

**DRAFT**



**WATER BOARDS**  
**BASELINE ENFORCEMENT REPORT**  
FISCAL YEAR 2006-2007



STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

**March 28, 2008**

Baseline Enforcement Report (FY 2006 – 2007)

**STATE OF CALIFORNIA**

Governor Arnold Schwarzenegger

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

Linda Adams, Secretary, Cal EPA

**STATE WATER BOARD**

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Gary Wolff, Vice-Chair

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Frances Spivey-Weber, Board Member

Dorothy Rice, Executive Director, State Water Board

**Office of Enforcement**

Reed Sato, Director

Mark Bradley, PE, Enforcement Manager

**Office of Research, Planning & Performance**

Caren Trgovcich, Director

Rafael Maestu

Liz Kanter

Editorial Assistance by Selica Potter

Graphic Services support by Sharon Norton and Dale Oliver

With special acknowledgement to the many State and Regional Water Board staff who contributed the information and examples in this report.

## Acronyms

ACL	Administrative Civil Liability
CAA	State Water Pollution Cleanup and Abatement Account
Cal EPA	California Environmental Protection Agency
CAFO	Concentrated Animal Feeding Operations
CAO	Cleanup and Abatement Order
CDO	Cease and Desist Order
CIWMB	California Integrated Waste Management Board
CIWQS	California Integrated Water Quality System
CSD	Community Services District
CTR	California Toxics Rule
CWA	Clean Water Act
DA	District Attorney
EO	Executive Officer
ICC	International Code Council
LID	Low Impact Development
MMP	Mandatory Minimum Penalties
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NPS	Non-Point Source
NOV	Notice of Violation
O&M	Operations & Maintenance
OE or Office	Office of Enforcement
PCS	Permit Compliance System
PY	Personnel Year
POTW	Publicly Owned Treatment Works
PUD	Public Utilities District
QA/QC	Quality Assurance/Quality Control
RCRA	Federal Resource, Conservation, and Recovery Act
SEP	Supplemental Environmental Project

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SIC .....	Standard Industrial Classification
SIU .....	Special Investigations Unit
SMCRA .....	Surface Mining Control and Reclamation Act
SMR .....	Self-Monitoring Report
SSMP .....	Sewer System Management Plan
SSO .....	Sanitary Sewer Overflow
TSO .....	Time Schedule Order
US EPA.....	U.S. Environmental Protection Agency
UST .....	Underground Storage Tanks
Water Boards.....	State and Regional Water Boards
WDR .....	Waste Discharge Requirements
WQBEL .....	Water Quality-Based Limitation
WWTP .....	Wastewater Treatment Plant

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**Types and Classifications of Enforcement Actions**

<b>Types of Enforcement Action</b>	<b>Descriptions</b>	<b>Classifications</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 violations, possible enforcement actions, penalties, and liabilities that 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 using 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 State or Regional Water Board.	Formal
Settlement	A settlement agreement per California Government Code Section 11415.6	Formal
Referral	Referral to the District Attorney, Attorney General, or US EPA.	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

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## Executive Summary

This first Baseline Enforcement Report describes the State Water Resources Control Board's and the California Regional Water Quality Control Boards' enforcement functions that support core regulatory programs and responsibilities to protect California's water quality for Fiscal Year 2006-2007 (July 1, 2006 – June 30, 2007).

This report establishes a baseline of information for determining where and how modifications might be made to enforcement resources to obtain strategic results. The report highlights the staff and funding available for core regulatory program enforcement and the enforcement actions achieved with those resources. It illustrates some of the challenges faced by the Water Boards in bringing enforcement actions and makes recommendations for improvements to the Water Boards' enforcement tools and authorities. This Baseline Report also recommends performance-based measures to gauge future Water Board enforcement efforts.

For the reporting year, FY2006-2007, the California Regional Water Quality Control Boards (Regional Water Boards) were supported by 82 enforcement staff and 95 compliance staff. The State Water Board was supported by 15 enforcement staff. Based on information from the Water Boards' database, these staff brought more than 800 informal enforcement actions and more than 1,300 formal enforcement actions, where formal enforcement actions reflect the various enforcement authorities contained in statute. Approximately 107 of the 1,300 formal enforcement actions established more than \$13 million in administrative civil liabilities. In developing these figures, which are shown in detail later in this report, it was clear that the Water Boards could make significant improvements in tracking the allocation of resources, outputs and time committed to enforcement activities.

An examination of the information presented in this report highlights the significant ongoing data and resource challenges of the Water Boards. The majority of the information presented in the tables and figures is generated from the Water Boards' California Integrated Water Quality System (CIWQS), which is a database containing information on the Water Board's water quality programs. For many of the core regulatory programs covered by this report, key data elements are either missing or incomplete. Variation in data entry is apparent from region to region and a lack of data should not be interpreted as inactivity by individual Regional Water Boards. An outcome of the broader Water Board initiative to make CIWQS functional

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to meet internal and external data management needs is to provide useful data on compliance and enforcement activities. This report recommends that CIWQS be upgraded to maintain the data to support 10 specific measures of performance. These recommended performance measures will assist the Water Boards to monitor, manage and improve its enforcement activities and include:

▪ Self Monitoring Reports reviewed	▪ Percentage of facilities requiring an enforcement response	▪ Pounds of pollutants reduced (water and soil)
▪ Number and percentage of inspections conducted	▪ Number and percentage of facilities with violations subject to MMPs that are addressed	▪ Wetlands/Beach miles restored
▪ Number and type of enforcement actions	▪ Penalties Assessed	▪ Compliance rates
		▪ Percentage of facilities repeating violations (Recidivism)

**The following improvements to the Water Boards' existing enforcement efforts are recommended based upon the information presented in this report:**

1. Create procedural consistency in Regional Water Board enforcement proceedings;
2. Prioritize enforcement actions to address the most serious threats to water quality;
3. Develop minimum training requirements for inspection and enforcement staff;
4. Increase inspector field presence;
5. Evaluate the role of citizen enforcement of the California Water Code to reduce water quality violations;
6. Evaluate the impact of establishing minimum penalties for California Water Code violations;
7. Create a dedicated enforcement staff and budget;
8. Evaluate the increased use of the Attorney General's Office, district attorneys, and city attorneys in enforcement actions;
9. Prioritize MMP-related violations for enforcement to reduce the backlog of these enforcement cases commencing in calendar year 2008 consistent with the recommendations contained in the 2007, 13385 Report;
10. Evaluate updating of statutory penalty limits to address inflation;

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11. Use enforcement tools to compel participation in key Water Board regulatory programs (such as the Irrigated Lands Regulatory Program);
12. Develop a uniform mechanism for tracking illegal discharges that do not fall within one of the current regulatory programs, and the actions taken to address those illegal discharges.
13. Encourage flexibility in the allocation of resources to focus on specific regional and statewide issues, recognizing that a shift in resources away from a program area will result in a corresponding reduction in the level of effort for that area.

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## Introduction

### Introduction and Purpose of This Report

In 2007, Governor Schwarzenegger directed the State Water Board to “develop a baseline of regulatory functions by all water boards and establish performance metrics to measure the effectiveness of [the Water Boards’] actions” and to “develop a comprehensive report on enforcement priorities, performance measures and targets.” This Baseline Report addresses the Governor’s direction about Water Board enforcement activities.<sup>1</sup>

Enforcement is not a regulatory program. It is a business function that supports the regulatory programs and authorities of the Water Boards. The principal goal of enforcement is to encourage compliance.

The Water Boards' core regulatory efforts are intended to promote compliance through a set of integrated actions that include:

- Ensuring permits are enforceable
- Compliance
- Conducting inspections
- Reviewing discharger self monitoring reports
- Investigating complaints
- Addressing non-compliance with enforcement

The enforcement component of the core regulatory programs concentrates on:

- Documenting and tracking violations
- Initiating formal and informal enforcement actions
- Coordinating with law enforcement agencies
- Monitoring and reporting on the effectiveness of State and Regional Water Boards' actions.

Enforcement strategies available to Regional Water Boards range from the most informal to the very formal. An informal enforcement action can be as simple as a phone call or email while the most formal actions involve referral of a matter to the Attorney General for litigation. In between are Notices of Violation, Investigatory Orders, Cleanup and Abatement Orders, Cease and Desist Orders, and orders imposing Administrative Civil Liability. For the more formal actions, a hearing before the Regional Water Board will generally be necessary. Ideally, serious violations will result in fair and appropriate consequences for the violators including

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<sup>1</sup> This Baseline Enforcement Report covers some of the subject matter also addressed by the annual Enforcement Report prepared by the State Water Board pursuant to *Water Code* section 13385(o). The Baseline Enforcement Report addresses a different reporting period and a greater number of core regulatory programs than the 13385 report.

## Baseline Enforcement Report (FY 2006 – 2007)

consistent application of penalties and other wide-ranging sanctions available to the Water Boards by law. Moreover, penalties must be calculated to eliminate the economic advantage achieved through noncompliance with water quality laws. Consistent use of formal enforcement actions to address the most serious violations is a fundamental goal of the Water Boards.

This report has five purposes:

- Identify the resources available for core regulatory enforcement and the enforcement actions achieved with those resources.
- Illustrate the challenges faced by the Water Boards in bringing appropriate enforcement to ensure compliance.
- Recommend metrics to measure the future effectiveness of the Water Boards' enforcement functions.
- Recommend improvements to the Water Boards' enforcement capabilities.
- Provide descriptive statistics on compliance and enforcement activities.

This report should be reviewed in conjunction with additional, recent reports available describing the Water Board's enforcement efforts including the annual Enforcement Report prepared by the State Water Board pursuant to *Water Code section 13385(o)* and the recent US EPA review of the Water Boards' enforcement of *Clean Water Act* violations. This review, released on January 25, 2008<sup>2</sup>, concluded that the Water Boards' enforcement activity was "highly effective" for federal fiscal year 2006. US EPA made the following recommendations for the Water Boards' enforcement activities:

- Issuance of TSOs should be coordinated with enforcement staff to ensure establishment of expeditious compliance schedules.
- Compliance orders (CDOs or TSOs) should be issued concurrently with ACLs for dischargers with continuing violations, especially for significant noncompliance violations.
- Trade-offs related to mandatory minimum penalties (MMPs) versus compliance orders to match enforcement with water quality priorities should be considered.

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<sup>2</sup> US EPA released its review of the State of California's compliance and enforcement activities under the federal *Clean Water Act*. The results of the review are published as: *US EPA State Review Framework (SRF) Report re: Clean Water Act Compliance and Enforcement Activities, for July 1, 2005 – June 30, 2006, January 25, 2008*.

## Baseline Enforcement Report (FY 2006 – 2007)

- Regional Water Boards should ensure that all facilities in significant noncompliance (as defined by US EPA) receive timely formal enforcement with enforceable time schedules (CDO, CAO, or TSO).
- All enforcement actions should be entered into state and federal information management systems to better reflect the extent of enforcement work conducted.
- The State and Regional Water Boards should develop the capability to perform pretreatment program approval and enforcement. A long-term investment in pretreatment staffing expertise would help to ensure protection of POTWs, waters and biosolids quality.

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# 1

## North Coast Regional Water Board

- 19, 470 square miles of land
- 340 miles of coastline
- 22,125 miles of streams
- 27,000 acres of lakes

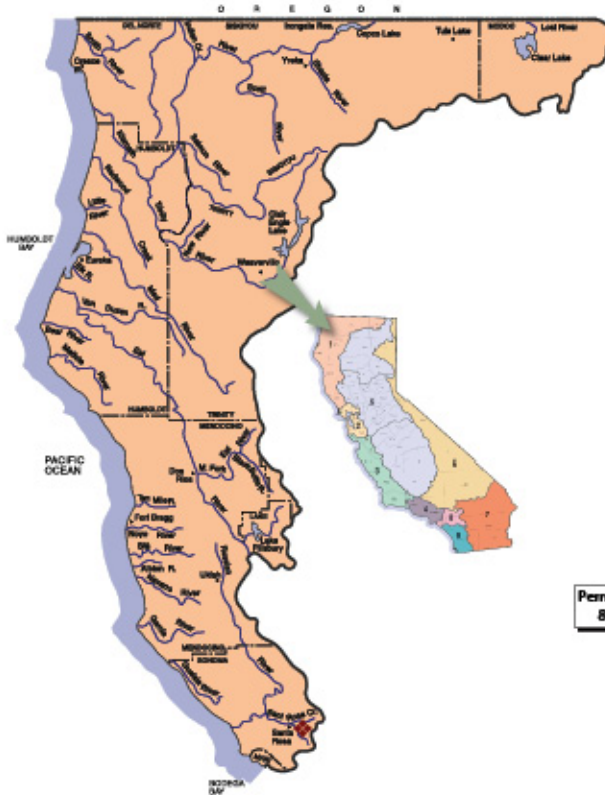
For the 5 core regulatory programs:

Permits = 1,789

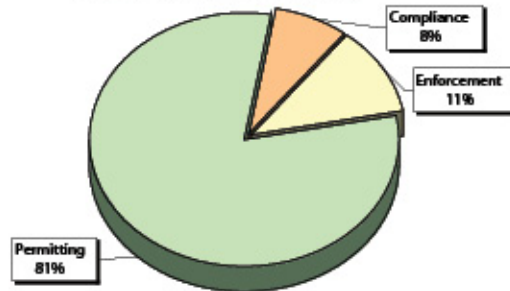
Compliance = 2 staff

Enforcement = 3 staff

Total Regional Board Staff = 82



Region 1, 5 Core Regulatory Programs Expenditures FY 2006-2007



Remote wilderness and towering redwoods characterize the North Coast Region, which stretches from the Oregon border to Marin County. A land of wet coastal mountains and drier inland valleys, it accounts for 12 percent of the state's land area, but 35 percent of its freshwater runoff. Its 340-mile-long coastline includes estuaries and environmentally sensitive areas protected by state law. Timber harvesting, agriculture, recreation and tourism are mainstays of the local economy.

North Coast Regional Water Quality Control Board  
[www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)  
 5550 Skylane Boulevard, Suite A  
 Santa Rosa, California 95403  
 Phone: (707) 576-2220

◆ = Regional Board Office

The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.

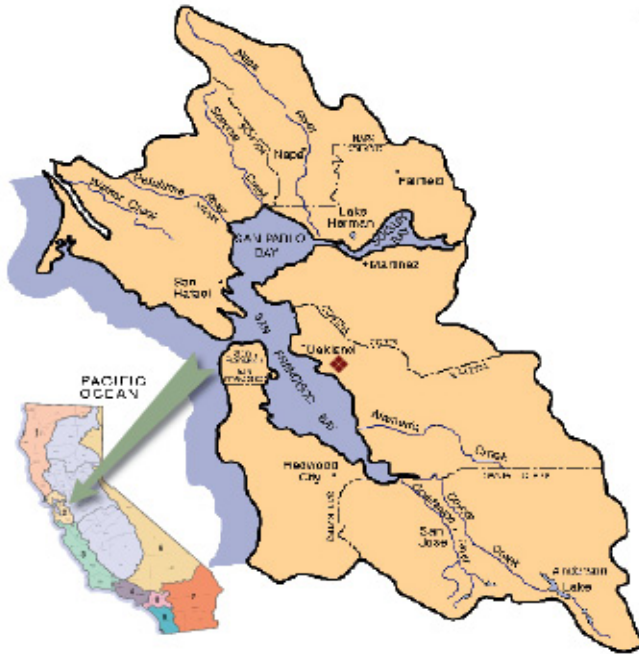


# 2 San Francisco Bay Regional Water Board

- 4,300 square miles of land
- 450 square miles of Bay water surface
- 110 miles of coastline

For the 5 core regulatory programs:  
 Permits = 5,116  
 Compliance = 11 staff  
 Enforcement = 20 staff  
 Total Regional Board Staff = 113

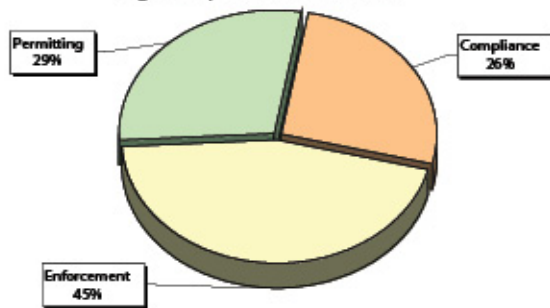
San Francisco Bay lies at the heart of this area, home to more than 7 million people. Industries range from high-tech computer manufacturers in Silicon Valley to oil refineries in Contra Costa County. The northern part of the region supports agriculture, such as the wine industry and dairies. Despite the heavy urbanization, there are still abundant natural resources, such as migratory birds, and fish in and around the Bay.



San Francisco Bay Regional Water Quality Control Board  
[www.waterboards.ca.gov/sanfranciscobay](http://www.waterboards.ca.gov/sanfranciscobay)  
 1515 Clay St., Suite 1400  
 Oakland, CA 94612  
 Phone: (510) 622-2300

◆ = Regional Board Office

Region 2, 5 Core Regulatory Programs Expenditures FY 2006-2007



The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.

# 3

## Central Coast Regional Water Board

- 11,274 square miles of land
- 2,360 miles of streams
- 25,040 acres of lakes
- 378 miles of coastline

For the 5 core regulatory programs:

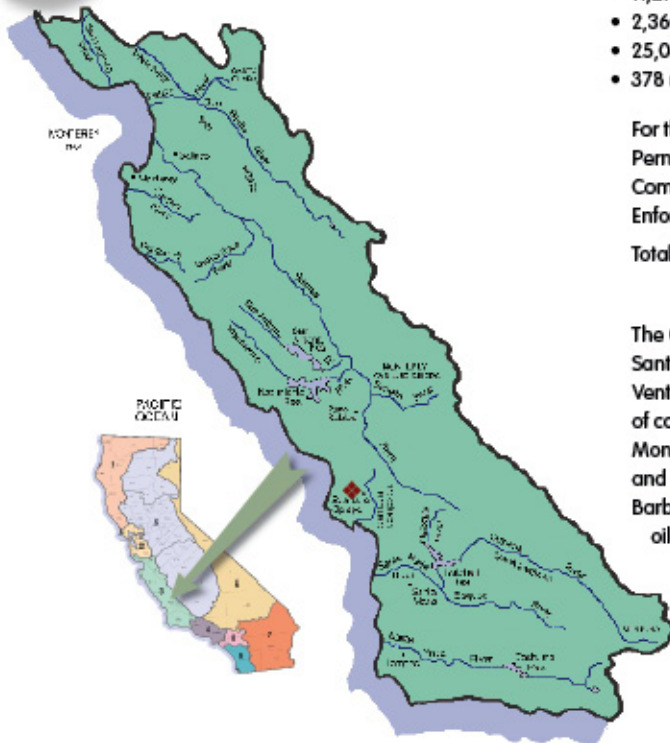
Permits = 2,465

Compliance = 11 staff

Enforcement = 6 staff

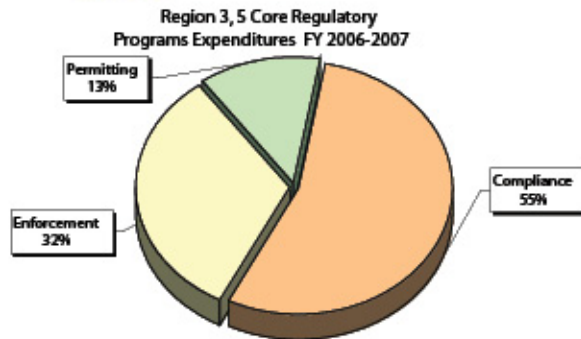
Total Regional Board Staff = 69

The Central Coast Region extends from Santa Clara County south to northern Ventura County. The region has 378 miles of coastline, including Santa Cruz and the Monterey Peninsula, the agricultural Salinas and Santa Maria Valleys, and the Santa Barbara coastal plain. Tourism, power and oil production, agriculture and related food processing activities are the major industries.



Central Coast Regional Water Quality Control Board  
[www.waterboards.ca.gov/centralcoast](http://www.waterboards.ca.gov/centralcoast)  
 895 Aerovista Place, Suite 101  
 San Luis Obispo, CA 93401  
 Phone: (805) 549-3147

◆ = Regional Board Office



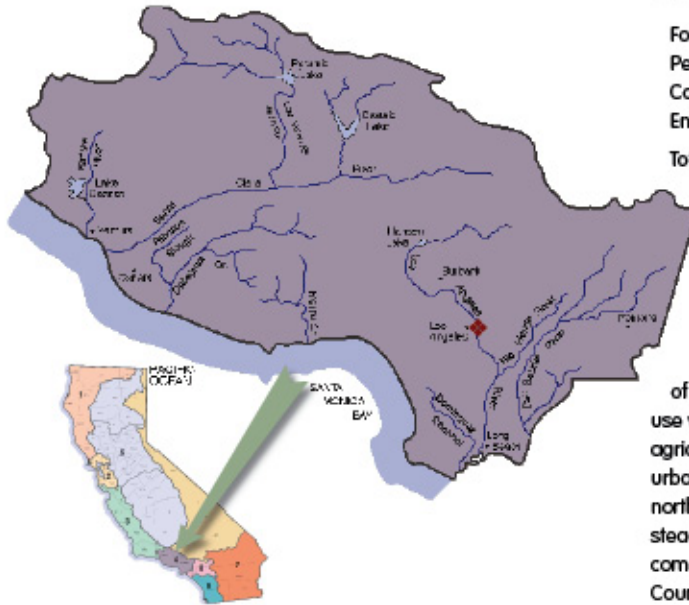
The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.

# 4

## Los Angeles Regional Water Board

- 4,447 square miles of land, including offshore islands
- 11,315 miles of streams
- 12,107 acres of lakes
- 120 miles of coastline

For the 5 core regulatory programs:  
 Permits = 8,078  
 Compliance = 10 staff  
 Enforcement = 9 staff  
 Total Regional Board Staff = 154

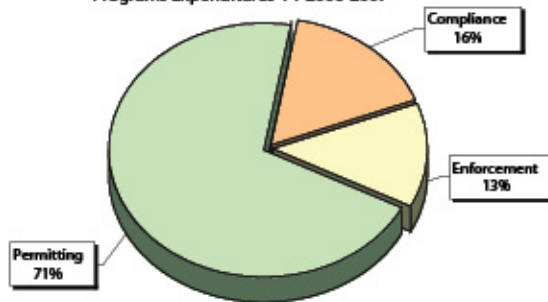


With 10 million residents, the Los Angeles region is the most densely populated region in the state. It encompasses all the coastal watersheds of Los Angeles and Ventura Counties, along with portions of Kern and Santa Barbara Counties. Land use varies considerably. In Ventura County, agriculture and open space exist alongside urban, residential and commercial areas. In northern Los Angeles County, open space is steadily being transformed into residential communities. In southern Los Angeles County, land uses include urban, residential, commercial and industrial.

