

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
May 18, 2017
Regional Water Board Office
Santa Rosa, California

ITEM: 5

SUBJECT: Update on the State Water Board's Water Quality Enforcement Policy (*Cris Carrigan and Yvonne West, State Water Board, Office of Enforcement*)

BOARD ACTION: No action is needed; this is an information item.

BACKGROUND: The Porter-Cologne Water Quality Control Act grants the State and Regional Water Boards (Water Boards) the authority to implement and enforce water quality laws, regulations, policies, and plans to protect waters of the state. The State Water Board issued an Enforcement Policy, which became effective in February 2002, to define an enforcement process that protects and enhances the quality of waters of the state and addresses water quality problems in a firm, fair, efficient, effective, and consistent manner. The State Water Board first amended this policy in November 2009 (effective in May 2010). Amendments to the policy made in 2009 included a prioritization process of enforcement actions and a methodology for calculating administrative civil liabilities (ACLs).

DISCUSSION: On April 4, 2017, the State Water Board further amended the policy (Supporting Document 1). The amended policy needs to be approved by the Office of Administrative Law before it takes effect. Cris Carrigan, Director and Yvonne West, Senior Staff Counsel at the State Water Board's Office of Enforcement, will update the Regional Water Board and the public on the key amendments to the policy including the fine-tuning to the penalty calculation methodology. They will also give a preview of a planned revision to the Supplemental Environmental Project Policy that is currently underway.

Enforcement Policy Amendments

The key amendments are focused on updating the Enforcement Policy to reflect recently-adopted legislation and Water Board policies addressing environmental justice and the human right to water, describing the discretionary enforcement prioritization process with more transparency, and fine-tuning some of the provisions of the penalty calculation methodology.

The Enforcement Policy now focuses the Regional Water Boards on the case prioritization model more than the violation prioritization model. This is a two-step process where violations are first ranked, and then viewed through the lens of a variety of different factors, including the severity of impacts to beneficial uses, suites of violations, compliance history, or certain categories of discharges within the region. The case model approach allows greater flexibility and a more nimble approach to deploying scarce enforcement resources. One of the factors to be considered in the second step of prioritization is

whether a violation implicates the human right to water. Supporting Document 2 provides illustrations of the basic framework of the penalty methodology for reference.

At Administrative Civil Liabilities (ACL) hearings, the Water Board must consider how its prosecution staff have applied penalty factors and derived the penalties proposed in ACL actions. The Water Board may decide to impose, modify, or reject the proposed penalties after hearing testimony. The penalties proposed by prosecution staff or modified by the Water Board must be based on the factors set forth in the penalty calculation methodology. The Water Board's advisory staff and counsel assist the Water Board in this process.

Supplemental Environmental Project (SEP) Policy and Future Amendments

In 2009, the State Water Board adopted a SEP Policy (Supporting Document 3). The SEP Policy allows a discharger to satisfy part of the monetary assessment imposed in an ACL Order by completing or funding one or more eligible SEPs. SEPs are projects that enhance the beneficial uses of the waters of the state, have a nexus to the violation(s) cited in the ACL, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger.

The Office of Enforcement is in the process of revising the 2009 SEP Policy to more clearly incorporate the requirements of [Assembly Bill 1071 \(AB 1071\)](#), pertaining to the CalEPA and its Boards, Departments, and Office. The policy will be revised to clarify and include each of the following:

1. A public process to solicit potential SEPs from disadvantaged communities.
2. Allowing the amount of a SEP to be up to 50 percent of the enforcement action brought under the jurisdiction of a board, department, or office within the agency.
3. An annual list of SEPs that may be selected to settle a portion of an enforcement action under the jurisdiction of a board, department, or office within the agency.
4. A consideration of the relationship between the location of the violation and the location of the proposed SEP.

The SEP Policy revision planned timeline is as follows: public workshop(s) in Spring/Summer 2017, public comment period in Summer 2017, and State Water Board hearing in Fall 2017.

RECOMMENDATION: N/A

SUPPORTING DOCUMENTS:

1. 2017 Enforcement Policy – under separate cover http://www.waterboards.ca.gov/board_info/agendas/2017/apr/040417_9_2017_enf_policy.pdf
2. Penalty Calculation Methodology (Basic Framework)
3. 2009 Supplemental Environmental Project Policy - under separate cover http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf