



**California Environmental Protection Agency**



## ENFORCEMENT REPORT

**[Per California Water Code Chapter 5.5 Section 13385(o)]**

***November 6, 2007***

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**State Water Boards  
Enforcement Report**  
[Per California Water Code Chapter 5.5 Section 13385(o)]

This State Water Boards report provides the information directed by Chapter 5.5 Section 13385(o) of the California Water Code, responding to the following provision:

*13385 Civil Liability*

*(o): The state board shall continuously report and update information on its Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:*

*(A) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.*

*(B) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions*

*(C) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.*

As directed by this statute, the report is available at the Water Board's website at <http://www.waterboards.ca.gov> .

## **Executive Summary**

This report summarizes information regarding violations of waste discharge requirements and enforcement actions taken by the Regional Water Quality Control Boards (Regional Water Boards) in response to those violations. The report addresses only discharges to surface water because it has been prepared pursuant to Chapter 5.5 of the California Water Code. Chapter 5.5 implements provisions of the Federal Water Pollution Control Act and establishes a regulatory program for discharges to surface water only. This report also contains commentary on performance and follow-up actions.

The Water Boards use the California Integrated Water Quality System (CIWQS) database to track violations and the resulting enforcement actions. The CIWQS database contains information on violations and enforcement actions that have occurred since July 1, 1999.

Most of the tables presented in this report are now available for public use via the State Water Board's Internet site. These electronic reports represent an entirely different approach to meeting our statutory reporting requirements. Transitioning to live, public reports allows the user access to violation and enforcement data from all dischargers regulated by the Water Boards, and gives the user control over how to sort and filter this data to meet specific information needs.

The Water Board's public reports currently available can be found on the Water Board's public website at:

<http://www.waterboards.ca.gov/ciwqs/publicreports.html>

The major findings of this report are:

- (1) The Water Boards have collected over \$47 million in penalties and settlements over the last five fiscal years.
- (2) The Water Boards regulate over 2,000 National Pollutant Discharge Elimination System (NPDES) wastewater permittees, and more than 37,000 stormwater permittees statewide.
- (3) The total number of violations at NPDES wastewater facilities and the number of effluent violations has fluctuated since 2000 with no overall trends up or down.
- (4) The percentage of violations with a completed enforcement action has declined during the past four years (Note some violations may not warrant enforcement).
- (5) A backlog of MMPs exists, representing a substantial pending workload.
- (6) Transition to a new data system in mid-2005 has affected collection and reporting of data on violations and enforcement actions.

These findings are based on analysis of the data from the CIWQS database as presented in this report.

The Water Boards are undertaking the following actions to address the findings in this report:

- (a) Standardization for efficient processing of permits and MMPs; return saved resources to compliance work,
- (b) Continued development of electronic submittal of compliance information from dischargers to provide dischargers and state staff greater efficiencies and enable more state resources to be devoted to compliance,
- (c) Continue work on improved public reporting of violation and enforcement information, including development of a "Compliance Report Card" on the Internet.
- (d) Explore improved prioritization of enforcement efforts,
- (e) Issuance of an annual enforcement report covering all Water Board programs,
- (f) Assess compliance at federal facilities and discuss findings with USEPA.

## Introduction

This report addresses violations of Waste Discharge Requirements for discharges to surface water. Discharges to surface water are issued a combined Waste Discharge Requirements/NPDES permit. The NPDES program is administered by California in accordance with the United States Environmental Protection Agency's approval, and is implemented through Chapter 5.5 of the California Water Code. NPDES Waste Discharge Requirements are usually issued by one of the nine Regional Water Boards. These nine Regional Water Boards and twelve regional offices lie within different watersheds and are as follows (see Appendix A for map and details):

- Region 1 – North Coast Water Board
- Region 2 – San Francisco Bay Water Board
- Region 3 – Central Coast Water Board
- Region 4 – Los Angeles Water Board
- Region 5 – Central Valley Water Board (With Offices in Redding [5R], Sacramento [5S] and Fresno [5F])
- Region 6 – Lahontan Water Board (With offices in South Lake Tahoe [6A] and Victorville [6B])
- Region 7 – Colorado River Basin Water Board
- Region 8 – Santa Ana Water Board
- Region 9 – San Diego Water Board

Four overarching considerations are pertinent to this report: the reporting period, federal facilities, stormwater facilities, and data quality.

### Reporting Period

This report includes a compilation of violations that occurred up to December 31, 2006 and the enforcement actions in response to those violations. Typically, it takes approximately six months to issue an enforcement action after the violation has occurred; it may take substantially longer for more complex cases, or where staff has been assigned to higher priorities. Also, self-monitoring reports are typically due to the Water Boards 30 to 45 days after the end of the month for which the monitoring was done. This allows for laboratory analysis and transmittal of data. As a result, Water Board staff does not detect violations for several months after they occur. Staff must review the reports, identify the violations and manually enter the information into the data system. Where a large enforcement action is warranted to address a minor but chronic problem, it could be several years before a particular violation is linked to such an action.

It is important to note that the data presented in these reports continues to change as actions are taken and information is updated. For example, in a report issued in August 2006, the Water Boards reported that only 86% of certain violations had not resulted in an enforcement action. Data now indicate that 46% of these violations have resulted in an enforcement action.

Data for the report was extracted from the CIWQS database September 13-20, 2007.

### Federal Facilities

CIWQS database information about federal facilities has become inconsistent and problematic because Water Boards have found it difficult to prevail in enforcement against federal facilities. Federal facilities are shielded from most enforcement actions by sovereign immunity, so enforcement actions are often precluded. Motivation for data entry under these circumstances has declined. For example, San Diego Regional Water Board initially entered all identified violations at federal facilities into the database. The San Diego Regional Water Board discontinued this comprehensive recordation of federal facility violations because of their inability to enforce. Inclusion of this data in summary information about violations and related enforcement has a dramatic and misleading impact on the historic data. For that reason, this report does not include violations and enforcement actions for federal facilities. To ensure the Water Boards are properly addressing violations, a separate assessment of such facilities should be done, and the findings discussed with USEPA.