Los Angeles Regional Water Quality Control Board  
[www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)  
 320 West Fourth Street, Suite 200  
 Los Angeles, CA 90013  
 Phone: (213) 576-6600

◆ = Regional Board Office

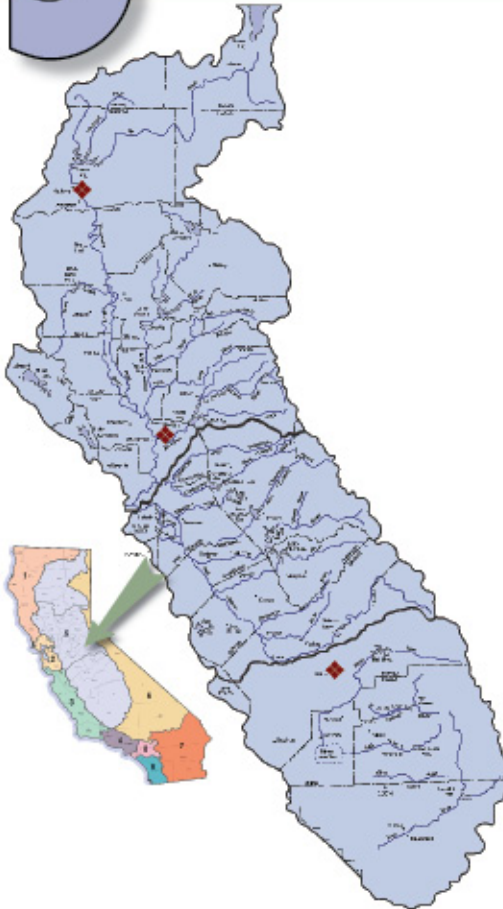
Region 4, 5 Core Regulatory Programs Expenditures FY 2006-2007



The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.

# 5

## Central Valley Regional Water Board



- 60,000 square miles
- 38 of California's 58 counties are either completely or partially within the Regional Board's boundaries
- 11,350 miles of streams
- 579,110 acres of lakes, and the largest contiguous groundwater basin in California

For the 5 core regulatory programs:

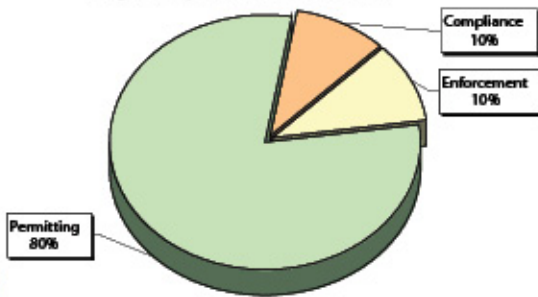
Permits = 15,778

Compliance = 21 staff

Enforcement = 22 staff

Total Regional Board Staff = 254

Region 5, 5 Core Regulatory Programs Expenditures FY 2006-2007



Central Valley Regional Water Quality Control Board  
[www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

- Sacramento Main Office  
 11020 Sun Center Drive #200  
 Rancho Cordova, CA 95670-6114  
 Phone: (916) 464-3291

◆ = Regional Board Office

The Central Valley Region is the State's largest, encompassing 60,000 square miles, or about 40 percent of the State's total area. Thirty-eight of California's 58 counties are either completely or partially within the Regional Board's boundaries, formed by the crests of the Sierra Nevada on the east, the Coast Ranges and Klamath Mountains on the west, the Oregon border on the north, and the Tehachapi Mountains on the south. The Sacramento and San Joaquin Rivers, along with their tributaries, drain the major part of this large area through an inland Delta, before emptying into San Francisco Bay. The Delta is the focal point of the state's two largest water conveyance projects, the State Water Project and the federal Central Valley Project. Together, the Sacramento and San Joaquin Rivers and the Delta furnish over half of the state's water supply. The southern third of the Central Valley contains the Tulare Lake Basin, a closed hydrographic unit, except during extremely wet years.

The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.





# Lahontan Regional Water Board

- 33,131 square miles of land
- 3,170 miles of streams
- 382,300 acres of lakes

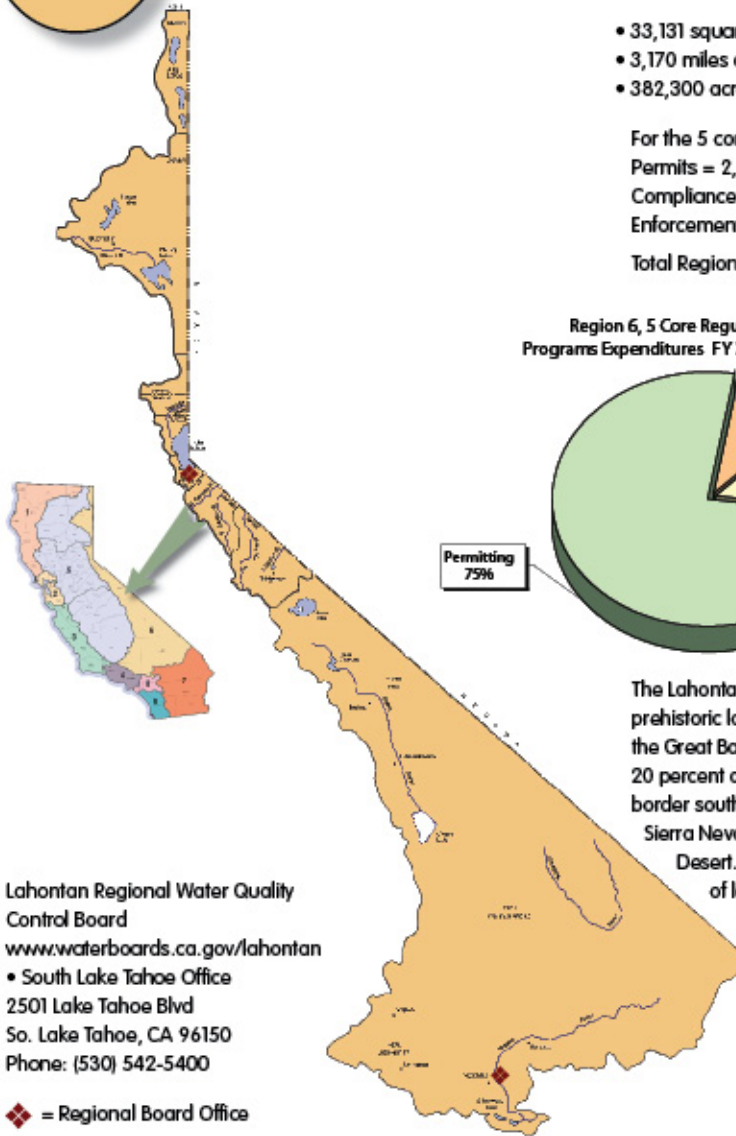
For the 5 core regulatory programs:

Permits = 2,305

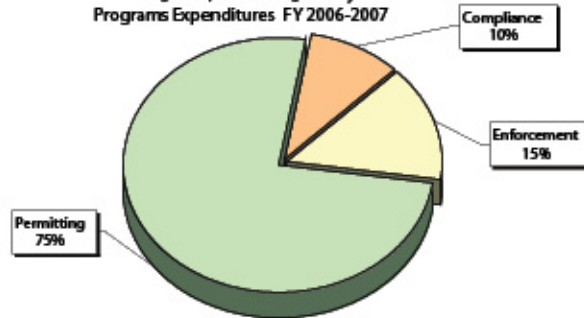
Compliance = 4 staff

Enforcement = 6 staff

Total Regional Board Staff = 60



Region 6, 5 Core Regulatory Programs Expenditures FY 2006-2007



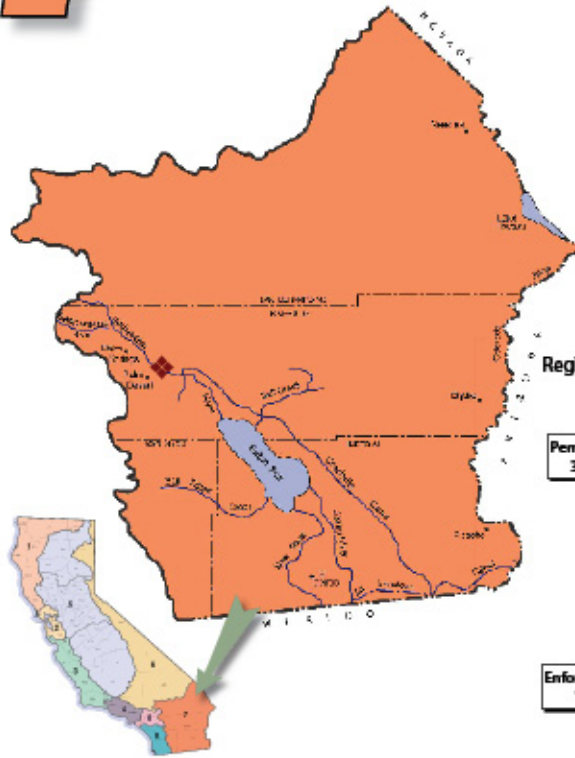
The Lahontan Region is named for a prehistoric lake that once covered much of the Great Basin. The region includes about 20 percent of California from the Oregon border south along the eastern crest of the Sierra Nevada through the northern Mojave Desert. Within this area are hundreds of lakes, streams and wetlands, including the nationally significant Lake Tahoe and Mono Lake. Tourism is the most important industry in the region, which also includes Death Valley National Park, the Mammoth Lakes area and portions of the newly formed Mojave National Preserve.

Lahontan Regional Water Quality Control Board  
[www.waterboards.ca.gov/lahontan](http://www.waterboards.ca.gov/lahontan)  
 • South Lake Tahoe Office  
 2501 Lake Tahoe Blvd  
 So. Lake Tahoe, CA 96150  
 Phone: (530) 542-5400

◆ = Regional Board Office

The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.

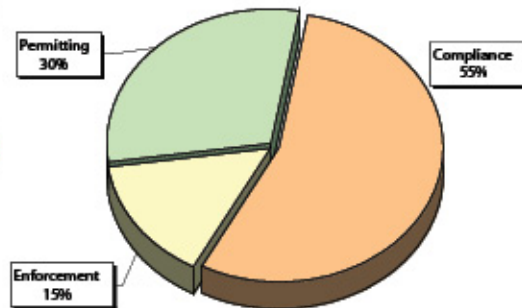
# 7 Colorado River Basin Regional Water Board



- 20,000 square miles of land
- 900 miles of streams and rivers
- 250,000 acres of lakes

For the 5 core regulatory programs:  
 Permits = 1,636  
 Compliance = 12 staff  
 Enforcement = 3 staff  
 Total Regional Board Staff = 38

Region 7, 5 Core Regulatory Programs Expenditures  
 FY 2006-2007



Colorado River Basin Regional Water Quality Control Board  
[www.waterboards.ca.gov/coloradoriver/basin](http://www.waterboards.ca.gov/coloradoriver/basin)  
 73-720 Fred Waring Drive, Suite 100  
 Palm Desert, CA 92260  
 Phone: (760) 346-7491

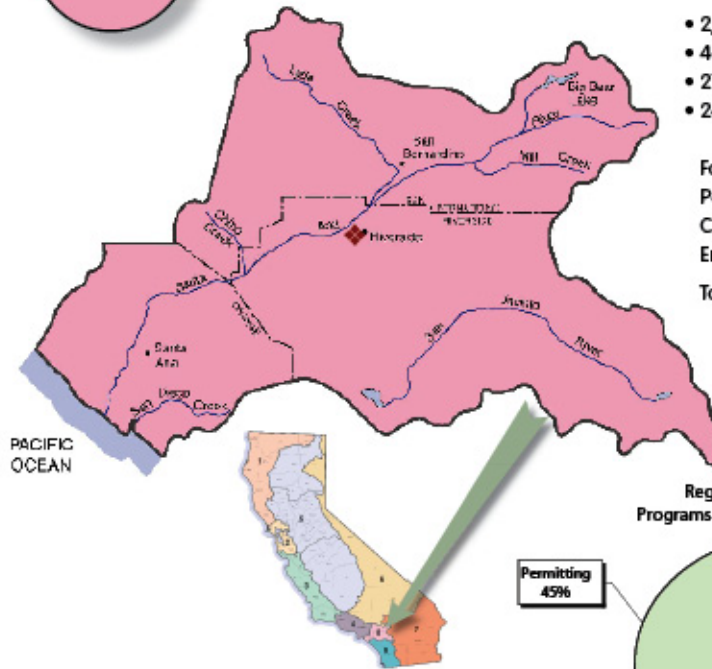
◆ = Regional Board Office

The Colorado River Basin Region covers California's most arid area. Despite its dry climate, the region contains two water bodies of state and national significance: the Colorado River and the Salton Sea. Water from the Colorado River irrigates more than 700,000 acres of productive farmland in the Imperial, Coachella, Bard, and Palo Verde Valleys. The river also provides drinking water to several million people in California's southern coastal cities.

The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.

# 8

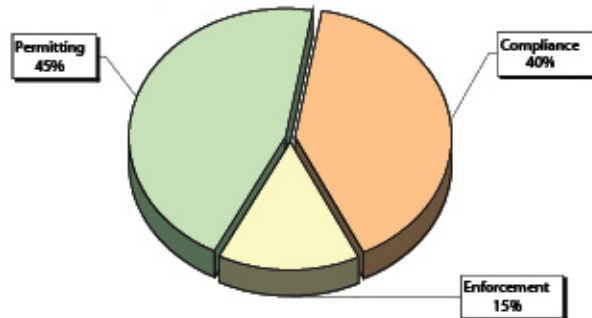
## Santa Ana Regional Water Board



- 2,800 square miles of land
- 460 miles of streams
- 21,090 acres of lakes
- 24 miles of coastline

For the 5 core regulatory programs:  
 Permits = 7,757  
 Compliance = 13 staff  
 Enforcement = 8 staff  
 Total Regional Board Staff = 74

Region 8, 5 Core Regulatory Programs Expenditures FY 2006-2007



Santa Ana Regional Water Quality Control Board  
[www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)  
 3737 Main St., Suite 500  
 Riverside, CA 92501  
 Phone: (951) 782-4130

◆ = Regional Board Office

The Santa Ana Region, which extends from the San Bernardino and San Gabriel mountains in the north and east to Newport Bay along the coast, continues to be one of the most rapidly growing areas of the state. While the region is geographically the smallest, 2,800 square miles, it boasts one of the largest populations with almost 5 million people. This semi-arid region is known for its temperate climate and relatively low rainfall – about 15 inches per year.

The Regional Board is governed by nine members, all of whom are appointed by the Governor and confirmed by the State Senate. Regional Board members represent categories related to the control of water quality and must reside in, or have a place of business within, the region.





## Section 1

### Description of the Five Core Regulatory Programs

The California Water Boards have responsibility for preventing and controlling pollution to surface and groundwater resources in California. While federal law applies to point source discharges to surface water, discharges from all point and non-point sources, whether to surface or groundwater, are regulated under California's Porter-Cologne Water Quality Control Act. Any person discharging or proposing to discharge waste must file a report with a Regional Water Board if that discharge could affect the quality of the waters of the State. The Water Boards administer a number of regulatory programs designed to address a majority of potential discharges and other activities that could affect water quality. However, many other discharges occur that are not routinely or directly covered by those programs. Examples of these discharges include livestock grazing, silviculture (forestry), and agriculture. Regional Water Boards can regulate these discharges using many existing tools including individual Waste Discharge Requirements (WDRs), waivers of WDRs containing conditions, Total Maximum Daily Load (TMDLs), and other more general conditions or prohibitions in the Basin Plans. Data for these types of discharges have not been effectively captured in the past and are not presented in this report. However, these types of discharges present a considerable challenge to the Regional Water Boards and are included in some of the examples presented elsewhere in this document.

The five core regulatory programs which are discussed in this report are:

- **National Pollutant Discharge Elimination System (NPDES) Wastewater Program**  
Regulates the discharge of wastewater from point sources to surface waters (rivers, lakes, oceans, wetlands, etc), sewage spills and discharges of treated groundwater to surface water.
- **NPDES Stormwater Program**  
Regulates pollution discharged from surface waters. Pollution from construction and industrial sites is regulated under the stormwater construction and industrial program. Pollution from urban surface street stormwater runoff is regulated under the municipal stormwater program. Pollution from highways and roads is regulated under the

statewide stormwater general permit for the California Department of Transportation (CALTRANS).

- **Wetlands and 401 Certification Program**  
Regulates the dredging and disposal of sediments, filling of wetlands or waters, and any other modification of a water body.
- **Waste Discharge Requirements Program**  
Regulates the discharge of wastewater from point sources to land and groundwater, waste generated from confined animal facilities (e.g., dairies, feedlots, stables, poultry farms) and all other pollution sources that can affect water quality not covered by other programs.
- **Land Disposal**  
Regulates discharges of waste to land that need containment in order to protect water quality, including landfills, waste ponds, waste piles, and land treatment units

Water quality can be affected by many sources. These sources can be categorized as point source or nonpoint source. Point source discharges are planned, easily identified “end-of-pipe” waste discharges from man-made conveyance systems (e.g., publicly owned treatment works, landfills) while nonpoint source discharges result from more diffuse sources such as agricultural or silviculture activities.

The Water Boards have broad authority to address virtually any discharge of waste that affects water quality. The tools that the Water Boards have to regulate discharges include the adoption of water quality control plans describing discharges and the issuance of Waste Discharge Requirements (permits) or NPDES permits for ongoing discharges. The Water Boards can also issue enforcement orders including cease and desist orders for an ongoing discharge, and cleanup and abatement orders to remediate the effects of a discharge. Waste Discharge Requirements require dischargers to submit Self Monitoring Reports (SMRs) at varying frequencies to ensure that they are properly operating the facility and are in compliance with permit conditions.

While this Baseline Enforcement Report focuses on the five core regulatory programs listed above, it is important to note that the Water Boards also take enforcement actions related to nonpoint sources of surface water and groundwater pollution, the regulation and remediation of underground storage tanks, and the restoration of brownfields.

Historically the Water Boards have waived Waste Discharge Requirements for nonpoint source discharges. More recently, the Water Boards' general approach in addressing emerging nonpoint source discharges which impact water quality is to identify a regulatory mechanism to address the discharge and then proscribe standards or limits to control the discharge. The Water Boards recognize that this approach may not provide an immediate response to emerging discharge issues but it enables the Water Boards to more thoroughly evaluate the appropriate regulatory response to the discharge, rather than to react to the discharge with an enforcement-centered approach. New waivers issued for nonpoint source discharges incorporate specific conditions to protect water quality and include monitoring and data reporting requirements. The Water Boards' use of waivers of waste discharge requirements to address polluted runoff from nonpoint sources such as silviculture and agriculture activities is an example of this ongoing, deliberative approach.

Another example is the development of the regulatory response to address water quality impacts of grazing operations on the central coast. Central Coast Regional Water Board Basin Plan prohibitions (based on TMDLs for sediment and bacteria) forbids livestock owners or operators from conducting activities that allow, or threaten to allow, discharges. Livestock owners and operators must submit evidence of no discharges and proper management measures, or a plan to put management measures in place. This information will assist the Regional Water Board in further understanding the localized and regional impacts from livestock operations and if additional regulatory steps are needed. The Regional Water Board has provided training on grazing land management for ranchers for several years which is similar to the educational requirements of the irrigated agriculture waiver program.

### **National Pollutant Discharge Elimination System Wastewater Program**

- 690 facilities are regulated using individual permits
- 1,730 facilities are regulated using general permits

Authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Typical point source discharges include discharges from: municipalities or publicly owned treatment works (POTWs), industrial facilities, and urban areas regulated under the Storm Water

Program. Two types of NPDES permits are issued: individual and general permits.

Individual permits are further categorized into major and minor permits. Major permits are for POTWs where the flow is equal to or greater than 1 million gallons per day, or industrial facilities that have a US EPA industry rating score criteria of 80 or higher. The score indicates a facility's potential to: (1) discharge conventional and toxic pollutants; (2) discharge large volumes of wastewater; and (3) impact public health. The higher the score, the higher the potential. The rating criteria also consider whether the discharge is to an impaired water body, estuary, or coastal waters.

### **Resources**

The State Water Board's Needs Analysis Report<sup>3</sup> estimated that the NPDES Wastewater Program needed 233 full-time staff to operate a fully functioning program. The Water Boards currently have about 100 staff statewide in this program.

### **Challenges**

Due to limited resources, not all facilities are being inspected, and not all Self-Monitoring Reports (SMRs) are being reviewed. In addition, permits are backlogged because of both the lack of staff resources and new requirements (court cases, policies, regulations, etc.) that have increased the complexity of NPDES permits and the staff time required to write them.

Pretreatment program inspections, conducted by a US EPA contractor, are for POTWs that have approved pretreatment programs. The purpose of the inspections is to ensure that industrial discharges do not interfere with a POTW's operations or pass pollutants through the plant. However, because of resource limitations, some pretreatment reports are either not sent to dischargers on time or not sent at all. US EPA has recommended that the State Water Board or each Regional Water Board develop the capability to approve pretreatment programs and enforce these program requirements.

POTWs in smaller communities with financial hardship may experience difficulty in complying with requirements and upgrading both their treatment works and sewerage system infrastructure. These

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<sup>3</sup> Report to the Legislature as Required by FY 1999/00 Budget Act Supplemental Language, Final Report Core Regulatory Programs' Needs Analysis.

pressures on small communities may have implications on the enforcement actions brought by the Water Boards.

### **Emerging Issues**

In May 2000, US EPA adopted water quality criteria for California, known as the California Toxics Rule (CTR). After May 2000, reissued permits included compliance schedules because dischargers were not able to immediately comply with the new limitations. Schedules for CTR compliance can only be included in permits until May 2010. After May 2010, Regional Water Boards will need to rely on already constrained resources to adopt new NPDES permits and Time Schedule Orders, which may become highly controversial.

### **NPDES Storm Water Program**

- 26 Phase I Municipal Separate Storm Sewer Systems (MS4) Permits regulate discharges from about 300 cities, counties and special districts
- Phase II MS4 Permits regulate discharges from about 190 smaller cities, counties or special districts.
- 9,500 Industrial facilities are regulated under the General Industrial Storm Water Permit
- 20,000 active permits under the General Construction Storm Water Permit

The Storm Water Program is a subset of the NPDES permitting program. The storm Water Program consists of three components; municipal, industrial and construction. The goal of the Storm Water Program is to reduce/eliminate the discharge of pollutants in storm water and dry weather flows from urban, construction, and/or industrial environments. These discharges are largely untreated and can be a significant source of pollutants discharged to surface waters.

