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STATE WATER RESOURCES CONTROL BOARD

**WATER QUALITY
ENFORCEMENT POLICY**

February 19, 2002

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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INTRODUCTION

The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) (together "Boards") are the principal state agencies with primary responsibility for the coordination and control of water quality. In the Porter-Cologne Water Quality Control Act (Porter-Cologne), the Legislature declared that the "state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation..." (California Water Code section 13000). Porter-Cologne grants the Boards the authority to implement and enforce the water quality laws, regulations, policies and plans to protect the groundwater and surface waters of the state. Timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the State have clean water. It is the policy of the SWRCB that the Boards shall strive to be fair, firm and consistent in taking enforcement actions throughout the State, while recognizing the individual facts of each case. The primary goal of this Enforcement Policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. Toward that end, it is the intent of the SWRCB that the RWQCBs operate within the framework provided by this Policy.

Enforcement serves many purposes. First and foremost, it assists in protecting the beneficial uses of waters of the State. Swift and firm enforcement can prevent threatened pollution from occurring and can promote prompt cleanup and correction of existing pollution problems. Enforcement ensures compliance with requirements in SWRCB and RWQCB regulations, plans, policies, and orders. Enforcement not only protects the public health and the environment, but also creates an "even playing field," ensuring that dischargers who comply with the law are not placed at a competitive disadvantage by those who do not. It also deters potential violators and, thus, further protects the environment. Monetary remedies, an essential component of an effective enforcement program, provide a measure of compensation for the damage that pollution causes to the environment and ensure that polluters do not gain an economic advantage from violations of water quality laws.

It is important to note that enforcement of the State's water quality requirements is not solely the purview of the Boards and their staff. Other agencies (e.g., the California Department of Fish and Game) have the ability to enforce certain water quality provisions in state law. State law also allows for members of the public to bring enforcement matters to the attention of the Boards and authorizes aggrieved persons to petition the SWRCB to review most actions or in-actions by the RWQCB. In addition, state and federal statutes provide for public participation in the issuance of most orders, policies and water quality control plans. Finally, the federal Clean Water Act (CWA) authorizes citizens to bring suit against dischargers for certain types of CWA violations.

I. FAIR, FIRM AND CONSISTENT REGULATION AND ENFORCEMENT

A. Standard, Enforceable Orders

Fair, firm and consistent enforcement depends on a foundation of solid requirements in law, regulations, policies, and the adequacy of enforceable orders. Such orders include but are not limited to: waste discharge requirements (WDRs), including National Pollutant Discharge Elimination System (NPDES) permits; waivers; certifications; and cleanup and abatement orders. The extent to which enforceable orders include well-defined requirements and apply *similar requirements to similar situations affects the consistency of compliance and enforcement*. Whenever the circumstances of a discharge are similar, the provisions of the enforceable orders should be comparable.

The SWRCB, with assistance and advice from the RWQCBs and other stakeholders will compile and maintain examples of standard enforceable orders. RWQCBs' orders shall be consistent *except as appropriate for the specific circumstances related to the discharge and to be consistent with applicable water quality control plans*. Such modifications must be consistent with applicable state and federal law. RWQCB Water Quality Control Plans may include unique requirements that apply within a region and that must be implemented.

B. Determining Compliance

The Boards shall implement consistent and valid methods to determine compliance with enforceable orders. Compliance assurance activities include the review of self-monitoring reports, facility inspections and complaint response. Compliance assurance activities are discussed in more detail in section II of this Policy.

C. Timely and Appropriate Enforcement

An enforcement action is any informal or formal action taken to address the failure to comply or the threatened failure to comply with applicable statutes, regulations, plans, policies, or enforceable orders. Enforcement actions should be initiated as soon as possible after discovery of the violation.

Enforcement actions should be appropriate for each type of violation and should be similar for violations that are similar in nature and have similar water quality impacts. Appropriate enforcement informs the violator that the violation has been noted and recorded by the Board, results in a swift return to compliance, and serves as a deterrent for future violations. When appropriate, enforcement also requires remediation of environmental damage.

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D. Progressive Enforcement

Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources to: 1) assist cooperative dischargers in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance. For some violations, an informal response such as a phone call or staff enforcement letter is sufficient to inform the discharger that the violation has been noted by the RWQCB and to encourage a swift return to compliance. More formal enforcement is often an appropriate first response for more consequential violations. If any violation continues, the enforcement response should be quickly escalated to increasingly more formal and serious actions until compliance is achieved. Progressive enforcement is not appropriate in all circumstances. For example, where there is an emergency situation needing immediate response, immediate issuance of a cleanup and abatement order may be appropriate.

E. Enforcement Priorities

Every violation deserves an appropriate enforcement response. However, because resources are limited, the RWQCBs must continuously balance the need to complete non-enforcement program tasks with the need to address violations. Within available resources for enforcement, the RWQCBs must then balance the importance or impact of each potential enforcement action with the cost of that action. Informal enforcement actions are usually very cost effective and are therefore the most frequently used enforcement response. Most formal enforcement actions are relatively costly and must therefore be targeted to the RWQCB's highest priority violations.

The first step in enforcement prioritization is the determination of the relative importance of the violation. Section III of this Policy identifies criteria for determining if a violation should be identified as a priority violation. Priority violations include: all NPDES violations that the United States Environmental Protection Agency (USEPA) requires to be reported on the Quarterly Non-Compliance Report (QNCR) for the purpose of tracking significant non-compliance; all serious violations as defined in California Water Code section 13385; and other violations that the SWRCB and/or RWQCB considers to be significant and therefore high priority. Staff will indicate, for each violation, whether or not the violation meets the "priority violation" criteria in section III of this Policy.

The second step is to identify dischargers that are repeatedly or continuously in violation of requirements. California Water Code section 13385(i) prescribes mandatory minimum penalties for specific instances of multiple violations for NPDES discharges. Those provisions are discussed in more detail in Section V.D. of this Policy. In addition to those violations, and for non-NPDES discharges, the RWQCB will identify those dischargers with an excessive number of violations (e.g., four or more similar types of violations in a six month period) or seasonally recurring violations (e.g., violations of a monthly average effluent limitation for a specific pollutant in the same season¹ for two consecutive years). The SWRCB will develop enhanced

¹ "Season" means either: 1) spring, summer, autumn, or winter; or 2) a time or part of the year during which a specified kind of agricultural work is performed or a specified kind of weather prevails (e.g., the harvest season, the rainy season, etc.).

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data routines and reporting capabilities to enhance the RWQCBs' ability to identify such dischargers with chronic violations.

The third step is for senior staff and management to review, for each newly identified priority violation and for each discharger identified as having chronic violations, other characteristics of the discharger and violations that would affect decisions about the appropriate enforcement response. Once each month senior staff and management should meet and assign, for each discharger with priority or chronic violations, a relative priority for enforcement of "high", "medium" or "low". Except for confidential information regarding ongoing investigations or enforcement, the list of dischargers identified as high priority for enforcement should be reported to the RWQCB and should be available upon request from the RWQCB. The criteria for selecting relative enforcement priority include, but are not limited to:

- (a) the applicability of mandatory minimum penalty provisions of California Water Code sections 13385 and 13399.33;
- (b) evidence of, or threat of, pollution or nuisance and the magnitude or impacts of the violation;
- (c) evidence of negligence or recalcitrance;
- (d) the availability of resources for enforcement;
- (e) USEPA expectations for timely and appropriate enforcement for NPDES delegated programs²;
- (f) specific recommended enforcement pursuant to Section V of this Policy;
- (g) case-by-case factors that may mitigate a violation including the compliance history of the violator and good-faith efforts of the violator to eliminate noncompliance;
- (h) impact or threat to watersheds or water bodies that the RWQCB considers high priority (e.g., due to the vulnerability of an existing beneficial use or an existing state of impairment);
- (i) potential to cleanup and abate effects of pollution; and
- (j) the strength of evidence in the record to support the enforcement action.

Serious threats of violation must also be dealt with promptly in order to avoid or mitigate the effects of the threatened violation. Within available resources, formal enforcement actions should be targeted at dischargers with the highest priority violations, chronic violations and/or threatened violations. Dischargers with priority violations that do not receive formal enforcement should receive informal enforcement.

² For NPDES facilities that are listed on the Quarterly Noncompliance Reports (QNCR) USEPA considers timely enforcement of Significant Noncompliance (SNC) violations to be an enforcement action taken within five months after the first quarter of SNC (Guidance for Oversight of NPDES Programs, USEPA Office of Water, May 1987). USEPA considers appropriate enforcement to be an enforceable order or agreement that requires specific corrections to address the violations; in California, Cease and Desist Orders, Cleanup and Abatement Orders, or judicial consent decrees are considered by USEPA to meet this expectation.

F. Environmental Justice

The State and Regional Boards shall promote enforcement of all health and environmental statutes within their jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state. The SWRCB is participating in, and fully supports, the efforts of the California Environmental Protection Agency Working Group on Environmental Justice (convened pursuant to Public Resources Code 72002) to develop and implement an interagency environmental justice strategy.

II. COMPLIANCE ASSURANCE

Compliance with WDRs, Water Quality Control Plan prohibitions, enforcement orders, and other provisions of law administered by the SWRCB or RWQCBs can be determined through discharger self-monitoring reports (SMRs), compliance inspections, facility reporting, complaints, or file review.

A. Self-Monitoring Reports (SMRs)

The Boards ensure compliance with WDRs and other Board orders by requiring dischargers to implement a monitoring and reporting program under California Water Code sections 13267 and 13383, and to periodically submit SMRs. Reporting frequency for regulated dischargers depends on the nature and impact of the discharge. The regulations that implement the CWA also specify monitoring requirements. Enforceable orders that require a monitoring and reporting program should explicitly require the discharger to clearly identify all violations of applicable requirements in a cover letter or in the SMR and to discuss corrective actions taken or planned and the proposed time schedule of corrective actions. Identified violations should include a description of the requirement that was violated and a description of the violation.

When specifying signatory requirements in WDRs, the RWQCB should ensure that those individuals who have responsibility for the collection, analysis and/or reporting of compliance monitoring data are required to sign and certify reports of monitoring results. Responsible individuals may include the following: the chief plant operator; the chief of an in-house laboratory; and/or the individual(s) responsible for preparation and submittal of SMRs.

RWQCB staff shall regularly review all discharger SMRs and document all violations and any subsequent enforcement response in the Boards' enforcement data management system.

B. Compliance Inspections

On-site compliance inspections are conducted by the RWQCB staff under the authority provided in California Water Code sections 13267 and 13383. Compliance inspections provide the RWQCB an opportunity to verify that information submitted in SMRs is complete and accurate. Compliance inspections address compliance with WDRs, laboratory quality control and assurance, record keeping and reporting, time schedules, best management practices, pollution

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prevention plans, and any other pertinent requirements. RWQCB staff shall document all violations identified as the result of compliance inspections and any subsequent enforcement response in the facility file and in the Boards' enforcement data management system.

C. Direct Facility Reporting

California Water Code section 13271 requires any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state to notify the Office of Emergency Services of the discharge as specified in that section. The Office of Emergency Services then immediately notifies the appropriate RWQCB and the local health officer and administrator of environmental health of the discharge.

WDRs, including NPDES permits, should require regulated facilities to report to the RWQCB by phone within a specified time, followed by a written report and/or a discussion in the next SMR, when certain events occur, such as:

- (a) Discharges that are not in accordance with WDRs and that pose an immediate public health threat;
- (b) Bypass of raw or partially treated sewage or other waste from a treatment unit or discharge of wastewater from a collection system in a manner inconsistent with WDRs;
- (c) Treatment unit failure or loss of power that threatens to cause a bypass; and
- (d) Any other operational problems that threaten to cause significant violations of WDRs or impacts to receiving waters or public health.

D. Complaints and Complaint Investigations

Often information regarding an actual or potential violation or unauthorized discharge is obtained through telephone or written notification from a member of the public, another public agency or an employee working at a regulated facility. Complaints may also involve nuisance conditions, such as noxious odors that extend beyond a wastewater treatment plant boundary. During the course of an investigation additional violations that are indirectly related or unrelated to the original investigation may also be discovered. RWQCB staff shall document all complaints and findings resulting from complaint investigations.

E. Case Record Maintenance and Review

WDRs, enforcement orders (e.g., cleanup and abatement orders, cease and desist orders, and time schedule orders), and requests for reports required pursuant to California Water Code section 13267 frequently mandate completion of tasks, which the dischargers must confirm by submission of appropriate reports to the RWQCBs. Failure to submit the reports or to complete the required tasks may be the basis for additional enforcement. RWQCBs shall use data management systems to track tasks and reports required of dischargers.

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Often the RWQCB first hears about spills or other violations from the California Department of Fish and Game, the California Department of Toxic Substance Control, the Office of Emergency Services or other agencies. District Attorneys are another source of information. The RWQCBs can use this information to decide whether to initiate joint or separate enforcement actions.

III. DETERMINING "PRIORITY" VIOLATIONS

Priority violations include: all NPDES violations that the United States Environmental Protection Agency (USEPA) requires to be reported on the Quarterly Non-Compliance Report (QNCR) for the purpose of tracking significant non-compliance; all violations subject to mandatory minimum penalties pursuant to California Water Code section 13385; and other violations that the SWRCB and/or RWQCB considers to be significant and therefore high priority. The general criteria below have been developed to assist the RWQCBs in identifying priority violations in order to help establish priorities for enforcement efforts. Depending on the circumstances, violations that are not included on this list could nonetheless be considered "priority" as well. RWQCB staff should indicate, for each violation, whether or not the violation meets the "priority violation" criteria in this section. RWQCB senior staff and management should use the criteria specified in Section I. E. of this policy to further evaluate the priority violations and, within available resources, target formal enforcement actions at the highest priority violations.

The following subsections comprise a non-exclusive list of "priority" violations that will be identified as priority violations in the enforcement database, that will be further evaluated for possible formal enforcement, and that should, at a minimum, receive informal enforcement.

A. NPDES Effluent and Receiving Water Limitation Violations

For facilities with NPDES permits, except as specified in subsection (e) of this section, the following violations of numeric effluent and receiving water limits are priority violations:

- (a) Except as specified in subsections (a)(i) and (a)(ii), any violation of an effluent or receiving water limitation for a Group 1 pollutant (see Table III-1) by 40 percent or more or any violation of an effluent or receiving water limitation for a Group 2 pollutant (see Table III-2) by 20 percent or more.
 - (i) For discharges of pollutants subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the "California Ocean Plan", where the effluent or receiving water limitation for a pollutant is lower than the applicable Minimum Level, any discharge that equals or exceeds the Minimum Level is a priority violation. For violations of effluent limitations only, such a discharge would also be considered to be a serious violation pursuant to California Water Code section 13385(h)(2)(a).
 - (ii) For discharges of pollutants that are not subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the California Ocean Plan (e.g., pollutants that are not addressed by the applicable plan) where the effluent or receiving water limitation

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for a pollutant is lower than the applicable quantitation limit³, any discharge that: 1) equals or exceeds the quantitation limit; and 2) exceeds the effluent or receiving water limitation by 40 percent or more for a Group 1 pollutant or by 20 percent or more for a Group 2 pollutant, is a priority violation. For violations of effluent limitations only, such discharges would be considered to be serious violations pursuant to California Water Code section 13385(h)(2)(a).

- (b) Any waste discharge that violates a flow limitation by ten percent or more.
- (c) Any waste discharge that violates a receiving water temperature limitation by three degrees Celsius (5.4 degrees Fahrenheit) or more.
- (d) Any waste discharge that violates an effluent or receiving water limitation for pH by one pH unit or more or, where the discharger is continuously monitoring pH, any discharge that violates the effluent or receiving water limit by 1 pH unit for ten minutes or longer in a calendar day.
- (e) Violations of receiving water limits will not be considered priority violations if: the NPDES permit contains requirements for responding to receiving water violations by investigating the cause of the violation; the facility is in compliance with those requirements; and the facility takes necessary action to ensure that its effluent does not cause or contribute to future violations of receiving water limits.

³ There are also multiple definitions for the term "quantitation limit." One generally accepted definition for the quantitation limit is the concentration at which a state certified laboratory has determined with a specified degree of confidence, that the actual concentration of the pollutant present in the sample is within a specified percentage of the concentration reported. For the purpose of this policy, the applicable quantitation limit is the quantitation limit specified or authorized in the applicable waste discharge requirements.

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Table III-1. Group 1 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), the United States Environmental Protection Agency (USEPA) has identified a list of pollutants, which are included as Group 1 pollutants under the various classifications of "other." This list is included in Appendix A of this Policy and is hereby incorporated into this Table III-1.

Oxygen Demand

Biochemical Oxygen Demand (BOD)
Chemical Oxygen Demand (COD)
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (TSS)
Total Dissolved Solids (TDS)
Other

Nutrients

Inorganic Phosphorous Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

Methylene Blue Active Substances
Nitrilotriacetic Acid
Oil and Grease
Other Detergents or Algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

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Table III-2. Group 2 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), USEPA has identified a list of pollutants, which are included as Group 2 pollutants. This list is included in Appendix B of this Policy and is hereby incorporated into this Table III-2.

Metals

All metals not specifically listed under Group 1.

Inorganics

Cyanide

Total Residual Chlorine

Organics

All organics not specifically listed under Group 1.

B. Toxicity Violations

Failure to conduct whole effluent toxicity (WET) monitoring tests when required by an enforceable order is a priority violation. Failure to provide valid test results (i.e., meet all test acceptability criteria) or otherwise comply with test and quality assurance procedures, including failure to retest as required following the failure to meet test acceptability criteria, is a priority violation.

Violations of numeric whole effluent toxicity limits contained in WDRs, Water Quality Control Plan prohibitions or other provisions of law are priority violations unless: the WDRs contain requirements for responding to the violation by investigating the cause of the violation (e.g., a Toxicity Identification Evaluation and/or a Toxicity Reduction Evaluation); the facility is in compliance with those requirements; and the facility takes necessary action to ensure that its effluent does not cause or contribute to future violations of whole effluent toxicity limits.

Failure to implement a required Toxicity Identification Evaluation and/or a Toxicity Reduction Evaluation or to otherwise comply with conditions of WDRs or other enforceable orders in response to toxicity violations is a priority violation.

C. Violations of Prohibitions

WDRs, Water Quality Control Plans, and enforcement orders often contain prohibitions (year-round or seasonal) against certain types of discharges of waste. Violations of such prohibitions that result in an adverse impact to beneficial uses or in a condition of nuisance or pollution are considered priority violations.

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D. Spills (including other unauthorized discharges)

Priority violations include:

- (a) sewage or treated wastewater spills that cause a public health threat and/or are greater than 5000 gallons;
- (b) spills of other materials that cause a public health threat or cause toxicity to fish or other aquatic or terrestrial species or that result in an adverse impact to other beneficial uses of groundwater or surface water;
- (c) spills of materials containing persistent, bioaccumulative pollutants in quantities and or concentrations that pose a significant risk to human health or the environment;
- (d) unpermitted discharges of pollutants in Areas of Special Biological Significance;
- (e) discharges from unregulated facilities that cause violations of water quality objectives;
- (f) discharges of sediment that impact spawning habitat; and
- (g) unpermitted discharges of pollutants to waters identified as impaired (on the Clean Water Act section 303(d) List) for that pollutant.

E. Failure to Submit Plans and Reports

Failure by waste water treatment facilities that are approaching treatment capacity to submit plans that are required to address capacity issues within six months of the date specified in WDRs is a priority violation.

Failure to submit reports required by WDRs, California Water Code sections 13267 and 13383, California Water Code section 13260, regulations or Water Quality Control Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to impede the review of the status of compliance are priority violations. When required in WDRs or other enforceable orders, the failure to clearly identify all violations of applicable requirements in a cover letter or in the SMR is a priority violation. In addition, failure to comply with the notification requirements contained in California Water Code sections 13271 and 13272 is a priority violation. Failure to submit a Spill Prevention, Control, and Countermeasures (SPCC) Plan, required by Health and Safety Code Section 25270.5(c) within 30 days from the due date is a priority violation. Violation of signatory requirements for plans and reports is a priority violation.

F. Violations of Compliance Schedules

Violations of compliance schedule dates (e.g., schedule dates for starting construction, completing construction, or attaining final compliance) by 30 days or more from the compliance date specified in an enforceable order are priority violations.

G. Pretreatment Program Violations

Failure of a publicly-owned treatment works (POTW) to substantially implement its approved pretreatment program as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users and failure to meet pretreatment program compliance schedules is a priority violation.

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Discharges from Industrial Users (IUs) that cause a POTW to have a plant upset or an effluent limit violation are priority violations. Discharges from an IU that exceed a categorical limit for a Group 1 pollutant by 40% or more or for a Group 2 pollutant by 20% or more are priority violations. Note: The SWRCB or RWQCB normally takes enforcement against an IU only when the POTW fails to take appropriate enforcement actions.

H. Storm Water Program Violations

1. Industrial and Construction Discharges

Certain construction and industrial activities require compliance with either the General NPDES Permit for Storm Water Discharges Associated with Construction Activity (Construction Storm Water Permit) or the General NPDES Permit for Discharges of Storm Water Associated with Industrial Activity Excluding Construction (Industrial Storm Water Permit). Failure to submit a Notice of Intent for coverage under the general permits is a priority violation if a discharge to a water of the United States has occurred or is likely to occur. Priority violations include failure to:

- (a) develop a Storm Water Pollution Prevention Plan (SWPPP) within 30 days of the due date which includes appropriate, site-specific best management practices (BMPs);
- (b) implement a SWPPP;
- (c) conduct required monitoring; or
- (d) submit an annual report within 30 days of the due date.

The Storm Water Enforcement Act of 1998 (California Water Code section 13399.25 et seq.) includes mandatory enforcement actions. It requires the RWQCB to notify the discharger if it fails to submit a Notice of Intent or an annual report. The RWQCB must impose administrative penalties for failure to respond to two notifications. In addition to any penalty mandated by the Storm Water Enforcement Act of 1998, the RWQCB may, without prior notice, assess administrative civil liability against all priority violations, as these are also violations of section 13385(a).

2. Municipal Discharges

In most urban areas, discharges of storm water from municipal separate storm sewer systems (MS4s) to waters of the United States must be in compliance with a Municipal NPDES Storm Water Permit. Failure to either submit a report of waste discharge, to develop a storm water management plan within 30 days of the due date, to implement one or more components of its storm water management plan, to conduct monitoring, or to submit an annual report within 30 days of the due date is a priority violation. For example, the failure of a municipality to develop and/or implement a construction site program element that includes a demonstration of adequate legal authority and the implementation of an effective inspection and enforcement program is a priority violation.

Under the Storm Water Enforcement Act of 1998 (California Water Code section 13399.25 et seq.), the RWQCB must send notices to a permittee who fails to submit an annual report, and must impose administrative penalties for failure to respond to two notifications. However, the RWQCB may, without prior notice, assess administrative civil liability for failure to submit an annual report, as this also violates section 13385(a).

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3. Failure to attain performance standards and failure to report and address violations

Most storm water permits require the discharger(s) to comply with general performance practices or standards. For example, performance standards applicable to industrial and construction storm water discharges are to implement best management practices using the best available technology economically achievable and best conventional technology. Performance standards applicable to municipal storm water discharges are to implement best management practices that reduce the discharge of pollutants from municipal separate storm sewer systems to the maximum extent practicable. If storm water and/or authorized non-storm water discharges cause or substantially contribute to a violation of an applicable water quality standard, the discharger is usually required to take specific, iterative actions (e.g., modify its Storm Water Management Plan) to resolve such violations. Priority violations include the failure to report violations as required by the permit and/or the failure to comply with permit requirements for addressing identified violations. The criteria for priority violations in section III (A) of this Policy apply to NPDES storm water permits that contain numeric effluent limitations.

I. Clean Water Act Section 401 Violations

Discharges into waters of the United States that require a federal permit or license also require certification (in accordance with Section 401 of the Clean Water Act) from the SWRCB or RWQCB that the discharge will comply with the State's water quality standards. Failure to obtain required certification prior to a discharge that causes or contributes to a condition of nuisance or pollution or violates water quality standards is a priority violation. Failure to comply with conditions specified in the certification is a priority violation.

J. Violation of Water Quality Objectives in Groundwater

Any discharge of waste resulting in, or likely to result in, a violation of an applicable water quality objective, groundwater limitations, groundwater protection standards or other applicable concentration limits in waste discharge requirements for pollutants in groundwater, or in the creation of a condition of nuisance, is a priority violation unless the discharge is permitted or otherwise specifically authorized by the SWRCB or RWQCB.

K. Discharge of Bio-solids to Land

The following violations of the SWRCB General WDRs for discharge of bio-solids to land are priority violations:

- (a) Any discharge in violation of the setback requirements;
- (b) Any discharge that exceeds 1.4 times the agronomic rate⁴ for nitrogen, where the site is not a land-reclamation site;
- (c) Any discharge of tail-water in violation of the requirements;

⁴ Agronomic Rate: The nitrogen requirements of a plant needed for optimal growth and production, as cited in professional publications for California or recommended by the County Agricultural Commissioner, a Certified Agronomist or Certified Soil Scientist.

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- (d) Any discharge that exceeds the Background Cumulative Adjusted Loading Rate in the requirements, or exceeds the Ceiling Pollutant Concentration Limits;
- (e) Any violation of the specific Class B Discharge Specifications; and
- (f) Any violations of pathogen reduction requirements or violations of harvesting and site restriction requirements.

L. Waste Discharge Requirement (WDR) Program

The following violations of requirements in WDRs for discharges regulated by the WDR Program are priority violations:

- (a) Failure to monitor as required;
- (b) The failure to maintain required freeboard in ponds;
- (c) Any discharge that exceeds flow limits by 20 percent or more;
- (d) Any discharge that exceeds the effluent limitation for biological oxygen demand or total dissolved solids by 100 percent or more;
- (e) Any discharge where the dissolved oxygen is less than 50 percent of the effluent limitation; or
- (f) Other violations as determined by the Board.

It is a priority violation for a person to discharge waste in violation of California Water Code section 13264.

M. Aboveground Petroleum Storage Act

The following violations of the Aboveground Petroleum Storage Act (California Health and Safety Code section 25270 et.seq.) are priority violations:

- (a) Failure to file a storage report;
- (b) Failure to prepare a Spill Prevention, Control and Countermeasures Plan prepared in accordance with guidelines contained in Part 112 of Title 40 of the Code of Federal Regulations;
- (c) Failure to establish a monitoring system;
- (d) Failure to report spills;
- (e) Failure to conduct daily visual inspections of any tank storing petroleum;
- (f) Failure to allow the regional board to conduct periodic inspections of the tank facility; and
- (g) Failure to install a secondary means of containment when required.

N. Land Disposal

The following violations of requirements in WDRs for facilities regulated by the Land Disposal Program are priority violations:

- (a) Failure to submit required construction quality assurance plans prior to construction;
- (b) Failure to submit required construction quality assurance / quality control certification reports prior to waste discharge;
- (c) Failure to implement an adequate waste load checking program and/or knowing acceptance of un-permitted waste;
- (d) Failure to install and/or maintain required thickness of acceptable cover material;

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- (e) Failure to monitor (ground and surface water) as required;
- (f) The failure to respond to evidence of a release of waste to groundwater as required in WDRs or other enforceable orders (i.e., failure to develop and implement an Evaluation Monitoring and/ or a Corrective Action Program);
- (g) Un-permitted discharge of leachate or waste to surface water;
- (h) Slope failure or erosion resulting in the exposure of waste and/or the discharge of sediment or other pollutants to surface water that impacts beneficial uses, causes or contributes to a violation of an applicable water quality objective or in the creation of a condition of nuisance or pollution; and
- (i) Failure to maintain required freeboard.

O. Failure to Pay Fees, Penalties or Liabilities

Failure to pay fees, penalties or liabilities within 30 days of the due date is a priority violation unless the discharger has filed a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty or liability; or an alternate payment schedule has been accepted by the RWQCB.

P. Falsifying Information

Falsification of information submitted to the Board or intentional withholding of information required by applicable laws, regulations or an enforceable order is a priority violation.

IV. ENFORCEMENT ACTIONS

The Boards have a variety of enforcement tools to use in response to non-compliance by dischargers. This section describes the range of options and discusses procedures that are common to some or all of these options. With specified exceptions California Water Code section 13360 (a) prohibits the SWRCB or RWQCB from specifying the design, location, type of construction, or particular manner in which compliance may be had with a particular requirement.

A. Standard Language

In order to provide a consistent approach to enforcement throughout the state, enforcement orders should be standardized where appropriate. The SWRCB intends to maintain model enforcement orders containing standardized provisions for use by the RWQCBs. RWQCBs should use the models and modify terms and conditions as appropriate for the specific circumstances related to the discharge and to be consistent with RWQCB plans and policies.

B. Informal Enforcement Actions

An informal enforcement action is any enforcement action taken by SWRCB or RWQCB staff that is not defined in statute. An informal enforcement action can include any form of communication (verbal, written, or electronic) between SWRCB and/or RWQCB staff and a discharger about a violation or potential violation. These actions may, in some circumstances, be

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petitioned to the RWQCB or the RWQCB Executive Officer but cannot be directly petitioned to the SWRCB.

The purpose of an informal enforcement action is to quickly bring a violation to the discharger's attention and to give the discharger an opportunity to return to compliance as soon as possible. The RWQCB may take formal enforcement action in place of, or in addition to, informal enforcement actions. Continued noncompliance is considered a priority violation and should trigger formal enforcement action.

1. Verbal Enforcement Actions and Enforcement Letters

For many violations, the first step is a verbal enforcement action. Staff should contact the discharger by phone or in person and inform the discharger of the specific violations, discuss how and why the violations occurred, and discuss how and when the discharger will correct the violation and achieve compliance. Staff shall document the conversation in the facility case file and in the enforcement database.

An enforcement letter is often appropriate as a follow-up, or in lieu of, a verbal enforcement action. Enforcement letters are signed by staff or by the appropriate senior staff. The letter should inform the discharger of the specific violations, and, if known to staff, discuss how and why the violations occurred and how and when the discharger will correct the violation and achieve compliance.

Verbal enforcement actions and enforcement letters must not include language that excuses the violation or that modifies a compliance date in WDRs or other orders issued by the State or RWQCB.

2. Notice of Violation (NOV)

The NOV letter is the highest level of informal enforcement action. An NOV should be signed by the RWQCB Executive Officer or designated staff and should be addressed and mailed to the discharger(s) by certified mail. In cases where the discharger has requested that their consultant be notified of RWQCB actions, the consultant should also receive a copy of the NOV. The NOV letter should include a description of specific violations, a summary of potential enforcement options available for non-compliance (including the potential daily or per gallon maximum Administrative Civil Liability (ACL) available), and, when appropriate, a request for a written response by a specified date. The summary of potential enforcement options shall include appropriate citations to the California Water Code and should specify that the RWQCB reserves the right to take any enforcement action authorized by law.

C. Formal Enforcement Actions

Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation of water quality laws, regulations, policy or orders. Formal enforcement orders should contain findings of facts that establish all the statutory requirements of the specific statutory provision being utilized. The actions listed below present options available for enforcement.

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1. Notices to Comply

Notices to Comply are issued pursuant to California Water Code section 13399 et seq., which requires the use of Notices to Comply as the only means by which the SWRCB or RWQCB can issue citations for minor violations. A violation is determined to be minor by the SWRCB or the RWQCB after considering factors defined in California Water Code sections 13399(e) and (f) and the danger the violation poses to, or the potential that the violation has for endangering human health, safety, or welfare or the environment.

- (a) The violations listed below are considered to be minor violations for the purpose of compliance with California Water Code section 13399 et seq.:
 - (i) Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.
 - (ii) Records (including WDRs) not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.
 - (iii) Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.
 - (iv) Failure to have permits available during an inspection.
 - (v) Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment.

- (b) A violation is not considered minor in nature if it is a priority violation as described in Section III of this Policy or includes any of the following:
 - (i) Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the California Water Code.
 - (ii) It involves any violation that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
 - (iii) Chronic violations or violations committed by a recalcitrant violator.
 - (iv) Violations that cannot be corrected within 30 days.

2. Notices of Stormwater Noncompliance

The Stormwater Enforcement Act of 1998 (California Water Code section 13399.25 et seq.) requires that each RWQCB notify storm water dischargers who have failed to file a notice of intent to obtain coverage, a notice of non-applicability, a construction certification, or annual reports. If, after two notifications, the discharger fails to file the applicable document a mandatory civil liability shall be assessed against the discharger.

3. Technical Reports and Investigations

California Water Code sections 13267(b) and 13383 allow RWQCBs to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste in accordance with the conditions in the section. Failure to comply with requirements made by a RWQCB pursuant to California Water Code section 13267(b) is a priority violation and may

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result in administrative civil liability pursuant to California Water Code section 13268. Failure to comply with orders made pursuant to California Water Code section 13383 may result in administrative civil liability pursuant to California Water Code section 13385. Section 13267(b) and 13383 requirements are enforceable when signed by the Executive Officer of the RWQCB.

California Water Code section 13267 (b) requires Regional Boards to:

- provide the person who is required to provide the reports with a written explanation with regard to the need for the reports, and
- identify the evidence that supports requiring that person to provide the reports.

To comply with these requirements, the RWQCB should include a brief statement regarding the *relationship between the information that is being sought and the water quality issue that is being investigated* (e.g., to determine the level of the discharge's impact on beneficial uses or to determine compliance with waste discharge requirements.) The Regional Board should also identify a basis for suspecting that the recipient(s) of the order discharged, is discharging, or may discharge waste. This may be accomplished by including a brief statement regarding the person's current or former ownership or control over the location of the discharge or the person's control over the discharge itself. If the existence of a discharge is in question, the statement should also identify a basis for suspecting a discharge (e.g., a brief description of the condition downstream or down-gradient of the suspected discharge). These statements required by 13267(b) may, for example, be contained in a transmittal letter, in the 13267(b) requirements, or in the findings in an order. Note these statements are not required by California Water Code section 13383, which applies only to discharges subject to regulation under the NPDES program.

Although they should be cited in Cleanup and Abatement Orders, Cease and Desist Orders, and section 13308 Time Schedule Orders, it is important to note that California Water Code sections 13267 and 13383 are not strictly enforcement statutes. RWQCBs should routinely cite those sections as authority whenever asking for technical or monitoring reports. California Water Code section 13267 should also be cited in all non-NPDES WDRs, waivers and certifications as authority for monitoring and reporting requirements. California Water Code section 13383 should be cited in all NPDES permits.

4. Cleanup and Abatement Orders (CAOs)

Cleanup and Abatement Orders (CAOs) are adopted pursuant to California Water Code section 13304. CAOs may be issued to any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance (discharger). The CAO requires the discharger to clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

RWQCBs should keep an accurate record of staff oversight costs for CAOs, because dischargers are liable for such costs. When a CAO specifies that staff costs are to be recovered from the

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discharger, failure to pay invoiced amounts for staff costs is a violation of the CAO that is subject to an ACL.

RWQCBs shall comply with SWRCB Resolution No. 92-49, "Policies And Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304", in issuing CAOs. CAOs should require discharger(s) to clean up the pollution to background levels or the best water quality which is reasonable if background levels of water quality cannot be restored in accordance with Resolution No. 92-49. At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies. CAOs should name all dischargers for whom there is sufficient evidence of responsibility as set forth in California Water Code section 13304.

CAOs that require submission of technical and monitoring reports should always state that the reports are required pursuant to California Water Code section 13267. CAOs shall contain language describing likely enforcement options available for non-compliance and should specify that the RWQCB reserves its right to take any enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CAOs should trigger further enforcement in the form of an ACL, a Time Schedule Order (TSO) under California Water Code section 13308, or referral to the Attorney General for injunctive relief or monetary remedies.

5. Section 13300 Time Schedule Orders (TSOs)

Pursuant to California Water Code section 13300, the RWQCB can require the discharger to submit a time schedule which sets forth the actions that the discharger will take to address actual or threatened discharges of waste in violation of requirements. TSOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267.

6. Section 13308 Time Schedule Orders (13308 TSOs)

California Water Code section 13308 authorizes the RWQCB to issue a Section 13308 Time Schedule Order (13308 TSO) which prescribes a civil penalty if compliance is not achieved in accordance with the time schedule. The RWQCB may issue a 13308 TSO if there is a threatened or continuing violation of a cleanup and abatement order, cease and desist order, or any requirement issued under California Water Code sections 13267 or 13383. The penalty must be set based on an amount reasonably necessary to achieve compliance and may not contain any amount intended to punish or redress previous violations. Therefore, the 13308 TSO should contain findings explaining how the penalty amount will induce compliance without imposing punishment. For example, it could include a calculation of how much money the discharger is saving each day by delaying compliance. The 13308 TSO provides the RWQCBs with their primary mechanism for motivating compliance, and if necessary, assessing monetary penalties against federal facilities.

If the discharger fails to comply with the 13308 time schedule, the penalty is imposed when the RWQCB Executive Officer issues a complaint for Administrative Civil Liability. If the amount of proposed liability in the Complaint is less than the amount specified in the 13308 Order, the

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RWQCB is required by California Water Code 13308(c) to include specific findings setting forth the reasons for its action based on California Water Code section 13327. The penalty may not exceed \$10,000 for each day in which the violation of the 13308 TSO occurs.

7. Cease And Desist Orders (CDOs)

Cease and Desist Orders (CDOs) are adopted pursuant to California Water Code sections 13301-13303. CDOs may be issued to dischargers violating or threatening to violate WDRs or prohibitions prescribed by the RWQCB or the SWRCB. CDOs are often issued to dischargers with chronic non-compliance problems. These problems are rarely amenable to a short-term solution. Often, compliance involves extensive capital improvements or operational changes. The CDO will usually contain a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. CDOs may also include restrictions on additional service connections to community sewer systems and combined stormwater/sewer systems.

Section 4477 of the Government Code prohibits all state agencies from entering into contracts of \$5,000 or more for the purchase of supplies, equipment, or services from any nongovernmental entity who is the subject of a CDO which is no longer under review and which was issued for violation of WDRs or which has been finally determined to be in violation of federal laws relating to air or water pollution. The SWRCB provides the list of such violators to other state agencies and publishes the list on the internet at <http://www.swrcb.ca.gov>.

CDOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267. CDOs shall contain language describing likely enforcement options available for non-compliance and specify that the RWQCB reserves its right to take any further enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CDOs should trigger further enforcement in the form of an ACL, 13308 Order or referral to the Attorney General for injunctive relief or monetary remedies.

8. Modification Or Rescission Of Waste Discharge Requirements

In accordance with the provisions of the California Water Code, the RWQCB may modify or rescind WDRs in response to violations. Depending on the circumstances of the case, rescission of WDRs may be appropriate for failure to pay fees, penalties or liabilities; discharges that adversely affect beneficial uses of the waters of the state; and violation of the SWRCB General WDRs for discharge of bio-solids due to violation of the Background Cumulative Adjusted Loading Rate. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a publicly owned treatment works (POTW).

9. Administrative Civil Liability (ACL)

ACL means monetary assessments imposed by a RWQCB or the SWRCB. The California Water Code and the Health and Safety Code authorize ACLs in several circumstances which are

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summarized in Table IV-1⁵. Staff working on ACLs should consult the appropriate section of the Code to review the entire text.

Table IV-1. Summary of Relevant California Water Code and Health and Safety Code Authority for Imposing Administrative Civil Liability Pursuant to this Policy.

STATUTE	COVERAGE
§ 13261 (California Water Code)	Up to \$1,000 per day for failure to furnish reports of waste discharge or failure to pay annual program fees. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a willful violation.)
§ 13265 (California Water Code)	Up to \$1,000 per day for discharging without a permit. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and violation is due to negligence.)
§ 13268 (California Water Code)	Up to \$1,000 per day for failing or refusing to furnish technical or monitoring reports or falsifying information therein. (Up to \$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a knowing violation.)
§ 13271 (California Water Code)	Up to \$20,000 for failing to notify the Office of Emergency Services (OES) of a discharge of hazardous substances that exceeds the reportable quantity or more than 1000 gallons of sewage.
§ 13272 (California Water Code)(Limitation: Does not apply to spills of oil into marine waters as defined in Government Code §8670.3(f).)	Not less than \$500 and not more than \$5000 per day for each day of failure to notify OES of a discharge of any oil or product in or on the waters of the state.
§ 13308 (California Water Code)	Up to \$10,000 per day for violations of time schedules. Amount to be prescribed when time schedule is established.

⁵ Sections 13627.1, 13627.2, 13627.3 and 13627.4 of the Water Code and section 25284.4 of the Health and Safety Code authorize the SWRCB to impose administrative civil liability on wastewater treatment plant operators and underground storage tank testers, respectively. This policy does not apply to, and is not intended to limit in any way, the SWRCB's imposition of any disciplinary action, including administrative civil liability, on these individuals pursuant to this authority, except that the types of enforcement actions discussed in subpart V. B. shall be considered.

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<p>§ 13350 (California Water Code)</p>	<ul style="list-style-type: none"> • Up to \$10 per gallon of waste discharged, or • Up to \$5000 per day of violation. <p>The Regional Board is required to make a specific finding if it imposes civil liability in an amount less than \$100 per day of violation if there is no discharge, or less than \$500 per day of violation if there is a discharge and a CAO is issued.</p>
<p>§ 13385 (a) (California Water Code)</p>	<p>For NPDES permit program violations or discharges to surface water: Up to \$10,000 per day of violation plus an additional liability of \$10 per gallon for each gallon over 1,000 gallons where there is a discharge that is not cleaned up. A "discharge" as used in this section is defined as any discharge from a point source to navigable waters of the United States, any introduction of pollutants into a POTW, or any use or disposal of sewage sludge.</p>
<p>§ 13385 (h) and (i) (California Water Code)</p>	<ul style="list-style-type: none"> • 13385 (h) (1) ... Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for the first serious violation as defined by statute and each additional serious violation in any period of six consecutive months, except that the SWRCB or RWQCB may elect to require the discharger to spend an amount equal to the penalty for the first serious violation on a supplemental environmental project or to develop a pollution prevention plan. • 13385 (i) Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations: <ol style="list-style-type: none"> (1) Exceeds a waste discharge requirement effluent limitation. (2) Fails to file a report pursuant to Section 13260. (3) Files an incomplete report pursuant to Section 13260. (4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

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§ 13399.33 (California Water Code)	<ul style="list-style-type: none">• Not less than \$5,000 per year or fraction thereof for failure to submit required notice of intent for coverage under stormwater permit.• Not less than \$1,000 per year or fraction thereof for failure to submit notices on non-applicability, annual reports or construction certification as required by stormwater program.
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a) ACL Complaint

California Water Code sections 13323-13327 describe the process to be used to assess ACLs. The California Water Code authorizes RWQCB Executive Officers to issue an ACL Complaint. California Water Code section 13261(b)(1) authorizes both the RWQCB Board Executive Officers and the State Board Executive Director to issue an ACL complaint for failing to furnish a report of waste discharge or pay a waste discharge requirement fee. The ACL Complaint describes the violation and provision of law authorizing imposition of the civil liability, proposes a specific civil liability, and informs the recipient that a public hearing will be held within 60 days after the Complaint is served. Section VII of this policy provides specific instructions for staff to use when developing and documenting a recommendation for the amount of the assessment. It is the policy of the SWRCB that a public comment period should be provided prior to the settlement of any ACL, including mandatory minimum penalties. The SWRCB or RWQCB should use appropriate methods to notify the public of the proposed action. Appropriate methods include, but are not limited to, posting notices on the internet, mailing and/or e-mailing documents to all known interested parties and publishing notices in newspapers. ACLs issued under section 13385 for violations of the CWA must allow a 30-day public comment period and public notice must include publishing a notice in a newspaper of general circulation for any proposed settlement of the ACL.

Upon receipt of an ACL Complaint, the discharger(s) may waive its right to a public hearing and pay the liability; negotiate a settlement (memorialized in the form of an amended complaint); or appear at the RWQCB or SWRCB hearing to dispute the Complaint. If the discharger waives its right to a public hearing and pays the liability, a third party may still comment on the Complaint at any time during the public comment period. Following review of the comments, the Executive Officer may withdraw the ACL complaint. An ACL Complaint may be redrafted and issued as appropriate. In cases where a public hearing before the RWQCB or SWRCB is not held, summary information regarding the final disposition of the Complaint should be included in the SWRCB or RWQCB Agenda.

If the discharger does not waive the right to a public hearing, California Water Code section 13233(b) requires that a public hearing be held within 60 days of the issuance of the complaint. The discharger may agree in writing that the hearing can be held more than 60 days after the issuance of the complaint. The hearing shall be before a panel of the RWQCB or before the RWQCB or SWRCB. Following the hearing the RWQCB or SWRCB will consider whether to affirm, modify or reject the liability. If the RWQCB or SWRCB adopts an ACL Order, it may be for an amount that is greater or less than the amount proposed in the complaint but may not exceed the maximum statutory liability. If the Executive Officer decides to dismiss the liability prior to the hearing, the Executive Officer must withdraw the Complaint.

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b) Suspended Liability

The RWQCB or SWRCB may, by various means, allow a portion of the liability to be satisfied through the successful completion of a Supplemental Environmental Project (SEP) and/or a Compliance Project (CP). The remaining portion of the liability shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The specific procedures for suspending liability for SEPs and CPs are discussed in greater detail in Sections IX and X of this Policy.

c) Staff Costs

The portion of the ACL amount that is intended to recover staff costs should always be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. Staff costs are discussed in greater detail in Section VII of this Policy.

d) ACL Order

ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB. ACL Orders can only be modified by the SWRCB pursuant to California Water Code section 13320 or in superior court if a petition for writ of mandate was properly filed in accordance with California Water Code section 13330. All cash payments to the SWRCB or RWQCBs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

10. Referrals To Attorney General, District Attorney, United States (U.S.) Attorney or City Attorney

The RWQCB or SWRCB can refer violations to the state Attorney General for civil enforcement actions. The RWQCB or SWRCB can also request the appropriate county District Attorney or City Attorney seek criminal prosecution. A superior court may be requested to impose civil or criminal penalties. In some cases (e.g., when the District Attorney or Attorney General is unable or unwilling to accept a case), the RWQCB may find it appropriate to request the USEPA's criminal investigation division or the U.S. Attorney's Office to review potential violations of federal environmental statutes, including but not limited to the CWA, the Endangered Species Act, the Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act.

a) Attorney General

At the request of the RWQCB or SWRCB, the Attorney General can seek judicial civil liabilities on behalf of the RWQCB or SWRCB for California Water Code violations, essentially the same ones for which the RWQCB or SWRCB can impose ACLs. Maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the court instead of the RWQCB. The Attorney General can also seek injunctive relief in the form of a restraining order, preliminary injunction, or permanent injunction pursuant to California Water Code sections 13262, 13264, 13304, 13331, 13340 and 13386. Injunctive relief may be appropriate in emergency situations, or where a discharger has ignored enforcement orders or does not have the ability to pay a large ACL.

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For civil assessments, referrals to the Attorney General should be reserved for cases where the violation merits a significant enforcement response but where an ACL would be inappropriate or ineffective. For example, when a major oil spill occurs, several state agencies can seek civil monetary remedies under different state laws; a single civil action by the Attorney General may be more efficient than numerous individual agency actions. A violation (or series of violations) with major public health or water quality impacts should be considered for referral in order to maximize the monetary assessment because of its effect as a deterrent. Referral for recovery of natural resources damages under common law theories, such as nuisance, may also be appropriate.

b) District Attorney, City Attorney, USEPA or U.S. Attorney

District Attorneys, City Attorneys, USEPA, or U.S. Attorneys may seek civil or criminal penalties under their own authority for some of the same violations the RWQCB pursues. A request by the RWQCB is not required. The decision to file a criminal action and what charges to bring is within the sole discretion of the prosecutor who acts on behalf of the people of the state in general. A RWQCB can request prosecution or investigation and should cooperate with a prosecutor but the criminal action is not controlled by, or the responsibility of, the RWQCB. Staff should always request that any settlement by the District Attorney require any actions that are necessary to prevent recurrence of a spill and/or to mitigate damage to the environment and include recovery of staff costs.

A major area where District Attorney involvement should be considered is where there is suspected criminal action related to releases of hazardous substances or toxic materials. A request for District Attorney involvement would support the local agency or another state agency that is taking the lead (e.g., county health department, city fire department, California Department of Fish and Game or the California Department of Toxic Substances Control). Many District Attorney offices have created task forces specifically staffed and equipped to investigate environmental crimes including water pollution. These task forces may request RWQCB support which should be provided within available resources. District Attorneys also have the resources to carry out investigations that may be beyond the expertise of RWQCB staff. For example, a District Attorney's investigator is skilled at interviewing witnesses and collecting evidence. Such assistance can help a RWQCB determine if enforcement action is required and help with developing the evidence needed to prove the basis for enforcement.

In addition to the criminal sanctions and civil fines, the District Attorney often pursues injunctive actions to prevent unfair business advantage. The law provides that one business may not gain unfair advantage over its competitors by using prohibited tactics. A business that fails to comply with its WDRs or an enforcement order competes unfairly with other businesses that obey the law.

In cases where there is a serious violation of the CWA and additional investigatory resources are needed, the USEPA or U.S. Attorney may be contacted. Civil matters should be referred to the USEPA, not directly to the U.S. Attorney

Investigations by prosecutors are confidential and are generally not subject to Public Records Act disclosure. It is essential that staff working with the prosecutor or prosecutor's investigators maintain this confidentiality.

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c) Civil versus Criminal Actions

Enforcement actions taken by the RWQCB are administrative or civil actions. In cases where there is reason to believe that specific individuals or entities have engaged in criminal conduct, the RWQCB may refer the case to the District Attorney, City Attorney, Attorney General, USEPA's criminal investigation division or the U.S. Attorney. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment.

While criminal statutes differ, most require some type of intent or knowing behavior on the part of the violator. This intent may be described as knowing, reckless, or willful. In addition to the required intent, criminal offenses usually consist of a number of elements, each one of which must be proven. Determining whether the required degree of intent and each of the elements exists often involves a complex analysis. If a potential environmental criminal matter comes to the attention of staff, staff should inform RWQCB management and the RWQCB's attorney.