### Stormwater Facilities

Two things have occurred with respect to reporting on stormwater enforcement: 1) separate wastewater and stormwater enforcement reports were consolidated by statute, commencing January 1, 2005, into this report, and 2) the stormwater program uses the CIWQS data base for recording stormwater violations and enforcement actions. The result is dedicated wastewater and stormwater sections in this report, and a broader stormwater discussion than past stormwater enforcement reports.

### Data quality

Data quality and completeness present an ongoing challenge, and data entry is inconsistent between Water Boards and has been delayed in some. The primary reasons for these difficulties are the manual review of monitoring reports, manual data entry, and adjustment to a new data system.

In July 2005, the Water Boards launched a new data system called the California Integrated Water Quality System (CIWQS). Initial deployment of this system occurred before the system was fully ready. Development of reporting functionality, development of business rules, and data migration continues. As such, inconsistencies and apparent deficiencies in the data presented in this report do not necessarily reflect inconsistencies in our enforcement program statewide. To address the question of data quality, the Water Board has begun a project that will assess the quality of data in CIWQS by coordinating a data audit and establishing QA/QC protocols to assure that the quality of data remains high into the future.

The Water Boards have recently developed a number of public reports to meet our requirement to continuously provide the data contained in this report. Additionally, functionality expected in CIWQS promises to move us well beyond where we were in terms of data quality, data entry and management, and public access to information on compliance. One of the key elements of this new system is electronic submittal and analysis of monitoring reports, and automated generation and tracking of violation information. We anticipate that as this functionality is implemented for

all our NPDES Permits, the quality and completeness of routine compliance monitoring data will improve dramatically.

### **(A) A compilation of the number of violations of waste discharge requirements in the previous year.**

#### **Wastewater**

During the reporting period, there were 2,394 active wastewater facilities regulated by NPDES waste discharge requirements in California. These facilities are divided into two categories:

- Major facilities – Facilities with an average daily discharge greater than 1 million gallons per day or those that pose a high degree of threat to water quality;
- Minor facilities – Facilities with an average daily flow less than 1 million gallons per day and have a lower threat to water quality.

The waste discharge requirements (hereinafter “NPDES permits” or “permits”) are issued as individual permits or as general permits. Dischargers who are eligible for coverage under a general permit must enroll and agree to comply with the conditions of the general permit.

A summary of active NPDES facilities by category and Water Board is shown in Table 1.

**Table 1: NPDES Wastewater Permits by Category and Regional Office**

REGIONAL OFFICE	MAJOR FACILITIES	MINOR FACILITIES			Total Permittees
	INDIVIDUAL Permits	GENERAL Permit Enrollees	INDIVIDUAL Permits	Total Minor Permits	
1	15	19	31	50	65
2	82	212	59	271	353
3	28	102	36	138	166
4	51	562	99	661	712
5F	6	25	41	66	72
5R	14	20	64	84	98
5S	39	119	69	188	227
6A	1	17	4	21	22
6B	2	9	13	22	24
7	15	40	20	60	75
8	16	404	28	432	448
9	21	82	29	111	132
<b>Total</b>	<b>290</b>	<b>1,611</b>	<b>493</b>	<b>2,104</b>	<b>2,394</b>

Table 2 lists the total number of violations of NPDES permits by Water Board office for each of the past five years. The table shows an increase in the number of total violations over the first three years followed by a decrease during the last two years, though this does not track for all the Water Board offices. This general increase in the number of violations is in part explained by an

increased diligence in recording violations, particularly mandatory minimum penalty violations. The later decrease corresponds to competing priorities for staff time, and a resulting drop in data entry of violations. As noted elsewhere in this report, deployment of the CIWQS database in mid-2005 resulted in a drop in data entry, though some Regional Water Board offices are entering this data.

**Table 2: Number of Violations of NPDES Wastewater Permits 2002 to 2006**

<b>Violations of NPDES Waste Discharge Requirements</b>					
<b>Regional Office</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
1	403	458	691	249	132
2	285	254	275	283	132
3	324	216	416	410	414
4	1,036	2,164	1,933	1,148	1,451
5F	712	561	285	144	10
5R	101	74	50	120	99
5S	778	981	1,726	1827	692
6A	18	11	9	5	1
6B	21	25	22	14	114
7	198	316	166	192	257
8	127	112	158	237	130
9	122	172	493	123	166
<b>Total</b>	<b>4,125</b>	<b>5,344</b>	<b>6,224</b>	<b>4,752</b>	<b>3,598</b>

A comparison of the number of violations by Water Board and the number of facilities regulated in that Water Board is provided in Table 3. A comparison of the average number of violations per facility assists in recognizing Water Boards or facilities that have above average and below average compliance rates.



**Table 3: Number of Violations Per Wastewater Facility for 2006**

<b>Number of Facilities Compared to Number of NPDES Violations in 2006</b>			
<b>Regional Office</b>	<b>NPDES Facilities</b>	<b>Total Violations</b>	<b>Violations per facility</b>
1	65	132	2.0
2	353	132	0.4
3	166	414	2.5
4	712	1,451	2.0
5F	72	10	0.1
5R	98	99	1.0
5S	227	692	3.0
6A	22	1	0.0
6B	24	114	4.8
7	75	257	3.4
8	448	130	0.3
9	132	166	1.3
<b>Total</b>	<b>2,394</b>	<b>3,598</b>	<b>Average: 1.74</b>

The data indicate an uneven distribution of the average number of violations per facility among the different Water Board offices. The reasons for this variability include differences in facility-specific requirements, differences in Water Board office processes and priority assigned to report review and data entry, and differences in rates of compliance among dischargers. Variability due to report review and data entry should be reduced with the electronic submittal and analysis being implemented through our improved data system. Another project to standardize permits will reduce the difference in facility specific requirements over the next few years as permits are renewed.

A breakdown of the violation types and the number of those violations that are identified as priority violations is presented in Table 4. A more detailed description of each violation category is provided in Appendix B. Violations vary from not submitting monitoring reports on time to acute toxicity violations. The Water Boards identify priority violations based on criteria identified in the Water Quality Enforcement Policy (Resolution No. 2002-0040) (<http://www.waterboards.ca.gov/plnspols/docs/wqep.doc>). A priority violation represents a greater threat to water quality than other violations. Approximately thirty percent of NPDES wastewater violations have been identified as priority violations.

