



Update of Central Valley Regional Water Quality Control Board Compliance and Enforcement Activities

2006-2007 Enforcement Report

25 January 2008

Introduction

- Review of Enforcement
- Policies and Procedures
- Status and achievements
- A more detailed program presentation – ILRP
- Challenges
- Next steps



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Good morning Mr. Chairman, members of the Board. My name is Dan Radulescu. I am the Enforcement Coordinator for the Central Valley Region. I obtained a Master of Science Degree in Civil Engineering from Loyola Marymount University, Los Angeles, I am a licensed civil engineer in California and Oregon and a third year law student. I worked for fourteen years at the LARWQCB, mainly in surface water programs such as NPDES and storm water permitting and enforcement, and I was the pretreatment program coordinator for the LA region.

I would like to welcome to our meeting Mr. Reed Sato, Director of the State Water Board's Office of Enforcement, and staff from the office, who graciously accepted to participate to our meeting.

Regional Water Boards take very seriously their responsibility to implement water quality laws, plans and policies to protect public health and the environment. As a public agency, we are also committed to transparency in our processes. We are before you and the public to give a short overview of our enforcement activities and to give an update of the achievements and challenges. This morning, I will highlight:

- Reasons for evaluating enforcement activities
- An overview of policies and procedures
- Current status and achievements with a more in-depth presentation of our Irrigated Lands Regulatory Program
- Challenges
- And next steps designed to improve and enhance our enforcement efforts

This presentation is a continuation of the updates that we made in March of 2005 and August of 2006. Copies of those documents are available on our website.

Dischargers Have No Right to Discharge Without A Permit

- Protecting the environment is an important national goal
- Both Federal and State law gives us broad authority and discretion
- Enforcement is a priority

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It is significant to recognize that protecting the environment is an important national goal and that both federal and state law do not recognize a right to discharge without a permit and allow to degrade the quality of receiving waters.

The Clean Water Act is recognized as a tough law and it has very ambitious goals. Since its adoption more than 35 years ago we made significant progress but there is still plenty work to be done.

In addition, state law gives us broad authority and discretion to take appropriate action in a fair, consistent and balanced manner tailoring enforcement responses based on the specifics of the case, particularities of our region and in concordance with the existing policies of the State Water Board.

Governor Schwarzenegger's Action Plan for California's Environment and the Cal/EPA Strategic Vision established a management priority of improving enforcement. The Strategic Vision specifies: "Enforcement of the law must be consistent, predictable, fair, and equitable. There can be no equivocation or hesitation in the pursuit of individuals or businesses violating laws that protect human health and the environment."

Central Valley Region Facts

- Nearly 40 % of State's Land area
- 18% of State's population
- 2/3 of State's drinking water
- Nearly 30 million acre-feet of reservoir storage



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Before I enter into the details of my presentation I would like to present a brief overview of some of the impressive statistical facts taken from EO's extensive presentation of August of last year.

Our Region covers about 60,000 sq. miles or almost 40% of the State

18% of State's population lives here but it is expected a significant growth in the next decade

In our Region there are 36 of 58 counties

The largest west coast estuary

2nd largest contiguous groundwater basin in US

The majority of water quality issues faced throughout the state, such as discharges from dairies, irrigated lands, waste land application, timber harvest are in the Central Valley; if there is an issue throughout all of California you will have it in our region too.

San Joaquin Valley faces high growth rates but that also brings serious concerns about the waste disposal associated with this growth.

There is significant effort to meet the challenges in front of us, and we have to balance to balance our resources among competing priorities

Statistical Facts

Per each staff person:

- 232 sq. miles of land resources
- 44 stream miles
- 2,236 acres of lakes
- Hundreds of sq. miles of groundwater basin

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A quick statistical analysis reveals that there are significant expectations from our staff. The diversity and complexities of issues we are facing are unmatched by any other Regional Board, in my opinion. For example, each staff person is stewarding, on average, the protection of 232 sq. miles of land resources, 44 miles of streams and rivers, over 2,000 acres of lakes, and a significant area of groundwater basin

Statistical Facts

Per each staff person:

- 503 construction storm water dischargers
- 205 dairies
- 71 clean up cases
- 125 of UST cases
- 4,000 parcels in ILRP

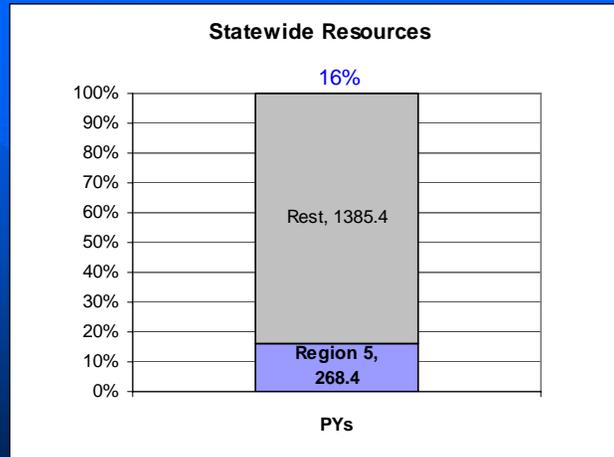
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In addition, this slide shows a brief and incomplete overview of some of the caseloads handled by the Regional Board staff in specific programs. The numbers are significant and unmatched in the State Water Board and Regional Boards system.

Statistical Facts



- Source: State Water Resources Control Board - Workforce Plan Framework - May 15, 2007
- State Water Resources Control Board - Analysis of Vacancies January 17, 2008

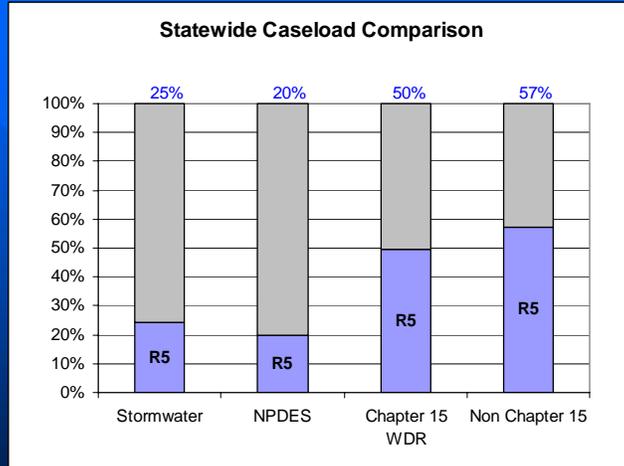
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Although we handle those impressive caseloads only 16% of the total statewide workforce in the State/Regional Water Boards system is allocated to our Region. These figures represent statewide total number of employees comparison, our region's resources are shown as the blue bar of the graph while the gray top portion represent the resources in the rest of the Regional and State Water Boards. Even with these limited resources it is not unusual to have dedicated at one time 50% or more of our staff working on compliance and enforcement issues.