### **Municipal Permitting:**

- Phase I MS4 Permits – Nine Regional Water Boards have adopted 26 Phase I MS4 permits that regulate discharges from approximately 300 cities, counties, and special districts. The permits can address the discharge from a single entity, such as the City of Salinas, or the discharges from many entities, such as the permit issued to Los Angeles County that regulates discharges from 85 different cities.

## Baseline Enforcement Report (FY 2006 – 2007)

- Phase II MS4 General Permit – regulates the discharges from MS4s in smaller urbanized areas. A small MS4 is defined as a system that serves a population of less than 100,000; is located in an urbanized area (defined by the Census Bureau); and is not part of a Phase I permit. This permit regulates the discharge from about 190 small MS4s, which are cities, counties, or special districts. “Non-traditional small MS4s” include hospitals and state universities.
- Caltrans Statewide Storm Water Permit – regulates the discharges from Caltrans’ roads, highways, and other facilities (roadside rest areas, maintenance yards, etc.)

### **Industrial Permitting**

- General Industrial Storm Water Permit – regulates the discharge of storm water associated with industrial activities for about 9,500 industrial facilities. This permit regulates the discharge of storm water from ten broad categories of industry that are defined by the federal regulations, but does not include commercial facilities such as retail gasoline stations.

### **Construction Permitting**

- General Construction Storm Water Permit – regulates the discharge of storm water associated with construction activities that result in a land disturbance of one acre or more. There are currently about 20,000 active construction permittees under this permit.
- General Permit for Small Linear Construction – regulates construction activities associated with small linear construction projects (those disturbing less than five acres of land). These projects include activities such as the installation of fiber optic cables, laying of gas or water line, and burying of electric lines. There are 87 construction activities that are being regulated through this permit.

### **Resources**

The State Water Board’s Needs Analysis Report estimated that the NPDES Storm Water Program needed about 400 staff in order to operate a fully functioning program. Currently, the NPDES Storm Water Program has about 100 staff.



### **Challenges**

Due to limited resources, not all permittees are being inspected, not all municipal permittees are being audited, and not all annual reports are being reviewed. In addition, permits are backlogged because of both the lack of staff resources and new requirements (court cases, policies, regulations, etc.) that have increased the complexity of NPDES permits and the staff time required to write them. It is estimated that over half the resources in the NPDES storm water program are expended on permit issuance activities. In addition, court cases have found that the documents that are submitted by the regulated community when an application for permit coverage is made may be subject to public review and comment, and approval by the Regional Board. This could create an unanticipated workload for the Water Boards and could prove to be disruptive to the regulated community.

### **Emerging Issues**

New legislation requires the State and Regional Water Boards to regulate facilities that handle pre-production plastic pellets, also known as nurdles, beginning in January 2009. Nurdles can be as small as one millimeter and are easily windblown or carried away in runoff where they wind up in the environment. They are a source of pollutants in surface waters and beaches and the ocean. [AB 258 (Chapter 735, Statutes of 2007)].

Storm water permits are also becoming more complex and controversial. New and revised permit requirements must translate waste load allocations from adopted Total Maximum Daily Loads (TMDLs), as required by law, and incorporate low impact development (LID) provisions. There is also a growing recognition that atmospheric deposition can be a significant source of pollutants in storm water and urban runoff, adding to the complexities of regulating sources and the need for collaboration with other Cal EPA agencies, such as the Air Resources Board.

### **Wetlands and 401 Certification Program**

- approximately 1,130 Water Quality Certifications (§ 401) permits are issued annually

This program encompasses wetlands protection but stems from the legal authority in *Clean Water Act* section 401 governing the discharge of

dredge and fill material<sup>4</sup> in federal waters. The Water Boards use their water quality certification authority under section 401 to ensure that federal permits issued under Clean Water Act section 404 meet water quality standards. In addition, the California Wetlands Conservation Policy (Executive Order W-59-93), also known as the “No Net Loss” Policy for Wetlands, guides wetland protection in the State.

California has lost 91% of its historic wetland acreage,<sup>5</sup> which is more than any other State. It is estimated that more than 85% of historic riparian habitat has been lost statewide.<sup>6</sup> Headwater areas and ephemeral drainages typically make up more than 60% of the stream network in a watershed. These critical headwaters are the origin of our water supply and are disappearing at an alarming rate due to development. The 401 regulatory program uses waste discharge requirements to regulate all discharges of dredged or fill material into State waters, including wetlands, riparian and headwater areas. Dredge or fill activities can involve channelization of streams, diversions, road and trail crossings, release of sediments that harm aquatic resources and water quality, and the release of toxic materials from re-suspending pollutants adsorbed by bottom sediments. The Water Boards issue approximately 1,100 Water Quality Certification (§ 401) permits annually.

### **Resources**

The State Water Board’s Needs Analysis Report identified that the 401 Certification program had a projected need of 134 staff statewide. The Water Boards currently have about 16 staff in this statewide program.

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<sup>4</sup> Under the *Clean Water Act*, discharge of “dredged material” means adding into waters of the United States materials that were removed from waters of the United States. Discharge of “fill material” means adding into waters of the United States materials (such as concrete, dirt, rock, pilings, rip-rap, or side-cast material) that are for the purpose or have the effect of either replacing an aquatic area with dry land or raising the elevation of an aquatic area. Under Porter-Cologne, the same definitions apply, except to State waters rather than federal waters.

<sup>5</sup> Dahl, T.E. 1990. Wetlands Losses in the United States 1780s to 1980s. Washington, DC: U.S. Fish and Wildlife Service. Available online at: <http://www.npwrc.usgs.gov/resource/wetlands/wetloss>

<sup>6</sup> RHJV (Riparian Habitat Joint Venture). 2004 version 2.0. The riparian bird conservation plan: a strategy for reversing the decline of riparian associated birds in California. California Partners in Flight. Available online at: <http://www.prbo.org/calpif/pdfs/riparian.v-2.pdf>

### **Challenges**

Recent Supreme Court rulings interpreting Section 404 of the Clean Water Act limit waters<sup>7</sup> subject to regulation by the federal government. These decisions have resulted in confusion about federal jurisdiction over wetlands and riparian areas, especially those tributaries limited to seasonal flows and their associated wetlands. As a result, California has been required to use its independent authorities under the *Porter-Cologne Water Quality Control Act* to protect these vital resources.

A recent internal wetland program audit revealed that 57% of the Wetland permit mitigation requirements were successfully complied with (Ambrose, et al., UCLA, 2006). This highlights the need for increased compliance monitoring and enforcement efforts.

### **Emerging Issues**

Water Board staff is developing a statewide Wetland and Riparian Area Protection Policy for the State Board's consideration. This policy would extend protection to wetland and riparian areas that are no longer under federal jurisdiction. The policy is proposed to be adopted in three phases, with phase one targeted for adoption in mid-2009. Phase one would establish a program based on the federal 404 program, and include a wetland definition that would define the array of California wetlands. The second and third phases would consider new beneficial use definitions and water quality objectives, and extend the policy beyond discharges of dredged and fill material.

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<sup>7</sup> Defined as waters of the United States (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 2001 and Rapanos v. United States, 2006 and Carabell v. United States, 2006).

## **Waste Discharge Requirements Program**

- 7,000 facilities are regulated under WDRs

This program includes discharges of waste that are not subject to the waste management unit requirements of Title 27 Environmental Protection – Division 2, Solid Waste, or the permitting requirements of the NPDES program. Typical dischargers include municipalities, restaurants, wineries, food processors, commercial buildings, and dairies. The disposal systems they use include leach fields, percolation ponds, or irrigation facilities. Sanitary sewer systems that are not regulated under a POTW's NPDES permit but are regulated by the statewide general order for sanitary sewer systems are included in this program.

Although the program primarily regulates discharges to groundwater, it also includes some discharges to surface waters that are exempted under the NPDES program. The program has more than 7,000 regulated facilities. The requirements for these facilities can include adequate disinfection of waste before discharge or public contact. The pollutants of concern, besides pathogens, are salts, including nitrates and other chemical contaminants. Some Regional Water Boards are also establishing limitations for other constituents, such as emerging contaminants, for which the Department of Public Health has not yet established drinking water standards.

### **Resources**

The State Water Board's Needs Analysis Report identified that the WDR program had a projected need of 290 staff. The Water Boards currently have about 77 staff statewide in this program.

### **Challenges**

Salt limitations for many types of facilities, including food processing facilities and wineries in irrigated agricultural areas of the Central Valley, continue to be of concern. Central Valley Water Board management has developed staff guidance for establishing salt limitations during the period when the Central Valley Water Board is updating its basin plans. High levels of salts or dissolved solids in effluent discharges and their impact on the quality of receiving waters are a statewide issue. The sheer number of WDRs that must be processed to address this issue adds to the difficulty.

### **Emerging Issues**

There are currently 1,098 sanitary sewer systems enrolled for coverage under the recently adopted Sanitary Sewer Systems General Order. Another 78 sanitary sewer systems have not complied with the requirement to enroll (submit an application or Notice of Intent form) for coverage under the Sanitary Sewer Systems Order. The Water Boards are beginning to make progress in enforcement against collection systems that have failed to enroll for coverage under this permit and provide the required spill reporting.

### **Land Disposal Program**

- 882 waste treatment, storage, or disposal sites, including over 280 solid waste landfills are currently regulated

The Land Disposal Program regulates discharges of waste to land that require containment to protect water quality. The facilities most commonly regulated are landfills and industrial waste ponds, although other types of waste management units are subject to regulation. The Land Disposal Program implements regulations entitled "Waste Discharges to Land" (Title 27 and Title 23). These regulations are complementary to those of the California Integrated Waste Management Board (CIWMB), US EPA's Resource Conservation and Recovery Act (RCRA) Subtitle D program for the regulation of municipal solid waste landfills, and the Department of Toxic Substance Control's and US EPA's Resource Conservation and Recovery Act (RCRA) Subtitle C program for the regulation of hazardous waste treatment, storage, and disposal. The regulations specify requirements for facility siting, design, construction, maintenance and monitoring, including groundwater monitoring for detection, evaluation of scope of any contamination, and corrective action. The regulations are implemented through WDRs which are most commonly issued to individual facilities although there are some general WDRs and conditional waivers.

### **Resources**

The State Water Board's Needs Analysis Report reported that the Land Disposal Program needed 164 staff to operate a fully functioning program. Approximately 70 staff statewide are working in the Land Disposal Program.

### **Challenges**

WDR revisions are backlogged because of the lack of staff. Also, because of resource limitations, many compliance inspections and specialized construction inspections are not completed and many of the SMRs are not being reviewed for compliance with WDRs.

### **Emerging Issues**

Many facilities regulated under the Land Disposal Program lack sufficiently funded financial assurance instruments. Of those landfills subject to federal RCRA Subtitle D requirements tracked by CIWMB and subject to the Water Boards' requirements for corrective action, an estimated 70 % may lack sufficient funding to address a future release. Financial assurance information for landfills is currently being updated by the Water Boards and the CIWMB.

## **OTHER REGULATORY ACTIVITIES**

The Water Boards continue to improve efforts to regulate agricultural nonpoint source discharges through comprehensive agricultural waiver programs. To date, the most significant efforts have occurred in the Central Coast and Central Valley Regional Water Boards. While the Central Coast Regional Water Board deals with agricultural dischargers individually, the Central Valley Regional Water Board deals with "third-party" coalitions that represent the individual dischargers. These differences are in part due to the size and number of dischargers in the regions (the Central Valley region covers five times the number of square miles and nine times the number of land owners as the Central Coast region)

Silvicultural (forestry) activities are a major nonpoint source of pollution. The State Water Board has agreements with the California Department of Forestry and Fire Protection (for nonfederal lands) and the U.S. Department of Agriculture, Forest Service (USFS) (for National Forests for water quality regulation on forest lands). Where waters are not listed on the Clean Water Act section 303(d) list (CWA 303[d] list), the Regional Boards regulate silvicultural activities through categorical waiver policies or individual waivers.

## Section 2

### State Water Board Office of Enforcement

#### Creation of the Office of Enforcement (Office)

The Office was formed in mid-2006 to emphasize the importance of enforcement as a key component of the Water Boards' core regulatory functions and statutory responsibilities. The role of the Office is to ensure that violations of State and Regional Water Board orders and permits result in firm, fair, and consistent enforcement through direct actions, the development of policies and guidance, and identification of metrics for decision-making on enforcement related issues.

#### Structure of the Office

The Office reports to the State Water Board's Executive Director. The Office is comprised of legal and investigative staff. The investigative staff is divided into two units, the Special Investigations Unit (SIU) with 7 staff and 1 student position, and the Underground Storage Tanks (UST) Enforcement Unit, which has 5 staff and 1 student position. Consolidation of Water Board enforcement attorneys into the Office began at the end of FY 2006/2007, with 3 attorneys. This number will significantly increase in FY 2008/2009.

#### Functions of the Office of Enforcement

- Direct Enforcement Actions
- Referrals
- Independent Water Quality Enforcement
- Enforcement Coordination
- Policy Development

#### Direct Enforcement Actions

- The Office's attorneys work with regional prosecution staff to bring administrative enforcement cases before the State Water Board and the Regional Water Boards, which include significant water quality enforcement cases and cases from programs that are carried out by the Regional Water Boards. The investigative staff assist with Regional Water Board investigations when additional resources and/or expertise are needed.
- The Office investigates and brings enforcement cases for programs administered by the State Water Board including:

Baseline Enforcement Report (FY 2006 – 2007)

**Operator Certification Program:** The State Water Board enforces the laws and regulations governing waste water treatment plant (WWTP) operators. The Office of Operator Certification, within the Division of Financial Assistance, administers the WWTP operator certification program. The Special Investigations Unit (SIU) investigates potential cases of wrong doing and takes enforcement action when warranted. During the 2006/2007 fiscal year, SIU investigated approximately 20 WWTP operator certification cases, opened 15 new operator certification cases and closed about 10 cases.

**Underground Storage Tank Enforcement:** The UST Enforcement Unit supports enforcement of the UST Leak Prevention and Cleanup Programs and the Cleanup Fund Program, primarily by investigating violations of UST construction, monitoring and cleanup requirements, and by reviewing allegations of fraud against the UST Cleanup Fund. For UST leak prevention matters which, by statute, there is no administrative enforcement available, the Office will refer enforcement matters to the Attorney General’s Office or local prosecutors for action.

**UST Tank Tester Licensing Program:** The State Water Board can take administrative enforcement action against licensed tank testers. There are approximately 150 licensed tank testers in California. Tank testers test UST systems to verify that the systems are not leaking and are in compliance.

**Table 1-FY 2006/2007 Summary of Office of Enforcement Actions**

<b>Program</b>	<b>Administrative Civil Liability Actions</b>	<b>Referral to Other Agency</b>	<b>Disciplinary Action</b>	<b>Penalty amount</b>
Underground Storage Tank		4		\$55,200
Tank Tester Licensing		2		\$135,000
Operator Certification	3	3	1	\$55,220
<b>TOTAL</b>	<b>3</b>	<b>9</b>	<b>1</b>	<b>\$245,420</b>



### **Referrals**

The Office is the primary legal contact point for criminal or civil enforcement actions for water quality violations referred by the Regional Water Boards to outside prosecutors such as the Attorney General's Office or district attorneys.

### **Independent Water Quality Enforcement**

The State Water Board has authority to undertake water quality enforcement actions that ordinarily would be a Regional Water Board matter. At this time, the Office of Enforcement is investigating several significant violations which have been referred to the Office by a Regional Water Board. Currently, there are no completed enforcement actions resulting from those referrals. The Office of Enforcement will report on these matters when they are concluded.

### **Enforcement Coordination**

The Office coordinates the monthly Enforcement Roundtables that include representatives of the nine Regional Water Boards and other enforcement partners such as US EPA and local prosecutors.

### **Policy Development**

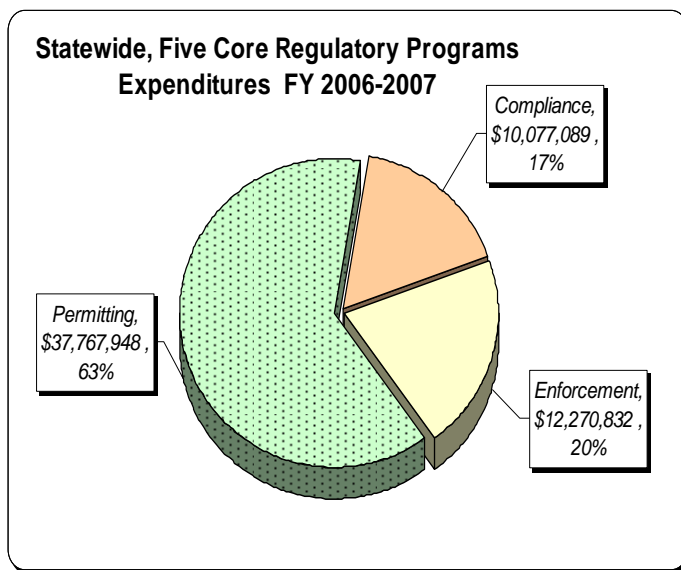
The Office is responsible for updating the Water Quality Enforcement Policy. The Water Boards' Water Quality Enforcement Policy articulates enforcement expectations and priorities for the State and the Regional Water Boards.

**Section 3**

**Compliance and Enforcement Resources At the Water Boards (Inputs)**

Most compliance, investigation and enforcement activities are performed at the nine Regional Water Boards.

**Figure 1**



The inputs or resources for water quality protection support many activities from planning and permitting, to taking eventual enforcement. Compliance and enforcement activities can require a high level of specialization and skill to document inspections, identify violations, prepare enforcement cases, and present expert testimony at hearing. Inspectors at the Water Boards ensure that requirements are complied

with, review discharger’s SMRs, and document violations in the database. Once violations are identified and documented, they are prioritized for enforcement. Cases are developed with advice and assistance from the Water Boards’ staff counsels. The Regional Water Boards have approximately 177 staff dedicated to compliance and enforcement activities statewide. Permitting staff may also be involved in some enforcement activities.

The Office of Enforcement at the State Water Board had 15 staff dedicated for special investigations and enforcement during fiscal year 2006-2007. These staff included a team of 3 prosecutors assisting Water Board staff with their enforcement cases.

Compliance activities are also supported by student assistants who review SMRs, and US EPA contractors conducting inspections.

Baseline Enforcement Report (FY 2006 – 2007)

The following tables present estimates, provided by the Regional Water Boards, of compliance and enforcement personnel in fiscal year 2006-2007.

The table below shows Regional Water Board resources devoted to compliance activities. These are activities taken to ensure compliance with regulatory requirements and include routine compliance inspections, review of required water quality monitoring reports, and recording violations and other information in the California Integrated Water Quality System (CIWQS) database.

**Table 2 – Regional Water Board Compliance Determination Resources**  
 FY 2006-2007 Estimates of Compliance Determination Personnel by Program

Region	NPDES	STORM WATER	WDR	LAND DISPOSAL	401 Cert	TOTAL
	PY	PY	PY	PY	PY	PY
Region 1	0.6	0.5	0.6	0.4	0.1	2.2
Region 2	1.5	2.2	6.8	0.5	0.6	11.6
Region 3	2.5	3.0	4.2	1.0	0.1	10.8
Region 4	2.5	6.0	1.0	1.0	0.0	10.5
Region 5	3.7	4.4	2.8	9.9	0.0	20.9
Region 6	0.2	0.4	0.8	2.6		4.0
Region 7	2.0	1.8	3.5	5.0	0.0	12.3
Region 8	2.6	8.1	0.4	2.4	0.0	13.4
Region 9	2.1	3.8	1.8	2.3	0.0	10.0
<b>Total</b>	17.7	30.2	22.0	25.0	0.8	95.7

PY= Person Year

Baseline Enforcement Report (FY 2006 – 2007)

The table below shows Regional Water Board resources for enforcement activities. These are activities taken in response to violations or related to specific compliance problems.

**Table 3 – Regional Water Board Enforcement Resources**

FY 2006-2007 Estimates of Enforcement Personnel by Program

Region	NPDES	STORM WATER	WDR	LAND DISPOSAL	401 Cert	TOTAL
	PY	PY	PY	PY	PY	PY
Region 1	1.8	0.7	0.7	0.0	0.1	3.3
Region 2	3.8	3.8	11.1	0.9	0.3	19.9
Region 3	1.5	1.0	3.5	0.1	0.1	6.2
Region 4	3.5	1.4	2.5	1.4	0.1	8.9
Region 5	4.1	3.6	3.5	10.9	0.1	22.2
Region 6	0.7	1.5	3.5	0.4		6.0
Region 7	1.0	0.2	1.7	0.1	0.0	3.0
Region 8	5.4	2.3	0.0	0.3	0.1	8.2
Region 9	0.6	2.3	0.6	0.6	0.1	4.3
<b>Total</b>	22.4	16.8	27.1	14.7	0.9	82.0

PY= Person Year

Both Tables 2 and 3 show significant variation between regions and individual programs within those regions.

Within each program and Regional Water Board, the weight of compliance and enforcement activities varies significantly. In general, variation in the level of resources committed to these types of activities can be explained by the maturity of the programs: a more mature and developed program would generally focus fewer resources in permitting and new regulation and more resources on compliance activities (this is not the case for all programs). A program with more compliance problems would likely be spending more resources for enforcement.

Baseline Enforcement Report (FY 2006 – 2007)

The following figures show how permitting, compliance and enforcement resources are distributed among the core regulatory programs.

