diana Henriouille



Presentation Overview

- **Policy updates and enforcement prioritization process**
(Yvonne West, Office of Enforcement, 10-15 minutes)
- **Enforcement update and regional enforcement priorities**
(Diana Henriouille, Regional Water Board, 20-25 minutes)

Enforcement Policy Update: Two Topics

- Prioritization Process
- State Board Enforcement Priorities for 2018

Purpose of Prioritizing

- Enforcement Prioritization enhances the Water Boards' ability to leverage their scarce enforcement resources to achieve the general deterrence needed to encourage the regulated community to anticipate, identify, and correct violations

OR

MORE EFFICIENT & MEANINGFUL ENFORCEMENT

Enforcement Policy Requirements

- Water Boards shall rank violations, then prioritize cases for formal discretionary enforcement action
- Each Regional Water Board shall appoint an Enforcement Coordinator to assist with prioritizing cases and implementing the Enforcement Policy
- Meet periodically, but in no event less than quarterly, to pre-screen and analyze potential cases for discretionary enforcement
- Meetings should include Enforcement Coordinator, one or more attorney liaisons, enforcement staff, and the lead prosecutor or the lead prosecutor's designee
- Appropriate protocols to maintain separation of functions should be established

How Should Staff Proceed with Prioritization Meetings?

- Step 1 – Determine the relative significance of each violation or series of violations at a particular facility
 - Priority: Class I violations (violations that pose an immediate and substantial threat to water quality and that have the potential to cause significant detrimental impacts to human health or the environment as well as recalcitrant parties)
- Step 2 – Establish case priorities for discretionary enforcement actions
- To allow Water Board leadership, staff, and their attorneys to candidly discuss case prioritization

Tools To Improve Prioritization Meetings

- Prepare Prior to Meeting
 - Identify staff necessary for a productive conversation and make sure they are in attendance
- Develop Business Rules
 - Establish Expectations for Prioritization Meetings
 - Define Roles and Responsibilities for Staff Who Participate in Prioritization Meetings
- Program Specific Factors for Identifying Priority Cases
- Periodic Check-in with Management on Enforcement Priorities
- Identify Region Specific Enforcement Priorities Annually
- Identify Reasonable Enforcement Goals for Available Resources

State Board Enforcement Priorities for 2018

- Promote enforcement and compliance assistance in Disadvantaged Communities and communities with financial hardship.
- Focus on a method for prioritizing and prosecuting enforcement cases for discharge violations of the industrial and construction general stormwater permits.
- Focus on using all available regulatory tools, including enforcement tools, to compel responsible parties to provide replacement water to those whose drinking water supply is contaminated by nitrate.



Adoption of 2017 SEP Policy

- Applies to all SEPs agreed to in principle on or after May 3, 2017
- Amendments meant to address several new laws and regulatory updates, as well as to provide greater clarity, transparency, and ease of implementation.
 - Public Resources Code section 71118
 - Water Code section 106.3 (Human Right to Water)
 - 2017 Water Quality Enforcement Policy
 - Include Division of Water Rights and Division of Drinking Water
- Policy and related documents available online:
https://www.waterboards.ca.gov/water_issues/programs/enforcement/sep.html



Significant Updates to SEP Policy

- SEPs in disadvantaged communities (DACs), Environmental Justice communities (EJ), communities with financial hardship, or in furtherance of the human right to water
 - Director of OE may approve a SEP that is greater than 50% of total penalty
 - Additional flexibility in oversight costs
- MMPs with total penalties less than \$15,000 can be 100% directed to SEPs without approval from OE Director
 - For amounts greater than 50% \$15,000 plus 50% of liability over that amount can be directed to SEPs



Reporting Requirements and Oversight

- By March 31, each year, Water Board submit to OE:
 - Summary of reports of each completed SEP, results of Third Party audits, annual update to SEP List
- Responsible Parties or Third Party must submit to Water Board:
 - Audit reports from third party SEPs
 - At least quarterly reporting on SEP progress
 - Certificate of Completion
- Regional Boards should collect oversight costs where necessary