D. Petitions of Enforcement Actions

Persons affected by most formal enforcement actions or failures to act by a RWQCB may file petitions with the SWRCB for review of such actions or failures to act. The petition must be received by the SWRCB within 30 days of the RWQCB action. A petition on the RWQCB's failure to act must be filed within 30 days of the date the RWQCB refuses to act or within 60 days after a request has been made to the RWQCB to act. Actions taken by the Executive Officer of the RWQCB pursuant to authority delegated by the RWQCB (e.g., cleanup and abatement orders) are considered actions by the Board and are also subject to the 30-day time limit. In addition, significant enforcement actions by a RWQCB Executive Officer may be reviewed by the RWQCB at the request of the discharger. When a discharger has unsuccessfully petitioned the RWQCB and subsequently petitions the SWRCB for review, the petition to the SWRCB must be filed within 30 days of the Executive Officer's action. The SWRCB may, at any time and on its own motion, review most actions or failures to act by a RWQCB. When a petition is filed with the SWRCB, the time for payment of fees, liabilities or penalties that are the subject of the petition is extended during the SWRCB review of the petition.

V. SPECIFIC RECOMMENDED ENFORCEMENT

It is the intent of the SWRCB that the following specific instances of non-compliance receive consistent enforcement responses from the SWRCB and all nine RWQCBs. These specific recommendations should be considered when senior staff and management establish the relative priority for enforcement pursuant to section I.E. of this Policy. Decisions by the SWRCB and RWQCB to deviate from these specific recommendations should be based on extenuating circumstances that are documented in the discharger/facility record (e.g., file, databases, other records).

A. Dischargers Knowingly Falsifying or Knowingly Withholding Information that is Required to be Submitted to State Regulatory Agencies

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The foundation of the State's regulatory program relies on dischargers accurately, and honestly reporting information required by the Boards. This required information includes, but is not limited to: reports of waste discharge; self monitoring reports including influent and effluent quality; flow data; surface and groundwater data; spills of untreated or partially treated wastewater; and technical reports. Knowingly falsifying or knowingly withholding such information that would indicate violations of requirements contained in board orders, plans and policies erodes the State's regulatory program and places the health of the public and the environment at risk. The SWRCB views these violations as very important and strongly encourages the RWQCBs to respond to any instance of falsification or withholding of required information in accordance with this policy.

The discharger is responsible for compliance with orders and reporting of required information, including violations, to the SWRCB or RWQCB. The discharger is also responsible for ensuring that any employees, agents, or contractors acting on its behalf report required information truthfully, accurately and on time.

Enforcement of statutes pertaining to falsification or withholding of required information should be a high priority and considered as follows:

- (a) Initiate investigation of all instances of suspected falsification or withholding of water quality data within thirty days of becoming aware of the allegations. If the results of preliminary investigation suggest a possibility of criminal wrongdoing by the discharger, the SWRCB and RWQCB staff shall consult with management and the RWQCB's counsel to consider informing the appropriate criminal investigative agency.
- (b) Protect the confidentiality of all staff investigations of potential instances of knowingly falsifying or withholding required information. The RWQCBs shall protect the complainant's personal information such as name, address, phone numbers and employment data by providing a secure location for files about matters related to ongoing criminal investigations or licensing (e.g., treatment plant operator certification). The information in these files shall not be released to the public without consulting with the RWQCB attorney.
- (c) Forward all cases where the investigation supports the allegation of falsification or intentional withholding of water quality data to the District Attorney, Circuit Prosecutor, Attorney General or the U.S. Attorney for criminal investigation.
- (d) The SWRCB and the RWQCBs should pursue administrative actions against the discharger including assessment of civil liabilities and consideration of rescission of WDRs if there is sufficient evidence of falsification or intentional or negligent withholding of required information and the criminal investigators and/or prosecutors agree that the administrative and civil process will not interfere with, or jeopardize, the criminal investigation.
- (e) The RWQCB should implement an intensive inspection schedule (e.g., bi-monthly inspections for a period of six months) for any facility where the investigation supports the allegation of falsification or withholding of water quality data. Inspections should involve thorough review of facility water quality records, procedures and processes, logbooks, and sampling of effluent at regular intervals. Requesting the assistance of the

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District Attorney, Attorney General, or U.S. Attorney should be considered in complex cases.

B. Certified Wastewater Treatment Plant Operators and Licensed Underground Storage Tank Testers Knowingly Falsifying or Knowingly Withholding Information that is Required to be Submitted to State Regulatory Agencies

1. The SWRCB's Office of Operator Certification shall promptly consider suspending or revoking the Operator Certificate, or imposing administrative civil liability, on any operator who knowingly commits any of the following acts if doing so impacts or threatens to impact water quality:

- (a) knowingly falsifies required information submitted to the SWRCB or RWQCB;
- (b) withholds required information from the SWRCB or RWQCB;
- (c) knowingly submits false information on an application for operator certification; or
- (d) through threats, coercion, or intimidation forces others to falsify or withhold required information from the SWRCB or RWQCB. The Office of Operator Certification shall report to the SWRCB at a public meeting its decisions where formal disciplinary action has been taken against any operator for such action(s).

2. The SWRCB's Office of Tank Tester Licensing shall promptly consider suspension or revocation, or the imposition of administrative civil liability, of any licensed tank tester who knowingly commits any of the following acts if doing so impacts or threatens to impact water quality:

- (a) knowingly falsifies required information submitted to the SWRCB;
- (b) withholds required information from the SWRCB;
- (c) knowingly submits false information on an application for license, or
- (d) through threats, coercion, or intimidation forces others to falsify or withhold required information from the SWRCB.

C. Failure to Submit Reports and Submittal of Inadequate Reports

As stated above, the State's water quality regulatory program relies on dischargers to report information specified in the WDR or in another enforceable order. If the discharger fails to submit a report, or submits a report that is inadequate (i.e., so deficient or incomplete as to impede the review of the status of compliance) the RWQCB should issue a notice of violation to the discharger. The notice of violation must not include language that excuses the violation or that modifies the original compliance date. If the discharger does not submit an adequate report within 60 days of the original compliance date, the RWQCB should issue an ACL unless the delay is beyond the reasonable control of the discharger.

D. Mandatory Minimum Penalties for NPDES Violations

Mandatory penalty provisions are required by California Water Code section 13385(h) and (i) for specified violations of NPDES permits. For violations that are subject to those mandatory minimum penalties, the RWQCB must either assess an ACL for the mandatory minimum penalty

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or assess an ACL for a greater amount. California Water Code section 13385(h) requires that a mandatory minimum penalty of \$3,000 be assessed by the RWQCB for each serious violation. A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more. (See Tables III-1 and III-2). Section III.A.(a) of this policy addresses situations where the effluent limit for a pollutant is less than or equal to the quantitation limit. As an alternative to assessing \$3,000 for the first serious violation in a six-month period, the RWQCB may require the discharger to spend an amount equal to the penalty for a SEP or to develop a pollution prevention plan (PPP). Exceptions to the imposition of mandatory minimum penalties are provided for violations that are caused by acts of war or by an unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character or by an intentional act of a third party. Such exceptions do not apply if the violation could have been prevented or avoided by the exercise of due care or foresight by the discharger. Such exceptions are fact specific and should be evaluated on a case by case basis.

If the RWQCB allows the discharger to prepare a PPP pursuant to California Water Code section 13263.3 or an SEP in lieu of paying \$3,000 for the first violation, the RWQCB must wait until the discharger has not had any serious violations for six months before it can allow the discharger to prepare an SEP or PPP in lieu of the mandatory penalty for additional serious violations. Any SEP or PPP allowed pursuant to California Water Code section 13263.3 should only consist of measures that go above and beyond the existing obligation of the discharger.

The RWQCB is required by California Water Code section 13385(i) to assess mandatory minimum penalties of \$3,000 per non-serious violation, not counting the first three violations. A non-serious violation occurs if the discharger does any of the following four or more times in any period of six consecutive months:

- (a) exceeds WDR effluent limitations;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) exceeds a toxicity discharge limitation where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.

The six-month time period is calculated as a "rolling" 180 days.

The intent of these portions of the California Water Code is to assist in bringing the State's permitted facilities into compliance with WDRs. RWQCBs should issue mandatory minimum penalties within seven months of the time that the violations qualify as mandatory minimum penalty violations, or sooner if the total mandatory penalty amount is \$30,000 or more. This will encourage the discharger to correct the violation in a timely manner.

A single operational upset which leads to simultaneous violations of one or more pollutant parameters shall be treated as a single violation. EPA defines "single operational upset" as "an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one CWA effluent discharge pollutant parameter. Single operational upset does not include... noncompliance to the extent caused by improperly designed or inadequate treatment facilities" ("Issuance of Guidance Interpreting Single Operational Upset" Memorandum from the Associate Enforcement Counsel, Water Division, U.S.EPA, September 27, 1989.). The EPA Guidance further defines an

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“exceptional” incident as a “non-routine malfunctioning of an otherwise generally compliant facility.” Single operational upsets include such things as upset caused by a sudden violent storm, a bursting tank, or other exceptional event and may result in violations of multiple pollutant parameters. The discharger has the burden of demonstrating a single operational upset occurred. The RWQCB shall apply the above EPA Guidance in determining if a single operational upset occurred. A finding that a single operational upset has occurred is not a defense to liability, but may affect the number of violations.

California Water Code section 13385(j) includes several limited exceptions to the mandatory minimum penalty provisions. The primary exceptions are for discharges that are in compliance with a cease and desist order or time schedule order under narrowly specified conditions. California Water Code section 13385(k) provides an alternative to assessing mandatory minimum penalties against a POTW that serves a small community, “as defined by subdivision (b) of Section 79084”. Under this alternative, the RWQCBs may require the POTW to spend an amount equivalent to the mandatory minimum penalty toward a compliance project that is designed to correct the violations.

California Water Code section 79084 defines “small community” as a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the board.

It is the policy of the SWRCB that “rural county” means a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine.

It is the policy of the SWRCB that “financial hardship” means that the median annual household income for the community is less than 80% of the California median annual household income. It is the policy of the SWRCB that “median annual household income” means the median annual household income of the community based on the most recent census data or a local survey approved by the SWRCB. If a community believes that the census data does not represent the community, and the community is not a Census Designated Place, a City or a Town, the community may apply to the SWRCB for designation as a “small community with a financial hardship”. The application must include a map of community boundaries, a list of properties, the number of households and the number of people in the community. Additional information including information regarding income and/or property values of the community may be submitted in support of the application. If the application does not provide an adequate basis for the calculation of median household income, the SWRCB may require an independent income survey conducted in accordance with a pre-approved methodology. A subdivision of state government shall not be considered a small community with a financial hardship. The SWRCB will maintain a current list of designated small communities with a financial hardship.

The following counties qualify as rural counties with a financial hardship		
Alpine	Inyo	Plumas
Calaveras	Kings	Sierra
Colusa	Lake	Siskiyou
Del Norte	Lassen	Tehama
Glenn	Mariposa	Trinity

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Humboldt	Mendocino	Tuolumne
Imperial	Modoc	
Based on 1990 Census Data		

E. Failure To Pay Annual Fees

California Water Code section 13260 requires that each person prescribed WDRs shall pay an annual fee, except confined animal feeding or holding operations, which have a one-time \$2,000 fee and solid waste landfills, which are not subject to WDR fees pursuant to an exclusion in Public Resources Code section 48004(b). Failure to pay the fee when requested is a misdemeanor (and a priority violation) and may be subject to an ACL imposed by the RWQCB or SWRCB of up to \$1,000 per day pursuant to California Water Code section 13261.

If the annual fee is not paid within 30 days of the due date on the original invoice, the SWRCB staff shall issue a Demand Letter for the annual fee which informs the recipient of the amount due and states that non-payment of the fee within 30 days could result in one or more of the following:

- (a) an ACL imposed by the RWQCB not to exceed \$1,000 per day;
- (b) a civil liability imposed by the superior court not to exceed \$5,000 per day;
- (c) rescission of existing WDRs; or
- (d) prosecution as a misdemeanor.

If the fee is not paid within 30 days of the date of the Demand Letter, the SWRCB staff shall issue a Notice of Violation and an ACL Complaint should be issued by the RWQCB Executive Officer. The amount of an ACL for nonpayment of fees should reflect an escalation of liability if there is a past history of failure to pay fees. In addition to the ACL, the discharger remains responsible for payment of the annual fees.

F. Failure To Pay Administrative Civil Liabilities

The SWRCB should pursue collection of unpaid administrative civil liabilities. The California Water Code states that ACLs shall be paid within 30 days of the RWQCB's adoption of an ACL Order unless the petitioner files a petition for review under California Water Code section 13320. When a petition is filed with the SWRCB, payment is extended during the SWRCB review of the petition and shall be paid within 30 days of the SWRCB's decision on the petition unless the petitioner seeks judicial review pursuant to California Water Code section 13330. Payment of an ACL is also extended while a writ of mandate is pending before the superior court. If the petitioner fails to pay the liability and fails to seek judicial review within 30 days of the SWRCB action, the SWRCB may file for a judgment to collect the ACL pursuant to California Water Code section 13328. Application is made to the appropriate court in the county in which the liability was imposed, generally within 60 days of the failure to pay.

As an alternative to Section 13328, the SWRCB or RWQCB may pursue judicial collection for failure to pay an ACL imposed for CWA violations pursuant to California Water Code section 13385. After the time to file for judicial review has expired, the California Water Code provides that the Attorney General upon request must petition the appropriate court to collect the liability. The person failing to pay the liability on a timely basis is required to pay, in addition to that

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penalty, interest, attorney's fees, cost for collection proceedings and a quarterly nonpayment fee for each quarter during which the failure to pay persists. The nonpayment fee is equal to 20 percent of the aggregate amount of the person's liability and the nonpayment fees unpaid at the beginning of each quarter.

G. Acute and Chronic Toxicity and Public Health

Where any violation can be shown to be the result of a discharger's failure to exercise normal care in handling, treating, or discharging waste, and that failure has resulted in acute or chronic toxicity to fish or wildlife and/or a public health threat, the SWRCB or RWQCB should consider assessing civil liability.

Acute toxicity is toxicity that is severe enough to cause mortality or extreme physiological disorder rapidly (typically within 48 or 96 hours). Chronic toxicity is the toxicity impact that lingers or continues for a relatively long period of time, often 1/10 of a lifespan or more. Chronic effects include, but are not limited to mortality, stunted growth, or reduced reproduction rates.

VI. SPECIAL CONSIDERATIONS

A. Violations at Federal Facilities

The CWA and the Resource Conservation and Recovery Act contain limited waivers of sovereign immunity. Due to sovereign immunity, the State cannot assess penalties or liabilities against federal agencies for past violations (i.e., no ACLs) under most circumstances. One significant exception is provided by the Federal Facilities Compliance Act of 1992 (42 USCA 6901 et seq), which allows the States to penalize federal agencies, under specified circumstances, for violations of state hazardous waste management requirements. In addition, under California Water Code section 13308, a RWQCB may seek an ACL, up to a maximum of \$10,000 per day of violation, against federal facilities for any violation of a time schedule order. The time schedule order issued pursuant to Section 13308 prescribes a civil penalty that is based upon the amount necessary to achieve future compliance with an existing enforcement order. The RWQCB should take the action administratively, but if the federal government declines to pay, the RWQCB must refer the matter to the Attorney General's Office to file an action in state or federal court.

B. Integrated Enforcement

SWRCB and RWQCB staff should cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. The aggregate enforcement authorities of the Boards and Departments of the California Environmental Protection Agency (Cal/EPA) and the Resources Agency should be coordinated to eliminate inconsistent and inappropriately duplicative efforts. Where appropriate and as resources allow, RWQCB staff should take the following steps to assist in integrated enforcement efforts:

- (a) participate in multi-agency enforcement coordination;
- (b) share enforcement information;
- (c) participate in cross-training efforts;

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- (d) participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges; and
- (e) where other regulatory agencies have jurisdiction regarding site remediation, the RWQCB should inform and consult with those agencies to ensure that remedial activities will satisfy the aggregate requirements for all.

1. Solid Waste Facilities

Where a RWQCB has issued, or is likely to issue an enforcement action to a solid waste facility that is also under the jurisdiction of the Integrated Waste Management Board, the RWQCB must comply with California Public Resources Code sections 45016, 45019 and 45020.

2. Hazardous Waste Facilities

The role of the RWQCBs regarding enforcement at "offsite hazardous waste treatment, storage, or disposal activities and onsite activities which are required to have a Resource Conservation and Recovery Act (RCRA) Subtitle C permit" was prescribed by the 1995 Cal/EPA "Framework for the Implementation of Health and Safety Code Section 25204.6(b) (SB 1082)". The RWQCB issues WDRs and monitoring programs that are no less stringent than RCRA requirements. The Department of Toxic Substances Control incorporates those WDRs by reference into its permit and carries out all oversight responsibilities associated with hazardous waste facilities, including oversight of groundwater monitoring and other requirements in WDRs. The Department of Toxic Substances Control must coordinate enforcement actions for violation of the WDRs with the RWQCB before initiation of enforcement.

Under RCRA Subtitle C Authorization, corrective action is normally implemented pursuant to the authority of the Department of Toxic Substances Control. The Framework, however, identified over 60 hazardous waste facilities where the RWQCB acts as lead agency for corrective action oversight of existing releases. RWQCBs shall consult with the Department of Toxic Substances Control to ensure that corrective action at those facilities is at least RCRA equivalent.

3. Oil Spills

Responses to oil spills to inland waters that may impact fish and wildlife resources or to marine or estuarine waters should be coordinated with the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR). Staff shall consult with the RWQCB management and the RWQCB attorney to determine appropriate action. Staff should assist in an investigation by providing documentation, sampling, etc. If the discharger has not prepared a spill prevention plan or the plan is not acceptable to the RWQCB, the RWQCB should request a technical report under California Water Code sections 13267 or 13383. Major oil spills, those in excess of 10,000 gallons, usually involve a number of governmental jurisdictions. Such spills should be brought to the RWQCB for consideration of referral to the Attorney General for recovery of civil liability and other remedies.

If formal enforcement actions are taken, they are usually enforced by either the county District Attorney under either the Fish and Game Code or Health and Safety Code, or by the RWQCB under the California Water Code. In general, if the District Attorney is interested in pursuing the case, the RWQCB should consult with the District Attorney before pursuing its own enforcement

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action to avoid any potential double jeopardy issues. However, staff should always request that any settlement by the District Attorney include recovery of staff costs and require any actions that appear necessary to prevent recurrence of a spill and/or to mitigate damage to the environment. If a District Attorney is the enforcement lead, RWQCB staff should generally focus their efforts on cleanup and prevention of future spills.

4. Hazardous Waste Spills

Hazardous wastes are those meeting the criteria specified in Title 22, Division 4.5, Chapter 11, California Code of Regulations. RWQCB staff should coordinate enforcement actions involving hazardous waste spills with the California Department of Toxic Substances Control and/or any local or county hazardous waste program. The Department of Fish and Game should be consulted whenever pollution events may impact fish and wildlife resources. Spills constitute unlawful disposal of hazardous waste pursuant to the Health and Safety Code. RWQCB staff should consider referring spills of all but the smallest amounts to the appropriate District Attorney. In addition, the RWQCB should consider assessing an ACL unless the spill was very small or limited in impact. Due to the nature of the materials discharged, the RWQCB should consider assessing an ACL in an amount at or near the legal maximum. If the California Department of Toxic Substances Control is seeking penalties or damages through a referral to the Attorney General, the RWQCB should consider joining that action in lieu of assessing an ACL.

Large spills of hazardous waste or hazardous substances, 10,000 gallons or more, should be treated like large oil spills, and should be considered for referral to the Attorney General. If appropriate, RWQCB staff should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted. In addition, such spills may constitute the unlawful disposal of hazardous waste pursuant to the Hazardous Waste Control Act (Health and Safety Code section 25100 et seq.) and, in most cases, should be investigated in conjunction with the California Department of Toxic Substances Control.

C. Violations at Waste Water Treatment Facilities that are Operating at 80% or more of Design Capacity

In addition to any formal or informal response to a violation at a waste water treatment facilities that is operating at 80% or more of its permitted capacity, when appropriate, the RWQCB should require, pursuant to Water Code section 13300 or section 13301, a detailed time schedule of specific actions the discharger proposes to take in order to correct or prevent a violation of requirements.

VII. Monetary Assessments in Administrative Civil Liabilities (ACLs)

The following provisions apply to all ACLs except mandatory minimum penalties required pursuant to California Water Code sections 13385(h) and (i) and penalties pursuant to California Water Code section 13399.33. Mandatory minimum penalties are discussed in Section V.D. of this Policy.

The SWRCB or RWQCB must make several important decisions in specifying the conditions of an ACL. First, the Board must determine the amount of the liability considering the factors in

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law. The factors that must be considered are included in the stepwise approach presented later in this section. Next, the Board must consider whether the discharger should be allowed to satisfy some or all of that monetary assessment by completing or funding one or more supplemental environmental projects (SEPs). SEPs are discussed in Section IX. Finally, when the underlying problem that caused the violation(s) has not been corrected, the Board may include provisions in the ACL to encourage future work by the discharger to address problems related to the violation. The Board does this by including an additional monetary assessment against the discharger that is based on the cost of returning to and/or maintaining compliance (i.e., the estimated cost of completing the specified Compliance Projects) This portion of the monetary assessment will be suspended pending the satisfactory completion of the specified Compliance Projects (CPs). CPs are discussed in greater detail in Section X.

The California Water Code requires that the determination of the amount of the liability include the consideration of a number of factors. Prior to issuing a complaint the RWQCB Executive Officer should consider each factor. This consideration shall be documented in the ACL Complaint or in a staff report. If the RWQCB issues an ACL Order, the order shall contain findings explaining the Board's consideration of the factors. The documentation of elements such as the economic benefit, staff costs and avoided costs are necessary for the appropriate distribution of the total liability.

The California Water Code lists a number of factors that must be taken into consideration when setting ACLs. California Water Code section 13327, governing ACL amounts for a wide variety of violations, states that:

[The Board] shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

California Water Code section 13385(e), governing ACL amounts for violations subject to the CWA, requires consideration of different factors stating that:

The regional board, the state board, or the superior court, as the case may be shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

The California Water Code does not specify how these factors are to be weighed or combined when setting the actual dollar amount of an ACL. This section describes the procedure to be used by SWRCB and RWQCB staff to develop a recommendation for the amount of the monetary assessment in an ACL based on the facts of the case. The steps in the procedure are shown in Table VII-1. This procedure applies to ACLs issued under both California Water Code section 13327 and California Water Code section 13385(e). Staff should carefully document

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each step in the ACL Complaint, ACL Order or the staff-report for the ACL. The manner in which the SWRCB or RWQCB considers these factors for any given situation is up to the discretion of the Board within the limits of statutory maximums and minimums described in Section VII.I.

Table VII-1. Procedure to set ACL amounts

Step	Procedure
A. Initial Liability	Set an initial liability based on the extent and severity of the violation and the sensitivity of the receiving water. An initial liability should also be calculated for non-discharge violations.
B. Beneficial Use Liability	If possible, estimate the dollar value of any impacts of the violation on beneficial uses of the affected waters.
C. Base Amount	The Base Amount is a single amount that is a result of combining the figures derived from the first 2 steps. For many ACLs, the base amount will simply be the initial liability from step A. because the calculation of the beneficial use liability may not be appropriate. The base amount reflects the extent and severity of the violation and its impact on beneficial uses.
D. Adjustment for discharger's conduct	Determine factors to adjust the Base Amount with respect to the conduct of the discharger's history of violations and other considerations. Apply these factors to the Base Amount from step C.
E. Adjustment for other factors	Determine whether any other factors should be taken into consideration when setting the ACL amount. If appropriate, adjust the figure from Step D to include these factors.
F. Economic Benefit	Estimate the economic benefit to the discharger. Economic benefit is any savings or monetary gain derived from the acts that constitute the violation. Add the economic benefit to the amount in step E.
G. Staff Costs	Estimate the SWRCB and RWQCB staff costs resulting from the violation. Add this cost to the figure determined from steps A through F.
H. Adjustment for ability to pay	If appropriate, increase or reduce the figure from Steps A through G with respect to the discharger's ability to pay and ability to continue in business.
I. Check against statutory limits	Check the figure from steps A through H against the statutory maximum and minimum limits.

A. Initial Liability

Set an Initial Liability based on factors related to the discharge - the nature, circumstances, extent, and gravity of the violation, the degree of toxicity of the discharge, and the susceptibility of the discharge to cleanup or abatement. This may include the consideration of information such as the pollutants contained in a discharge, the volume of the discharge, the sensitivity of the receiving water and its beneficial uses, threats to water quality and aquatic life, threats to human health and the volume of the receiving water relative to the discharge. The way that this amount is calculated will depend on the type of violation. For spills, effluent limitation violations, and similar violations, the initial water quality liability can be based on a per-gallon and/or per day charge.

For non-discharge violations such as late reports, failure to submit reports, and failure to pay fees, this initial water quality liability should be set considering the impact on the RWQCB's ability to effectively administer its water quality programs in addition to the above factors. These impacts include, but are not limited to, additional RWQCB staff costs beyond the

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normally required effort and the potential consequences of delayed clean-up, coordination, mitigation and enforcement response by the RWQCB due to late or omitted reports. For late or missing reports, the initial water quality liability amount could also consider impacts to water quality caused by the delay or failure. Timely follow-up on these violations acts as a deterrent to the violator and others and supports those dischargers who readily commit the resources necessary to comply with similar requirements.

B. Beneficial Use Liability

Review the designated beneficial uses of the receiving water and determine whether the violation has resulted in any quantifiable impacts related to beneficial uses. Quantitative information may only be available for a limited number of impacts such as beach closure days, but where readily available the RWQCB should consider it.

C. Base Amount

The Base Amount is the Initial Liability, the Beneficial Use Liability or a combination of the Initial Liability and the Beneficial Use Liability. When it is possible to calculate the Beneficial Use Liability, the RWQCBs should assess the extent to which the Beneficial Use Liability represents the entire harm resulting from the violation. The RWQCBs may, at their discretion, find it appropriate to combine the amounts from Steps A and B in a way that reflects the significance of the impacts quantified in Step B relative to the total impacts of the violation.

The way that the Initial Liability and the Beneficial Use Liability should be combined will depend on how the violation harms the beneficial uses of the receiving waters and the extent to which this harm has been quantified. For example, a sewage spill will typically result in a wide variety of impacts, such as fish kills, degradation of wildlife habitat, and beach closures. For a sewage spill to the ocean in an urban area with high beach use, impacts on beach recreation may represent most of the harm resulting from the spill. If it is possible to estimate the value of the lost beach recreation in step B, it is appropriate to take this value and add it to some portion of the Initial Liability amount to reflect the total impact.

For a sewage spill contaminating a beach in a remote area, where beach use is relatively low, impacts on beach use may be less important than other impacts, such as degradation of wildlife habitat and harm to a pristine environment. In such a case, the combined liability (steps A and B) may be based more heavily on the Initial Liability, because the impacts quantified in step B may be less significant relative to the entire impacts of the violation.

D. Conduct of the Discharger

The Base Amount from Step C must then be adjusted to reflect the conduct of the discharger. This adjustment reflects factors such as the degree of culpability of the discharger, any voluntary cleanup efforts undertaken and the discharger's history of violations. This adjustment can be made by determining values for the four factors in Table VII-2, and using them to determine a conduct factor that is applied to the Base Amount. The RWQCB may apply the various conduct factors using percentages. A percentage less than 100 percent may be appropriate for a discharger that made exemplary efforts such as voluntary cleanup. Percentages greater than 100 percent are appropriate for dischargers that demonstrated less than exemplary behavior such as delaying notification of a spill. Large multiplier percentages 200 - 500 percent may be

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appropriate for cases involving falsification of data or other deliberate acts or in cases where the discharger disregarded warnings from Board staff or other parties about the threat of discharge.

This calculation is:

$$ACL = \text{Base Amount} \times CF1 \times CF2 \times CF3 \times CF4$$

Note: Conduct factors should be expressed as a decimal (e.g. 90% = .9).

Table VII-2. Conduct Factors to adjust ACLs

Factor	Adjustment for
Culpability Factor (CF1)	Discharger's degree of culpability regarding the discharge. Higher ACL amounts should be set for intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.
Notification Factor (CF2)	Extent to which the discharger reported the violation as required by law or regulation.
Cleanup and Cooperation Factor (CF3)	Extent to which the discharger cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken.
History of violations factor (CF4)	Prior history of violations

In considering the discharger's prior history of violations careful consideration should be given to whether or not past violations that were not subject to previous ACLs should be included in the current ACL. Where there is a pattern of violations or the violation was intentional, the assessed liability could be substantially affected when considerations such as aggregate impacts and economic benefit are included.

E. Other Factors

If the RWQCB believes that the amount determined using Steps A through D is inappropriate, the amount may be adjusted. Examples of circumstances warranting an adjustment under this step are:

- (a) The discharger publicized the violation and the subsequent enforcement actions in a way that encourages others to violate water quality laws and regulations.
- (b) The threat to human health or the environment was so egregious that the preceding factors did not, in the opinion of the RWQCB, adequately address this violation.
- (c) The discharger has provided, or RWQCB staff has identified other pertinent information not previously considered that indicates a higher or lower amount is justified.

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- (d) A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular socioeconomic group.

If such an adjustment is made, the reasons for the extent and direction of the adjustment must be noted in the administrative record.

F. Economic Benefit

Economic benefit is any savings or monetary gain derived from the acts that constitute the violation. In cases when the violation occurred through no fault of the discharger and it was demonstrated that the discharger exercised due care, there may be no economic benefit. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as Best Management Practices (BMPs)) or did not take other measures needed to prevent the violations, economic benefit should be estimated as follows:

- (a) Determine those actions required by an enforcement order or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent the violation. Needed actions may have been capital improvements to the discharger's treatment system, implementation of adequate BMPs or the introduction of procedures to improve management of the treatment system.
- (b) Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.
- (c) Estimate the type and cost of these actions. There are two types of costs that should be considered, delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g. for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices, etc) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of non-compliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- (d) Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on the delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of non-compliance. This calculation should be done using the USEPA's BEN⁶ computer program (the most recent version is accessible at

⁶ USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

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<http://www.swrcb.ca.gov>) unless the SWRCB or RWQCB determines, or the discharger demonstrates to the satisfaction of the SWRCB or RWQCB, that, based on case-specific factors, an alternate method is more appropriate for a particular situation.

- (e) Determine whether the discharger has gained any other economic benefits. These may include income from continuing in production when equipment used to treat discharges should have been shut down for repair or replacement.
- (f) The RWQCBs should not adjust the economic benefit for expenditures by the discharger to abate the effects of the discharge.

The economic benefit shall be added to the adjusted base amount calculated from the previous steps unless the RWQCB determines that it is not appropriate. The ACLC or ACL Order shall include a finding that supports the determination.

G. Staff Costs

Staff costs may be one of the "other factors that justice may require", and should be estimated when setting an ACL. Staff should estimate the cost that investigation of the violation and preparation of the enforcement action(s) has imposed on government agencies. This can include all activities of a progressive enforcement response that results in the ACL. Staff costs should be added to the amount calculated from the previous steps.

H. Ability to Pay and Ability to Continue in Business

The procedure in Steps A through G gives an amount that is appropriate to the extent and severity of the violation, economic benefit and the conduct of the discharger. This amount may be reduced or increased based on the discharger's ability to pay.

The ability of a discharger to pay an ACL is limited by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, it may be reduced on the grounds of ability to pay. The RWQCBs may also consider increasing an ACL to assure that the enforcement action would have a similar deterrent effect for a business or public agency that has a greater ability to pay.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

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Normally, an ACL should not seriously jeopardize the discharger's ability to continue in business or operation. The discharger has the burden of proof of demonstrating lack of ability to pay and must provide the information needed to support this position. This adjustment can be used to reduce the ACL to an amount that the discharger can reasonably pay and still bring operations into compliance. The downward adjustment for ability to pay should be made only in cases where the discharger is cooperative and has the ability and the intention to bring operations into compliance within a reasonable amount of time. If the violation occurred as a result of deliberate or malicious conduct, or there is reason to believe that the discharger can not or will not bring operations into compliance, the ACL must not be adjusted for ability to pay.

The RWQCBs may also consider increasing the ACL because of ability to pay. For example, if the RWQCB determines that the proposed amount is unlikely to have an appropriate deterrent effect on an uncooperative discharger with a greater ability to pay, the amount should be increased to the level that the Board determines is necessary to assure future compliance.

I. Statutory Maximum and Minimum Limits

The ACL must be checked against the statutory maximum and minimum limits to ensure that it is in compliance with the appropriate section of law. The maximum amount for an ACL issued under California Water Code section 13385 is \$10,000 for each day in which a violation occurs plus \$10 per gallon for amounts discharged but not cleaned up in excess of 1,000 gallons. The statutory maximum amounts for ACLs issued under California Water Code sections 13261, 13350, and 13399.33 are summarized in Table IV-1.

California Water Code section 13385, which applies to discharges regulated pursuant to the CWA, was amended effective January 1, 2000, to state that "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation". Therefore, for such violations occurring on or after January 1, 2000, the minimum amount for an ACL is the economic benefit. For violations subject to mandatory minimum penalties pursuant to California Water Code section 13385 (h) and (i), the Regional Board may choose in its discretion to assess civil liability in addition to the mandatory penalty. In such cases, the total recovered amount must be no less than the mandatory penalty amount or the economic benefit, whichever is greater.

It is the policy of the SWRCB that all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

VIII. STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT

Sections 13440-13443 of the California Water Code establish a Cleanup and Abatement Account⁷ (CAA) which is administered by the SWRCB. The CAA receives monies from court

⁷ The SWRCB Administrative Procedures Manual, Chapter 4.4, 1992 (subject to amendment), explains the process and responsibilities for the management of the CAA.

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judgments, ACLs⁸, and other specified sources. A RWQCB attempting to remedy a significant unforeseen water quality problem that poses an actual or potential public health threat, and for which the RWQCB does not have adequate resources budgeted, may apply to the SWRCB to receive money from the CAA to assist it in responding to the problem. In addition, the SWRCB and other public agencies with the authority to cleanup waste or abate the effects thereof may utilize the account to assist in the cleanup or abatement of the waste. Each application for CAA funds is judged on its own merits.

A. Emergency Requests

RWQCB Executive Officers (or their designee) or public agencies may request emergency funds verbally for amounts up to \$100,000. These requests shall be directed to the Chief of the Division of Clean Water Programs. In the absence of that individual, other designated staff should be called in the order listed: the Chief Counsel, the Executive Director, the Chief Deputy Director, the Chief of the Division of Administrative Services. Any of these five individuals may review and approve the request.

Within one week following the oral request, the requesting agency shall submit the request in writing to the Chief of the Division of Clean Water Programs.

B. Non-Emergency Requests

Non-emergency requests and all requests for more than \$100,000 must be submitted, in writing, for approval by the SWRCB. The Chief of the Division of Clean Water Programs, determines if the request is eligible for funding, and presents eligible requests to the SWRCB with a staff recommendation.

C. Contracts

Contracts executed by a RWQCB consistent with Water Code Section 13304 and funded by the CAA are exempt from General Services review, and may be approved more quickly. When time permits, these contracts should be in writing. Otherwise, Section 13304 allows a RWQCB to enter into oral contracts. If the RWQCB enters into an oral contract, the terms of the contract must be documented and submitted to the Division of Clean Water Programs. It must be submitted within one week of the date of the oral contract with copies for the Accounting and Contracts Offices.

IX. Supplemental Environmental Projects (SEPs)

The SWRCB or RWQCB may allow a discharger to satisfy some or all of the monetary assessment imposed in an ACL Complaint or Order completing or funding one or more SEPs. SEPs are projects that enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise

⁸Not all of the money received from ACLs is deposited in the CAA. For example, money received from ACLs issued pursuant to California Water Code 13399.33 is deposited in the Waste Discharge Permit Fund.

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required of the discharger. California Water Code section 13385(h)(3) allows limited use of SEPs associated with mandatory minimum penalties. California Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. In addition, the SWRCB supports the inclusion of SEPs in other ACL actions, so long as these projects meet the criteria specified in this section. These criteria should also be considered when the SWRCB or RWQCB is negotiating SEPs as part of the settlement of civil actions brought in court.

A. Process for Project Selection

Any public or private entity may submit a proposal to the SWRCB (or to the RWQCB for transmittal to the SWRCB) for an SEP that they propose to fund through this process. Staff at the SWRCB shall evaluate each proposal and maintain a list of candidate SEPs that satisfy the general criteria in subsection C of this section. The list of candidate SEPs shall be made available on the Internet along with information on completed SEPs and SEPs that are in-progress. When a RWQCB is considering allowing a discharger to perform an SEP in lieu of some or all of a monetary assessment, the RWQCB should direct the discharger to the list of candidate SEPs. The discharger may select a SEP from the list of candidate SEPs or may propose a different SEP that satisfies the general criteria for SEPs. When the discharger submits a proposal to the RWQCB for a SEP, it should include draft provisions (i.e., details of the specific activities that will be conducted, and of the estimated budget for each activity in the SEP) for a contract to be executed between the discharger(s) who will be funding the project and the entity performing the SEP if different from the discharger. The discharger should be requested to provide information regarding the additional selection criteria in subsection D of this section and shall demonstrate to the satisfaction of the Board that the selected or proposed SEP also satisfies the Nexus requirements in subsection E of this section.

B. ACL Complaints and ACL Orders allowing SEPs

All ACL Complaints and Orders that include suspended liabilities for SEPs shall include or reference detailed specifications for evaluating the timely and successful completion of the SEP. The ACL Complaint or Order shall contain or reference specific performance standards, and identified measures or indicators of performance. The ACL Complaint or Order shall specify that the discharger is required to meet these standards and indicators.

Any portion of the liability that is not suspended must be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The ACL Complaint or Order shall state that failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and the suspended amounts will become immediately due and payable.

The ACL Complaint or Order shall either include a time schedule or reference a TSO with a single or multiple milestones and the amount of liability that will be permanently suspended upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP. The Complaint or Order should state that, if the final total cost of the successfully completed SEP is less than the amount suspended for completion of the SEP, the discharger must remit the difference to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The Complaint or Order should state that if any

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SEP milestone is not completed to the satisfaction of the Executive Officer by the date of that milestone, the previously suspended liability associated with that milestone shall be immediately due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute. It is the discharger's responsibility to pay the amount(s) due, regardless of any agreements between the discharger and any third party contracted to implement the project. Therefore, the discharger may want to consider a third party performance bond or the inclusion of a penalty clause in their contract.

Since ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB, the RWQCB may want to include provisions in the ACL Order to extend the deadline for any milestone if it, or its Executive Officer, determines that the delay was beyond the reasonable control of the discharger. If the RWQCB fails to reserve jurisdiction for this purpose, the time schedule in the ACL Order can only be modified by the SWRCB pursuant to California Water Code section 13320.

The ACL Complaint or Order shall include provisions for project tracking, reporting, and oversight:

- (a) The ACL Complaint or Order shall require the discharger to provide the SWRCB or RWQCB progress reports, as appropriate, and shall require a final report, certifying the completion of the SEP.
- (b) The ACL Complaint or Order shall require the discharger to provide the SWRCB or RWQCB a post-project accounting of expenditures.
- (c) The SWRCB or RWQCB shall not manage or control funds that may be set aside or escrowed for performance of a SEP. Nor may the SWRCB or RWQCB retain authority to manage or administer the SEP. The SWRCB or RWQCB may require the discharger to select and hire an independent management company or other appropriate third party, which reports solely to the SWRCB or RWQCB, to audit implementation of the SEP. The company should evaluate compliance with performance measures and report to the SWRCB or RWQCB about the timely and successful completion of the SEP. Alternatively, as a condition of the SEP, the SWRCB or RWQCB may require the discharger to pay into the Cleanup and Abatement Account or other fund or account as authorized by statute an amount equal to the estimated cost for oversight of the SEP by the SWRCB or RWQCB. The RWQCB or third party auditor shall track the implementation of the SEP (e.g., through progress reports, meetings with the discharger, etc.) to ensure that the implemented SEP reasonably follows the approved project and achieves the original objectives.
- (d) The ACL Complaint or Order should require that, whenever the discharger publicizes an SEP or the results of the SEP, it will state in a prominent manner that the Project is being undertaken as part of the settlement of an enforcement action.

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C. General SEP Qualification Criteria

All SEPs approved by the SWRCB or RWQCB must satisfy the following general criteria:

- (a) An SEP shall only consist of measures that go above and beyond the obligation of the discharger. For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to:
 - (i) monitoring programs;
 - (ii) studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
 - (iii) water or soil treatment;
 - (iv) habitat restoration or enhancement;
 - (v) pollution prevention or reduction;
 - (vi) wetland, stream, or other waterbody protection, restoration or creation;
 - (vii) conservation easements;
 - (viii) stream augmentation;
 - (ix) reclamation;
 - (x) public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.);
 - (xi) watershed assessment (e.g., citizen monitoring, coordination and facilitation);
 - (xii) watershed management facilitation services; and
 - (xiii) non-point source program implementation.
- (c) The SEP shall not directly benefit the SWRCB or RWQCB functions or staff. For example, SEPs shall not be gifts of computers, equipment, etc. to the SWRCB or RWQCB.
- (d) The SEP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity (e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger's project(s).

D. Additional SEP Qualification Criteria

The following additional criteria should be evaluated by the SWRCB and RWQCB during final approval of SEPs proposed by the discharger:

- (a) The SEP should, when appropriate, include documented support by other resource agencies, public groups and affected persons.

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- (b) The SEP should, when appropriate, document that the project complies with the California Environmental Quality Act.
- (c) **Regionwide use/benefit** - Some projects may benefit the specific watershed yet still provide added value regionwide or even statewide. For example, development of a spill prevention course could benefit not just the local watershed but the whole region or state if properly packaged and utilized. Likewise, a monitoring program for a particular water body could also provide information that staff could use in assessing other discharges, spills, 401 certifications or flood control activities in a river. Projects, which provide the SWRCB or RWQCB with added value, are encouraged.
- (d) **Combined funding** - Some projects use seed money to create a much greater or leveraged impact. Often other agencies will contribute staff time, laboratory services, boat use, or other services as part of a monitoring project. While the applicant may propose to spend hard money on equipment or materials, they may be donating expertise and labor to accomplish a much larger project. Matching funds, in kind services and leveraged projects are encouraged.
- (e) **Institutional stability and capacity** - The RWQCB shall consider the ability of the discharger or third party contractor to accomplish the work and provide the products and reports expected. This criterion is especially important when a Board receives money as the result of a settlement and must then select and fund projects proposed from many sources.
- (f) **Projects that involve environmental protection, restoration, enhancement or creation of waterbodies** should include requirements for monitoring to track the long-term success of the project.

E. Nexus Criteria

An SEP must have a nexus (connection or link) between the violation(s) and the SEP. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. An SEP must meet one or more of the following criteria. SEP approval is more likely for projects meeting more criteria.

Geographic Nexus - The proposed project should have a geographic link or nexus with the area where the water quality problem or violation occurred. For example, a spill to a river might require a plan to improve habitat or fish populations in the river in the general area of the spill. Work in a tributary watershed might be appropriate depending on the circumstances, however, work in a far different part of the region or state would likely not meet the geographic nexus criteria.

Spill Type or Violation - The proposed project should be related to the specific spill type or violation. For example, an SEP for a sewage spill ACL could include holding spill prevention workshops for other dischargers in the general area (both a geographic and violation type nexus). The workshops should go beyond what is necessary just to address mandatory work, equipment, and improvements required to correct the nature of the violation.

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Beneficial use protection - Where specific beneficial uses were affected by the violation, it is appropriate to design SEPs that address protection and improvement of those uses. Where fish populations and habitats are affected, efforts to improve habitats and populations would be ideal, especially in the same watershed. Water quality monitoring, including flows, channel morphology, and habitat characteristics would be appropriate projects. In this case, the nexus is between the type of violation and the specific beneficial uses impacted. It is also important to keep endangered species issues in focus and to consult with the Department of Fish and Game, the National Marine Fisheries Service, and US Fish and Wildlife Service about impacts of violations on these species and possible SEPs.

X. Compliance Projects (CPs)

A CP is a project that is designed to address problems related to the violation and bring the discharger back into compliance in a timely manner.

A. CPs under California Water Code Section 13385(k)

In lieu of assessing all or a portion of a mandatory minimum penalties against a POTW serving an eligible small community, the SWRCB or RWQCB may, pursuant to California Water Code section 13385 (k), require that the POTW to spend an equivalent amount toward the completion of a CP. CPs must be proposed by the POTW and the SWRCB or RWQCB must find all of the following:

- (a) The CP is designed to correct the violations within five years;
- (b) The CP is in accordance with this Enforcement Policy; and
- (c) The POTW has demonstrated that it has sufficient funding to complete the CP.

It is the policy of the SWRCB that the following conditions shall apply to Compliance Projects under California Water Code section 13385(k):

- (d) The amount of the penalty suspended shall not exceed the cost to return to and/or maintain future compliance.
- (e) CPs shall also comply with the general conditions for CPs specified in subsection C of this Section.

B. CPs in other ACLs

If the underlying problem that caused the violation(s) has not been corrected, the cost of returning to and/or maintaining compliance (i.e., the estimated cost of completing the CP) may be included by the RWQCB in the ACL as an additional monetary assessment against the discharger that is suspended pending the satisfactory completion of a CP. Payment of the additional monetary assessment is only required the CP is not satisfactorily completed. The monetary assessment for the CP is in addition to the economic benefit calculated as part of the ACL in accordance with section VII.F.

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It is the policy of the SWRCB that the following conditions shall apply to Compliance Projects in all ACLs except ACLs under California Water Code section 13385(k):

- (a) The amount of the assessment suspended shall not exceed the additional portion of the monetary assessment that was based on the discharger's cost of completing the CP.
- (b) Either the RWQCB or the discharger may recommend specific CPs that could be included in the ACL action.
- (c) CPs shall also comply with the general conditions for CPs specified in subsection C of this Section.

C. General Conditions for all CPs

The following general conditions apply to all CPs:

- (a) CPs may include, but are not limited to: construction of new facilities; upgrade or repair of existing facilities; conducting water quality investigations or monitoring; operating a cleanup system; adding staff; training; studies; and the development of operation, maintenance and/or monitoring procedures.
- (b) CPs should be designed to bring the discharger back into compliance in a timely manner and/or prevent future noncompliance.
- (c) A CP is a project that the discharger is otherwise obligated to perform independent of the ACL itself.
- (d) CPs shall have clearly identified project goals, costs, milestones, and completion dates and these shall be specified in the ACL action.
- (e) CPs that will last longer than one year shall have at least annual reporting requirements.
- (f) If the discharger completes the CP to the satisfaction of the RWQCB or the Executive Officer by the specified date, the suspended amount is permanently suspended.
- (g) If the CP is not completed to the satisfaction of the RWQCB or the Executive Officer on the specified date the amount suspended becomes due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute.
- (h) The ACL Complaint or Order shall clearly state that payment of the previously suspended amount does not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.

Since ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB, the RWQCB should include a clause in the time schedule for completing CPs. Such clause should reserve the RWQCB's jurisdiction to modify the time schedule if it, or its Executive Officer, determines that the delay was beyond the reasonable control of the discharger. If the RWQCB fails to reserve jurisdiction for this purpose, the time schedule in the ACL Order can only be modified by the SWRCB pursuant to California Water Code section 13320. Another option that allows some flexibility in the time schedule for a CP is for the Board to adopt a CAO or a CDO at the same time it adopts the ACL Order. The ACL would require compliance with the time schedule in the CAO or CDO. All cash payments to the SWRCB or RWQCBs, including previously suspended liabilities assessed for failure to comply with CPs or SEPs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

XI. DISCHARGER SELF-AUDITING

It is desirable to encourage self-auditing, self-policing, and voluntary disclosure of environmental violations by dischargers. Self-auditing and voluntary disclosure of violations that are not otherwise required to be reported to the Boards shall be considered by the Boards when determining enforcement actions and in appropriate cases may lead to a determination to forego or lessen the severity of an enforcement action. Falsification or misrepresentation of such voluntary disclosures shall be brought to the attention of the appropriate RWQCB for possible enforcement action.

XII. ENFORCEMENT REPORTING

In order to ensure greater consistency in the reporting by the RWQCBs on violations and enforcement actions, the enforcement reports for all Regions will be standardized. These reports will include a listing of facilities with a water quality violation during the reporting period or unresolved from a previous reporting period, including violations without a RWQCB response. This listing shall include at least the following information:

- (a) The date of violation;
- (b) An identification whether the violation is considered to be a priority violation (see Section III);
- (c) The RWQCB response, if any;
- (d) The date of the response;
- (e) The corrective action taken by the discharger, at least in cases of priority violations; and
- (f) A listing of all previous violations for the facility which occurred in the previous 12 months and the associated RWQCB response.

The enforcement reports will be presented to the RWQCBs on no greater than quarterly intervals. The report format will be produced by the State Water Information Management (SWIM) data system and the RWQCBs will utilize the SWIM to track and monitor discharger's violations and RWQCB's enforcement activities. Utilization of the SWIM data system by the RWQCBs is essential for the SWRCB's compliance with California Water Code section 13385 (m), which requires statewide reporting of violations to the Legislature.

A. Summary Violation and Enforcement Reports

All RWQCBs shall produce standard quarterly reports addressing priority violations. The SWRCB will specify the format of the summary reports.

B. Spill Reporting for Sanitary Sewer Collection Systems

The RWQCBs shall enter all available data on spills into the Sanitary Sewer Overflow/Spills Module of the SWRCB's SWIM data system. It is the SWRCB's goal to achieve consistent reporting of spills from regulated sanitary sewer collections systems.

XIII. POLICY REVIEW AND REVISION

It is the intent of the SWRCB that this Policy be reviewed and revised, as appropriate, at least every five years.