Figure 2

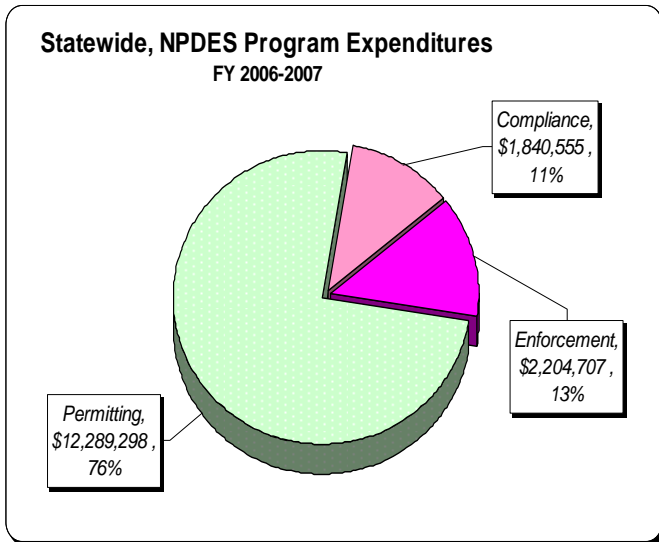


Figure 3

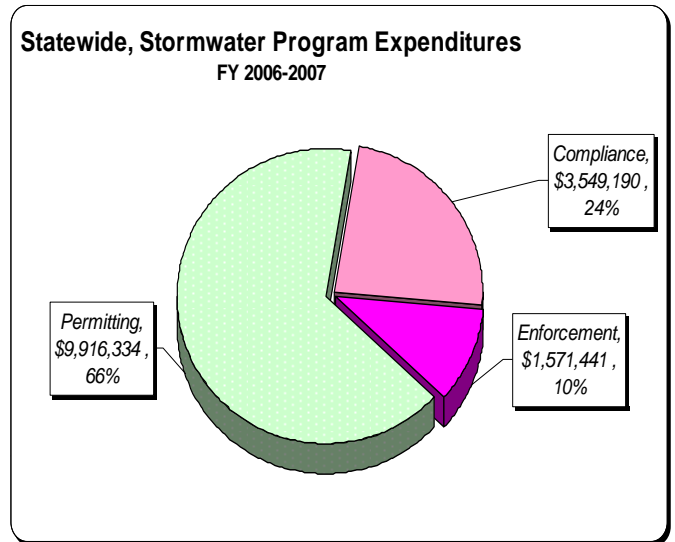


Figure 4

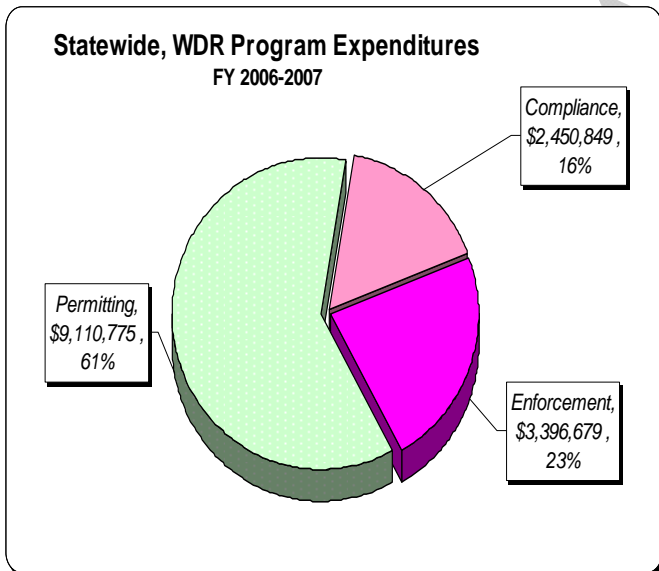


Figure 5

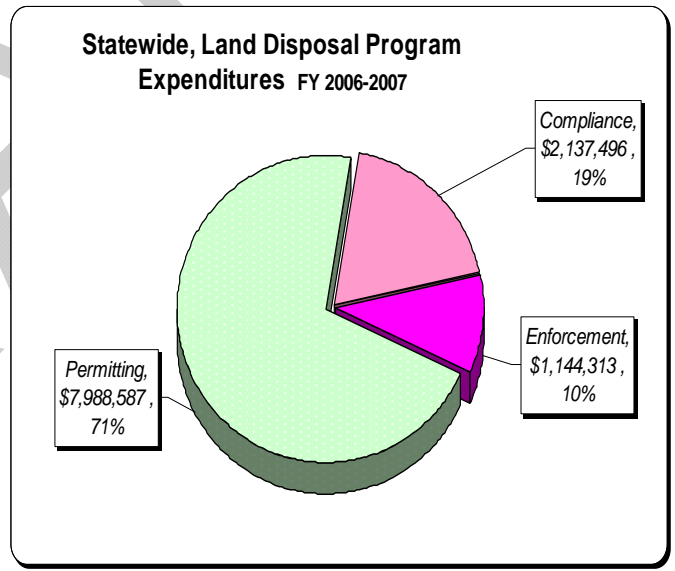


Figure 6

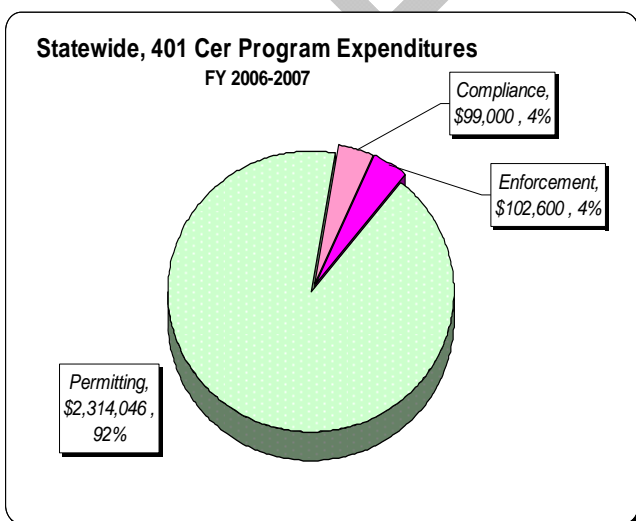
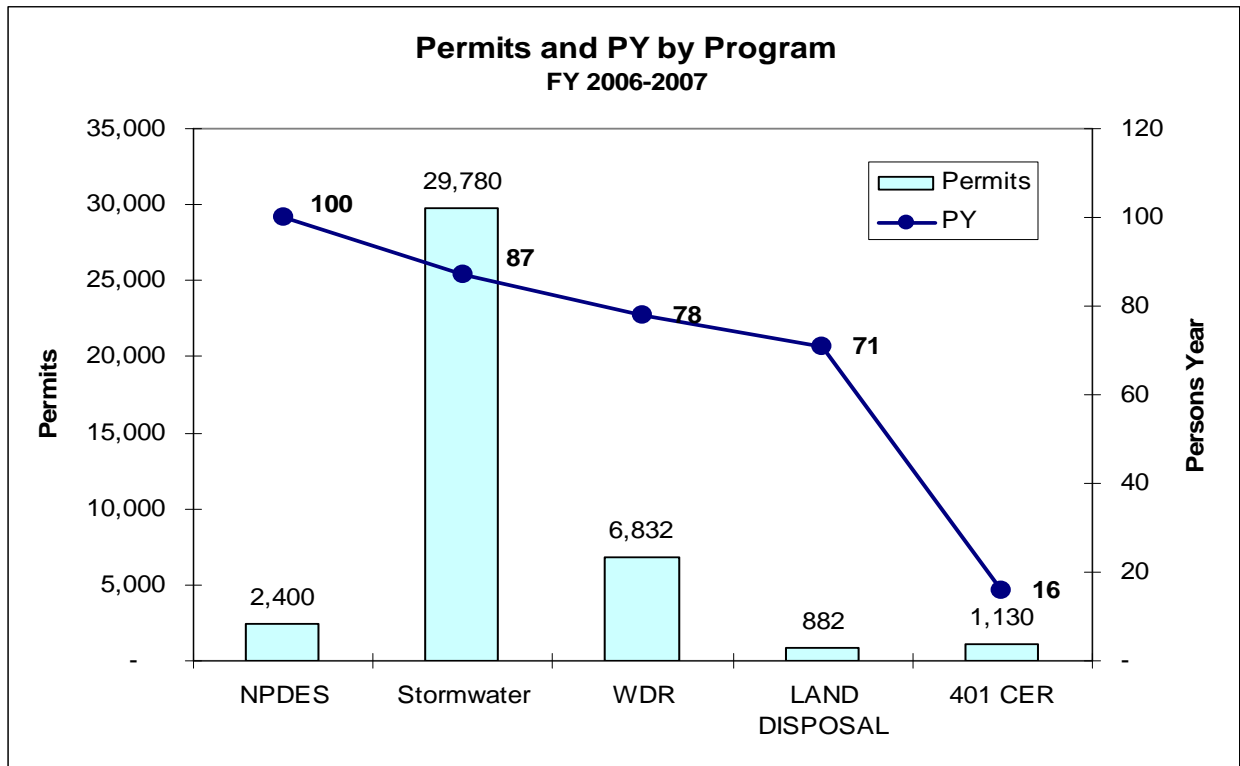
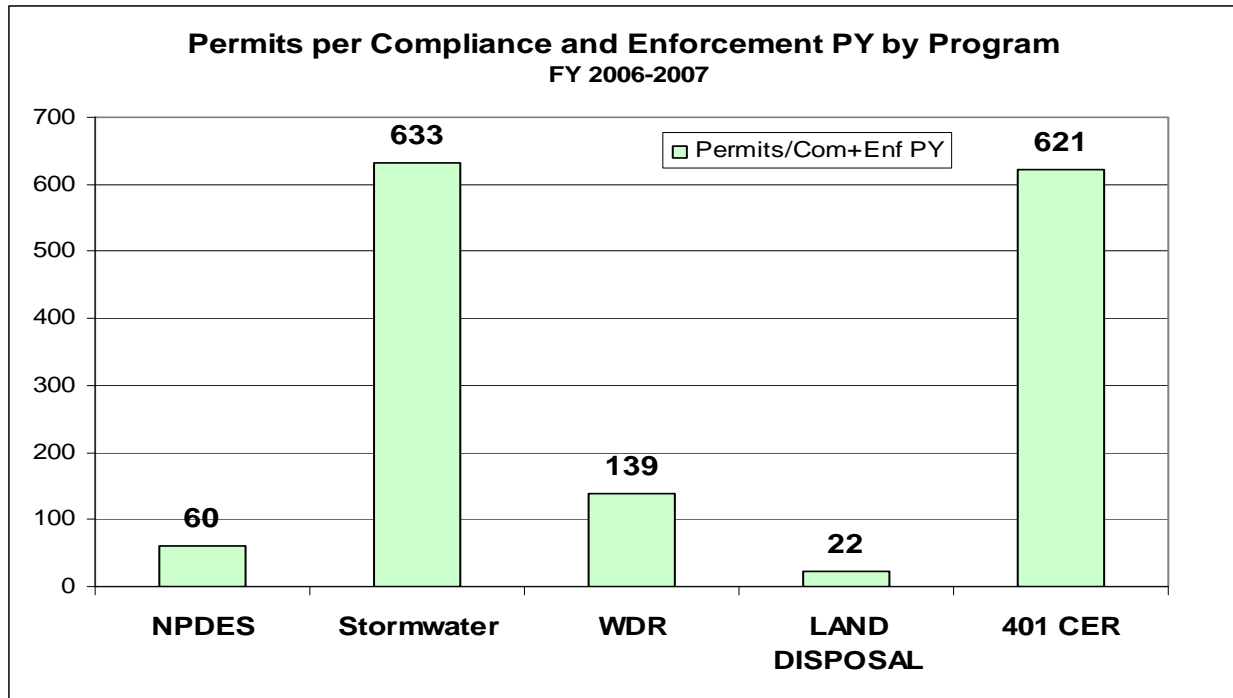


Figure 7



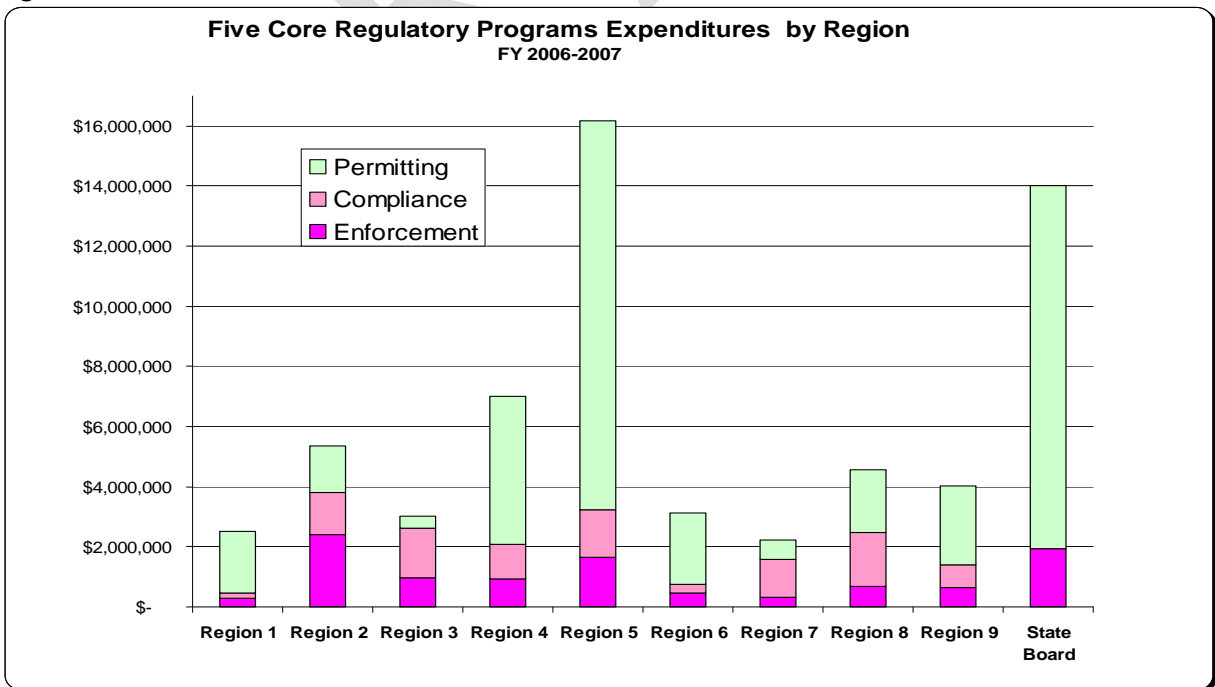
The distribution of dedicated compliance and enforcement resources and the workload, or average number of permitted facilities assigned for every compliance and enforcement staff, also varies significantly among regions and programs. For example on the next page under the stormwater program, the average number of facilities per person is approximately 632 for the land disposal program is 22 facilities per person.

Figure 8



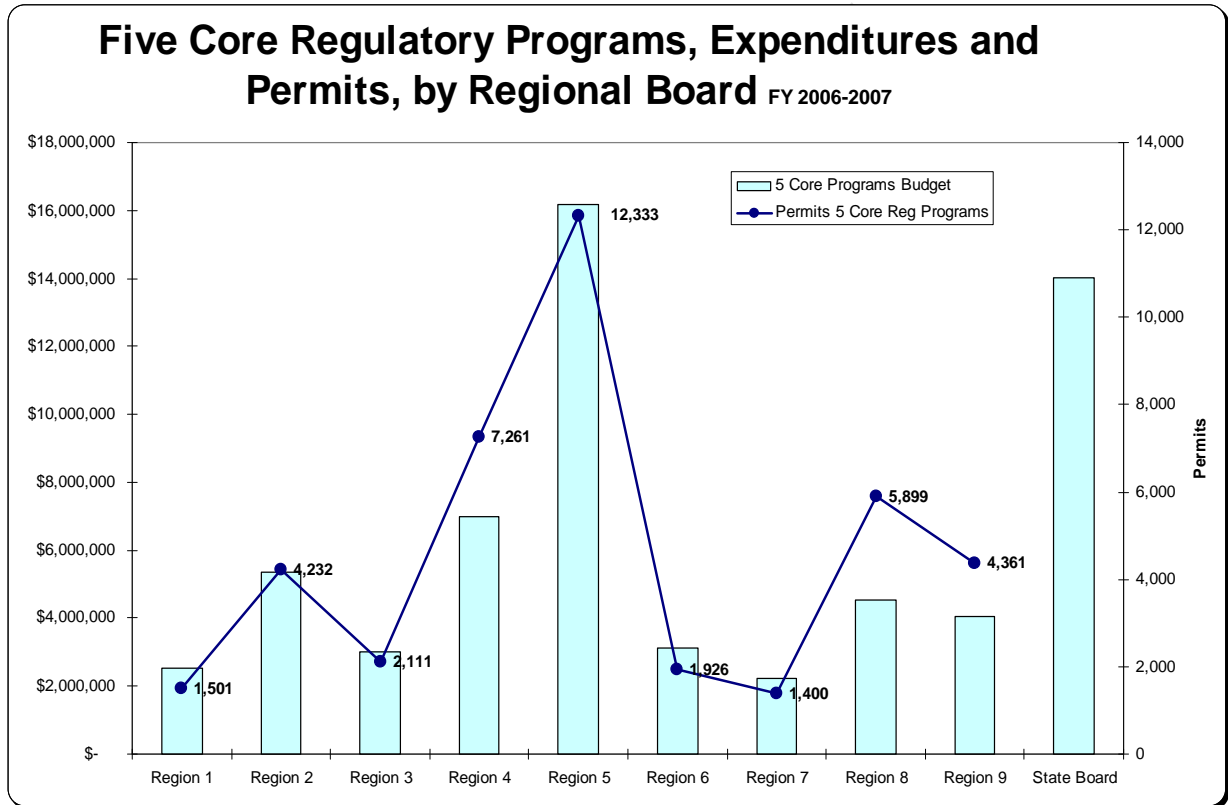
The distribution of resources between activities such as permitting, compliance and enforcement not only varies by program but there are significant differences among Regional Board offices as shown in the following figure.

Figure 9



The following graph represents the distribution of permits and resources among the nine Regional Boards. The State Water Board devotes its resources primarily to the development and adoption of statewide standards and policies, general permits, and statewide plans, issuance of water quality control plans in areas of statewide significance, and approval of regional water quality control plans.

Figure 10





## Section 4

### Compliance and Enforcement Outputs By the Regional Water Boards

Compliance and enforcement program output measures typically describe what is produced by the core regulatory program inputs. These outputs reflect the compliance workload, complaints reviewed, SMRs reviewed, compliance inspections conducted, and the violations discovered and recorded in the Water Boards' data systems. They also reflect the enforcement actions taken in these regulatory programs.

The tables in this section describe a variation in the numbers of facilities overseen by each Regional Water Board. This variation reflects the regional differences in watersheds, geography, and demographics. For example, regions with large urbanized areas (Regional Water Boards 2, 4, and 8: San Francisco Bay, Los Angeles, and Colorado River) have most of the NPDES Wastewater and stormwater facilities, reflecting the large populations in these areas, land development, and higher land use costs resulting in discharges directly to streams, rivers, lakes, and the ocean. Similarly, the majority of the facilities with WDR are located in Region 5 (Central Valley Regional Board) reflecting the large geographic area of this area, its largely rural nature, and that more of these discharges are directly to land instead of to surface waters. Where a particular facility is regulated by multiple programs, that facility will be counted in each applicable table.

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 current 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.<sup>8</sup> In many instances, multiple violations are covered by a single enforcement action. Likewise, there may be several enforcement actions taken in response to a single violation, such as issuance of an initial letter or notice of violation, followed by a cleanup order and a separate penalty action.

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<sup>8</sup> The proposed revisions to the Water Quality Enforcement Policy will provide further differentiation of violations for enforcement prioritization purposes.

## Baseline Enforcement Report (FY 2006 – 2007)

Water Boards staff have a variety of enforcement tools available for use. Enforcement actions taken as a result of a violation include 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. The relatively low number of informal enforcement actions recorded in CIWQS and presented in this report may not accurately represent the level of effort spent by staff in performing these activities. Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation such as Cleanup and Abatement Orders and assessment of penalties.

The Water Quality Enforcement Policy provides for a progressive enforcement approach that allows for a tailored response based on the specifics of the violation. Depending on the nature and severity of the violation, informal enforcement action such as a warning letter to a violator, or more formal enforcement action, including orders requiring corrective action within a particular time frame may be taken. In other instances, enforcement staff may use more informal tools, such as a phone call or a staff enforcement letter for compliance assistance. The Regional Water Boards may also levy Administrative Civil Penalties or refer cases to the Attorney General or District Attorney, who may seek higher penalties in court. The enforcement options are further described in Appendix 1.

Historically the Water Boards have not tracked informal activities in their database systems because of resource demands related to data entry. The draft Water Quality Enforcement Policy requires the Water Boards to carefully track the outcomes of informal and formal enforcement actions to provide a comprehensive picture of all enforcement activities.

It is important to note again that these tables are based on available data in the CIWQS database. While the CIWQS database was deployed in mid-2005, the Water Boards continue to work on the quality and completeness of the data, as well as the functionality and reporting capabilities of the database. CIWQS was the subject of a recent external review, and the Water Boards are implementing the recommendations of that review to improve data quality and completeness on violations and enforcement. Because of these limitations, inconsistencies and apparent deficiencies in the data presented in this report do not necessarily reflect inconsistencies in the enforcement program statewide.

## NPDES Wastewater Program Outputs

### Compliance Outputs

More than 14,800 self monitoring reports are received every year by the Regional Water Boards to comply with the NPDES Wastewater program requirements. SMRs are submitted with different frequencies. Most dischargers submit quarterly and annual reports. Major dischargers for the NPDES program may be also required to submit monthly reports. All regulated facilities must submit, at a minimum, an annual report. For fiscal year 2006-2007 the CIWQS database was not yet capable of tracking monitoring reports due, received and reviewed for any of the programs described in this report. Therefore, at this time it is not possible to produce statistics about the SMRs. It is also important to mention that the majority of the violations identified in this report have been detected through the review of SMRs.

Inspections conducted are tracked in the CIWQS database and for the NPDES Wastewater program, 475 facilities were inspected during fiscal year 2006-2007. The percentage of facilities inspected for each region differs significantly depending on whether the facility is a major discharger, a minor discharger under an individual permit or a minor discharger enrolled in a general permit.

The following table shows the total number of inspections conducted by each regional board for both major NPDES and minor NPDES facilities.

**Table 4- NPDES Wastewater Inspections FY 06-07**

NPDES	INSPECTIONS	PERMITS	% Facilities Inspected
Region 1	45	78	58%
Region 2	50	298	17%
Region 3	51	130	39%
Region 4	171	728	23%
Region 5	88	478	18%
Region 6	2	34	6%
Region 7	11	69	16%
Region 8	17	436	4%
Region 9	40	149	27%
<b>Total</b>	475	2,400	20%

Baseline Enforcement Report (FY 2006 – 2007)

Approximately 80% of major NPDES facilities and 15% of minor NPDES facilities were inspected during fiscal year 2006-2007.

