
North Coast Regional Water Quality Control Board

Administrative Civil Liability Fact Sheet

The California Regional Water Quality Control Boards have the authority to impose administrative civil liabilities for a variety of violations under California Water Code Section 13323. This document generally describes the process that the North Coast Regional Water Quality Control Board (Regional Water Board) follows in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint by the authorized Regional Water Board's Assistant Executive Officer. The complaint describes the violations that are alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and an attachment showing the methodology applied to calculate the penalty amount. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint may represent him or herself, however, legal advice and representation may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of staff and management from the Regional Water Board and the State Water Resources Control Board's Office of Enforcement. Any other person who believes they will be impacted by the proceeding may request to participate as a "designated party." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and submit policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to seven board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. The board members and Advisory Team are impartial decision-makers and advisors. Both the Prosecution Team and the Advisory Team have their own attorney. No ex parte or "one-sided" communications with the board or Advisory Team regarding substantive matters are allowed. Neither members of the Prosecution Team nor the Discharger or his/her representatives, nor any other

designated party, are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure document that will be circulated by the Advisory Team. The Hearing Procedure document will provide the specific procedures governing the administrative process relating to the complaint; to the extent that the Hearing Procedure document conflicts with any aspect of this Fact Sheet, the Hearing Procedure document shall control.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing. Each of these options is described below.

Withdrawal: May result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: May result if the Prosecution Team becomes aware of an important flaw in the complaint that can be corrected.

Payment and waiver: May result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment. The Waiver document issued with the complaint also provides an option for the Discharger to waive his/her right to a hearing within 90 days of complaint issuance. The Discharger may waive this time requirement and still contest the complaint (See "Hearing" heading below).

Settlement: Results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified projects. These projects include making improvements beyond those already required by law that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for SEPs and Compliance Projects are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, and Supplemental Environmental Projects Policy, which are available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. However, although the Regional Water Board generally accepts any timely waiver

submitted by the Discharger, the execution of the waiver does not preclude the Regional Water Board from proceeding to hearing on this matter within 90 days. The hearing will be conducted under rules set forth in the Hearing Procedure. In general, the hearing will be conducted as follows: the Prosecution Team will present its case, the Discharger and any other approved designated party will present their case(s), including evidence, testimony, and argument challenging the allegations. The parties may cross-examine each other's witnesses. Interested persons may provide policy statements, but generally may not submit evidence or testimony.

At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Advisory Team will circulate Draft Hearing Procedures that provide additional detail on the hearing process, including deadlines for evidentiary and document submissions, witness information and other pertinent dates and deadlines. Following review and comment by the Discharger and Prosecution Team, the Advisory Team will issue final Hearing Procedures that will apply to this proceeding. At the hearing, the Prosecution Team has the burden of proving the allegations and the board must find that the weight of the evidence supports the allegations to issue an order.

Following the hearing, the Regional Water Board may: 1) issue an order requiring payment of the full amount recommended in the complaint; 2) issue an order requiring payment of a reduced amount; 3) issue an order the payment of a higher amount, up to the statutory maximum for the violations; 4) decide not to impose an assessment; or 5) refer the matter to the Attorney General's Office for civil prosecution.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), when determining a penalty amount the Regional Water Board is required to consider several factors specified in the Water Code, including: the nature, circumstance, 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 Discharger, 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 benefit or savings, if any resulting from the violations, and other matters as justice may require (California Water Code Section 13327, 13385(e) and 13399). The State Water Board's Enforcement Policy provides direction on the consideration of these factors in calculating a penalty amount. (The Enforcement Policy is available for review and download at https://www.waterboards.ca.gov/plans_policies/#policies). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process, including deadlines to file a petition and the information that must be included in a petition is available at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code Section 13328, if necessary, in order to collect payment of the administrative civil liability amount.