

California Environmental Protection Agency

State Water Resources Control Board

Administrative Civil Liability Assessments

Pursuant to Water Code Section 13350

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EXECUTIVE SUMMARY

This report is required by California Water Code section 13350 (k). It provides information regarding administrative civil liabilities (ACLs) issued by the Regional Water Quality Control Boards (RWQCBs) during calendar year 2002 pursuant to California Water Code section 13350. Water Code section 13350 is an important, but infrequently used tool for assessing administrative civil liabilities. Other, more flexible code sections, notably Water Code section 13385, currently provide the primary authority used by the RWQCBs for assessing administrative civil liabilities.

During calendar year 2002 the RWQCBs issued eight administrative civil liabilities pursuant to California Water Code section 13350. The total dollar amount of the liabilities was \$2,405,550.

I. STATUTORY PROVISIONS

California's water quality control law (Division 7 of the Water Code) contains nine sections whereby the RWQCBs have the discretion to assess ACLs.

Chapter 1445, Statutes of 1989, amended Water Code section 13350 (one of the nine ACL sections) by adding requirements that, in assessing ACLs against some persons who cause water pollution, the State Water Resources Control Board (SWRCB) or RWQCBs assess at least a specified minimum amount. The maximum amounts in the law were left unchanged.

Chapter 869, Statutes of 2001 further amended Water Code sections 13350 by clarifying that civil liability should be imposed on either a daily basis or on a per gallon basis, but not both and by otherwise clarifying the existing requirements.

Section 13350(k) of the California Water Code requires an annual report from the SWRCB to the Legislature that shall list

"all instances in which civil liability has been administratively imposed by a regional board in accordance with [Water Code section 13350] subdivision (e) during the preceding year, and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance."

II. HISTORY

Until 1988, Water Code 13350 provided the primary authority for the assessment of ACL by RWQCBs. Most of the assessments and the vast majority of the money collected came as a result of the use of Section 13350. However, in 1987 the Legislature amended Water Code 13385 to

achieve full conformance with federal water quality requirements. The amendment had the effect of making section 13385 a more effective tool for enforcement than is section 13350. The principle advantage of section 13385 is that no proof of pollution or nuisance is needed when there is a violation of waste discharge requirements or standards. Thus, section 13385 is, for all practical purposes, a strict liability section. Section 13350 remains a more cumbersome statute that requires that pollution or nuisance be proved.

Other civil liability sections in the Water Code are also more flexible than Section 13350. For example, section 13268 allows RWQCB to assess liability when a proper technical report is not prepared concerning a groundwater investigation. If the request was authorized in the first place, the failure to provide the report can be the subject of an ACL without further proof. Another example is section 13261 that allows ACL assessments when anyone who has been notified by the RWQCB that they should not discharge without a permit does so. No proof of pollution or nuisance is required, only the notice.

III. DISCUSSION OF CASES FOR CALENDAR YEAR 2002

Eight ACLs were finalized during 2002 pursuant to Water Code 13350. The total dollar amount of the liabilities was \$2,405,550.

One case involved the negligent discharge of sediment into waters of the state in violation of the applicable Basin Plan. Two cases involved intentional or negligent violation of a Cleanup and Abatement Order by failing to obtain permit coverage. One of those cases also involved not submitting required technical reports. One case involved failure to comply with requirements in Waste Discharge Requirements, a Cease and Desist Order and a Cleanup and Abatement Order. Two cases involved violations of waste discharge prohibitions in a Cease and Desist order. The last case involved failure to comply with landfill cover and reporting requirements in a Cease and Desist Order .

- The San Francisco Bay RWQCB issued Order R2-2002-0050 for \$18,000 pursuant to California Water Code section 13350 (e). The maximum amount of liability that could have been imposed was \$355,000.
- The San Francisco Bay RWQCB issued Order R2-2002-0099 for \$113,500 pursuant to California Water Code section 13350 (e)(1). The maximum amount of liability that could have been imposed was \$2,395,000.
- The San Francisco Bay RWQCB issued Order R2-2002-0100 for \$10,200 pursuant to California Water Code section 13350 (e)(1). The maximum amount of liability that could have been imposed was \$335,000.
- The Lahontan RWQCB issued Order R6V-2002-0025 for \$2,000,000 pursuant to California Water Code section 13350 and California Government Code section 11415.60. The order formalized a settlement agreement between the discharger and the RWQCB. The

maximum liability that could have been imposed was the subject of significant legal dispute. As a result, the maximum liability is not specified.

- The Santa Ana RWQCB issued Order R8-2002-0064 for \$30,000 pursuant to California Water Code section 13350(e). The maximum amount of liability that could have been imposed was \$600,000. Note: This ACL is currently under petition with the SWRCB.
- The Santa Ana RWQCB issued Order R8-2002-0065 for \$30,000 pursuant to California Water Code section 13350(e). The maximum amount of liability that could have been imposed was \$600,000. Note: This ACL is currently under petition with the SWRCB.
- The San Diego RWQCB issued Order R9-2002-0017 for \$160,750 pursuant to California Water Code sections 13268 and 13350. The maximum amount of liability that could have been imposed was \$2,722,000. The ACL was petitioned to the SWRCB. The SWRCB subsequently lowered the amount to \$84,850.