It is important to note that the term “priority” violation used in this context is different than “serious” violations discussed in the following section on mandatory minimum penalties. The term “serious” violation is defined in sections 13385(h) and 13385.1 of the Water Code. All “serious” violations are considered priority violations, but not all priority violations are “serious” violations.

**Table 4: NPDES Wastewater Violations by Category for 2006**

<b>Breakdown of the Number of NPDES Violations by Category for 2006</b>					
<b>Description of Violation Category</b> (See Appendix B)	<b>Total Violations</b>		<b>Priority Violations</b>		
	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>% of Total Priority</b>	<b>% of Total Violations</b>
Effluent	1,030	29%	351	32%	10%
Category 1 Pollutant	903	25%	90	8%	3%
Reporting	687	19%	346	32%	10%
Category 2 Pollutant	529	15%	21	2%	1%
Monitoring	160	4%	151	14%	4%
Receiving Water	92	3%	65	6%	2%
Sanitary Sewer Overflow	77	2%	0	0%	0%
Violation of Non-Effluent Permit Condition	44	1%	19	2%	1%
Acute Toxicity	23	1%	20	2%	1%
Unauthorized Discharge	13	0%	13	1%	0%
Chronic Toxicity	12	0%	0	0%	0%
Other Requirement	5	0%	0	0%	0%
Groundwater	3	0%	5	0%	0%
BMP	2	0%	0	0%	0%
Pretreatment	2	0%	3	0%	0%
Unregulated Discharge	2	0%	0	0%	0%
<b>Total</b>	<b>3,584</b>		<b>1,084</b>		<b>30%</b>

### **Stormwater**

At the time of report preparation, there are 37,006 active facilities/permittees regulated by NPDES stormwater permits in California. These facilities are divided into five categories:

- **Construction Stormwater Facilities** – Dischargers whose projects disturb one or more acres of soil or whose projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity ([Construction General Permit, 99-08-DWQ](#)). Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade or capacity of the facility.
- **Industrial Stormwater Facilities** – The Industrial Storm Water General Permit Order 97-03-DWQ ([General Industrial Permit](#)) is an NPDES permit that regulates discharges associated with 10 broad categories of industrial activities.

- Linear Stormwater Facilities –Underground/Overhead Projects disturbing at least 1 acre but less than 5 acres (including trenching and staging areas) are covered by the Statewide General Permit for Storm Water Discharges Associated with Construction Activity from Small Linear Underground/Overhead Projects ([Small LUP General Permit](#))
- Municipal Stormwater Phase I Facilities – The Municipal Storm Water Permits regulate storm water discharges from municipal separate storm sewer systems (MS4s). Under [Phase I](#), which started in 1990, the Water Boards have issued NPDES MS4 permits to permittees serving populations greater than 100,000 people. Many of these permits are issued to a group of co-permittees encompassing an entire metropolitan area.
- Municipal Stormwater Phase II Facilities – Under [Phase II](#), the SWRCB adopted a General Permit for the Discharge of Storm Water from Small MS4s (WQ Order No. 2003-0005-DWQ) to provide permit coverage for smaller municipalities (10,000 to 100,000 people), including non-traditional Small MS4s which are governmental facilities such as military bases, public campuses, and prison and hospital complexes.

The stormwater permits are generally issued as individual permits to the Phase 1 MS4s and as general permits to the other categories. Dischargers who are eligible for coverage under a general permit must enroll and agree to comply with the conditions of the general permit.

A summary of active NPDES stormwater facilities by category and Water Board is shown in Table 5.

**Table 5: NPDES Stormwater Permittees by Permit Type and Regional Office**

REGIONAL OFFICE	Construction	Industrial	Linear	Municipal Phase I*	Municipal Phase II*	Total
1	391	358	1	7	12	769
2	1,659	1,411	9	77	33	3,189
3	682	395	3	3	15	1,098
4	2,261	2,811	8	104	0	5,184
5F	1,153	581	3	8	0	1,745
5R	437	172	0	3	6	618
5S	3,259	1,128	13	21	39	4,460
6A	121	34	0	5	0	160
6B	764	163	3	1	4	935
7	555	166	6	14	0	741
8	2818	1,471	8	73	0	4,370
9	2,791	692	12	79	2	3,576
<b>Total</b>	<b>16,891</b>	<b>9,382</b>	<b>66</b>	<b>395</b>	<b>111</b>	<b>26,845</b>

Table 6 lists the total number of violations of NPDES stormwater permits by Water Board office for each of the past five years.

**Table 6: Number of Violations of NPDES Stormwater Permits by Year**

Violations of NPDES Stormwater Waste Discharge Requirements					
Regional Office	2002	2003	2004	2005	2006
1	51	87	11	0	5
2	103	63	112	8	3
3	94	28	197	453	60
4	1,129	696	510	270	208
5F	6	9	105	305	238
5R	127	27	153	47	51
5S	56	202	376	463	522
6A	69	49	75	39	61
6B	15	1	0	2	8
7	21	0	49	2	1
8	381	264	383	462	242
9	461	363	361	160	133
<b>Total</b>	<b>2,513</b>	<b>1,789</b>	<b>2,332</b>	<b>2,211</b>	<b>1,532</b>

A breakdown of the storm water violations by violation type for 2006 is presented in Table 7. Approximately one percent of NPDES stormwater violations have been identified as priority violations.

**Table 7: NPDES Stormwater Violations by Category for 2006**

<b>Breakdown of the Number of NPDES Stormwater Violations by Category for 2006</b>					
<b>Description of Violation Category</b> (See Appendix B)	<b>Total Violations</b>		<b>Priority Violations</b>		
	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>% of Total Priority</b>	<b>% of Total Violations</b>
Reporting	989	65%	1	6%	0%
BMP	209	14%	1	6%	0%
Failure to Pay Fees	87	6%	9	50%	1%
SWPPP	83	5%	0	0%	0%
Violation of Non-Effluent Permit Condition	65	4%	1	6%	0%
Failure to Obtain Permit	25	2%	3	17%	0%
Unauthorized Discharge	16	1%	0	0%	0%
Basin Plan Prohibition	15	1%	1	6%	0%
Effluent	11	1%	1	6%	0%
Monitoring	10	1%	0	0%	0%
Enforcement Action	6	0%	0	0%	0%
Unregulated Discharge	6	0%	0	0%	0%
Other Requirement	5	0%	1	6%	0%
Other Codes	2	0%	0	0%	0%
California Water Code	1	0%	0	0%	0%
Receiving Water	1	0%	0	0%	0%
Sanitary Sewer Overflow	1	0%	0	0%	0%
<b>Total</b>	<b>1,532</b>		<b>18</b>		<b>1%</b>

**(B) A record of the formal and informal compliance and enforcement actions taken for each violation.**

**Wastewater**

Enforcement actions taken as a result of a violation include both informal and formal actions. An informal enforcement action is any enforcement action taken by Water Board staff that is not defined in statute such as staff letters and notices of violation. Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation such as cleanup and abatement orders. Appendix C describes the enforcement options used by the Water Boards.