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Appendix A. Group 1 Pollutants

The following list of pollutants is hereby included as Group 1 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

5-DAY SUM OF WLA VALUES
5-DAY SUM OF BOD5 DISCHARGED
7-DAY SUM OF WLA VALUES
7-DAY SUM OF BOD5 DISCHARGED
ACIDITY
ACIDITY, CO2 PHENOL (AS CaCO3)
ACIDITY, TOTAL (AS CaCO3)
ACIDITY-MINRL METHYL ORANGE (AS CaCO3)
ALGICIDES, GENERAL
ALKALINITY, BICARBO-NATE (AS CaCO3)
ALKALINITY, CARBO-NATE (AS CaCO3)
ALKALINITY, PHENOL- PHTHALINE METHOD
ALKALINITY, TOTAL (AS CaCO3)
ALUMINUM
ALUMINUM CHLORIDE, DISSOLVED, WATER
ALUMINUM SULFATE
ALUMINUM, POTENTIALLY DISSOLVD
ALUMINUM, TOTAL RECOVERABLE
ALUMINUM, ACID SOLUABLE
ALUMINUM, DISSOLVED (AS AL)
ALUMINUM, IONIC
ALUMINUM, TOTAL
ALUMINUM, TOTAL (AS AL)
AMMONIA & AMMONIUM- TOTAL
AMMONIA (AS N) + UNIONIZED AMMONIA
AMMONIA, UNIONIZED
AVG. OF 7-DAY SUM OF BOD5 VALUES
BARIUM, SLUDGE, TOT, DRY WEIGHT (AS BA)
BICARBONATE ION- (AS HCO3)
BIOCHEMICAL OXYGEN DEMAND-5
BIOCIDES
BOD % OVER INFLUENT
BOD (ULT. 1ST STAGE)
BOD (ULT. 2ND STAGE)
BOD (ULT. ALL STAGES)
BOD 35-DAY (20 DEG. C)
BOD CARBONACEOUS, 25-DAY (20 DEG. C)
BOD, 11-DAY (20 DEG. C)
BOD, 20-DAY (20 DEG. C)
BOD, 20-DAY, PERCENT REMOVAL
BOD, 5-DAY (20 DEG. C)
BOD, 5-DAY 20 DEG C PER CFS OF STREAMFLW
BOD, 5-DAY DISSOLVED
BOD, 5-DAY PERCENT REMOVAL
BOD, 5-DAY (20 DEG.C) PER PRODUCTION
BOD, CARB-5 DAY, 20 DEG C, PERCENT REMVL
BOD, CARBONACEOUS 5 DAY,5 C
BOD, CARBONACEOUS (5-DAY, 20 DEG C)
BOD, CARBONACEOUS 05 DAY, 20C
BOD, CARBONACEOUS 20 DAY, 20C
BOD, CARBONACEOUS, 28-DAY (20 DEG.C)
BOD, CARBONACEOUS, PERCENT REMOVAL
BOD, FILTERED, 5 DAY, 20 DEG C
BOD, NITROG INHIB 5-DAY (20 DEG. C)
BOD, PERCENT REMOVAL (TOTAL)
BOD, MASS, TIMES FLOW PROP. MULTIPLIER
BOD-5 LB/CU FT PROCESS
BORIC ACID
BORON, DISSOLVED (AS B)
BORON, SLUDGE, TOTAL DRY WEIGHT (AS B)
BORON, TOTAL
BORON, TOTAL (AS B)
BORON, TOTAL RECOVERABLE
BROMIDE (AS BR)
BROMINE CHLORIDE
BROMINE REPORTED AS THE ELEMENT
CALCIUM IN BOTTOM DEPOSITS
CALCIUM, TOTAL RECOVERABLE
CALCIUM, DISSOLVED (AS CA)
CALCIUM, PCT EXCHANGE
CALCIUM, PCT IN WATER, (PCT)
CALCIUM, TOTAL (AS CA)
CARBON DIOXIDE (AS CO2)
CARBON, TOT ORGANIC (TOC)
CARBON, TOT ORGANIC (TOC) PER 1000 GALS.
CARBON, TOTAL (AS C)
CARBON, TOTAL INORGANIC (AS C)
CARBONACEOUS OXYGEN DEMAND, % REMOVAL
CARBONATE ION- (AS CO3)
CBOD5 / NH3-N
CHEM. OXYGEN DEMAND (COD) % REMOVAL
CHEM. OXYGEN DEMAND PER PRODUCTION
CHEMICAL OXYGEN DEMAND (COD)
CHEMICAL OXYGEN DEMAND (COD)
CHEMICAL OXYGEN DEMAND (COD)
CHLORIDE
CHLORIDE (AS CL)
CHLORIDE, DISSOLVED (AS CL)
CHLORIDE, DISSOLVED IN WATER
CHLORIDE, PER CFS OF STREAMFLOW
CHLORIDE, PERCENT REMOVAL
CHLORIDE, SLUDGE, TOTAL DRY WEIGHT
CHLORIDES & SULFATES
CHLORINE DEMAND, 1 HR
CHLORITE

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COBALT, DISSOLVED (AS CO)
COBALT, TOTAL (AS CO)
CONDUCTIVITY, NET
COPPER, SLUDGE, TOT, DRY WEIGHT (AS CU)
DIGESTER SOLIDS CONTENT, PERCENT
DITHIOCARBAMATE, RPTD AS
DITHIOCARBONATE
DRILLED SOLIDS IN DRILLING FLUIDS
E.COLI, MTEC-MF
ENDRIN KETONE, IN WATER
FERROCHROME LIGNO- SULFONATED
FRWTR MUD
FERROCYANIDE
FERROUS SULFATE
FIRST STAGE OXYGEN DEMAND, %
REMOVAL
FLOW, MAXIMUM FLOW RANGE
FLUORIDE - FREE
FLUORIDE, DISSOLVED (AS F)
FLUORIDE, TOTAL (AS F)
FLUOROBORATES
FREE ACID, TOTAL
HARDNESS, TOTAL (AS CaCO3)
HYDROCHLORIC ACID
HYDROCHLORIC ACID
HYDROGEN PEROXIDE
HYDROGEN PEROXIDE (T) DILUTION RATIO
HYDROGEN SULFIDE
IODIDE (AS I)
IRON
IRON AND MANGANESE -SOLUBLE
IRON AND MANGANESE -TOTAL
IRON, POTENTIALLY DISSOLVD
IRON, DISSOLVED (AS FE)
IRON, DISSOLVED FROM DRY DEPOSITION
IRON, FERROUS
IRON, SLUDGE, TOTAL, DRY WEIGHT (AS FE)
IRON, SUSPENDED
IRON, TOTAL (AS FE)
IRON, TOTAL PER BATCH
IRON, TOTAL PER PRODUCTION
IRON, TOTAL PERCENT REMOVAL
LIGHTLY TREATED LIG-NOSULFONATED
MUD
LITHIUM, DISSOLVED (AS LI)
LITHIUM, TOTAL (AS LI)
MAGNESIUM, DISSOLVED (AS MG)
MAGNESIUM, IN BOTTOM DEPOSITS
MAGNESIUM, PCT EXCHANGE
MAGNESIUM, TOTAL (AS MG)
MAGNESIUM, TOTAL RECOVERABLE
MANGANESE IN BOTTOM DEPOSITS (DRY
WGT)
MANGANESE, POTENTIALLY DISSOLVD
MANGANESE, DISSOLVED (AS MN)
MANGANESE, SUSPENDED
MANGANESE, TOTAL
MANGANESE, TOTAL (AS MN)
MANGANESE, TOTAL RECOVERABLE
METHYLENE BLUE ACTIVE SUBSTANCES
MICROSCOPIC ANALYSIS
MOLYBDENUM, DRY WEIGHT
MONOBORO CHLORATE
NICKEL, DRY WEIGHT
NITRILOTRIACETIC ACID (NTA)
NITRITE NITROGEN, DISSOLVED (AS N)
NITRITE PLUS NITRATE DISSOLVED 1 DET.
NITRITE PLUS NITRATE IN BOTTOM
DEPOSITS
NITRITE PLUS NITRATE TOTAL 1 DET. (AS N)
NITROGEN (AS NO3) SLUDGE SOLID
NITROGEN OXIDES (AS N)
NITROGEN SLUDGE SOLID
NITROGEN SLUDGE TOTAL
NITROGEN, AMMONIA DISSOLVED
NITROGEN, AMMONIA PER CFS OF
STREAMFLW
NITROGEN, AMMONIA TOTAL (AS N)
NITROGEN, AMMONIA TOTAL (AS NH4)
NITROGEN, AMMONIA IN BOTTOM DEPOSITS
NITROGEN, AMMONIA, PERCENT REMOVAL
NITROGEN, AMMONIA, SLUDGE, TOT DRY
WGT
NITROGEN, AMMONIA, TOT UNIONIZED (AS
N)
NITROGEN, KJELDAHL DISSOLVED (AS N)
NITROGEN, KJELDAHL TOTAL (AS N)
NITROGEN, NITRATE DISSOLVED
NITROGEN, NITRATE TOTAL (AS N)
NITROGEN, NITRATE TOTAL (AS NO3)
NITROGEN, NITRITE TOTAL (AS N)
NITROGEN, NITRITE TOTAL (AS NO2)
NITROGEN, ORGANIC TOTAL (AS N)
NITROGEN, SLUDGE, TOT, DRY WT. (AS N)
NITROGEN, TOTAL KJELDAHL, % REMOVAL
NITROGEN, INORGANIC TOTAL
NITROGEN, OXIDIZED
NITROGEN-NITRATE IN WATER, (PCT)
NITROGEN-NITRITE IN WATER, (PCT)
NITROGENOUS OXYGEN DEMAND (20-DAY,
20C)
NITROGENOUS OXYGEN DEMAND, %
REMOVAL
NON-IONIC DISPERSANT (NALSPERSE 7348)
NON-NITROGENOUS BOD
OIL & GREASE
OIL & GREASE AROMATIC
OIL & GREASE % REMOVAL
OIL & GREASE (FREON EXTR.-IR
METH)TOT,RC
OIL AND GREASE
OIL AND GREASE

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OIL AND GREASE (SOXHLET EXTR.) TOT.
OIL AND GREASE PER CFS OF STREAMFLW
OIL AND GREASE PER PRODUCTION
OIL AND GREASE VISUAL
OIL AND GREASE, HEXANE EXTR METHOD
OIL AND GREASE, PER 1000 GALLONS
OXYGEN DEMAND FIRST STAGE
OXYGEN DEMAND, DISSOLVED
OXYGEN DEMAND, SUM PRODUCT
OXYGEN DEMAND, ULTIMATE
OXYGEN DEMAND, CHEM. (COD), DISSOLVED
OXYGEN DEMAND, CHEM. (HIGH LEVEL)
(COD)
OXYGEN DEMAND, CHEM. (LOW LEVEL)
(COD)
OXYGEN DEMAND, TOTAL
OXYGEN DEMAND, TOTAL (TOD)
OXYGEN DEMAND, ULT. CARBONACEOUS
(UCOD)
OXYGEN DEMAND, ULT., PERCENT
REMOVAL
OZONE
OZONE - RESIDUAL
PH, CAC03 STABILITY
PHOSPHATE TOTAL SOLUBLE
PHOSPHATE, DISSOLVED COLOR METHOD
(AS P)
PHOSPHATE, ORTHO (AS PO4)
PHOSPHATE, ORTHO (AS P)
PHOSPHATE, TOTAL (AS PO4)
PHOSPHATE, TOTAL COLOR. METHOD (AS P)
PHOSPHATE, DISSOLVED/ORTHOPHOSPHATE
(AS P)
PHOSPHATE, POLY (AS PO4)
PHOSPHOROUS 32, TOTAL
PHOSPHOROUS, IN TOTAL
ORTHOPHOSPHATE
PHOSPHOROUS, TOTAL ELEMENTAL
PHOSPHOROUS, TOTAL ORGANIC (AS P)
PHOSPHOROUS, TOTAL, IN BOTTOM
DEPOSITS
PHOSPHORUS (REACTIVE AS P)
PHOSPHORUS, DISSOLVED
PHOSPHORUS, TOTAL PERCENT REMOVAL
PHOSPHORUS, TOTAL SOLUBLE (AS PO4)
POTASSIUM, DISSOLVED (AS K)
POTASSIUM, IN BOTTOM DEPOSITS
POTASSIUM, PCT EXCHANGE
POTASSIUM, TOTAL RECOVERABLE
POTASSIUM, TOTAL PCTIN WATER, (PCT)
PROPARGITE
RATIO FECAL COLIFORM & STREPTOCOCCI
RESIDUE, SETTLEABLE
RESIDUE, TOTAL FILTERABLE
RESIDUE, TOTAL FILTERABLE
RESIDUE, TOTAL VOLATILE
RESIDUE, TOTAL NON- SETTLEABLE
RESIDUE, VOLATILE NONFILTERABLE
SEAWATER GEL MUD
SETTLEABLE SOLIDS PERCENT REMOVAL
SILICA, DISSOLVED (AS SIO2)
SILICA, TOTAL (AS SIO2)
SILICON, TOTAL
SLUDGE BUILD-UP IN WATER
SLUDGE SETTLEABILITY 30 MINUTE
SLUDGE VOLUME DAILY INTO A WELL
SLUDGE, RATE OF WASTING
SODIUM ADSORPTION RATIO
SODIUM ARSENITE
SODIUM CHLORIDE (SALT)
SODIUM HEXAMETA- PHOSPHATE
SODIUM IN BOTTOM DEP (AS NA) (DRY WGT)
SODIUM NITRITE
SODIUM SULFATE, TOTAL
SODIUM, %
SODIUM, % EXCHANGE- ABLE SOIL, TOTAL
SODIUM, DISSOLVED (AS NA)
SODIUM, SLUDGE, TOT, DRY WEIGHT (AS NA)
SODIUM, TOTAL (AS NA)
SODIUM, TOTAL (AS NA)
SODIUM, TOTAL RECOVERABLE
SOLIDS ACCUMULATION RATE TOT DRY
WEIGHT
SOLIDS, FIXED DISSOLVED
SOLIDS, FIXED SUSPENDED
SOLIDS, SETTLEABLE
SOLIDS, SLUDGE, TOT, DRY WEIGHT
SOLIDS, SUSPENDED PERCENT REMOVAL
SOLIDS, TOTAL
SOLIDS, TOTAL DISSOLVED
SOLIDS, TOTAL DISSOLVED (TDS)
SOLIDS, TOTAL DISSOLVED- 180 DEG.C
SOLIDS, TOTAL FIXED
SOLIDS, TOTAL SUSPENDED
SOLIDS, TOTAL VOLATILE
SOLIDS, TOTAL DISS., PERCENT BY WEIGHT
SOLIDS, TOTAL DISSOLVED, TOTAL TONS
SOLIDS, TOTAL NON-VOLATILE, NON-FIXED
SOLIDS, TOTAL SUSP PER PRODUCTION
SOLIDS, TOTAL SUSP PER 1000 GALLONS
SOLIDS, TOTAL SUSP PER BATCH
SOLIDS, TOTAL SUSP PER CFS OF
STREAMFLW
SOLIDS, VOLATILE DISSOLVED
SOLIDS, VOLATILE SUSPENDED
SOLIDS, VOLATILE SUSPENDED, % REMOVAL
SOLIDS, VOLATILE SUSP IN MIXED LIQUOR
SOLIDS, DRY, DISCHARGETO SOL.HANDLING
SYS.
SOLIDS, DRY, INCIN.AS % OF
DRYSOL.FROMTRMTPLT

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SOLIDS, DRY, REMOVED FROM SOL.
HANDLING SYS.

SOLIDS-FLOTNG-VISUAL DETRMNTN-# DAYS
OBS

SOLIDS, TOT. VOLATILE PERCENT REMOVAL

SOLIDS, VOLATILE % OF TOTAL SOLIDS

SULFATE

SULFATE (AS S)

SULFATE, DISSOLVED (AS SO₄)

SULFATE, TOTAL (AS SO₄)

SULFIDE, DISSOLVED, (AS S)

SULFIDE, TOTAL

SULFIDE, TOTAL (AS S)

SULFITE (AS S)

SULFITE (AS SO₃)

SULFITE WASTE LIQUOR PEARL BENSON

INDEX

SULFUR DIOXIDE TOTAL

SULFUR, TOTAL

SULPHUR, TOTAL ELEMENTAL
SUM BOD AND AMMONIA, WATER

SURFACTANTS (MBAS)

SURFACTANTS (LINEAR ALKYLATE
SULFONATE)

SURFACTANTS, AS CTAS, EFFLUENT

SUSPENDED SOLIDS

SUSPENDED SOLIDS, TOTAL ANNUAL

SUSPENDED SOLIDS, TOTAL DISCHARGE

TOTAL SUSP. SOLIDS- LB/CU FT PROCESS

TRIARYL PHOSPHATE

TURBIDITY, HCH TURBIDIMETER

VANADIUM, DISSOLVED (AS V)

VANADIUM, SUSPENDED (AS V)

VANADIUM, TOTAL

VANADIUM, TOTAL (AS V)

VANADIUM, TOTAL DRY WEIGHT (AS V)

VANADIUM, TOTAL RECOVERABLE

WLA BOD-5 DAY VALUE

Appendix B. Group 2 Pollutants

The following list of pollutants are hereby included as Group 2 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

1,2,3 TRICHLORO-ETHANE	1,3-DIAMINOUREA
2,4,6 TRICHLOROPHENOL, DRY WEIGHT	1,3-DICHLOROBENZENE
2-HEXANONE	1,3-DICHLOROBENZENE, DRY WEIGHT
2-PROPANONE	1,3-DICHLOROPROPENE, TOTAL WEIGHT
1, 2, 4-TRIMETHYL-BENZENE	1,4 DICHLOROBUTANE
1, 3, 5-TRIMETHYL-BENZENE	1,4-DIOXANE
1,1 DICHLORO 1,2,2,2 TETRAFLUOROETHANE	1,4'-DDT (O,P'-DDT)
1,1 DICHLORO 2,2,2- TRIFLUOROETHANE	1,4-DICHLOROBENZENE
1,1,1 TRICHLORO-2,2,2TRIFLUOROETHANE	1,4-DICHLOROBENZENE, DRY WEIGHT
1,1,1,2,2-PENTA- FLUOROETHANE	1,4-XYLENE
1,1,1,3,3-PENTA- FLUOROBUTANE	1-BROMO-2-CHLOROETHANE
1,1,1-TRICHLORO- ETHANE	1-CHLORO-1,1- DIFLUOROETHANE
1,1,1-TRICHLOROETHANE, DRY WEIGHT	1-HYDROXY-ETHYLIDENE
1,1,1-TRIFLUORO-ETHANE	1-METHYLNAPHTHALENE
1,1,2,2-TETRACHLORO-ETHANE	1-NITROSOPIPERIDINE
1,1,2,2-TETRACHLOROETHANE, DRY WEIGHT	2,2DIBROMO-3-NITRILOPROPIONAMIDE
1,1,2-TRICHLORO- ETHANE	2,2-DICHLOROVINYL
1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE	DIMETHYLPHOSPHATE
1,1,2-TRICHLOROETHANE, DRY WEIGHT	2,2-DIMETHYL-2,3-DI-HYDRO-7-
1,1-DICHLORO-1- FLUOROETHANE	BENZOFURANOL
1,1-DICHLOROETHANE	2,3 DICHLOROPROPYLENE
1,1-DICHLOROETHANE, DRY WEIGHT	2,3,4,6-TETRACHLORO-PHENOL
1,1-DICHLOROETHENE	2,3,7,8 CHLORO- DIBENZOFURAN
1,1-DICHLOROETHYLENE	2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN
1,1-DICHLOROETHYLENE, DRY WEIGHT	2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN
1,1-DIMETHYL- HYDRAZINE	SED,
1,2,3 TRICHLORO- BENZENE	2,3,7,8-TETRACHLORO-DIBENZO-P-DIOXIN
1,2,4,5-TETRACHLORO-BENZENE	2,4,5 - T
1,2,4,5-TETRAMETHYL-BENZENE	2,4,5 - TRICHLORO- PHENOL
1,2,4-TRICHLORO- BENZENE	2,4,5, TP(SILVEX)
1,2,4-TRICHLOROBENZENE, DRY WEIGHT	2,4,5-TP(SILVEX) ACIDS/SALTS WHOLE
1,2-BIS(2-CHLOROETH-ONY) ETHANE	WATER SAMPLE
1,2-CIS-DICHLORO-ETHYLENE	2,4,5-TRICHLOROPHENOXYPROPIONIC ACID
1,2-DICHLOROBENZENE	2,4,6-TRICHLORO- PHENOL
1,2-DICHLOROBENZENE, DRY WEIGHT	2,4-DB
1,2-DICHLOROETHANE	2,4-DICHLOROPHENOL
1,2-DICHLOROETHANE, DRY WEIGHT	2,4-DICHLOROPHENOXYACETIC ACID
1,2-DICHLOROETHANE, TOTAL WEIGHT	2,4-DIMETHYLPHENOL
1,2-DICHLOROPROPANE	2,4-DINITROPHENOL
1,2-DICHLOROPROPANE, DRY WEIGHT	2,4-DINITROTOLUENE
1,2-DICHLOROPROPENE	2,4-DINITROTOLUENE, DRY WEIGHT
1,2-DIPHENYL- HYDRAZINE	2,4-TOLUENEDIAMINE
1,2-DIPHENYL-HYDRAZINE, DRY WEIGHT	2,5-TOLUENEDIAMINE
1,2-PROPANEDIOL	2,6-DINITROTOLUENE
1,2-TRANS-DICHLORO- ETHYLENE	2,6-DINITROTOLUENE, DRY WEIGHT
1,2-TRANS-DICHLOROETHYLENE, DRY	2-ACETYL AMINO- FLOURCENE
WEIGHT	2-BUTANONE
1,3 DICHLOROPROPANE	2-BUTANONE PEROXIDE

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2-CHLOROANILINE	ACIDS,TOTAL VOLATILE (AS ACETIC ACID)
2-CHLOROETHANOL	ACROLEIN
2-CHLOROETHYL VINYL ETHER (MIXED)	ACROLEIN, DRY WEIGHT
2-CHLOROETHYL VINYL ETHER, DRY WEIGHT	ACRYLAMIDE MONOMER
2-CHLORONAPHTHALENE	ACRYLIC ACID
2-CHLOROPHENOL	ACRYLONITRILE
2-ETHYL-1-HEXANOL	ACRYLONITRILE, DRY WEIGHT
2-ETHYL-2-METHYL- DIOXOLANE	A-ENDOSULFAN-ALPHA
2-METHYL-2-PROPANOL	ALACHLOR (BRAND NAME-LASSO)
2-METHYL-4,6-DINITROPHENOL	ALACHLOR, DISSOLVED
2-METHYL-4-CHLOROPHENOL	ALDICARB
2-METHYLNAPHTHALENE	ALDICARB SULFONE
2-METHYLNAPHTHALENE	ALDICARB SULFOXIDE
2-METHYLPHENOL	ALDRIN
2-NAPHTHYLAMINE	ALDRIN + DIELDRIN
2-NITROANILINE	ALDRIN, DRY WEIGHT
2-NITROPHENOL	ALKYL BENZENE SULFONATED (ABS)
2-SECONDARY BUTYL- 4,6-DINITROPHENOL	ALKYLDIMETHYL ETHYL AMMONIUM BROMIDE
3,3'-DICHLORO- BENZIDINE	ALKYLDIMETHYLBENZYL AMMONIUM CHLORIDE
3,3'-DICHLOROBENZIDINE, DRY WEIGHT	ALPHA ACTIVITY
3,4 BENZOFLUORAN- THENE	ALPHA EMITTING RADI-UM ISOTOPES, DISSOL.
3,4,5 TRICHLORO- GUACACOL	ALPHA GROSS RADIOACTIVITY
3,4,6-TRICHLORO- CATECHOL	ALPHA, DISSOLVED
3,4,6-TRICHLORO- GUAIACOL	ALPHA, SUSPENDED
3-CHLOROPHENOL	ALPHA, TOTAL
3-NITROANILINE, TOTAL IN WATER	ALPHA, TOTAL, COUNTING ERROR
4,4'-BUTYLDENE BIS- (6-T-BUTYL-M-CRESOL)	ALPHABHC DISSOLVED
4,4'-DDD (P,P'-DDD)	ALPHA-ENDOSULFAN
4,4'-DDE (P,P'-DDE)	AMIBEN (CHLORAMBEN)
4,4'-DDT (P,P'-DDT)	AMINES, ORGANIC TOTAL
4,6-DINITRO-O-CRESOL	AMINOTROL - METHYLENE PHOSPHATE
4-BROMOPHENYL PHENYL ETHER	ANILINE
4-CHLORO-3, 5-DIMETHYLPHENOL	ANTHRACENE
4-CHLORO-3-METHYL PHENOL	ANTIMONY IN BOTTOM DEPOSITS (DRY WGT)
4-CHLOROPHENYL PHENYL ETHER	ANTIMONY, DISSOLVED (AS SB)
4-METHYLPHENOL	ANTIMONY, TOTAL (AS SB)
4-METHYLPHENOL	ANTIMONY, TOTAL RECOVERABLE
4-NITRO-M-CRESOL	AROMATICS, SUBSTITUTED
4-NITRO-N-METHYLPHTHALIMIDE, TOTAL	AROMATICS, TOTAL PURGEABLE
4-NITROPHENOL	ARSENIC
9,10 DICHLOROSTEARIC ACID	ARSENIC, POTENTIALLY DISSOLVD
9,10 EPOXYSTEARIC ACID	ARSENIC, DISSOLVED (AS AS)
A-BHC-ALPHA	ARSENIC, DRY WEIGHT
ABIETIC ACID	ARSENIC, TOTAL (AS AS)
ACENAPHTHENE	ARSENIC, TOTAL RECOVERABLE
ACENAPHTHENE, SED (DRY WEIGHT)	ASBESTOS
ACENAPHTHYLENE	ASBESTOS (FIBROUS)
ACETALDEHYDE	ATRAZINE
ACETAMINOPHEN	ATRAZINE, DISSOLVED
ACETIC ACID	AZOBENZENE
ACETONE	BALAN (BENEFIN)
ACETONE, DRY WEIGHT	BARIUM IN BOTTOM DEPOSITS (DRY WGT)
ACETONE IN WASTE	
ACETOPHENONE	
ACID COMPOUNDS	

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BARIUM, POTENTIALLY DISSOLVD
BARIUM, DISSOLVED (AS BA)
BARIUM, TOTAL (AS BA)
BARIUM, TOTAL RECOVERABLE
BASE NEUTRALS & ACID (METHOD 625),
TOTAL
BASE NEUTRALS & ACID (METHOD 625),
EFFLNT
BASE/NEUTRAL COMPOUNDS
BAYER 73 LAMPREYCIDE IN WATER
B-BHC-BETA
B-BHC-BETA DISSOLVED
B-ENDOSULFAN-BETA
BENTAZON, TOTAL
BENZENE
BENZENE (VOLATILE ANALYSIS)
BENZENE HEXACHLORIDE
BENZENE SULPHONIC ACID
BENZENE, DISSOLVED
BENZENE, DRY WEIGHT
BENZENE, HALOGENATED
BENZENE, TOLUENE, XYLENE IN
COMBINATN
BENZENE, ETHYLBENZENETOLUENE,
XYLENE COMBN
BENZENEHEXACHLORIDE
BENZIDINE
BENZIDINE, DRY WEIGHT
BENZIOC ACIDS-TOTAL
BENZISOTHIAZOLE
BENZO(A)ANTHRACENE
BENZO(A)PYRENE
BENZO(A)PYRENE, DRY WEIGHT
BENZO(B)FLUORANTHENE (3,4-BENZO)
BENZO(GHI)PERYLENE
BENZO(K)FLUORANTHENE
BENZOFURAN
BENZY CHLORIDE
BENZYL ALCOHOL
BENZYL CHLORIDE
BERYLLIUM IN BOTTOM DEPOSITS (DRY
WGT)
BERYLLIUM, POTENTIALLY DISSOLVD
BERYLLIUM, DISSOLVED (AS BE)
BERYLLIUM, TOTAL (AS BE)
BERYLLIUM, TOTAL RECOVERABLE (AS
BE)
BETA, DISSOLVED
BETA, SUSPENDED
BETA, TOTAL
BETA, TOTAL, COUNTING ERROR
BETASAN(N-2-
MERCAPTOETHYLBENZENESULFAMID
BEZONITRILE (CYANOBENZENE)
BHC, TOTAL
BHC-ALPHA
BHC-DELTA
BHC-GAMMA
BIOASSAY (24 HR.)
BIOASSAY (48 HR.)
BIOASSAY (96 HR.)
BIOASSAY (24 HR)
BIOASSAY (48 HR)
BIOASSAY (96 HR)
BIS -- PHENOL-A (ALPHA)
BIS (2-CHLORO-ISOPROPYL) ETHER
BIS (2-CHLOROETHOXY) METHANE
BIS (2-CHLOROETHOXY) METHANE, DRY WT.
BIS (2-CHLOROETHYL) ETHER
BIS (2-ETHYLHEXYL) PHTHALATE
BIS (2-ETHYLHEXYL) PHTHALATE, DRY WGT
BIS (CHLOROMETHYL) ETHER
BIS (TRICHLOROMETHYL) SULFONE
BIS ETHER
BISMUTH, TOTAL (AS BI)
BISPHENOL-A
BROMACIL
BROMACIL (HYVAR)
BROMOCHLOROMETHANE
BROMODICHLOROETHANE
BROMOFORM
BROMOFORM, DRY WEIGHT
BROMOMETHANE
BUTACHLOR
BUTANE
BUTANOIC ACID
BUTANOL
BUTANONE
BUTHDIENE TOTAL
BUTOXY ETHOXY ETHANOL TOTAL
BUTYL ACETATE
BUTYL BENZYL PHTHALATE
BUTYLATE (SUTAN)
CADMIUM
CADMIUM TOTAL RECOVERABLE
CADMIUM IN BOTTOM DEPOSITS (DRY WGT)
CADMIUM SLUDGE SOLID
CADMIUM SLUDGE TOTAL
CADMIUM, POTENTIALLY DISSOLVD
CADMIUM, DISSOLVED (AS CD)
CADMIUM, TOTAL (AS CD)
CADMIUM, SLUDGE, TOT DRY WEIGHT (AS
CD)
CAFFEINE
CAPTAN
CARBAMATES
CARBARYL TOTAL
CARBN CHLOROFRM EXT-RACTS, ETHER
INSOLUBL
CARBOFURAN
CARBON DISULFIDE
CARBON TETRACHLORIDE

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CARBON TETRACHLORIDE, DRY WEIGHT
CARBON, CHLOROFORM EXTRACTABLES
CARBON, DISSOLVED ORGANIC (AS C)
CARBOSULFAN, TOTAL
CERIUM, TOTAL
CESIUM, TOTAL (AS CS)
CHLOR, PHENOXY ACID GP, NONE FOUND
CHLORAL
CHLORAL HYDRATE
CHLORAMINE RESIDUAL
CHLORDANE (CA OCEAN PLAN DEFINITION)
CHLORDANE (TECH MIX & METABS), DRY
WGT
CHLORDANE (TECH MIX. AND
METABOLITES)
CHLORDANE, ALPHA, WHOLE WATER
CHLORDANE, GAMMA, WHOLE WATER
CHLORENDIC ACID

CHLORIDE, ORGANIC, TOTAL
CHLORINATED DIBENZO-FURANS, EFFLUENT
CHLORINATED DIBENZO-FURANS, SLUDGE
CHLORINATED DIBENZO-P-DIOXINS,
EFFLUENT
CHLORINATED DIBENZO-P-DIOXINS, SLUDGE
CHLORINATED ETHANES
CHLORINATED HYDRO- CARBONS, GENERAL
CHLORINATED METHANES
CHLORINATED ORGANIC COMPOUNDS
CHLORINATED PESTI- CIDES, TOTAL
CHLORINATED PESTI- CIDES, TOT & PCB'S
CHLORINATED PHENOLS
CHLORINATION
CHLORINE DIOXIDE
CHLORINE DOSE
CHLORINE RATE
CHLORINE USAGE
CHLORINE, COMBINED AVAILABLE
CHLORINE, FREE AVAILABLE
CHLORINE, FREE RESIDUAL, TOTAL
EFFLUENT
CHLORINE, TOTAL RESIDUAL
CHLORINE, TOTAL RESIDUAL (DSG. TIME)
CHLORINE, TOTAL RES. DURATION
OF VIOLATION

CHLOROBENZENE
CHLOROBENZENE, DRY WEIGHT
CHLOROBENZILATE
CHLOROBUTADIENE (CHLOROPRENE)
CHLORODIBROMOMETHANE
CHLORODIBROMOMETHANE, DRY WEIGHT
CHLORODIFLUORO- METHANE
CHLORODIMEFORM
CHLOROETHANE
CHLOROETHANE, TOTAL WEIGHT

CHLOROETHYLENE BISTHIOCYANATE
CHLOROFORM
CHLOROFORM EXTRACTABLES, TOTAL
CHLOROFORM, DISSOLVED
CHLOROFORM, DRY WEIGHT
CHLOROHEXANE, TOTAL
CHLOROMETHANE
CHLOROMETHYL BENZENE
CHLORONITROBENZENE
CHLOROPHENOXY PROPANANOL
CHLOROSYRINGEALDEHYDE, EFFLUENT
CHLOROTOLUENE
CHLOROXAZONE
CHLORPHENIRAMINE
CHLORPYRIFOS
CHROMIUM
CHROMIUM, DRY WEIGHT
CHROMIUM TOTAL RECOVERABLE
CHROMIUM SLUDGE SOLID
CHROMIUM SLUDGE TOTAL
CHROMIUM TRIVALENT IN BOTTOM
DEPOSITS
CHROMIUM, DISSOLVED (AS CR)
CHROMIUM, HEXA VALENT
CHROMIUM, HEXA VALENT
CHROMIUM, HEXA VALENT (AS CR)
CHROMIUM, HEXA VALENT DISSOLVED (AS
CR)
CHROMIUM, HEXA VALENT IN BOT DEP (DRY
WT)
CHROMIUM, HEXA VALENT POTENTIALLY
DISOLVD
CHROMIUM, HEXA VALENT TOT
RECOVERABLE
CHROMIUM, SUSPENDED (AS CR)
CHROMIUM, TOTAL
CHROMIUM, TOTAL (AS CR)
CHROMIUM, TOTAL PERCENT REMOVAL
CHROMIUM, TOTAL DRY WEIGHT (AS CR)
CHROMIUM, TOTAL IN BOT DEP (WET WGT)
CHROMIUM, TRIVALENT (AS CR)
CHROMIUM, TRIVALENT, POTENTIALLY
DISSOLVD
CHRYSENE
CIS-1,3-DICHLORO PROPENE
CITRIC ACID
CN, FREE (AMENABLE TO CHLORINE)
COBALT, TOTAL RECOVERABLE
COLUMBIUM, TOTAL
COMBINED METALS SUM
COPPER
COPPER TOTAL RECOVERABLE
COPPER AS SUSPENDED BLACK OXIDE
COPPER IN BOTTOM DEPOSITS (DRY WGT)
COPPER SLUDGE SOLID
COPPER SLUDGE TOTAL

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COPPER, DISSOLVED (AS CU)
COPPER, POTENTIALLY DISSOLVED
COPPER, SUSPENDED (AS CU)
COPPER, TOTAL (AS CU)
COPPER, TOTAL PER BATCH
COUMAPHOS
CRESOL
CYANATE (AS OCN)
CYANIDE (A)
CYANIDE AND THIOCYANATE - TOTAL
CYANIDE COMPLEXED TO RANGE OF
COMPOUND
CYANIDE FREE NOT AMENABLE TO
CHLORIN.
CYANIDE IN BOTTOM DEPOSITS (DRY WGT)
CYANIDE SLUDGE SOLID
CYANIDE, FILTERABLE, TOTAL
CYANIDE, FREE-WATER PLUS
WASTEWATERS
CYANIDE, TOTAL (AS CN)
CYANIDE, TOTAL RECOVERABLE
CYANIDE, WEAK ACID, DISSOCIABLE
CYANIDE, DISSOLVED STD METHOD
CYANIDE, FREE (AMEN. TO CHLORINATION)
CYCLOATE (RONEET)
CYCLOHEXANE
CYCLOHEXANONE
CYCLOHEXYL AMINE (AMINO
HEXAHYDRO)
CYCOHEXANONE
DACONIL (C8CL4N2)
DACTHAL
DDD IN WHOLE WATER SAMPLE
DDE
DDT
DDT/DDD/DDE, SUM OF P,P' & O,P' ISOMERS
DECACHLOROBIPHENYL (DCBP) TOTAL
DECHLORANE PLUS
DEHYDROABIETIC ACID
DELNAV
DELTA BENZENE HEXACHLORIDE
DEMETON
DIAZINON
DIBENZO (A,H) ANTHRACENE
DIBENZO (A,H) ANTHRACENE, DRY WEIGHT
DIBENZOFURAN
DIBROMOCHLORO- METHANE
DIBROMODICHLOROMETHANE
DIBROMOMETHANE
DICHLONE
DICHLORAN, TOTAL
DICHLOROBENZENE
DICHLOROBENZENE, ISOMER
DICHLOROBENZYLTRIFLUORIDE
DICHLOROBROMOMETHANE
DICHLOROBROMOMETHANE, DRY WEIGHT
DICHLOBUTADIENE
DICHLOBUTENE- (ISOMERS)
DICHLORODEHYDRO- ABEIETIC ACID
DICHLORODIBROMOMETHANE
DICHLORODIFLUORO- METHANE
DICHLOROETHENE, TOTAL
DICHLOROFLUORO METHANE
DICHLOROMETHANE
DICHLOROPROPYLENE, 1,2
DICHLOROTOLUENE
DICHLOROTRIFLUORO- ETHANE
DICHLORVOS, TOTAL
DICHLORVOS, TOTAL DISSOLVED
DICHLORVOS, TOTAL SED DRY WEIGHT
DICHLORVOS, TOTAL SUSPENDED
DICYCLOHEXYLAMINE, TOTAL
DICYCLOPENTADIENE
DIDECYLDIMETHYL AMMONIUM CHLORIDE
DIDROMOMETHANE, 1-2
DIELDRIN
DIELDRIN, DRY WEIGHT
DIETHL METHYL BENZENESULFONAMIDE
DIETHYL PHTHALATE
DIETHYL PHTHALATE, DRY WEIGHT
DIETHYLAMINE
DIETHYLAMINOETHANOL
DIETHYLBENZENE
DIETHYLENE GLYCOL DINITRATE, TOTAL
DIETHYLHEXYL PHTHALATE ISOMER
DIETHYLHEXYL- PHTHALATE
DIETHYLSTILBESTEROL
DIFOLATAN
DIISOPROPYL ETHER
DIMETHOXYBENZIDINE
DIMETHYL BENZIDINE
DIMETHYL DISULFIDE TOTAL
DIMETHYL NAPHTHALENE
DIMETHYL PHTHALATE
DIMETHYL PHTHALATE
DIMETHYL PHTHALATE, DRY WEIGHT
DIMETHYL SULFIDE TOTAL
DIMETHYL SULFOXIDE TOTAL
DIMETHYLAMINE
DIMETHYLANILINE
DI-N-BUTYL PHTHALATE
DI-N-BUTYL PHTHALATE, DRY WEIGHT
DI-NITRO BUTYL PHENOL (DNBP)
DINITROTOLUENE
DI-N-OCTYL PHTHALATE
DI-N-OCTYL PHTHALATE, DRY WEIGHT
DINOSEB
DINOSEB (DNBP)
DIOXANE
DIOXIN
DIOXIN (TCDD) SUSPENDED
DISSOLVED RADIOACTIVE GASSES

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DISULFOTON
DIURON
DOCOSANE
DODECYLGUANIDINE SALTS
DYFONATE
DYPHYLLINE
EDTA
EDTA AMMONIATED
ENDOSULFAN SULFATE
ENDOSULFAN, ALPHA, IN WASTE
ENDOSULFAN, BETA, INWASTE
ENDOSULFAN, TOTAL
ENDRIN
ENDRIN + ENDRIN ALDEHYDE (SUM)
ENDRIN ALDEHYDE
EPHEDRINE SULFATE
EPICHLOROHYDRIN
EPTC (EPTAM)
ESTRADIOL
ETHALFLURALIN WATER, TOTAL
ETHANE, 1,2-BIS (2- CLRETHXY), HOMLG SUM
ETHANOL
ETHION
ETHYL METHANESULFONATE
ETHYL ACETATE
ETHYL BENZENE
ETHYL BENZENE
ETHYL ETHER BY GAS CHROMATOGRAPH
ETHYL METHYL- DIOXOLANE
ETHYL PARATHION
ETHYLBENZENE
ETHYLBENZENE, DRY WEIGHT
ETHYLENE CHLOROHYDRIN
ETHYLENE DIBROMIDE (1,2
DIBROMOETHANE)
ETHYLENE GLYCOL
ETHYLENE GLYCOL
ETHYLENE GLYCOL DINITRATE
ETHYLENE OXIDE
ETHYLENE THIOUREA (ETU)
ETHYLENE, DISSOLVED (C2H4)
ETHYLHEXYL
EXPLOSIVE LIMIT, LOWER
EXPLOSIVES, COMBINED TNT + RDX +
TETRYL
FERRICYANIDE
FLUORANTHENE
FLUORANTHENE, DRY WEIGHT
FLUORENE
FLUORENE, DRY WEIGHT
FLUORIDE - COMPLEX
FLUSILAZOLE
FOAMING AGENTS
FORMALDEHYDE
FORMIC ACID
FREON 113 (1,1,1-TRIFLOURO-2,2-
FREON, TOTAL
FUEL, DIESEL, #1
FURFURAL
GAMMA, TOTAL
GAMMA, TOTAL COUNTING ERROR
GAMMA-BHC
GASOLINE, REGULAR
GERMANIUM, TOTAL (AS GE)
GLYPHOSATE, TOTAL
GOLD, TOTAL (AS AU)
GROSS BETA
GUAFENSIN
GUANIDINE NITRATE
GUTHION
HALOGEN, TOTAL ORGANIC
HALOGEN, TOTAL RESIDUAL
HALOGENATED HYDRO- CARBONS, TOTAL
HALOGENATED ORGANICS
HALOGENATED TOLUENE
HALOGENS, ADSORBABLEORGANIC
HALOGENS, TOT ORGAN-ICS BOTTOM
SEDIMENT
HALOMETHANES, SUM
HEPTACHLOR
HEPTACHLOR EPOXIDE
HEPTACHLOR, DRY WEIGHT
HEPTANE
HERBICIDES, TOTAL
HEXACHLOROBENZENE
HEXACHLOROBENZENE, DRY WEIGHT
HEXACHLOROBIPHENYL
HEXACHLOROBUTADIENE
HEXACHLOROBUTADIENE
HEXACHLOROBUTADIENE, DRY WEIGHT
HEXACHLOROCYCLO- PENTADIENE
HEXACHLOROCYCLOHEXANE (BHC) TOTAL
HEXACHLOROCYCLOPENTADIENE, DRY
WEIGHT
HEXACHLOROETHANE
HEXACHLOROETHANE, DRY WEIGHT
HEXACHLOROPENTADIENE
HEXADECANE
HEXAHYDROAZEPINONE
HEXAMETHYL- PHOSPHORAMINE(HMPA)
HEXAMETHYLBENZENE
HEXANE
HEXAZIMONE
HMX-1,3,5,7-TETRA ZOCINE
HYDRAZINE
HYDRAZINES, TOTAL
HYDROCARBON, TOTAL RECOVERABLE
HYDROCARBONS NITRATED
HYDROCARBONS NITRATED, TOTAL
HYDROCARBONS, AROMATIC
HYDROCARBONS, TOTAL GAS
CHROMATOGRAPH

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HYDROCARBONS,IN H2O,IR,CC14 EXT.
CHROMAT
HYDROGEN CYANIDE
HYDROQUINONE
HYDROXYACETOPHENONE
HYDROXYQUINOLINE TOTAL
HYDROXYZINE
INDENE
INDENO (1,2,3-CD) PYRENE
INDENO (1,2,3-CD) PYRENE, DRY WEIGHT
INDIUM
IODINE 129
IODINE RESIDUAL
IODINE TOTAL
ISOBUTYL ACETATE
ISOBUTYL ALCOHOL
ISODECYLDIPHENYL- PHOSPHATE
ISO-OCTANE
ISOOCTYL 2,4,5-T
ISOOCTYL SILVEX
ISOPHORONE
ISOPHORONE, DRY WEIGHT
ISOPIMARIC ACID
ISOPRENE
ISOPROPALIN WATER, TOTAL
ISOPROPANOL
ISOPROPYL ALCOHOL (C3H8O), SED.
ISOPROPYL ETHER
ISOPROPYLBENZENE
ISOPROPYLBIPHENYL, TOTAL
ISOPROPYLIDINE DIOXYPHENOL
ISOTHIAZOLONE
ISOTHIOZOLINE, TOTAL
ISOXSUPRINE
KELTHANE
KEPONE
LANTHANUM, TOTAL
LEAD
LEAD TOTAL RECOVERABLE
LEAD 210, TOTAL
LEAD SLUDGE SOLID
LEAD SLUDGE TOTAL
LEAD, POTENTIALLY DISSOLVD
LEAD, DISSOLVED (AS PB)
LEAD, DRY WEIGHT
LEAD, TOTAL DRY WEIGHT (AS PB)
LEAD, TOTAL (AS PB)
LINDANE
LINOLEIC ACID
LINOLENIC ACID
M - ALKYLDIMETHLBENZYLAMCL
MALATHION
MB 121
MERCAPTANS, TOTAL
MERCAPTOBENZOTHAZOLE
MERCURY
MERCURY, POTENTIALLY DISSOLVD
MERCURY, DISSOLVED (AS HG)
MERCURY, TOT IN BOT DEPOSITS (DRY WGT)
MERCURY, TOTAL (AS HG)
MERCURY TOTAL RECOVERABLE
MERCURY, DRY WEIGHT
METALS TOXICITY RATIO
METALS, TOTAL
METALS, TOX PRIORITY POLLUTANTS,
TOTAL
META-XYLENE
METHAM SODIUM (VAPAM)
METHANE
METHANOL, TOTAL
METHOCARBAMOL
METHOMYL
METHOXYCHLOR
METHOXYPROPYLAMINE
METHYL METHANESULFONATE
METHYL ACETATE
METHYL BROMIDE
METHYL BROMIDE, DRY WEIGHT
METHYL CHLORIDE
METHYL CHLORIDE, DRY WEIGHT
METHYL CYANIDE (ACETONITRILE)
METHYL ETHYL BENZENE
METHYL ETHYL KETONE
METHYL ETHYL SULFIDE
METHYL ISOBUTYL KETONE (MIBK)
METHYL MERCAPTAN
METHYL METHACRYLATE
METHYL NAPHTHALENE
METHYL PARATHION
METHYL STYRENE
METHYLAMINE
METHYLENE BIS-THIOCYANATE
METHYLENE CHLORIDE
METHYLENE CHLORIDE, DRY WEIGHT
METHYLENE CHLORIDE, SUSPENDED
METHYLHYDRAZINE
METRIBUZIN (SENCOR), WATER, DISSOLVED
METRIOL TRINITRATE, TOTAL
MIREX
MOLYBDENUM DISSOLVED (AS MO)
MOLYBDENUM, TOTAL (AS MO)
MONOCHLOROACETIC ACID
MONO-CHLORO-BENZENES
MONOCHLOROBENZYLTRIFLUORIDE
MONOCHLORODEHYDRO- ABIETIC ACID
MONOCHLOROTOLUENE
N PENTANE
N, N- DIMETHYLFORMAMIDE
N, N'DIETHYL CARBANILIDE
N, N-DIMETHYL FORMAMIDE
NAPHTHALENE
NAPHTHALENE, DRY WEIGHT