Figure 11

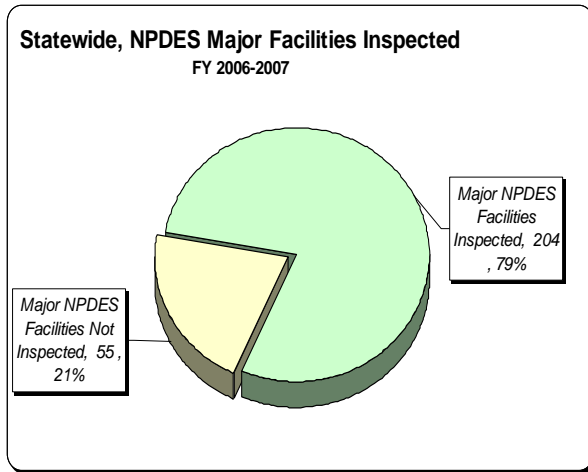
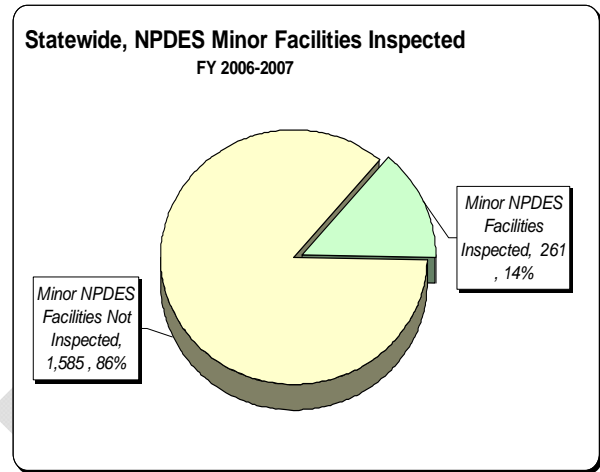


Figure 12



The Mandatory Minimum Penalty (MMP) violations shown below are a subset of NPDES violations for which the Water Boards are required to issue a minimum penalty. All violations subject to mandatory minimum penalties are currently considered priority violations for enforcement.

Table 5 – NPDES Compliance and Enforcement Outputs FY 2006-2007

Regional Board	No. of Facilities	Inspections Conducted	Violations			Violations Subject to Mandatory Minimum Penalties		
			Total Violations	Receiving Enforcement	% of violations Receiving Enforcement	Total MMP Violations	Receiving a Penalty at or Above Minimum	% of MMP Violations Receiving Mandatory Enforcement
1	78	45	97	47	48%	37	22	59%
2	298	50	242	101	42%	35	22	63%
3	130	51	410	228	56%	77	1	1%
4	728	171	2,281	697	30%	1,196	5	0%
5	478	88	493	280	56%	98	40	41%
6	34	2	22	11	50%	8	0	0%
7	69	11	244	238	97%	154	23	15%
8	436	17	94	85	90%	4	4	100%
9	149	40	249	229	92%	50	24	48%
<b>Totals</b>	<b>2,400</b>	<b>475</b>	<b>4,132</b>	<b>1,916</b>	<b>46%</b>	<b>1,659</b>	<b>141</b>	<b>8%</b>

The above table shows a large variation in the number of NPDES violations and enforcement actions. The reasons for this variability include differences in facility-specific requirements, differences in Regional Water Board office

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processes and priority assigned to report review and data entry, differing rates of compliance among dischargers, and the redirection of resources to address actions not directly related to enforcement, such as addressing the permitting backlog. The variation in enforcement actions reflects differing emphasis on enforcement at the Regional Water Boards, and a variation in the significance of the violations and water bodies impacted.

**Enforcement Action Outputs**

The following table lists the number of enforcement actions taken by the Regional Water Boards listed from informal to more formal, during fiscal year 2006-2007.

**Table 6 – NPDES Enforcement Actions Listing**

Enforcement Action	Regional Board									Total
	1	2	3	4	5	6	7	8	9	
	Oral Communication		1	11		6			1	
Staff Enforcement Action			2		2	1	31		18	54
Notice of Violation		4	9	18	5	4			5	45
Notice to Comply							2			2
13267 Letter		1		1						2
Time Schedule Order			2	6	4					12
Clean-up and Abatement Order	1				1	1				3
Cease and Desist Order	4	1			2			1		8
Administrative Civil Liability	11	9	4	7	8	2	11	6	2	60
<b>TOTAL</b>	<b>16</b>	<b>16</b>	<b>28</b>	<b>32</b>	<b>28</b>	<b>8</b>	<b>44</b>	<b>8</b>	<b>25</b>	<b>205</b>

■ informal enforcement action; ● formal enforcement action

There were no actions recorded in CIWQS for the following enforcement action types: Notice of Stormwater Non-Compliance, Referral to Other Agency, Formal Referral to Attorney General and Settlement Court Order.

## NPDES Stormwater Program Outputs

### Compliance Assurance Outputs

More than 9,000 SMRs are received every year by the Regional Water Boards to comply with the industrial storm water program requirements<sup>9</sup>. Monitoring reports are submitted annually or as specified in the permit requirements. For fiscal year 2006-2007 the CIWQS database was not capable of tracking monitoring reports due, received and reviewed for any program. Therefore at this time it is not possible to produce statistics about the number of SMRs for which compliance was assessed.

Inspections conducted are tracked in the CIWQS database. For the Stormwater Program 1,838 facilities were inspected during fiscal year 2006-2007. The percentage of facilities inspected for each region differs significantly.

The following table shows the total number of inspections conducted by each Regional Water Board.

**Table 7-Stormwater Inspections FY 06-07**

STORMWATER	INSPECTIONS	PERMITS	% Permits Inspected
Region 1	80	838	9%
Region 2	22	3,426	1%
Region 3	26*	1,212	2%
Region 4	974*	5,866	17%
Region 5	290	7,354	4%
Region 6	56	1,358	4%
Region 7	1	915	0%
Region 8	372	5,173	7%
Region 9	17	3,638	0%
<b>Total</b>	<b>1,838</b>	<b>29,780</b>	<b>6%</b>

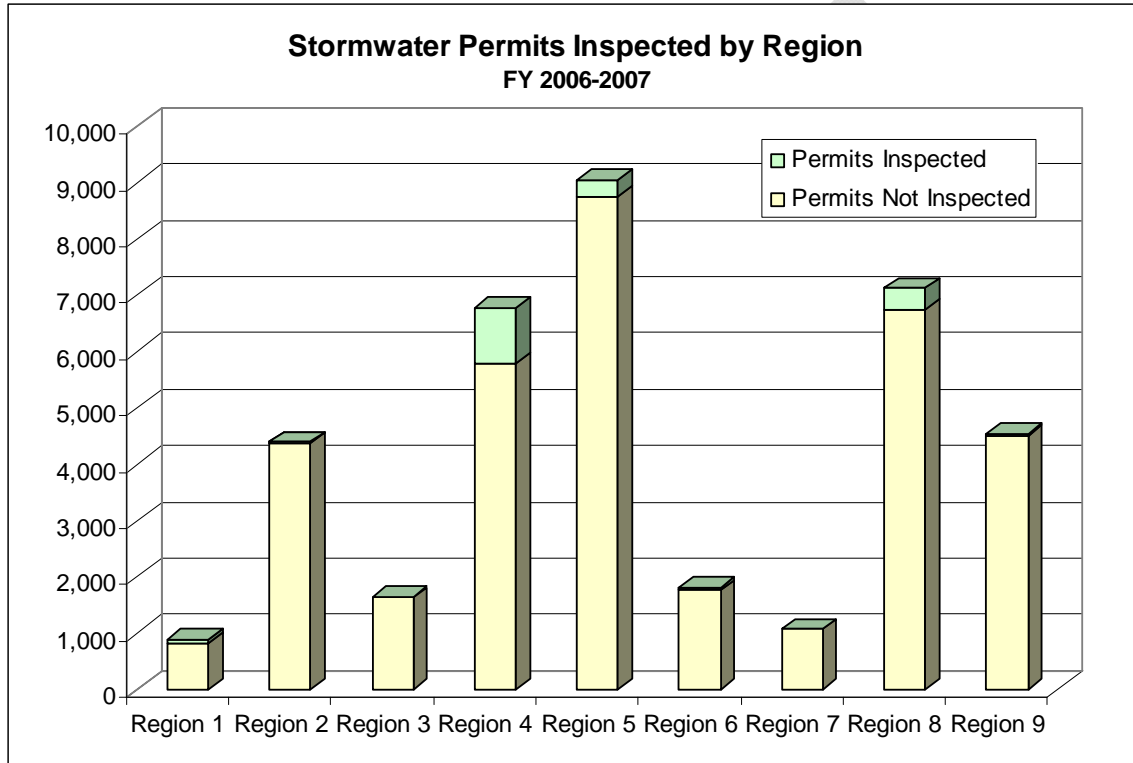
\* Data from CIWQS as amended by the Regional Water Boards

<sup>9</sup> At the time of this report, entities regulated under the construction storm water permit were not required to submit monitoring reports

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The percentage of facilities inspected is low compared to the number of permits issued. This can be explained by the large number of facilities regulated under the program. Despite this fact, the storm water program has an active inspection program and conducts the largest number of inspections of all of the core regulatory programs.

**Figure 13**



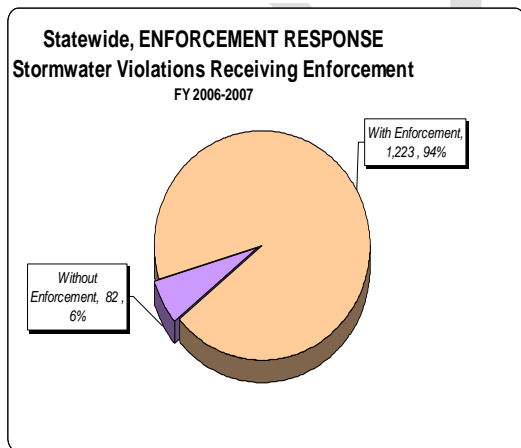
**Table 8 – Stormwater Compliance and Enforcement Outputs FY 06-07**

Regional Board	No. of Facilities	Inspections Conducted	Violations		
			Total Violations	With Enforcement	% of Violations Receiving Enforcement
1	838	80	6	6	100%
2	3,426	22	4	3	75%
3	1,212	26*	49	47	96%
4	5,866	974*	172	167	97%
5	7,354	290	600	591	98%
6	1,358	56	61	45	74%
7	915	1	3	2	66%
8	5,173	372	195	180	92%
9	3,638	17	215	182	85%
<b>Totals</b>	<b>29,780</b>	<b>1,838</b>	<b>1,305</b>	<b>1,223</b>	<b>94%</b>

\* Data from CIWQS as amended by the Regional Water Boards

Storm water violations and violations receiving one or more enforcement actions are shown above. Most of the violations noted are reporting violations. Most non-reporting violations in the storm water program are discovered through site inspections.

**Figure 14**



This situation differs from violations at NPDES facilities where the majority of discharge violations are found through a review of SMRs submitted by the dischargers. This difference in recorded violations reflects the difference in how NPDES wastewater and stormwater sites are regulated. While wastewater sites are largely regulated through self-monitoring to ensure compliance with specific effluent limits, stormwater sites are regulated to ensure sediment and

potential contaminants are prevented from leaving these sites through proper on-site controls. Ensuring that these controls are adequate for the nearly 30,000 permitted stormwater permittees would require a large field presence.

The relatively low number of priority violations above is likely due to inconsistent use of the priority designation in the CIWQS database. The Water Quality Enforcement Policy specifies that most of the common



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reporting violations should be considered priority violations for storm water sites. The fact that Region 3 has more enforcement actions than violations is due to CIWQS data on the issuance of notices for failure to provide reports. Water Code provisions require issuance of several notices to dischargers before a penalty is issued.

**Enforcement Action Outputs**

The following table lists the number of enforcement actions taken by the Regional Water Boards listed from informal to more formal during fiscal year 2006-2007.

**Table 9 – Stormwater Enforcement Actions Listing**

Stormwater Enforcement Actions for Fiscal Year 2006/2007										
Enforcement Action	Regional Board									Total
	1	2	3	4	5	6	7	8	9	
Oral Communication					7	5		72	4	88
Staff Enforcement Action				3	20	7		7	1	38
Notice of Violation		1	100	47	32	12		9	26	227
Notice to Comply		1		25	1	1		10		38
Notice of Stormwater Non-compliance				4	634	1		311		950
13267 Letter				1		3			13	17
Clean-up and Abatement Order	1				2	8			3	14
Administrative Civil Liability	1	1	4	1	8	3		5	5	28
Formal Referral to Attorney General								1		1
Settlement Court Order									1	1
<b>Total</b>	<b>2</b>	<b>3</b>	<b>104</b>	<b>81</b>	<b>704</b>	<b>40</b>	<b>0</b>	<b>415</b>	<b>53</b>	<b>1,402</b>

■ informal enforcement action; ● formal enforcement action

There were no actions recorded in CIWQS for the following enforcement action types: Time Schedule Order, Cease and Desist Order and Referral to Other Agency.

## 401 Certification Program Outputs

### Compliance Outputs

For the 401 Certification program, 18 facilities were reported as inspected during FY 2006-2007. The 401 Certification program does not yet use CIWQS consistently and the data provided is only current for certain Regional Water Boards.

The following table shows the total number of 401 certifications issued during FY 2006-2007, the number of inspections conducted and the number of violations detected based on information provided by the program managers.

**Table 10 – 401 Certification Compliance and Enforcement Outputs FY 06-07**

Regional Board	No. of Facilities	Inspections Conducted	Violations		
			Total	With Enforcement	% of Violations Receiving Enforcement
<b>1</b>	103	3	3	3	100%
<b>2</b>	216	1	1	1	100%
<b>3</b>	90				
<b>4</b>	95				
<b>5</b>	365				
<b>6</b>	53	10	10	10	100%
<b>7</b>	32				
<b>8</b>	116	2	2	2	100%
<b>9</b>	60	2	2	2	100%
<b>Totals</b>	<b>1,130</b>	<b>18</b>	<b>18</b>	<b>18</b>	<b>100%</b>

Table 10 shows that there were few violations documented for 401 certification violations.

### Enforcement Action Outputs

The following table lists the number of enforcement actions taken by the Regional Water Boards as provided by the 401 program managers, listed from informal to more formal, during FY 2006-2007.

**Table 11 – 401 Certification Enforcement Actions Listing**

401 Certification Enforcement Actions for Fiscal Year 2006/2007										
Enforcement Action	Regional Board									Total
	1	2	3	4	5	6	7	8	9	
Notice of Violation	3	1				9		2	1	16
Clean-up and Abatement Order						1			1	2
<b>Total</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>18</b>

■ informal enforcement action; ● formal enforcement action

## WDR Program Outputs

### Compliance Outputs

More than 25,000 SMRs are received every year by the Regional Water Boards. Monitoring reports are submitted annually or as specified in WDR program requirements. For FY 2006-2007 the CIWQS database was not capable of tracking monitoring reports due, received and reviewed for any program and therefore statistics about the number of reports are not included.

Inspections conducted are tracked in the CIWQS database. For the WDR program, 856 facilities were inspected during FY 2006-2007. The following table shows the total number of inspections conducted by each Regional Water Board.

**Table 12-WDR Inspections FY 06-07**

WDR	INSPECTIONS	PERMITS	% Permits Inspected
Region 1	37	447	8%
Region 2	4	203	2%
Region 3	181	618	29%
Region 4	45*	506	9%
Region 5	255	3,803	7%
Region 6	52	382	14%
Region 7	217	310	70%
Region 8	10	113	9%
Region 9	55	450	12%
<b>Total</b>	<b>856</b>	<b>6,832</b>	<b>13%</b>

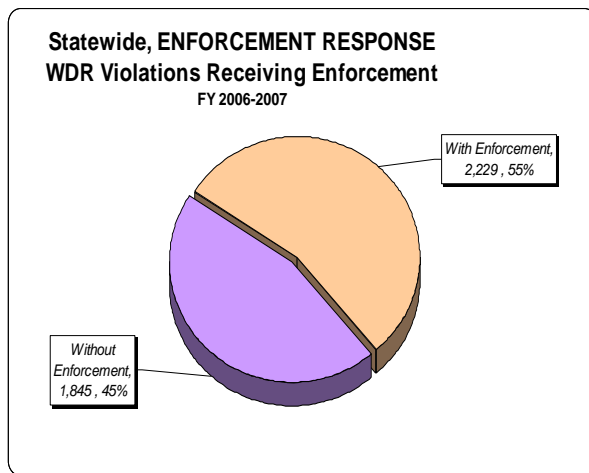
\* Data from CIWQS as amended by the Regional Water Boards

**Table 13 – WDR Compliance and Enforcement Outputs FY 2006-2007**

RB	No. of Facilities	Inspections Conducted	Violations		
			Total	With Enforcement	% of Violations Receiving Enforcement
1	447	37	190	8	4%
2	203	4	2	0	0%
3	618	181	596	71	12%
4	506	45*	308	142	46%
5	3,803	255	2,099	1,568	75%
6	382	52	280	7	3%
7	310	217	201	116	58%
8	113	10	40	0	0%
9	450	55	358	317	89%
<b>Totals</b>	<b>6,832</b>	<b>856</b>	<b>4,074</b>	<b>2,229</b>	<b>55%</b>

\* Data from CIWQS as amended by the Regional Water Boards

**Figure 15**



As noted earlier, the types of wastewater dischargers regulated under the NPDES and the WDR programs are similar, the primary difference being that NPDES discharges are to surface waters and WDR discharges are to land and groundwater. While there are more WDR facilities, they are often smaller in scale than NPDES facilities. The land-intensive nature of these discharges means that these facilities are often found in

more rural settings. However, WDR discharge violations can affect groundwater resources, and such effects can take longer to remediate or recover than surface water impacts.

As with NPDES violations and enforcement actions, regional variations in the outputs for WDR facilities reflect differences in the facilities regulated, resources made available for enforcement, and priorities assigned to tracking and recording violations and enforcement actions.

**Enforcement Action Outputs**

The following table lists the number of enforcement actions taken by the Regional Water Boards listed from informal to more formal during FY 2006-2007.

**Table 14 – WDR Enforcement Actions Listing**

Enforcement Action	WDR Enforcement Actions for Fiscal Year 2006/2007									Total
	Regional Board									
	1	2	3	4	5	6	7	8	9	
Oral Communication			6		15					21
Staff Enforcement Action			16		10				47	73
Notice of Violation			10	7	106	1		1	9	134
Notice to Comply							69			69
13267 Letter			1		45			1	7	54
Time Schedule Order				1			1			2
Clean-up & Abatement Order	2		1		2	2			1	8
Cease and Desist Order					7	2				9
Administrative Civil Liability	1		2	1		1	1			6
Settlement Court Order			1						1	2
<b>Total</b>	<b>3</b>	<b>0</b>	<b>37</b>	<b>9</b>	<b>185</b>	<b>6</b>	<b>71</b>	<b>2</b>	<b>65</b>	<b>378</b>

■ informal enforcement action; ● formal enforcement action

There were no actions recorded in CIWQS for the following enforcement action types: Notice of Stormwater Non-compliance, Referral to Other Agency and Formal Referral to Attorney General.

## Land Disposal Program Outputs

### Compliance Outputs

More than 2,000 SMRs are received every year by the Regional Water Boards to comply with the land disposal program requirements. Monitoring reports are submitted as specified in the permit requirements. For fiscal year 2006-2007 the CIWQS database was not capable of tracking monitoring reports due, received and reviewed for any program. Therefore at this time it is not possible to produce statistics about the number of SMRs for which compliance was assessed.

Inspections conducted are tracked in the CIWQS database and for the Land Disposal program, 394 facilities were inspected during FY 2006-2007. The following table shows the total number of inspections conducted by each Regional Water Board.

**Table 15- Land Disposal Inspections FY 06-07**

<b>LAND DISPOSAL</b>	<b>INSPECTIONS</b>	<b>FACILITIES INSPECTED</b>	<b>PERMITS</b>	<b>% Facilities Inspected</b>
Region 1	2	2	35	5%
Region 2	100*	89	89	100%
Region 3	40	25	61	41%
Region 4	70*	66	66	100%
Region 5	262	185	333	55%
Region 6	79	71	99	72%
Region 7	70	51	74	69%
Region 8	6	6	61	10%
Region 9	33	31	64	48%
<b>Total</b>	<b>662</b>	<b>526</b>	<b>1,309</b>	<b>40%</b>

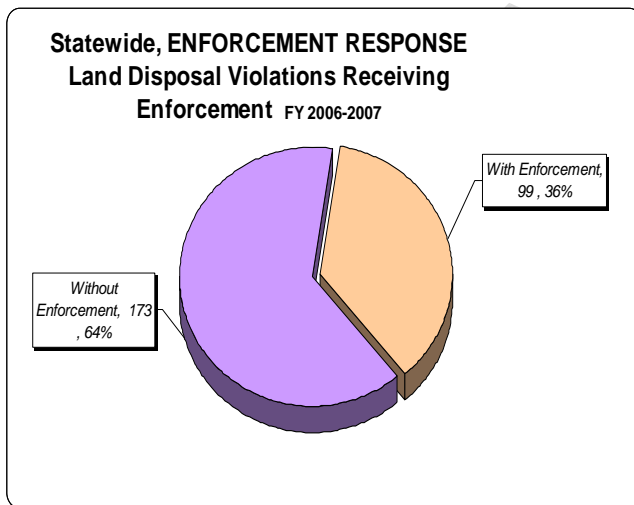
\* Data from CIWQS as amended by the Regional Water Boards

**Table 16– Land Disposal Compliance and Enforcement Outputs FY 06-07**

Regional Board	No. of Facilities	Inspections Conducted	Violations		
			Total Violations	With Enforcement	% of Violations Receiving Enforcement
1	35	2	8	0	0%
2	89	100*	0	0	0%
3	61	40	18	1	5%
4	66	70*	5	5	100%
5	333	262	134	81	60%
6	99	79	84	4	5%
7	74	70	15	1	7%
8	61	6	2	1	50%
9	64	33	6	6	100%
<b>Totals</b>	<b>882</b>	<b>662</b>	<b>272</b>	<b>99</b>	<b>36%</b>

\* Data from CIWQS as amended by the Regional Water Boards.

**Figure 16**



Land Disposal sites include landfills, waste containment ponds, waste piles, and land treatment units. Sites in the Table 16 are generally stationary, long-term sites that require on-going monitoring to detect and ensure cleanup of releases of contaminants.

## Enforcement Action Outputs

The following table lists the number of enforcement actions taken by the Regional Water Boards listed from informal to more formal, during FY 2006-2007.

**Table 17 – Land Disposal Enforcement Actions Listing**

Enforcement Action	Regional Board									Total	
	1	2	3	4	5	6	7	8	9		
Oral Communication		2									2
Staff Enforcement Action					8					4	12
Notice of Violation		1		1	35	1		4	4		46
Notice to Comply							1				1
13267 Letter		1			1	1				4	7
Time Schedule Order							1				1
Clean-up and Abatement Order		1			3					4	8
Cease and Desist Order					2						2
Administrative Civil Liability					4						4
<b>Total</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>53</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>16</b>		<b>83</b>

■ informal enforcement action; ● formal enforcement action

There were no actions recorded in CIWQS for the following enforcement action types: Notice of Stormwater Non-compliance, Referral to Other Agency, Formal Referral to Attorney General and Settlement Court Order.

## Assessment of Administrative Civil Liability (ACL)

The Water Boards have authority to assess ACLs for certain violations. In some cases, these violations require the recovery of a MMP.