**Table 8: NPDES Wastewater Violations Compared to Completed Enforcement Actions**

Calendar Year	2003			2004			2005			2006		
	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions
1	428	154	274	645	226	419	226	94	132	119	33	86
2	255	107	148	275	100	175	283	133	150	133	77	56
3	216	144	72	425	216	209	411	123	288	415	190	225
4	2,142	462	1,680	1,844	1,054	790	1,096	587	509	1,345	688	657
5F	550	117	433	285	75	210	144	25	119	10	2	8
5R	74	33	41	52	7	45	107	26	81	81	43	38
5S	983	455	528	1,727	792	935	1,827	784	1,043	693	361	332
6A	11	11	0	9	6	3	7	3	4	1	0	1
6B	25	10	15	23	6	17	14	7	7	114	111	3
7	316	21	295	166	36	130	191	13	178	257	70	187
8	129	55	74	181	108	73	238	185	53	130	117	13
9	217	8	209	550	9	541	123	12	111	215	17	198
<b>Total</b>	<b>5,346</b>	<b>1,577</b>	<b>3,769</b>	<b>6,182</b>	<b>2,635</b>	<b>3,547</b>	<b>4,667</b>	<b>1,992</b>	<b>2,675</b>	<b>3,513</b>	<b>1,709</b>	<b>1,804</b>
<b>Percentage</b>		<b>29%</b>	<b>71%</b>		<b>43%</b>	<b>57%</b>		<b>43%</b>	<b>57%</b>		<b>49%</b>	<b>51%</b>

Table 8 shows the number of violations for 2003 to 2006. It also lists the number of violations for which there is no completed enforcement action (enforcement is still pending for some, but not all, of these violations), and the number of violations that are linked to an enforcement action. The percentages at the bottom show each violation category as a percentage of the total number of violations.

Table 9 shows the percentage of violations linked to an enforcement action. While Water Board authorities for enforcement are significant, resource levels generally preclude enforcement against every violation.

**Table 9: Percentage of NPDES Wastewater Violations With A Completed Enforcement Action.**

Regional Board Office	2003		2004		2005		2006	
	Violations	With Enforcement	Violations	With Enforcement	Violations	With Enforcement	Violations	With Enforcement
1	428	64%	645	65%	226	58%	119	72%
2	255	58%	275	64%	283	53%	133	42%
3	216	33%	425	49%	411	70%	415	54%
4	2,142	78%	1,844	43%	1,096	46%	1,345	49%
5F	550	79%	285	74%	144	83%	10	80%
5R	74	55%	52	87%	107	76%	81	47%
5S	983	54%	1,727	54%	1,827	57%	693	48%
6A	11	0%	9	33%	7	57%	1	100%
6B	25	60%	23	74%	14	50%	114	3%
7	316	93%	166	78%	191	93%	257	73%
8	129	57%	181	40%	238	22%	130	10%
9	217	96%	550	98%	123	90%	215	92%
<b>Total</b>	<b>5,346</b>	<b>71%</b>	<b>6,182</b>	<b>57%</b>	<b>4,667</b>	<b>57%</b>	<b>3,513</b>	<b>51%</b>

#### Color Codes

<b>GREEN</b>	<b>More than 90% of violations with completed enforcement</b>
<b>YELLOW</b>	<b>Between 80% and 90% of violations with completed enforcement</b>
<b>RED</b>	<b>Less than 80% of violations with completed enforcement</b>

#### Stormwater

Table 10 shows the number of stormwater violations for the last four years. It also lists the number of stormwater violations addressed by enforcement actions. The percentages at the bottom show each violation category as a percent of the total number of violations.

**Table 10: NPDES Stormwater Violations Compared to Completed Enforcement Actions**

NPDES Stormwater Violations Compared to Enforcement Actions												
Fiscal Year	2003			2004			2005			2006		
Regional Office	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions	Total Violations	Total Violations without Completed Enforcement Actions	Total Violations with Enforcement Actions
1	89	1	88	10	0	10	0	0	0	5	0	5
2	65	2	63	6	2	4	6	2	4	1	1	0
3	30	0	30	201	3	198	210	3	207	55	0	55
4	715	3	712	509	1	508	270	1	269	196	2	194
5F	9	0	9	105	8	97	305	10	295	240	3	237
5R	27	6	21	153	4	149	44	1	43	50	2	48
5S	202	3	199	380	4	376	459	7	452	527	9	518
6A	51	20	31	77	18	59	39	30	9	54	48	6
6B	1	1	0	0	0	0	1	1	0	8	8	0
7	0	0	0	49	2	47	1	0	1	0	0	0
8	266	7	259	268	32	236	455	47	408	201	25	176
9	403	27	376	379	31	348	168	19	149	142	26	116
<b>Total</b>	<b>1,858</b>	<b>70</b>	<b>1,788</b>	<b>2,137</b>	<b>105</b>	<b>2,032</b>	<b>1,958</b>	<b>121</b>	<b>1,837</b>	<b>1,479</b>	<b>124</b>	<b>1,355</b>
<b>Percentage</b>		<b>4%</b>	<b>96%</b>		<b>5%</b>	<b>95%</b>		<b>6%</b>	<b>94%</b>		<b>8%</b>	<b>92%</b>

Table 10 shows a very high enforcement response rate, much higher than in Table 8 for the wastewater reporting. This is due in part to the fact that these violations are often entered into the database at the same time the enforcement action is entered.