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NAPHTHENIC ACID
NAPROPAMIDE (DEVRIOL)
N-BUTYL ACETATE
N-BUTYL-BENZENE SULFONAMIDE (IN
WAT)
N-BUTYLBENZENE (WHOLE WATER, UG/L
NEPTUNE BLUE
N-HEPTADECANE
NIACINAMIDE
NICKEL
NICKEL TOTAL RECOVERABLE
NICKEL SLUDGE SOLID
NICKEL SLUDGE TOTAL
NICKEL, POTENTIALLY DISSOLVD
NICKEL, DISSOLVED (AS NI)
NICKEL, SUSPENDED (AS NI)
NICKEL, TOTAL (AS NI)
NICKEL, TOTAL PER BATCH
NICKEL, TOT IN BOTTOM DEPOSITS (DRY
WGT)
NICOTINE SULFATE
NITROBENZENE
NITROBENZENE, DRY WEIGHT
NITROCELLULOSE
NITROFURANS
NITROGEN, ORGANIC, DISSOLVED (AS N)
NITROGLYCERIN BY GAS
CHROMATOGRAPHY
NITROGUANIDINE
NITROSODIPHENYLAMINE
NITROSTYRENE
N-NITROSO COMPOUNDS, VOLATILE
N-NITROSO COMPOUNDS, VOLATILE
N-NITROSODIBUTYL- AMINE
N-NITROSODIETHYL- AMINE
N-NITROSODIMETHYL- AMINE
N-NITROSODIMETHYLAMINE, DRY WEIGHT
N-NITROSODI-N-PROPYLAMINE
N-NITROSODI-N-PROPYLAMINE, DRY
WEIGHT
N-NITROSODIPHENYL- AMINE
N-NITROSODIPHENYLAMINE, DRY WEIGHT
N-NITROSOPYRROLIDINE
N-PROPYLBENZENE
O - CHLOROBENZYL CHLORIDE
OCTACHLORO- CYCLOPENTENE
OCTYLPHENOXY POLYETHOXYETHANOL
OIL, PETROLEUM ETHER EXTRACTABLES
OIL/GREASE CALCULATED LIMIT
OLEIC ACID
ORDRAM (HYDRAM)
ORGANIC ACTIVE IN- GREDIENTS (40CFR455)
ORGANIC COMPOUNDS, CHLOROFORM
EXTRACT.
ORGANIC HALIDES, TOTAL
ORGANIC PESTICIDE CHEMICALS (40CFR455)
ORGANICS, GASOLINE RANGE
ORGANICS, TOT PURGE-ABLES (METHOD 624)
ORGANICS, TOTAL
ORGANICS, TOTAL TOXIC (TTO)
ORGANICS, VOLATILE (NJAC REG. 7:23-17E)
ORGANICS-TOT VOLITILE (NJAC REG.7:23-17E)
ORTHENE
ORTHOCHLOROTOLUENE
ORTHO-CRESOL
ORTHO-XYLENE
O-TOLUIDINE
OXALIC ACID
P,P'-DDE - DISSOLVED
P,P'-DDT - DISSOLVED
PALLADIUM, TOTAL (AS PD)
P-AMINOBIPHENYL
PANTHALIUM, TOTAL
PARABEN (METHYL AND PROPYL)
PARACHLOROMETA CRESOL
PARA-DICHLOROBENZENE
PARAQUAT
PARATHION
PCB - 1262
PCB, TOTAL SLUDGE, SCAN CODE
PCB, TOTAL, SCAN EFFLUENT
PCB-1016 (AROCHLOR 1016)
PCB-1221 (AROCHLOR 1221)
PCB-1232 (AROCHLOR 1232)
PCB-1242 (AROCHLOR 1242)
PCB-1248 (AROCHLOR 1248)
PCB-1254 (AROCHLOR 1254)
PCB-1260 (AROCHLOR 1260)
PCBS IN BOTTOM DEPS. (DRY SOLIDS)
P-CRESOL
P-DIMETHYLAMINO- AZOBENZENE
PEBULATE (TILLAM)
PENTACHLOROBENZENE
PENTACHLOROETHANE
PENTACHLOROPHENOL
PESTICIDES, GENERAL
P-ETHYLTOLUENE
PETROL HYDROCARBONS, TOTAL
RECOVERABLE
PHENACETIN
PHENANTHRENE
PHENANTHRENE, DRY WEIGHT
PHENOL, SINGLE COMPOUND
PHENOLIC COMPOUNDS, SLUDGE TOTAL,
DRY WEIGHT
PHENOLIC COMPOUNDS, UNCHLORINATED
PHENOLICS IN BOTTOM DEPOSITS (DRY
WGT)
PHENOLICS, TOTAL RECOVERABLE
PHENOLS
PHENOLS, CHLORINATED
PHENOXY ACETIC ACID

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PHENYLPROPANOLAMINE
PHENYLTOLOXAMINE
PHORATE
PHOSPHATED PESTICIDES
PHOSPHOROTHIOIC ACID 0,0,0-TRIETHYL
ESTR
PHTHALATE ESTERS
PHTHALATES, TOTAL
PHTHALIC ACID
PHTHALIC ANHYDRIDE
PLATINUM, TOTAL (AS PT)
POLONIUM 210
POLYACRILAMIDE CHLORIDE
POLYBROMINATED BIPHENYLS
POLYBROMINATED DIPHENYL OXIDES
POLYCHLORINATED BIPHENYLS (PCBS)
POLYMETHYLACRYLIC ACID
PROPABHLOR (RAMROD) DISSOLVED
PROPANE, 2-METHOXY- 2-METHYL
PROPANIL
PROPENE, TOTAL
PROPRANE, TOTAL
PROPYL ACETATE
PROPYLENE OXIDE
PROPYLENGLYCOL, TOTAL
PURGEABLE AROMATICS METHOD 602
PURGEABLE HYDRO- CARBONS, METH. 601
PYRENE
PYRENE, DRY WEIGHT
PYRETHRINS
PYRIDINE
QUARTERNARY AMMONIUM COMPOUNDS
QUINOLINE
RADIATION, GROSS BETA
RADIATION, GROSS ALPHA
RADIOACTIVITY
RADIOACTIVITY, GROSS
RADIUM 226 + RADIUM 228, TOTAL
RADIUM 226, DISSOLVED
RADIUM 228, TOTAL
RARE EARTH METALS, TOTAL
RATIO OF FECAL COLIFORM TO FECAL
STREPOC
R-BHC (LINDANE) GAMMA
RDX, DISSOLVED
RDX, TOTAL
RESIN ACIDS, TOTAL
RESORCINOL
RHODIUM, TOTAL
ROTENONE
ROUNDUP
RUBIDIUM, TOTAL (AS RB)
SAFROLE
SAMARIUM, TOTAL (AS SM IN WATER)
SELENIUM, ACID SOLUBLE
SELENIUM SLUDGE SOLID
SELENIUM, POTENTIALLY DISSOLVD
SELENIUM, DISSOLVED (AS SE)
SELENIUM, DRY WEIGHT
SELENIUM, SLUDGE, TOTAL DRY WEIGHT
SELENIUM, TOTAL (AS SE)
SELENIUM, TOTAL RECOVERABLE
SEVIN
SEVIN (CARBARYL) IN TISSUE
SILVER
SILVER TOTAL RECOVERABLE
SILVER IN BOTTOM DEPOSITS (DRY WGT)
SILVER, DISSOLVED (AS AG)
SILVER, IONIC
SILVER, POTENTIALLY DISSOLVED
SILVER, TOTAL (AS AG)
SILVER, TOTAL PER BATCH
SILVEX
SODIUM CHLORATE
SODIUM DICHROMATE
SODIUM DIMETHYL-DITHIOCARBAMATE,
TOTAL
SODIUM PENTACHLORO- PHENATE
SODIUM POLYACRYLATE, TOTAL
SODIUM-O-PPTH
STRONTIUM 90, TOTAL
STRONTIUM, DISSOLVED
STRONTIUM, TOTAL (AS SR)
STYRENE
STYRENE, TOTAL
SULFABENZAMIDE
SULFACETAMIDE
SULFATHIAZOLE
SULFOTEPP (BLADAFUME)
TANNIN AND LIGNIN
TCDD EQUIVALENTS
TELLURIUM, TOTAL
TERBACIL
TERBUFOS (COUNTER) TOTAL
TETRA SODIUM EDTA
TETRACHLORDIBENZOFURAN,2378-(TCDF)
SED,
TETRACHLORO BENZENE
TETRACHLOROETHANE, TOTAL
TETRACHLOROETHENE
TETRACHLOROETHYLENE
TETRACHLOROETHYLENE
TETRACHLOROETHYLENE, DRY WEIGHT
TETRACHLOROGUAIACOL (4CG) IN WHOLE
WATER
TETRAHYDRO-3,5-DIMETHYL-2-HYDRO-1,3,5-
TH
TETRAHYDROFURAN
TETRAMETHYLBENZENE
THALLIUM IN BOTTOM DEPOSITS (DRY WGT)
THALLIUM, POTENTIALLY DISSOLVD

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THALLIUM, ACID SOLUBLE
THALLIUM, DISSOLVED (AS TL)
THALLIUM, TOTAL (AS TL)
THALLIUM, TOTAL RECOVERABLE
THC, DRY & O2
THEOPHYLLINE
THIOCARBAMATES
THIOCYANATE (AS SCN)
THIOSULFATE ION(2-)
THORIUM 230
THORIUM 232
TIN
TIN, DISSOLVED (AS SN)
TIN, TOTAL (AS SN)
TIN, TOTAL RECOVERABLE
TITANIUM, DISSOLVED (AS TI)
TITANIUM, TOTAL (AS TI)
TITANIUM, TOTAL DRY WEIGHT (AS TI)
TOLUENE
TOLUENE, DISSOLVED
TOLUENE, DRY WEIGHT
TOLUENE-2,4 -DIISOCYANITE
TOLYTRIAZOLE
TOTAL ACID PRIORITY POLLUTANTS
TOTAL BASE/NEUTRAL PRIORITY
POLLUTANTS
TOTAL PESTICIDES
TOTAL PHENOLS
TOTAL POLONIUM
TOTAL PURGEABLE HALOCARBONS
TOTAL TOXIC ORGANICS (TTO) (40CFR413)
TOTAL TOXIC ORGANICS (TTO) (40CFR433)
TOTAL TOXIC ORGANICS (TTO) (40CFR464A)
TOTAL TOXIC ORGANICS (TTO) (40CFR464B)
TOTAL TOXIC ORGANICS (TTO) (40CFR464C)
TOTAL TOXIC ORGANICS (TTO) (40CFR464D)
TOTAL TOXIC ORGANICS (TTO) (40CFR467)
TOTAL TOXIC ORGANICS (TTO) (40CFR468)
TOTAL TOXIC ORGANICS (TTO) (40CFR469)
TOTAL TOXIC ORGANICS (TTO) (40CFR465)
TOTAL VOLATILE PRIORITY POLLUTANTS
TOXAPHENE
TOXAPHENE, DRY WEIGHT
TOXICITY
TOXICITY, CERIODAPHNIA ACUTE
TOXICITY, CERIODAPHNIA CHRONIC
TOXICITY, PIMEPHALES ACUTE
TOXICITY, PIMEPHALES CHRONIC
TOXICITY, CHOICE OF SPECIES
TOXICITY, FINAL CONC TOXICITY UNITS
TOXICITY, SALMO CHRONIC
TOXICITY, SAND DOLLAR
TOXICITY, TROUT
TOXICS, PERCENT REMOVAL
TRANS-1,2-DICHLORO-ETHYLENE
TRANS-1,3-DICHLORO PROPENE
TREFLAN (TRIFLURALIN)
TRIBUTYLAMINE
TRIBUTYL TIN
TRICHLOROBENZENE
TRICHLOROBENZENE 1,2,4 TOTAL
TRICHLOROETHANE
TRICHLOROETHENE
TRICHLOROETHYLENE
TRICHLOROETHYLENE, DISSOLVED
TRICHLOROETHYLENE, DRY WEIGHT
TRICHLOROFLUORO- METHANE
TRICHLOROGUAIACOL
TRICHLOROPHENATE- (ISOMERS)
TRICHLOROPHENOL
TRICHLOROTOLUENE
TRICHLOROTRIFLUORO- ETHANE
TRIETHANOLAMINE
TRIETHYLAMINE
TRIFLURALIN (C13H16F3N3O4)
TRIHALOMETHANE, TOT.
TRIMETHYL BENZENE
TRINITROTOLUENE (TNT), DISSOLVED
TRINITROTOLUENE (TNT), TOTAL
TRIPHENYL PHOSPHATE
TRITHION
TRITIUM (1 H3), TOTAL
TRITIUM, TOTAL
TRITIUM, TOTAL COUN-TING ERROR (PC/L)
TRITIUM, TOTAL NET INCREASE H-3 UNITS
TUNGSTEN, DISSOLVED
TUNGSTEN, TOTAL
U-236 TOTAL WTR
URANIUM, POTENTIALLY DISSOLVD
URANIUM, 235 TOTAL
URANIUM, 238 TOTAL
URANIUM, NATURAL, DISSOLVED
URANIUM, NATURAL, TOTAL
URANIUM, NATURAL, TOTAL (IN PCI/L)
URANIUM, TOTAL AS U308
URANYL-ION
UREA
VERNAM (S-PROPYLDI-
PROPYLTHIOCARBAMATE)
VINYL ACETATE
VINYL CHLORIDE
VINYL CHLORIDE, DRY WEIGHT
VOLATILE COMPOUNDS, (GC/MS)
VOLATILE FRACTION ORGANICS (EPA 624)
VOLATILE HALOGENATED HYDROCARBONS
VOLATILE HALOGENATED ORGANICS (VHO),
TOT
VOLATILE HYDROCARBONS
VOLATILE ORGANICS DETECTED
XANTHATES
XC POLYMER IN DRILLING FLUIDS
XYLENE

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XYLENE, PARA- TOTAL
ZINC
ZINC TOTAL RECOVERABLE
ZINC IN BOTTOM DEPOSITS (DRY WGT)
ZINC SLUDGE SOLID
ZINC SLUDGE TOTAL
ZINC, DISSOLVED (AS ZN)
ZINC, DRY WEIGHT

ZINC, POTENTIALLY DISSOLVED
ZINC, TOTAL
ZINC, TOTAL (AS ZN)
ZIRCONIUM, TOTAL



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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

TO: Edward C. Anton
Acting Executive Director

/s/
FROM: Craig M. Wilson
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: April 17, 2001

SUBJECT: QUESTIONS AND ANSWERS ABOUT THE CLEAN WATER
ENFORCEMENT AND POLLUTION PREVENTION ACT OF 1999 (SB 709)
AND ITS AMENDMENTS (SB 2165)

This memorandum supersedes all previous memoranda on the same subject.¹ In 1999, the Clean Water Enforcement and Pollution Prevention Act of 1999 (Senate Bill 709²) was enacted. The 1999 act added several provisions to Division 7 of the California Water Code that address (1) pollution prevention plans; (2) mandatory minimum penalties; (3) recovery of economic benefit in assessing civil liability; and (4) a requirement to prescribe effluent limitations. In 2000, Senate Bill 2165³ was enacted, which amended some of these new provisions effective January 1, 2001. What follows is a brief summary of the laws. Attached is an in-depth legal analysis in the form of Questions and Answers about SB 709 and SB 2165. For further assistance, please contact Senior Staff Counsel Karen O'Haire at (916) 341-5179, or Assistant Chief Counsel Phil Wyels at (916) 341-5178.

¹ Previous memoranda on this subject, dated December 1, 1999, and March 22, 2000, from William R. Attwater to Walt Pettit, are superseded by this Memorandum. This Memorandum, which addresses additional issues raised by the implementation of SB 709 and new issues raised by the enactment of SB 2165, may be further revised from time to time to address new issues or revisions to the law. It may also be revised as appropriate to reflect revisions to the State Water Resources Control Board's Water Quality Enforcement Policy. The issues that are currently the subject of draft revisions to the Enforcement Policy have been noted as such in the Questions and Answers.

² Stats. 1999, ch. 93.

³ Stats. 2000, ch. 807.

SUMMARY OF SB 709 AND SB 2165

Pollution Prevention Plans. Water Code section 13263.3 authorizes the State Water Resources Control Board (State Board), a Regional Water Quality Control Board (Regional Board), or a Publicly Owned Treatment Works (POTW) to require a discharger to complete and implement a pollution prevention plan (PPP). A POTW may require industrial dischargers to prepare and implement a PPP and the State Board or a Regional Board may require a POTW and industrial users to prepare and implement a PPP. This authority is discretionary. The legislation defines what constitutes pollution prevention and specifies what is required to be included in the PPPs for the purposes of this section. The failure to prepare or implement a PPP may subject the discharger to civil liability and penalties.

Mandatory Minimum Penalties. Water Code section 13385(h) and (i) provide for mandatory minimum penalties of \$3,000 per violation of an NPDES permit as described below. There are two types of mandatory penalties: serious violations and ongoing violations.

- A. *Serious Violations* – The Regional Boards shall assess a mandatory minimum penalty of \$3,000 for each serious violation. A serious violation is an exceedance of an effluent limitation by a specified percentage. In lieu of assessing this penalty for the first serious violation in a period of six months, the Regional Boards may allow the discharger to use the amount to complete a PPP or for a supplemental environmental project.
- B. *Ongoing Violations* – The Regional Boards shall assess a mandatory minimum penalty if a person commits four or more violations of a specified type in a six-month period. There is no mandatory penalty for the first three violations. Assessment of a \$3,000 penalty per violation begins with the fourth violation. The types of violations include the following:
- a. Exceeding an effluent limitation.
 - b. Failure to file a report pursuant to Water Code section 13260.
 - c. Filing an incomplete report pursuant to Water Code section 13260.
 - d. Exceeding a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

SB 2165 added several limited exceptions to the mandatory minimum penalty provisions. The primary exceptions are for discharges that are in compliance with a cease and desist order or time schedule order under narrowly specified conditions. SB 2165 also added an alternative to assessing mandatory minimum penalties against POTWs that serve “small communities.” Under this alternative, the Regional Boards may require the POTW to spend an amount equivalent to

the mandatory minimum penalty toward a compliance project that is designed to correct the violations.

Recovery of Economic Benefit. Water Code section 13385(e), governing the assessment of administrative civil liabilities (ACL), was amended to require that "at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." Previously, economic benefit was just one of several factors to be considered in determining the amount of ACL; now recovery of economic benefit as part of an ACL is mandatory. Recovery of economic benefit is not required when assessing mandatory penalties under Water Code section 13385(h) and (i). The State Board is in the process of revising its Water Quality Enforcement Policy to provide guidance on how to determine the amount of an ACL, including how to determine economic benefit.

Effluent Limitations. Water Code section 13263.6 requires the Regional Board to prescribe effluent limitations as part of the waste discharge requirements (WDRs) for a POTW for all substances that a report required by federal law indicates are discharged into the POTW. This section only applies to substances for which the State or Regional Board has established numeric water quality objectives and has determined that the POTW's discharge is or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to, an excursion above the numeric water quality objectives. This requirement is largely duplicative of existing federal requirements, but is new for non-NPDES WDRs.

Attachment

cc: RWQCB Executive Officers
John Norton, OSI
RWQCB Attorneys

**SB 709 AND SB 2165
QUESTIONS AND ANSWERS**

April 17, 2001

State Water Resources Control Board

15881

SB 709 AND SB 2165 QUESTIONS AND ANSWERS

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SB 709 AND SB 2165 QUESTIONS AND ANSWERS

I. POLLUTION PREVENTION PLANS (SECTION 13263.3¹)

1. Q. What is a pollution prevention plan (PPP)?

A. A PPP is a plan specifically defined in section 13263.3 that identifies actions that would cause a net reduction in the use or generation of a hazardous substance or pollutant that is discharged into water.

2. Q. Are all discharges, including those subject to NPDES permits² and non-NPDES waste discharge requirements, subject to the PPP provisions of section 13263.3?

A. No. The pollution prevention provisions apply only to dischargers subject to NPDES permits and to industrial users that discharge to publicly owned treatment works (POTWs), i.e., subject to the federal pretreatment program. They do not apply to non-NPDES waste discharges. Section 13263.3(c). The State and Regional Boards and POTWs may require PPPs of industrial users. The State and Regional Boards may require PPPs of POTWs. While section 13263.3 only applies to dischargers subject to NPDES permits, Regional Boards may require other dischargers to submit similar reports addressing pollution prevention pursuant to section 13267. Regional Boards may also require dischargers subject to NPDES permits to submit similar reports where the conditions in section 13263.3 are not met, pursuant to section 13267 or section 13383.

3. Q. Is the requirement to prepare a PPP mandatory?

A. No. The State Board, a Regional Board, or a POTW has discretion to require the discharger to prepare a PPP in the circumstances listed in section 13263.3(d), including where the discharge is a chronic violator, where the discharger significantly contributes to or has the potential to significantly contribute to creation of a toxic hot spot, where pollution prevention is necessary to achieve a water quality objective, or where the discharger is subject to a cease and desist order or a time schedule order issued pursuant to sections 13300, 13301, or 13308.

4. Q. What is a "chronic violator" for purposes of requiring a PPP?

A. The State Board describes the term "chronic violator" and "chronic violation" in the Guidance to Implement the Water Quality Enforcement Policy. [Note: the Enforcement Policy is currently scheduled for significant revisions. This portion of the Q&A will be revised to be consistent with any final revisions.] For major NPDES permittees, as defined by U.S. EPA in 40 CFR Section 122.2 (July 1, 1994), the enforcement criterion for chronic violations is exceedance of the monthly average effluent limit for any pollutant

¹ All statutory references are to the California Water Code, unless specified otherwise.

² The State and Regional Boards issue waste discharge requirements, which also serve as NPDES permits, pursuant to section 13377. For the reader's convenience, this type of waste discharge requirements will be referred to as an NPDES permit.

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in any four months in a six-month period, or exceedance of the monthly average effluent limitation for any pollutant in the same season for two years in a row. For purposes of section 13263.3, the term "chronic violator" would apply to all dischargers subject to section 13263.3, not just to major NPDES permittees. In other words, if a discharger subject to section 13263.3 exceeds a monthly average effluent limit for any pollutant in any four months in a six-month period or exceeds the monthly average effluent limitation for any pollutant in the same season for two years in a row, it would be considered a "chronic violator."

5. Q. How will the State or Regional Board or a POTW determine if a discharger significantly contributes, or has the potential to significantly contribute, to the creation of a toxic hotspot?

A. The State Board adopted Resolution 99-065, a Water Quality Control Policy that sets forth the Consolidated Toxic Hot Spots Cleanup Plan. The Plan provides guidance to the Regional Boards for implementing the requirements of section 13390 et seq. (Chapter 5.6. Bay Protection and Toxic Cleanup.) The Plan provides guidance for the Regional Boards in determining whether discharges contribute or potentially contribute to the creation and maintenance of a toxic hotspot. In determining whether it is appropriate to require preparation of a PPP, the Regional Boards should consider the Consolidated Toxic Hot Spots Cleanup Plan.

6. Q. How does the State Board, a Regional Board, or a POTW determine that pollution prevention is necessary to achieve a water quality objective as stated in section 13263.3(d)(1)(C)?

A. The provision provides considerable discretion to the State and Regional Boards and POTWs in making the determination that pollution prevention is necessary to achieve a water quality objective. Some examples could include where an industrial user contributes significant pollutant loading to a POTW that may be causing a POTW to exceed a water quality objective, where the discharge is to a Clean Water Act section 303(d) listed water body, where an industrial user is preparing a pretreatment plan, or where a pollutant discharge is causing an upset at the POTW.

7. Q. What information is required to be included in a PPP?

A. The State Board or a Regional Board may require a POTW to prepare a PPP and the State Board, a Regional Board, or a POTW may require a discharger other than a POTW to prepare a PPP. The PPP requirements for POTWs are different than the PPP requirements for other dischargers. A PPP prepared by a POTW must address all of the issues specified in section 13263.3(d)(3). A PPP prepared by a discharger other than a POTW must address all of the issues specified in section 13263.3(d)(2).

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8. Q. Is there a special format to be used in preparing a PPP?

A. A sample format is available, but other formats may be used. The State Board was required to adopt a sample format, and provide it to dischargers for completing the PPP. The State Board has adopted the sample format. It is available on the State Board's website at www.swrcb.ca.gov. The use of the sample format is not required; it is just available to assist dischargers in preparing PPPs. Dischargers may choose their own format so long as they address all the issues required under section 13263.3 and any additional issues required to be addressed by the regulatory agency.

9. Q. What process is required by section 13263.3 for the State Board, the Regional Boards, and the POTWs when requiring preparation or implementation of, or compliance with, a PPP?

A. Section 13263.3(d) authorizes the State or Regional Board or POTW to require a discharger to complete and implement a PPP. The Regional Board may implement this authority by making the preparation of a complete PPP a requirement of the NPDES permit, a 13267 order, or one of the following enforcement orders. The Regional Board may require the implementation of the PPP by issuing an order pursuant to sections 13263.3(d)(1), 13300, 13301, 13304, or 13308. The Regional Board may also require the development of a PPP in lieu of a mandatory penalty for a serious violation pursuant to section 13385(h). A POTW would use its enforcement authority granted under section 13263.3 and its existing pretreatment authority to require preparation and implementation of a PPP. The State Board's Office of Chief Counsel has prepared sample permits and orders.

After the discharger prepares the PPP, the State Board, Regional Board, or POTW must make the PPP available for public review. Trade secret information is exempt from public disclosure and shall be included in a separate appendix not available to the public. The PPP, except for the trade secret information, is a public record that must be provided to the public upon request, following the normal procedure for providing public records. Section 13263.3(e) requires the State Board, a Regional Board, or a POTW to provide an opportunity for public comment prior to requiring the discharger to comply with a PPP developed by the discharger. The State Board, a Regional Board, or the POTW may provide that opportunity for comment by holding a public meeting or hearing and/or by providing the public an opportunity to submit comments in writing.

10. Q. Is the PPP considered a part of the NPDES permit?

A. Section 13263.3(k) states that the "state board, a regional board, or POTW may not include a pollution prevention plan in any waste discharge requirements or other permit issued by that agency." In other words, the Regional Board may not incorporate by reference the contents of a PPP into an NPDES permit, require the implementation of a PPP in an NPDES permit, or otherwise include a PPP in an NPDES permit, but it may make preparation of a PPP a condition of an NPDES permit.

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11. Q. What enforcement actions can be taken against the discharger for failure to prepare or implement a PPP?

- A. Pursuant to section 13263.3(g), the State Board and the Regional Boards may assess administrative civil liability pursuant to section 13385(c)(1) for failure to complete a PPP, for submitting an inadequate PPP, or for not implementing a PPP, unless a POTW has assessed penalties for the same action. Failure to prepare or implement a PPP is not subject to the mandatory minimum penalty provisions. The Regional Boards should assess liability under section 13263.3(g) in the same way that Regional Boards assess administrative civil liability for other violations of NPDES permits. Alternatively, Regional Boards may assess liability under sections 13268 or 13350 for violating orders issued pursuant to sections 13267 or 13304 that required preparation of a PPP. POTWs may assess civil penalties against the dischargers as specified in section 13263.3(h) or other local legal authority, such as a pretreatment ordinance.

12. Q. Is the discharger still subject to enforcement actions for violations of its NPDES permit or pretreatment requirements even if it has implemented a PPP?

- A. Yes. The PPP does not take the place of the NPDES permit requirements. The discharger must continue to comply with its NPDES permit even if it is required to prepare and implement a PPP and regardless of the effectiveness of the PPP.

13. Q. May a discharger change its PPP?

- A. Yes. A discharger may change its PPP, including withdrawing from a measure included in the PPP for several reasons specified in section 13263.3(i), if approved by the State Board, a Regional Board, or a POTW.

14. Q. Must the State Board, a Regional Board, or a POTW approve a PPP?

- A. No. The State Board, the Regional Board, or the POTW may require preparation of a PPP, but is not required to approve the PPP or assure that it will in fact reduce pollution.

15. Q. If a Regional Board has previously required a discharger to follow a pollution prevention program, is such a program preempted by section 13263.3 concerning PPPs?

- A. No. The Regional Board has authority pursuant to section 13267 to require dischargers to prepare reports and may require other actions to comply with water quality standards. The new provisions do not preclude the Regional Boards from requiring dischargers to prepare technical reports under section 13267 that may include a report similar to a PPP as defined in section 13263.3.

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16. Q. Does section 13263.3 affect the requirement to prepare storm water pollution prevention plans (SWPPPs) required by storm water NPDES permits?

A. No. section 13263.3 addresses preparation of a specific type of PPP and only specifies what must be addressed in that type of PPP. It does not preempt or preclude the requirement to prepare SWPPPs pursuant to individual or general NPDES storm water permits.

17. Q. May a Regional Board or a POTW require a federal agency to prepare a pollution prevention plan?

A. Yes. Clean Water Act section 313 waived sovereign immunity with respect to state water pollution laws. Section 313 requires the federal government to comply with state requirements, administrative authority, process, and sanctions. The requirement to prepare a pollution prevention plan would be considered within the administrative authority of the state.

18. Q. Does section 13385(h)(1), which allows the State or Regional Board to require preparation of a PPP in lieu of paying a mandatory minimum penalty, provide an additional basis for requiring a PPP, or must the Regional Board find that one of the conditions for requiring a PPP in section 13263.3(d) has been met?

A. Section 13385(h)(1) does not provide an additional basis for requiring a PPP. Prior to requiring a discharger to develop a PPP in lieu of a mandatory penalty under section 13385(h)(1), the Regional Board must find that one of the conditions in section 13263.3(d) has been met.

II. MANDATORY MINIMUM PENALTIES³ (SECTION 13385(H)-(K))

A. Types of Discharges and Violations That Are Subject to Mandatory Penalties

19. Q. Are all discharges, including those subject to NPDES permits and non-NPDES waste discharge requirements, subject to the mandatory penalty?

A. No. The mandatory penalty provisions were added to section 13385, which applies only to surface water discharges subject to the NPDES requirements, including both individual NPDES permits and general NPDES permits such as storm water permits. Any unpermitted discharge that should be subject to an NPDES permit would generally not be subject to mandatory penalties but would instead be subject to administrative civil liability under section 13385(a).

20. Q. Are all violations of an NPDES permit subject to a mandatory minimum penalty?

A. No. Section 13385(h) and (i) specify the types of violations that are subject to mandatory penalties. If a discharger causes one of these types of violations, unless otherwise specified in section 13385(h) through (k), the penalty is mandatory and must be assessed by the State or Regional Boards.

21. Q. What is an effluent limitation? What does it mean to "exceed" an effluent limitation?

A. The federal regulatory definition of the term "effluent limitation" is "any restriction . . . on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean." 40 CFR 122.2. This definition has been interpreted by the U.S. EPA and the courts very broadly in some contexts. For example, the U.S. EPA considers design standards and best management practices for storm water and concentrated animal feeding operations to be effluent limitations. 61 Fed.Reg. 57425, 57427 (Nov. 6, 1996); 66 Fed.Reg. 2960, 3053 (Jan. 12, 2001). The regulation authorizing municipalities to apply for variances from the secondary treatment requirements has been held to be an effluent limitation. *NRDC v. EPA*, 665 F.2d 768, 776 (D.C. Cir. 1981). Under this approach, virtually any limitation contained in an NPDES permit could be considered an "effluent limitation."

In adopting the mandatory penalty provisions, however, it is the Office of Chief Counsel's opinion that the Legislature intended a more restrictive use of the term "effluent limitation." In another section of Senate Bill 709, the Legislature added section 13263.6, which requires the Regional Boards to prescribe effluent limitations under specified circumstances. (See Section IV. of this document for a discussion of this requirement.)

³ For the purposes of these Questions and Answers, the mandatory minimum penalty provisions (sections 13385(h)-(k)) will be referred to as "mandatory penalty" provisions, and the administrative civil liability provisions (sections 13385(a)-(e)) will be referred to as "discretionary liability" or "liability" provisions.

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The Legislature used the term “effluent limitations” in section 13263.6 in a manner that loosely parallels the requirements for water quality-based effluent limitations contained in 40 CFR 122.44(d)(1). In addition, in section 13385(a)(2), the Legislature made every violation of an NPDES permit subject to discretionary liability. The Legislature clearly intended, therefore, that the mandatory penalty provisions that apply to “effluent limitations” apply only to a subset of NPDES permit limitations.

For the purposes of applying the mandatory penalty provisions, the Regional Boards should consider “effluent limitations” to refer to the restrictions that focus on the quantities, discharge rates, or concentrations of the effluent that is authorized to be discharged from the location(s) specified in the NPDES permit.⁴ An effluent limitation may be expressed in numeric or narrative form, and may be expressed as a prohibition against a discharge of a certain quantity, rate, or concentration of effluent from the discharge location. Limitations that merely specify design standards, management practices, or operational requirements would not be considered effluent limitations. In addition, limitations that focus on the quality of the receiving water (generally referred to as “receiving water limitations”), rather than the quantity or quality of the effluent, would not be considered effluent limitations for these purposes. This approach is consistent with the Regional Boards’ traditional manner of drafting NPDES permits, in which water quality objectives are incorporated into NPDES permits as receiving water limitations, regardless of whether an effluent limitation is required by the federal regulations. For administrative convenience, NPDES permits often contain headings to separate the different types of permit conditions (e.g., “prohibitions,” “effluent limitations,” “receiving water limitations,” “general provisions,” etc.). The heading will be helpful, but not conclusive, in determining whether the limitation is an effluent limitation. The limitation must, in fact, be an effluent limitation in order for any exceedances to be subject to a mandatory minimum penalty.

Section 13385(h)(2) and (i)(1) refer to a discharge or person who “exceeds” an effluent limitation, and section 13385(i)(4) refers to a person who “exceeds” a toxicity discharge limitation. To “exceed” means to surpass or to go beyond the limit. American Heritage Dictionary, 4th ed. 2000. Limitations are most frequently expressed in terms of a maximum quantity, rate, or concentration. In those cases, if the amount discharged is greater than the limitation, the discharge has obviously exceeded the limitation. Occasionally, however, the limitation is expressed in terms of a minimum quantity, rate, or concentration. Examples include pH and dissolved oxygen. In these cases, if the discharge is lower than the minimum limitation, the discharge has also exceeded the limitation, because it has gone beyond the authorized limit.

⁴ “Effluent” refers to both the individual pollutants in the discharge and the sum of those pollutants, or the whole of the discharge.

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22. Q. If an NPDES permit authorizes discharges to storage ponds, are such discharges to the ponds subject to mandatory penalties?

A. Some dischargers' NPDES permits authorize the use of storage ponds to store treated waste water, and authorize discharge of the stored effluent both to waters of the United States and to reclamation (e.g., for irrigation). Discharges to ponds that are not considered waters of the United States would not be subject to mandatory minimum penalties as long as the waste water is not subsequently discharged to waters of the United States. Any exceedances of the NPDES permit's effluent limitations would subject the discharge to mandatory penalties, however, if the waste water is subsequently discharged from the pond to surface water.

23. Q. Are spills and overflows subject to mandatory minimum penalties under section 13385(h) or (i)?

A. If the spill or overflow does not occur from the authorized discharge location(s) specified in the NPDES permit, it is not subject to mandatory minimum penalties, because it is not subject to the permit's effluent limitations. If the spill or overflow is from an authorized discharge location, however, it would be subject to a mandatory minimum penalty if it exceeds the effluent limitations. The Regional Board should, therefore, evaluate the individual NPDES permit's terms to determine whether the spill or overflow is from an authorized discharge location, and if it is, whether it exceeded any effluent limitations. Spills and overflows from an authorized discharge location may be subject to the single operational upset provision in section 13385(f). (In such cases, violations of multiple effluent limitations would be considered a single violation, as discussed below in the Answer to Question 36.) Note that section 13385(h) and (i) are mandatory penalties, but the Regional Board may also assess discretionary liability for spills or overflows, whether or not they are subject to the mandatory penalties.

If a spill or overflow to surface waters occurs from a location that is not authorized in the NPDES permit (e.g., from the collection system), or from a facility that is not regulated by an NPDES permit, that discharge is subject to discretionary administrative civil liability under section 13385(a), but is not subject to mandatory penalties under section 13385(h) and (i).

24. Q. Section 13385(h) requires the State or Regional Board to assess a mandatory penalty of \$3,000 for each "serious violation." How is "serious violation" defined?

A. Section 13385(h)(2)(A) defines a "serious violation" to mean any waste discharge that exceeds the effluent limitation contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or a Group I pollutant by 40 percent or more. Appendix A of Title 40, Code of Federal Regulations, section 123.45 specifies the Group I and II pollutants. 40 CFR 123.45 lists categories of Group I and Group II pollutants, each with a list that includes specific constituents and indicates that there are other, nonlisted, constituents that fit into some of the categories. U.S. EPA publishes a

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more complete list of Group I and Group II pollutants that are covered under "other." That list is available on the State Board's website. In determining whether an effluent limitation is a Group I or Group II pollutant, the Regional Board should check the more complete list. The NPDES permit must include an effluent limitation for a Group I or II pollutant for the mandatory penalty to apply. Additional constituents that are not Group I or Group II pollutants may also be subject to effluent limitations. In such cases, exceedances of those effluent limitations would be addressed by section 13385(i)(1), not (h).

25. Q. Is coliform a Group I or Group II pollutant?

- A. Coliform is neither a Group I nor a Group II pollutant and, therefore, exceedances of coliform effluent limitations could not be considered "serious violations."

26. Q. What types of violations are subject to section 13385(i)?

- A. Section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of \$3,000 per violation, not counting the first three violations, if the discharger does any of the following four or more times in any period of six consecutive months: (1) exceeds a waste discharge requirement effluent limitation (numeric or narrative), (2) fails to file a report pursuant to section 13260, (3) files an incomplete report pursuant to section 13260, or (4) exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

27. Q. What constitutes a failure to file a report or the filing of an incomplete report pursuant to section 13260 for purposes of determining violations subject to section 13385(i)(2) or (3)?

- A. Section 13385(i)(2) and (3) requires a mandatory penalty only where the discharger fails to file a report under section 13260 or files an incomplete report four or more times in any period of six consecutive months. Since NPDES dischargers are generally required to file a report of waste discharge under section 13260 only once every five years, it is unlikely that mandatory penalties would ever be imposed pursuant to section 13385(i)(2) or (3). It is conceivable, however, that a new discharger, or an existing discharger who has a material change in the discharge, could fail to file a report of waste discharge after receiving notice of the requirement four or more times in a period of six consecutive months from the Regional Board. It is also possible that after receiving a report of waste discharge, the Regional Board could find that it is incomplete four or more times in a period of six consecutive months because the discharger failed to provide needed information or the appropriate fees to complete the report. Note that failure to submit monitoring reports or submitting incomplete monitoring reports are not subject to mandatory penalties under section 13385(h) or (i).

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28. Q. What is a "toxicity discharge limitation" for the purposes of section 13385(i)(4)? What is a "toxic pollutant" for the purposes of section 13385(i)(4)?

- A. A "toxicity discharge limitation" is a toxicity limitation that applies to the discharge, but that does not meet the definition of an effluent limitation. Exceedances of toxicity effluent limitations, including effluent limitations for whole effluent toxicity, are addressed by section 13385(i)(1). In addition, because the Legislature used the term "discharge" in describing this type of limitation, it appears that a "toxicity discharge limitation" would not include toxicity receiving water limitations. (See Answer to Question 21.) Some NPDES permits may have toxicity discharge limitations that may be exceeded, but that do not qualify as either effluent limitations or receiving water limitations. Section 13385(i)(4) requires the assessment of mandatory penalties if such a toxicity discharge limitation is exceeded four or more times in six consecutive months, but only if the permit does not have any pollutant-specific effluent limitations for toxic pollutants.

The term "toxic pollutant" is defined in the Clean Water Act section 502(13), 33 U.S.C. 1362(13). The U.S. EPA has promulgated a list of toxic pollutants found in 40 CFR Part 302. If the NPDES permit contains an effluent limitation for any toxic pollutant on U.S. EPA's list, then mandatory penalties would not be assessed under section 13385(i)(4). Instead, penalties for exceeding any pollutant-specific effluent limitations would be assessed under section 13385(i)(1).

29. Q. Are "minor violations" under section 13399 subject to mandatory penalties?

- A. Section 13399 requires the Regional Boards to issue a "notice to comply" for violations that constitute "minor violations." (Minor violations are described in the State Board's Enforcement Policy.) Section 13399.2(e) states that the State or Regional Board may not take any other enforcement action under Division 7 of the Water Code against a person who has received a notice to comply and is in compliance. Section 13385(h) and (i) both state, however, that "notwithstanding any other provision of [Division 7]" the mandatory penalties apply. Therefore, even if a "minor violation" is subject to a notice to comply it also may be subject to mandatory penalties if the minor violation is also a violation of or results in a violation enumerated in section 13385(h) or (i).

30. Q. How does the State or Regional Board determine whether there is a serious violation under section 13385(h) if the effluent limitation is a narrative effluent limitation?

- A. Section 13385(h)(2)(A) defines a "serious violation" as a waste discharge that exceeds a Group II or Group I effluent limitation by either 20 percent or 40 percent, respectively. The term "effluent limitation" as used in section 13385(h) does not distinguish between numeric and narrative effluent limitations. Therefore, if the discharge exceeds a narrative effluent limitation by the requisite percentage, it is subject to section 13385(h). In the case of some narrative effluent limitations, however, mandatory penalties for serious violations may not be assessed because it is not quantitatively possible to determine whether the discharge has exceeded the narrative effluent limitation by 20 percent or 40 percent. [The

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Enforcement Policy may be revised to provide additional guidance in this area, in which case this document will be revised accordingly.] In this case, the discharge could not be subject to section 13385(h). (Effluent limitations of “zero” or “nondetectable” are addressed below.) However, note that even if the violation is not subject to a mandatory penalty under section 13385(h), it may still be subject to discretionary administrative civil liability and/or a mandatory penalty under section 13385(i).

31. Q. How does the State or Regional Board determine whether there is a violation under section 13385(h) or (i) if the effluent limitation is lower than the detection level?

- A. A mandatory penalty should only be imposed where the State or Regional Board can document a measurable violation consistent with federal regulations and State Board plans or policies addressing detection limits. See, e.g., the State Board’s “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (Resolution 2000-015, “State Implementation Plan”). An effluent limitation for a pollutant addressed by the State Implementation Plan would be considered exceeded if the concentration of the pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reported Minimum Level.

32. Q. How does the State or Regional Board determine whether there is a violation under section 13385(h) or (i) if the effluent limitation is zero or nondetectable?

- A. If the effluent limitation is “zero,” any reported detection necessarily exceeds the effluent limitation by more than 40 percent. [This is in accordance with the current draft of the revisions to the State Board’s Enforcement Policy] Ideally, where the NPDES permit contains an effluent limitation of “nondetectable,” the permit specifies the detection limit or methodology to be used for determining compliance with the effluent limitation. In such cases, that detection limit or methodology, including any authorized approach for rounding to significant figures, should be used for determining compliance. Where the permit does not specify the detection limit or methodology, the Regional Board should amend the permit or provide other direction to the discharger concerning the detection limit (e.g., pursuant to section 13267). Where there is no such direction, the Regional Board should determine what detection limit or methodology has traditionally been used by the discharger. That detection limit or methodology should be the basis for determining compliance with the “nondetectable” permit effluent limitations.

B. Calculating the Amount of the Mandatory Penalty

33. Q. Section 13385(h) and (i) mandate a penalty if specified violations occur during “any period of six consecutive months.” How is the six consecutive month period determined?

- A. SB 709 became effective on January 1, 2000. Violations that occurred prior to that date are not subject to the mandatory penalties. The act required the Regional Board to assess a mandatory penalty for each serious violation in any six-month period (former section

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13385(h)(1) and (i)(1)), and for the fourth and subsequent violations if there were four or more specified violations in any six-month period (former section 13385(i)(2)). SB 2165, which became effective on January 1, 2001, restated these provisions and added a clarifying definition of a "period of six consecutive months" in order to facilitate the necessary calculations (because the months have differing numbers of days). The period is now defined as the 180 days immediately following the first violation. Because this merely ratifies the period that the State and Regional Boards have been using, this definition is not considered to be a substantive change in the law. The application of the new definition in calculating whether there have been four or more violations in a period of six consecutive months for the purposes of section 13385(i) is potentially ambiguous, because it could be argued that there must be an initial violation before the Regional Board can begin to calculate whether there have been four additional violations during the subsequent 180-day period. It would follow that the requirement to assess a mandatory penalty does not apply until the fifth violation in a period of 181 days. This hypertechnical interpretation would conflict with the plain meaning of section 13385(i): "a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following [violations] four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations . . ." Further, there is nothing in the legislative history for SB 2165 that indicates that the Legislature intended to change this fundamental provision of SB 709. Therefore, the Regional Boards must assess mandatory minimum penalties under section 13385(i) for the fourth and any subsequent violations that occur within the 180-day period that immediately follows the first violation.

34. Q. How is the amount of mandatory penalty calculated for violations subject to section 13385(i)?

- A. In determining the amount of the penalty under section 13385(i), the Regional Board would assess \$3,000 for each violation, not counting the first three violations, where the discharger had four or more violations in any one of the four categories of violations in section 13385(i). For example, if a discharger exceeded any combination of effluent limitations 10 times in a period of six consecutive months and a toxicity discharge limitation four times in that same six-month period, the penalty would be \$24,000 (\$21,000 for the seven violations in excess of the first three violations for the effluent limitation and \$3,000 for the one violation in excess of the first three violations for the toxicity discharge limitation). If the same discharger filed one incomplete report under section 13260 during the same six-month period, that violation would not be subject to a mandatory penalty because that type of violation did not occur four or more times in the six-month period. A mandatory penalty is not assessed unless a discharger causes four or more violations within one category of section 13385(i). Note that serious violations under section 13385(h) also count toward determining the number of exceedances under section 13385(i)(1) because serious violations are, by definition, also violations of effluent limitations. An additional mandatory penalty would not be assessed for the serious

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violations under section 13385(i), however, because a mandatory penalty would already be required under section 13385(h).

Section 13385(i) provides that the requirement to assess a mandatory penalty does not apply to the first three violations in a period of six consecutive months, but the statute does not provide any direction for determining which violation(s) occurred first where there are both serious violations and nonserious violations on the same day. In this situation, the total amount of the penalty may vary depending on whether the serious violation is counted before or after the nonserious violation. If a nonserious violation is counted as one of the first three violations it will not receive a mandatory penalty, but a serious violation will always receive a mandatory penalty whether or not it is one of the first three violations. Therefore, when it is not possible to determine the order in which the violations occurred, the recommended conservative approach is to count the serious violations last in determining the order in which multiple violations on the same day occurred.

Attached to this Q&A are several examples for calculating the amount of mandatory minimum penalties.

35. Q. Should the State or Regional Board consider that a violation occurs each day beginning on the date of sampling until receipt of the sampling results?

A. Typically, sampling data would only indicate whether there is a violation on the date the data is collected. Other evidence, however, may be used to demonstrate that violations occurred on more than one day.

36. Q. If there is a single operational upset that results in simultaneous exceedances of more than one effluent limitation, should the State or Regional Board consider that one violation or multiple violations?

A. Section 13385(f) states that a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. Section 13385(f) applies to determining penalties under section 13385(h) and (i). Therefore, for purposes of section 13385(h) and (i), simultaneous exceedances of more than one effluent limitation due to a single operational upset would be considered one violation. Section 13385(f) is the same as Clean Water Act section 309(c)(5) (33 U.S.C. section 1319(c)(5)), and must be interpreted consistent with federal law. For purposes of that provision, U.S. EPA defines "single operational upset" as

"an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one Clean Water Act effluent discharge pollutant parameter. Single operational upset does not include . . . noncompliance to the extent caused by improperly designed or

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inadequate treatment facilities.” (See U.S. EPA Guidance Interpreting “Single Operational Upset,” which is contained on the SWRCB website.)

This U.S. EPA Guidance further defines an “exceptional” incident as a “nonroutine malfunctioning of an otherwise generally compliant facility.” For example, if a facility has had a history of violations due to excess flows during wet weather events, the single operational upset provision may not apply to such violations.

A decision by the United States Court of Appeals for the Third Circuit further interprets the “single operational upset” provision. See *Public Interest Research Group of New Jersey, Inc. et al. v. Powell Duffryn Terminals Inc.* (3d Cir. 1990) 913 F.2d 64. The Court considered a “single operational upset” to mean such things as upsets caused by a sudden violent storm, a bursting tank, or other exceptional event, not operational upsets caused by improperly operated or designed facilities. The Court determined that the “single operational upset” provision applies to the determination of the amount of the liability or penalty; it is not a defense to liability. The “single operational upset” provision differs from the “upset” defense provided by U.S. EPA’s regulations in 40 CFR section 122.41(n). That “upset” defense may be raised as an affirmative defense to liability and the discharger must meet certain requirements, including reporting the incident within 24 hours.

Merely because more than one effluent limitation is violated does not mean that a “single operational upset” occurred. The discharger has the burden of demonstrating that a “single operational upset” occurred. The discharger must show that the violations were the result of a specific cause, and that the cause qualifies as an upset. See *Powell Duffryn*, 913 F.2d at 76; *U.S. v. Gulf States Steel, Inc.* (N.D. Ala. 1999) 54 F.Supp.2d 1233, 1248. For the purposes of determining the number of violations under section 13385(h) and (i), the Regional Boards should apply U.S. EPA’s Guidance in determining whether a “single operational upset” has occurred. Ultimately, this will be a fact-based determination by the State and Regional Boards.

If the State or Regional Board determines that a single operational upset event has occurred, all exceedances on any single day that are attributable to that event will be counted as only one exceedance for the purposes of calculating mandatory penalties. If the exceedances attributable to the same event continue for two days, two exceedances will be counted, and so on, in accordance with U.S. EPA’s Guidance.⁵ However, the “single operational upset” provision should not be used for subsequent days where the discharger fails to take immediate remedial steps and thereby allows the noncompliance to continue over an extended period. See *Gulf States Steel*, 54 F.Supp.2d at 1247.

⁵ The Answer to Question II.11 in the memorandum dated December 6, 1999 stated that exceedances that continued for multiple days would be counted as a single violation. This answer has been revised to be consistent with the U.S. EPA’s Guidance.

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37. Q. If the waste discharge requirements contain effluent limitations addressing both a daily maximum and a monthly average for the same pollutant, are exceedances of each based on the same monitoring event(s) counted as two separate violations for purposes of section 13385(h) or (i)?

A. Yes.

38. Q. In determining the number of violations for purposes of section 13385(h) or (i), should the State or Regional Board count one violation for each separate limitation regardless of the number of violations?

A. Unless multiple violations are the result of a single operational upset, each exceedance of separate effluent limitations should be considered a separate violation. However, a violation that fits into more than one subdivision of section 13385 should not be assessed a double penalty. For example, a serious violation under section 13385(h) would also be an exceedance of an effluent limitation under section 13385(i)(1), but penalties should not be assessed twice for the same violation. If the discharger had exceeded four effluent limitations in a period of six consecutive months, and the first and fourth violations were serious violations, the discharger would be assessed a mandatory minimum penalty of \$6,000, not \$9,000. The second serious violation is also the first violation subject to a mandatory minimum penalty under section 13385(i)(1), but the discharger would only be assessed once for that violation.

39. Q. How does the State or Regional Board determine how many “violations” occurred?

A. For purposes of the mandatory penalty provisions, the Regional Board should determine the number of violations based on monitoring data and other evidence that the discharger has exceeded an effluent limitation. For example, if based on one or more monitoring data points in a month, the Regional Board determines that the discharger has violated a monthly average effluent limitation, the Regional Board should consider that one violation. Note, however that if the Regional Board chooses to assess discretionary administrative civil liability for violations of a monthly average it should consider such a violation of a monthly average as 30 days of violations in order to be consistent with the Clean Water Act. The new section 13385(h) and (i) requires a mandatory penalty for “each violation,” not “for each day in which the violation occurs” as provided in section 13385(c). If the permit contains an effluent limitation based on a daily maximum, but only requires weekly monitoring, the Regional Board should consider each monitoring data point that exceeds the daily maximum as a violation unless other evidence indicates that a violation has occurred on more days than the day the monitoring data was collected.