Statistical Facts



- The highest caseloads for CAFOs and Irrigated Lands Regulatory Programs

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We regulate a significant number of dischargers and a wide variety of discharges, including waste discharges to surface waters or land, storm water discharges, discharges from USTs, landfills, discharge of mining waste and spills and leaks of various pollutants. The caseloads handled by the Regional Board staff in core regulatory programs are impressive. For example, based on current CIWQS data we handle 25% of all storm water dischargers, [the blue bar represents the portion handled by our region and the gray bar the other eight Regional Boards combined], 20% of all major NPDES permits and 17% of all NPDES permits, 50% of all Chapter 15 WDRs and 57% of all Non-Chapter 15 permits. The same high percentages apply for the other regulatory programs, such as Underground Storage Tanks, Clean Up sites, Water Quality Certification, Timber Harvest, etc.

In addition, our Regional Board handles the highest caseloads for Combined Animal Feeding Operations and Irrigated Lands Regulatory Programs in the state.

Reasons for Review of Policies and Procedures

- Governor's Action Plan for the Environment
- Cal EPA Enforcement Assessment
- Public Awareness
- U.S. EPA Enforcement Survey

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Why the attention to enforcement?

The State and Regional Water Boards have a strong policy with respect to enforcement. In addition, the Governor, Cal/EPA, and the State Water Board support strong enforcement. For example, the Governor's Action plan for the Environment provides:

“Strict law enforcement is vital to assure environmental protection, prevent polluters from achieving unfair competitive advantage against complying competitors, send a message of public values, and establish conditions conducive to creativity and participation in voluntary initiatives.”

A few years ago, Cal EPA performed a survey on enforcement conducted by the Boards, Departments and Offices. Some of the findings included:

Strengths:

Water Boards have clear administrative enforcement authority, and make good use of this authority – particularly in view of the very limited resources dedicated to enforcement tasks

Recommended areas to address:

We need to measure enforcement results, not enforcement activities. The focus should be on:

- Increasing compliance rates
- Reducing risks to the environment
- Better data analysis and information availability

Public awareness and interest in our performance is another reason to evaluate and discuss our policies and procedures.

Recently USEPA surveyed enforcement activities done in our region and region 4 on behalf of the State of California for a nationwide status report. In its preliminary draft, issued recently, the report concludes that we are performing excellent on enforcement in core regulatory programs, from a nationwide perspective. The report however identified that we have to significantly improve our data tracking and data management capabilities.

Regional Water Quality Control Boards – What Do We Do?

Primary Functions:



- Planning
- Regulation
- Enforcement

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The foremost responsibility of the Regional Water Boards is to implement water quality laws, plans and policies to protect public health and the environment. Primary functions include broadly speaking Planning, Regulation and Enforcement. In our today's presentation we are addressing only the enforcement aspects of our activities.

Enforcement: An Integral Component of Regional Board's Activities

- An enforcement action is typically the conclusion of a set of activities
 - Compliance determination
 - Monitoring report review
 - Compliance inspection
 - Field surveillance
 - Complaint investigation

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Typically, an enforcement action may be initiated by an inspection, a public complaint, a monitoring report review, field surveillance activities, etc. However, most of the times it is the conclusion of a sequence of activities and represents only the tip of the iceberg of those activities. It is not unusual that staff may spend hundreds of hours of work on a difficult enforcement case alone. That does not take into account the permitting, compliance determination activities preceding the enforcement action.

Basis for Enforcement

- The law prohibits discharging wastes without a permit
- Permits and Basin Plan contain conditions and provisions that must be complied with



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The law prohibits in general the discharges of pollutants without a permit unless there is a specific exemption.

Permits, orders and conditional waivers include: prohibitions, discharge specifications, provisions, task schedules, monitoring requirements. There are also conditions and prohibitions in the Basin Plan that must be complied with.

These form broadly the basis for enforcement.



Why Enforce?

Our chief goal is compliance. However, without a strong enforcement program, you cannot reasonably expect compliance.

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Our main goal is compliance. The permits are tailored to address specific water quality issues and protect beneficial uses. We depend on the dischargers to perform a self-evaluation of their performance and report to us if they meet the conditions of the permits or not. However, we need a strong enforcement program that verifies the level of compliance by all dischargers, determine if those that may need permits comply with the law, and take immediate enforcement when public health or the environment is in imminent danger of negative impact.

Enforcement Goals

- Protect Public Health and the Environment
- Prevent Pollution
- Promote Prompt Cleanup of Existing Pollution
- Deterrence

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The goals of the enforcement are to protect public health and the environment, prevent pollution, promote prompt cleanup of existing pollution. In addition our enforcement activities serve as a deterrence for those that are tempted to lower their standard of compliance or ignore the law.

Enforcement Goals

- Level Playing Field
- Compensatory Measure for Environmental Damage
- Encourage Self Compliance

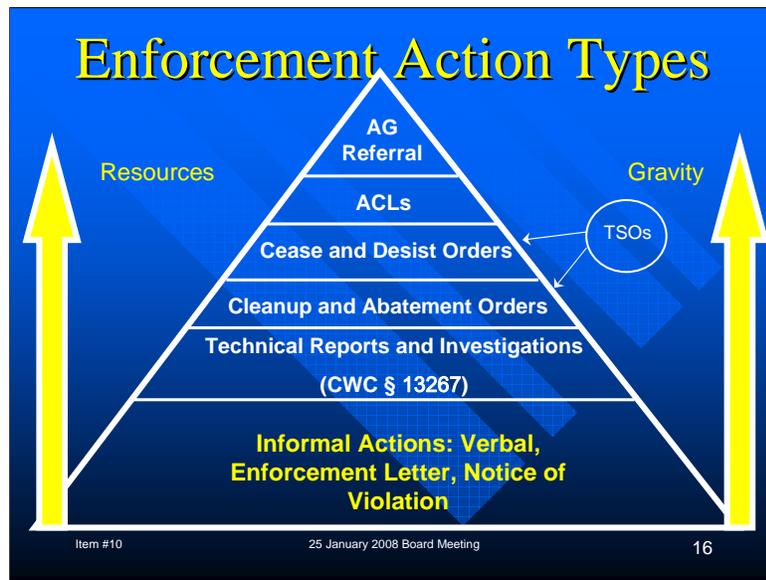
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We also strive to assure a level playing field – by this we mean that dischargers not complying should not gain unfair economic advantage over those complying, and our actions need to be consistent (those in like circumstances are treated alike).

