

SUPPLEMENTAL  
EXECUTIVE OFFICER SUMMARY REPORT  
March 11, 2009

- ITEM: 11
- SUBJECT: Workshop: Informational workshop on the Regional Board's enforcement function, emphasizing implementation of the State Water Board's Water Quality Enforcement Policy and consideration of supplemental environmental projects. Public comments are encouraged. The Regional Board will not be taking action on this item (Jeremy Haas).
- PURPOSE: Today's workshop will provide an overview of processes used to implement the Board's enforcement function and to direct funding toward supplemental environmental projects.
- PUBLIC NOTICE: Information for the workshop has been provided in the agenda mailing and posted on-line.
- DISCUSSION: Enforcement is an integral function of the regulatory programs and authorities of the Regional Board. To ensure compliance with waste discharge requirements that implement applicable statutes, regulations, and policies, the Regional Board evaluates compliance with requirements and enforces against non-compliant dischargers.
- Enforcement actions are guided by established statute, regulations, and policy. Enforcement authorities are established within Division 7 of the California Water Code, the Porter-Cologne Water Quality Control Act. The State Water Board's Water Quality Enforcement Policy (WQEP) describes the framework for implementing the enforcement function of the Regional Board. The WQEP provides guidance to the Regional Board on a wide range of enforcement matters, including use of supplemental environmental projects. The State Water Board has distributed a draft update of the WQEP for public review. The State Board expects to consider the policy update by the end of the year. In addition, the State Water Board's Strategic Plan relies upon deterrence-based enforcement with a strong and credible threat of punitive consequences.

The Regional Board has a variety of formal and informal enforcement tools available. Formal actions are statutorily recognized actions to address a violation or threatened violation. Formal actions include Cease and Desist Orders, Cleanup and Abatement Orders (CAO), Administrative Civil Liability (ACL) Orders, Time Schedule Orders, and Referrals to the Attorney General, District Attorney, United States (U.S.) Attorney or City Attorney. Informal enforcement actions are those taken by Board staff that are not defined in statute, such as staff enforcement letters and notices of violation.

### Regional Board Enforcement Process

Every discovered violation receives an enforcement response in the form of a notification to the discharger of the violation. The notification is generally in the form of a staff enforcement letter or a written notice of violation.

Determining the appropriate action beyond the initial notification is a process that considers many factors to balance staff resources with Regional and State Board priorities. In all cases, the primary expected outcomes of enforcement actions are a return to compliance and deterrence of future violations.

Prioritization begins with the determination of the relative importance of the violation. Staff considers the highest enforcement priorities to be:

1. Violations of enforcement orders;
2. Sewage spills resulting in impacts to beneficial uses and beach closures;
3. Effluent violations subject to mandatory penalties;
4. Unregulated storm water and sediment discharges from construction sites to waters of the State;
5. Unauthorized filling of waters of the State; and
6. Unpaid annual fees.

The level of effort put forth toward enforcement is directly related to available resources. Formal enforcement actions, particularly CAO or ACL Orders, can require substantial staff resources. In addition, maintaining separation of prosecutorial and advisory functions has dramatically increased the resources required for formal and many informal enforcement actions.

To effectively manage enforcement resources, Regional Board staff uses a Compliance Oversight Group (COG) to systematically identify, track, and evaluate priority enforcement actions. The COG, lead by the Assistant Executive Officer, meets regularly to screen, prioritize and assign enforcement projects and also direct the work of the Compliance Assurance Unit, a technical unit dedicated specifically for pursuing enforcement actions. In addition, the staff Enforcement Coordinator coordinates cases, reviews all formal enforcement actions for consistency, prepares enforcement progress reports, and serves as liaison with the State Board.

#### Supplemental Environmental Projects (SEPs)

A SEP is an option for a discharger to propose in the resolution of an ACL action. The Regional Board may allow a discharger to satisfy part of the monetary assessment imposed in an ACL order by completing or funding one or more SEPs. SEPs are specifically allowed in some statutes of the Water Code. In the absence of other statutory authority in the Water Code regarding the use of SEPs, Government Code section 11415.60 has been interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an ACL. While SEPs can facilitate settlements, the funding of SEPs is not a primary goal of any enforcement case, nor is it necessary to include a SEP in the settlement of an enforcement action that assesses a monetary liability or penalty.

SEPs may be included in ACL actions so long as the projects meet criteria specified in the State Water Board's Policy on Supplemental Environmental Projects. That policy was adopted in February 2009 and replaced guidance in the existing Water Quality Enforcement Policy. The criteria is used to ensure that the selected projects have environmental value, further the enforcement goals of the Water Boards, and are subject to appropriate input and oversight by the Water Boards.

**LEGAL CONCERNS:** References or discussion involving enforcement cases in development must be limited in order to maintain the integrity of potential enforcement actions.

SUPPORTING  
DOCUMENTS:

1. Briefing Document on the new SEP Policy
2. The Policy on Supplemental Environmental Projects
3. Summary of SEPs included in Regional Board ACL actions.
4. SEP Policy Evaluation Checklist

RECOMMENDATION:

The Board will not be taking action on this item.