40. Q. Does an exceedance of an average or median effluent limitation constitute one violation or multiple violations?

A. In the usual case, if the discharger exceeds an average or median effluent limitation based on a static period of time (e.g., monthly or weekly averages), it would be considered only

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one violation for the month or the week for the purposes of calculating mandatory penalties, as described above. Exceedances of effluent limitations where it is specified that the average or median will be computed on a rolling basis (calculated daily), however, would be considered to be violations for each new time period that the average or median was exceeded. The permit, the applicable water quality control plan, and U.S. EPA guidance should be reviewed to determine how to calculate the number of violations in these cases.

41. Q. Is it possible to have more than one mandatory penalty per day for an exceedance of a single effluent limitation?

- A. For the purpose of mandatory penalties, an exceedance of a single effluent limitation based on instantaneous maximums or hourly averages should be counted as no more than one violation per day.

C. Potential Exceptions to Mandatory Penalties

42. Q. Do the mandatory minimum penalty provisions apply even if the Regional Board has issued a cease and desist order or other order providing a time schedule for achieving compliance with the effluent limitation that is the subject of the violations?

- A. Generally, yes. Issuance of the penalty and the amount of the penalty is mandatory even if there is a cease and desist order or other time schedule order outside of the permit, unless the cease and desist order or time schedule order meet the conditions specified in section 13385(j)(2) or (3), which are discussed below. If, however, the permit itself includes a time schedule before the effluent limitation is in effect, and/or provides for an interim limitation, an exceedance of the effluent limitation that is not yet in effect would not result in a violation subject to a mandatory penalty. If the permit itself includes interim effluent limitations, violations of those interim limitations would be subject to mandatory penalties. If a cease and desist order includes effluent limitations, violations of those effluent limitations would not be subject to mandatory penalties unless those limits are also in the permit. The Regional Board may also under some circumstances grant variances from effluent limitations; such variances would be contained in the permit and if they are effluent limitations, violations could be subject to the mandatory penalties.

43. Q. Are exceedances of effluent limitations that result from qualifying treatment plant bypasses or upsets subject to mandatory penalties?

- A. Generally, yes. The only exception, which is specified in section 13385(j)(1)(D), applies to treatment facilities located in Los Angeles County. Pursuant to 40 CFR section 122.41(m) and (n), a Regional Board may incorporate provisions for bypass and/or upset into its NPDES permits. (Note that the "upset" described in 40 CFR 122.41(n) is not the same as the "single operational upset" described above.) If the discharger's permit contains these provisions, then for the purposes of assessing discretionary liability, violations of certain effluent limitations may be excused if the discharger can demonstrate

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that the violations resulted from a qualifying bypass or upset condition. (Only technology based effluent limitation violations may be excused under the upset defense.) However, section 13385(h) and (i) require the assessment of mandatory penalties when a discharger "exceeds" effluent limitations. Even if the violation may be excused, the fact that the effluent limitation was "exceeded" remains. The operative term in the mandatory penalty provisions of section 13385 is "exceeds," whereas the operative term in the discretionary liability provisions is "violates." This difference in terms, in conjunction with the otherwise unnecessary exception for Los Angeles County facilities, means that exceedances of certain effluent limitations that result from qualifying treatment plant bypasses or upsets, while perhaps not subject to discretionary liability, are still subject to mandatory penalties.

44. Q. Are there any exceptions to the requirement to assess mandatory penalties due to circumstances that are beyond the control of the discharger?

A. Yes. Section 13385(j)(1) states that mandatory penalties shall not be assessed if the violations are caused by one or any combination of (1) an act of war, (2) an unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or (3) an intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

45. Q. What additional exceptions to mandatory penalties took effect on January 1, 2001?

A. SB 2165, which became effective on January 1, 2001, contained several new exceptions to the mandatory penalties of section 13385(h) and (i). section 13385(j)(1)(D) provides the exception for approved treatment plant bypasses during calendar year 2001 in the Los Angeles Region mentioned above. An uncodified section of SB 2165 provides relief from mandatory penalties for certain construction dewatering and storm water discharges during calendar years 2000 and 2001 in the Los Angeles Region. Section 13385(j)(2) and (j)(3) provide exceptions for discharges that are in compliance with a cease and desist order or section 13300 time schedule order under narrowly specified conditions. Finally, section 13385(k) authorizes the State or Regional Boards to require a publicly owned treatment works (POTW) that serves a small community to spend an amount equivalent to the mandatory penalty toward the completion of a compliance project in lieu of assessing the mandatory penalty.

46. Q. What are the conditions for qualifying for the new exception to mandatory penalties based on compliance with an existing cease and desist order or time schedule order pursuant to section 13385(j)(2)?

A. SB 2165 added new section 13385(j)(2), which provides an exception to the mandatory penalties under the following conditions. The discharge must be in compliance with a cease and desist order (CDO) or a section 13300 time schedule order (TSO) that was issued between January 1, 1995, and July 1, 2000. The CDO or TSO must specify actions

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to correct the violations that would otherwise be subject to mandatory penalties, and must include a final compliance date. If the final compliance date is more than one year from the effective date of the CDO or TSO, the CDO or TSO must contain interim tasks and a schedule for completing those interim tasks. In addition, the discharger must either be implementing a PPP, or be under a requirement of the Regional Board to implement a PPP. Finally, in order to qualify for the exception, the discharger must also demonstrate that it has carried out "all reasonable and immediately feasible actions to reduce noncompliance" with its NPDES permit, and the Executive Officer must concur with this demonstration.

The applicability of this exception expires in accordance with section 13385(j)(2)(B). The mandatory penalties shall apply to any continuing exceedances on the next date that NPDES permit is revised and reissued (usually within five years), unless the Regional Board does all of the following on or before the date of reissuance. First, the Regional Board must determine that the discharger is properly implementing a complete PPP. Second, the Regional Board must modify the CDO or TSO as necessary to make it consistent with the reissued NPDES permit. Third, the Regional Board must establish in the CDO or TSO a date for achieving full compliance with all of the terms of the reissued NPDES permit. The compliance date is subject to varying restrictions. If the reissued NPDES permit adds any new or more stringent effluent limitations than those contained in the previous permit, then the final compliance date may be no later than ten years from the date that the previous NPDES permit was issued. If the reissued NPDES permit does not add any new or more stringent effluent limitations, then the final compliance date may be no later than ten years from the date that the previous NPDES permit was issued or the original compliance date in the CDO or TSO, whichever is earlier. If the discharger fails to comply with the final compliance date (or any other provision of the CDO or TSO), any exceedances of effluent limitations during the period of noncompliance are subject to mandatory penalties.

- 47. Q. What are the conditions for qualifying for the new exception to mandatory penalties based on compliance with a new cease and desist order or time schedule order pursuant to section 13385(j)(3)?**
- A. SB 2165 also added new section 13385(j)(3), which provides an exception to the mandatory penalties under the following conditions. The discharge must be in compliance with a CDO or TSO that was issued after July 1, 2000. The CDO or TSO must specify actions to correct the violations that would otherwise be subject to mandatory penalties, and must include a final compliance date that is as short as possible, taking into account specified factors, but may not exceed five years from the effective date of the CDO or TSO. If the final compliance date is more than one year from the effective date of the CDO or TSO, the CDO or TSO must contain interim effluent limitations, interim tasks, and a schedule for completing those interim tasks. In addition, the discharger must either be implementing a PPP, or be under a requirement of the Regional Board to implement a PPP.

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In addition to the above, in order to qualify for this exception, the Regional Board must find that the discharger is unable to consistently comply with its effluent limitation(s) for one of the following three reasons. First, the effluent limitation may be a “new, more stringent, or modified” requirement that became applicable to the discharge after an NPDES permit had already been issued for the facility, and after July 1, 2000, and new or modified control measures must be necessary to comply with the effluent limitation. The condition that the effluent limitation became applicable after the facility had already been issued an NPDES permit is intended to ensure that new facilities are not inadequately designed. The condition that the effluent limitation became applicable (e.g., through the renewal or reissuance of an existing NPDES permit) after July 1, 2000, ensures that older facilities that were already required to upgrade in order to comply with new effluent limitations prior to July 1, 2000 do not receive an exception to mandatory penalties under this provision. The new, more stringent, or modified effluent limitations could include, for example, new effluent limitations based on a recent reasonable potential analysis, the California Toxics Rule, or a new total maximum daily load. If there is a compliance schedule accompanying the new effluent limitation, of course, this exception from mandatory penalties would not be necessary until the effluent limitation takes effect.

Second, there may be new methods for detecting or measuring a pollutant that demonstrate that new or modified control measures are necessary to comply with the effluent limitation. This could include, for example, improved detection limits that indicate for the first time that a particular pollutant is in the discharge. Third, there may be an unanticipated change in the quality of the only municipal or industrial water supply reasonably available to the discharger that causes exceedances of effluent limitations. Finally, under all three of these scenarios, the Regional Board must find that new or modified control measures to address the exceedances caused by one of the above reasons cannot be put into operation within 30 calendar days. If the Regional Board intends the CDO or TSO to provide an exception to mandatory penalties, it is recommended that the Regional Board also include a finding to that effect.

48. Q. Do the exceptions to mandatory penalties based on compliance with a CDO or TSO apply to violations that occurred prior to January 1, 2001?

- A. No. The general rule is that statutes apply prospectively, unless there is clear legislative intent to the contrary. Here, there is no indication that the Legislature intended these exceptions to apply retroactively. Further, new section 13385(j)(2) and (3) cannot be said to be mere clarifications of the pre-existing mandatory penalty requirements. Rather, these provisions of SB 2165 created new circumstances under which the mandatory penalty provisions simply do not apply (“Subdivisions (h) and (i) do not apply to any of the following. . .”). Therefore, notwithstanding new section 13385(j)(2) and (3), the Regional Boards must assess mandatory penalties for any qualifying violations under section 13385(h) and (i) that occurred prior to January 1, 2001.

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49. Q. What are the conditions for the “small community” alternative to mandatory penalties?

- A. Section 13385(k) authorizes the State or Regional Boards to require a POTW that serves a small community to spend an amount equivalent to the mandatory penalty toward the completion of a compliance project in lieu of assessing the mandatory penalty against the POTW if the State or Regional Board finds that the compliance project is designed to correct the violations within five years, the compliance project is in accordance with the State Board’s Enforcement Policy, and the POTW has demonstrated sufficient funding to complete the compliance project.

50. Q. Which dischargers are eligible for the small community alternative to mandatory penalties? What is a “compliance project”?

- A. Only POTWs serving small communities are eligible for this alternative to mandatory penalties. Section 13385(k) incorporates the definition contained in section 79084(b) for Proposition 13’s Watershed Protection Program: “ ‘small community’ means a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the [state] board.” [The State Board has not yet defined “financial hardship” for these purposes. It is expected that the current revisions to the Enforcement Policy will contain such a definition.]

Section 13385(k) requires that the compliance project be “in accordance with the enforcement policy of the state board.” The existing Enforcement Policy does not address compliance projects. It is expected that the current revisions to the Enforcement Policy will describe appropriate types of compliance projects.

Until the expected revisions to the Enforcement Policy take effect, Regional Boards will not be able to utilize the small community alternative to mandatory penalties contained in section 13385(k).

51. Q. May the State and Regional Boards utilize the small community alternative to mandatory penalties for violations that occurred prior to January 1, 2001?

- A. Yes, provided that they have not already finally assessed the mandatory penalties for the same violations. Unlike the new exceptions to the mandatory penalties based on compliance with a CDO or TSO in section 13385(j)(2) and (3), which determine whether the mandatory penalty provisions apply to the violations (see Answer to Question 48), the new small community alternative in section 13385(k) provides an alternative to the State or Regional Board’s assessment of the mandatory penalty (“In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i). . .”). As long as the assessment has not yet occurred, the utilization of the small community alternative to mandatory penalties for violations that occurred prior to the effective date of

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SB 2165 should be considered a prospective application of this provision of the amendment.

52. Q. How often can a discharger perform a supplemental environmental project or develop a pollution prevention plan in lieu of paying a mandatory penalty?

- A. Under section 13385(h)(1) the State or Regional Board must assess a mandatory penalty for each serious violation. In lieu of the \$3,000 penalty, however, the State or Regional Board may allow the discharger to perform a supplemental environmental project (SEP) or develop a pollution prevention plan (PPP), as long as the discharger has had no serious violations during the previous six months. If the discharger commits any additional serious violations in the next 180 days, the Regional Board must assess a mandatory penalty for those additional violations, and may not substitute an SEP or a PPP for those mandatory penalties. Thus, the Regional Board must take an action for every serious violation. If the Regional Board allows the discharger to prepare an SEP or PPP for the first serious violation, it must wait 180 days before it can allow the discharger to prepare an SEP or PPP in lieu of the mandatory penalty for any subsequent serious violations. For example, if a discharger violates an effluent limitation that constitutes a serious violation in February, April, and June, it would be subject to \$9,000 in mandatory penalties. The Regional Board could only allow the discharger to conduct an SEP or develop a PPP for the violation in February in lieu of the penalty, i.e., for up to \$3,000. A discharger may not conduct an SEP or develop a PPP in lieu of paying mandatory penalties under section 13385(i).

53. Q. Are federal agencies that have NPDES permits subject to mandatory minimum penalties?

- A. No. The federal government is subject to state laws only to the extent it has waived sovereign immunity. The Clean Water Act section 313 waived sovereign immunity to the extent that the federal government

“shall be subject to, and comply with [State] requirements, administrative authority, process, and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. . . .”

The United States Supreme Court has determined that a waiver of sovereign immunity must be strictly interpreted, i.e., the waiver must be explicit. While Congress has waived sovereign immunity with respect to the issuance of and compliance with permitting requirements, courts have determined that it has not waived sovereign immunity with respect to the state's assessment of penalties for past violations and punitive fines under the Clean Water Act. The term “sanctions” does not include punitive fines. See *U.S. Department of Energy v. Ohio*, 112 S.Ct. 1627 (1992), *State of Maine v. Dept. of the Navy*, 973 F.2d 1007 (1st Cir. 1992). The mandatory penalties under section 13385(h) and (i)

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would apply to past violations and are intended to be punitive. Therefore, the federal government cannot be subject to mandatory penalties under section 13385.

D. Procedures Related to the Assessment of Mandatory Penalties

54. Q. Does the State or Regional Board assess mandatory minimum penalties?

- A. Section 13385 authorizes both the State Board and the Regional Boards to assess administrative civil liability and mandatory penalties. Typically, however, the Regional Board would initially assess the liability or penalties, but such assessments are subject to State Board review through the petition process.

55. Q. Who has the burden of proof, the State or Regional Board or the discharger, in determining whether the violation is subject to the mandatory minimum penalty?

- A. Violations under section 13385 are subject to strict liability and the mandatory penalty provisions do not change the liability scheme. Under strict liability, the State or Regional Board must prove that there have been violations as specified in section 13385(h) or (i). Once the State or Regional Board has demonstrated such violations, it becomes the discharger's burden to establish, by a preponderance of the evidence, that the amount of the penalty imposed should be less than the maximum. Since the new provisions establish statutory minimum penalties, the State or Regional Board may not assess a lesser amount. The State or Regional Board may determine at the hearing, however, that the evidence is not sufficient to make a finding that there was a violation. It is up to the discharger to provide evidence to demonstrate that the Regional Board incorrectly calculated the number of violations and the amount of the penalty. See *State of California v. City and County of San Francisco, et al.* (1979) 94 Cal.App.3d 522.

56. Q. What procedure should the Regional Board use in assessing the mandatory minimum penalty?

- A. To assess mandatory penalties under section 13385(h) or (i), the Executive Officer should issue a "Complaint for Mandatory Penalties" pursuant to the procedure in section 13323. If the Executive Officer chooses to seek discretionary civil liability that also includes violations subject to mandatory penalties, the Executive Officer would issue a "Complaint for Administrative Civil Liability and Mandatory Penalties." The State Board Office of Chief Counsel has prepared sample complaints. The Complaint should provide the discharger the opportunity to waive the right to a hearing and pay the stated penalty, to request a settlement meeting with the Executive Officer, or to request a hearing before the Regional Board to challenge the penalty. The Complaint should also inform the discharger that if a hearing before the Regional Board is requested, the Regional Board may modify the amount assessed by including additional discretionary liability based on section 13385. If it is likely that the Regional Board would want to consider assessing additional discretionary liability, the Complaint for Mandatory Penalties should also include an evaluation of the factors specified in section 13385(e), including a calculation

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of economic benefit. Alternatively, the Regional Board could direct the Executive Officer to rescind the "Complaint for Mandatory Penalties" and issue a "Complaint for Administrative Civil Liability and Mandatory Penalties" at the hearing.

If the discharger chooses to waive the right to a hearing, the waiver must be accompanied by a check for the full amount assessed (less any supplemental environmental project approved pursuant to section 13385(h)). The waiver is not effective until the assessed amount has been paid.

The act does not specify when the mandatory penalties must be assessed. The Regional Board Executive Officers may issue complaints at suitable times to make best use of staff resources and to assure compliance with section 13323 hearing requirements.

- 57. Q. Can persons aggrieved by the assessment of mandatory penalties file a petition for review with the State Board under section 13320? If so, does the discharger have to pay the penalty while the petition is pending before the State Board?**
- A. The discharger and other interested persons may petition the State Board to review the mandatory penalty. While the petition is pending, the discharger is not required to pay the penalty. The penalty is due and payable within 30 days after a decision upholding the penalty or dismissal of the petition.
- 58. Q. Must the Regional Board recover economic benefit in assessing a penalty under section 13385(h) or (i)?**
- A. No. The requirement to recover economic benefit is included within section 13385(e), which only applies to assessing discretionary liability, not to recovering mandatory minimum penalties. If, however, a Regional Board is seeking both mandatory minimum penalties pursuant to section 13385(h) or (i) and administrative civil liability pursuant to section 13385(a) through (e), it must recover at a minimum the economic benefit, if any, or the mandatory penalty amount, whichever is greater.
- 59. Q. May the Regional Board assess administrative civil liability in addition to the mandatory penalty?**
- A. Yes. Where the Regional Board is required to assess a mandatory minimum penalty, it may also choose to assess a greater amount under the discretionary liability provisions. In such a case, the Regional Board Executive Officer would issue a "Complaint for Administrative Civil Liability and Mandatory Penalties." In any settlement of such a complaint, or after a hearing before the Regional Board, the Executive Officer or Regional Board must recover no less than the mandatory penalties or the economic benefit, whichever is greater.

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60. Q. Does the assessment of a mandatory penalty preclude later assessment of administrative civil liability pursuant to section 13385(a) through (e) for the same violation that was the subject of the mandatory penalty?

A. Yes. While the State or Regional Board may assess liability above the mandatory minimum penalty, once a penalty is assessed there can be no further assessment for the same violation unless new facts, such as concealment of evidence, come into play.

III. ECONOMIC BENEFIT (SECTION 13385(E))

61. Q. Section 13385(e) now requires the Regional Board, State Board, or superior court, in determining the amount of civil liability for violations of an NPDES permit to, at a minimum, recover the economic benefits, if any, derived from the acts that constitute the violation. How is the economic benefit to be calculated?

A. The draft revisions to the Enforcement Policy contain guidance for calculating economic benefit. In general, the Regional Board staff would determine what actions could have been taken to attain compliance or avoid violations and consider such information as what the costs of those actions would have been, the interest earned by delaying compliance, and what benefit to the discharger occurred as a result of failing to comply or delaying compliance. The Regional Board may request information from the discharger to use in determining the amount of economic benefit. The complaint for administrative civil liability should specify the basis for the economic benefit determination. It then becomes the discharger's burden to demonstrate that it had no or a lesser amount of economic benefit.

62. Q. Must the Regional Board assess the economic benefit to the extent it exceeds statutory maximum liability (i.e., the maximum \$10,000 per day per violation and \$10 per gallon)?

A. No. The requirement to recover economic benefit does not create a new statutory maximum liability. If the economic benefit exceeds the statutory maximum liability, the Regional Board shall recover the statutory maximum liability.

63. Q. If the Regional Board must assess a mandatory penalty under section 13385(h) or (i), but has determined that it is not appropriate to assess administrative civil liability, must the Regional Board also recover any economic benefit derived from the acts that constitute the violation(s)?

A. No. See Answer to Question 58. If the Regional Board chooses in its discretion to assess civil liability in addition to the mandatory penalty, however, then it is required to consider the factors in section 13385(e) and must recover the economic benefit, if any. In such a case, the total recovered amount must be no less than the mandatory penalty amount or the economic benefit, whichever is greater.

64. Q. In determining the economic benefit, may the Regional Board subtract from the economic benefit the amount the discharger spent in responding to the discharge that occurred as a result of the failure to take the action in advance that would have prevented the discharge?

A. No. [In accordance with current draft revisions to Enforcement Policy].

IV. EFFLUENT LIMITATIONS (SECTION 13263.6)

65. Q. Section 13263.6 requires the Regional Boards to include effluent limitations in waste discharge requirements for a POTW for all substances (1) that are reported in toxic chemical release data reports prepared pursuant to section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. section 11023), (2) that are indicated are discharged into the POTW, and (3) for which the State or Regional Board has established numeric water quality objectives, and where (4) the Regional Board determines that the discharge is or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to, an excursion above any numeric water quality objective. How does the new section 13263.6(a), which requires the Regional Board to include effluent limitations in certain situations, differ from existing federal NPDES regulations that require inclusion of numeric effluent limitations in NPDES permits under certain circumstances?

A. U.S. EPA NPDES regulations require an NPDES permit to include a water quality based numeric effluent limitation for all pollutants or pollutant parameters that the Regional Board determines

“are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality.” (40 CFR section 122.44(d)(1)(i).)

U.S. EPA NPDES regulations specify how to determine whether there is a reasonable potential and provides options for determining the appropriate numeric effluent limitations.

Section 13263.6 is less broad in certain ways than existing NPDES requirements. Like existing NPDES requirements, effluent limitations are required where the discharge is at a level that will cause, have the reasonable potential to cause or contribute to an excursion above an objective. Unlike existing NPDES requirements, section 13263.6 requires effluent limitations only where the discharge causes excursions above numeric water quality objectives, not narrative water quality standards. Also, section 13263.6 requires effluent limitations only for substances discharged to the POTW and reported in toxic chemical release data reports and where the State or Regional Board has established numeric water quality objectives. At the present time there are few numeric water quality objectives in the water quality control plans. If a constituent has or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, e.g., any applicable State or Regional Board numeric water quality objectives, the Regional Board must include a numeric effluent limitation in the NPDES permit. Compliance with existing NPDES requirements would result in compliance with the new section 13263.6.

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Unlike existing federal requirements, section 13263.6(a) requires the State or Regional Boards to include effluent limitations only for water quality objectives adopted by the State or Regional Boards. U.S. EPA has adopted the "California Toxics Rule" (CTR) that established water quality criteria for toxic pollutants for California. Those criteria must be implemented by the State and Regional Boards, but they have not been adopted by the State or Regional Boards so they need not, at this time, be considered in determining the need for effluent limitations under section 13263.6(a). Section 13263.6 applies only to water quality objectives adopted by the State or Regional Boards. The Office of Chief Counsel has prepared model permit language.

66. Q. What is section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sec. 11023)?

- A. The Emergency Planning and Community Right to Know Act (EPCRA) is a federal law that establishes programs to provide the public with information about hazardous and toxic chemicals in their communities and establishes emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances. EPCRA section 313 requires the owner and operator of certain facilities to complete a toxic chemical release form for listed toxic chemicals used on the facility in quantities exceeding certain thresholds established in EPCRA section 313. The form must be submitted to U.S. EPA and to the state Office of Emergency Response each year.

67. Q. How does the Regional Board determine which substances are included in the most recent toxic chemical release data reported pursuant to section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sec. 11023)?

- A. The Regional Board may request the POTW to submit a report pursuant to section 13267 (or other means) to the Board specifying what substances have been included in the toxic chemical release reports that are discharged into the POTW. Since, however, effluent limitations are only required where the State or Regional Board has adopted numeric water quality objectives, the Regional Board would comply with section 13263.6 by adopting effluent limitations for excursions above the numeric water quality objectives. To assure compliance with this provision, the Regional Boards should require POTWs to report information provided in EPCRA section 313 reports. The Office of Chief Counsel has prepared a model letter for use by the Regional Boards.

68. Q. Does section 13263.6 apply to non-NPDES waste discharge requirements?

- A. Yes, section 13263.6 applies to both NPDES permits and non-NPDES waste discharge requirements for POTWs.

Therefore, when issuing waste discharge requirements to POTWs that discharge to land, the Regional Boards should conduct a reasonable potential analysis, and adopt effluent

SB 709 AND SB 2165 QUESTIONS AND ANSWERS

limitations, if appropriate, for substances on the EPCRA section 313 report if the State or Regional Board has adopted numeric water quality objectives for ground water.

SB 709 AND SB 2165 QUESTIONS AND ANSWERS

ATTACHMENT

Examples for calculating the amount of mandatory minimum penalties pursuant to Water Code section 13385(i)

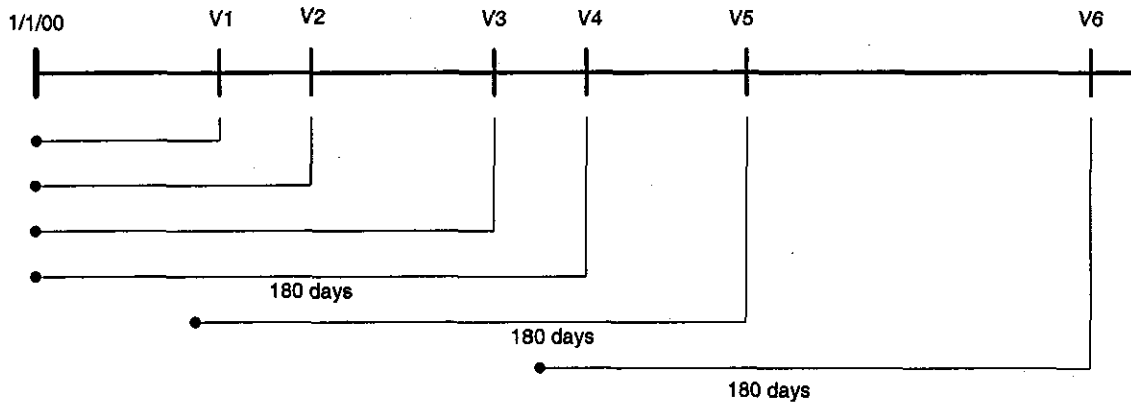
Notes:

V: an exceedance of an effluent limitation subject to 13385(i)(1)

S: an exceedance of an effluent limitation that also qualifies as "serious" under 13385(h)(1)

180 days: the 180-day period immediately preceding the "S" or "V" in question

Example #1



V1 = No MMP

V5 = \$3000

V2 = No MMP

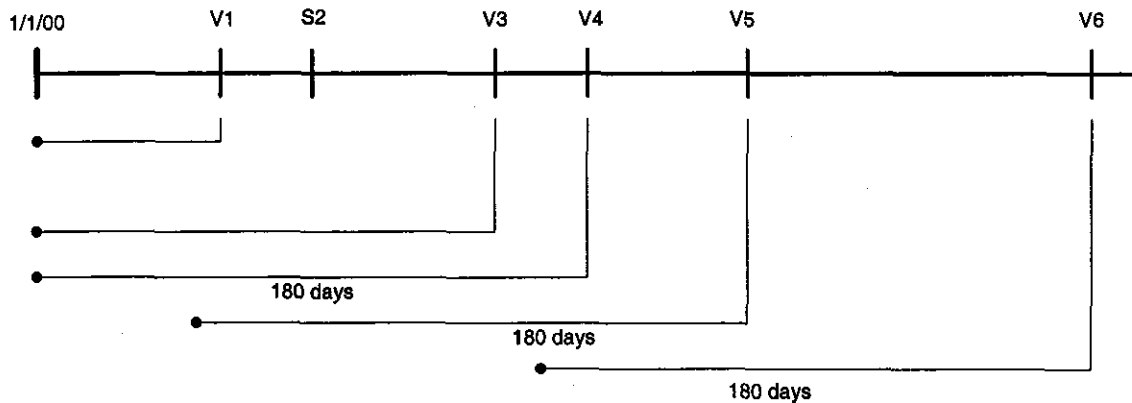
V6 = No MMP

V3 = No MMP

TOTAL = \$6000

V4 = \$3000

Example #2



V1 = No MMP

V5 = \$3000

S2 = \$3000

V6 = No MMP

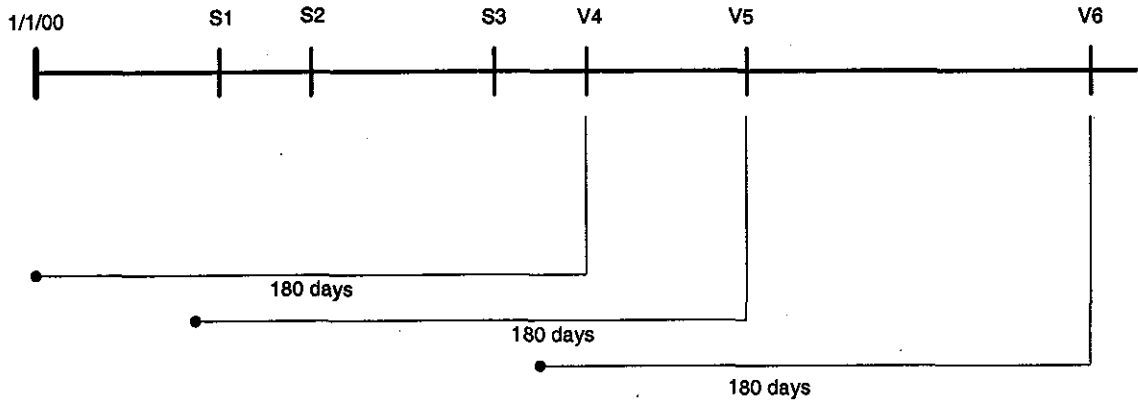
V3 = No MMP

TOTAL = \$9000

V4 = \$3000

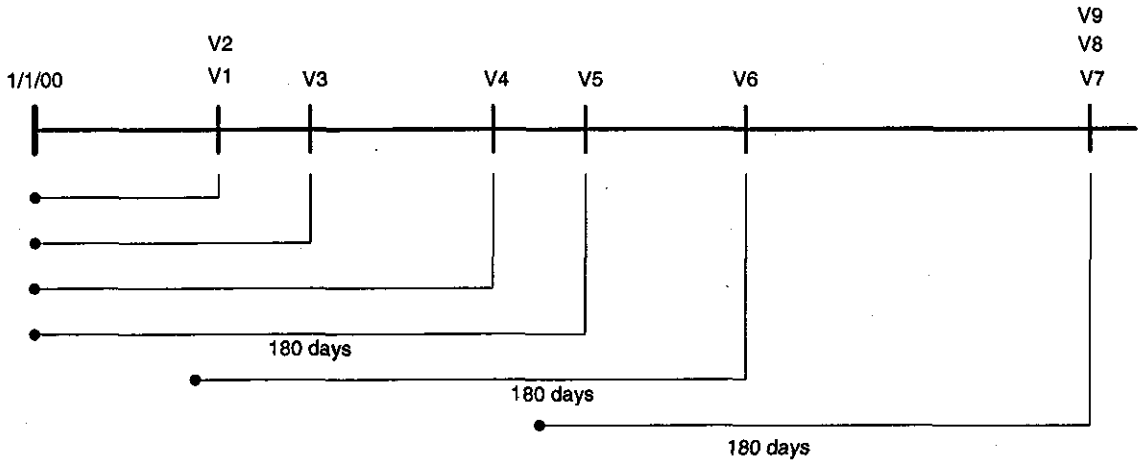
SB 709 AND SB 2165 QUESTIONS AND ANSWERS

Example #3



S1 = \$3000	V5 = \$3000
S2 = \$3000	V6 = No MMP
S3 = \$3000	TOTAL = \$15,000
V4 = \$3000	

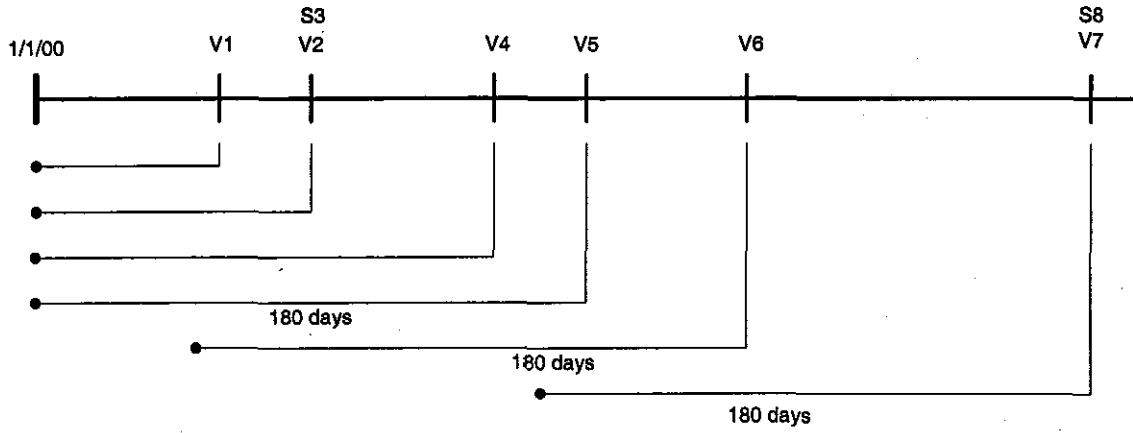
Example #4



V1 = No MMP	V6 = \$3000
V2 = No MMP	V7 = No MMP
V3 = No MMP	V8 = \$3000
V4 = \$3000	V9 = \$3000
V5 = \$3000	TOTAL = \$15,000

SB 709 AND SB 2165 QUESTIONS AND ANSWERS

Example #5



V1 = No MMP

V2 = No MMP

S3 = \$3000

V4 = \$3000

V5 = \$3000

V6 = \$3000

V7 = No MMP

S8 = \$3000

TOTAL = \$15,000

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ENFORCEMENT POLICY

(Resolution No. 96-030, as amended by Resolution No. 97-085)

WHEREAS:

1. California Water Code (WC) Section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards shall conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC Section 13000) and shall coordinate their respective activities so as to achieve a unified and effective water quality control program in the State;
2. WC Section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC Section 13142(c) provides that State Policy for Water Quality Control shall consist of principles and guidelines deemed essential by the State Water Board for water quality control;
4. WC Section 13240 provides that Water Quality Control Plans (Basin Plans) shall conform to any State Policy for Water Quality Control;
5. The State Water Board assembled a panel, called the External Program Review Committee (Committee), composed of representatives from the regulated community, environmental groups, and other interested parties with a stake in the work of the State and Regional Water Boards to make recommendations on the conduct of the State Water Board's water quality programs.
6. One of the Committee's recommendations was that the State Water Board adopt a statewide enforcement policy that would ensure that enforcement actions throughout the State are consistent, predictable, and fair.
7. The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act; the Toxic Pits Cleanup Act of 1984; Chapters 6.67, 6.7, and 6.75 of Division 20 of the Health and Safety Code (HSC); Section 25356.1 of HSC; and Chapter 6 of Division 3 of the Harbors and Navigation Code.
8. It is appropriate to adopt a statewide water quality enforcement policy and guidelines implementing the policy to ensure statewide consistency in enforcement.
9. Adoption of this policy is categorically exempt from the California Environmental Quality Act under 14 CCR, Section 15321.
10. This policy should be periodically reviewed and revised, as appropriate.
11. Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code establishes a

program for minor violations and requires the State Water Board to determine the types of violations that are minor violations.

THEREFORE BE IT RESOLVED:

- I. Enforcement actions throughout the State shall be consistent, predictable, and fair.
- II. It is the intent of the State Water Board that the enforcement actions of the Regional Water Boards be consistent with this policy and the attached implementing guidelines.
- III. Violations of waste discharge requirements (WDRs) or applicable statutory or regulatory requirements should result in a prompt enforcement response against the discharger. At a minimum, the Regional Water Board staff shall bring the following to the attention of their Regional Water Board for possible enforcement action:
 - A. For major NPDES permittees, as defined in 40 CFR Section 122.2 (July 1, 1994):
 1. Exceedence of Category 1 pollutants by 1.4 times the monthly average effluent limit for any two months in a six month period. Category 1 pollutants are defined as Group 1 pollutants listed in 40 CFR Section 123.45, Appendix A (July 1, 1994) [Appendix A];
 2. Exceedence of Category 2 pollutants by 1.2 times the monthly average effluent limit for any two months in a six month period. Category 2 pollutants are defined as Group 2 pollutants listed in Appendix A;
 3. Chronic violations where there is an exceedence of the monthly average effluent limit for any pollutant in any four months in a six month period, or exceedences of the monthly average effluent limit for any pollutant in the same season for two years in a row;
 - B. Any incidence of acute toxicity which violates WDRs, Basin Plans, or other provisions of law;
 - C. Violation of narrative toxicity standards contained in WDRs or Basin Plans due to chronic toxicity;
 - D. Violations of prohibitions contained in WDRs, Basin Plans, or enforcement orders;
 - E. Failure to submit reports required in WDRs, orders, or Basin Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to cause misunderstanding and thus impede the review of the status of compliance, except when it is recognized in program workplans that some categories of self-monitoring reports will not be reviewed;
 - F. Violations of compliance schedule milestones for starting construction, completing construction, or attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or WDRs;
 - G. Failure of a publicly-owned treatment works, as defined in 40 CFR Section 122.2 (July 1, 1994), to implement its approved pretreatment program, as defined in 40 CFR Section 403.3 (July 1, 1994), as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users;

H. Failure to submit a Notice of Intent for coverage under the Storm Water Industrial General Permit, develop a Storm Water Pollution Prevention Plan (SWPPP), implement a SWPPP, conduct monitoring, or submit annual reports after specific notification to the discharger.

IV. Enforcement actions should be initiated as soon as possible after discovery of the violation. If the violation continues, the Regional Water Board staff shall consider escalating their response from less formal enforcement actions, such as notice of violation letters, to increasingly more formal and severe enforcement actions, and if necessary, shall bring this to the attention of their Regional Water Board for possible escalation of enforcement action.

V. The State and Regional Water Board staff shall cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. The aggregate enforcement authority of the Boards and Departments of the California Environmental Protection Agency (Cal/EPA) should be coordinated to eliminate inconsistent, overlapping, and redundant efforts. The following steps should be taken by Regional Water Board staff to assist in integrated enforcement efforts:

- A. Participate in multiagency and enforcement coordination;
- B. Share enforcement information;
- C. Participate in cross-training efforts;
- D. Participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges.

VI. For spills of hazardous materials:

- A. The Regional Water Board staff shall coordinate enforcement actions with the Department of Toxic Substances Control and/or any local or county hazardous material program;
- B. The Regional Water Board staff shall consider referring spills in all but the smallest amounts to the appropriate District Attorney. If the District Attorney chooses not to pursue the case, the Regional Water Board staff shall consider issuing an administrative civil liability (ACL) Complaint.
- C. Large spills of hazardous materials should be considered for referral to the Attorney General. If necessary, the Regional Water Board staff should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted.

VII. In setting ACL amounts:

- A. Similar violations should result in similar amounts;
- B. ACL amounts should create a strong disincentive for future violations;
- C. Dischargers should not gain an economic benefit from the violations;

VIII. The State Water Board supports the use of supplemental environmental projects which are

funded or implemented by dischargers in exchange for a suspension of a portion of an ACL or other monetary assessment which would otherwise be paid directly to the State Cleanup and Abatement Account.

IX. It is desirable to encourage self-auditing, self-policing, and voluntary disclosure of environmental violations by dischargers. Such self-auditing and voluntary disclosure of violations shall be considered by the State and Regional Water Boards when determining enforcement actions and in appropriate cases may lead to a determination to forego or lessen the severity of an enforcement action.

Falsification or misrepresentation of such voluntary disclosures shall be brought to the attention of the appropriate Regional Water Board for possible enforcement action.

X. This policy shall be reviewed and revised, as appropriate, not later than every five (5) years.

XI. The violations listed below are considered to be minor in nature provided the violations do not include the following:

- Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the Water Code.
- Any violation of Division 7 of the Water Code that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
- Any violation that is a chronic violation or that is committed by a recalcitrant violator.
- Any violation that cannot be corrected within 30 days.

Minor Violations:

- A. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.
- B. Records not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.
- C. Failure to have permits available during an inspection.
- D. Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.
- E. Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment and provided further that such violations do not violate any other order or prohibition issued by the State or Regional Boards. Significant threat means the threat of or an actual change in water quality that could result in a violation of water quality objectives or a condition of pollution or nuisance.

GUIDANCE TO IMPLEMENT
THE WATER QUALITY ENFORCEMENT POLICY

April 1996

Amended September 18, 1997

This document is intended to clarify the State Water Resources Control Board's (State Water Board's) policy on enforcement and to provide general guidance to the Regional Water Quality Control Boards (Regional Water Boards), their staff, the regulated community and the general public. Statements which appear in **bold** indicate an actual statement of State Water Board policy intended to be implemented by the State and Regional Water Boards or their staff. The remainder of the document is intended as guidance.

Where the word "should" is used in a policy statement (**bold**), it is intended that the State and Regional Water Boards or their staff exercise their discretion, and that they be prepared to justify whatever decision is made or action is taken. Where the word "shall" is used in a policy statement (**bold**) requiring that State or Regional Water Board staff act or bring a matter to the attention of their respective Board, it is not intended to mandate that the State or Regional Water Board itself take any enforcement action. Unless otherwise specified, it is intended that the State or Regional Water Boards exercise their discretion in pursuing enforcement actions.

INTRODUCTION

The State Water Board and Regional Water Boards exercise the regulatory and adjudicatory powers of the State of California in the field of water resources. One of these powers is the implementation of statutes and programs to protect the quality of the waters of the State. Timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the State have clean water. **It is the policy of the State Water Board that enforcement actions throughout the State shall be consistent, predictable, and fair.** In their review of State and Regional Water Board activities, the External Program Review's Regional Board Consistency Task Force specifically recommended that the State Water Board adopt a statewide enforcement policy that would ensure this.

Enforcement serves many purposes. First and foremost, it assists in keeping the State's waters clean. Swift and sure enforcement orders can prevent threatened pollution from occurring and can promote prompt cleanup and correction of existing pollution problems. It ensures compliance with State and Regional Water Board orders. Enforcement not only protects the public health and the environment, but also creates an "even playing field", ensuring that dischargers who comply with the law are not placed at a competitive disadvantage by those who do not. It will also deter potential violators and, thus, further protect the environment.

Other benefits result from a strong enforcement program. Monetary remedies, an essential component of an effective enforcement program, provide a funding source for needed cleanup projects, provide compensation for the often unquantifiable damage pollution causes the environment, and ensure that polluters do not gain a substantial economic advantage from violations of water quality laws.

The State and Regional Water Boards have a wide array of enforcement options at their disposal. Enforcement actions are available to address many circumstances, including but not limited to the following:

- Violation of an effluent limit, receiving water limit, or discharge prohibition contained in an order or Water Quality Control Plan (Basin Plan) adopted by the State Water Board or a Regional Water Board.
- An unauthorized spill, leak, fill, or other discharge.
- Failure to perform an action required by the State Water Board or a Regional Water Board, such as submittal of a self-monitoring or technical report, or completion of a cleanup task by a specified deadline.

The procedures set forth in this document are not intended to be a substitute for the sound discretion of the State and Regional Water Boards in enforcement matters. Enforcement determinations are complicated decisions based ultimately on experience and professional judgement. Rather, the purpose of this document is to provide a framework within which such decisions may be better made.

In deciding which course of action should be pursued, Regional Water Board staff should consult with their supervisors and with legal counsel assigned to the Regional Water Board. The Regional Water Board's legal counsel is its expert on most aspects of enforcement, including precedents and conformity with existing laws, regulations, and guidance.

It is important to note that enforcement of the State's water quality statutes is not solely the purview of the State and Regional Water Boards and their staff. State law allows for members of the public to bring enforcement matters to attention of the State and Regional Water Boards and authorizes aggrieved persons to petition the State Water Board to review any action or inaction by the Regional Water Board. In addition, the Water Code provides for public participation in the issuance of orders, policies and water quality control plans.

I. DISCOVERY OF VIOLATION

Violation of waste discharge requirements (WDRs), enforcement orders, or applicable provisions of law administered by the State or Regional Water Boards can be discovered through discharger self-monitoring reports (SMRs), compliance inspections, facility reporting, complaints, or file review. Unauthorized discharges, those for which WDRs have not been issued, are most commonly discovered through complaints and interagency notifications .

A. SELF-MONITORING REPORTS

The State and Regional Water Boards ensure compliance with WDRs by requiring all dischargers to implement a monitoring and reporting program and to periodically submit SMRs. Reporting frequency for regulated dischargers will depend on the nature and effect of the discharge. Most dischargers, however, are required to submit SMRs monthly.

B. COMPLIANCE INSPECTIONS

Compliance inspections are conducted on-site by the Regional Water Board staff under the authority provided in Water Code Sections 13267 and 13383. Compliance inspections address compliance with

WDRs; laboratory quality control and assurance; record keeping and reporting; time schedules; best management plans; and any other pertinent provisions. The inspections are also used as a verification of the accuracy of the discharger's SMR. In addition, the U.S. Environmental Protection Agency (USEPA) has authority to inspect facilities which discharge to surface waters.

C. DIRECT FACILITY REPORTING

Dischargers with regulated facilities are generally required to report to the Regional Water Board by phone, usually immediately or within 24 hours, followed by a written report and a discussion in the next SMR, when certain events occur, such as:

- Bypass of raw or partially treated sewage from a treatment unit or discharge of wastewater from a collection system.
- Treatment unit failure or loss of power which threatens to cause a bypass.
- Any other operational problems which threaten to cause significant violations of WDRs or impacts to receiving waters.

D. COMPLAINTS

Often information regarding an actual or potential violation or unauthorized discharge is obtained through telephone or written notification from a member of the public, another public agency or an employee working at a regulated facility. Complaints may also involve nuisance conditions, such as noxious odors that extend beyond a wastewater treatment plant boundary.

E. FILE REVIEW

WDRs frequently mandate completion of tasks, which the dischargers must confirm by submission of appropriate reports to the Regional Water Boards. Failure to submit the reports or to complete the required tasks may be the basis for initiating enforcement.

II. ENFORCEMENT TRIGGERS

Violations of WDRs or applicable statutory or regulatory requirements should result in a prompt enforcement response against the discharger. It is recognized, however, that Regional Water Board resources are limited, and that resources may be best used and water quality may be best protected by focusing on violations and discharges that pose the greatest threat to human health and the environment. What follows is an outline of violations and discharges that should trigger an immediate enforcement response from the Regional Water Board. Regional Water Boards are encouraged to ensure that violations of WDRs or unauthorized discharges of waste not listed below also receive an appropriate enforcement response. **At a minimum, Regional Water Board staff shall bring the following to the attention of their Regional Water Board for possible enforcement action:**

A. POLLUTANTS

For major NPDES permittees, as defined in 40 CFR Section 122.2 (July 1, 1994), the enforcement criterion is: exceedence of Category 1 pollutants by 1.4 times the monthly average effluent limit for any two months in a six month period; or exceedence of Category 2 pollutants by 1.2 times the monthly average effluent limit for any two months in a six month period.

Category 1 and Category 2 pollutants are defined as Group 1 and Group 2 pollutants respectively, as listed in 40 CFR Section 123.45, Appendix A (July 1, 1994). The Categories are shown in Attachment 1.

B. CHRONIC VIOLATIONS

For major NPDES permittees, as defined in 40 CFR Section 122.2 (July 1, 1994), the enforcement criterion for chronic violations is exceedence of the monthly average effluent limit for any pollutant in any four months in a six month period, or exceedence of the monthly average effluent limit for any pollutant in the same season for two years in a row.

C. TOXICITY

Regional Water Board staff shall bring any incidence of acute toxicity which violates WDRs, Basin Plans, or other provisions of law to the attention of their Regional Water Board for possible enforcement action. Where acute toxicity can be shown to be the result of failure of a discharger to exercise normal care in handling, treating, or discharging waste, an enforcement action with a monetary assessment should be issued.

Similarly, staff shall bring violations of narrative toxicity standards contained in WDRs or Basin Plans due to chronic toxicity to the attention of their Regional Water Board for possible enforcement action. Regional Water Boards should develop enforcement triggers to implement narrative toxicity standards due to chronic toxicity. The Regional Water Boards enforcement provisions will remain in effect until the State Water Board adopts either statewide plans or a policy with provisions for enforcement of narrative toxicity standards. Regional Water Boards must amend their toxicity enforcement provisions and criteria to conform to such statewide plans or policies after they are adopted.

D. PROHIBITIONS

Regional Water Board staff shall bring violations of prohibitions contained in WDRs, Basin Plans, or enforcement orders to the attention of their Regional Water Board for possible enforcement action. The level of response and whether that response is a formal enforcement should depend on the degree of discharger culpability, environmental damage, independent action by the discharger to correct the violation, etc.

E. SPILLS

Spills generally refer to unauthorized discharges and are considered to be significant violations of State law and basin plans. Because the significance of the spill in terms of environmental impact depends on the amount of material spilled, the nature of the spilled material, size of the affected water body, or the proximity of the spill to a water body (if the spill was not directly to the water body) Regional Water Boards have discretion to determine the appropriate enforcement level and monetary liability. In making this determination Regional Water Boards may consider actions taken by the discharger to immediately notify appropriate authorities, and to initiate cleanup and other actions to minimize potential effects of the spill.

F. FAILURE TO SUBMIT REPORTS

In some cases, reports required by WDRs, Cease and Desist Orders, Cleanup and Abatement Orders, and Basin Plans measure progress in implementing long-term corrective actions intended to achieve permanent compliance with permits, Basin Plans, and state and federal laws and regulations. **Failure to submit reports required in WDRs, orders, or Basin Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to cause misunderstanding and thus impede the review of the status of compliance are serious violations which staff shall bring to the attention of their Regional Water Board for possible enforcement action. An exception to this will occur when it is recognized in program workplans that some categories of self-monitoring reports will not be reviewed.** Violations of these types of reporting requirements should include monetary assessments.