In case of environmental damage the discharger has the responsibility to take remedial measures and we aim to promote and encourage self compliance by all our dischargers.



This slide is a simplistic depiction of what is a complex process. I will draw your attention to a number of points. I will go slowly since there is a lot of information on this one slide:

First

- Enforcement can be classified as **informal** which forms the base of the pyramid or **formal** which tend to be higher order activity.

- Consistent with State Water Board Enforcement Policy we use a **progressive enforcement approach**; generally we start at a lower or informal level which is cost effective and in many cases very effective in bringing about compliance. If compliance is not achieved, we move to increasingly more stringent actions until the discharger is in compliance. That is the “gravity” arrow. This arrow also reflects that if we are facing an egregious violation or significant threat to public health or the environment we will generally start with a more significant enforcement action, higher up in the pyramid.

Second point from this pyramid – resources. The higher up the pyramid we go, the greater the associated staff time and resources to conduct an action it will be. In light of our limited resources, we have to continuously balance our efforts between permitting, planning, compliance and enforcement activities

Third point – the base of the pyramid reflects the category of enforcement where we take the greatest number of actions. This is **informal** enforcement (staff spends a significant amount of time conducting informal enforcement but in general these activities are not yet comprehensively tracked in the data system – so this is one of the challenges I am going to talk later on). There are fewer actions in quantity as we move higher up the pyramid. As you note the bulk of the pyramid is composed by informal actions and 13267 investigative orders.

Informal actions include verbal communications by staff, written communications (staff enforcement letters) and notices of violation. Through **Water Code section 13267 Orders** the Regional Water Board may require a discharger who has discharged, discharges, is suspected of discharging, or who proposes to discharge waste to furnish, on request, under penalty of perjury, technical or monitoring program reports that may be needed to determine the status of the discharge or proposed discharge of waste.

The rest of the actions identified in the top layers of the pyramid are in the Water Code and are formal enforceable orders and include Time Schedule Orders which provides dischargers time schedules to come into compliance under certain conditions.

Fourth point – The Water Code is powerful and well crafted in that it provides a wide variety of tools to the Regional Board for addressing the wide variety of violations and circumstances we encounter, and provides the flexibility to carefully tailor enforcement responses that are most appropriate to the situation and will be the most efficient and effective.

In order to give you a better flavor of how enforcement is integrated with other activities I will turn over the presentation to my colleague Ms. Kelly Briggs, Senior Environmental Scientist; she leads and will present highlights from the Irrigated Lands Regulatory Program.

Irrigated Lands Regulatory Program: Overview

- Program background
- Enforcement elements
- Current efforts
- Tools
- Challenges
- Preview of 2008

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Background

- 7.2 million irrigated agricultural acres in Central Valley Region
- Responsible for protection of thousands of miles of waterways
- Participation
 - 5.1 million acres, 71,000 parcels, 28,000 participants
 - Non-participating extrapolation: 2.1 million acres, 29,000 non-participating parcels, 12,000 non-participants)
 - Some non-participating parcels have coverage under other programs or do not require waiver coverage

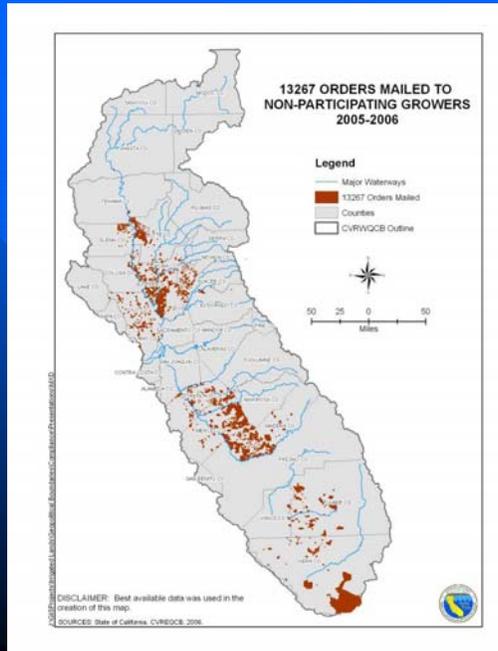
Background (cont.)

- Program Resources
 - 18 staff in three offices
 - 5 staff dedicated to compliance, outreach, planning
 - Coalition staff leads (7) also conduct compliance work
- 9 Coalition Groups

Compliance/Enforcement

- Administrative
 - Participation
 - CWC section 13267 Orders
 - Notices of Violation (NOVs)
 - Administrative Civil Liability
 - Coalitions
 - NOVs for late reporting
- Water Quality
 - Unauthorized discharges
 - Complaint follow up
 - Management Plans

