

Item 5

Enforcement Update: Discussion of Regional Enforcement Priorities for 2020-2021

October 15, 2020

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Presentation Overview

- Background
- 2019 enforcement priorities
- Past year's enforcement highlights
- Current conditions
- Looking ahead; our priorities for the upcoming year
- Supplemental Environmental Project (SEP) check-in
- Discussion

Background

The 2017 Enforcement Policy recommends that each year, enforcement staff for each Regional Water Board seek input at a regularly noticed public meeting of the Regional Water Board and consider identifying general enforcement priorities based on input from members of the public and Regional Water Board members within thirty (30) days thereafter.

- July 2018: Staff presented our Region's first proposed priority list for Board input and public comment. Response was positive.
- October 2019: Staff provided an annual update to the Board and proposed slight modifications to the list. Response was positive. List posted on OE web page.

2019 R1 Enforcement Priorities

- 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
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.
- Pursue timely enforcement on missed deadlines in existing enforcement orders
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits

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; or
- Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.

Unexpected significant cases outside of priorities

- High threats/significant impacts
- Egregious discharger conduct

2020 Review

- How did we do?

Cannabis Enforcement

- In 2019 we had authorized senior level staff to transmit inspection reports under Notice of Violation (NOV)
- 40+ NOVs issued since October 2019
- Ongoing complex cases with progressive enforcement (CAO, invitation for settlement discussion)

Non-Cannabis Agriculture

- NOVs issued to several dairies
- Ongoing complex cases

Unauthorized dredge/fill in surface waters

- Significant overlap with cannabis and other agriculture
- Issued one NOV based on CDFW inspection of a site where we received a complaint

Enforce missed deadlines

- Continuing to improve our tracking methods and efforts
- Have issued several NOVs for deadlines missed or not fully met.

Storm Water

- All NPDES stormwater positions were filled by end of 2019
- Keeping momentum started with our cross-office stormwater team
- Continuing complex cases initiated during previous year including 1 ACLC and an invitation to enter settlement discussions
- Enforcement for permit violations under IGP, CGP, and Municipal permits
- Enrollment enforcement on several industrial sites
- State Water Board stormwater non-filer initiative

Current enforcement unit staffing/capabilities

Unit was fully staffed a year ago, with 3 staff dedicated cannabis enforcement, 2 for general enforcement, and 1 scientific aide. Hiring freeze had already left us with one position we could not fill: cannabis enforcement specialist.

Current staffing:

Cannabis Water Resource Control Engineer Adona White

Cannabis Engineering Geologist (EG) Brian Fuller

Cannabis EG frozen vacancy

General Environmental Scientist (ES) Jordan Filak

General ES Doreen Kiruja (redirected full time to Covid 19 contact tracing)

(Tentative) Sci Aide (checking potential to refill)

Enforcement performance targets

- 100% of facilities with over \$12,000 in Mandatory Minimum Penalties (5 or more violations) have MMPs assessed within 18 months of accrual.
- 100% of Class I Priority violations (as defined by Enforcement Policy) have formal enforcement or a 13267 investigative order issued within 18 months of discovery.

Class 1 Priority Violations without formal enforcement within 18 months:

- 14/15: 100%
- 15/16: 10%
- 16/17: 53%
- 17/18: 30%
- 18/19: 83%
- 19/20: 60%

Facilities with 5 or more MMP violations without assessment within 18 months of discovery

- 14/15: 12
- 15/16: 6
- 16/17: 4
- 17/18: 4
- 18/19: 6
- 19/20: 4

Enforcement Action Terminology Set

Action Type Terminology	
NOV	Notice of Violation
Informational Order/13627	Water Code Section 13267 Informational Order
CAO	Cleanup and Abatement Order
EPL	Expedited Payment Letter
NONC/NNC	Notice of Noncompliance
ACLC	Administrative Civil Liability Complaint Order
ACLO	Administrative Civil Liability Order

A complete list of Technical Water, Water Quality, Environmental, and Water-Related Terms can be found at:
https://www.waterboards.ca.gov/publications_forms/available_documents/water_words/acronyms.pdf

Enforcement Action Summary

Throughout a 15-month period beginning in May 2019 and ending in July 2020, Region 1 has issued 122 total enforcement actions.