G. COMPLIANCE SCHEDULES

Violations of compliance schedule milestones for starting construction, completing construction, or attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or WDRs shall result in staff bringing the matter to the attention of their Regional Water Board for possible enforcement action.

H. PRETREATMENT PROGRAM IMPLEMENTATION

Staff shall bring failure of a publicly-owned treatment works, as defined in 40 CFR Section 122.2 (July 1, 1994), to implement its approved pretreatment program, as defined in 40 CFR Section 403.3 (July 1, 1994), as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users to the attention of their Regional Water Board for possible enforcement action. This includes pretreatment program compliance schedules.

I. STORM WATER PROGRAM

Discharges of storm water associated with industrial activities require compliance with the General Industrial Activities Storm Water Permit. **Failure to submit a Notice of Intent for coverage under the general permit, develop a Storm Water Pollution Prevention Plan (SWPPP), implement a SWPPP, conduct monitoring, and submit annual reports after specific notification to the discharger are significant violations and shall warrant staff bringing the matter to their Regional Water Board for possible enforcement action.**

III. TYPES OF ENFORCEMENT ACTIONS

The State and Regional Water Boards have a variety of enforcement tools to use in response to non-compliance by dischargers. This section describes the range of options and discusses procedures that are common to some or all of these options.

An enforcement action is any informal or formal action taken to address an incidence of actual or threatened non-compliance with existing regulations or provisions designed to protect water quality. Formal enforcement actions fall into two basic categories: those that direct future actions by dischargers and those that address past violations. Actions which generally direct future action include imposition of time schedules and issuance of Cease and Desist Orders and Cleanup and Abatement Orders. Actions taken to address past violations include issuance of notices to comply (minor violations), rescission of waste discharge requirements, administrative civil liability, and

referral to the Attorney General or District Attorney. In some instances, both types are used concurrently to deal with a specific violation (e.g., discharger has had past violations but has not yet corrected the problem).

Determination of who is responsible for a particular violation can sometimes be difficult. For a regulated discharge, the discharger is usually the same individual to whom the WDRs were issued. For unauthorized discharges, the discharger is usually the property owner, tenant, or lessee. The Regional Water Board's legal counsel should be consulted where determination of the discharger is in question.

Enforcement actions should be initiated as soon as possible after discovery of the violation. If the violation continues, Regional Water Board staff shall consider escalating their response from less formal enforcement actions, such as notice of violation (NOV) letters, to increasingly more formal and severe enforcement actions, and if necessary, shall bring this to the attention of their Regional Water Board for possible escalation of enforcement action.

Any person aggrieved by an action or failure to act by a Regional Water Board may petition the State Water Board to review the decision. The petition must be received by the State Water Board within 30 days of the Regional Water Board action or refusal to act, or 60 days after a request has been made to the Regional Water Board to act. In addition, the State Water Board may, at any time and on its own motion, review any action or failure to act by a Regional Water Board.

A. INFORMAL ENFORCEMENT

For minor violations, the first step is usually informal enforcement action. Staff should contact the discharger by phone and document the conversation in a follow-up letter. Staff should inform the discharger of the specific violations, discuss how and why the violations occurred, and discuss how and when the discharger will come back into compliance. This step can be deleted for significant violations, such as repeated or intentional illegal discharges, falsified reports, etc.

The NOV letter is an informal enforcement action. The purpose of a NOV letter is to bring a violation to the discharger's attention and to give the discharger an opportunity to correct the violation before formal enforcement actions are taken. Continued noncompliance should trigger formal enforcement action.

An NOV letter should be signed by the Executive Officer and should cover the following points: description of specific violations, summary of applicable enforcement options (including maximum ACL), and a request for a written response. The letter should always go to the discharger named in the Regional Water Board order, even if staff normally deals with a consultant. See Attachment 2 for an example of a NOV.

A special form of the NOV letter is the Field Notice of Violation, a form used by Regional Water Board staff in the field (Attachment 3). This form describes the violation and requests corrective action as appropriate. The purpose is to alert the discharger immediately to the violation and the potential for civil liability.

B. TIME SCHEDULE ORDER

Pursuant to Water Code Section 13300, actual or threatened discharges of waste in violation of

requirements can result in imposition of a time schedule which sets forth the actions a discharger shall take to correct or prevent the violation.

C. NOTICES TO COMPLY

Notices to Comply are issued pursuant to Chapter 5.8 (commencing with section 13399) of Division 7 of the Water Code. This Chapter provides an expedited approach for dealing with minor violations. Commonly referred to as the "fix-it-ticket" legislation, this law requires the use of field-issued notices to comply as the sole enforcement option in given situations involving minor violations.

Notices to Comply are ordinarily written during the course of an inspection by an authorized representative of the State or Regional Water Board to require a discharger to address minor violations that can be corrected within 30 days. Major features of this law include the following:

- An inspector has the discretion not to issue a notice to comply for a minor violation.
- A notice to comply is not required if there is immediate correction.
- A single notice to comply is used to cite all minor violations detected during the same inspection.
- With exceptions, a notice to comply is the sole means by which an inspector may cite a minor violation.
- If testing is required to determine if there has been a violation, a notice to comply may be issued at a latter date.
- Other enforcement actions may be taken upon a failure to comply or if necessary to prevent harm to public health or the environment.
- Criminal proceedings are not limited by the new law.
- Civil penalties may still be assessed for minor violations if warranted or required by federal law.

The violations listed below are considered to be minor in nature provided the violations do not include the following:

- **Any knowing, willful, or intentional violation of Division 7 (commencing with section 13000) of the Water Code.**
- Any violation of Division 7 of the Water Code that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
- Any violation that is a chronic violation or that is committed by a recalcitrant violator.
- Any violation that cannot be corrected within 30 days.

Minor Violations:

A. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.

B. Records not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.

C. Failure to have permits available during an inspection.

D. Inadvertent violations of insignificant administrative provisions that do not involve a

discharge of waste or a threat thereof.

E. Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment and provided further that such violations do not violate any other order or prohibition issued by the State or Regional Boards. Significant threat means the threat of or an actual change in water quality that could result in a violation of water quality objectives or a condition of pollution or nuisance.

D. CEASE AND DESIST ORDERS

Cease and Desist Orders (CDOs) are adopted pursuant to Water Code Sections 13301-13303. CDOs are normally issued to dischargers regulated by WDRs and often remain in force for years.

CDOs are typically issued to regulate dischargers with chronic non-compliance problems. These problems are rarely amenable to a short-term solution; often, compliance involves extensive capital improvements or operational changes. The CDO will usually set a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. CDOs may also include restrictions on additional service connections (referred to as a "connection ban") to community sewer systems. These have been applied to sanitary sewer systems but can be applied to storm sewer systems, as well. Violations of CDOs should trigger further enforcement in the form of an ACL or referral to the Attorney General for injunctive relief or monetary remedies.

E. CLEANUP AND ABATEMENT ORDERS

Cleanup and Abatement Orders (CAOs) are adopted pursuant to Water Code Section 13304. CAOs are generally issued to dischargers that are not being regulated by WDRs. With the exception of ground water cleanups, CAOs are typically short-lived enforcement orders.

CAOs are issued by the Regional Water Board, or by the Executive Officer under delegation from the Regional Water Board pursuant to Water Code Section 13223. Executive Officer-issued CAOs should be used when speed is important, such as when a major spill or upset has occurred and waiting until the Regional Water Board can meet to approve a CAO would be inappropriate. Regional Water Boards should keep an accurate record of staff oversight costs for CAOs since dischargers are liable for such expenses. If staff costs are not recovered voluntarily or through civil court actions, the amount of the costs constitutes a lien on the affected property and foreclosure may be used. Violations of CAOs should trigger further enforcement in the form of an ACL or referral to the Attorney General for injunctive relief or monetary remedies.

F. MODIFICATION OR RESCISSION OF WASTE DISCHARGE REQUIREMENTS

In accordance with the provisions of the Water Code, and in the case of NPDES permits, the Federal Water Pollution Control Act, the Regional Water Board may modify or rescind WDRs in response to violations. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a wastewater treatment plant.

G. ADMINISTRATIVE CIVIL LIABILITY

Administrative civil liability (ACL) means monetary assessments imposed by a Regional Water

Board. The Water Code authorizes ACLs in several circumstances:

Water Code Section	Type of Violation
13261	Failure to furnish report of waste discharge or to pay required fees.
13265	Unauthorized discharge of waste.
13268	Failure to furnish technical report.
13308	Failure to comply with time schedule.
13350	Intentional or negligent violation of CDO; CAO; WDRs; or Regional Water Board prohibition (Basin Plan), which results in pollution, or unauthorized release of any petroleum product.
13385	Violation of NPDES permit, Basin Plan Prohibition, etc.

Water Code Sections 13323-13327 describe the ACL process to be used. The Water Code authorizes Regional Water Board Executive Officers to issue an ACL Complaint. The Complaint describes the violation, proposes a specific monetary assessment, and sets a hearing date (no more than 60 days after the Complaint is issued).

The discharger may either waive their right to a hearing or appear at the Regional Water Board hearing to dispute the Complaint. In the latter case, the Regional Water Board has the choice of dismissing the Complaint, adopting an ACL order (ACL amount need not be the same as in the Complaint), or adopting a different enforcement order (e.g. referral to Attorney General).

ACL actions are intended to address past violations. If the underlying problem has not been corrected, the ACL action should be accompanied by a Regional Water Board order to compel future work by the discharger (e.g. CAO or CDO). One exception involves late reports, where a revised submittal deadline could have the effect of encouraging further delay for some dischargers.

H. REFERRALS TO ATTORNEY GENERAL OR DISTRICT ATTORNEY

The Regional Water Board can refer violations to the state Attorney General or ask the appropriate county District Attorney to seek criminal relief. In either case, a superior court judge will be asked to impose civil or criminal penalties. In some cases, the Regional Water Board may find it appropriate to request the U.S. Attorney's Office to review potential violations of federal environmental statutes, including the Clean Water Act, Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act.

I. Attorney General

The Attorney General can seek civil enforcement of a variety of Water Code violations, essentially the same ones for which the Regional Water Board can impose ACL. Maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the court instead of the Regional Water Board. The Attorney General can also seek injunctive relief in the form of a restraining order, preliminary injunction, or permanent injunction pursuant to Water Code Sections 13262, 13264, 13304, 13331, 13340 and 13386. Injunctive relief may be appropriate where a discharger has ignored enforcement orders.

For civil assessments, referrals to the Attorney General should be reserved for cases where the

violation merits a significant enforcement response but where ACL is inappropriate. For example, when a major oil spill occurs, several state agencies can seek civil monetary remedies under different state laws; a single civil action by the Attorney General is more effective than numerous individual actions. A violation (or series of violations) with major public health or water quality impacts should be considered for referral, in order to maximize the monetary assessment because of its effect as a deterrent. Referral for recovery of natural resources damages under common law theories, such as nuisance, may also be appropriate.

Normally, a case should not be recommended for referral to the Attorney General unless it has been informally determined that the Attorney General is able and willing to handle the case. Even with the Attorney General in the lead role, referrals often consume considerable staff time, especially if staff members are requested to testify at trial.

The majority of cases referred are settled out of court, although the process takes many months (or years). Since the Regional Water Boards gained the authority to impose ACL for substantial amounts, fewer cases need be referred to the Attorney General.

2. District Attorney

District Attorneys may seek civil or criminal penalties under their own authority for many of the same violations the Regional Water Board pursues. While the Water Code requires a formal Regional Water Board referral to the Attorney General, the Regional Water Board's Executive Officer is not precluded from bringing appropriate matters to the attention of a District Attorney. A major area where District Attorney involvement should be considered is for unauthorized releases of hazardous substances. In most of these cases, the Regional Water Board is not the lead agency, and the referral action is intended to support the local agency that is taking the lead (e.g. county health department or city fire department). In many cases, Regional Water Board staff lacks the time to prepare an enforcement action, and a District Attorney referral is another option to seeing the matter pursued. Many District Attorney offices have created task forces specifically staffed and equipped to investigate environmental crimes including water pollution. These task forces may ask for Regional Water Board support which should be given within available resources.

In addition to the criminal sanctions and civil fines, the District Attorney often pursues injunctive actions to prevent unfair business advantage. The law provides that one business may not gain unfair advantage over its competitors by using prohibited tactics. A business that fails to comply with its WDRs or an enforcement order competes unfairly with other businesses that obey the law.

3. Civil versus Criminal Actions

Enforcement actions taken by the Regional Water Board are civil actions. In cases where there is reason to believe that specific individuals or entities have engaged in criminal conduct, the Regional Water Board or Executive Officer may request that criminal actions be pursued by the District Attorney. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment.

It is not expected or desired that Regional Water Board staff will attempt an in-depth analysis of whether environmental criminal conduct has occurred in each individual case. While criminal statutes differ, many require some type of intent or knowing behavior on the part of the violator. This intent may be described as knowing, reckless, or willful. In addition to the required intent, criminal offenses

consist of a number of elements, each one of which must be proven. Determining whether the required degree of intent and each of the elements exists often involves a complex analysis. If a potential environmental criminal matter comes to the attention of staff, consultation with Regional Water Board management and counsel should take place first before making any contact with other enforcement authorities.

When evaluating whether a case should be referred for criminal investigation, particular attention should be given to the degree of intent and the gravity of the violation. A good rule of thumb is that if the conduct appears to be intentional or reckless and constitutes a serious threat to human health or the environment, careful consideration should be given to pursuing the case criminally.

I. SPECIAL SITUATIONS

1. Violations at State or Federal Facilities

For violations caused by a department or other entity of the State of California, the Executive Officer should notify the director or head of the department or entity of the nature of the violation, the actions needed to abate or clean up the discharge, and the potential of a State or Regional Water Board enforcement action. Depending upon the significance of the violation and/or the willingness and ability of the department to comply, an enforcement action (ACL, CAO, or CDO) may be issued to correct the violation and to deter future violations.

Violations at federal facilities should be handled similarly. Due to sovereign immunity, however, the State cannot obtain penalties from federal agencies for past violations (e.g., no ACLs) under most circumstances. One significant exception is provided by the Federal Facilities Compliance Act of 1992, which allows the States to penalize federal agencies, under specified circumstances, for violations of state hazardous waste management requirements. In addition, under Water Code Section 13308 a Regional Water Board may seek ACL, up to a maximum of \$10,000 per day of violation, against federal facilities for violation of a time schedule order, which was adopted to ensure future compliance with an existing enforcement order.

2. Integrated Enforcement

State and Regional Water Board staff shall cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. The aggregate enforcement authority of the Boards and Departments of the California Environmental Protection Agency (Cal/EPA) should be coordinated to eliminate inconsistent, overlapping and redundant efforts. The following steps should be taken by Regional Water Board staff to assist in integrated enforcement efforts: participate in multi-agency enforcement coordination; share enforcement information; participate in cross-training efforts; participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges.

The exchange of information among the Boards and Departments is especially important. Recent case law imputes the knowledge of each state agency to all others. Cal/EPA will be maintaining a data base for information on all enforcement actions. Quick and accurate filing of enforcement data with the State Water Board and Cal/EPA is essential.

3. Oil Spills

Responses to oil spills to marine or estuarine waters should be coordinated through the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR). OSPR staff may pursue enforcement action administratively or through referral to the local District Attorney, and, in such cases, the Regional Water Board generally should not invest staff time in a parallel effort. Staff should assist in an investigation by providing documentation, sampling, etc. If the discharger has not prepared a plan acceptable to the Regional Water Board to prevent recurrence, the Regional Water Board should request such a technical report under Water Code Sections 13267 or 13383.

Major oil spills, those in excess of 10,000 gallons, usually involve a number of governmental jurisdictions. Such spills should be brought to the Regional Water Board for consideration of referral to the Attorney General for recovery of civil monetary remedies and damages.

Oil spills to inland (fresh) waters are not within the jurisdiction of OSPR. If formal enforcement actions are taken, they are usually enforced by either the county District Attorney under either the Fish and Game Code or Health and Safety Code, or by the Regional Water Board under the Water Code. In general, if the District Attorney is interested in pursuing the case, the Regional Water Board should consult with the District Attorney before pursuing its own enforcement action to avoid any potential double jeopardy issues. However, staff should always request that any settlement include recovery of staff costs and any actions that appear necessary to prevent recurrence of a spill and to mitigate damage to the environment.

4. Hazardous Materials Spills

Hazardous materials are those meeting the criteria specified in Title 22, Division 4.5, Chapter 11, California Code of Regulations. **Regional Water Board staff shall coordinate enforcement actions with the Department of Toxic Substances Control and/or any local or county hazardous material program.** Spills constitute unlawful disposal of hazardous waste pursuant to the Health and Safety Code. **Regional Water Board staff shall consider referring spills in all but the smallest amounts to the appropriate District Attorney, (generally in the 100-10,000 gallon range). If the District Attorney chooses not to pursue the case, Regional Water Board staff shall consider issuing an ACL Complaint unless the spill was very small or limited in impact.** Due to the nature of the materials discharged, the Regional Water Board staff should consider issuing the ACL Complaint in an amount at or near the legal maximum.

Large spills of hazardous materials, 10,000 gallons or more, should be treated like large oil spills, and should be considered for referral to the Attorney General. If necessary, Regional Water Board staff should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted. In addition, such spills may constitute the unlawful disposal of hazardous waste pursuant to the Hazardous Waste Control Act (Health and Safety Code Section 25100 et seq.) and, in most cases, should be investigated in conjunction with the Department of Toxic Substances Control.

5. Spills of Nonhazardous Materials

Spills of materials that do not meet the formal criteria as being hazardous can still be highly toxic, such as some petroleum hydrocarbons or detergents, or of only limited toxicity, such as corn syrup. For this reason, such spills must be evaluated case-by-case for enforcement.

6. Storm Water Discharges

As compliance with the State Water Board's General Industrial Activities Storm Water Permit has costs associated with it, industries that are currently in compliance are at an economic disadvantage as compared to industries that are not. The imposition of ACL for noncompliance with the General Industrial Activities Storm Water Permit will be based on factors required by statute, including the costs that the facility avoided by not complying. These costs include: the annual fee, the cost of Storm Water Pollution Prevention Plan development, the cost of implementing best management practices, and the cost of monitoring and reporting. ACL will be in addition to the requirement of submitting a notice of intent to comply with the permit along with the first year's annual permit fee. ACL may be assessed by either the State Water Board or the Regional Water Boards.

7. Solid Waste Facilities

Provisions were added to the Public Resources Code (PRC) in 1995 which impact on enforcement activities at solid waste facilities:

- (a) Where a Regional Water Board has issued, or is likely to issue an enforcement action against a solid waste facility, they must provide a statement to the local enforcement agency, the Solid Waste Management Board, the air pollution control district and the Department of Toxic Substances Control, if the violation involves the jurisdiction of that agency. This statement must be provided at least 10 days prior to the date of issuance of an enforcement order which is not an emergency, within five days from the date of issuance of an enforcement order for an emergency, or within 15 days of the discovery of a violation of a state law, regulation, or term or condition of a solid waste facilities permit for a solid waste facility, which is likely to result in an enforcement action. The statement must provide an explanation of and justification for the enforcement action, or a description of the violation (PRC Section 45019).
- (b) The appropriate Regional Water Board must inspect a solid waste facility within 30 days of receipt of an enforcement action or proposed enforcement action from one of the above agencies if such action stems from a complaint concerning a solid waste facility and if a water quality violation is at issue (PRC Section 45020).
- (c) If a Regional Water Board receives a complaint concerning a solid waste facility, which is not within its jurisdiction, it must refer the complaint to the appropriate state agency within 30 days (PRC Section 45021).
- (d) If a Regional Water Board receives a complaint concerning a solid waste facility, either directly or by referral from another state agency, it shall either take appropriate enforcement action, refer the complaint to the Attorney General, the district attorney, or city attorney, whichever is applicable, or provide, within 60 days, to the person who filed the complaint a written explanation as to why enforcement action is not appropriate (PRC Section 45022).
- (e) Regional Water Board enforcement activities at solid waste facilities shall comply with the following (PRC Section 45020):
 - (1) Enforcement activities shall eliminate duplication and facilitate compliance.

- (2) Facility operators must be notified before administrative civil liability (ACL) is imposed.
- (3) Prior to imposing ACL, and upon the request of a solid waste facility operator, the Regional Water Board must meet with the operator to clarify regulatory requirements and to determine how the operator could come into voluntary compliance. The operator may request a meeting with all agencies involved in the enforcement matter.
- (4) The Regional Water Board must consider the factors listed in PRC Section 45016 in determining the appropriate enforcement action.

IV. DETERMINING ACL AMOUNTS

The Water Code gives the Regional Water Board substantial discretion in setting ACL amounts. How this discretion is exercised is based upon several factors, some of which relate to the discharger and some of which relate to the discharge itself. The Regional Water Board is required to consider ten factors when setting ACL amounts but has latitude in how it applies and weighs each factor. This discretion is helpful, since no two cases are alike, but this often results in significant staff effort to recommend a reasonable ACL amount. In addition, maximum potential assessments are huge for some violations. Setting ACL amounts at or near the maximum often is not practical nor is it always good public policy.

One goal of this policy in calculating ACL amounts is consistency. **Similar violations should result in similar amounts**; dischargers should have some idea of their potential exposure. Another goal is deterrence; **ACL amounts should create a strong disincentive for future violations**. Finally, **dischargers should not gain an economic benefit from the violations**.

A. MINIMUM AND MAXIMUM ACL AMOUNTS

The Water Code establishes maximum ACL amounts for each type of violation. These amounts are expressed as a function of violation duration (dollars per day) or violation magnitude (dollars per gallons discharged). Maximum ACL amounts range from \$1,000 to \$10,000 per day and \$10 per gallon. (See Attachment 4).

Water Code Section 13350 also establishes minimum ACL amounts for certain violations. These amounts are either \$100 or \$500 per day of violation. The Regional Water Board is required to impose these minimum amounts unless it makes express findings based upon the factors specified in Water Code Section 13327.

B. FACTORS TO BE CONSIDERED

Section 13327 of the Water Code requires the Regional Water Board to consider ten factors when determining the amount of ACL:

"(T)he nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require."

The first three factors relate to the environmental significance of the violations. The remaining factors deal with the character, actions and economic worth of the violator. These factors should be used not only in determining an appropriate ACL amount, but also in deciding whether an ACL should be issued at all. Below is a discussion of some common issues for the ten factors, followed by a matrix for use as a guide in determining monetary assessments. (Note that several of the factors have been grouped together).

1. Nature, Circumstance, Extent, and Gravity of Violation and Degree of Toxicity

These factors address the magnitude and duration of a violation. More fundamentally, they address the impact of a violation and its effect on beneficial uses, including public health and water quality. This factor should be weighted heavily in calculating ACL amounts.

There are different methods to define the gravity of different types of violations. For spills, the main concern is the volume, duration, and toxicity of the material spilled. For effluent limit violations, the concern is the violation's significance (e.g., how much above the effluent limit). For time schedule violations, the length of the delay and its effects on overall compliance are the primary issues.

2. Degree of Culpability

Higher ACL amounts should be set for intentional or negligent violations than for accidental, non-negligent violations. Showing intent or negligence is not always easy. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.

3. Prior History of Violations

Higher ACL amounts should be set in cases where there is a pattern of previous violations. If the Regional Water Board has already imposed ACL for past violations, then ACL for additional violations of the same type should be substantially higher. However, a Regional Water Board cannot impose ACL on a discharger more than once for the same violation.

4. Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken

These two factors relate to cleanup efforts. The ACL amount should be reduced to reflect good-faith efforts by the violator to clean up wastes or abate the effects of waste discharges. In many cases, the violation is not amenable to cleanup or abatement, such as a regulated discharge to surface waters in excess of effluent limits or a time schedule violation for site investigation. In these cases, the ACL amount is unaffected by the cleanup or abatement factor.

5. Economic Savings

Dischargers should not enjoy a competitive advantage because they flout environmental laws. Assessments for Water Code violations should at a minimum take away whatever economic savings a firm or agency gains as a result of those violations.

Economic savings fall into two categories: (1) deferred capital spending and (2) reduced or avoided

costs of operation and maintenance (O&M). To estimate economic savings, the first step is to identify which capital improvement projects or O&M activities were delayed or avoided. The second step is to estimate these capital and O&M costs and express them as a present value.

Cost data may often be obtained from the discharger, especially when the discharger explains what it did to prevent future recurrence of the violations. If the discharger does not volunteer this cost information, staff can require it via a Water Code Section 13267 or 13383 request. Financial management programs can convert capital and O&M costs into an economic savings estimate.

Savings from deferred capital spending is calculated based on the amount of interest that could have been earned on the capital funds during the delay period. Savings from O&M activities are calculated for the entire delay period and expressed as a present value.

6. Ability to Pay and Ability to Continue in Business

Normally, assessments are not set so high as to put firms out of business or seriously harm their ability to continue in business. In a similar sense, government agencies have finite resources to pay assessments, notwithstanding their broad powers to raise revenue. At issue is how the Regional Water Boards calculate a firm's (or agency's) ability to pay.

Draft USEPA guidance provides one possible method for analyzing affordability. See 1994 "Draft Economic Guidance for Water Quality Standards Workbook" by USEPA. The draft guidance suggests analyzing four factors: liquidity (short-term ability to pay bills); solvency (long-term ability to pay bills); leverage (current debt load and ability to borrow additional funds); and earnings (how pollution-related costs affect profitability).

7. Other Matters as Justice May Require

This factor affords the Regional Water Board wide discretion. However, it applies only to matters not already addressed in the list above and it should be used primarily for any considerations that are specific to the violator. This factor can also be used as a basis for recovery of staff costs incurred in the ACL process. Staff costs should be added to the ACL amount derived from the other ACL factors to come up with the total ACL amount. Details on deriving staff costs are given below.

Finally, litigation considerations may justify a reduction in the amount due to applicable precedents, competing public interest considerations, or the specific facts or evidentiary issues pertaining to a particular case.

ASSESSMENT MATRIX

After an analysis of the above factors, the following matrix should be used as a guide to determine the appropriate ACL assessment based upon the determined level of "Environmental Significance" and "Compliance Significance". The overlap in the amounts in the matrix is intended to allow for flexibility in the amount assessed. The "Environmental Significance" relates to the violation itself: the gravity of the violation(s)--nature, circumstances, extent, and degree of toxicity of the discharge; and whether the discharge is susceptible to cleanup or abatement. The "Compliance Significance" deals with the discharger: voluntary cleanup efforts undertaken by the violator; the violator's prior history of violations; and the violator's degree of culpability.

After consulting the following matrix: the final amount to be assessed may be decreased by the violator's ability to pay and the effect on the violator's ability to continue in business; and the final amount to be assessed may be increased or decreased by other matters as justice may require. This should include recovery of staff costs. If the amount assessed is less than the minimums specified in Water Code Section 13350, findings based on consideration of the above factors to justify such an assessment are required.

Assessment Matrix

COMPLIANCE SIGNIFICANCE (DISCHARGER)	ENVIRONMENTAL SIGNIFICANCE (DISCHARGE)		
	MINOR	MODERATE	MAJOR
MINOR	\$100 - \$2,000	\$1,000 - \$20,000	\$10,000 - \$100,000
MODERATE	\$1,000 - \$20,000	\$10,000 - \$100,000	\$50,000 - \$200,000
MAJOR	\$10,000 - \$100,000	\$50,000 - \$200,000	\$100,000 to maximum amount

Examples of violations which correspond to the above categories may be found in Attachment 5.

C. RECOVERY OF STAFF COSTS

Enforcement orders issued under Water Code Section 13304 and ACL orders should address recovery of staff costs incurred in preparing the enforcement action, since most enforcement consumes significant amounts of staff time. Water Code Section 13304 explicitly allows the recovery of staff costs which are incurred in connection with a CAO. As discussed above, staff costs should also be considered as one of the "other matters as justice may require" when calculating ACL assessments.

CAOs should always include a provision that the Regional Water Board may seek recovery of staff costs, including costs for any staff investigation and oversight of cleanup, associated with the order. Below is an example of cost-recovery language:

"Pursuant to Section 13304 of the Water Code, the discharger is hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order. The discharger shall reimburse the Board upon receipt of a billing statement for those costs."

D. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

The State Water Board supports the use of supplemental environmental projects which are funded or implemented by dischargers in exchange for a suspension of a portion of an ACL or other monetary assessment, which would otherwise be paid directly to the State Cleanup and Abatement Account. Supplemental projects should mitigate damage done to the environment by the discharger, and usually should involve the restoration or enhancement of wildlife and aquatic habitat or beneficial uses in the general vicinity of the violation. However, projects may also consist of less

direct environmental benefits, such as preparation of certain kinds of studies or an industry specific public awareness activity. Generally, acceptable projects should fall into one of five categories: pollution prevention, pollution reduction, environmental restoration, environmental auditing, and public awareness.

Supplemental environmental projects may be considered if: (1) violations are corrected through actions to ensure future compliance; (2) deterrence objectives are served by payment of an appropriate monetary assessment; (3) there is an appropriate relationship between the nature of the violation and the environmental benefits to be derived from the supplemental project; and (4) the project is not otherwise required or would not proceed in the absence of the proposal.

Supplemental environmental projects should only consist of measures that go above and beyond the obligation of the discharger to voluntarily undertake measures necessary to assure compliance with permits and regulations. For example, sewage pump stations should have basic reliability features to minimize the occurrence of sewage spills. A mitigation project following a pump station spill should not include installation of these basic reliability features nor should credit be given for the money spent on cleanup.

Supplemental environmental projects should not equal the total amount of the ACL assessment. Except in very minor cases, the ACL order should require a cash payment (to the State Cleanup and Abatement Account) of a portion of the ACL amount, which includes staff costs. The purpose of this is to deter future non-compliance. The supplemental project costs should equal or exceed the remainder of the ACL amount. Therefore, the total ACL package may include a monetary assessment, the supplemental project, plus staff costs.

The supplemental environmental project should be clearly described in the ACL order, including a detailed description of the mitigation project and a completion deadline; if the discharger fails to complete the project by this time, then the discharger should pay the ACL amounts which were previously suspended to the State Cleanup and Abatement Account. This feature provides the discharger an incentive for prompt implementation of mitigation projects. If the discharger completes the mitigation in a timely manner, this portion of the ACL may be suspended.

ATTACHMENT 1 - Pollutant Categories

POLLUTANT CATEGORIES

Category 1 Pollutants - These are pollutants for which the enforcement criterion is 1.4 times the effluent limit for exceedences of monthly average effluent limits which occur two months in a six month period.

Oxygen Demand
 Biochemical Oxygen Demand
 Chemical Oxygen Demand
 Total Oxygen Demands
 Total Organic Carbon

Minerals
 Calcium
 Chloride
 Fluoride
 Magnesium

Other	Sodium
Solids	Potassium
Total Suspended Solids	Sulfur
Total Dissolved Solids	Sulfate
Other	Total Alkalinity
	Total Hardness
	Other Minerals
Nutrients	
Inorganic Phosphorous	Metals
Compounds	Aluminum
Inorganic Nitrogen Compounds	Cobalt
Other	Iron
	Vanadium

Detergents and Oils

Methylene blue active substances

Nitrilotriacetic acid

Oil and Grease

Other detergents or algicides

Category 2 Pollutants - These are pollutants for which the enforcement criterion is 1.2 times the effluent limit for exceedences of monthly average effluent limits which occur two months in a six month period.

Metals

All metals not specifically listed under Category 1.

Inorganics

Cyanide

Total Residual Chlorine

Organics

All organics not specifically listed under Category 1.

ATTACHMENT 2 - Sample Notice of Violation

SAMPLE NOTICE OF VIOLATION

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

_____ REGION

In the matter of

NOTICE OF VIOLATION

No. _____

YOU ARE HEREBY NOTIFIED THAT:

On (insert date) , you were notified of the following violations:

_____ Staff review of self-monitoring reports submitted pursuant to Monitoring and Reporting Program indicated that your discharge was in violation of effluent limitations or other waste discharge requirements in Order No. _____.

_____ Staff inspection of your facility revealed conditions which violate your Waste Discharge Requirements in Order No. _____.

_____ Observations of your facility revealed conditions which violate . . .

_____ Technical or Monitoring Reports required by Order No. _____, or requested in a letter dated (insert date) have not been received on time (Due date: (insert date)).

As of (insert date) , the above violations had not been satisfactorily corrected. This Notice of Violation serves as a final notice to correct the above violations by (insert date) . If you fail to correct the above violations by this date, the Board shall take appropriate enforcement actions authorized by the Porter-Cologne Water Quality Control Act (Div. 7 of the Water Code, commencing with Section 13000), including the possible assessment of civil liabilities of (amount of liability) per day of violation, or referral to the State Attorney General for judicial sanctions.

This Notice is based on the following specific circumstances:

EXAMPLES

1. A self-monitoring report for the month of May 1994 was not submitted to the Regional Water Quality Control Board, Region _____ .

2. On September 2, the Regional Water Quality Control Board inspector observed seepage from your landfill. The seepage was flowing into a drainage ditch which runs along the southeast boundary of your property and is ultimately tributary to _____. Order No. prohibits any discharge

of wastes and leachate to surface waters.

ATTACHMENT 3 - Field Notice of Violation

STATE OF CALIFORNIA

California Regional Water Quality Control Board Telephone:

_____ Region FAX:

(ADDRESS)

FIELD NOTICE OF VIOLATION

I. INCIDENT INFORMATION

Incident Date: _____ Time: _____ Previous Occurrence: Yes ___ No ___

Material: _____ Volume: _____

Location: _____

Phone Number: _____ City/County: _____

Description of Incident: _____

Waters Impacted: _____

Extent of Impact: _____

Responding Agencies: _____

Contacts: _____

II. VIOLATION SECTION

On _____, at _____, you were advised of the following Water Code Section violation(s):

() 13264 Unauthorized discharge of waste to State waters

() 13304 Discharge of waste in violation of waste discharge requirements or other orders or Basin Plan Prohibitions

() 13350 Unauthorized release of petroleum products to State Waters

() 13385 Discharge to State waters without a permit

III. CORRECTIVE ACTIONS SECTION

You are hereby notified that the violations must be satisfactorily corrected immediately. You are requested to submit a report within five (5) working days describing the incident, volume discharged, and cleanup or other measures undertaken to correct the violation.

You are advised that you may be subject to civil liability due to violation of the State Water Code Section(s). Failure to correct the above violations may result in an enforcement action, leading to Administrative Civil Liability including liabilities of up to \$10,000 per day or more. Your response actions and cooperation will be taken into account in assessing the amount of any civil liability as a result of this violation.

I acknowledge receipt of this Notice of Violation.

RECIPIENT NAME: _____

TITLE: _____

SIGNATURE: _____ DATE: _____

(NOTE: Signing this document is not an admission of guilt.)

RWQCB STAFF NAME: _____

TITLE: _____

SIGNATURE: _____ DATE: _____

(Note to staff: Attach Table of Maximum Civil Liability)

ATTACHMENT 4 - Maximum Civil Liability Amounts

MAXIMUM CIVIL LIABILITY AMOUNTS

Water Code Section	Violation	Maximum Liability if Imposed by:	
		Board	Court
13261(b)	Failure to furnish a report of waste discharge or pay fee	\$1,000 per day	\$5,000 per day
13261(d)	Willful submission of a false report, withholding information, or failure to furnish report of waste discharge for hazardous waste	\$5,000 per day	\$25,000 per day
13265(b)	Discharge of waste without Board-issued WDR or WDR waiver after notification by Board	\$1,000 per day	\$5,000 per day
13265(d)	Discharge of hazardous waste without Board-issued WDR or WDR waiver	\$5,000 per day	\$25,000 per day
13268(b)	Failure to furnish a technical or monitoring program report	\$1,000 per day	\$5,000 per day
13268(d)	Knowing failure or refusal to furnish a technical or monitoring report if discharging hazardous waste	\$5,000 per day	\$25,000 per day
13308	Time schedule violation	\$10,000 per day	
13350	Intentional or negligent violation of CDO or CAO; intentional or negligent waste discharge in violation of WDR or other Board order or prohibition; or intentional or negligent release of petroleum product: (d) there is a discharge and a CAO	\$5,000 per day	\$15,000 per day
	(e) there is a discharge and no CAO	\$10 per gallon	\$20 per gallon
	(f) there is no discharge but Board order is violated	\$1,000 per day	\$10,000 per day
13385	Violates NPDES permit, or Basin Plan prohibition, program requirements, etc.	\$10,000 per day and \$10 per gallon, for amounts not cleaned up in excess of \$1,000 gallons (net)	\$25,000 per day, and \$25 per gallon, for amounts not cleaned up in excess of \$1,000 gallons (net)

Notes: "Hazardous waste" is defined in H&SC Section 25117; "hazardous substance" is defined in H&SC Section 25140 as well as Section 311(b)(2) of Clean Water Act (surface water discharges).

ATTACHMENT 5 - Assessment Matrix Examples

1.) Compliance Significance: Moderate

Environmental Significance: Minor

A single-walled fiberglass tank containing 2,500 gallons of citric acid (pH 3.2) is stored without secondary containment at a beverage production and bottling facility. A forklift hits and breaks the tank and 1,000 gallons of the contents flow into a storm drain tributary to an estuary. The operator takes swift abatement and remedial steps to contain the spill. Minimal impact is made to waters of the state.

2.) Compliance Significance: Moderate**Environmental Significance: Moderate**

Five years ago, volatile organic compounds (VOCs) were discovered in the soil and groundwater beneath a plating shop and at other site locations of a facility. The Regional Water Board issued a Cleanup and Abatement Order (CAO) with a time schedule for soil and groundwater investigation and remediation. To date, the plating company has conducted initial site investigation, but is in violation of its CAO time schedule for a complete investigation, site remediation, and source control. A previous ACL was issued to this facility for violation of the same CAO two years ago. The Company is in violation of its CAO for 347 days.

ATTACHMENT 6 - Acronyms**LISTING OF ACRONYMS**

ACL Administrative Civil Liability

Cal/EPA California Environmental Protection Agency

CAO Cleanup and Abatement Order

CDO Cease and Desist Order

DFG Department of Fish and Game

NOV Notice of Violation

NPDES National Pollutant Discharge Elimination System

O&M Operation and Maintenance

OSPR Oil Spill Prevention and Response (unit of DFG)

SMR Self-Monitoring Report

SWPPP Storm Water Pollution Prevention Plan

USEPA U.S. Environmental Protection Agency

WDR Waste Discharge Requirements

STATE WATER RESOURCES CONTROL BOARD

**WATER QUALITY
ENFORCEMENT POLICY**

DRAFT REVISED POLICY

October 15, 2001 Draft

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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INTRODUCTION

The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) (together "Boards") are the principal state agencies with primary responsibility for the coordination and control of water quality. In the Porter-Cologne Water Quality Control Act (Porter-Cologne), the Legislature declared that the "state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation..." (California Water Code section 13000). Porter-Cologne grants the Boards the authority to implement and enforce the water quality laws, regulations, policies and plans to protect the groundwater and surface waters of the state. Timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the State have clean water. It is the policy of the SWRCB that the Boards shall strive to be fair, firm and consistent in taking enforcement actions throughout the State, while recognizing the individual facts of each case. The primary goal of this Enforcement Policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. Toward that end, it is the intent of the SWRCB that the RWQCBs operate within the framework provided by this Policy.

Enforcement serves many purposes. First and foremost, it assists in protecting the beneficial uses of waters of the State. Swift and firm enforcement can prevent threatened pollution from occurring and can promote prompt cleanup and correction of existing pollution problems. Enforcement ensures compliance with requirements in SWRCB and RWQCB regulations, plans, policies, and orders. Enforcement not only protects the public health and the environment, but also creates an "even playing field," ensuring that dischargers who comply with the law are not placed at a competitive disadvantage by those who do not. It also deters potential violators and, thus, further protects the environment. Monetary remedies, an essential component of an effective enforcement program, provide a measure of compensation for the damage that pollution causes to the environment and ensure that polluters do not gain an economic advantage from violations of water quality laws.

It is important to note that enforcement of the State's water quality requirements is not solely the purview of the Boards and their staff. Other agencies (e.g., the California Department of Fish and Game) have the ability to enforce certain water quality provisions in state law. State law also allows for members of the public to bring enforcement matters to the attention of the Boards and authorizes aggrieved persons to petition the SWRCB to review most actions or in-actions by the RWQCB. In addition, state and federal statutes provide for public participation in the issuance of most orders, policies and water quality control plans. Finally, the federal Clean Water Act (CWA) authorizes citizens to bring suit against dischargers for certain types of CWA violations.

I. FAIR, FIRM AND CONSISTENT REGULATION AND ENFORCEMENT

A. Standard, Enforceable Orders

Fair, firm and consistent enforcement depends on a foundation of solid requirements in law, regulations, policies, and the adequacy of enforceable orders. Such orders include but are not limited to: waste discharge requirements (WDRs), including National Pollutant Discharge Elimination System (NPDES) permits; waivers; certifications; and cleanup and abatement orders. The extent to which enforceable orders include well-defined requirements and apply similar requirements to similar situations affects the consistency of compliance and enforcement. Whenever the circumstances of a discharge are similar, the provisions of the enforceable orders should be comparable.

The SWRCB, with assistance and advice from the RWQCBs will compile and maintain examples of standard enforceable orders. RWQCBs' orders shall be consistent except as appropriate for the specific circumstances related to the discharge and to be consistent with applicable water quality control plans. Such modifications must be consistent with applicable state and federal law. RWQCB Water Quality Control Plans may include unique requirements that apply within a region and that must be implemented.

B. Determining Compliance

The Boards shall implement consistent and valid methods to determine compliance with enforceable orders. Compliance assurance activities include the review of self-monitoring reports, facility inspections and complaint response. Compliance assurance activities are discussed in more detail in section II of this Policy.

C. Timely and Appropriate Enforcement

An enforcement action is any informal or formal action taken to address the failure to comply or the threatened failure to comply with applicable statutes, regulations, plans, policies, or enforceable orders. Enforcement actions should be initiated as soon as possible after discovery of the violation.

Enforcement actions should be appropriate for each type of violation and should be similar for violations that are similar in nature and have similar water quality impacts. Appropriate enforcement informs the violator that the violation has been noted and recorded by the Board, results in a swift return to compliance, and serves as a deterrent for future violations. When appropriate, enforcement also requires remediation of environmental damage.

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D. Progressive Enforcement

Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources to: 1) assist cooperative dischargers in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance. For some violations, an informal response such as a phone call or staff enforcement letter is sufficient to inform the discharger that the violation has been noted by the RWQCB and to encourage a swift return to compliance. More formal enforcement is often an appropriate first response for more consequential violations. If any violation continues, the enforcement response should be quickly escalated to increasingly more formal and serious actions until compliance is achieved. Progressive enforcement is not appropriate in all circumstances. For example, where there is an emergency situation needing immediate response, immediate issuance of a cleanup and abatement order may be appropriate.

E. Enforcement Priorities

Every violation deserves an appropriate enforcement response. However, because resources are limited, the RWQCBs must continuously balance the need to complete non-enforcement program tasks with the need to address violations. Within available resources for enforcement, the RWQCBs must then balance the importance or impact of each potential enforcement action with the cost of that action. Informal enforcement actions are usually very cost effective and are therefore the most frequently used enforcement response. Most formal enforcement actions are relatively costly and must therefore be targeted to the RWQCB's highest priority violations.

The first step in enforcement prioritization is the determination of the relative importance of the violation. Section III of this Policy identifies criteria for determining if a violation should be identified as a priority violation. Priority violations include: all NPDES violations that the USEPA requires to be reported on the Quarterly Non-Compliance Report (QNCR) for the purpose of tracking significant non-compliance; all "serious" and "frequent" violations as defined in California Water Code section 13385; and other violations that the SWRCB and/or RWQCB considers to be significant and therefore high priority. Staff will indicate, for each violation, whether or not the violation meets the "priority violation" criteria in section III of this Policy.

The second step is for senior staff and management to review, for each newly identified priority violation, other characteristics of the violation that would affect decisions about the appropriate enforcement response. Once each month senior staff and management should meet and assign, for each priority violation, a relative priority value of "high", "medium" or "low". Except for confidential information regarding ongoing investigations or enforcement, the list of high priority violations should be reported to the RWQCB, should be available upon request from the RWQCB, and should be posted, along with the most recent violation report, on the RWQCB internet-site. The criteria for selecting the relative enforcement priority include, but are not limited to:

- (a) the applicability of mandatory minimum penalty provisions of California Water Code sections 13385 and 13399.33;

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- (b) evidence of, or threat of, pollution or nuisance and the magnitude or impacts of the violation;
- (c) evidence of negligence or recalcitrance;
- (d) the availability of resources for enforcement;
- (e) USEPA expectations for timely and appropriate enforcement for NPDES delegated programs¹;
- (f) specific recommended enforcement pursuant to Section V of this Policy;
- (g) case-by-case factors that may mitigate a violation including the compliance history of the violator and good-faith efforts of the violator to eliminate noncompliance;
- (h) impact or threat to watersheds or water bodies that the RWQCB considers high priority (e.g., due to the vulnerability of an existing beneficial use or an existing state of impairment);
- (i) issues of environmental justice, such that enforcement efforts should be fair and equitable across communities without socio-economic biases;
- (j) potential to cleanup and abate effects of pollution; and
- (k) the strength of evidence in the record to support the enforcement action.

Serious threats of violation must also be dealt with promptly in order to avoid or mitigate the effects of the threatened violation. Within available resources, formal enforcement actions should be targeted at the highest priority violations and threatened violations. Priority violations that do not receive formal enforcement should receive informal enforcement.

F. Environmental Justice

Environmental Justice is defined in Government Code section 65040.12(c) as: "... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Consistent with this, the Boards shall undertake enforcement efforts in a manner that is fair and equitable across communities without socio-economic bias and shall encourage community involvement. To do this, the Boards shall, within available resources:

- (a) Enter demographic data (e.g., census data, etc.) into the SWRCB data management system for use in making enforcement decisions;
- (b) Analyze data to evaluate relationships between socioeconomic factors and enforcement; and
- (c) Conduct effective outreach to inform communities of violations that affect them, to provide education regarding the role of the Boards, and to notify affected communities of pending enforcement actions and encourage community involvement. Effective outreach

¹ For NPDES facilities that are listed on the Quarterly Noncompliance Reports (QNCR) USEPA considers timely enforcement of Significant Noncompliance (SNC) violations to be an enforcement action taken within five months after the first quarter of SNC (Guidance for Oversight of NPDES Programs, USEPA Office of Water, May 1987). USEPA considers appropriate enforcement to be an enforceable order or agreement that requires specific corrections to address the violations; in California, Cease and Desist Orders, Cleanup and Abatement Orders, or judicial consent decrees are considered by USEPA to meet this expectation.

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may involve the use of alternative media (e.g., radio, internet, targeted news publications) as well as translation into plain English or non-English languages.

II. COMPLIANCE ASSURANCE

Compliance with WDRs, Water Quality Control Plan prohibitions, enforcement orders, and other provisions of law administered by the SWRCB or RWQCBs can be determined through discharger self-monitoring reports (SMRs), compliance inspections, facility reporting, complaints, or file review.

A. Self-Monitoring Reports (SMRs)

The Boards ensure compliance with WDRs and other Board orders by requiring dischargers to implement a monitoring and reporting program under California Water Code sections 13267 and 13383, and to periodically submit SMRs. Reporting frequency for regulated dischargers depends on the nature and impact of the discharge. The regulations that implement the CWA also specify monitoring requirements. Enforceable orders that require a monitoring and reporting program should explicitly require the discharger to clearly identify all violations of applicable requirements in a cover letter or in the SMR and to discuss corrective actions taken or planned and the proposed time schedule of corrective actions. Identified violations should include a description of the requirement that was violated and a description of the violation.

In addition to other signatory requirements, WDRs for POTWs should explicitly state that reports of monitoring results must also be signed and certified by the chief plant operator and if the chief plant operator is not in the direct line of supervision of the laboratory function, the chief of the laboratory also.

RWQCB staff shall regularly review all discharger SMRs and document all violations and any subsequent enforcement response in the Boards' enforcement data management system.

B. Compliance Inspections

On-site compliance inspections are conducted by the RWQCB staff under the authority provided in California Water Code sections 13267 and 13383. Compliance inspections provide the RWQCB an opportunity to verify that information submitted in SMRs is complete and accurate. Compliance inspections address compliance with WDRs, laboratory quality control and assurance, record keeping and reporting, time schedules, best management practices, pollution prevention plans, and any other pertinent requirements. RWQCB staff shall document all violations identified as the result of compliance inspections and any subsequent enforcement response in the facility file and in the Boards' enforcement data management system.

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C. Direct Facility Reporting

California Water Code section 13271 requires any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state to notify the Office of Emergency Services of the discharge as specified in that section. The Office of Emergency Services then immediately notifies the appropriate RWQCB and the local health officer and administrator of environmental health of the discharge.

WDRs, including NPDES permits, shall require regulated facilities to report to the RWQCB by phone within a specified time, followed by a written report and/or a discussion in the next SMR, when certain events occur, such as:

- (a) Discharges that are not in accordance with WDRs and that pose an immediate public health threat;
- (b) Bypass of raw or partially treated sewage or other waste from a treatment unit or discharge of wastewater from a collection system in a manner inconsistent with WDRs;
- (c) Bypass of recycled water from a treatment unit or discharge of recycled water from a distribution system in a manner inconsistent with WDRs;
- (d) Treatment unit failure or loss of power that threatens to cause a bypass; and
- (e) Any other operational problems that threaten to cause significant violations of WDRs or impacts to receiving waters or public health.