Enforcement Efforts

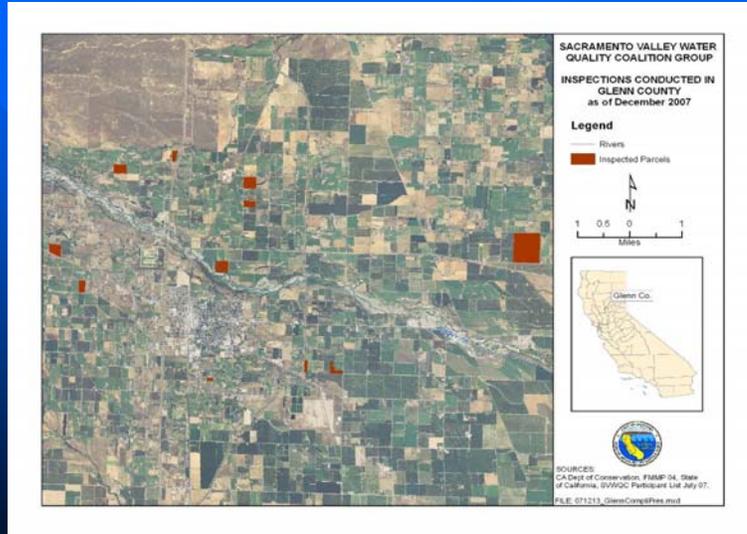


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Inspections

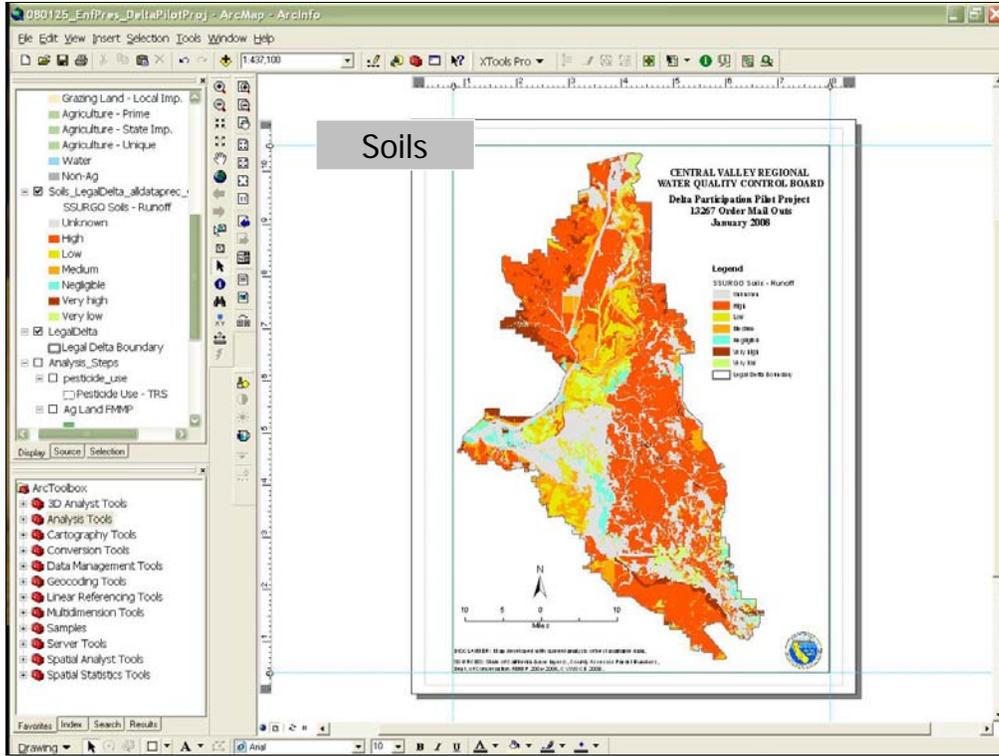
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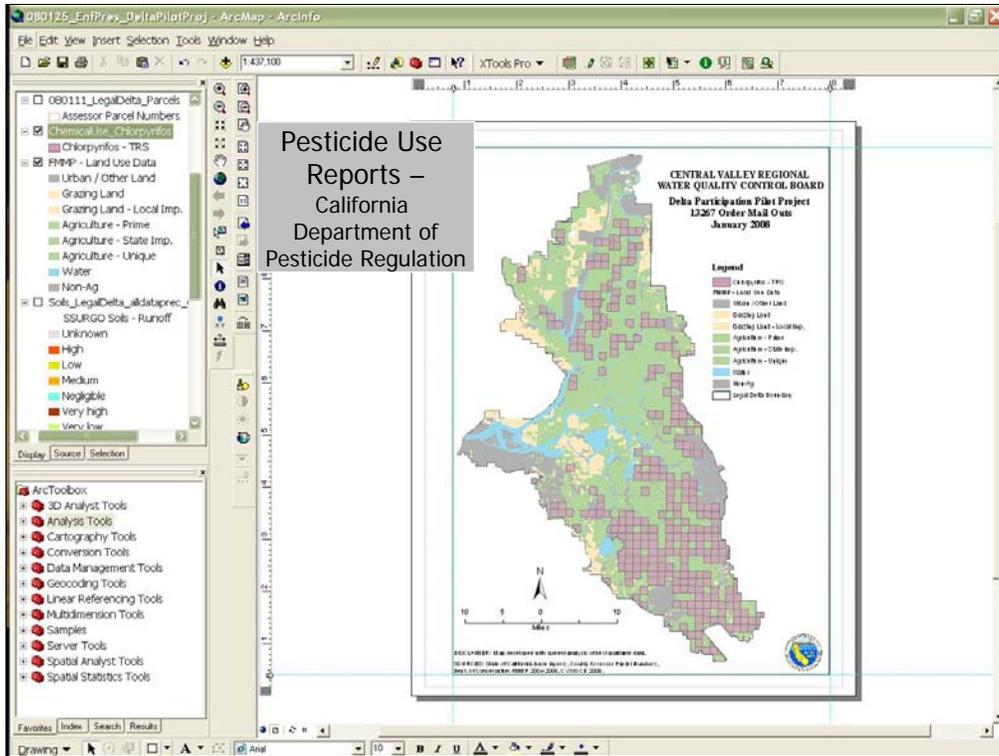