## **(C) An analysis of the effectiveness of current policies, including mandatory minimum penalties (MMPs).**

### **Mandatory Minimum Penalties (MMPs)**

#### Background

California Water Code section 13385 requires MMPs for specified violations of NPDES permits. For violations that are subject to those MMPs, the Water Board must either assess an Administrative Civil Liability (ACL) for the minimum penalty or assess an ACL for a greater amount. California Water Code section 13385(h) requires a MMP of \$3,000 for each “serious” violation. A serious violation is defined as any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more.

The Water Boards are also required by California Water Code section 13385(i) to assess MMPs of \$3,000 for multiple non-serious violations. This penalty applies when the discharger does any of the following four or more times in any period of six consecutive months:

- 1) Violates effluent limitations;
- 2) Fails to file a report of waste discharge pursuant to California Water Code section 13260;
- 3) Files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- 4) Violates a toxicity effluent limitation where the WDR does not contain pollutant-specific effluent limitations for toxic pollutants.

California Water Code section 13385(j) includes several limited exceptions to the mandatory minimum penalty provisions. The primary exceptions are for discharges that are in compliance with a cease and desist order or time schedule order under narrowly specified conditions. California Water Code section 13385(k) provides an alternative to assessing MMPs against a publicly owned treatment works (POTW) that serves a small community with a financial hardship. Under this alternative, the Water Boards may require the POTW to spend an amount equivalent to the mandatory minimum penalty toward a compliance project that is designed to correct the violations.

California Water Code section 13385.1, effective January 1, 2004, defines the term “effluent limitation” and expands the definition of a “serious violation” in California Water Code section 13385(h) to include failure to file a discharge monitoring report for each 30 days it is late. Section 13385.1 also re-defines MMPs as applicable only to permits in which the location of the discharge is specified. Most general NPDES permits do not specify the location of discharge and are therefore not subject to MMPs for effluent or reporting violations.

#### Summary of MMP Violations and MMP Enforcement Actions

According to the CIWQS database, 14,628 MMP violations occurred between January 1, 2000 and December 31, 2006. Of these, 7,776 (48 percent) are recorded in CIWQS as having received a minimum or greater penalty. Some portion of the reported effluent violations may qualify for statutory exemptions.

Table 11 shows the number of violations that have had penalties issued by each Water Board office.

**Table 11: Status of Effluent Violations Subject to MMPs From January 2000 to December 2006**

<b>Violations Subject to MMPs - January 2000 to December 2006</b>				
<b>Regional Office</b>	<b>Total MMP Violations</b>	<b>Violations With MMP Enforcement</b>	<b>Violations Without Completed MMP Enforcement</b>	<b>% Without</b>
1	1365	610	755	55%
2	1,352	941	411	30%
3	666	519	147	22%
4	4,112	1,130	2,982	73%
5F	1484	677	807	54%
5R	111	63	48	43%
5S	3,543	1479	2064	58%
6A	22	0	22	100%
6B	10	5	5	50%
7	484	311	173	36%
8	733	548	185	25%
9	746	569	177	24%
<b>TOTAL</b>	<b>14,628</b>	<b>6,852</b>	<b>7,776</b>	<b>48%</b>

Table 12 lists the number of facilities in each Water Board office that have one or more MMP violations, the number of facilities for which MMPs have been issued for all MMP violations, and the number of facilities that would require at least one enforcement action to cover the outstanding MMP violations. As shown, 388 or more enforcement actions would be necessary to cover the 6,852 violations subject to MMPs.

**Table 12: Facilities With MMP Effluent Violations and Pending Enforcement Actions January 2000 to December 2006**

<b>Regional Office</b>	<b>Facilities with MMP effluent violations</b>	<b>Facilities with all MMP penalties issued</b>	<b>Facilities with pending MMP penalties</b>
1	35	6	29
2	67	18	49
3	27	5	22
4	178	28	150
5F	21	2	19
5R	17	6	11
5S	68	12	56
6A	3	0	3
6B	3	1	2
7	18	4	14
8	19	3	16
9	24	7	17
<b>TOTAL</b>	<b>480</b>	<b>92</b>	<b>388</b>

### Effectiveness of Mandatory Minimum Penalties on Effluent Violations

Early trends in MMP violations indicated an overall reduction in the number of violations at NPDES facilities. We believed that reduction was at least partly a result of increased compliance due to the deterrent effect of MMPs. Data in 2003 and 2004 showed an increase in violations, but we believe this is partly due to increased emphasis on recording and collecting these mandatory penalties. Additionally, the introduction of MMPs for reporting violations in 2004 put a greater emphasis on reviewing and tracking all such reports. The Water Boards generally prioritize MMP issuance to facilities with greater compliance problems because of the staff resource costs associated with issuing MMPs and ACLs.

Our transition to a new data system in mid-2005 caused a drop in the numbers of MMP violations entered into CIWQS and linked to the appropriate enforcement actions, limiting our ability to track some violations. This was due to confusion and concern regarding the proper use of this data system. We anticipate that electronic submittal and analysis of monitoring reports, and automated generation and tracking of violation information will significantly improve our confidence in the data for MMP violations, and should simplify MMP issuance. This may result in a greater number of known violations to validate and address, an increased need for enforcement responses to these violations, and a commensurate staff cost to issue them.