D. Complaints and Complaint Investigations

Often information regarding an actual or potential violation or unauthorized discharge is obtained through telephone or written notification from a member of the public, another public agency or an employee working at a regulated facility. Complaints may also involve nuisance conditions, such as noxious odors that extend beyond a wastewater treatment plant boundary. During the course of an investigation additional violations that are indirectly related or unrelated to the original investigation may also be discovered. RWQCB staff shall document all complaints and findings resulting from complaint investigations.

E. Case Record Maintenance and Review

WDRs, enforcement orders (e.g., cleanup and abatement orders, cease and desist orders, and time schedule orders), and requests for reports required pursuant to California Water Code section 13267 frequently mandate completion of tasks, which the dischargers must confirm by submission of appropriate reports to the RWQCBs. Failure to submit the reports or to complete the required tasks may be the basis for additional enforcement. RWQCBs shall use data management systems to track tasks and reports required of dischargers.

Often the RWQCB first hears about spills or other violations from the California Department of Fish and Game, the California Department of Toxic Substance Control, the Office of Emergency

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Services or other agencies. District Attorneys are another source of information. The RWQCBs can use this information to decide whether to initiate joint or separate enforcement actions.

III. DETERMINING "PRIORITY" VIOLATIONS

The general criteria below have been developed to assist the RWQCBs in identifying priority violations in order to help establish priorities for enforcement efforts. Depending on the circumstances, violations that are not included on this list could nonetheless be considered "priority" as well. RWQCB staff should indicate, for each violation, whether or not the violation meets the "priority violation" criteria in this section. RWQCB senior staff and management should use the criteria specified in Section I. E. of this policy to further evaluate the priority violations and, within available resources, target formal enforcement actions at the highest priority violations.

The following subsections comprise a non-exclusive list of "priority" violations that will be identified as priority violations in the enforcement database, that will be further evaluated for possible formal enforcement, and that should, at a minimum, receive informal enforcement.

A. NPDES Effluent and Receiving Water Limitation Violations

For facilities with NPDES permits, the following effluent and receiving water limitation violations are priority violations:

- (a) Except as specified in subsections (a)(i) and (a)(ii), any violation of an effluent or receiving water limitation for a Group 1 pollutant (see Table III-1) by 40 percent or more or any violation of an effluent or receiving water limitation for a Group 2 pollutant (see Table III-2) by 20 percent or more.
 - (i) For discharges of pollutants subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the "California Ocean Plan", where the effluent or receiving water limitation for a pollutant is lower than the applicable Minimum Level, any discharge that equals or exceeds the Minimum Level is a priority violation.
 - (ii) For discharges of pollutants that are not yet subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the California Ocean Plan (i.e., discharges with waste discharge requirements issued prior to the adoption of the applicable plan) where the effluent or receiving water limitation for a pollutant is lower than the applicable method detection limit² any exceedance of the method detection limit is a priority violation. Where the effluent or receiving water limitation for a pollutant is greater

² There are multiple definitions for the term "method detection limit". One generally accepted definition for the method detection limit is the concentration at which one or more state certified laboratories has determined with 99% confidence that the pollutant is present in the sample. For the purpose of this policy, the applicable method detection limit is the method detection limit (or detection limit) specified or authorized in the applicable waste discharge requirements.

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than the applicable method detection limit and less than an applicable quantitation limit³, any exceedance of the quantitation limit is a priority violation.

- (b) Any waste discharge that violates a flow limitation by ten percent or more.
- (c) Any waste discharge that violates a receiving water temperature limitation by three degrees Celsius (5.4 degrees Fahrenheit) or more.
- (d) Any waste discharge that violates an effluent or receiving water limitation for pH by one pH unit or more or, where the discharger is continuously monitoring pH, any discharge that violates the effluent or receiving water limit by 1 pH unit for ten minutes or longer.
- (e) Any waste discharge that violates an effluent or receiving water limitation for any other pollutant or monitored parameter that is not listed in either Table III-1 or Table III-2 by 40 percent or more.

³ There are also multiple definitions for the term "quantitation limit". One generally accepted definition for the quantitation limit is the concentration at which a state certified laboratory has determined with a specified degree of confidence, that the actual concentration of the pollutant present in the sample is within a specified percentage of the concentration reported. For the purpose of this policy, the applicable quantitation limit is the quantitation limit specified or authorized in the applicable waste discharge requirements.

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Table III-1. Group 1 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), the United States Environmental Protection Agency (USEPA) has identified an exhaustive list of those pollutants, which are included as Group 1 pollutants under the various classifications of "other." The entire list is included in Appendix A of this Policy and is hereby incorporated into this Table III-1. This change is prospective, including changes to the incorporated provisions as the changes take effect.

Oxygen Demand

Biochemical Oxygen Demand (BOD)
Chemical Oxygen Demand (COD)
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (TSS)
Total Dissolved Solids (TDS)
Other

Nutrients

Inorganic Phosphorous Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

Methylene Blue Active Substances
Nitrilotriacetic Acid
Oil and Grease
Other Detergents or Algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

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Table III-2. Group 2 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), USEPA has identified an exhaustive list of those pollutants, which are included as Group 2 pollutants. The entire list is included in Appendix B of this Policy and is hereby incorporated into this Table III-2. This change is prospective, including changes to the incorporated provisions as the changes take effect.

Metals

All metals not specifically listed under Group 1.

Inorganics

Cyanide

Total Residual Chlorine

Organics

All organics not specifically listed under Group 1.

B. Chronic Violations

Chronic violations are priority violations. California Water Code section 13385(i) prescribes mandatory minimum penalties for specific instances of multiple violations for NPDES discharges. Those provisions are discussed in more detail in Section V.D. of this Policy. In addition to those provisions, and for non-NPDES discharges, a facility or discharger is in chronic violation when it has four or more similar types of violations during any six-month period, or it has violated a monthly average effluent limitation for a specific pollutant in the same season⁴ for two consecutive years.

C. Toxicity Violations

Discharges resulting in two or more violations of numeric or narrative toxicity requirements contained in WDRs, Water Quality Control Plan prohibitions or other provisions of law within any six-month period are priority violations.

Failure to implement a required Toxicity Identification Evaluation and/or a Toxicity Reduction Evaluation or to otherwise comply with conditions of WDRs in response to toxicity violations is a priority violation.

⁴ "Season" means either: 1) spring, summer, autumn, or winter; or 2) a time or part of the year during which a specified kind of agricultural work is performed or a specified kind of weather prevails (e.g., the harvest season, the rainy season, etc.).

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D. Violations of Prohibitions

WDRs, Water Quality Control Plans, and enforcement orders often contain prohibitions (year-round or seasonal) against certain types of discharges of waste. Violations of such prohibitions that result in an adverse impact to beneficial uses or in a condition of nuisance or pollution are considered priority violations.

E. Spills (including other unauthorized discharges)

Priority violations include:

- (a) all sewage or treated wastewater spills that reach surface waters (including wetlands);
- (b) sewage or treated wastewater spills to soil that cause a public health threat and/or are greater than 5000 gallons;
- (c) spills of other materials that cause a public health threat or cause toxicity to fish or other aquatic or terrestrial species or that result in an adverse impact to other beneficial uses of groundwater or surface water;
- (d) discharges of sediment that impact spawning habitat; and
- (e) discharges of pollutants listed by SWRCB pursuant to the Clean Water Act section 303(d) into a water body identified as impaired under that section.

F. Failure to Submit Plans and Reports

Failure by waste water treatment facilities that are approaching treatment capacity to submit plans that are required to address capacity issues within six months of the date specified in WDRs is a priority violation.

Failure to submit reports required by WDRs, California Water Code sections 13267 and 13383, California Water Code section 13260, regulations or Water Quality Control Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to impede the review of the status of compliance are priority violations. In addition, failure to comply with the notification requirements contained in California Water Code sections 13271 and 13272 is a priority violation.

G. Violations of Compliance Schedules

Violations of compliance schedule dates (e.g., schedule dates for starting construction, completing construction, or attaining final compliance) by 30 days or more from the compliance date specified in an enforceable order are priority violations.

H. Pretreatment Program Violations

Failure of a publicly-owned treatment works (POTW) to substantially implement its approved pretreatment program as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users and failure to meet pretreatment program compliance schedules is a priority violation.

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Discharges from Industrial Users (IUs) that cause a POTW to have a plant upset or an effluent limit violation are priority violations. Discharges from an IU that exceed a categorical limit for a Group 1 pollutant by 40% or more or for a Group 2 pollutant by 20% or more are priority violations. Note: The SWRCB or RWQCB only takes enforcement against an IU when the POTW fails to take appropriate enforcement actions.

I. Storm Water Program Violations

1. Industrial and Construction Discharges

Certain construction and industrial activities require compliance with either the General NPDES Permit for Storm Water Discharges Associated with Construction Activity (Construction Storm Water Permit) or the General NPDES Permit for Discharges of Storm Water Associated with Industrial Activity Excluding Construction (Industrial Storm Water Permit). Failure to submit a Notice of Intent for coverage under the general permits or a notice of non-applicability, after specific notification to the discharger, is a priority violation if the violation is not corrected within 30 days after notification. Failure to either develop a Storm Water Pollution Prevention Plan (SWPPP), to implement a SWPPP, to conduct required monitoring, or to submit an annual report is a priority violation.

2. Municipal Discharges

In most urban areas, discharges of storm water to and from municipal separate storm sewer systems (MS4s) require compliance with a Municipal NPDES Storm Water Permit. Failure to either submit a report of waste discharge, to develop a storm water management plan, to implement one or more components of its storm water management plan, to conduct monitoring, or to submit an annual report is a priority violation. An example of a priority violation is the failure of a municipality to enforce its ordinance resulting in sediment discharges from construction activity at sites in its jurisdiction that impact water quality.

3. Failure to attain performance standards, failure to report and address violations and unauthorized discharges

Most storm water permits require the discharger(s) to comply with general performance practices or standards. For example, performance standards applicable to storm water discharges are to implement best management practices using the best available technology economically achievable and best conventional technology (BAT/BCT), and to the maximum extent practicable (MEP). If storm water and/or authorized non-storm water discharges cause or substantially contribute to an exceedance of an applicable water quality standard, the discharger is usually required to take specific, iterative actions (e.g., modify its Storm Water Management Plan) to resolve such exceedances. For storm water and/or authorized non-storm water discharges that cause or substantially contribute to an exceedance of an applicable water quality standard, priority violations include the failure to comply with these iterative procedures to address exceedances required by the permit or for discharges of non-storm water that are not authorized by the permit. The criteria for priority violations in section III (A) of this Policy apply to NPDES storm water permits that contain numeric effluent limitations.

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J. Clean Water Act Section 401 Violations

Discharges into waters of the United States that require a federal permit or license also require certification (in accordance with Section 401 of the Clean Water Act) from the SWRCB or RWQCB that the discharge will comply with the State's water quality standards. Failure to obtain required certification prior to a discharge that causes or contributes to a condition of nuisance or pollution or violates water quality standards is a priority violation. Failure to comply with conditions specified in the certification is a priority violation.

K. Violation of Water Quality Objectives or Receiving Water Limitations

Any discharge of waste resulting in, or likely to result in, a violation of an applicable water quality objective or a receiving water limitation in groundwater or surface water, or in the creation of a condition of nuisance, is a priority violation unless the discharge is permitted or otherwise specifically authorized by the SWRCB or RWQCB. For storm water discharges, RWQCBs may allow the iterative approach discussed in SWRCB Orders WQ 91-03, 91-04, 96-13, 98-01 and 99-05 or allowed in the relevant NPDES permit.

L. Discharge of Bio-solids to Land

The following violations of the SWRCB General WDRs for discharge of bio-solids to land are priority violations:

- (a) Any discharge in violation of the setback requirements;
- (b) Any discharge that exceeds 1.4 times the agronomic rate⁵ for nitrogen, where the site is not a land-reclamation site;
- (c) Any discharge of tail-water in violation of the requirements;
- (d) Any discharge that exceeds the Background Cumulative Adjusted Loading Rate in the requirements, or exceeds the Ceiling Pollutant Concentration Limits; and
- (e) Any violation of the specific Class B Discharge Specifications.

M. Waste Discharge Requirement (WDR) Program

The following violations of requirements in WDRs for facilities regulated by the WDR Program are priority violations:

- (a) The failure to maintain required freeboard in ponds;
- (b) Any discharge that exceeds flow limits by 20 percent or more;
- (c) Any discharge that exceeds the effluent limitation for biological oxygen demand or total dissolved solids by 100 percent or more;
- (d) Any discharge where the dissolved oxygen is less than 50 percent of the effluent limitation; or
- (e) Other violations as determined by the Board.

⁵ Agronomic Rate: The nitrogen requirements of a plant needed for optimal growth and production, as cited in professional publications for California or recommended by the County Agricultural Commissioner, a Certified Agronomist or Certified Soil Scientist.

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N. Aboveground Petroleum Storage Act

The following violations of the Aboveground Petroleum Storage Act (California Health and Safety Code section 25270 et.seq.) are priority violations:

- (a) Failure to file a storage report;
- (b) Failure to establish a required monitoring system; and
- (c) Failure to report spills as required.

O. Land Disposal

The following violations of requirements in WDRs for facilities regulated by the Land Disposal Program are priority violations:

- (a) The release of waste to ground water;
- (b) Un-permitted discharge of leachate or waste to surface water;
- (c) Significant erosion and discharge of sediment to surface water;
- (d) Significant ponding or standing water on top of waste (or cover) in a landfill;
- (e) Lack of low permeability cover for a landfill in winter period (failure to winterize the site by established deadlines);
- (f) Failure to monitor (ground and surface water) as required;
- (g) Failure to develop and implement Evaluation Monitoring;
- (h) Failure to develop and implement Corrective Action;
- (i) Failure to submit adequate monitoring reports (with graphs, evaluation of data, ground water elevation maps, certification statements, etc.);
- (j) Acceptance of un-permitted waste (i.e. inadequate waste load checking program);
- (k) Failure to submit Quality Assurance As-builts for construction of containment systems;
- (l) Inadequate preparation of sub-grades before liner placement;
- (m) Slope damage, rills, gullies, or exposed refuse resulting from lack of appropriate erosion control;
- (n) Uncontrolled discharge of leachate (i.e. seeps);
- (o) Excessive build-up (> 1') of leachate on underlying (lined or unlined) system; and
- (p) Failure to maintain required freeboard.

P. Failure to Pay Fees, Penalties or Liabilities

Failure to pay fees, penalties or liabilities within 30 days of the due date is a priority violation unless the discharger has filed a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty or liability; or an alternate payment schedule has been accepted by the RWQCB.

Q. Falsifying Information

Falsification of information submitted to the Board or intentional withholding of information required by applicable laws, regulations or an enforceable order is a priority violation.

IV. ENFORCEMENT ACTIONS

The Boards have a variety of enforcement tools to use in response to non-compliance by dischargers. This section describes the range of options and discusses procedures that are common to some or all of these options. With specified exceptions, including NPDES permits, California Water Code section 13360 (a) prohibits the SWRCB or RWQCB from specifying the design, location, type of construction, or particular manner in which compliance may be had with a particular requirement.

A. Standard Language

In order to provide a consistent approach to enforcement throughout the state, enforcement orders should be standardized where appropriate. The SWRCB intends to maintain model enforcement orders containing standardized provisions for use by the RWQCBs. RWQCBs should use the models and modify terms and conditions as appropriate for the specific circumstances related to the discharge and to be consistent with RWQCB plans and policies.

B. Informal Enforcement Actions

An informal enforcement action is any enforcement action taken by SWRCB or RWQCB staff that is not defined in statute. An informal enforcement action can include any form of communication (verbal, written, or electronic) between SWRCB and/or RWQCB staff and a discharger about a violation or potential violation. These actions may, in some circumstances, be petitioned to the RWQCB or the RWQCB Executive Officer but cannot be directly petitioned to the SWRCB.

The purpose of an informal enforcement action is to quickly bring a violation to the discharger's attention and to give the discharger an opportunity to return to compliance as soon as possible. The RWQCB may take formal enforcement action in place of, or in addition to, informal enforcement actions. Continued noncompliance is considered a priority violation and should trigger formal enforcement action.

1. Verbal Enforcement Actions and Enforcement Letters

For many violations, the first step is a verbal enforcement action. Staff should contact the discharger by phone or in person and inform the discharger of the specific violations, discuss how and why the violations occurred, and discuss how and when the discharger will correct the violation and achieve compliance. Staff shall document the conversation in the facility case file and in the enforcement database.

An enforcement letter is often appropriate as a follow-up, or in lieu of, a verbal enforcement action. Enforcement letters are signed by staff or by the appropriate senior staff. The letter should inform the discharger of the specific violations, and, if known to staff, discuss how and why the violations occurred and how and when the discharger will correct the violation and achieve compliance.

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Verbal enforcement actions and enforcement letters must not include language that excuses the violation or that modifies a compliance date in WDRs or other orders issued by the State or RWQCB.

2. Notice of Violation (NOV)

The NOV letter is the highest level of informal enforcement action. An NOV should be signed by the RWQCB Executive Officer or designated staff and should be addressed and mailed to the discharger(s) by certified mail. In cases where the discharger has requested that their consultant be notified of RWQCB actions, the consultant should also receive a copy of the NOV. The NOV letter should include a description of specific violations, a summary of potential enforcement options available for non-compliance (including the potential daily or per gallon maximum Administrative Civil Liability (ACL) available), and, when appropriate, a request for a written response by a specified date. The summary of potential enforcement options shall include appropriate citations to the California Water Code and should specify that the RWQCB reserves the right to take any enforcement action authorized by law.

C. Formal Enforcement Actions

Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation of water quality laws, regulations, policy or orders. Formal enforcement orders should contain findings of facts that establish all the statutory requirements of the specific statutory provision being utilized.

1. Notices to Comply

Notices to Comply are issued pursuant to California Water Code section 13399 et seq., which requires the use of Notices to Comply as the only means by which the SWRCB or RWQCB can issue citations for minor violations. A violation is determined to be minor by the SWRCB or the RWQCB after considering factors defined in California Water Code sections 13399(e) and (f) and the danger the violation poses to, or the potential that the violation has for endangering human health, safety, or welfare or the environment.

- (a) The violations listed below are considered to be minor violations for the purpose of compliance with California Water Code section 13399 et seq.:
 - (i) Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.
 - (ii) Records (including WDRs) not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.
 - (iii) Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.
 - (iv) Failure to have permits available during an inspection.
 - (v) Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment.

- (b) A violation is not considered minor in nature if it is a priority violation as described in Section III of this Policy or includes any of the following:

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- (i) Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the California Water Code.
- (ii) It involves any violation that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
- (iii) Chronic violations or violations committed by a recalcitrant violator.
- (iv) Violations that cannot be corrected within 30 days.

2. Notices of Stormwater Noncompliance

The Stormwater Enforcement Act of 1998 (California Water Code section 13399.25 et seq.) requires that each RWQCB notify storm water dischargers who have failed to file a notice of intent to obtain coverage, a notice of non-applicability, a construction certification, or annual reports. If, after two notifications, the discharger fails to file the applicable document a mandatory civil liability shall be assessed against the discharger.

3. Technical Reports and Investigations

California Water Code sections 13267(b) and 13383 allow RWQCBs to conduct investigations and to require technical or monitoring reports in accordance with the conditions in the section. Failure to comply with requirements made pursuant to Section 13267(b) is a priority violation and may result in administrative civil liability pursuant to Section 13268. Failure to comply with orders made pursuant to Section 13383 may result in administrative civil liability pursuant to Section 13385. Section 13267(b) and 13383 requirements are enforceable when signed by the Executive Officer of the RWQCB.

It is important to note that California Water Code sections 13267 and 13383 are not strictly enforcement statutes. RWQCBs should routinely cite those sections as authority whenever asking for technical or monitoring reports. California Water Code sections 13267 and 13383 should also be cited in all WDRs, waivers and certifications as authority for monitoring and reporting requirements.

4. Cleanup and Abatement Orders (CAOs)

Cleanup and Abatement Orders (CAOs) are adopted pursuant to California Water Code section 13304. CAOs may be issued to dischargers that are not being regulated by WDRs. RWQCBs should keep an accurate record of staff oversight costs for CAOs, because dischargers are liable for such costs. If staff costs are not recovered voluntarily or through civil court actions, the RWQCB may request that a lien be placed on the affected property. When a CAO specifies that staff costs are to be recovered from the discharger, failure to pay invoiced amounts for staff costs is a violation of the CAO that is subject to an ACL.

RWQCBs shall comply with SWRCB Resolution No. 92-49, "Policies And Procedures For Investigation And Cleanup And Abatement Of Discharges Under Water Code section 13304", in issuing CAOs. CAOs should require discharger(s) to clean up the pollution to background levels or the best water quality which is reasonable if background levels of water quality cannot be restored in accordance with Resolution No. 92-49 . At a minimum, cleanup levels must be

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sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies. CAOs should name all dischargers for whom there is sufficient evidence of responsibility as set forth in California Water Code section 13304.

CAOs that require submission of technical and monitoring reports should always state that the reports are required pursuant to California Water Code section 13267. CAOs shall contain language describing likely enforcement options available for non-compliance and should specify that the RWQCB reserves its right to take any enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CAOs should trigger further enforcement in the form of an ACL, a Time Schedule Order (TSO) under California Water Code section 13308, or referral to the Attorney General for injunctive relief or monetary remedies.

5. Section 13300 Time Schedule Orders (TSOs)

Pursuant to California Water Code section 13300, the RWQCB can require the discharger to submit a time schedule which sets forth the actions that the discharger will take to address actual or threatened discharges of waste in violation of requirements. TSOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267.

6. Section 13308 Time Schedule Orders (13308 TSOs)

California Water Code section 13308 authorizes the RWQCB to issue a Section 13308 Time Schedule Order (13308 TSO) which prescribes a daily civil penalty if compliance is not achieved in accordance with the time schedule. The RWQCB may issue a 13308 TSO if there is a threatened or continuing violation of a cleanup and abatement order, cease and desist order, or any requirement issued under California Water Code sections 13267 or 13383. The daily penalty must be set based on an amount reasonably necessary to achieve compliance and may not contain any amount intended to punish or redress previous violations. Therefore, the 13308 TSO should contain findings explaining how the daily penalty amount will induce compliance without imposing punishment. For example, it could include a calculation of how much money the discharger is saving each day by delaying compliance. The 13308 TSO provides the RWQCBs with their primary mechanism for motivating compliance, and if necessary, assessing monetary penalties against federal facilities.

If the discharger fails to comply with the 13308 time schedule, the daily penalty is imposed when the RWQCB Executive Officer issues a complaint for Administrative Civil Liability. The amount proposed in the complaint should be equal to the daily penalty multiplied by the days of violation. If the amount of proposed liability in the Complaint is less than the amount specified in the 13308 Order, the RWQCB is required by California Water Code 13308(c) to include specific findings setting forth the reasons for its action based on California Water Code section 13327. The penalty may not exceed \$10,000 for each day in which the violation of the 13308 TSO occurs.

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7. Cease And Desist Orders (CDOs)

Cease and Desist Orders (CDOs) are adopted pursuant to California Water Code sections 13301-13303. CDOs may be issued to dischargers violating or threatening to violate WDRs or prohibitions prescribed by the RWQCB or the SWRCB. CDOs are often issued to dischargers with chronic non-compliance problems. These problems are rarely amenable to a short-term solution. Often, compliance involves extensive capital improvements or operational changes. The CDO will usually contain a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. CDOs may also include restrictions on additional service connections to community sewer systems and combined stormwater/sewer systems.

Section 4477 of the Government Code prohibits all state agencies from entering into contracts of \$5,000 or more for the purchase of supplies, equipment, or services from any nongovernmental entity who is the subject of a CDO which is no longer under review and which was issued for violation of WDRs or which has been finally determined to be in violation of federal laws relating to air or water pollution. The SWRCB provides the list of such violators to other state agencies and publishes the list on the internet at <http://www.swrcb.ca.gov>.

CDOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267. CDOs shall contain language describing likely enforcement options available for non-compliance and specify that the RWQCB reserves its right to take any further enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CDOs should trigger further enforcement in the form of an ACL, 13308 Order or referral to the Attorney General for injunctive relief or monetary remedies.

8. Modification Or Rescission Of Waste Discharge Requirements

In accordance with the provisions of the California Water Code, the RWQCB may modify or rescind WDRs in response to violations. Depending on the circumstances of the case, rescission of WDRs may be appropriate for failure to pay fees, penalties or liabilities; discharges that adversely affect beneficial uses of the waters of the state; and violation of the SWRCB General WDRs for discharge of bio-solids due to exceedance of the Background Cumulative Adjusted Loading Rate. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a publicly owned treatment works (POTW).

9. Administrative Civil Liability (ACL)

ACL means monetary assessments imposed by a RWQCB or the SWRCB. The California Water Code and the Health and Safety Code authorize ACLs in several circumstances which are summarized in Table IV-1⁶. Staff working on ACLs should consult the appropriate section of the Code to review the entire text.

⁶ Section 13627.3 (if AB 1664 is signed by Governor, then this should read, "Sections 13627.1 and 13627.2") of the Water Code and section 25284.4 of the Health and Safety Code authorize the SWRCB to impose administrative civil liability on certified wastewater treatment plant

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Table IV-1. Summary of Relevant California Water Code and Health and Safety Code Authority for Imposing Administrative Civil Liability Pursuant to this Policy.

STATUTE	COVERAGE
§ 13261 (California Water Code)	Up to \$1,000 per day for failure to furnish reports of waste discharge or failure to pay annual program fees. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a willful violation.)
§ 13265 (California Water Code)	Up to \$1,000 per day for discharging without a permit. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and violation is due to negligence.)
§ 13268 (California Water Code)	Up to \$1,000 per day for failing or refusing to furnish technical or monitoring reports or falsifying information therein. (Up to \$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a knowing violation.)
§ 13271 (California Water Code)	Up to \$20,000 for failing to notify the Office of Emergency Services (OES) of a discharge of hazardous substances that exceeds the reportable quantity or more than 1000 gallons of sewage.
§ 13272 (California Water Code)(Limitation: Does not apply to spills of oil into marine waters as defined in Government Code §8670.3(f).)	Not less than \$500 and not more than \$5000 per day for each day of failure to notify OES of a discharge of any oil or product in or on the waters of the state.
§ 13308 (California Water Code)	Up to \$10,000 per day for violations of time schedules. Amount to be prescribed when time schedule is established.
§ 13350 (California Water Code)	<ul style="list-style-type: none"> • Up to \$10 per gallon of waste discharged (if no cleanup and abatement order has been issued). • Between \$500 and \$5,000 per day if a cleanup and abatement order has been issued. • If there is no discharge, but an order of the RWQCB is violated: Between \$100 and \$1,000 for each day of violation.

operators and licensed underground storage tank testers, respectively. This policy does not apply to, and is not intended to limit in any way, the SWRCB's imposition of any disciplinary action, including administrative civil liability, to these individuals pursuant to this authority, except that the types of enforcement actions discussed in subpart V. B. shall be considered.

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<p>§ 13385 (a) (California Water Code)</p>	<p>For NPDES permit program violations or discharges to surface water: Up to \$10,000 per day of violation plus an additional liability of \$10 per gallon for each gallon over 1,000 gallons where there is a discharge that is not cleaned up. A “discharge” as used in this section is defined as any discharge from a point source to navigable waters of the United States, any introduction of pollutants into a POTW, or any use or disposal of sewage sludge.</p>
<p>§ 13385 (h) and (i) (California Water Code)</p>	<ul style="list-style-type: none"> • 13385 (h) (1) ... Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for the first serious violation as defined by statute and each additional serious violation in any period of six consecutive months, except that the SWRCB or RWQCB may elect to require the discharger to spend an amount equal to the penalty for the first serious violation on a supplemental environmental project or to develop a pollution prevention plan. • 13385 (i) Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations: <ol style="list-style-type: none"> (1) Exceeds a waste discharge requirement effluent limitation. (2) Fails to file a report pursuant to Section 13260. (3) Files an incomplete report pursuant to Section 13260. (4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
<p>§ 13399.33 (California Water Code)</p>	<ul style="list-style-type: none"> • Not less than \$5,000 per year or fraction thereof for failure to submit required notice of intent for coverage under stormwater permit. • Not less than \$1,000 per year or fraction thereof for failure to submit notices on non-applicability, annual reports or construction certification as required by stormwater program.
<p>§ 25270.12 (H&S Code) (Special provisions covering aboveground storage tanks)</p>	<p>Fines of up to \$10,000 per day for failure to file a storage report, submit fees, establish monitoring or report spills.</p>

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a) ACL Complaint

California Water Code sections 13323-13327 describe the process to be used to assess ACLs. The California Water Code authorizes RWQCB Executive Officers to issue an ACL Complaint. The ACL Complaint describes the violation and provision of law authorizing imposition of the civil liability, proposes a specific civil liability, and informs the recipient that a hearing will be held within 60 days after the Complaint is served. Section VII of this policy provides specific instructions for staff to use when developing and documenting a recommendation for the amount of the assessment. ACLs issued under section 13385 for violations of the CWA must allow a 30-day public comment period for any proposed settlement of the ACL. It is the policy of the SWRCB that at least 30 days public comment period should be provided prior to the settlement of any ACL. The SWRCB or RWQCB should use appropriate methods to notify the public of the proposed action. At a minimum, public notice must include publishing a notice in a newspaper of general circulation.

Upon receipt of an ACL Complaint, the discharger(s) may waive its right to a hearing and pay the liability; negotiate a settlement (memorialized in the form of an amended complaint); or appear at the RWQCB hearing to dispute the Complaint. If the discharger waives its right to a hearing and pays the liability, a third party may still comment on the Complaint at any time during the public comment period. Following review of the comments, the Executive Officer may withdraw the ACL complaint. An ACL Complaint may be redrafted and issued as appropriate. In cases where a hearing before the RWQCB is not held, summary information regarding the final disposition of the Complaint should be included in the SWRCB or RWQCB Agenda.

If the discharger does not waive the right to a hearing, California Water Code section 13233(b) requires that a hearing be held within 60 days of the issuance of the complaint unless the discharger agrees in writing that the hearing can be held more than 60 days after the issuance of the complaint. The hearing shall be before a panel of the RWQCB or before the RWQCB. At the hearing the RWQCB will consider whether to affirm, modify or reject the liability. If the RWQCB adopts an ACL Order, it may be for an amount that is greater or less than the amount proposed in the complaint but may not exceed the maximum statutory liability. If the Executive Officer decides to dismiss the liability prior to the hearing, the Executive Officer must rescind the Complaint.

b) Suspended Liability

The RWQCB may, by various means, allow a portion of the liability to be satisfied through the successful completion of a Supplemental Environmental Project (SEP) and/or a Compliance Project (CP). The remaining portion of the liability shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The specific procedures for suspending liability for SEPs and CPs are discussed in greater detail in Sections VIII and IX of this Policy.

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c) Staff Costs

The portion of the ACL amount that is intended to recover staff costs should always be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. Staff costs are discussed in greater detail in Section VII of this Policy.

d) ACL Order

ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB. ACL Orders can only be modified by the SWRCB pursuant to California Water Code section 13320 or in superior court if a petition for writ of mandate was properly filed in accordance with California Water Code section 13325. All cash payments to the SWRCB or RWQCBs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

10. Referrals To Attorney General, District Attorney, United States (U.S.) Attorney or City Attorney

The RWQCB can refer violations to the state Attorney General for civil enforcement actions. The RWQCB can also request the appropriate county District Attorney or City Attorney seek criminal prosecution. A superior court may be requested to impose civil or criminal penalties. In some cases (e.g., when the District Attorney or Attorney General is unable or unwilling to accept a case), the RWQCB may find it appropriate to request the U.S. Attorney's Office to review potential violations of federal environmental statutes, including but not limited to the CWA, the Endangered Species Act, the Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act.

a) Attorney General

At the request of the RWQCB, the Attorney General can seek judicial civil liabilities on behalf of the RWQCB for a variety of California Water Code violations, essentially the same ones for which the RWQCB can impose ACLs. Maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the court instead of the RWQCB. The Attorney General can also seek injunctive relief in the form of a restraining order, preliminary injunction, or permanent injunction pursuant to California Water Code sections 13262, 13264, 13304, 13331, 13340 and 13386. Injunctive relief may be appropriate in emergency situations, or where a discharger has ignored enforcement orders or does not have the ability to pay a large ACL.

For civil assessments, referrals to the Attorney General should be reserved for cases where the violation merits a significant enforcement response but where an ACL would be inappropriate or ineffective. For example, when a major oil spill occurs, several state agencies can seek civil monetary remedies under different state laws; a single civil action by the Attorney General may be more efficient than numerous individual agency actions. A violation (or series of violations) with major public health or water quality impacts should be considered for referral in order to maximize the monetary assessment because of its effect as a deterrent. Referral for recovery of natural resources damages under common law theories, such as nuisance, may also be appropriate.

b) District Attorney, City Attorney, or U.S. Attorney

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District Attorneys, City Attorneys, or U.S. Attorneys may seek civil or criminal penalties under their own authority for some of the same violations the RWQCB pursues. A request by the RWQCB is not required. The decision to file a criminal action and what charges to bring is within the sole discretion of the prosecutor who acts on behalf of the people of the state in general. A RWQCB can request prosecution or investigation and should cooperate with a prosecutor but the criminal action is not controlled by, or the responsibility of, the RWQCB. Staff should always request that any settlement by the District Attorney require any actions that are necessary to prevent recurrence of a spill and/or to mitigate damage to the environment and include recovery of staff costs.

A major area where District Attorney involvement should be considered is where there is suspected criminal action related to releases of hazardous substances or toxic materials. A request for District Attorney involvement would support the local agency or another state agency that is taking the lead (e.g., county health department, city fire department, California Department of Fish and Game or the California Department of Toxic Substances Control). Many District Attorney offices have created task forces specifically staffed and equipped to investigate environmental crimes including water pollution. These task forces may request RWQCB support which should be provided within available resources. District Attorneys also have the resources to carry out investigations that may be beyond the expertise of RWQCB staff. For example, a District Attorney's investigator is skilled at interviewing witnesses and collecting evidence. Such assistance can help a RWQCB determine if enforcement action is required and help with developing the evidence needed to prove the basis for enforcement.

In addition to the criminal sanctions and civil fines, the District Attorney often pursues injunctive actions to prevent unfair business advantage. The law provides that one business may not gain unfair advantage over its competitors by using prohibited tactics. A business that fails to comply with its WDRs or an enforcement order competes unfairly with other businesses that obey the law.

In cases where there is a serious violation of the CWA and additional investigatory resources are needed, the U.S. Attorney may be contacted.

Investigations by prosecutors are confidential and are generally not subject to Public Records Act disclosure. It is essential that staff working with the prosecutor or prosecutor's investigators maintain this confidentiality.

c) Civil versus Criminal Actions

Enforcement actions taken by the RWQCB are administrative or civil actions. In cases where there is reason to believe that specific individuals or entities have engaged in criminal conduct, the RWQCB may refer the case to the District Attorney, City Attorney, Attorney General, or U.S. Attorney. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment.

While criminal statutes differ, most require some type of intent or knowing behavior on the part of the violator. This intent may be described as knowing, reckless, or willful. In addition to the required intent, criminal offenses usually consist of a number of elements, each one of which

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must be proven. Determining whether the required degree of intent and each of the elements exists often involves a complex analysis. If a potential environmental criminal matter comes to the attention of staff, staff should inform RWQCB management and the RWQCB's attorney.

D. Petitions of Enforcement Actions

Persons affected by most formal enforcement actions or failures to act by a RWQCB may file petitions with the SWRCB for review of such actions or failures to act. The petition must be received by the SWRCB within 30 days of the RWQCB action. A petition on the RWQCB's failure to act must be filed within 30 days of the date the RWQCB refuses to act or within 60 days after a request has been made to the RWQCB to act. Actions taken by the Executive Officer of the RWQCB pursuant to authority delegated by the RWQCB (e.g., cleanup and abatement orders) are considered actions by the Board and are also subject to the 30-day time limit. In addition, significant enforcement actions by a RWQCB Executive Officer may be reviewed by the RWQCB at the request of the discharger. When a discharger has unsuccessfully petitioned the RWQCB and subsequently petitions the SWRCB for review, the petition to the SWRCB must be filed within 30 days of the Executive Officer's action. The SWRCB may, at any time and on its own motion, review most actions or failures to act by a RWQCB.

V. SPECIFIC RECOMMENDED ENFORCEMENT

It is the intent of the SWRCB that the following specific instances of non-compliance receive consistent enforcement responses from the SWRCB and all nine RWQCBs. These specific recommendations should be considered when senior staff and management establish the relative priority for enforcement pursuant to section I.E. of this Policy. Decisions by the SWRCB and RWQCB to deviate from these specific recommendations should be based on extenuating circumstances that are documented in the discharger/facility record (e.g., file, databases, other records).

A. Dischargers Knowingly Falsifying or Knowingly Withholding Information that is Required to be Submitted to State Regulatory Agencies

The foundation of the State's regulatory program relies on dischargers accurately, and honestly reporting information required by the Boards. This required information includes, but is not limited to: reports of waste discharge; self monitoring reports including influent and effluent quality; flow data; surface and ground water data; spills of untreated or partially treated wastewater; and technical reports. Knowingly falsifying or knowingly withholding such information that would indicate violations of requirements contained in board orders, plans and policies erodes the State's regulatory program and places the health of the public and the environment at risk. The SWRCB views these violations as very important and strongly encourages the RWQCBs to respond to any instance of falsification or withholding of required information in accordance with this policy.

The discharger is responsible for compliance with orders and reporting of required information, including violations, to the SWRCB or RWQCB. The discharger is also responsible for ensuring that any employees, agents, or contractors acting on its behalf report required information

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truthfully, accurately and on time. WDRs should require training, specific signature authorization, audits, and procedures to ensure that dischargers, including their designees and employees are providing truthful, accurate, and timely reporting of required information.

Enforcement of statutes pertaining to falsification or withholding of required information should be a high priority and considered as follows:

- (a) Initiate investigation of all instances of suspected falsification or withholding of water quality data within thirty days of becoming aware of the allegations. If the results of preliminary investigation suggest a possibility of criminal wrongdoing by the discharger, the SWRCB and RWQCB staff shall consult with management and the RWQCB's counsel to consider informing the appropriate criminal investigative agency.
- (b) Protect the confidentiality of all staff investigations of potential instances of knowingly falsifying or withholding required information. The RWQCBs shall protect the complainant's personal information such as name, address, phone numbers and employment data by providing a secure location for files about matters related to ongoing criminal investigations or licensing (e.g., treatment plant operator certification). The information in these files shall not be released to the public without consulting with the RWQCB attorney.
- (c) Forward all cases where the investigation supports the allegation of falsification or intentional withholding of water quality data to the District Attorney, Circuit Prosecutor, Attorney General or the U.S. Attorney for criminal investigation.
- (d) The SWRCB and the RWQCBs should pursue administrative actions against the discharger including assessment of civil liabilities and consideration of rescission of WDRs if there is sufficient evidence of falsification or intentional or negligent withholding of required information and the criminal investigators and/or prosecutors agree that the administrative and civil process will not interfere with, or jeopardize, the criminal investigation.
- (e) The RWQCB should implement an intensive inspection schedule (e.g., bi-monthly inspections for a period of six months) for any facility where the investigation supports the allegation of falsification or withholding of water quality data. Inspections should involve thorough review of facility water quality records, procedures and processes, logbooks, and sampling of effluent at regular intervals. Requesting the assistance of the District Attorney, Attorney General, or U.S. Attorney should be considered in complex cases.

B. Certified Wastewater Treatment Plant Operators and Licensed Underground Storage Tank Testers Knowingly Falsifying or Knowingly Withholding Information that is Required to be Submitted to State Regulatory Agencies

1. The SWRCB's Office of Operator Certification shall promptly consider suspension or revocation of the Operator Certificate, or the imposition of administrative civil liability (ACL option must be removed if AB 1664 is not signed by the Governor), of any operator who

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knowingly commits any of the following acts if doing so impacts or threatens to impact water quality:

- (a) knowingly falsifies required information submitted to the SWRCB or RWQCB;
- (b) withholds required information from the SWRCB or RWQCB;
- (c) knowingly submits false information on an application for operator certification; or
- (d) through threats, coercion, or intimidation forces others to falsify or withhold required information from the SWRCB or RWQCB. The Office of Operator Certification shall report to the SWRCB at a public meeting its decisions where formal disciplinary action has been taken against any operator for such action(s).

2. The SWRCB's Office of Tank Tester Licensing shall promptly consider suspension or revocation, or the imposition of administrative civil liability, of any licensed tank tester who knowingly commits any of the following acts if doing so impacts or threatens to impact water quality:

- (a) knowingly falsifies required information submitted to the SWRCB;
- (b) withholds required information from the SWRCB;
- (c) knowingly submits false information on an application for license, or
- (d) through threats, coercion, or intimidation forces others to falsify or withhold required information from the SWRCB.

C. Failure to Submit Reports and Submittal of Inadequate Reports

As stated above, the State's water quality regulatory program relies on dischargers to report information specified in the WDR or in another enforceable order. If the discharger fails to submit a report, or submits a report that is inadequate (i.e., so deficient or incomplete as to impede the review of the status of compliance) the RWQCB should notify the discharger of the violation. At a minimum, the RWQCB should require submission of the information pursuant to California Water Code section 13267 if the discharger does not correct the violation within 30 days of the notification, and should issue an ACL if the discharger does not correct the violation within 60 days of the notification.

D. Mandatory Minimum Penalties for NPDES Violations

Mandatory penalty provisions are required by California Water Code section 13385(h) and (i) for specified violations of NPDES permits. California Water Code section 13385(h) and (i) require that a mandatory minimum penalty of \$3,000 be assessed by the RWQCB for all serious violations. A serious violation is any waste discharge that exceeds the effluent limit for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more. (See Tables III-1 and III-2). As an alternative to assessing \$3,000 for the first serious violation in a six-month period, the RWQCB may require the discharger to spend an amount equal to the penalty for a SEP or to develop a pollution prevention plan (PPP). An exception to the imposition of mandatory minimum penalties is an intentional act of a third party which could not have been prevented or avoided by the exercise of due care or foresight by the discharger. Such intentional acts are fact specific and should be evaluated on a case by case basis.

If the RWQCB allows the discharger to prepare a PPP pursuant to California Water Code section 13263.3 or an SEP in lieu of paying \$3,000 for the first violation, the RWQCB must wait until the discharger has not had any serious violations for six months before it can allow the

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discharger to prepare an SEP or PPP in lieu of the mandatory penalty for additional serious violations. Any SEP or PPP allowed pursuant to California Water Code section 13263.3 should only consist of measures that go above and beyond the existing obligation of the discharger.

The RWQCB is required by California Water Code section 13385(i) to assess mandatory minimum penalties of \$3,000 per non-serious violation, not counting the first three violations. A non-serious violation occurs if the discharger does any of the following four or more times in any period of six consecutive months:

- (a) exceeds WDR effluent limitations;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) exceeds a toxicity discharge limitation where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.

The six-month time period is calculated as a "rolling" 180 days.

The intent of these portions of the California Water Code is to assist in bringing the State's waters into compliance with WDRs. RWQCBs should issue mandatory minimum penalties within seven months of the time that the violations qualify as MMP violations, or sooner if the total mandatory penalty amount is \$30,000 or more. This will encourage the discharger to correct the violation in a timely manner.

A single operational upset which leads to simultaneous violations of one or more pollutant parameters shall be treated as a single violation. EPA defines "single operational upset" as "an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one CWA effluent discharge pollutant parameter. Single operational upset does not include... noncompliance to the extent caused by improperly designed or inadequate treatment facilities" ("Issuance of Guidance Interpreting Single Operational Upset" Memorandum from the Associate Enforcement Counsel, Water Division, U.S.EPA, September 27, 1989.). The EPA Guidance further defines an "exceptional" incident as a "non-routine malfunctioning of an otherwise generally compliant facility." Single operational upsets include such things as upset caused by a sudden violent storm, a bursting tank, or other exceptional event and may result in violations of multiple pollutant parameters. The discharger has the burden of demonstrating a single operational upset occurred. The RWQCB shall apply the above EPA Guidance in determining if a single operational upset occurred. A finding that a single operational upset has occurred is not a defense to liability, but may affect the number of violations.

California Water Code section 13385(j) includes several limited exceptions to the mandatory minimum penalty provisions. The primary exceptions are for discharges that are in compliance with a cease and desist order or time schedule order under narrowly specified conditions. California Water Code section 13385(k) provides an alternative to assessing mandatory minimum penalties against a POTW that serves a small community, "as defined by subdivision (b) of Section 79084". Under this alternative, the RWQCBs may require the POTW to spend an amount equivalent to the mandatory minimum penalty toward a compliance project that is designed to correct the violations.

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California Water Code section 79084 defines "small community" as a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the board.

It is the policy of the SWRCB that "rural county" means a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine.

It is the policy of the SWRCB that "financial hardship" means that the median annual household income for the community is less than 80% of the California median annual household income. It is the policy of the SWRCB that "median annual household income" means the median annual household income of the community based on the most recent census data or a local survey approved by the SWRCB or RWQCB. If a community believes that the census data does not represent the community, and the community is not a Census Designated Place, a City or a Town, an income survey must be conducted in accordance with guidelines published by the United States Department of Agriculture, Rural Economic and Community Development Service. A subdivision of state government should not be considered a small community with hardship.

The following counties qualify as rural counties with a financial hardship		
Alpine	Inyo	Plumas
Calaveras	Kings	Sierra
Colusa	Lake	Siskiyou
Del Norte	Lassen	Tehama
Glenn	Mariposa	Trinity
Humboldt	Mendocino	Tuolumne
Imperial	Modoc	
Based on 1990 Census Data		

E. Failure To Pay Annual Fees

California Water Code section 13260 requires that each person prescribed WDRs shall pay an annual fee, except confined animal feeding or holding operations, which have a one-time \$2,000 fee and solid waste landfills, which are not subject to WDR fees pursuant to an exclusion in Public Resources Code section 48004(b). Failure to pay the fee when requested is a misdemeanor (and a priority violation) and may be subject to an ACL imposed by the RWQCB of up to \$1,000 per day pursuant to California Water Code section 13261.

If the annual fee is not paid within 30 days of the due date on the original invoice, the SWRCB staff shall issue a Demand Letter for the annual fee which informs the recipient of the amount due and states that non-payment of the fee within 30 days could result in one or more of the following:

- (a) an ACL imposed by the RWQCB not to exceed \$1,000 per day;
- (b) a civil liability imposed by the superior court not to exceed \$5,000 per day;
- (c) rescission of existing WDRs; or

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- (d) prosecution as a misdemeanor.

If the fee is not paid within 30 days of the date of the Demand Letter, the SWRCB staff shall issue a Notice of Violation and an ACL Complaint should be issued by the RWQCB Executive Officer. The amount of an ACL for nonpayment of fees should reflect an escalation of liability if there is a past history of failure to pay fees. In addition to the ACL, the discharger remains responsible for payment of the annual fees.

F. Failure To Pay Administrative Civil Liabilities

The SWRCB should pursue collection of unpaid administrative civil liabilities. The California Water Code states that ACLs shall be paid within 30 days of the RWQCB's adoption of an ACL Order unless the petitioner files a petition for review under California Water Code section 13320. When a petition is filed with the SWRCB, payment is extended during the SWRCB review of the petition and shall be paid within 30 days of the SWRCB's decision on the petition unless the petitioner seeks judicial review pursuant to California Water Code section 13330. If the petitioner fails to pay the liability and fails to seek judicial review within 30 days of the SWRCB action, the SWRCB may file for a judgment to collect the ACL pursuant to California Water Code section 13328. Application is made to the appropriate court in the county in which the liability was imposed, generally within 60 days of the failure to pay.

As an alternative to Section 13328, the SWRCB or RWQCB may pursue judicial collection for failure to pay an ACL imposed for CWA violations pursuant to California Water Code section 13385. After the time to file for judicial review has expired, the California Water Code provides that the Attorney General upon request must petition the appropriate court to collect the liability. The person failing to pay the liability on a timely basis is required to pay, in addition to that penalty, interest, attorney's fees, cost for collection proceedings and a quarterly nonpayment fee for each quarter during which the failure to pay persists. The nonpayment fee is equal to 20 percent of the aggregate amount of the person's liability and the nonpayment fees unpaid at the beginning of each quarter.

G. Acute and Chronic Toxicity and Public Health

Where any violation can be shown to be the result of a discharger's failure to exercise normal care in handling, treating, or discharging waste, and that failure has resulted in acute or chronic toxicity to fish or wildlife and/or a public health threat, the SWRCB or RWQCB should consider assessing civil liability.

Acute toxicity is toxicity that is severe enough to cause mortality or extreme physiological disorder rapidly (typically within 48 or 96 hours). Chronic toxicity is the toxicity impact that lingers or continues for a relatively long period of time, often 1/10 of a lifespan or more. Chronic effects include, but are not limited to mortality, stunted growth, or reduced reproduction rates.

VI. SPECIAL CONSIDERATIONS

A. Violations at Federal Facilities

The CWA and the Resource Conservation and Recovery Act contain limited waivers of sovereign immunity. Due to sovereign immunity, the State cannot assess penalties or liabilities against federal agencies for past violations (i.e., no ACLs) under most circumstances. One significant exception is provided by the Federal Facilities Compliance Act of 1992 (42 USCA 6901 et seq), which allows the States to penalize federal agencies, under specified circumstances, for violations of state hazardous waste management requirements. In addition, under California Water Code section 13308, a RWQCB may seek an ACL, up to a maximum of \$10,000 per day of violation, against federal facilities for any violation of a time schedule order. The time schedule order issued pursuant to Section 13308 prescribes a daily civil penalty that is based upon the amount necessary to achieve future compliance with an existing enforcement order. The RWQCB should take the action administratively, but if the federal government declines to pay, the RWQCB must refer the matter to the Attorney General's Office to file an action in state or federal court.