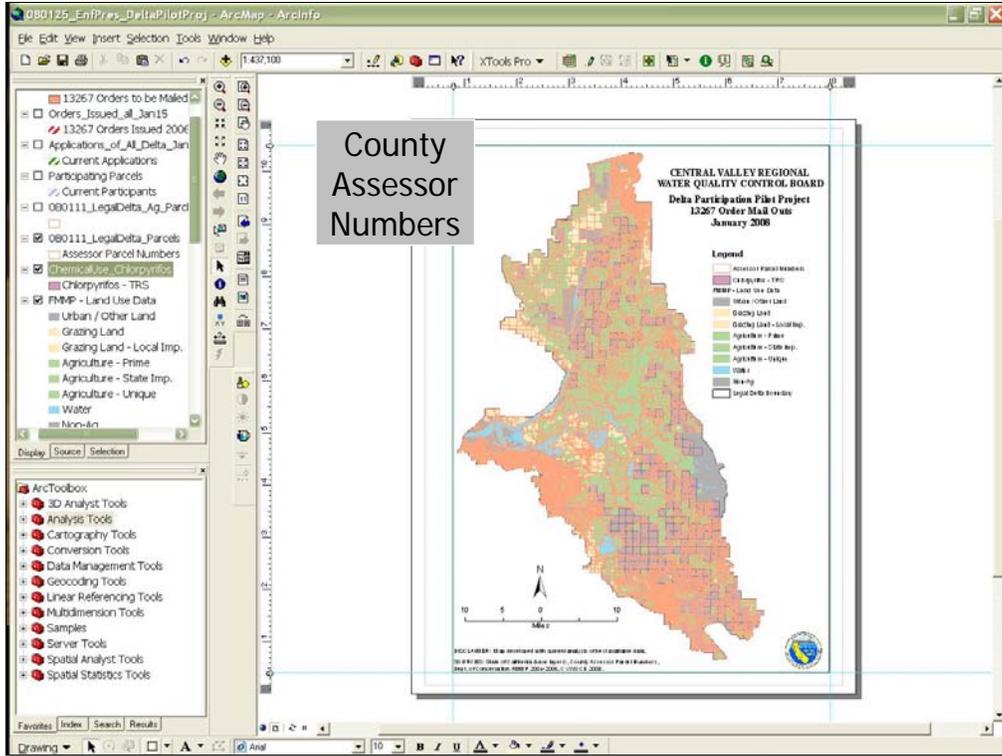
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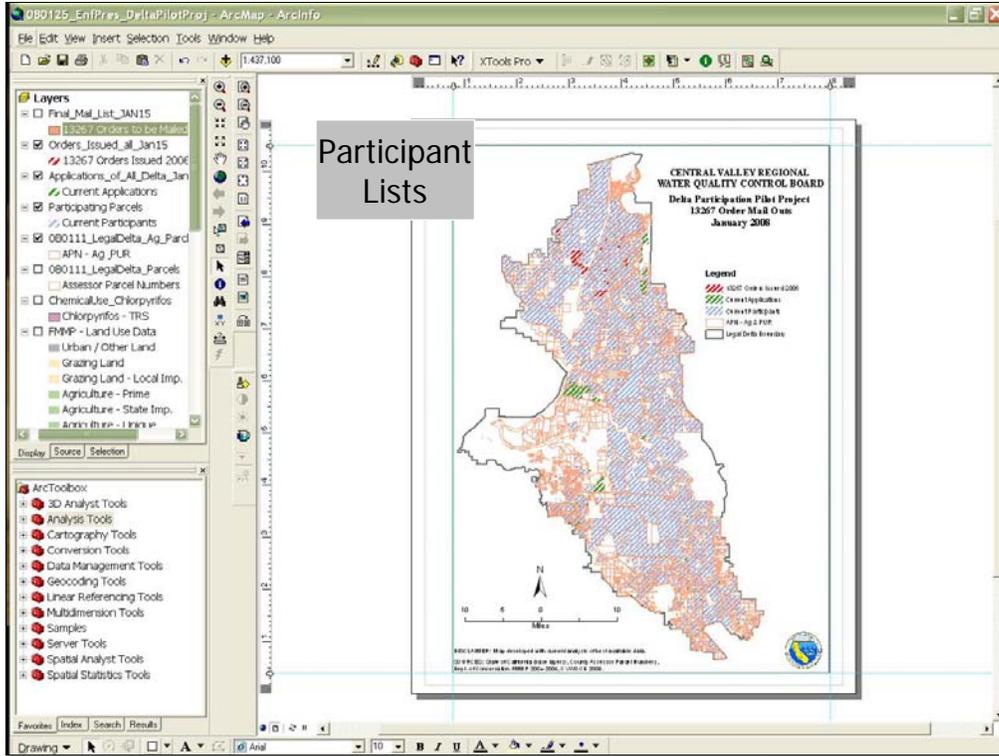
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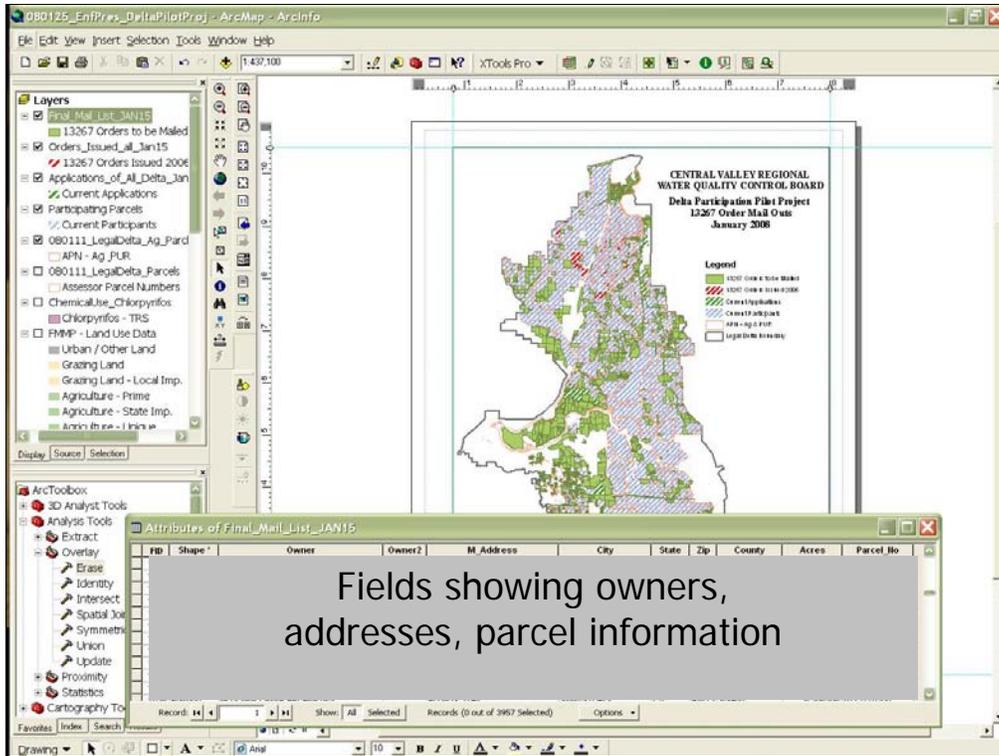
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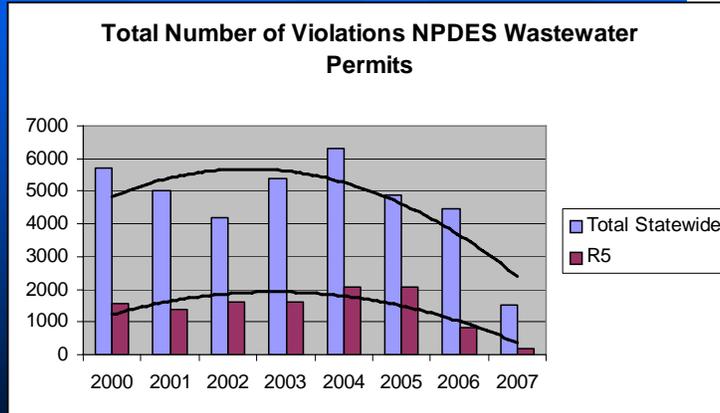
Challenges