May 1, 2019- July 31, 2020 Enforcement Actions	
NOV	99
Informational Order	6
CAO	5
EPL	4
NONC	4
ACLC	1
ACLO	3
Total	122

Table 1

May 1, 2019 - December 31, 2019 Enforcement Actions	
NOV	51
Informational Order	5
CAO	3
EPL	2
NONC	1
ACLC	0
ACLO	1
Total	63

Table 2

January 1, 2020 - July 31, 2020 Enforcement Actions	
NOV	48
Informational Order	1
CAO	2
EPL	2
NONC	3
ACLC	1
ACLO	2
Total	59

Table 3

Enforcement Actions by Type and Source Unit (2019)

May 1, 2019 – December 31, 2019									
Action	Enf	Cann	Ag	Storm	Indv. NPDES	Cleanups	Timber	401	Status
NOV (51)	24	23		3		1			15 Resolved, 33 In Process, 3 Unresolved
Informational Order (5)	1		1	2				1	5 In Process
CAO (3)	3								3 In Process
EPL (2)					2				2 Resolved
NONC (1)				1					1 In Process
ACLO (1)					1				1 Resolved

- Resolution rate of enforcement actions (2019 sample): 29% Resolved, 67% In Process, 4% Unresolved
- Cannabis and Enforcement staff issued over 80% of enforcement actions in the 2019 sample.
- 2019 set the stage for a significant increase in officewide enforcement participation entering 2020

Resolved: The discharger has taken all the appropriate actions to address the violation. (permits acquired, penalties paid, enrollment obtained, etc.)

In Process: The discharger is responsive and has begun taking meaningful steps to address the violation.

Unresolved: The discharger is unresponsive, failed to accept notice, and has not taken the appropriate steps to address the violation.

Enforcement Actions by Type and Source Unit (2020)

January 1, 2020 - July 30, 2020									
Action	Enf	Cann	Ag	Storm	Indv. NPDES	Cleanups	Timber	401	Status
NOV (48)	20	10	2	11		2	2	1	17 Resolved, 24 In Process, 7 Unresolved
Informational Order (1)							1		1 In Process
CAO (2)	2								2 In Process
EPL (2)					2				2 Resolved
NONC (3)				3					2 Resolved, 1 Unresolved
ACLC (1)				1					1 In Process
ACLO (2)					2				2 Resolved

- Resolution rate for enforcement actions (2020 sample): 39% Resolved, 48% In Process, 13% Unresolved
- Faced with the loss of staff, local wildfires, and the many tribulations of 2020, officewide involvement in enforcement has allowed Region 1 staff to retain a stable pace issuing and resolving enforcement actions in comparison to 2019.

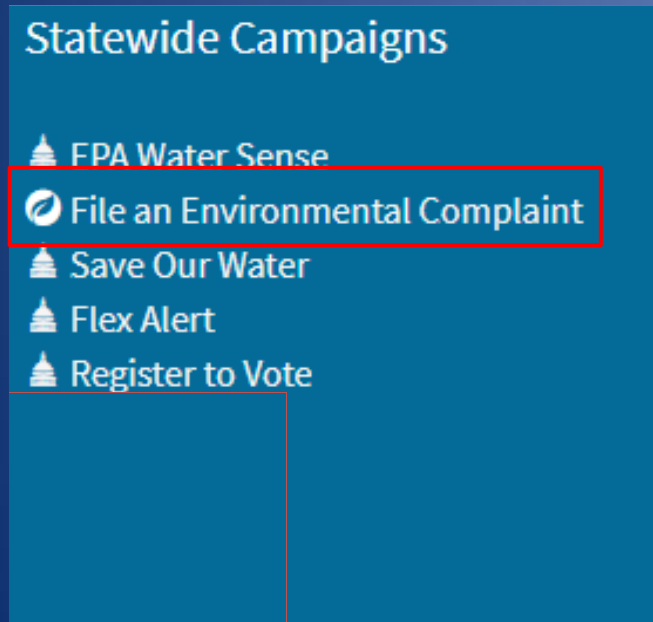
Resolved: The discharger has taken all the appropriate actions to address the violation. (permits acquired, penalties paid, enrollment obtained, etc.)

In Process: The discharger is responsive and has begun taking meaningful steps to address the violation.

Unresolved: The discharger is unresponsive, failed to accept notice, and has not taken the appropriate steps to address the violation.

Complaint Review Process

How are environmental complaints are submitted to Region 1?



Statewide Campaigns

- EPA Water Sense
- File an Environmental Complaint**
- Save Our Water
- Flex Alert
- Register to Vote

Complainant



Your "Water" Concern

Your water concern is related to (select all that apply):

Cannabis/Marijuana cultivation? No ?