**Figure 1: MMP violations per year since 2000.**

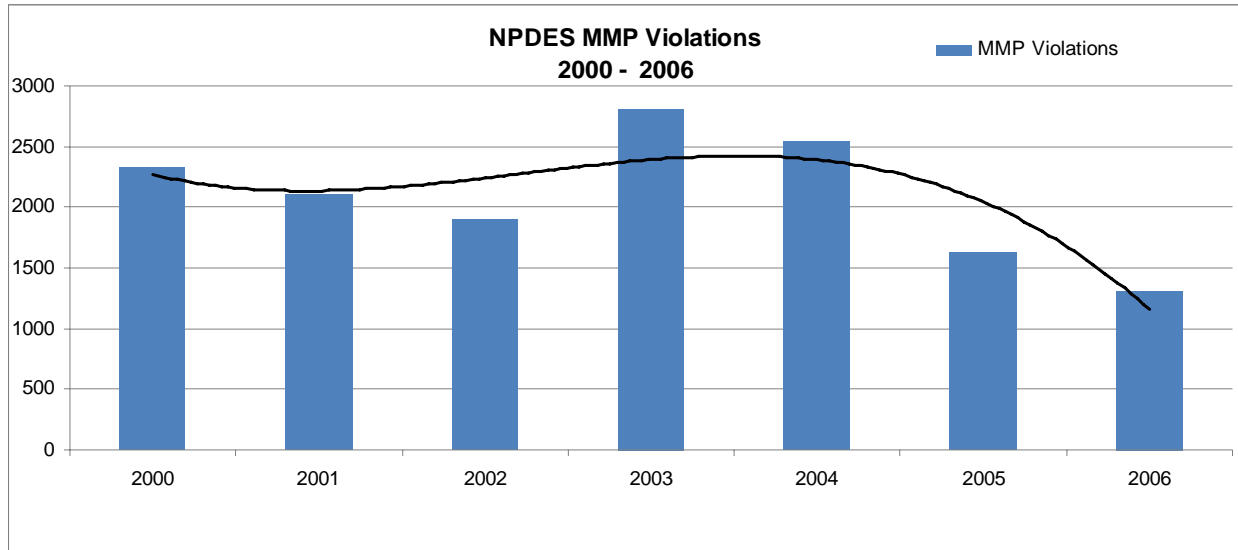
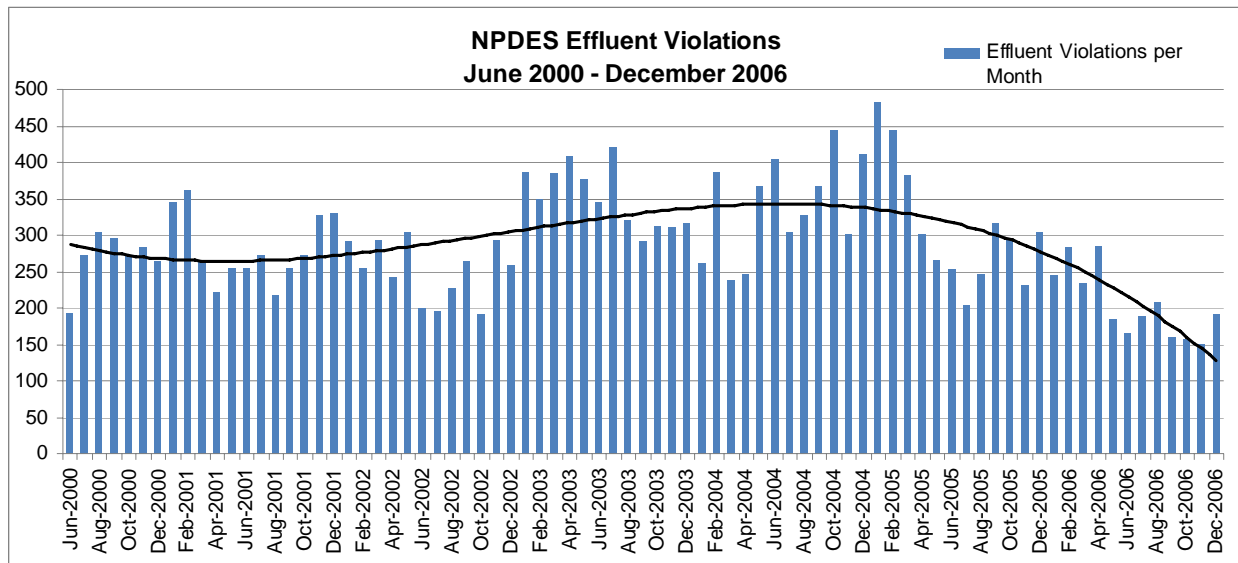
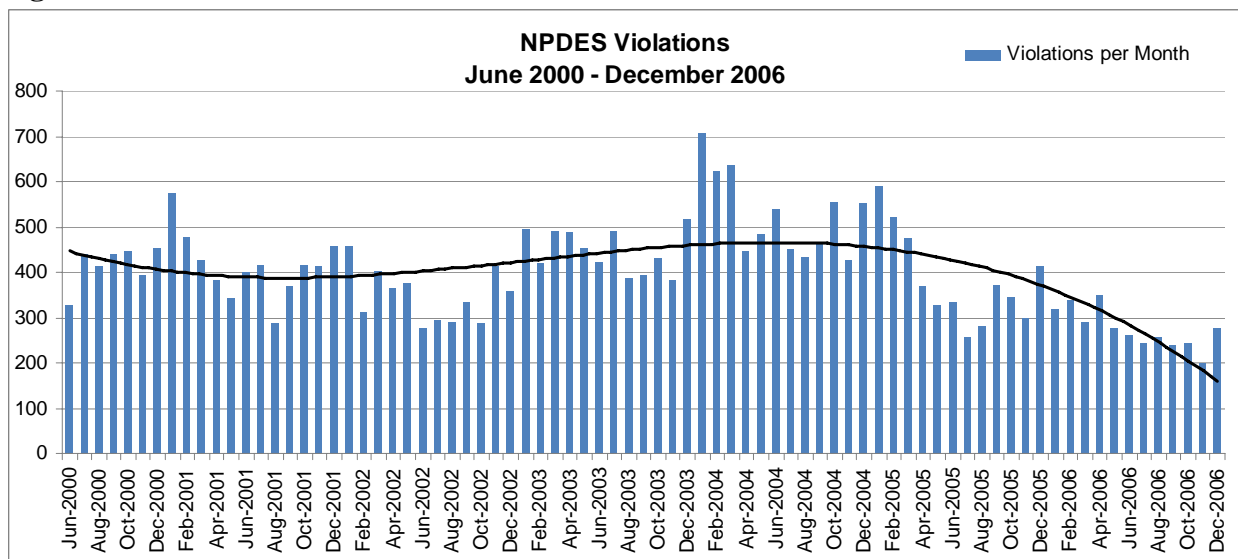


Figure 1 shows MMP violations since 2000. We see a variation through the years. There is an initial decrease, followed by an increase in 2003 and 2004. This increase corresponds to an increased emphasis on collection and recording of violation data. The decrease in 2005 and 2006 reflects challenges to data collection related to implementation of a new data system in mid-2005 and competing priorities for staff time. Additionally, there are many MMP violations in 2006 that have not yet been entered by Water Board staff. The line in this and the following figures represents the general trend of the data.