In fiscal year 2006-2007, the Regional Water Boards assessed more than \$13 million in liabilities. In some situations, the Regional Water Boards accepted a Supplemental Environmental Project (SEP) in lieu of a monetary payment of the penalty. SEPs are for environmentally beneficial projects, either for projects the discharger would not otherwise have had to complete, or in some limited cases, for projects designed to return the discharger to compliance. Allowance for these projects is at the discretion of the individual Regional Water Board. There is a large variation from region to region in how these liabilities are allocated between penalties paid and SEPs allowed.

The Regional Water Boards record the amount for the SEP as a liability to the discharger. The following table shows the breakdown by Regional



Baseline Enforcement Report (FY 2006 – 2007)

Water Board. SEPs and compliance projects are addressed under “Project.”

**Table 18 – Liability Amounts Assessed by Regional Water Boards**

FY 2006-2007 data from CIWQS as amended by the Regional Water Boards

<b>RB</b>	<b>Total Amount Assessed</b>	<b>Liability Amount</b>	<b>Liability Pending</b>	<b>Project Amount</b>	<b>Project Pending</b>	<b>Total Pending</b>
1	\$ 1,370,900	\$ 313,250	\$ 42,400	\$1,057,650	\$ 958,150	\$1,000,550
2	\$ 1,413,000	\$ 175,000	\$ -	\$1,238,000	\$ 1,192,000	\$1,192,000
3	\$ 466,500	\$ 233,597	\$ 127,000	\$ 232,903	\$ 57,000	\$ 184,000
4	\$ 3,625,100	\$ 734,025	\$ -	\$2,930,075	\$ 2,375,000	\$2,375,000
5	\$ 3,977,770	\$2,253,270	\$1,065,500	\$1,742,500	\$ 903,500	\$1,969,000
6	\$ 902,340	\$ 222,049	\$ 20,000	\$ 680,291	\$ -	\$ 20,000
7	\$ 614,000	\$ 94,000	\$ 94,000	\$ 520,000	\$ 520,000	\$ 614,000
8	\$ 660,199	\$ 581,699	\$ 309,719	\$ 78,500	\$ 50,000	\$ 359,719
9	\$ 207,300	\$ 181,800	\$ 170,300	\$ 25,500	\$ -	\$ 170,300
<b>Totals</b>	<b>\$13,246,109</b>	<b>\$4,770,690</b>	<b>\$1,828,919</b>	<b>\$8,505,419</b>	<b>\$6,055,650</b>	<b>\$7,884,569</b>

The total assessed amount is a sum of the liability amounts and the project amounts. The pending amounts are outstanding amounts that have not been recorded as paid, or projects that are not yet complete.

On average, roughly one-third of the amount was assessed as penalty amounts that must be paid to the Water Boards’ Cleanup and Abatement Account or the Waste Discharge Permit Fund. The remaining two-thirds of the amount was devoted to SEPs or compliance projects.

## Section 5

### Compliance and Enforcement Outcomes

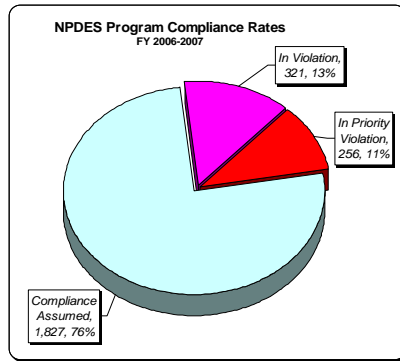
The mission of compliance and enforcement programs is to ensure that compliance with laws and regulations is achieved and maintained over time. Measuring the outcome, or effect, of our activities is the most difficult part of performance measurement. A group of enforcement staff from all agencies within Cal EPA met during 2007 to discuss the most effective and consistent way of measuring expected results from enforcement programs. There was consensus among the participants that one of the most important elements is to measure compliance rates. Compliance rates assist managers to describe noncompliance problems in magnitude, frequency and duration and to evaluate the results of a program's compliance and enforcement strategies. Other recommended performance measures to assess the outcome of compliance and enforcement programs included measures to address the deterrent effects of enforcement recidivism, and environmental and economic benefits.

Approaches used to calculate compliance rates vary and must be tailored to each program. The approaches used in this Section must be evaluated to determine if they reflect actual compliance for future reports. This report currently only addresses compliance rates among regions and programs based on information available in current Water Board databases. Data and information is provided for the nine Regional Water Boards, but only for four of the five identified core regulatory programs. At this point it is not possible to provide information on compliance rates for the 401 Certification program. Future reports will include data for the rest of the recommended performance measures, as tracking and evaluation systems are improved and developed.

Compliance rates vary significantly among regions and programs in response to compliance activities and the level of enforcement resources dedicated to each program in each region.

## NPDES WASTEWATER PROGRAM

Figure 17



The NPDES Wastewater program regulates approximately 2,400 diverse facilities discharging to surface waters. This count includes both major individual dischargers with a high threat to water quality and minor dischargers enrolled under a general permit. The Water Boards are developing compliance rates for each one of the discharger groups to be included in future reports.

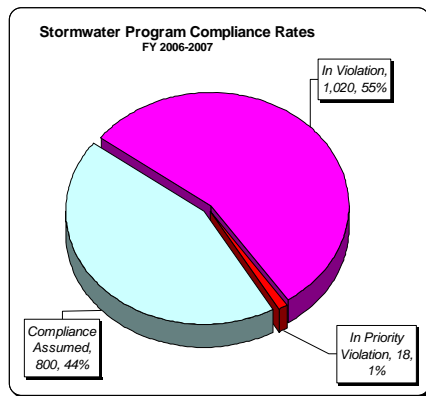
For the NPDES Wastewater program, it is reasonable to assume that every facility and permit has received some degree of compliance assessment either by a review of the monitoring reports or through inspections. This is particularly true for major and minor individual permits.

Table 19

NPDES WASTEWATER COMPLIANCE RATE FY 2006/ 2007											
Region	Number of Facilities	Facilities with one or more violations in the period	Percentage of Facilities in Violation	Total Violations	Total Facilities With Priority Violations	Percentage of Facilities with priority violations	Total Priority Violations	# of Facilities with 1-10 violations	# of Facilities with 11-25 violations	# of Facilities with >25 violations	Average # of Violations per Facility In violation
1	79	21	<b>27%</b>	142	8	<b>10%</b>	51	17	3	1	6.8
2	293	48	<b>16%</b>	245	15	<b>5%</b>	68	41	3	4	5.1
3	130	47	<b>36%</b>	454	32	<b>25%</b>	149	38	5	4	9.7
4	733	345	<b>47%</b>	2,569	167	<b>23%</b>	831	281	53	11	7.4
5	482	54	<b>11%</b>	487	6	<b>1%</b>	30	43	8	3	9.0
6	34	5	<b>15%</b>	22	2	<b>6%</b>	7	4	1	0	4.4
7	69	21	<b>30%</b>	247	14	<b>20%</b>	102	14	5	2	11.8
8	436	15	<b>3%</b>	94	4	<b>1%</b>	5	13	1	1	6.3
9	148	21	<b>14%</b>	249	8	<b>5%</b>	61	16	4	1	11.9
<b>Total</b>	<b>2,404</b>	<b>577</b>	<b>24%</b>	<b>4,509</b>	<b>256</b>	<b>11%</b>	<b>1,304</b>	<b>467</b>	<b>83</b>	<b>27</b>	<b>7.8</b>

## STORMWATER PROGRAM

Figure 18



56% of the stormwater regulated facilities inspected had one or more recorded violations during FY 2006/2007. The 56% noncompliance rate for the stormwater program is likely misleading due to the quality of information in the CIWQS database. The rate of compliance for this program was based on the number of facilities for which compliance was assessed (inspections conducted) and not the total number of facilities. Five of the Regional Water Boards reported more facilities with violations than the number of facilities inspected within the region for this program. Eliminating these entries results in a 21% noncompliance rate for the program. The use of the priority flag for violations is also highly inconsistent. Despite the data limitations, the stormwater program identified the largest number of facilities with at least one violation.

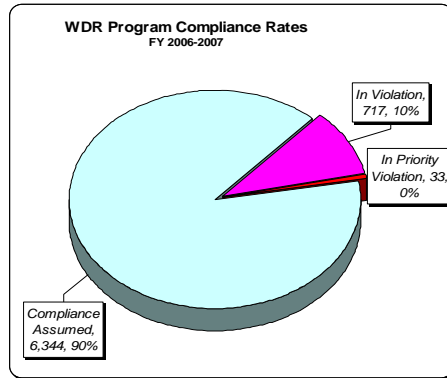
Table 20

STORMWATER COMPLIANCE RATES FY 2006/2007								
Region	Number of Facilities Inspected	Facilities with one or more violations in the period	Percentage of Facilities in Violation	Total Violations	# of Facilities with 1-10 violations	# of Facilities with 11-25 violations	# of Facilities with >25 violations	Average # of Violations per Facility In violation
1	80	1	1%	6	1	0	0	6.0
2	22	4	18%	4	4	0	0	1.0
3	26	44	169%	49	44	0	0	1.1
4	974	86	9%	172	86	0	0	2.0
5	290	582	201%	600	582	0	0	1.0
6	56	29	52%	61	28	1	0	2.1
7	1	3	300%	3	3	0	0	1.0
8	372	156	42%	195	156	0	0	1.3
9	17	133	782%	213	132	0	1	1.6
<b>Total</b>	<b>1,838</b>	1,038	<b>56%</b>	1,303	1,036	1	1	1.3

\* Data from CIWQS as amended by the Regional Water Boards

## WDR PROGRAM

Figure 19



Compliance rates for the WDR program vary among Regional Water Boards, from no facilities in violation in Region 2 (San Francisco Bay Regional Board) to 29% of the facilities in violation in Region 7.

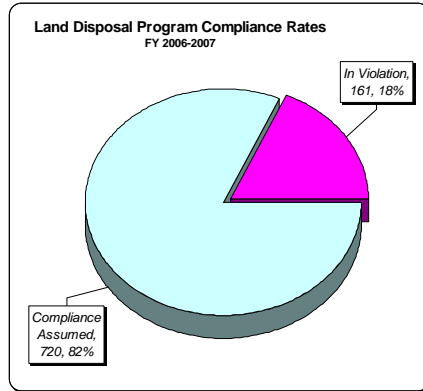
Similar to the NPDES Wastewater program, the compliance rate was calculated assuming that each facility received some level of oversight. Overall, 11% of the 6,832 facilities in the program had one or more violations during the reporting period. 29 of those facilities had chronic compliance problems with more than 25 violations each accounted in the reporting period. Similar to the stormwater program, the priority flag for violations is used inconsistently by the Water Boards.

Table 21

WDR COMPLIANCE RATE FY 2006/2007								
Region	Number of Facilities	Facilities with one or more violations in the period	Percentage of Facilities in Violation	Total Violations	# of Facilities with 1-10 violations	# of Facilities with 11-25 violations	# of Facilities with >25 violations	Average # of Violations per Facility In violation
1	447	53	12%	190	50	3	0	3.6
2	203	1	0%	2	1	0	0	2.0
3	618	140	23%	604	126	10	4	4.3
4	506	42	8%	333	30	9	3	7.9
5	3,803	279	7%	2,334	206	54	19	8.4
6	382	87	23%	303	84	3	0	3.5
7	310	89	29%	193	88	0	1	2.2
8	113	7	6%	40	5	2	0	5.7
9	450	52	12%	362	47	3	2	7.0
<b>Total</b>	<b>6,832</b>	750	<b>11%</b>	4,361	637	84	29	5.8

## LAND DISPOSAL PROGRAM

Figure 20



Compliance rates in this program vary significantly among Regional Water Boards. 162 facilities under the land disposal program were identified as having one or more violations for fiscal year 2006-07 in the database. This represents a noncompliance rate of 18%.

Similar to the NPDES Wastewater program, the compliance rate was calculated assuming that each facility received some level of oversight.

Table 22

LAND DISPOSAL COMPLIANCE RATE FY 2006/2007									
Region	Number of Facilities	Facilities with one or more violations in the period	Percentage of Facilities in Violation	Total Violations	# of Facilities with 1-10 violations	# of Facilities with 11-25 violations	# of Facilities with >25 violations	Average # of Violations per Facility In violation	
1	35	6	17%	8	6	0	0	1.3	
2	89	0	0%	0	0	0	0	N/A	
3	61	13	21%	18	13	0	0	1.4	
4	66	2	3%	5	2	0	0	2.5	
5	333	80	24%	135	80	0	0	1.7	
6	99	46	46%	91	45	0	1	2.0	
7	74	10	14%	15	10	0	0	1.5	
8	61	2	3%	2	2	0	0	1.0	
9	64	3	5%	3	3	0	0	1.0	
<b>Total</b>	<b>882</b>	162	<b>18%</b>	277	161	0	1	1.7	

\* Data from CIWQS as amended by the Regional Water Boards

## Section 6

### Proposed Performance Metrics for the Water Boards' Enforcement Activities

Performance measures are vital tools for evaluating enforcement activities. Information provided by performance measures assists decision-makers in formulating enforcement objectives, making adjustments in response to changing conditions, evaluating enforcement strategies, and establishing internal and public accountability mechanisms.

Some of the basic management questions that can be answered with performance measures for aspects of compliance and enforcement are listed below:

	<b>Compliance Monitoring and Detection</b>	<b>Compliance Documentation</b>	<b>Enforcement</b>	<b>Information Sharing</b>
<b>Inputs</b>	What resources are available for monitoring and inspection?	What resources are available for documenting compliance?	What resources are available for enforcement?	What resources are available for information sharing?
<b>Activities</b>	What is the strategy to monitor compliance?	What is the process to document compliance?	What is the enforcement process?	What is the current approach to make information available?
<b>Outputs</b>	Is compliance assessed?	Is compliance documented?	Are violations enforced according to policy?	Is compliance and enforcement information available?
<b>Outcome</b>	Is compliance achieved?	Is compliance information stored, available and useful?	Is enforcement effective in ensuring compliance?	Is compliance and enforcement information useful/used?

## Baseline Enforcement Report (FY 2006 – 2007)

This report recommends a limited group of performance measures that address activity levels (inputs), the results of those activities (outputs) and the effect of our actions (outcomes). The following table summarizes nine recommended measures for the Water Boards' enforcement programs (the final measure, Environmental Benefits, is broken into two measures). Periodic public reporting of information on these performance measures would better enable the Water Boards, the Legislature and the public to assess the effectiveness of the Water Boards' Enforcement Program.

Measure Name	Measure Description
<b>Self-Monitoring Report Evaluation</b>	<b>Number of self-monitoring reports received and reviewed and percentage of reports reviewed</b>
<b>Inspection Monitoring</b>	<b>Number of inspections and percentage of facilities inspected</b>
<b>Compliance Rates</b>	<b>The percentage of facilities in compliance based upon the number of facilities evaluated</b>
<b>Enforcement Response</b>	<b>Percentage of facilities in violation receiving an enforcement action requiring compliance</b>
<b>Enforcement Activities</b>	<b>Number and type of enforcement actions</b>
<b>Penalties Assessed and Collected</b>	<b>Amount of penalties assessed and collected, SEPs approved and injunctive relief</b>
<b>MMP Violations Addressed</b>	<b>Number of facilities with MMP violations receiving a penalty at or above the minimum penalty assessed</b>
<b>Recidivism</b>	<b>Number and percentage of facilities returning to non-compliance for the same violation(s) previously addressed through an enforcement action</b>
<b>Environmental Benefits</b> <i>(as a result of an enforcement action)</i>	<b>Estimated pounds of pollutants reduced through cleanup (soil or water), and wetlands/stream/beach miles protected/restored (acres)</b>

The following sections provide a more detailed description of the proposed performance measures:

### **Self Monitoring-Report Evaluation**

Self monitoring reports are the basic tool the Water Boards have to assess compliance with water quality laws and regulations. It is based on the "honor system" of self monitoring and self reporting. The Water Boards receive more than 60,000 monitoring reports a year from different programs. Water Board enforcement staff review the monitoring reports to verify compliance and to document any violations detected during their



review. Tracking and reviewing the reports is a major activity and requires a significant amount of resources.

Non submittal of monitoring reports has been identified in the enforcement policy as a priority violation. Failure to submit the required reports limits the ability of Water Board staff to verify compliance with permit requirements.

The proposed performance measure would display information by regional board and by program for the total number of monitoring reports due in the year (or reporting period), the number (and percentage compared to the report due) of reports that have been received and the number (and percentage compared to the reports received) of reports reviewed by water board staff.

### **Inspection Monitoring**

Inspections of regulated facilities are also part of the Water Boards strategy to assure compliance. The Water Boards are required to inspect certain facilities with certain frequency and to assess the overall level of compliance with permits and requirements. Targets for inspections are established through commitments with federal agencies and between the State and the Regional Boards.

Using a breakdown of information by program, region and type of inspection this performance measure would display the total number of inspections conducted for a selected period of time. The total number of inspections would be compared to the total number of facilities in the program and to the total number of facilities targeted to be inspected for the period. A percentage would be calculated and displayed for each group.

### **Compliance Rates**

Compliance is the ultimate goal of a regulatory program. Past violations must be addressed so that an adequate level of deterrence is achieved that ensures future compliance with requirements and regulations. Compliance rates are an assessment of the ability of the regulated community to meet the requirements necessary to protect water quality.

Because of the diverse requirements established in permits and regulations, measuring, and documenting compliance with those requirements in a consistent way is a challenge for the Water Boards.

The number of facilities assessed could be compared to the number of facilities with each violation type to calculate rates of compliance for the sample group. The Water Boards will need to develop a statistical method for extrapolating rates of compliance from the facilities assessed relative to the total number of facilities subject to regulation for a given program or type of facility since the group of facilities assessed or inspected within a compliance period may change from year to year.

### **Enforcement Response**

According to the current and proposed revision of the Water Quality Enforcement Policy, every violation deserves an appropriate enforcement response. Most formal enforcement actions must be targeted to the highest priority violations. Performance measures that assess enforcement response must take this into consideration.

The measures should be broken down into periods, programs, and Regional Water Boards as well as by the type of enforcement compared to the level of priority for each violation. This information should be compared to analyze and determine potential trends in the level of enforcement response.

### **Enforcement Activities**

Different types of violations warrant different enforcement responses. Whether that response is informal or formal, the Water Boards should be able to evaluate the appropriateness and level of effort associated with each response. This measure will track and report the number and type of enforcement actions issued broken down by, period, program, region and enforcement action type. In order to analyze trends, this information could be displayed with a graph including several time periods.

### **Penalties Assessed and Collected**

Penalties and liabilities imposed through formal enforcement actions are a key component of the Water Boards' enforcement strategy. Penalties and liabilities may vary significantly from one enforcement case to another. The penalties and liabilities are paid to the CAA (and sub-accounts) or to the Waste Discharge Permit Fund. Some of the liabilities may be addressed by a SEP or a Compliance Project. This performance measure would convey the amount of penalties and liabilities imposed and differentiate when the liabilities are assessed at or above any applicable mandatory minimum.

The measure would be based on the total liability imposed for each action and the percentage of liabilities paid to one of the Water Boards'

accounts, or to a SEP or to a Compliance Project, if applicable. Information must be capable of being aggregated and disaggregated by program, region and time period.

### **Mandatory Minimum Penalties Violations Addressed**

MMPs are required by California Water Code sections 13385 and 13385.1 for specified effluent and reporting violations of NPDES permits occurring after January 1, 2000. For violations that are subject to these MMPs, the Water Boards must either assess an ACL for the MMP (\$3,000 per violation) or assess an ACL for an amount higher than the mandatory minimum.

Because enforcement of these violations is mandatory, the Water Boards track these violations closely. The Water Boards should track not just the number of violations subject to MMP but also the number and the percentage of the violations that receive the mandatory minimum. Information on violations receiving penalties and violations pending can be displayed graphically showing the trend over several years.

MMP actions represent a mandated effort and workload for the Water Boards. The enforcement action taken normally addresses more than one mandatory minimum violation; therefore, the performance measures must consider the number of actions (cases or facilities) pending to receive an enforcement action.

### **Recidivism**

Recidivism is an indicator of the long-term effectiveness of our enforcement strategies. The rate of recidivism is determined by the number and percentage of facilities which fail to maintain or achieve compliance after an enforcement action has been brought against the entity.

### **Environmental Benefits (resulting from an enforcement action)**

This indicator, or set of indicators, demonstrates the environmental outcomes related to the effectiveness of our enforcement strategies.

Measures of environmental benefits could include:

- Estimated pounds of pollutants reduced
- Estimated soil cleaned up (cubic yards)
- Water cleaned up (gallons groundwater)
- Wetlands/stream/beach miles protected/restored (acres)
- People with safe access to drinking water

## Baseline Enforcement Report (FY 2006 – 2007)

Each one of these indicators or measures should have its own metrics or units of measurement. The information should be displayed by program, Regional Water Board, watershed, and compared over time.

Currently, the Water Boards do not track this information. This information could be collected when the enforcement case is resolved and compliance is achieved or when there is an expectation that results were achieved as a result of the enforcement action.

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## Section 7

### **Recommendations for Improvements In Water Board Enforcement Programs**

After reviewing the summary statistics in this report and recommendations received about the Water Boards' enforcement activities through public forums (Appendix 3), the State Water Board's Office of Enforcement recommends the actions below as priorities for core regulatory enforcement program improvements. These actions are in addition to ongoing enforcement improvement efforts such as the proposed revisions to the Water Quality Enforcement Policy and implementation of the CIWQS review Panel recommendations.

#### **1. Create Procedural Consistency in Regional Water Board Enforcement Proceedings**

To provide fair and consistent enforcement, formal enforcement actions should follow procedures which are consistent across the Water Boards. The Office of Enforcements' prosecuting attorneys should work with the advisory counsel in the Office of Chief Counsel to develop uniform hearing notices and other administrative enforcement procedures.

#### **2. Prioritize Enforcement Actions to Address the Most Serious Threats to Water Quality**

Regional Water Boards should engage in bimonthly enforcement priority discussions with the Office of Enforcement to evaluate priority cases for enforcement action. The priorities selected should be consistent with the Water Quality Enforcement Policy. The Regional Water Boards should review and track cases that are identified as priorities. All Class 1 Violations (as defined in the proposed Water Quality Enforcement Policy) should have formal enforcement actions initiated within one year of detection by Water Board staff.

#### **3. Enhance Inspection and Enforcement Training**

The Water Boards should develop minimum training requirements for compliance and enforcement staff. Each compliance and enforcement staff person should have an individual development plan that specifies required training elements. The training should be administered through

the Water Boards' Training Academy or Cal EPA's Enforcement Training Program. This training should also include information on CIWQS data entry procedures.

