

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Thursday, October 15, 2020
Regional Water Board Office
Santa Rosa, California

ITEM: 5

SUBJECT: Enforcement Update: Discussion of Regional Enforcement Priorities for 2020-2021 (Diana Henriouille)

BOARD ACTION: This item is an informational item only; no action will be taken by the Regional Water Board.

BACKGROUND: On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted the 2017 Water Quality Enforcement Policy (Enforcement Policy), which became effective October 5, 2017. The Enforcement Policy recommends that on an annual basis, enforcement staff for each Regional Water Board "seek input at a regularly noticed public meeting of the Regional Water Board and consider identifying general enforcement priorities based on input from members of the public and Regional Water Board members within thirty (30) days thereafter."

In July 2018, North Coast Region enforcement staff presented to the Board proposed enforcement priorities for the year, and accepted comments from the Board and members of the public. Following the Board meeting, staff finalized a list of priorities, which included:

- Prioritize and pursue enforcement cases for discharge violations associated with site development and use for cannabis cultivation;
- Identify, prioritize, and pursue enforcement cases for discharge violations associated with agricultural activities other than cannabis cultivation;
- Pursue non-filers under all our applicable regulatory programs;
- Take timely follow-up enforcement, including progressive enforcement and/or penalty assessment, where appropriate, on missed deadlines for all active enforcement orders; and
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits.

Staff also incorporated screening criteria to assist in prioritizing cases, recommending that higher priority for formal enforcement be placed on violations where one or more of the following criteria are met:

- Violation has resulted in threats/impacts to critical habitat for a listed endangered or threatened species;

- Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring;
- Violation is contributing to a watershed impairment; and
- Violation has resulted in impacts to a public drinking water supply.

On October 17, 2019, staff again presented to the Board an informational update, reviewing enforcement accomplishments over the past year within each priority category, overall enforcement efforts, and recommendations for adjustments to the enforcement priority list and screening criteria for the year ahead. Staff noted that the enforcement priority list has proven beneficial in helping to focus limited resources, and that the priorities had fit well with the types of violations encountered over the course of the year. Staff proposed only minor changes to the priority list for the year ahead. These changes included:

1. Adding one priority:

- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.

2. Deleting one priority:

- Pursue non-filers under all our applicable regulatory programs.

3. Adding one screening criterion:

- Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.

The Board generally expressed support for staff enforcement efforts, and following the October 2019 Board meeting, staff notified Office of Enforcement staff of the modifications to Region 1's priority list for 2019-2020.

Discussion: During the October 2019 presentation, staff reported to the Board that hiring over previous months had filled several vacant positions in both the enforcement and NPDES units, and that recent momentum in overall enforcement accomplishments was likely to continue and increase. Subsequent events served to hamper our optimistic predictions, as we experienced power outages; evacuations for fires; both short- and long-term office closures for disasters, civil unrest, extraordinary weather events, and a global pandemic; COVID-19-related limitations on travel and field activities; departures of staff; significant resource reductions; and related hardships on our regulated community. Despite these difficulties, staff continued, though at a slower pace, to pursue enforcement consistent with the regional priorities. At the October 2020 Board meeting, staff will update the Board on enforcement accomplishments over the past year.

Staff will also discuss with the Board proposed changes to the priority list for the year ahead, acknowledging that limitations and restricted conditions are likely to continue into the foreseeable future. Specific recommended changes for the 2020-21 regional enforcement priority list include the following, identified by ~~strikeout~~ and underlined font with a brief explanation for these changes in italicized font:

- Prioritize and pursue enforcement cases for waste discharge violations associated with site development and use for cannabis cultivation, without applicable permits.

This proposed change reflects the significant recent reduction in staffing and resources for the cannabis program, and direction from the statewide Cannabis Executive Oversight Committee regarding the program priority to pursue enforcement of water quality laws at illegal cultivation sites.

- ~~▪ Prioritize and pursue enforcement cases for waste discharge violations associated with agricultural activities other than cannabis cultivation~~

This proposed change acknowledges our generally limited staff resources and availability. At the same time, on the regulatory side, we have combined and redirected resources toward development of regulatory/permitting tools for discharges associated with agricultural activities. While staff recommendation is to remove this as an enforcement priority for the reasons stated here, if an agricultural-related discharge meets the screening criteria, then such a violation will be prioritized for enforcement action.

Retain the remaining priorities, unchanged:

- Pursue timely enforcement on missed deadlines in existing enforcement orders;
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits;
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.

Additional Screening Criteria

Retain these criteria, making only a single change, as shown:

- Violation has resulted in threats/impacts to critical habitat;
- Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring;

- Violation is contributing to a watershed impairment;
- Violation has resulted in impacts to a public drinking water supply that serves a disadvantaged or severely disadvantaged community or a community with financial hardship.

This proposed change serves to emphasize the North Coast Regional Board's continuing commitment to environmental justice and advancing the Human Right to Water as resolved by the Regional Water Board in April 2019 (Resolution R1-2019-0024).

Staff propose to continue to reserve the option to pursue enforcement action for cases outside of the priority list:

Unexpected significant cases outside of priorities

- High threats/significant impacts
- Egregious discharger conduct
- Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.

Finally, the enforcement update that staff presented to the Board in October 2019 consisted of two parts: a discussion about regional enforcement priorities, and a presentation and discussion about implementation of the State Water Board's Supplemental Environmental Project (SEP) Policy. As part of the latter discussion, staff presented, and the Board adopted, Resolution No. R1-2019-0046 approving a process for soliciting, posting and maintaining a list, and using supplemental environmental projects in the resolution of enforcement cases involving penalty assessment. The approved process includes a periodic reporting to the Board, by staff or the Executive Officer, of any changes made to the list, use of projects in enforcement cases, or other relevant developments related to implementation of the SEP Policy. Although there have been no significant changes or developments over the past year, staff will provide the Board with a brief SEP review and status update during its presentation.

Summary: The recommended enforcement priorities and screening criteria for the North Coast Region, for 2020-2021 are:

- Prioritize and pursue enforcement cases for waste discharge violations associated with site development and use for cannabis cultivation, without applicable permits.
- Pursue timely enforcement on missed deadlines in existing enforcement orders;

- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits;
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.

Additional Screening Criteria

- Violation has resulted in threats/impacts to critical habitat;
- Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring;
- Violation is contributing to a watershed impairment;
- Violation has resulted in impacts to a public drinking water supply that serves a disadvantaged or severely disadvantaged community or a community with financial hardship.
- Violation falls outside of the priority list but is associated with:
 - High threats/significant impacts
 - Egregious discharger conduct
 - Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.

Recommendation: N/A

Supporting Documents: N/A