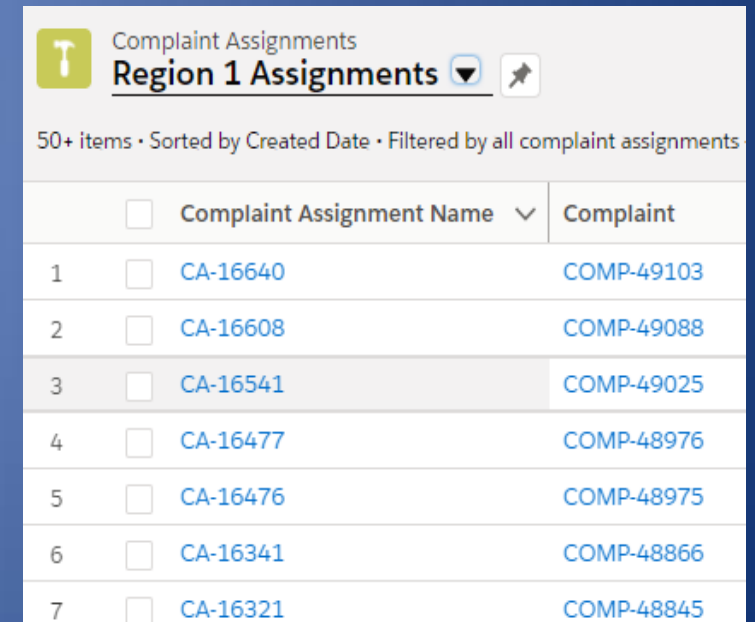
Drinking water? No ?

Water quality? Yes ?

Water rights? No ?

Other No ?

Complainant



Complaint Assignments
Region 1 Assignments

50+ items • Sorted by Created Date • Filtered by all complaint assignments

	<input type="checkbox"/> Complaint Assignment Name	Complaint
1	<input type="checkbox"/> CA-16640	COMP-49103
2	<input type="checkbox"/> CA-16608	COMP-49088
3	<input type="checkbox"/> CA-16541	COMP-49025
4	<input type="checkbox"/> CA-16477	COMP-48976
5	<input type="checkbox"/> CA-16476	COMP-48975
6	<input type="checkbox"/> CA-16341	COMP-48866
7	<input type="checkbox"/> CA-16321	COMP-48845

Region 1 Review Staff

Complaint Statistics, January 1, 2019 to September 30, 2020

Table 1 January 1, 2019 – September 30, 2020 Complaint Status	
Closed	100
Referred	36
Under Review	13
Total	149

Table 2 January 1, 2019 – September 30, 2020 Complaint Program Breakdown	
Point Source	31
Nonpoint Source	38
NPDES	12
Cannabis	51
Indeterminable	17

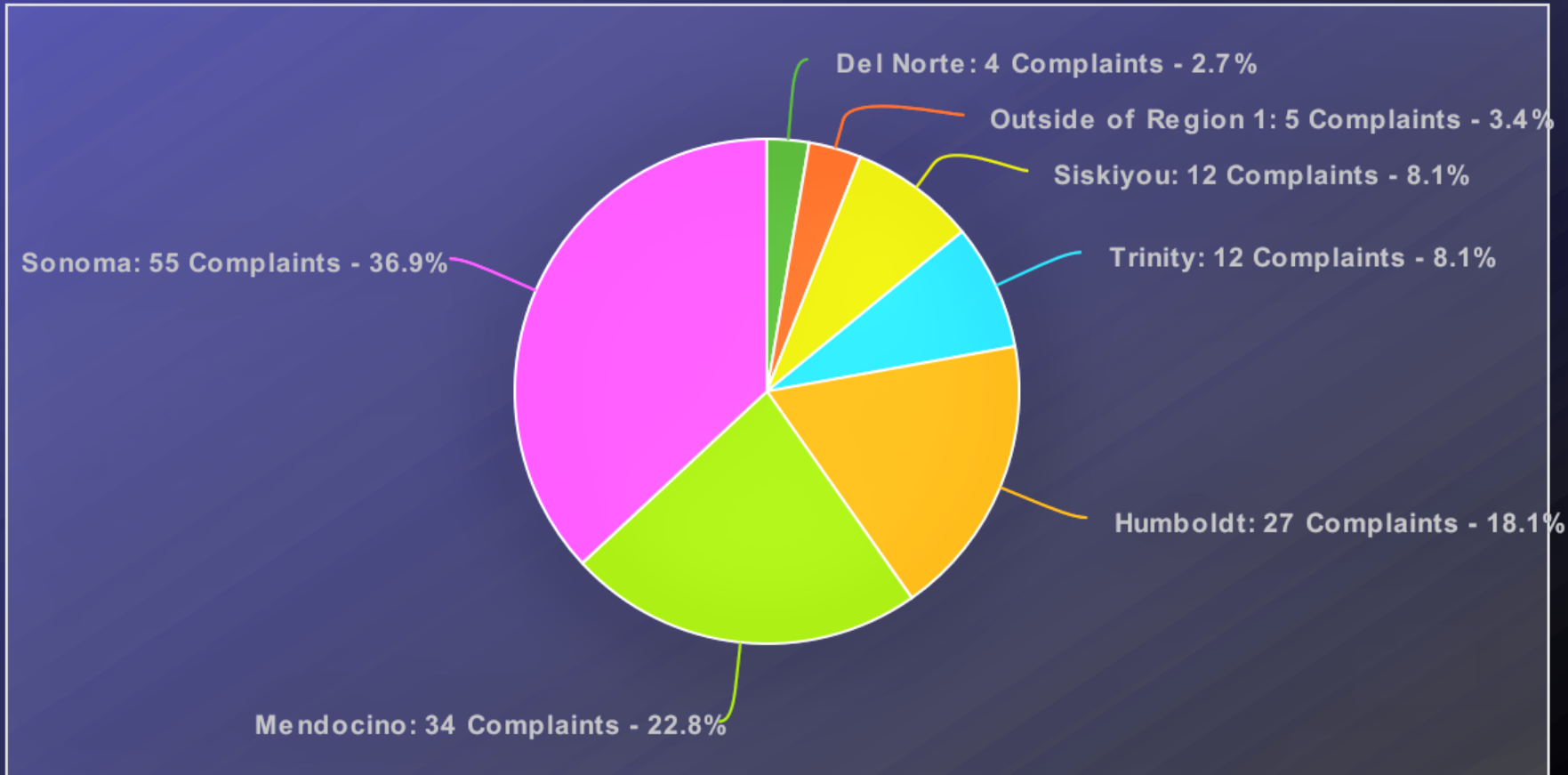
Closed: Closed complaints have been investigated by staff and deemed not a threat to water quality, pursued by staff and enforcement actions have taken place to address the threat to water quality, or has been deemed not an adequate use of available resources. In some instances, not enough information was provided to become a priority for further investigation.

Referred: Referred complaints are active cases that have been investigated by staff and referred to the proper unit within our agency.

Under Review: Complaints Under Review are active cases where investigation has begun but has not yet been routed to the proper unit or external agency.

Complaint Statistics (Location)

2019-2020 Complaints Received by County



County	Number of Complaints
Sonoma	55
Mendocino	34
Humboldt	27
Trinity	12
Siskiyou	12
Del Norte	4
Outside Region 1	5

Enforcement Priorities for 2020/2021

- The list continues to be germane to water quality issues in our region, and to be useful and helpful; but
- Expectations must be realistic; our list must reflect our capacity and acknowledge our limitations.

Adaptive Management

(Proposed Changes to the List for 2020)

Make these changes (one deletion and one modification) to the list of priorities:

- ~~Prioritize and pursue enforcement cases for waste discharge violations associated with agricultural activities other than cannabis cultivation~~
- Prioritize and pursue enforcement cases for waste discharge violations associated with site development and use for cannabis cultivation, without applicable permits.

Make this modification to the list of screening criteria:

- Violation has resulted in impacts to a public drinking water supply that serves a disadvantaged or severely disadvantaged community or a community with financial hardship.

So, the final list for 2020/2021

- Prioritize and pursue enforcement cases for waste discharge violations associated with site development and use for cannabis cultivation, without applicable permits;
- Pursue timely enforcement on missed deadlines in existing enforcement orders;
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits;
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.

Supplemental Environmental Project (SEP) program update

Definition: What is an SEP?

A Supplemental Environmental Project, or SEP, is “an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty.”

(2017 SEP policy, effective May 3, 2018).

Supplemental Environmental Projects and Board Resolution No. R1-2019-0046 (a quick look back)

- Established an SEP framework and process for our Region
- Approved an initial list of candidate projects
- Delegated authority to the Executive Officer to make future changes to the list
- Directed the Executive Officer and/or staff to report at least annually on the status, use, and any changes made to the list, procedures, and process

Current Region 1 SEP List

Agency/Organization	Project/Concept	Watershed	Cost
Shasta Valley Resource Conservation District (RCD)	Shasta River Fish Passage Barrier Improvement Project	Shasta	\$35,000
Scott River Watershed Council	Scott River Watershed Stewardship Project	Scott	~\$90,000
Shasta Valley RCD	Shasta River Water Quality Monitoring Program	Shasta	\$157,412
Eel River Recovery Project (ERRP)	Chamise and Woodman Creek Community Conservation and Restoration Pilot Program	Middle Main Eel	~\$250,000

Considerations

- Projects must meet SEP Policy criteria
- There is no guarantee of funding
- Full eligibility confirmation not possible until a settlement is under development
- A settling party is not restricted to using a project from the list, but can also propose an SEP at the time of a specific Administrative Civil Liability settlement.

Questions and Comments.