

EXECUTIVE OFFICER SUMMARY REPORT  
May 14, 2014

- ITEM: 8
- SUBJECT: Resolution Clarifying the Civil Liability Assessment Powers and Duties to the Executive Officer (Tentative Resolution No. R9-2014-0046). (*Chiara Clemente*)
- PURPOSE: To minimize the administrative cost and burden of preparing select penalty actions for San Diego Water Board (Board) consideration, the Board will provide direction on the nature and circumstance whereby certain mandatory or non-controversial orders imposing civil liability should be considered by the Executive Officer.
- RECOMMENDATION: Adoption of Tentative Resolution No. R9-2014-0046
- KEY ISSUES: None.
- DISCUSSION: **Purpose of the Tentative Order**  
The Tentative Resolution (Supporting Document 1) specifies the conditions under which the Board desires the Executive Officer to exercise his/her delegated authority to impose administrative civil liability and mandatory penalties (e.g. mandatory penalties, stipulated settlement orders, penalties under a certain dollar amount, or a combination thereof).
- This action does not affect procedures for public noticing, public comments, and responses. Even in cases where the Executive Officer has been given delegated authority, if the conditions of a particular case are such that the Executive Officer believes the Board is best suited to take action on a matter, the Executive Officer retains the ability to schedule any item before the Board. As with Board actions, all determinations made by the Executive Officer would be petitionable to the State Water Board.

**Background**

The Porter-Cologne Water Quality Control Act (Porter-Cologne Act, California Water Code, Division 7, section 13223) allows the Regional Water Boards to delegate to their Executive Officers any of their powers and duties under the Porter-Cologne Act, except for the following:

- a) The promulgation of any regulations;
- b) The issuance, modification, or revocation of any water quality control plan, water quality objective, or waste discharge requirement;
- c) The issuance, modification, or revocation of any cease and desist order;
- d) The holding of any hearing on water quality control plans; and
- e) The application to the Attorney General for judicial enforcement, but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of sections 13302, 13304, and 13340.

The Board has previously delegated all those statutorily-allowed powers and duties to the Executive Officer (Resolution No. R9-2005-0271, Supporting Document 2), however the Executive Officer has historically chosen to bring administrative civil liability and penalty actions to the Board for its consideration and resolution.

In an effort to streamline the administrative burden for uncontested mandatory penalty actions within the Region, in February 2011 the Board endorsed the use of Expedited Payment Letters (EPLs) by the Executive Officer. This effort has been effective for the majority of mandatory penalty cases issued since that time (Supporting Document 3).

Based on the success of the EPL process and the recognition that staff often expend a disproportionately large amount of time relative to certain violations' potential for harm (Supporting Document 4), the Tentative Resolution expands the types of civil liability and penalty actions to be considered by the Executive Officer.

If adopted, Board staff intend to review the effectiveness of the Resolution in two to three years, after several delegated matters have been pursued, and recommend to the Board any revisions that may be deemed necessary or desirable.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Resolution No. R9-2014-0046
2. Resolution No. R9-2005-0271
3. Summary of Enforcement Actions Since 2011
4. Office of Enforcement MMP Issue White Paper, dated October 22, 2013

PUBLIC NOTICE: Notice was provided in the agenda for the May 14, 2014 Board Meeting, which was posted on the San Diego Water Board's website on April 30, 2014.