- Addressing non-participants
 - Incomplete datasets
 - Incompatible data formats
 - # of cases vs. available resources
- Deadline to join Coalition Groups
- Prerequisites to enforcement
- Working smarter

Coming in 2008

- Increased field presence
 - Compliance
 - Outreach
 - Networking
- Delta Participation Pilot Project
- CWC 13267 Orders, NOVs, ACLs
- Unauthorized discharges
- Management Plans
- Continuing coordination with Coalition Groups

Current Status



California Environmental Protection Agency



DRAFT - ENFORCEMENT REPORT
(Per California Water Code Chapter 1.5 Section 13385)

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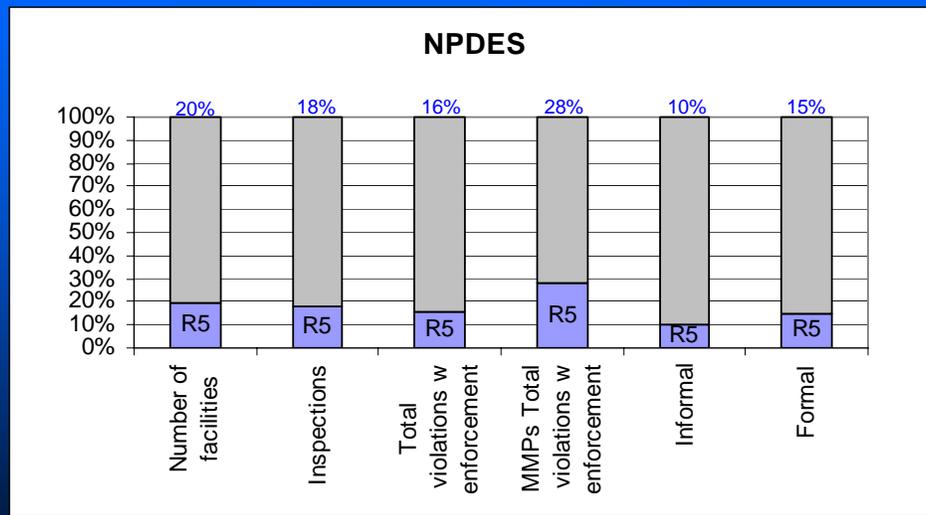
Next, I would like to guide you through a number of slides that will show the status of enforcement actions in our region in the context of a statewide perspective. Data sources used to prepare this brief overview include the mandatory 13385 reports, CIWQS data and additional internal data. Our Executive Officer already gave you an overview of the 13385 reports in the introduction to this presentation.

Based on the 13385 reports for core regulatory programs, there is a dip in violations and enforcement tracking on a statewide basis that includes our Regional Board's. I would like to make very clear that this dip is parallel with our transition to a new data management system, CIWQS, in mid 2005, and competing priorities for staff time. The spike in numbers for 2003 and 2004 may be related to the increase in capturing MMPs violations which have leveled off since then due to the fact that dischargers become more aware of compliance needs and perhaps fine tuned their processes.

In addition this dip mirrors our reorganization in the NPDES permitting section where a new enforcement unit was created and there was a focus in hiring new staff and get up to speed as quickly as possible. There was also a concomitant effort to deal with the NPDES permits backlog. It is significant to note that our staff has a number of MMPs actions waiting to be acted upon shortly, but these actions are very resource intensive.

Also most of the dip seems skewed toward the informal enforcement tracking where, historically we were not actively tracking very closely our activities. In addition, for calendar year 2007 data is incomplete since it will take some time until all the incoming data is evaluated and processed.

NPDES FY 2006



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Source: CIWQS data, 13385 Reports

However, a more in depth look at the statewide data reveals the performance of our Board's activities:

For fiscal year 2006, Region 5 had 20% of the statewide NPDES facilities and the level of enforcement efforts matches that caseload level. Again our Region is represented by the blue bar and the rest of the regional water boards by the gray portion of the graph.

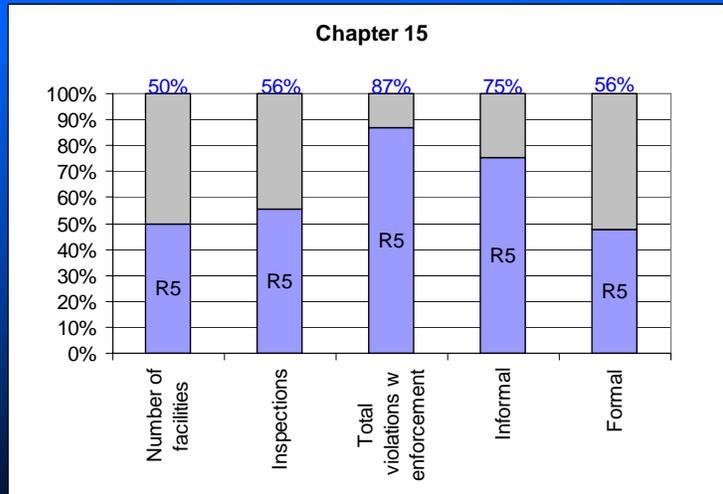
Our Board covered 15% of the statewide total number of violations that have been linked with an enforcement action;

18% of the statewide total number of inspections performed;

28% of the total of Mandatory Minimum Penalties violations linked with an enforcement action;

10% and 15% respectively of informal and formal enforcement actions. Again I would like to emphasize that the total informal enforcement numbers are definitely not accurately reflecting the level of effort that all the regions and offices are performing and this is an area where we work together with the State Water Board Office of Enforcement, CIWQS team, and the other regions to improve our data management performance to be more reflective of the actual effort.