**Figure 2: NPDES Effluent Violations 2000 to 2006**



**Figure 3: Overall Violations 2000 to 2006**



The general trends in NPDES effluent violations shown in Figure 2 and overall violations in Figure 3 are consistent with that of Figure 1, and the reasons for this are largely the same.

**Overall effectiveness**

The data presented in the tables throughout this report provide various perspectives on Water Board effectiveness relative to violations and enforcement actions. Having this data in a database and being able to use it has been a significant accomplishment since the late 1990’s. The data also reveals a substantial workload. Recent complications associated with deployment of the CIWQS database in mid-2005 have impacted the Water Boards’ ability to effectively use this data to manage our enforcement program, and this was the subject of a recent external

review. Recommendations from this review will be implemented at the Water Board, including streamlining data entry, effective QA/QC procedures, and continued improvement in the reporting and availability of this data for staff and the public.

Despite issuing millions of dollars in total penalties each year, and despite the changes from Fiscal Year 1996-1997 when only 5 percent of violations resulted in a formal enforcement action and 1 percent resulted in the assessment of an administrative civil liability,<sup>1</sup> the overall conclusion from review of the data is that the Water Boards need to further improve their effectiveness in handling violations and enforcement actions. However, despite this overall conclusion, there are success stories.

A case in point is an increased emphasis on prioritizing potential enforcement cases to ensure we are addressing the most significant threats. Based on an approach used by the San Diego Water Board, the Water Boards have developed a consistent format for prioritization, and regularly report this information to the State Water Board. Enforcement managers at each Regional Water Board meet regularly to discuss and prioritize potential enforcement cases.

Organizationally, the Regional Water Boards have an identified enforcement unit or team, and the State Water Board created an Office of Enforcement in July, 2006 to ensure greater coordination and consistency in enforcement. Enforcement representatives from the State and Regional Water Boards meet regularly to discuss enforcement matters and get feedback on enforcement approaches. The Office of Enforcement is also focusing on increased coordination with local, state, and federal law enforcement agencies, giving the Water Boards more enforcement tools, and more efficient use of resources statewide in addressing water quality problems.

The Water Boards' Water Quality Enforcement Policy was last updated in 2002 (<http://www.waterboards.ca.gov/plnspols/docs/wqep.doc>) and is currently being revised. This Policy creates a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits.

The Policy includes the following elements:

- An overview of water quality enforcement options.
- A process for identifying enforcement priorities and choosing the appropriate enforcement response.
- Provisions for more efficient use of standardized, enforceable permits and enforcement order language.
- Information to assist in integrated enforcement efforts with other agencies.
- Procedures for response to fraudulent reporting or knowingly withholding data.
- Specific guidance regarding assessment of administrative civil liability, use of supplemental environmental projects and compliance projects, handling of criminal activities, and standards for violation and enforcement reporting.

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<sup>1</sup> Legislative Analyst Office Analysis of 1999-2000 Budget Bill Resources Department 3 Issues.

The concepts and approaches of the Enforcement Policy are sound and provide appropriate approaches, practices, and considerations for effective enforcement. Improved implementation of the Enforcement Policy is needed to achieve its framework for effectiveness. Better implementation and needed changes will be address as the enforcement policy is revised in to following months.

The Water Boards continue to face multiple competing priorities and pressures that limit our opportunities to implement the Enforcement Policy provisions. Issuing permits, for example, has become more complex and contentious in recent years. It has drawn staff resources away from dealing with violations and enforcement because of discharger reactions and challenges related to the California Toxics Rule, to MMPs, and to other factors. The number of permits each staff is responsible for issuing, overseeing, and enforcing has increased. MMPs have also changed enforcement priorities by mandating formal enforcement actions in response to violations that, given their relative threat to water quality, were often resolved through informal enforcement actions before. Mandatory issuance of penalties in the hundreds of thousands of dollars for some small communities has had a substantial impact on those communities, disproportionately impacting them relative to larger dischargers.

To overcome these obstacles and improve implementation of the Enforcement Policy, the Water Boards will undertake the following actions to increase staff efficiencies, prioritize enforcement activities, and increase management oversight and public information:

- Revise the Water Quality Enforcement Policy to ensure it is clear, current, and ensures compliance with existing permits and basin plans.
- Standardize NPDES permitting to increase certainty and expectations for staff and dischargers, and to restore efficiency and performance to these efforts.
- Standardize the issuance of MMPs to maximize efficiency and minimize the resource impacts of these new requirements.
- Continued development of electronic submittal and analysis of monitoring reports, and automated generation and tracking of violation information.
- Development of public reporting of violations and compliance rates of dischargers, both as a disincentive to violate and to build partnerships in enforcement with public interest groups and interested communities. This includes development of a “Compliance Report Card” on the Internet to engage the public in a productive dialogue about discharger performance, environmental effects, Water Board workload, and Water Board performance.
- Issuance of an annual enforcement report that expands upon the reporting in this document, and includes an analysis of available enforcement resources, violation and enforcement data for all of our regulatory programs, and development of enforcement performance measures.
- Conduct an assessment of violations at federal facilities, and discuss the findings with USEPA.
- Ensure the data reports presented above available for live, public use on the Internet.

## Appendix A

### CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

**North Coast Region (1)**

5550 Skylane Blvd, Suite A  
 Santa Rosa, CA, 95403  
 Catherine E. Kuhlman, EO  
 TEL: (707) 576-2220  
 FAX: (707) 523-0135

**Central Coast Region (3)**

895 Aerovista Place,  
 Suite 101  
 San Luis Obispo, CA 93401  
 Roger W. Briggs, EO  
 TEL: (805) 549-3147  
 FAX: (805) 543-0397

**Lahontan Region (6SLT)**

2501 Lake Tahoe Blvd.  
 South Lake Tahoe, CA,  
 96150  
 Harold J. Singer, EO  
 TEL: (530) 542-5400  
 FAX: (530) 544-2271

**San Francisco Bay  
 Region (2)**

1515 Clay Street,  
 Suite 1400  
 Oakland, CA, 94612  
 Bruce H. Wolfe, EO  
 TEL: (510) 622-2300  
 FAX: (510) 622-2460

**Los Angeles Region (4)**

320 W. 4<sup>th</sup> St., Suite 200  
 Los Angeles, CA, 90013  
 Tracy Egoscue, EO  
 TEL: (213) 576-6600  
 FAX: (213) 576-6640