Enforcement priorities: A quick look back

- Previous enforcement prioritization presentation January 2015
 - Cannabis program development and implementation
 - Mandatory Minimum Penalties (MMPs) for facilities with individual NPDES permits
 - Complex regionwide/cross program enforcement efforts*
 - Coordinate with other agencies
 - Officewide enforcement case prioritization

*Much of our enforcement work does not result in items that come to the Board. The EO report in each agenda includes a summary of formal enforcement and notices of violation issued over the previous 4-6 weeks.



Enforcement unit staffing

- Current team (3 dedicated cannabis enforcement staff, 2 general regional enforcement staff)
- Training/cross training
- Work on ongoing routine enforcement activities
- Build unit capabilities to best support efforts on officewide enforcement priorities.



Preliminary priorities

- Developed April 2018, at the request of the Office of Enforcement
- Reflect priorities expressed by Board members
 - Coordinate enforcement and compliance assistance in Disadvantaged communities and communities with financial hardship
 - Prioritize and pursue enforcement cases for waste discharge violations associated site development and use for cannabis cultivation
 - Prioritize and pursue enforcement cases for waste discharge violations associated with agricultural activities other than cannabis cultivation



Enforcement activities: coordinate enforcement and compliance assistance efforts in disadvantaged communities

- Enforcement staff regularly attempt to include compliance assistance in our settlement considerations for enforcement on disadvantaged communities.
- Where individual facilities will require significant effort/resources, we forgo meeting short term workplan commitment (MMP backlog >18-mo) in order to gain a long term/permanent solution
 - Tulelake (the 2015 ACLO reflects nearly 10 years of coordinated effort)
 - College of the Redwoods (pending settlement reflects nearly 5 years of coordinated effort)
 - Loleta (coordinated compliance assistance efforts underway/ongoing)



Enforcement activities: cannabis sites

- Identify and focus activities in priority watersheds
- Optimize efficiency and effectiveness of our efforts
 - Improve inspection report development/review timeframes
 - Use lower level enforcement tools as first step to direct compliance
- Identify & work on highest priority cases for penalties
- Roads CAO



Enforcement activities: non-cannabis agriculture

- Challenge: very limited program implementation staff
- Frequently we must rely on and can only provide limited support for the efforts of other agencies
- Very small group of active cases
- Effort underway to develop an internal strategy to staff and pursue enforcement on more high priority cases



Suggested changes to regional priorities

- Remove:

- Coordinating enforcement and compliance assistance for disadvantaged communities.

- Add:

- Pursue non-filers under all applicable regulatory programs
- Pursue timely enforcement on missed deadlines in existing enforcement orders
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits



Non-filers under all applicable regulatory programs

- Cannabis program enrollment enforcement model
- Program staff identify sites/facilities and initiate progressive enforcement
- Where initial enforcement steps do not result in compliance, program staff may refer sites to enforcement unit for further progressive enforcement



Timely enforcement on missed deadlines for all active enforcement orders

- Track deadlines
- Review pending and missed deadlines
- Take appropriate enforcement
- Make timely referral to enforcement prioritization group



Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits

- All new team (hiring/training)
- Past enforcement
 - late or not submitted annual reports
 - Reviewed MRPs and communicated with dischargers regarding violations
- Proposed next step: direct improvements



Additional prioritization criteria

- Violation has resulted in threats/impacts to critical habitat
- Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring
- Violation is contributing to a watershed impairment
- Violation has resulted in impacts to a public drinking water supply



Unexpected significant cases outside of priorities

- High threats/significant impacts
- Egregious discharger conduct



Setting regional priorities: recommended process

- Annually, seek input at a regularly noticed meeting of the Regional Water Board
- Consider identifying general enforcement priorities based on input from members of the public and Regional Water Board members within thirty days thereafter

Wrap up

- Topics for future enforcement presentations?