#### **4. Increased Field Presence of Water Board Staff**

Inspection frequencies should be specified and maintained for each regulated facility. Increased inspector field presence can be of great value in locating non-filers and illegal discharges.

#### **5. Evaluate Opportunities for Citizen Enforcement of the Water Code**

The Water Boards' data shows that a large percentage of detected violations do not have any enforcement action associated with them. If the Water Boards are unable to address all water quality violations because of a lack of enforcement resources, the Water Boards should evaluate whether citizens of the State of California should have the ability to bring actions to enforce the *Water Code* similar to citizen enforcement action provisions under the federal *Clean Water Act*.

#### **6. Evaluate Establishing Minimum Penalties for Water Code Violations**

The Water Boards should evaluate imposing minimum penalties, similar to *Health and Safety Code section 25299 and Water Code section 13350(e)(1)*, for the most serious water quality violations. Health and Safety Code section 25299 has been a significant factor in supporting enforcement cases and obtaining fines and penalties against noncomplying owners and operators of UST systems. Adopting a minimum penalty regimen for other water quality violations would provide consistency in assessing monetary administrative and civil liabilities.

#### **7. Create a Dedicated Enforcement Staff and Budget**

The Water Boards should develop a consistent way of identifying the enforcement staff and budget for each region and at the State Water Board. The Water Boards' electronic time-keeping system should track the time and cost spent on enforcement matters, particularly those which go to formal enforcement actions. The Water Boards should seek authority to recover the reasonable costs of enforcement as an assessment of liability (in administrative or civil liability matters) in addition to any monetary civil liability imposed in the enforcement proceeding.

**8. Increase the Use of the Attorney General's Office, District Attorneys, and City Attorneys in Enforcement Actions**

The Water Boards' enforcement program relies on administrative enforcement activity. There are matters and violations which warrant referral to outside prosecuting agencies for the imposition of significant penalties, injunctive relief, and other actions. The Water Boards should better coordinate and communicate with these enforcement partners to ensure maximum deterrence. The Water Boards should evaluate whether additional legislative changes would aid in this effort.

**9. Reduce the Backlog of Enforcement Cases by Targeting MMP-Related Violations for Enforcement Priority**

Cases requiring MMPs continue to build up in the Water Board enforcement system. These cases have been designated as an enforcement priority by the Legislature. The Water Boards should initiate action to significantly and measurably reduce the backlog in 2008. The Water Boards should evaluate the effectiveness of MMPs in achieving compliance at regulated facilities.

**10. Evaluate Updating the Statutory Penalty Limits to Address Inflation**

The recent oil spill in the San Francisco Bay from the M/V Cosco Busan has highlighted that the authorized penalty amounts for the illegal discharge of oil and petroleum products into the state's waterways have not been updated since 1984. Cost of living indices suggest that the penalties should be adjusted by at least 100% to account for inflation. To maintain the deterrent impact of our water quality protection laws as intended, the Water Boards should evaluate the need and effects of adjusting the penalty provisions for both inflation and the environmental costs that result from these illegal discharges.

**11. Develop and Implement Plans to Compel Participation in Key Water Board Regulatory Programs**

As the Water Boards develop new initiatives and programs addressing emerging contaminant and pollution threats to water quality, it is essential for the success and integrity of these regulatory approaches to have full participation of the newly regulated entities. The Water Boards should develop plans, as a part of any new regulatory initiative or program, to target nonparticipants for early and well-publicized enforcement actions.

**12. Develop a Uniform Tracking and Reporting Mechanism for Illegal Discharges That Do Not Fall Within One of the Current Core Regulatory Programs**

The Water Boards should work with stakeholders to develop a consistent mechanism for recording these violations and tracking the enforcement response to the violations. Based on a baseline of verifiable information, the Water Boards can better determine the extent of the problem and develop more appropriate regulatory and enforcement responses.

**13. Encourage Flexibility in the Allocation of Resources to Target Priority Needs**

Encourage flexibility in the allocation of resources within the Regional Water Boards and at the State Water Board to focus on specific regional and statewide issues and priorities, recognizing that a shift in resources away from a program area will result in a corresponding reduction in the level of effort for that area. Resource allocation modifications must be tracked to account for changing priorities.



## Appendix 1

### Description of Enforcement Authorities

#### **INFORMAL ENFORCEMENT**

For minor violations, the first step is informal enforcement action. The Oral Communication is an action taken directly by staff to verbally inform the discharger of specific violations. A Staff Enforcement Letter (SEL) also notifies the discharger of specific violations but it is in writing and is signed by staff. The Notice of Violation (NOV) letter is also an informal enforcement action. Its purpose is to bring a violation to the discharger's attention and to give the discharger an opportunity to correct the violation before formal enforcement actions are taken. Continued noncompliance should trigger formal enforcement action. A NOV letter should be signed by the Regional Water Board's Executive Officer or Assistant Executive Officer.

#### **TIME SCHEDULE ORDER**

Actual or threatened discharges of waste in violation of requirements can result in a time schedule order which sets forth the actions a discharger shall take to correct or prevent the violation [*Water Code section 13300*]

#### **NOTICES TO COMPLY**

Notices to Comply are an expedited approach for dealing with minor violations. Commonly referred to as the "fix-it-ticket" legislation, this law requires the use of field-issued notices to comply as the sole enforcement option involving minor violations. [*Chapter 5.8 (beginning with section 13399) of Division 7 of the Water Code.*]

Notices to Comply are ordinarily written during the course of an inspection by an authorized representative of the State or Regional Water Board to require a discharger to address minor violations that can be corrected within 30 days.

#### **CEASE AND DESIST ORDERS**

Cease and Desist Orders (CDOs) are normally issued to dischargers regulated by WDRs and often remain in force for years. [*Water Code sections 13301-13303*].

CDOs are typically issued to regulate dischargers with chronic noncompliance problems. These problems are rarely amenable to a short-term solution; often, compliance involves extensive capital improvements or operational changes.

## Baseline Enforcement Report (FY 2006 – 2007)

The CDO will usually establish a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. CDOs may also include restrictions on additional service connections (referred to as a connection ban) to community sewer systems. These have been applied to sanitary sewer systems but can be applied to storm sewer systems, as well. Violations of CDOs should trigger an ACL or referral to the Attorney General for injunctive relief or monetary remedies.

### **CLEANUP AND ABATEMENT ORDERS**

Cleanup and Abatement Orders (CAOs) are generally issued to dischargers that are not regulated by WDRs. With the exception of groundwater cleanups, CAOs are typically short-lived enforcement orders. [*Water Code section 13304.*]

CAOs are issued by the Regional Water Board, or by a designee, such as the EO, under delegation from the Regional Water Board. [*Water Code section 13223*] Designee-issued CAOs should be used when speed is important, such as when a major spill or upset has occurred and waiting until the Regional Water Board can meet to approve a CAO would be inappropriate. If staff costs are not recovered voluntarily or through civil court actions, the amount of the costs constitutes a lien on the property. Violations of CAOs should trigger an ACL or referral to the Attorney General for injunctive relief or monetary remedies.

### **MODIFICATION OR RESCISSION OF WASTE DISCHARGE REQUIREMENTS**

In accordance with the provisions of the Water Code, and in the case of NPDES permits, the *Federal Water Pollution Control Act*, the Regional Water Board may modify or rescind WDRs in response to violations. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a Waste Water Treatment Plant.

### **ADMINISTRATIVE CIVIL LIABILITY**

Administrative Civil Liability (ACL) means monetary assessments imposed by a Regional Water Board. The Water Code authorizes ACLs in several circumstances.

Once an ACL complaint is issued, the discharger may either waive the right to a hearing or appear at the Regional Water Board hearing to dispute the complaint. In the latter case, the Regional Water Board has the choice of dismissing the complaint, adopting an ACL order (ACL amount need not be the same as in the complaint), or adopting a different enforcement order (*e.g.* referral to Attorney General).

ACL actions are intended to address past violations. If the underlying problem has not been corrected, the ACL action should be accompanied by a Regional Water Board order to compel future work by the discharger (*e.g.* CAO or CDO).

## Baseline Enforcement Report (FY 2006 – 2007)

The following is a list of Water Code sections for which civil liability can be accessed.

<u>Water Code Section</u>	<u>Type of Violation</u>
13261	Failure to furnish report of waste discharge or to pay fees.
13265	Unauthorized discharge of waste.
13268	Failure to furnish technical report.
13308	Failure to comply with time schedule.
13350	Intentional or negligent: (1) violation of CDO or CAO; (2) discharge of waste, or causing or permitting waste to be deposited where it is discharged, into the water of the state in violation of any WDR, waiver condition, certification, Basin Plan Prohibition or other Regional Water Board order or prohibition; or (3) causing or permitting the unauthorized release of any petroleum product to waters of the state.
13385	Violation of NPDES permit, Basin Plan Prohibition, etc.
13399.33	Failure to submit notice of intent to obtain coverage under the appropriate storm water NPDES permit
13627.1	Violations of wastewater treatment plant operators requirements
13627.2	Submitting false or misleading information on an application for certificate or registration for operator certification
13627.3	Failure to provide required registration information by a person or entity who contracts to operate a wastewater treatment plant

### **REFERRALS TO ATTORNEY GENERAL OR DISTRICT ATTORNEY**

The Regional Water Board can refer violations to the state Attorney General or ask the county district attorney to seek criminal relief. In either case, a superior court judge will be asked to impose civil or criminal penalties. In some cases, the Regional Water Board may find it appropriate to request the U.S. Attorney's Office to review violations of federal environmental statutes, including the CWA, *Migratory Bird Treaty Act*, or the *Resource Conservation and Recovery Act*.

#### **a. California Attorney General**

The California Attorney General can seek civil enforcement of a variety of Water Code violations, essentially the same ones for which the Regional Water Board can impose an ACL. Maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the court instead of the Regional Water Board. The Attorney General can also seek injunctive relief in the form of a restraining order, preliminary injunction, or permanent injunction pursuant to *Water Code sections 13262, 13264, 13304, 13331, 13340, and 13386*. Injunctive relief may be appropriate where a discharger has ignored enforcement orders.

## Baseline Enforcement Report (FY 2006 – 2007)

For civil assessments, referrals to the Attorney General should be reserved for cases where the violation merits a significant enforcement response but where ACL is inappropriate. A violation (or series of violations) with major public health or water quality impacts should be considered for referral, to maximize the monetary assessment because of its effect as a deterrent.

### **b. District Attorney**

District attorneys cannot directly pursue the provisions of the Water Code that grant the Water Boards authority to impose an ACL. District attorneys may, however, seek civil or criminal penalties under their own authority for many of the same violations the Regional Water Board pursues. While the Water Code requires a formal Regional Water Board referral to the Attorney General, the Regional Water Board's EO is not precluded from bringing appropriate matters to the attention of a district attorney for enforcement under statutes other than the Water Code.

District attorney involvement should be considered for unauthorized releases of hazardous substances. In most of these cases, the Regional Water Board is not the lead agency, and the referral action is intended to support the local agency that is taking the lead (e.g. county health department or city fire department). Many district attorney offices have created task forces specifically staffed and equipped to investigate environmental crimes including water pollution. These task forces may ask for Regional Water Board support which should be given within available resources.

The district attorney often pursues injunctive actions to prevent unfair business advantage in addition to the criminal sanctions and civil fines.

### **c. Civil Versus Criminal Actions**

Enforcement actions taken by the Regional Water Board are civil actions. In cases where there is reason to believe that individuals or entities have engaged in criminal conduct, the Regional Water Board or EO may request that criminal actions be pursued by a criminal prosecuting office. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment.

## Appendix 2

### Summary of Recommendations and Comments for Improvements to the Water Boards Enforcement Efforts

Recently, the Water Boards invited public input on the Water Quality Enforcement Policy and other improvements to current enforcement efforts. Many comments offered constructive ways to improve enforcement at the Water Boards. These reports and comments can be found at: [www.waterboards.ca.gov/plnspols/comments\\_wqenforce.html](http://www.waterboards.ca.gov/plnspols/comments_wqenforce.html). Highlights of the comments include:

- Focus enforcement efforts on violations that threaten water quality. Place greater emphasis on non-permitted discharges, General Permit non-filers and unauthorized spills;
- Address compliance issues in a timely manner. Some violations which give rise to mandatory minimum penalties (MMPs) have continued for over three years by which time significant penalties have accrued even when assessing only the required minimum penalty;
- Identify environmental justice communities. Violations and water quality problems that impact these communities should receive priority for enforcement;
- Review Discharger Self-Monitoring Reports in a timely manner;
- Develop a publicly available enforcement tracking system to track enforcement actions and compliance rates;
- Post a *Compliance Report Card* for each wastewater discharger on the internet to discuss discharger performance and environmental effects;
- Post all *Notices of Violation* on the Internet and make such notices searchable by geographical area;

## Baseline Enforcement Report (FY 2006 – 2007)

- Provide up-to-date performance measures on the Internet;
- Integrate Water Boards' Web sites containing permitted facility information with these of other state environmental agencies;
- Inspect permitted facilities on a regular basis for enforcement and education purposes;
- The Water Board's compliance reporting must cover all of the Board's regulatory programs, not just NPDES issues;
- Where the Regional Water Boards do not act to enforce environmental laws; the State Water Board should step in to protect the health of the state's surface and groundwater;
- Dedicated enforcement units should be established at each Regional Water Board;
- Permits should be enforceable and compliance deadlines should not be routinely extended;
- Increase the "on-the-ground" enforcement presence. Of the 1,500 State and Regional Water Board staff, only a handful are on the ground identifying violations;
- Develop a system to track whether enforcement actions solve the water quality problem and result in compliance;
- Review all Discharger Self-Monitoring Reports and document all violations, and subsequent enforcement responses in the Water Boards' data management system;
- Increase the assessment of fines and penalties in areas other than MMPs;
- Streamline the MMP enforcement process and to free up staff to focus on consent decrees, higher penalties, and other measures needed to deter and redress violations;
- Improve the enforceability of permits by addressing the lack of clarity in the provisions and setting enforceable deadlines for compliance;

## Baseline Enforcement Report (FY 2006 – 2007)

- Authorize Citizen Lawsuits under state law as a well recognized mechanism for enforcing environmental laws;
- Establish a publicly identifiable enforcement budget;
- Define training requirements for inspections and enforcement;
- Define inspection frequency requirements;
- Define data (Discharger Self-Monitoring Reports) review and analysis requirements;
- Determine and publish if Regional Water Boards (for MMP violations) have assessed penalties above the *minimum* amount required by the law and whether enforcement has resulted in compliance;
- Standardize Regional Water Board and State Water Board compliance reports;
- Publish the amount of economic advantage obtained by water quality violations and whether each enforcement action recovers the economic gain achieved by noncompliance; and
- Review enforcement actions taken by Regional Water Boards for consistency and compliance with laws, regulations, and policies.

## Appendix 3

### Spotlighting Water Board Enforcement Challenges

The Water Boards face serious challenges in using enforcement to address compliance issues. This appendix highlights some of the complex enforcement issues and challenges at the Water Boards.

#### Targeting Plastic Pellets (Nurdles) Under the General Industrial Storm Water Permit

##### Issue

In 2007, the Storm Water Compliance and Enforcement Unit at the Los Angeles Regional Water Board launched the Plastic Industry Enforcement Initiative (Initiative) to determine the regulatory status of plastics manufacturing sites. Plastic pellets, fragments and products form the bulk of marine debris and are a component of ocean pollution. Plastic pellets have been illegally discharged from manufacturing facilities and transportation facilities. Most of these facilities are subject to the General Industrial Storm Water Permit, which prohibits the discharge of these contaminants.

Approximately 924 plastics manufacturing sites were inspected from March through July 2007. Two warning notices to targeted sites requesting information about their operations were sent. These notices were followed up with inspections. A typical inspection reviewed the business operation of a site, identifying raw products, waste and final products, delivery systems, storage methods and general housekeeping. Staff prepared inspection reports supported by photo logs and recommendations. A database was created and maintained listing the target sites, their responses or lack thereof, inspection results, and final status determination. The 924 sites broadly fell into one of four categories:

- Needed permits and enrolled
- Needed storm water permits, but did not have a permit
- Might qualify for a no-exposure certification
- No operations that pose a threat to water quality



## Baseline Enforcement Report (FY 2006 – 2007)

It was determined that about 10% of the inspected sites had been operating without obtaining a General Industrial Storm Water Permit.

### **Challenge**

The Storm Water Program at the Los Angeles Regional Water Board has the highest number of industrial permittees in the state (3,000 permittees), and the second highest number of construction permits (2,800). The unit has seven staff, one of whom is dedicated to data management, and the remaining six perform field work with a unit supervisor. With the current level of staff resources, only a small portion of the region's storm water general permit facilities can be inspected.

When the Plastics Initiative began in March 2007, the unit's work plan called for construction site inspections until the rainy season was over in mid-April. A decision was made to shift resources to target this specific area of concern. The inspection of about 100 construction sites and notice of terminations was waived because of this switch in March to Initiative inspections. Two major inspection and evaluation work plans were also set aside: landfill inspections and group monitoring evaluations.

In July 2007, about 20 facilities were identified that ignored all notices and that posed a threat to water quality. Formal enforcement against these facilities awaits further resource allocation decisions.

### **Regional Approach**

The Enforcement Unit coordinated with its storm water municipal permitting counterpart to involve city inspectors to alleviate some of the inspection loads. Although city inspectors can help, Regional Water Board inspectors will still need to conduct spot inspections to confirm that the inspections and enforcement, performed by city inspectors, met MS4 permit requirements. These spot inspections created an additional inspection workload.

U.S. EPA also assisted the Regional Water Board by providing the services of their technical contractor, Tetra Tech. Tetra Tech, conducted inspections of 40 plastics sites over two weeks.

In 2007, AB 258 (Krekorian) was enacted to enhance the control of plastic pellets. To complement this law, regular inspection, public outreach, and enforcement are required. In order to carry out these tasks, the ability to shift resources to target the control of plastic pellets is

critical. The Governor’s 2008 – 2009 proposed budget includes additional resources for this legislation.

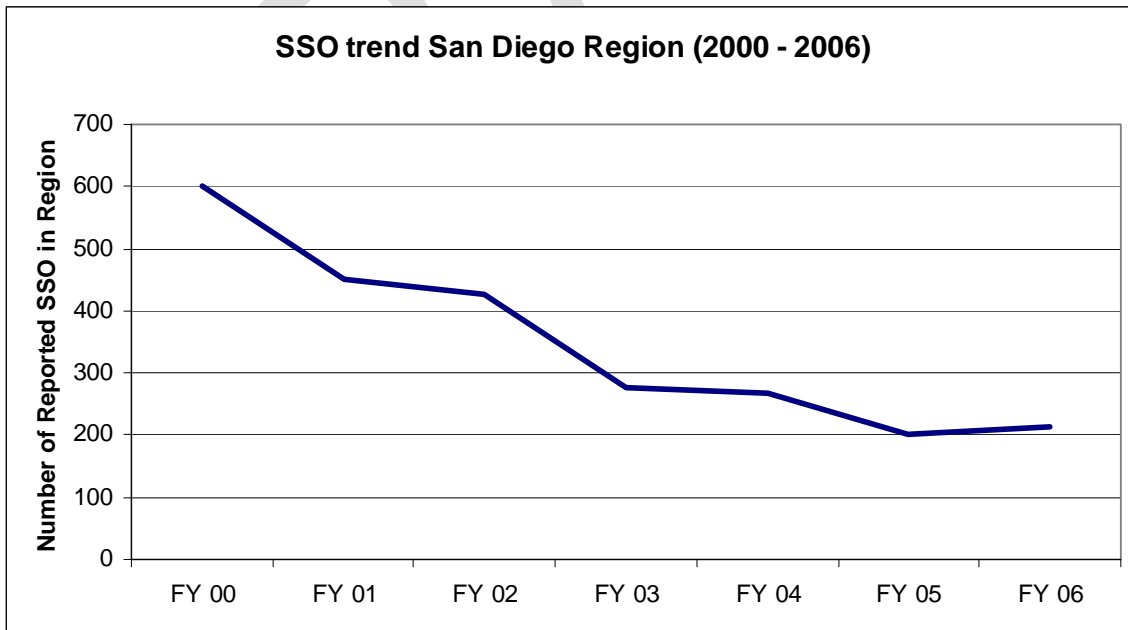
**Sanitary Sewer Overflows (SSOs)**

**Issue**

In 2006, the State Water Board adopted a Statewide General WDR for Sanitary Sewer Systems (Order No. 2006-0003). The statewide order builds upon San Diego Regional Water Board Order No. 96-04 (subsequently revised in response to the Statewide WDR) which requires public agencies that own or operate sanitary sewer systems to develop and implement sewer system management plans and report all SSOs through the State Water Board’s online SSO database.

The San Diego Regional Board’s vigilant oversight of sewerage agencies directly contributed to a steep decline in discharges from these facilities following the adoption of Order No. 96-04. The chart below shows the trends in SSOs in the San Diego Region since FY 2000<sup>10</sup>.

**Figure 21**



<sup>10</sup> The fiscal year begins in July and ends in June the following year.

## Baseline Enforcement Report (FY 2006 – 2007)

During June 2006 and September 2007, the San Diego region experienced 13 significant SSOs<sup>11</sup> that ranged from 140,000 gallons up to 14 million gallons. These spills affected all three counties within the Region and occurred during a prolonged dry weather period. The Regional Board assessed administrative civil liabilities (ACLs) for three of the SSOs. Six other SSOs are under investigation by the San Diego Regional Water Board enforcement staff, and four have been recommended for no further action.

### **Challenge**

With the adoption of the new Statewide General WDR for sanitary sewer systems, additional agencies are regulated that were not regulated under the superseded regional WDRs. Entities regulated by the new statewide SSO permit are now required to develop and implement a Sewer System Management Plan (SSMP). There is also an additional workload for San Diego Regional Water Board staff to review and approve these plans. The San Diego Regional Water Board is struggling to meet all of these workload needs.

### **Regional Approach**

The San Diego Regional Water Board has allocated 0.5 staff for SSO matters. This staffing is adequate to maintain the Region's ability to issue notices of violation for the worst of the spills, and report to the San Diego Regional Water Board. Current resource levels prevent the Regional Water Board from completing the underlying investigations and pursuing enforcement actions for all 13 incidents. A decision to pursue "no further action" for four of the incidents was made because of resource constraints. The San Diego Regional Water Board is now working with the newly formed Office of Enforcement (OE) to transfer the remaining cases still under investigation for either OE or US EPA follow-up.

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<sup>11</sup> A sanitary sewer overflow (SSO) is any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease. SSOs pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. Typical short-term consequences of SSOs include the closure of beaches and other recreational areas, inundated properties, and polluted rivers and streams.