Chapter 15 Land Disposal FY 2006



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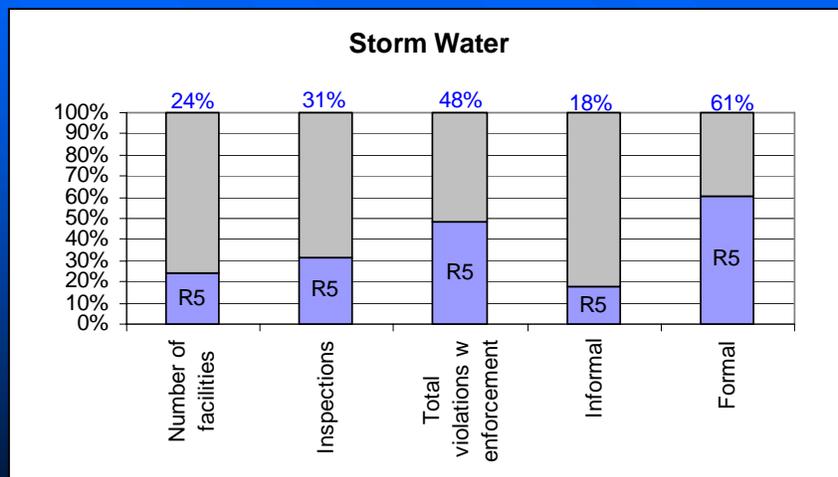
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Chapter 15 Land Disposal program accounts for 50% of the total statewide caseload

Based on the data logged in CIWQS we performed 56% of the statewide inspections, we have 87% of the total number of violations linked with an enforcement action, 75% of the total informal actions and 56% of the formal actions.

Storm Water FY 2006



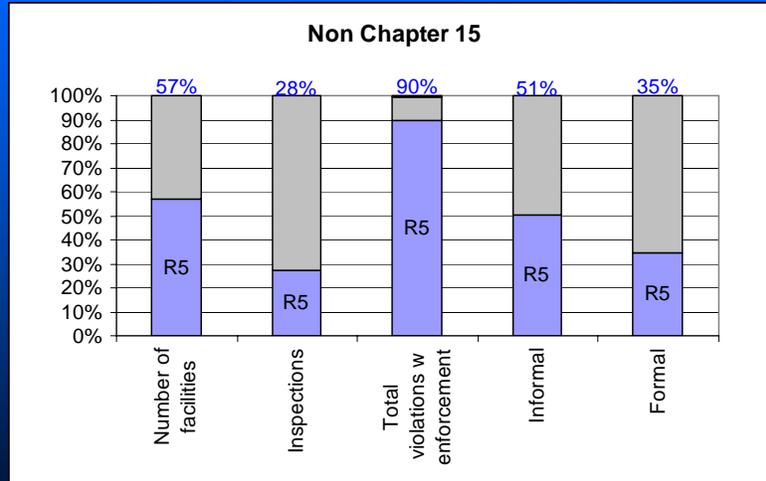
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Similar values can be seen for storm water program, where our region accounts for almost a quarter of cases and accounts for 31% of inspections, 48% of violations with enforcement, 18% of informal and 61% of formal.

Non Chapter 15 Land Disposal FY 2006



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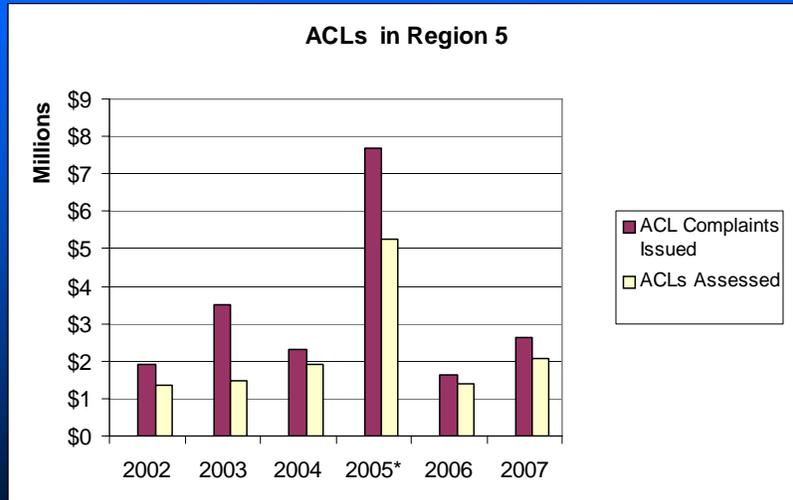
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Non Chapter 15 land disposal and land disposal/landfill/surface impoundment accounts for 57% of total statewide number of facilities, 28% of inspections, 90% of violations linked with enforcement, 51% of formal and 35% of formal enforcement actions.

I would conclude that overall our region performs well above average and recognize that we are addressing areas where we need improvement such as better data tracking and management.

ACLs in Region 5



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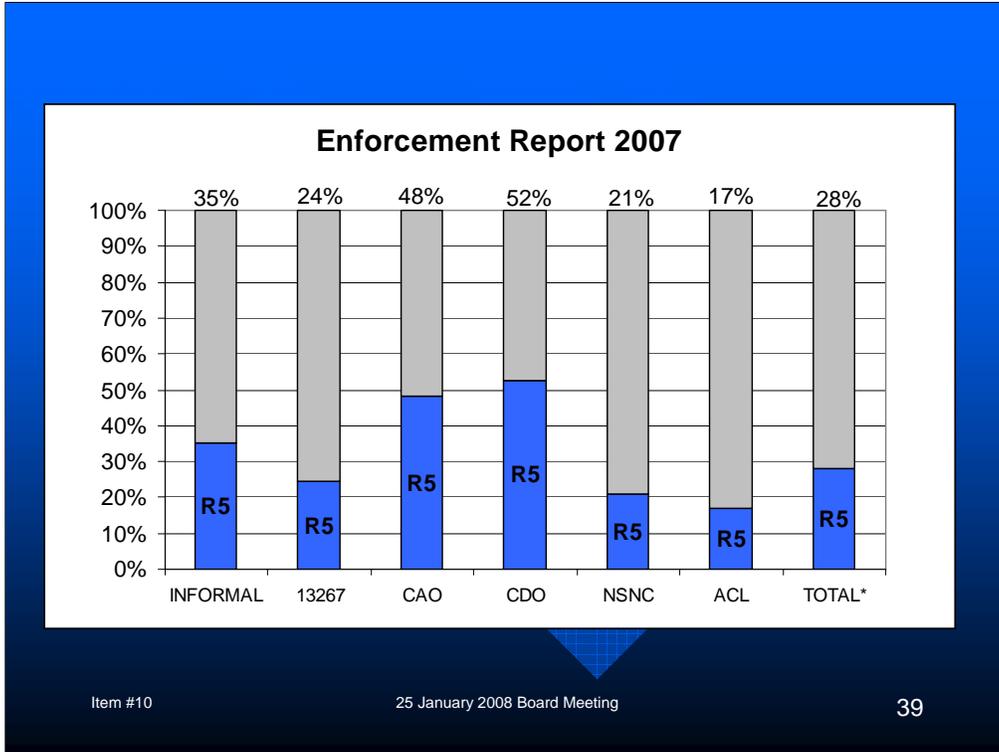
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* Includes Hilmar Cheese ACL

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Several sections of the Water Code authorize the Regional Board to impose **Administrative Civil Liabilities** (ACLs) to address past violations. Sometimes, a fine is what is necessary to get a discharger's attention and bring about compliance. The Water Code authorizes the Executive Officer to issue an ACL Complaint, or ACLs Orders can be adopted by the Board in a public meeting. If the underlying problem has not been corrected, the ACL action should be accompanied by an order to compel future work by the discharger (e.g., a CAO or CDO).