**Victorville Office (6V)**

14440 Civic Dr, Suite 200  
 Victorville, CA, 92392  
 Cindi Mitton, SWRCE  
 TEL: (760) 241-6583  
 FAX: (760) 241-7308

**Central Valley Region (5S)**

11020 Sun Center Drive, #200  
 Rancho Cordova, CA 95670  
 Pamela Creedon, EO  
 TEL: (916) 464-3291  
 FAX: (916) 464-4645

**Colorado River Basin  
 Region (7)**

73-720 Fred Waring Drive  
 Suite 100  
 Palm Desert, CA, 92260  
 Robert Perdue, EO  
 TEL: (760) 346-7491  
 FAX: (760) 341-6820

**Fresno Office (5F)**

1685 "E" Street  
 Fresno, CA, 93706  
 Loren J. Harlow, AEO  
 TEL: (559) 445-5116  
 FAX: (559) 445-5910

**Redding Office (5R)**

415 Knollcrest Drive  
 Redding, CA, 96002  
 Jim Pedri, AEO  
 TEL: (530) 224-4845  
 FAX: (530) 224-4857

**Santa Ana Region (8)**

3737 Main Street, Suite 500  
 Riverside, CA, 92501  
 Gerald J. Thibeault, EO  
 TEL: (951) 782-4130  
 FAX: (951) 781-6288

**San Diego Region (9)**

9174 Sky Park Court,  
 Suite 100  
 San Diego, CA, 92123  
 John Robertus, EO  
 TEL: (858) 467-2952  
 FAX: (858) 571-6972



**State of California**  
 Arnold Schwarzenegger, *Governor*

**California Environmental  
 Protection Agency**  
 Linda S. Adams, *Secretary*

**State Water Resources Control  
 Board**  
 Tam M. Doduc, *Board Chair*

## Appendix B

**LISTING AND DESCRIPTIONS OF VIOLATION TYPES USED  
IN THE CIWQS DATA SYSTEM**

Category 1 pollutant – Category 1 pollutants as defined by USEPA include:

Oxygen Demand

Biochemical Oxygen Demand  
Chemical Oxygen Demands  
Total Organic Carbon  
Other

Detergents and Oils

MBAS  
NTA  
Oil and Grease  
Other detergents or algaecides

Solids

Total Suspended Solids (Residues)  
Total Dissolved Solids (Residues)  
Other

Minerals

Calcium, Chloride, Fluoride, Magnesium, Sodium,  
Potassium, Sulfur, Sulfate, Total Alkalinity, Total Hardness,  
Other Minerals

Nutrients

Inorganic Phosphorus Compounds  
Inorganic Nitrogen Compounds  
Other

Metals

Aluminum, Cobalt, Iron, Vanadium

Category 2 pollutant – Category 2 pollutants as defined by USEPA:

Metals (all forms) - Other metals not specifically listed under Group I

Inorganics - Cyanide, Total Residual Chlorine

Organics - All organics are Group II except those specifically listed under Group I.

Other effluent violation – Any violation of an effluent requirement not cover under Category 1 or Category 2.

Chronic Toxicity – Violation of a chronic toxicity effluent requirement.

Acute Toxicity – Violation of an acute toxicity effluent requirement.

Violation of Non-effluent Permit Condition – Violation of any permit condition not pertaining to effluent requirements.

Reporting – Late report, failure to submit a report, or a report that is either not complete or contains errors.

Monitoring – Failure to conduct required monitoring

Compliance schedule – Failure to comply with a compliance schedule in a permit. This does not include schedules in an enforcement order likes a Cease & Desist and Time Schedule Orders.

Sanitary Sewer Overflow – Any spill from a sanitary sewer collection system or pump station.

Unauthorized Discharge – Any discharge other than allowed by WDRs that is not a sanitary sewer overflow.

Unregulated Discharge – Discharge from a site not currently under WDRs.

Groundwater – Any release to groundwater that violates permit conditions or basin plan prohibitions.

BMP – Failure to implement proper best management practices.

SWPPP – Failure to complete or update a stormwater pollution prevention plan.

Failure to obtain permit – Failure to obtain the appropriate permit prior to discharge or regulated activity.

Other Codes – Violations of codes sections other that the California Water Code.

Enforcement Action – Failure to comply with a previous enforcement order by not meeting its requirements, its time schedule, or failure to pay penalties.

Basin Plan Prohibition – Violation of any basin plan prohibition.



## Appendix C

### Types and Classification of Enforcement Actions

<b>Type of Enforcement Action</b>	<b>Description</b>	<b>Classification</b>
Verbal Communication	Any communication regarding the violation that takes place in person or by telephone.	Informal
Staff Enforcement Letter	Any written communication regarding violations and possible enforcement actions that is signed at the staff level.	Informal
Notice of Violation	A letter officially notifying a discharger of a violation and the possible enforcement actions, penalties, and liabilities that may result. This letter is signed by the Executive Officer.	Informal
Notice to Comply	Issuance of a Notice to Comply per Water Code Section 13399.	Formal
13267 Letter	A letter utilizing Water Code Section 13267 authority to require further information or studies.	Formal
Clean-up and Abatement Order	Any order pursuant to Water Code Section 13304.	Formal
Cease and Desist Order	Any order pursuant to Water Codes Sections 13301-13303.	Formal
Time Schedule Order	Any order pursuant to Water Code Section 13300.	Formal
Administrative Civil Liability (ACL) Complaint	ACL Complaint issued by the Executive Officer for liability pursuant to Water Code 13385.	Formal
Administrative Civil Liability (ACL) Order	An ACL Order that has been imposed by the Water Board or SWRCB.	Formal
Settlement	A settlement agreement per California Government Code Section 11415.6	Formal
Referral	Referral to the District Attorney, Attorney General, or USEPA.	Formal
Referred to a Task Force	Any referral of a violation to an environmental crimes task force.	Formal
Referral to Other Agency	Any referral to another State Agency.	Formal
Third Party Action	An enforcement action taken by a non-governmental third party and to which the State or Water Board is a party.	Formal
Waste Discharge Requirements	Any modification or rescission of Waste Discharge Requirements in response to a violation.	Formal