## **Discharges from Irrigated Lands - Enforcement Issues Faced By an Emerging Regulatory Program**

### **Issue**

The Central Valley Regional Water Board adopted Resolution No. R5-2003-0105 to address discharges from irrigated lands. To carry out the resolution, the Regional Water Board instituted an interim program of conditional waivers until a 10-year implementation program could be developed. The interim program created two conditional waivers for waste discharges to surface water from irrigated lands: one for approved coalition groups and one for individual dischargers. The issue facing the program is getting eligible owners and operators of irrigated lands to comply with the law by: (1) enrolling as a participant in an authorized coalition group, (2) filing as an individual under the individual discharger waiver, or (3) filing an individual report of waste discharge for the purpose of receiving appropriate WDRs.

New waivers, incorporating refinements to the 2003 waivers were adopted in June 2006. The conditional waivers require covered dischargers to provide documentation that they are complying with applicable water quality objectives, protecting beneficial uses, and preventing nuisances. Dischargers also are required to implement an approved monitoring program to evaluate the effectiveness of their management practices to improve and protect water quality.

### **Challenge**

There are more than 7 million acres of irrigated lands and 21,000 miles of agricultural channels and agriculturally dominated waterways in the Central Valley.<sup>12</sup> More than 28,000 growers, with over 70,000 parcels encompassing more than 5 million acres, are currently enrolled in Coalition Groups.<sup>13</sup> Although the current participation level is good, there are still thousands of acres of irrigated lands with no regulatory coverage, which must be addressed.

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<sup>12</sup> Staff Report: Considerations of Water Body Designations to Comply with the Provisions of the Water Quality Control Plan for ISWP, California Regional Water Quality Control Board, Central Valley Region, 1992; *breakout* - 160 Category (b) natural water bodies, comprising a total of 1,512 miles, dominated by agricultural drainage and/or agricultural supply water, and 6,291 Category (c) constructed agricultural channels with a total length of 19,812 miles.

<sup>13</sup> Information based on participant lists submitted by Coalition Groups, July 2007.

Because of current staffing constraints,<sup>14</sup> the Central Valley Regional Water Board will need to establish an efficient enforcement strategy to: (1) pursue dischargers who have not enrolled in a coalition or did not file for individual waivers or discharge requirements, (2) ensure coalition groups and individual dischargers are in compliance with the regulatory requirements, and (3) identify and address illegal discharges from irrigated lands.

### **Regional Approach**

A strategy under evaluation by the Central Valley Regional Water Board is to target grower participation in the program within a specific geographical area. Regional Water Board staff would then: (1) identify all parcels and parcel ownership within the geographic area used for irrigated agriculture and those parcels and parcel owners not currently enrolled in a Coalition or granted an Individual Waiver; (2) issue information orders pursuant to *Water Code section 13267* to owners of the identified land not currently enrolled requesting that they provide information about whether the land is used for irrigated agricultural activities that discharge agricultural wastewater within the scope of the Irrigated Lands Regulatory Program; and (3) pursue compliance and enforcement action to enroll a targeted percentage of the dischargers or acreage not currently enrolled.<sup>15</sup> The Regional Water Board would develop performance measures to track and guide its progress in bringing these dischargers into compliance.

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<sup>14</sup> There are currently 16 staff members working in the program; 5 are in the unit responsible for outreach, compliance, and planning.

<sup>15</sup> The Central Valley Water Board staff believes that they are likely to identify numerous small farms which involve many landowners and little acreage. Individually, these small operations likely contribute little to the overall pollution problems, and it is often unclear whether the operations are or are not "dischargers" within the scope of the program. Thus, the goal for success would not be set at 100% participation.

## **Water Quality Violations at Waste Water Treatment Facilities in Small and Disadvantaged Communities**

### **Issue**

Small communities<sup>16</sup> face compliance issues with their wastewater management systems. These communities are commonly located in rural, sparsely-populated areas that require greater pipeline and pumping infrastructure. Small communities tend to lack: (1) the economies of scale to build and maintain adequate wastewater systems, (2) the knowledge and resources necessary to apply for grants and loans to help make wastewater projects more feasible, and/or (3) the technical knowledge to determine the best project alternative or to appropriately plan for long-term operations and maintenance needs, after they receive project funding.

There are many small communities that are on failing septic systems or have old and undersized wastewater treatment plants (WWTP) that cannot meet current water quality standards. Such systems can cause significant health and safety problems, endanger surface water uses, and pose a threat to groundwater supplies. Eighty-one percent of small communities regulated under the NPDES program had at least one violation between January 1, 2000, and June 30, 2006; and 77 percent of these communities regulated under WDRs had at least one violation during that same period.

### **Challenge**

Complete, accurate, and current information about municipal WWTPs and the agencies running them are essential for the management and evaluation of issues related to small communities. The Water Boards have tried to collect data about the character and conditions of these wastewater treatment facilities, however, issues remain with deficiencies in our data tracking system.

The Water Boards must also determine solutions to effectively address water quality violations at facilities in small communities. Using both formal enforcement actions and other compliance measures, such as

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<sup>16</sup> In California, small communities are generally defined as those communities with either: (1) less than 10,000 persons for wastewater enforcement purposes or (2) less than 20,000 persons for financial assistance purposes. Many small and/or rural communities are also considered disadvantaged (have an average household income of less than 80% of the statewide average).

financial, technical, and regulatory assistance will help reduce violations and maintain compliance.

### **Approach**

The Water Boards have formed a staff work group to learn more about the problems faced by small communities and to develop strategies to address those problems. In addition to these internal efforts, the Water Boards have met with community-based organizations to gain a better perspective of the current needs and issues of small and/or disadvantaged communities. These organizations support small, rural, and disadvantaged communities with water and wastewater resource policy, planning, and management.

The staff working group is developing a *Small Community Wastewater Strategy* for public review and comment. One of the strategies addressed will be the use of formal enforcement actions to deter noncompliance. It is anticipated that the *Water Boards' Small Community Wastewater Strategy* would be an evolving strategy that would be reevaluated and updated annually to incorporate new ideas and address emerging small community needs.

While enforcement will be a useful tool in addressing certain types of problems, and bringing increased awareness to the public about the compliance problems faced by small communities, the infrastructure problems faced by these communities are examples of water quality violations which cannot be addressed by enforcement alone.

## Appendix 4

### Examples of Water Board Enforcement Actions

Statistics alone cannot tell the story of the Water Boards' enforcement efforts. The following are examples of significant enforcement actions taken by the Regional Water Boards<sup>17</sup> during fiscal year 2006-2007.

#### North Coast Regional Water Quality Control Board

##### **McKinleyville Community Services District (CSD)**

McKinleyville CSD owns and operates wastewater collection and treatment facilities serving the unincorporated community of McKinleyville in northern Humboldt County. Wastewater is treated in four oxidation ponds, disinfected, and discharged into the Mad River. The level of treatment provided by this system did not meet effluent limitations contained in the District's NPDES permit, and the District experienced chronic violations for several years. The Northcoast Regional Water Board issued an ACL (Complaint No. R1-2006-0034) on March 16, 2006 for \$231,000 as an MMP covering 92 serious and nonserious violations. McKinleyville is a small community with a population of less than 10,000 and had a financial hardship, which allowed the District to complete a compliance project instead of paying the penalty into the Cleanup and Abatement Account (CAA). The District paid \$10,000 into the CAA to defray staff administrative costs and spent approximately \$800,000 on a compliance project to upgrade the wastewater treatment process. The upgrade included construction of an additional wetland treatment process to augment oxidation treatment. The wetland was constructed in 2007 and should provide full compliance with effluent limitations when it is fully developed in late 2008.

#### San Francisco Bay Regional Water Quality Control Board

##### **Cargill, Incorporated**

Cargill operates a series of salt-making ponds around the edges of San Francisco Bay. In 2005, Cargill negligently discharged about 7,100 gallons of bittern, a toxic by-product of the salt-making process, to the Bay. The San Francisco Bay Regional Water Board adopted an ACL of \$71,000 for the discharge. Of this amount, Cargill paid \$43,000 toward a supplemental environmental project (SEP). The SEP allowed the

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<sup>17</sup> Santa Ana Regional Board information was not available at this time.



decommissioning of six groundwater wells at the 830-acre Eden Landing Ecological Preserve, which is contiguous with 5,500 acres of South Bay salt ponds acquired in 2003. This SEP assisted the State Department of Fish and Game's on-going efforts in a salt marsh and wetland restoration project. Additionally, Cargill completed corrective measures to equipment, infrastructure, and work practices at its bittern rail car loading station, where the spill had taken place.

### **The City and County of San Francisco (City)**

The San Francisco Bay Regional Water Board assessed an administrative civil liability of \$626,000 against the City for a raw sewage spill. The spill closed Ocean Beach for two days. The City paid \$44,000 to the CAA, \$182,000 to the San Mateo Resource Conservation District to restore steelhead habitat on a tributary of Pilarcitos Creek, and \$402,000 to the National Park Service for the development and implementation of low impact demonstration projects with educational signage for urban storm water at Fort Mason.

## **Central Coast Regional Water Quality Control Board**

### **Los Osos Septic Systems**

The Central Coast Water Board had been working to require a community-wide wastewater collection and treatment system in the unincorporated community of Los Osos, San Luis Obispo County, for many years. High-density development on small lots has caused pollution of underlying groundwater. Recent enforcement actions have resulted in a promising start down the path to compliance. In 2005, the Water Board imposed a \$6.6 million penalty on the Los Osos Community Services District (CSD), which had halted construction on a fully designed, permitted, and financed wastewater system. In 2006, the Central Coast Regional Water Board proposed issuing cease and desist orders to individual homeowners for noncompliance with the Basin Plan. In response, Assembly representative Blakeslee carried legislation allowing San Luis Obispo County to explore a process to take over wastewater responsibilities from the CSD. The Central Coast Regional Water Board took individual enforcement actions. In 2007, the community overwhelmingly voted to assess itself the costs to allow the county to start the process of design, permitting, financing and construction of a collection and treatment system. The Central Coast Regional Water Board's enforcement actions were critical in getting this community on the road to a permanent solution to this significant water quality problem.

## **Los Angeles Regional Water Quality Control Board**

### **Los Angeles County Sanitation District**

This matter involved an administrative civil liability for discharging 1.5 million gallons of raw sewage from the County Sanitation Districts of Los Angeles' sewage collection system. Of the 1.5 million gallons spilled, approximately 64,717 gallons reached the Pacific Ocean, and approximately 776,773 gallons percolated toward and into groundwater. Also, about 9 miles of shoreline were closed for four days and 113,500 square feet of beach area at six different spill sites were closed for 23 days. The County Sanitation Districts of Los Angeles settled the case for a payment of \$2.5 million in penalties and supplemental environmental projects.

### **Environmental Crime Task Force Joint Enforcement Actions**

Subsequent to a joint inspection with the Department of Fish and Game and the Harbor Police, the Los Angeles Regional Water Board issued Notices of Violation and Requirements to Submit Information to Del Mar Seafood, Western Fish Company, and Seven Oceans Fisheries Corporation located in Fish Harbor, San Pedro. These actions addressed illegal discharges of wastes from their squid and/or fish off-loading operations resulting in impacts to beneficial uses of waters of the State including reducing dissolved oxygen to levels not sufficient to support most forms of aquatic life. The dischargers were directed to immediately cease discharge of wastes, initiate a clean up and abatement program and prepare a technical report that summarizes the efforts being made. The Los Angeles City Attorney filed charges and the settlement of the cases included injunctive relief and submittal of payment of Los Angeles Regional Water Board staff costs to the CAA .

### **The Boeing Company**

The Los Angeles Water Board issued a complaint for administrative civil liabilities against The Boeing Company, Santa Susana Field Laboratory for \$471,190, for violating effluent limits contained in their NPDES Permit. A total of 79 violations were cited from October 2004 through January 2006. On August 27, 2007, Boeing waived its right to a hearing and agreed to a monetary liability of \$471,190 and \$235,595 was deposited in the CAA. The remainder of the liability funded three projects on the Regional Water Board's SEP List. These SEPs include \$199,500 to fund a study on how trace metals are transported and their impact on water quality and aquatic life conducted by the Southern California Coastal

Water Research Project; \$22,000 to fund kelp bed restoration by the Santa Monica Baykeeper in the Santa Monica Bay; and \$14,095 to fund a storm water management pamphlet published by the Los Angeles and San Gabriel Rivers Watershed Council.

## **Central Valley Regional Water Quality Control Board**

### **The City of Folsom**

The City of Folsom, a satellite collection system in Sacramento County, previously experienced serious problems with large sanitary sewer overflows during wet weather events. During a five-year period, there were four significant storm water sewage overflows ranging in size from 84,000 to 700,000 gallons discharged to the American River. The Central Valley Regional Water Board issued a Cleanup and Abatement Order to require the City to undertake corrective action. The assessed \$700,000 administrative civil liability was paid in full. The actions taken by the Central Valley Regional Water Board resulted in numerous improvements being made to correct capacity deficiencies and infiltration/inflow problems in the collection system, and have eliminated the catastrophic spills that occurred in the past.

### **Applegate Wastewater Treatment Plant**

Placer County's Applegate Waste Water Treatment Plant (WWTP) provides domestic wastewater service for a small community. In 2001, the Central Valley Water Regional Board issued a Cleanup and Abatement Order to the Applegate WWTP for continued discharges to Clipper Creek and the North Fork of the American River. In the spring of 2006, the discharger reported that approximately 2.2 million gallons of partially treated wastewater had spilled into surface waters. A complaint for administrative civil liabilities was subsequently issued in the amount of \$300,000. The discharger requested a settlement conference, and the matter was settled with the payment of \$16,000, and agreement to enhance their performance through (a) collecting and hauling all wastewater generated during winter months to another permitted facility, (b) by September 2007, providing proof that the \$66,000 suspended portion of the liability has been used in the design of a raw sewage pipeline from Applegate to another permitted facility, and (c) beginning construction of the pipeline by September 2008. The enforcement action will result in the abandonment of the undersized Applegate facility that had a tendency to overflow and the redirection of the waste to a regional treatment plant.

### **Roseville/Fiddymment**

The Central Valley Regional Water Board assessed an administrative civil liability of \$375,000 against Roseville/Fiddymment for storm water violations at the Fiddymment Ranch subdivision construction project in Placer County. Roseville/Fiddymment paid \$50,000 to the CAA, and \$325,000 to Placer Land Trust for vernal pool management and upland riparian and wetland habitat acquisition projects. The enforcement action resulted in stopping and preventing the release of a significant amount of sediments to the receiving waters and in remedial actions that will enhance the quality of the local water resources.

## **Lahontan Regional Water Quality Control Board**

### **Kings Beach Sewage Spill**

On July 19, 2005, approximately 50,000-gallons of raw sewage was discharged to Lake Tahoe as a result of problems with a pier construction project. On October 11, 2006, the Lahontan Regional Water Board adopted an order that settled ACL (Complaint No. R6T-2005-0029) for \$325,000. The settlement included \$298,000 for a SEP to fund the purchase and maintenance of an emergency pipeline bypass system that is available to all sewer agencies in the Lake Tahoe and Truckee regions. Having such equipment at the time of the spill could have significantly reduced the discharge volume and effect on the lake environment. This enforcement case also raised awareness regarding the importance of calling the appropriate underground utility location service, and identifying the locations of such utilities prior to beginning earth disturbing activities.

### **Victor Valley Wastewater Reclamation Authority Percolation Pond Levee Failure**

On November 9, 2006, the Lahontan Regional Water Board adopted an order settling ACL (Complaint No. R6V-2006-0002) for \$500,000. The Complaint was issued in response to an 8.7 million-gallon spill of secondary-treated, non-disinfected wastewater to the Mojave River. The spill was the result of continuing discharges into one of the wastewater percolation ponds causing the pond's levee to be overtopped and erode. As a result, the pond's contents spilled into the Mojave River. The settlement included a \$382,000 SEP for funding a Mojave River Characterization Study to assess

water quality, biological resources, and beneficial uses of the Mojave River in the Victorville area. The study will provide valuable data that local and regional resource protection and planning entities can use in their efforts to protect the Mojave River in an area experiencing rapid development.

### **Colorado River Basin Regional Water Quality Control Board**

#### **Ormat Nevada, Inc.**

Three ACL complaints were issued in January 2007 to Ormat Nevada of Reno, Nevada for NPDES permit violations at two of its geothermal power plants located in Imperial County. In one of the cases, the Colorado River Regional Water Board assessed \$123,000 for administrative civil liabilities and MMPs of \$15,000 and \$108,000, respectively. The discharger agreed to pay \$69,000 for a SEP to maintain existing treatment wetlands near the New River and for the cleanup of dead fish in the Salton Sea. As a result of the penalties, the power plants have ceased discharging to surface waters.

### **Santa Ana Regional Water Quality Control Board**

#### **J. K. Properties, Inc.**

An administrative civil liability complaint was issued to J. K. Properties, Inc. (the corporate entity that operates the Faircrest Apartments in the City of Stanton, Orange County) for the discharge of 24,000 gallons of sewage to waters of the United States. A \$100,000 penalty (Complaint No. R8-2006-0060) was assessed against this corporation because of nature of the discharge. The corporation had a history of sewage spills, and had failed to conduct a routine on-site system cleaning program that would have prevented the discharge. Fifty percent of the penalty supported a SEP for a study by the Orange County Sanitation District on the effects on beneficial uses of receiving waters from sewage spilled from private properties and privately owned sewage collection systems in Orange County.

### **San Diego Regional Water Quality Control Board**

#### **Poway Unified School District, Garden Road Elementary School**

In November 2006, the Regional Board imposed a \$32,800 liability for violations of the statewide construction permit. Violations alleged in the complaint include: failure to enroll in the storm water permit, failure to have or implement a Storm Water Pollution

## Baseline Enforcement Report (FY 2006 – 2007)

Prevention Plan (SWPPP), and sediment discharge to waters of the state.

### **South Orange County Wastewater Authority (SOCWA)**

In May 2007, the Regional Board imposed a \$36,000 Mandatory Minimum Penalty against SOCWA for violations of effluent limitations established by Order No. R9-2000-0013, related to SOCWA's discharge to the Pacific Ocean through the San Juan Creek Ocean Outfall. A portion of the penalty (\$25,500) will be paid to Southern California Coastal Waters Research Project (SCCWRP) to fund a SEP which would enhance the Doheny Epidemiology Study.

### **State Water Board Office of Enforcement**

During fiscal year 2006/2007, formal enforcement action was most commonly used in cases of uncertified Waste Water Treatment Plant (WWTP) operations. In cases of an uncertified operator performing functions that requires operator certification, both the uncertified individual and the employer were held responsible for this violation of the laws and regulations. In one case, the individual involved was criminally convicted --- a first for this program.

### **John Ekizian: San Lucas County Water District**

On December 13, 2006, John Ekizian was convicted on misdemeanor charges for operating a WWTP without a license as required by law. Mr. Ekizian contracted to operate and maintain the San Lucas County Water District's WWTP without the required operator certificate. Mr. Ekizian falsely represented himself to the Water District and to the Central Coast Regional Water Board as a certified WWTP operator. The California Central Coast Regional Water Board and the Office of Enforcement conducted the investigation and referred the case to the Monterey County District Attorney's Office. The court placed Mr. Ekizian on 3 years probation, sentenced him to 30 days in jail and ordered him to pay \$4,000 in fines and enforcement costs. The San Lucas County Water District was assessed \$10,000 in administrative penalties.

**Louis Zamora: Stratford Public Utilities District (PUD)**

During a Central Valley Regional Water Board inspection of the Stratford Public Utility District's WWTP, Louis Zamora told the inspector that he had the appropriate certification to operate the WWTP, but that the certificate had burned in an office fire. In fact, Mr. Zamora was operating without a certificate, and had been for several years. Mr. Zamora was assessed an \$8,000 administrative penalty, and the Stratford PUD was assessed \$15,000 in administrative penalties.

**Richard Hiwa: Little Bear Water Company**

Richard Hiwa had been operating the Pine Canyon WWTP for many years without a valid WWTP Operator Certificate. The Little Bear Water Company owned the facility. The matter was referred to the Monterey County District Attorney's Office. The matter was resolved against Little Bear Water Company for a civil penalty of \$12,500 and the payment of \$5,000 in costs of enforcement.

DRAFT

**Appendix 5**



STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

**ENFORCEMENT COORDINATORS**

**North Coast Region (1)**  
www.waterboards.ca.gov/northcoast  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403  
**Tom Dunbar (707) 576-2701**  
tdunbar@waterboards.ca.gov

**San Francisco Bay Region (2)**  
www.waterboards.ca.gov/sanfranciscobay  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
**Alan Friedman (510) 622-2347**  
afriedman@waterboards.ca.gov

**Central Coast Region (3)**  
www.waterboards.ca.gov/centralcoast  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
**Harvey Packard (805) 542-4639**  
hpackard@waterboards.ca.gov

**Los Angeles Region (4)**  
www.waterboards.ca.gov/losangeles  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013  
**Hugh Marley (213) 620-6375**  
hmarley@waterboards.ca.gov

**Central Valley Region (5)**  
www.waterboards.ca.gov/centralvalley  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
**Dan Radulescu (916) 464-4736**  
dradulescu@waterboards.ca.gov

**Fresno branch office**  
1685 E Street, Suite 200  
Fresno, CA 93706

**Redding branch office**  
415 Knollcrest Drive, Suite 100  
Redding, CA 96002

**Lahontan Region (6)**  
www.waterboards.ca.gov/lahontan  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150  
**Scott Ferguson (530) 542-5432**  
sferguson@waterboards.ca.gov

**Victorville branch office**  
14440 Civic Drive, Suite 200  
Victorville, CA 92392-2383

**Colorado River Basin Region (7)**  
www.waterboards.ca.gov/coloradriver  
73-720 Fred Waring Dr., Suite 100  
Palm Desert, CA 92260  
**Doug Wylie (760) 346-6585**  
dwylie@waterboards.ca.gov

**Santa Ana Region (8)**  
www.waterboards.ca.gov/santaana  
California Tower  
3737 Main Street, Suite 500  
Riverside, CA 92501-3339  
**Steve Mayville (951) 782-4992**  
smayville@waterboards.ca.gov

**San Diego Region (9)**  
www.waterboards.ca.gov/sandiego  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
**Mark Alpert (858) 467-2963**  
malpert@waterboards.ca.gov

★ **State Water Resources Control Board (Headquarters)**  
1001 I Street, Sacramento, CA 95814  
www.waterboards.ca.gov

Director of Office of Enforcement  
**Reed Sato**

**All other Enforcement**  
**Mark Bradley (916) 341-5891**  
mbradley@waterboards.ca.gov



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**State of California**  
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Tam M. Deduc, Chair  
Dorothy Rice, Executive Director