Although the amount of monetary penalties assessed is not a scientific measure to assess the level of our activities it is significant to note that we are using this tool on a consistent basis and we use it as appropriate to the circumstances of the case. Issuing Administrative Civil Liabilities is very resource intensive, as you recall ACL Orders were at the top of the enforcement pyramid. Although resource intensive, as the graph shows, the Regional Water Board did not hesitate to use it in concordance with the magnitude of the non compliance as demonstrated by the spike in 2005, when one of the highest penalties in the regional board's and state's history was issued to Hilmar Cheese. It also sends a clear message that we take compliance very seriously.



Although data for calendar year 2007 is still incomplete our Region's demonstrates good performance overall.

Challenges

- Prioritization
- Data Management
- Resources

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Although our performance was more than adequate, we know there are certain areas where there is room for improvement. Some of the challenges we face include

Prioritization

Data Management

Resources

Prioritization

- Enforcement Policy
- State Water Board Efforts
 - Enforcement Roundtable
- Regional Board Process
 - Compliance Oversight Group

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The Enforcement Policy identifies the importance of, and requires prioritization of enforcement actions. We strive to use the most appropriate tools and approaches to prioritize our work in light of the resources available. We aim to focus our efforts toward those dischargers that may show patterns of chronic non-compliance, on discharges exceeding the prescribed effluent limits into sensitive water bodies and impacting beneficial uses, spills and other discharges that may have an immediate impact on public health and the environment. However, a significant amount of our time is dedicated to processing MMPs as this task is mandated by state law. We are working closely in coordination and cooperation with State Water Board's Office of Enforcement on the implementation of the Enforcement Policy and we participated and commented in the preparation of the draft updates to the Policy scheduled for adoption this summer. We participate in the statewide enforcement roundtable to coordinate and achieve statewide consistency and share our experiences.

We are also actively engaged in refining our internal prioritization process. One mechanism that we are using is the Compliance Oversight Group. The Compliance Oversight Group meets on a regular schedule and discusses issues of consistency related to enforcement and coordination between our offices and between our region and State Water Board.

Data Management

- Consistency in Recording Violations
- Consistency in Tracking Enforcement Actions
- Enhanced Tracking of Enforcement Actions and Compliance
- Data Entry Unit

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Good data is an important tool to help us quickly, effectively and accurately identify issues and prioritize efforts. Presently, the data tools we have are cumbersome and they do not contain all of the information we need to conduct the type of prioritization process we are developing. Additionally, there are differences in how data is recorded, and this prevents ready comparisons for a prioritization analysis. We work with the State Water Board's CIWQS data management team and Office of Enforcement to improve consistency and enhance the recording of violations and tracking enforcement actions.

We are refining our data entry routines and protocols to be more efficient and improve our ability to track, account and take full credit for our informal enforcement activities. As I mentioned before, this is an area where historically we have not focused specifically although we are performing a significant amount of activities.

As part of our efforts to enhance our data management capabilities, recently a dedicated water quality data support unit was created and we hope it will be fully staffed and operational soon.

Resources

- Existing Resources for Enforcement
- Supplemental Environmental Projects

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Resource allocation will continue to be a challenge: we will have to continue balance our efforts between permitting, compliance, enforcement and Basin Planning to meet our mandates.

Just recently in order to provide more focus on enforcement our Rancho Cordova office is going through a reorganization that includes a new Enforcement Section that is dedicated to address enforcement issues of core regulatory programs. This action is in tune with the 2005 State Water Board Enforcement Plan that recommended the creation of dedicated enforcement units at each Regional Water Board. The Redding and Fresno offices are also actively considering the same realignment focused on enforcement.

As part of our enforcement actions we use Supplemental Environmental Projects in lieu of a portion of the monetary penalty when appropriate and if the projects are of good quality. SEPs are projects that enhance the beneficial uses of the waters of the state. SEPs can be a good means to retain resources within the region for water quality work, but these can require a significant amount of staff time. Staff will propose in the near future for Board's consideration a criteria for how proposals can be accepted on a SEP list for our region and provide for third party oversight to alleviate some of burden on staff time spent on oversight.

In the draft update to the Enforcement Policy it is proposed a drastic reduction in percentage of a credit from a monetary penalty that may be allocated toward a SEP. We believe that the flexibility to use this tool should continue to be available and Regional Water Boards should continue to have the discretion to use SEPs when warranted at the level of flexibility allowed by the law.

Next Steps

- Future challenges
 - Prioritization
 - Improved data management
 - Resources
 - Public Awareness

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Although we accomplished a lot in the past two years, there is room for improvement. It is imperative that we work smarter and find innovative ways to achieve our goals. In addition, with the current emphasis on enforcement, we will coordinate closely with the State Water Board's Office of Enforcement and other divisions and the other Regional Boards. We intend to improve the transparency of our activities and present updates on a consistent basis and to augment the information publicly available on our website.

A number of areas are on our immediate to do list, such as improving and stepping up the data entry and tracking of our activities.

The recent reorganization is also a definite sign of our commitment to a focused and consistent enforcement. We will continue to work with the dischargers that make efforts to maintain an adequate level of compliance and we will not hesitate to take action by using the progressive enforcement approach against those that will attempt to lower their standard.

We will continue to strive for firm but fair and balanced enforcement and we will continue to focus our attention on the critical water quality issues confronting our region. We will continue to keep the public aware of our activities and enhance our information dissemination tools.

We welcome your guidance and recommendations if our strategy is meeting the expectations and goals set out for our region.

Questions?



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If there are any inaccuracies in this presentation the responsibility is all mine. I thank you very much for your attention and I am ready to answer any of your questions.