B. Integrated Enforcement

SWRCB and RWQCB staff should cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. The aggregate enforcement authorities of the Boards and Departments of the California Environmental Protection Agency (Cal/EPA) and the Resources Agency should be coordinated to eliminate *inconsistent and inappropriately duplicative* efforts. Where appropriate and as resources allow, RWQCB staff should take the following steps to assist in integrated enforcement efforts:

- (a) participate in multi-agency enforcement coordination;
- (b) share enforcement information;
- (c) participate in cross-training efforts;
- (d) participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges; and
- (e) where other regulatory agencies have jurisdiction regarding site remediation, the RWQCB should *inform and consult with those agencies to ensure that remedial activities will satisfy the aggregate requirements for all.*

1. Solid Waste Facilities

Where a RWQCB has issued, or is likely to issue an enforcement action to a solid waste facility that is also under the jurisdiction of the Integrated Waste Management Board, the RWQCB must comply with California Public Resources Code sections 45016, 45019 and 45020.

2. Hazardous Waste Facilities

The role of the RWQCBs regarding enforcement at "offsite hazardous waste treatment, storage, or disposal activities and onsite activities which are required to have a Resource Conservation and Recovery Act (RCRA) Subtitle C permit" was prescribed by the 1995 Cal/EPA "Framework for the Implementation of Health and Safety Code Section 25204.6(b) (SB 1082)". The

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RWQCB issues WDRs and monitoring programs that are no less stringent than RCRA requirements. The Department of Toxic Substances Control incorporates those WDRs by reference into its permit and carries out all oversight responsibilities associated with hazardous waste facilities, including oversight of groundwater monitoring and other requirements in WDRs. The Department of Toxic Substances Control must coordinate enforcement actions for violation of the WDRs with the RWQCB before initiation of enforcement.

Under RCRA Subtitle C Authorization, corrective action is normally implemented pursuant to the authority of the Department of Toxic Substances Control. The Framework, however, identified over 60 hazardous waste facilities where the RWQCB acts as lead agency for corrective action oversight of existing releases. RWQCBs shall consult with the Department of Toxic Substances Control to ensure that corrective action at those facilities is at least RCRA equivalent.

3. Oil Spills

Responses to oil spills to marine or estuarine waters should be coordinated through the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR). Staff shall consult with the RWQCB management and the RWQCB attorney to determine appropriate action. Staff should assist in an investigation by providing documentation, sampling, etc. If the discharger has not prepared a spill prevention plan or the plan is not acceptable to the RWQCB, the RWQCB should request a technical report under California Water Code sections 13267 or 13383. Major oil spills, those in excess of 10,000 gallons, usually involve a number of governmental jurisdictions. Such spills should be brought to the RWQCB for consideration of referral to the Attorney General for recovery of civil liability and other remedies.

Oil spills to inland (fresh) waters are not within the jurisdiction of OSPR. If formal enforcement actions are taken, they are usually enforced by either the county District Attorney under either the Fish and Game Code or Health and Safety Code, or by the RWQCB under the California Water Code. In general, if the District Attorney is interested in pursuing the case, the RWQCB should consult with the District Attorney before pursuing its own enforcement action to avoid any potential double jeopardy issues. However, staff should always request that any settlement by the District Attorney include recovery of staff costs and require any actions that appear necessary to prevent recurrence of a spill and/or to mitigate damage to the environment. If a District Attorney is the enforcement lead, RWQCB staff should generally focus their efforts on cleanup and prevention of future spills.

4. Hazardous Waste Spills

Hazardous wastes are those meeting the criteria specified in Title 22, Division 4.5, Chapter 11, California Code of Regulations. RWQCB staff should coordinate enforcement actions involving hazardous waste spills with the California Department of Toxic Substances Control and/or any local or county hazardous waste program. Spills constitute unlawful disposal of hazardous waste pursuant to the Health and Safety Code. RWQCB staff should consider referring spills of all but the smallest amounts to the appropriate District Attorney. In addition, the RWQCB should consider assessing an ACL unless the spill was very small or limited in impact. Due to the nature of the materials discharged, the RWQCB should consider assessing an ACL in an amount at or near the legal maximum. If the California Department of Toxic Substances Control is

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seeking penalties or damages through a referral to the Attorney General, the RWQCB should consider joining that action in lieu of assessing an ACL.

Large spills of hazardous waste or hazardous substances, 10,000 gallons or more, should be treated like large oil spills, and should be considered for referral to the Attorney General. If appropriate, RWQCB staff should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted. In addition, such spills may constitute the unlawful disposal of hazardous waste pursuant to the Hazardous Waste Control Act (Health and Safety Code section 25100 et seq.) and, in most cases, should be investigated in conjunction with the California Department of Toxic Substances Control.

C. Violations at Waste Water Treatment Facilities that are Operating at 80% or more of Design Capacity

In addition to any formal or informal response to a violation at a waste water treatment facilities that is operating at 80% or more of its permitted capacity, the RWQCB should require, pursuant to Water Code section 13300 or section 13301, a detailed time schedule of specific actions the discharger proposes to take in order to correct or prevent a violation of requirements.

VII. Monetary Assessments in Administrative Civil Liabilities (ACLs)

The following provisions apply to all ACLs except mandatory minimum penalties required pursuant to California Water Code sections 13385(h) and (i) and penalties pursuant to California Water Code section 13399.33. Mandatory minimum penalties are discussed in Section V. C. of this Policy.

The SWRCB or RWQCB must make several important decisions in specifying the conditions of an ACL. First, the Board must determine the amount of the liability considering the factors in law. The factors that must be considered are included in the stepwise approach presented later in this section. Next, the Board must consider whether the discharger should be allowed to satisfy some or all of that monetary assessment by completing or funding one or more supplemental environmental projects (SEPs). SEPs are discussed in Section VIII. Finally, when the underlying problem that caused the violation(s) has not been corrected, the Board may include provisions in the ACL to encourage future work by the discharger to address problems related to the violation. The Board does this by including an additional monetary assessment against the discharger that is based on the cost of returning to and/or maintaining compliance (a delayed cost that represents an economic benefit) and that will be suspended pending the satisfactory completion of the specified Compliance Projects (CPs). CPs are discussed in greater detail in Section IX.

The California Water Code requires that the determination of the amount of the liability include the consideration of a number of factors. Prior to issuing a complaint the RWQCB Executive Officer should consider each factor. This consideration shall be documented in the ACL Complaint or in a staff report. If the RWQCB issues an ACL Order, the order shall contain findings explaining the Board's consideration of the factors. The documentation of elements such as the economic benefit, staff costs and avoided costs are necessary for the appropriate distribution of the total liability.

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The California Water Code lists a number of factors that must be taken into consideration when setting ACLs. California Water Code section 13327, governing ACL amounts for a wide variety of violations, states that:

[The Board] shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require.

California Water Code section 13385(e), governing ACL amounts for violations subject to the CWA, requires consideration of different factors stating that:

[The Board] shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

The California Water Code does not specify how these factors are to be weighed or combined when setting the actual dollar amount of an ACL. This section describes the procedure to be used by SWRCB and RWQCB staff to develop a recommendation for the amount of the monetary assessment in an ACL based on the facts of the case. The steps in the procedure are shown in Table VII-1. This procedure applies to ACLs issued under both California Water Code section 13327 and California Water Code section 13385(e). Staff should carefully document each step in the ACL Complaint, ACL Order or the staff-report for the ACL. The manner in which the SWRCB or RWQCB considers these factors for any given situation is up to the discretion of the Board within the limits of statutory maximums and minimums described in Section VII.I.

Table VII-1. Procedure to set ACL amounts

Step	Procedure
A. Initial Liability	Set an initial liability based on the extent and severity of the violation and the sensitivity of the receiving water. An initial liability should also be calculated for non-discharge violations.
B. Beneficial Use Liability	If possible, estimate the dollar value of any impacts of the violation on beneficial uses of the affected waters.
C. Base Amount	The Base Amount is a single amount that is a result of combining the figures derived from the first 2 steps. For many ACLs, the base amount will simply be the initial liability from step A, because the calculation of the beneficial use liability may not be appropriate. The base amount reflects the extent and severity of the violation and its impact on beneficial uses.
D. Adjustment for discharger's conduct	Determine factors to adjust the Base Amount with respect to the conduct of the discharger's history of violations and other considerations. Apply these factors to the Base Amount from step C.

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E. Adjustment for other factors	Determine whether any other factors should be taken into consideration when setting the ACL amount. If appropriate, adjust the figure from Step D to include these factors.
F. Economic Benefit	Estimate the economic benefit to the discharger. Economic benefit is any savings or monetary gain derived from the acts that constitute the violation. Add the economic benefit to the amount in step E.
G. Staff Costs	Estimate the SWRCB and RWQCB staff costs resulting from the violation. Add this cost to the figure determined from steps A through F.
H. Adjustment for ability to pay	If appropriate, increase or reduce the figure from Steps A through G with respect to the discharger's ability to pay and ability to continue in business.
I. Check against statutory limits	Check the figure from steps A through H against the statutory maximum and minimum limits.

A. Initial Liability

Set an Initial Liability based on factors related to the discharge - the nature, circumstances, extent, and gravity of the violation, the degree of toxicity of the discharge, and the susceptibility of the discharge to cleanup or abatement. This may include the consideration of information such as the pollutants contained in a discharge, the volume of the discharge, the sensitivity of the receiving water and its beneficial uses, threats to water quality and aquatic life, threats to human health and the volume of the receiving water relative to the discharge. The way that this amount is calculated will depend on the type of violation. For spills, effluent limitation violations, and similar violations, the initial water quality liability can be based on a per-gallon and/or per day charge.

For non-discharge violations such as late reports, failure to submit reports, and failure to pay fees, this initial water quality liability should be set considering the impact on the RWQCB's ability to effectively administer its water quality programs in addition to the above factors. These impacts include, but are not limited to, additional RWQCB staff costs beyond the normally required effort and the potential consequences of delayed clean-up, coordination, mitigation and enforcement response by the RWQCB due to late or omitted reports. For late or missing reports, the initial water quality liability amount could also consider impacts to water quality caused by the delay or failure. Timely follow-up on these violations acts as a deterrent to the violator and others and supports those dischargers who readily commit the resources necessary to comply with similar requirements.

B. Beneficial Use Liability

Review the designated beneficial uses of the receiving water and determine whether the violation has resulted in any quantifiable impacts related to beneficial uses. Quantitative information may only be available for a limited number of impacts such as beach closure days, but where readily available the RWQCB should consider it.

C. Base Amount

The Base Amount is the Initial Liability, the Beneficial Use Liability or a combination of the Initial Liability and the Beneficial Use Liability. When it is possible to calculate the Beneficial

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Use Liability, the RWQCBs should assess the extent to which the Beneficial Use Liability represents the entire harm resulting from the violation. The RWQCBs may, at their discretion, find it appropriate to combine the amounts from Steps A and B in a way that reflects the significance of the impacts quantified in Step B relative to the total impacts of the violation.

The way that the Initial Liability and the Beneficial Use Liability should be combined will depend on how the violation harms the beneficial uses of the receiving waters and the extent to which this harm has been quantified. For example, a sewage spill will typically result in a wide variety of impacts, such as fish kills, degradation of wildlife habitat, and beach closures. For a sewage spill to the ocean in an urban area with high beach use, impacts on beach recreation may represent most of the harm resulting from the spill. If it is possible to estimate the value of the lost beach recreation in step B, it is appropriate to take this value and add it to some portion of the Initial Liability amount to reflect the total impact.

For a sewage spill contaminating a beach in a remote area, where beach use is relatively low, impacts on beach use may be less important than other impacts, such as degradation of wildlife habitat and harm to a pristine environment. In such a case, the combined liability (steps A and B) may be based more heavily on the Initial Liability, because the impacts quantified in step B may be less significant relative to the entire impacts of the violation.

D. Conduct of the Discharger

The Base Amount from Step C must then be adjusted to reflect the conduct of the discharger. This adjustment reflects factors such as the degree of culpability of the discharger, any voluntary cleanup efforts undertaken and the discharger's history of violations. This adjustment can be made by determining values for the four factors in Table VII-2, and using them to determine a conduct factor that is applied to the Base Amount. The RWQCB may apply the various conduct factors using percentages. A percentage less than 100 percent may be appropriate for a discharger that made exemplary efforts such as voluntary cleanup. Percentages greater than 100 percent are appropriate for dischargers that demonstrated less than exemplary behavior such as delaying notification of a spill. Large multiplier percentages 200 - 500 percent may be appropriate for cases involving falsification of data or other deliberate acts or in cases where the discharger disregarded warnings from Board staff or other parties about the threat of discharge.

This calculation is:

$$ACL = \text{Base Amount} \times CF1 \times CF2 \times CF3 \times CF4$$

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Table VII-2. Conduct Factors to adjust ACLs

Factor	Adjustment for
Culpability Factor (CF1)	Discharger's degree of culpability regarding the discharge. Higher ACL amounts should be set for intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.
Notification Factor (CF2)	Extent to which the discharger reported the violation as required by law or regulation.
Cleanup and Cooperation Factor (CF3)	Extent to which the discharger cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken.
History of violations factor (CF4)	Prior history of violations

In considering the discharger's prior history of violations careful consideration should be given to whether or not past violations that were not subject to previous ACLs should be included in the current ACL. Where there is a pattern of violations, the assessed liability could be substantially affected when considerations such as aggregate impacts and economic benefit are included.

E. Other Factors

If the RWQCB believes that the amount determined using Steps A through D is inappropriate, the amount may be adjusted. Examples of circumstances warranting an adjustment under this step are:

- (a) The discharger publicized the violation and the subsequent enforcement actions in a way that encourages others to violate water quality laws and regulations.
- (b) The threat to human health or the environment was so egregious that the preceding factors did not, in the opinion of the RWQCB, adequately address this violation.
- (c) The discharger has provided, or RWQCB staff has identified other pertinent information not previously considered that indicates a higher or lower amount is justified.
- (d) A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular socioeconomic group.

If such an adjustment is made, the reasons for the extent and direction of the adjustment must be noted in the administrative record.

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F. Economic Benefit

Economic benefit is any savings or monetary gain derived from the acts that constitute the violation. In cases when the violation occurred through no fault of the discharger and it was demonstrated that the discharger exercised due care, there may be no economic benefit. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as Best Management Practices (BMPs)) or did not take other measures needed to prevent the violations, economic benefit should be estimated as follows:

- (a) Determine the actions that could have been taken to avoid the violation. Needed actions may have been capital improvements to the discharger's treatment system, implementation of adequate BMPs or the introduction of procedures to improve management of the treatment system.
- (b) Determine when these actions could have been taken in order to avoid the violation.
- (c) Estimate the type and cost of these actions. There are two types of costs that should be considered, delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g. for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices, etc) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of non-compliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- (d) Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on the delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of non-compliance. This calculation should be done using the most recent version of USEPA's BEN⁷ computer program (the most recent

⁷ USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance. This change is prospective, including changes to the incorporated provisions as the changes take effect.

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version is accessible at <http://www.swrcb.ca.gov>) unless the SWRCB or RWQCB determines, or the discharger demonstrates to the satisfaction of the SWRCB or RWQCB, that an alternate method is more appropriate for a particular situation.

- (e) Determine whether the discharger has gained any other economic benefits. These may include income from continuing in production when equipment used to treat discharges should have been shut down for repair or replacement.
- (f) The RWQCBs should not adjust the economic benefit for expenditures by the discharger to abate the effects of the discharge.

The economic benefit shall be added to the adjusted base amount calculated from the previous steps unless the RWQCB can demonstrate why this is not appropriate. This demonstration shall be made in the staff report and the ACLC or ACL Order shall include a finding that supports the demonstration.

G. Staff Costs

Staff costs may be one of the "other factors that justice may require", and should be estimated when setting an ACL. Staff should estimate the cost that investigation of the violation and preparation of the enforcement action(s) has imposed on government agencies. This can include all activities of a progressive enforcement response that results in the ACL. Staff costs should be added to the amount calculated from the previous steps.

H. Ability to Pay and Ability to Continue in Business

The procedure in Steps A through G gives an amount that is appropriate to the extent and severity of the violation, economic benefit and the conduct of the discharger. This amount may be reduced or increased based on the discharger's ability to pay.

The ability of a discharger to pay an ACL is limited by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, it may be reduced on the grounds of ability to pay. The RWQCBs may also consider increasing an ACL to assure that the enforcement action would have a similar deterrent effect for a business or public agency that has a greater ability to pay.

1. Businesses

Normally, an ACL should not seriously jeopardize the discharger's ability to continue in business. The discharger has the burden of proof of demonstrating lack of ability to pay and must provide the information needed to support this position. This adjustment can be used to reduce the ACL to the highest amount that the discharger can reasonably pay and still bring operations into compliance. The downward adjustment for ability to pay must be made only in

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cases where the discharger is cooperative and has the business ability and the intentions to bring operations into compliance within a reasonable amount of time. If the violation occurred as a result of deliberate or malicious conduct, or there is reason to believe that the discharger can not or will not bring operations into compliance, the ACL must not be adjusted for ability to pay.

The RWQCBs may also consider increasing the ACL because of a business's ability to pay. For example, if the RWQCB determines that the proposed amount is unlikely to have an appropriate deterrent effect on an uncooperative discharger with a greater ability to pay, the amount should be increased to the level that the Board determines is necessary to assure future compliance.

2. Public Agencies

ACLs paid by cities, sanitation districts and other public agencies are ultimately paid by their service populations, usually by taxes or user fees. In order to assure a similar deterrent effect for similar violations, the RWQCB may consider decreasing the total liability for cases of hardship or increasing the ACL if the agency is uncooperative or has a poor compliance history and has a large or affluent service population.

I. Statutory Maximum and Minimum Limits

The ACL must be checked against the statutory maximum and minimum limits to ensure that it is in compliance with the appropriate section of law. The maximum amount for an ACL issued under California Water Code section 13385 is \$10,000 for each day in which a violation occurs plus \$10 per gallon for amounts discharged but not cleaned up in excess of 1,000 gallons. The statutory maximum amounts for ACLs issued under California Water Code sections 13261, 13350, and 13399.33 are summarized in Table IV-1.

California Water Code section 13385, which applies to discharges regulated pursuant to the CWA, was amended effective January 1, 2000, to state that "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation". Therefore, for such violations occurring on or after January 1, 2000, the minimum amount for an ACL is the economic benefit.

It is the policy of the SWRCB that all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

VIII. Supplemental Environmental Projects (SEPs)

The SWRCB or RWQCB may allow a discharger to satisfy some or all of the monetary assessment imposed in an ACL Complaint or Order completing or funding one or more SEPs. SEPs are projects that enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger. California Water Code section 13385(h)(3) allows limited use of SEPs associated with mandatory minimum penalties. California Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. In addition, the SWRCB supports the inclusion of SEPs in other ACL actions, so long

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as these projects meet the criteria specified in this section. These criteria should also be considered when the SWRCB or RWQCB is negotiating SEPs as part of the settlement of civil actions brought in court.

A. Process for Project Selection

Any public or private entity may submit a proposal to the SWRCB or RWQCB for an SEP that they propose to fund through this process. Each RWQCB shall evaluate each proposal and maintain a list of candidate SEPs that satisfy the general criteria in subsection C of this section. The list of candidate SEPs shall be made available on the Internet along with information on completed SEPs and SEPs that are in-progress. The discharger may select a SEP from the list of candidate SEPs or may propose a different SEP that satisfies the general criteria for SEPs. When the discharger submits a proposal for a SEP, it should include draft provisions for a contract to be executed between the discharger(s) who will be funding the project and the entity performing the SEP if different from the discharger. The discharger should be requested to provide information regarding the additional selection criteria in subsection D of this section and shall demonstrate to the satisfaction of the Board that the selected or proposed SEP also satisfies the Nexus requirements in subsection E of this section.

B. ACL Complaints and ACL Orders allowing SEPs

All ACL Complaints and Orders that include suspended liabilities for SEPs shall include or reference detailed specifications for evaluating the timely and successful completion of the SEP. The ACL Complaint or Order shall contain or reference specific performance standards, and identified measures or indicators of performance. The ACL Complaint or Order shall specify that the discharger is required to meet these standards and indicators.

Any portion of the liability that is not suspended must be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The ACL Complaint or Order shall state that failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and the suspended amounts will become immediately due and payable.

The ACL Complaint or Order shall either include a time schedule or reference a TSO with a single or multiple milestones and the amount of liability that will be permanently suspended upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP. The Complaint or Order should state that, if the final total cost of the successfully completed SEP is less than the amount suspended for completion of the SEP, the discharger must remit the difference to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The Complaint or Order should state that if any SEP milestone is not completed to the satisfaction of the Executive Officer by the date of that milestone, the previously suspended liability associated with that milestone shall be immediately due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute. It is the discharger's responsibility to pay the amount(s) due, regardless of any agreements between the discharger and any third party contracted to implement the project. Therefore, the discharger may want to ensure that the third party is sufficiently bonded.

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Since ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB, the RWQCB may want to include a clause in the ACL Order that reserves its jurisdiction to modify the time schedule if it, or its Executive Officer, determines that the delay was beyond the reasonable control of the discharger. If the RWQCB fails to reserve jurisdiction for this purpose, the time schedule in the ACL Order can only be modified by the SWRCB pursuant to California Water Code section 13320.

The ACL Complaint or Order shall include provisions for project tracking, reporting, and oversight:

- (a) The ACL Complaint or Order shall require the discharger to provide the SWRCB or RWQCB progress reports, as appropriate, and shall require a final report, certifying the completion of the SEP.
- (b) The ACL Complaint or Order shall require the discharger to provide the SWRCB or RWQCB a post-project accounting of expenditures.
- (c) The SWRCB or RWQCB shall not manage or control funds that may be set aside or escrowed for performance of a SEP. Nor may the SWRCB or RWQCB retain authority to manage or administer the SEP. The SWRCB or RWQCB may require the discharger to hire an independent management company or other appropriate third party, which reports solely to the SWRCB or RWQCB, to audit implementation of the SEP. The company should evaluate compliance with performance measures and report to the SWRCB or RWQCB about the timely and successful completion of the SEP. Alternatively, as a condition of the SEP, the SWRCB or RWQCB may require the discharger to pay into the Cleanup and Abatement Account or other fund or account as authorized by statute an amount equal to the estimated cost for oversight of the SEP by the SWRCB or RWQCB.
- (d) The ACL Complaint or Order should require that, whenever the discharger publicizes an SEP or the results of the SEP, it will state in a prominent manner that the Project is being undertaken as part of the settlement of an enforcement action.

C. General SEP Qualification Criteria

All SEPs approved by the SWRCB or RWQCB must satisfy the following general criteria:

- (a) An SEP should only consist of measures that go above and beyond the obligation of the discharger. For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should directly benefit or study ground water or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to:
 - (i) monitoring programs;
 - (ii) studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
 - (iii) water or soil treatment;
 - (iv) habitat restoration or enhancement;

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- (v) pollution prevention or reduction;
 - (vi) wetlands protection, restoration or creation;
 - (vii) conservation easements;
 - (viii) stream augmentation;
 - (ix) reclamation;
 - (x) public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.);
 - (xi) watershed assessment (e.g., citizen monitoring, coordination and facilitation);
 - (xii) watershed management facilitation services; and
 - (xiii) non-point source program implementation.
- (c) The SEP shall not directly benefit the SWRCB or RWQCB functions or staff. For example, SEPs shall not be gifts of computers, equipment, etc. to the SWRCB or RWQCB.
- (d) The SEP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity (e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger's project(s).

D. Additional SEP Qualification Criteria

The following additional criteria should be evaluated by the SWRCB and RWQCB during final approval of SEPs proposed by the discharger:

- (a) The SEP should, when appropriate, include documented support by other resource agencies, public groups and affected persons.
- (b) The SEP should, when appropriate, document that the project complies with the California Environmental Quality Act.
- (c) Regionwide use/benefit - Some projects may benefit the specific geographic area yet still provide added value regionwide or even statewide. For example, development of a spill prevention course could benefit not just the local area but the whole region or state if properly packaged and utilized. Likewise, a monitoring program for a particular water body could also provide information that staff could use in assessing other discharges, spills, 401 certifications or flood control activities in a river. Projects, which provide the SWRCB or RWQCB with added value, are encouraged.
- (d) Combined funding - Some projects use seed money to create a much greater or leveraged impact. Often other agencies will contribute staff time, laboratory services, boat use, or other services as part of a monitoring project. While the applicant may propose to spend hard money on equipment or materials, they may be donating expertise and labor to accomplish a much larger project. Matching funds, in kind services and leveraged projects are encouraged.

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- (e) Institutional stability and capacity - The RWQCB shall consider the ability of the discharger or third party contractor to accomplish the work and provide the products and reports expected. This criterion is especially important when a Board receives money as the result of a settlement and must then select and fund projects proposed from many sources.
- (f) Projects that involve environmental protection, restoration, enhancement or wetlands creation should include requirements for monitoring to track the long-term success of the project.

E. Nexus Criteria

An SEP must have a nexus (connection or link) between the violation(s) and the SEP. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. An SEP must meet one or more of the following criteria. SEP approval is more likely for projects meeting more criteria.

Geographic Nexus - The proposed project should have a geographic link or nexus with the area where the water quality problem or violation occurred. For example, a spill to a river might require a plan to improve habitat or fish populations in the river in the general area of the spill. Work in a tributary watershed might be appropriate depending on the circumstances, however, work in a far different part of the region or state would likely not meet the geographic nexus criteria.

Spill Type or Violation - The proposed project should be related to the specific spill type or violation. For example, an SEP for a sewage spill ACL could include holding spill prevention workshops for other dischargers in the general area (both a geographic and violation type nexus). The workshops should go beyond what is necessary just to address mandatory work, equipment, and improvements required to correct the nature of the violation.

Beneficial use protection - Where specific beneficial uses were affected by the violation, it is appropriate to design SEPs that address protection and improvement of those uses. Where fish populations and habitats are affected, efforts to improve habitats and populations would be ideal. Water quality monitoring, including flows, channel morphology, and habitat characteristics would be appropriate projects. In this case, the nexus is between the type of violation and the specific beneficial uses impacted. It is also important to keep endangered species issues in focus and to consult with the Department of Fish and Game and US Fish and Wildlife Service about impacts of violations on these species and possible SEPs.

IX. Compliance Projects (CPs)

A CP is a project that is designed to address problems related to the violation and bring the discharger back into compliance in a timely manner.

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A. CPs under California Water Code Section 13385(k)

In lieu of assessing all or a portion of a mandatory minimum penalties against a POTW serving an eligible small community, the SWRCB or RWQCB may, pursuant to California Water Code section 13385 (k), require that the POTW to spend an equivalent amount toward the completion of a CP. CPs must be proposed by the POTW and the SWRCB or RWQCB must find all of the following:

- (a) The CP is designed to correct the violations within five years;
- (b) The CP is in accordance with this Enforcement Policy; and
- (c) The POTW has demonstrated that it has sufficient funding to complete the CP.

It is the policy of the SWRCB that the following conditions shall apply to Compliance Projects under California Water Code section 13385(k):

- (d) The amount of the penalty suspended shall not exceed the cost to return to and/or maintain future compliance.
- (e) CPs shall also comply with the general conditions for CPs specified in subsection C of this Section.

B. CPs in other ACLs

If the underlying problem that caused the violation(s) has not been corrected, the cost of returning to and/or maintaining compliance constitutes a delayed cost (and thus an economic benefit) until the necessary improvements are actually implemented. Under these circumstances, the RWQCB may include in the ACL an **additional** monetary assessment against the discharger that is based on the delayed cost and suspend that portion of the liability pending the satisfactory completion of a CP.

It is the policy of the SWRCB that the following conditions shall apply to Compliance Projects in all ACLs except ACLs under California Water Code section 13385(k):

- (a) The amount of the assessment suspended shall not exceed the **additional** portion of the monetary assessment that was based on the discharger's economic benefit from the delayed costs.
- (b) Either the RWQCB or the discharger may recommend specific CPs that could be included in the ACL action.
- (c) CPs shall also comply with the general conditions for CPs specified in subsection C of this Section.

C. General Conditions for all CPs

The following general conditions apply to all CPs:

- (a) CPs may include, but are not limited to: construction of new facilities; upgrade or repair of existing facilities; conducting water quality investigations or monitoring; operating a cleanup system; adding staff; training; studies; and the development of operation, maintenance and/or monitoring procedures.
- (b) CPs should be designed to bring the discharger back into compliance in a timely manner and/or prevent future noncompliance.

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- (c) A CP is a project that the discharger is otherwise obligated to perform independent of the ACL itself.
- (d) CPs shall have clearly identified project goals, costs, milestones, and completion dates and these shall be specified in the ACL action.
- (e) CPs that will last longer than one year shall have at least annual reporting requirements.
- (f) If the discharger completes the CP to the satisfaction of the RWQCB by the specified date, the suspended amount is permanently suspended.
- (g) If the CP is not completed to the satisfaction of the RWQCB on the specified date the amount suspended becomes due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute.
- (h) The ACL Complaint or Order shall clearly state that payment of the previously suspended amount does not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.

Since ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB, the RWQCB should include a clause in the time schedule for completing CPs. Such clause should reserve the RWQCB's jurisdiction to modify the time schedule if it, or its Executive Officer, determines that the delay was beyond the reasonable control of the discharger. If the RWQCB fails to reserve jurisdiction for this purpose, the time schedule in the ACL Order can only be modified by the SWRCB pursuant to California Water Code section 13320. Another option that allows some flexibility in the time schedule for a CP is for the Board to adopt a CAO or a CDO at the same time it adopts the ACL Order. The ACL would require compliance with the time schedule in the CAO or CDO. All cash payments to the SWRCB or RWQCBs, including previously suspended liabilities assessed for failure to comply with CPs or SEPs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

X. DISCHARGER SELF-AUDITING

It is desirable to encourage self-auditing, self-policing, and voluntary disclosure of environmental violations by dischargers. Self-auditing and voluntary disclosure of violations that are not otherwise required to be reported to the Boards shall be considered by the Boards when determining enforcement actions and in appropriate cases may lead to a determination to forego or lessen the severity of an enforcement action. Falsification or misrepresentation of such voluntary disclosures shall be brought to the attention of the appropriate RWQCB for possible enforcement action.

XI. ENFORCEMENT REPORTING

In order to ensure greater consistency in the reporting by the RWQCBs on violations and enforcement actions, the enforcement reports for all Regions will be standardized. These reports will include a listing of facilities with a water quality violation during the reporting period or unresolved from a previous reporting period, including violations without a RWQCB response. This listing shall include at least the following information:

- (a) The date of violation;
- (b) An identification whether the violation is considered to be significant (see Section III);

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- (c) The RWQCB response, if any;
- (d) The date of the response;
- (e) The corrective action taken by the discharger, at least in cases of priority violations; and
- (f) A listing of all previous violations for the facility which occurred in the previous 12 months and the associated RWQCB response.

The enforcement reports will be presented to the RWQCBs on no greater than quarterly intervals. The report format will be produced by the State Water Information Management (SWIM) data system and the RWQCBs will utilize the SWIM to track and monitor discharger's violations and RWQCB's enforcement activities. Utilization of the SWIM data system by the RWQCBs is essential for the SWRCB's compliance with California Water Code section 13385 (m), which requires statewide reporting of violations to the Legislature.

A. Summary Violation and Enforcement Reports

All RWQCBs shall produce standard quarterly reports addressing priority violations. The SWRCB will specify the format of the summary reports.

B. Spill Reporting for Sanitary Sewer Collection Systems

The RWQCBs shall enter data on all spills into the Sanitary Sewer Overflow/Spills Module of the SWRCB's SWIM data system in accordance with this Policy. It is the SWRCB's goal to achieve consistent reporting of spills from regulated sanitary sewer collections systems. Therefore, all new and revised requirements and permits for owners or operators of sanitary sewer collection systems shall, at a minimum, contain language requiring reporting of spills consistent with Table IX-1 below. The SWRCB shall develop standard reporting forms for the listed reports. Quarterly reports shall include, for each spill, detailed information regarding the cause of the spill, spill quantity, and a discussion of the measures taken to prevent future spills.

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SUMMARY OF SPILL REPORTING REQUIREMENTS

TABLE IX-1

Type of Spill	Criteria	Reporting Requirements
Sewage Spill	Any spill that results in a discharge of sewage of 1000 gallons or more, or results in a discharge to surface waters ⁸ (any volume) or environmentally sensitive areas	<p>24 Hour Reporting: The discharger shall report to RWQCB within 24 hours from the time that 1) the discharger has knowledge of the spill, 2) notification is possible, and 3) notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the RWQCB in this initial report shall include the name and phone number of the person reporting the spill, the responsible sanitary sewer system agency, the estimated total volume of the spill, the location, the receiving surface waters⁶, whether or not the spill is still occurring at the time of the report, and confirmation that the local health services agency was or will be notified as required on the reporting requirements of the local health services agency.</p> <p>5 Day Reporting: The discharger shall submit a written report, as well as any supporting documents, describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter⁹.</p>
Sewage Spill	All sewage spills of less than 1,000 gallons that do not discharge to surface waters ⁶	<p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>

⁸ For the purposes of this Policy, surface waters include navigable waters, rivers, streams (including ephemeral streams), lakes, playa lakes, natural ponds, bays, the Pacific Ocean, lagoons, estuaries, man-made canals, ditches, dry arroyos, mudflats, sandflats, wet meadows, wetlands, swamps, marshes, sloughs and water courses of the United States as used in the federal Clean Water Act (see 40 CFR 122.2).

⁹ For the purposes of this Policy, the quarters of the year end on the following dates: March 31, June 30, September 31, and December 31.

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<p>Recycled Water Spill</p>	<p>All spills of recycled water treated to less than disinfected tertiary level (> 2.2 MPN) of 1,000 gallons or more that have entered or have the potential to enter surface waters⁶</p>	<p>24 Hour Reporting: The discharger shall report to RWQCB within 24 hours from the time that 1) the discharger has knowledge of the spill, 2) notification is possible, and 3) notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the RWQCB in this initial report shall include the name and phone number of the person reporting the spill, the responsible sanitary sewer system agency, the estimated total volume of the spill, the location, the receiving surface waters⁶, whether or not the spill is still occurring at the time of the report, and confirmation that the local health services agency was or will be notified as required un the reporting requirements of the local health services agency.</p> <p>5 Day Reporting: The discharger shall submit a written report describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>
<p>Recycled Water Spill</p>	<p>All spills of recycled water treated to disinfected tertiary level (\leq2.2 MPN) of 50,000 gallons or more that have entered or have the potential to enter surface waters</p>	<p>5 Day Reporting: The discharger shall submit a written report describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>
<p>Recycled Water Spill</p>	<p>All recycled water spills, regardless of quantity, that have not entered and will not enter surface waters⁶</p>	<p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>

XII. POLICY REVIEW AND REVISION

It is the intent of the SWRCB that this Policy be reviewed and revised, as appropriate, at least every five years.

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Appendix A. Group 1 Pollutants

The following list of pollutants are hereby included as Group 1 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

1,2,3 TRICHLORO- ETHANE	BORON, SLUDGE, TOTAL DRY WEIGHT (AS B)
2,4,6 TRICHLOROPHENOL, DRY WEIGHT	BORON, TOTAL
2-HEXANONE	BROMIDE (AS BR)
2-HEXANONE	BROMINE CHLORIDE
2-PROPANONE	BROMINE REPORTED AS THE ELEMENT
5-DAY SUM OF WLA VALUES	BUTANONE
5-DAY SUM OF BOD5 DISCHARGED	CADMIUM, SLUDGE, TOT DRY WEIGHT (AS CD)
7-DAY SUM OF WLA VALUES	CALCIUM IN BOTTOM DEPOSITS
7-DAY SUM OF BOD5 DISCHARGED	CALCIUM, TOTAL RECOVERABLE
ACETONE, DRY WEIGHT	CALCIUM, DISSOLVED (AS CA)
ACIDITY	CALCIUM, PCT EXCHANGE
ACIDITY, CO2 PHENOL (AS CACO3)	CALCIUM, PCT IN WATER, (PCT)
ACIDITY, TOTAL (AS CACO3)	CALCIUM, TOTAL (AS CA)
ACIDITY-MINRL METHYL ORANGE (AS CACO3)	CARBON DIOXIDE (AS CO2)
ALGICIDES, GENERAL	CARBON DISULFIDE
ALKALINITY, BICARBO-NATE (AS CACO3)	CARBON, TOT ORGANIC (TOC)
ALKALINITY, CARBO- NATE (AS CACO3)	CARBON, TOT ORGANIC (TOC) PER 1000 GALS.
ALKALINITY, PHENOL- PHTHALINE METHOD	CARBON, TOTAL (AS C)
ALKALINITY, TOTAL (AS CACO3)	CARBON, TOTAL INORGANIC (AS C)
ALUMINUM	CARBONACEOUS OXYGEN DEMAND, % REMOVAL
ALUMINUM CHLORIDE, DISSOLVED, WATER	CARBONATE ION- (AS CO3)
ALUMINUM SULFATE	CBOD5 / NH3-N
ALUMINUM, POTENTIALLY DISSOLVD	CHEM. OXYGEN DEMAND (COD) % REMOVAL
ALUMINUM, TOTAL RECOVERABLE	CHEM. OXYGEN DEMAND PER PRODUCTION
ALUMINUM, ACID SOLUABLE	CHEMICAL OXYGEN DEMAND (COD)
ALUMINUM, DISSOLVED (AS AL)	CHEMICAL OXYGEN DEMAND (COD)
ALUMINUM, IONIC	CHEMICAL OXYGEN DEMAND (COD)
ALUMINUM, TOTAL	CHLORIDE
ALUMINUM, TOTAL (AS AL)	CHLORIDE (AS CL)
AMMONIA & AMMONIUM- TOTAL	CHLORIDE, PER CFS OF STREAMFLOW
AMMONIA (AS N) + UNIONIZED AMMONIA	CHLORIDE, PERCENT REMOVAL
AMMONIA, UNIONIZED	CHLORIDE, SLUDGE, TOTAL DRY WEIGHT
AVG. OF 7-DAY SUM OF BOD5 VALUES	CHLORIDES & SULFATES
BARIUM, SLUDGE, TOT, DRY WEIGHT (AS BA)	CHLORINE DEMAND, 1 HR
BICARBONATE ION- (AS HCO3)	CHROMIUM, DRY WEIGHT
BIOCHEMICAL OXYGEN DEMAND-5	COBALT, DISSOLVED (AS CO)
BIOCIDES	COBALT, TOTAL (AS CO)
BOD % OVER INFLUENT	CONDUCTIVITY, NET
BOD (ULT. 1ST STAGE)	COPPER, SLUDGE, TOT, DRY WEIGHT (AS CU)
BOD (ULT. 2ND STAGE)	DIGESTER SOLIDS CONTENT, PERCENT
BOD (ULT. ALL STAGES)	DITHIOCARBAMATE, RPTD AS DITHIOCARBONATE
BOD 35-DAY (20 DEG. C)	DRILLED SOLIDS IN DRILLING FLUIDS
BOD CARBONACEOUS, 25-DAY (20 DEG. C)	E. COLI, MTEC-MF
BOD, 11-DAY (20 DEG. C)	ENDRIN KETONE, IN WATER
BOD, 20-DAY (20 DEG. C)	FERROCHROME LIGNO- SULFONATED FRWTR MUD
BOD, 20-DAY, PERCENT REMOVAL	FERROCYANIDE
BOD, 5-DAY (20 DEG. C)	FERROUS SULFATE
BOD, 5-DAY 20 DEG C PER CFS OF STREAMFLW	FIRST STAGE OXYGEN DEMAND, % REMOVAL
BOD, 5-DAY DISSOLVED	FLOW, MAXIMUM FLOW RANGE
BOD, 5-DAY PERCENT REMOVAL	FLUORIDE - FREE
BOD, 5-DAY(20 DEG.C)PER PRODUCTION	FLUORIDE, DISSOLVED (AS F)
BOD, CARB-5 DAY, 20 DEG C, PERCENT REMVL	FLUORIDE, TOTAL (AS F)
BOD, CARBONACEOUS 5 DAY, 5 C	FLUOROBORATES
BOD, CARBONACEOUS (5-DAY, 20 DEG C)	FREE ACID, TOTAL
BOD, CARBONACEOUS 05 DAY, 20C	GOLD, TOTAL (AS AU)
BOD, CARBONACEOUS 20 DAY, 20C	HARDNESS, TOTAL (AS CACO3)
BOD, CARBONACEOUS, 28-DAY (20 DEG. C)	HYDROCARBON, TOTAL RECOVERABLE
BOD, CARBONACEOUS, PERCENT REMOVAL	HYDROCHLORIC ACID
BOD, FILTERED, 5 DAY, 20 DEG C	HYDROCHLORIC ACID
BOD, NITROG INHIB 5-DAY (20 DEG. C)	HYDROGEN PEROXIDE
BOD, PERCENT REMOVAL(TOTAL)	HYDROGEN PEROXIDE(T) DILUTION RATIO
BOD, MASS, TIMES FLOW PROP. MULTIPLIER	HYDROGEN SULFIDE
BOD-5 LB/CU FT PROCESS	IODIDE (AS I)

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IRON
IRON AND MANGANESE -SOLUBLE
IRON AND MANGANESE -TOTAL
IRON, POTENTIALLY DISSOLVD
IRON, DISSOLVED (AS FE)
IRON, DISSOLVED FROM DRY DEPOSITION
IRON, FERROUS
IRON, SLUDGE, TOTAL, DRY WEIGHT (AS FE)
IRON, SUSPENDED
IRON, TOTAL (AS FE)
IRON, TOTAL PER BATCH
IRON, TOTAL PER PRODUCTION
IRON, TOTAL PERCENT REMOVAL
LEAD, DRY WEIGHT
LEAD, TOTAL DRY WEIGHT (AS PB)
LIGHTLY TREATED LIG-NOSULFONATED MUD
LITHIUM, DISSOLVED (AS LI)
LITHIUM, TOTAL (AS LI)
MAGNESIUM, DISSOLVED (AS MG)
MAGNESIUM, IN BOTTOM DEPOSITS
MAGNESIUM, TOTAL (AS MG)
MAGNESIUM, TOTAL RECOVERABLE
MANGANESE IN BOTTOM DEPOSITS (DRY WGT)
MANGANESE, POTENTIALLY DISSOLVD
MANGANESE, DISSOLVED (AS MN)
MANGANESE, SUSPENDED
MANGANESE, TOTAL
MANGANESE, TOTAL (AS MN)
MANGANESE, TOTAL RECOVERABLE
MERCURY TOTAL RECOVERABLE
MERCURY, DRY WEIGHT
METHYLENE BLUE ACTIVE SUBSTANCES
MICROSCOPIC ANALYSIS
MOLYBDENUM, DRY WEIGHT
MONOBORO CHLORATE
NICKEL, DRY WEIGHT
NICOTINE SULFATE
NITRILOTRIACETIC ACID (NTA)
NITRITE NITROGEN, DISSOLVED (AS N)
NITRITE PLUS NITRATE DISSOLVED 1 DET.
NITRITE PLUS NITRATE IN BOTTOM DEPOSITS
NITRITE PLUS NITRATE TOTAL 1 DET. (AS N)
NITROGEN (AS NO3) SLUDGE SOLID
NITROGEN OXIDES (AS N)
NITROGEN SLUDGE SOLID
NITROGEN SLUDGE TOTAL
NITROGEN, AMMONIA DISSOLVED
NITROGEN, AMMONIA PER CFS OF STREAMFLW
NITROGEN, AMMONIA TOTAL (AS N)
NITROGEN, AMMONIA TOTAL (AS NH4)
NITROGEN, AMMONIA IN BOTTOM DEPOSITS
NITROGEN, AMMONIA, PERCENT REMOVAL
NITROGEN, AMMONIA, SLUDGE, TOT DRY WGT
NITROGEN, AMMONIA, TOT UNIONIZED (AS N)
NITROGEN, KJELDAHL DISSOLVED (AS N)
NITROGEN, KJELDAHL TOTAL (AS N)
NITROGEN, NITRATE DISSOLVED
NITROGEN, NITRATE TOTAL (AS N)
NITROGEN, NITRATE TOTAL (AS NO3)
NITROGEN, NITRITE TOTAL (AS N)
NITROGEN, NITRITE TOTAL (AS NO2)
NITROGEN, ORGANIC TOTAL (AS N)
NITROGEN, SLUDGE, TOT, DRY WT. (AS N)
NITROGEN, TOTAL KJELDAHL, % REMOVAL
NITROGEN, INORGANIC TOTAL
NITROGEN, OXIDIZED
NITROGEN-NITRATE IN WATER, (PCT)
NITROGEN-NITRITE IN WATER, (PCT)
NITROGENOUS OXYGEN DEMAND (20-DAY, 20C)
NITROGENOUS OXYGEN DEMAND, % REMOVAL
NON-IONIC DISPERSANT (NALSPERSE 7348)
NON-NITROGENOUS BOD
OIL & GREASE
OIL & GREASE AROMATIC
OIL & GREASE % REMOVAL
OIL & GREASE (FREON EXTR.-IR METH)TOT,RC
OIL AND GREASE
OIL AND GREASE
OIL AND GREASE (SOXHLET EXTR.) TOT.
OIL AND GREASE PER CFS OF STREAMFLW
OIL AND GREASE PER PRODUCTION
OIL AND GREASE VISUAL
OIL AND GREASE, HEXANE EXTR METHOD
OIL AND GREASE, PER 1000 GALLONS
OXYGEN DEMAND FIRST STAGE
OXYGEN DEMAND, DISSOLVED
OXYGEN DEMAND, SUM PRODUCT
OXYGEN DEMAND, ULTIMATE
OXYGEN DEMAND, CHEM. (COD), DISSOLVED
OXYGEN DEMAND, CHEM. (HIGH LEVEL) (COD)
OXYGEN DEMAND, CHEM. (LOW LEVEL) (COD)
OXYGEN DEMAND, TOTAL
OXYGEN DEMAND, TOTAL (TOD)
OXYGEN DEMAND, ULT. CARBONACEOUS (UCOD)
OXYGEN DEMAND, ULT., PERCENT REMOVAL
OZONE
OZONE - RESIDUAL
PH, CAC03 STABILITY
PHOSPHATE TOTAL SOLUBLE
PHOSPHATE, DISSOLVED COLOR METHOD (AS P)
PHOSPHATE, ORTHO (AS PO4)
PHOSPHATE, ORTHO (AS P)
PHOSPHATE, TOTAL (AS PO4)
PHOSPHATE, TOTAL COLOR METHOD (AS P)
PHOSPHATE, DISSOLVED/ORTHOPHOSPHATE (AS P)
PHOSPHATE, POLY (AS PO4)
PHOSPHOROUS 32, TOTAL
PHOSPHOROUS, IN TOTAL ORTHOPHOSPHATE
PHOSPHOROUS, TOTAL ELEMENTAL
PHOSPHOROUS, TOTAL ORGANIC (AS P)
PHOSPHOROUS, TOTAL, IN BOTTOM DEPOSITS
PHOSPHORUS (REACTIVE AS P)
PHOSPHORUS, DISSOLVED
PHOSPHORUS, TOTAL PERCENT REMOVAL
PHOSPHORUS, TOTAL SOLUBLE (AS PO4)
POTASSIUM, DISSOLVED (AS K)
POTASSIUM, IN BOTTOM DEPOSITS
POTASSIUM, PCT EXCHANGE
POTASSIUM, TOTAL RECOVERABLE
POTASSIUM, TOTAL PCTN WATER, (PCT)
PROPARGITE
RARE EARTH METALS, TOTAL
RATIO FECAL COLIFORM & STREPTOCOCCI
RESIDUE, SETTLEABLE
RESIDUE, TOTAL FILTERABLE
RESIDUE, TOTAL FILTERABLE
RESIDUE, TOTAL VOLATILE
RESIDUE, TOTAL NON-SETTLEABLE
RESIDUE, VOLATILE NONFILTERABLE
RUBIDIUM, TOTAL (AS RB)
SEAWATER GEL MUD
SELENIUM, ACID SOLUBLE
SETTLEABLE SOLIDS PERCENT REMOVAL
SILICA, DISSOLVED (AS SIO2)
SILICA, TOTAL (AS SIO2)
SILICON, TOTAL
SLUDGE BUILD-UP IN WATER
SLUDGE SETTLEABILITY 30 MINUTE
SLUDGE VOLUME DAILY INTO A WELL
SLUDGE, RATE OF WASTING

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SODIUM ADSORPTION RATIO
SODIUM ARSENITE
SODIUM CHLORIDE (SALT)
SODIUM HEXAMETA- PHOSPHATE
SODIUM IN BOTTOM DEP (AS NA) (DRY WGT)
SODIUM NITRITE
SODIUM SULFATE, TOTAL
SODIUM, %
SODIUM, % EXCHANGE- ABLE SOIL, TOTAL
SODIUM, DISSOLVED (AS NA)
SODIUM, SLUDGE, TOT, DRY WEIGHT (AS NA)
SODIUM, TOTAL (AS NA)
SODIUM, TOTAL (AS NA)
SODIUM, TOTAL RECOVERABLE
SOLIDS ACCUMULATION RATE TOT DRY WEIGHT
SOLIDS, FIXED DISSOLVED
SOLIDS, FIXED SUSPENDED
SOLIDS, SETTLEABLE
SOLIDS, SLUDGE, TOT, DRY WEIGHT
SOLIDS, SUSPENDED PERCENT REMOVAL
SOLIDS, TOTAL
SOLIDS, TOTAL DISSOLVED
SOLIDS, TOTAL DISSOLVED (TDS)
SOLIDS, TOTAL DISSOLVED- 180 DEG.C
SOLIDS, TOTAL FIXED
SOLIDS, TOTAL SUSPENDED
SOLIDS, TOTAL VOLATILE
SOLIDS, TOTAL DISS., PERCENT BY WEIGHT
SOLIDS, TOTAL DISSOLVED, TOTAL TONS
SOLIDS, TOTAL NON- VOLATILE, NON-FIXED
SOLIDS, TOTAL SUSP PER PRODUCTION
SOLIDS, TOTAL SUSP. PER 1000 GALLONS
SOLIDS, TOTAL SUSP. PER BATCH
SOLIDS, TOTAL SUSP. PER CFS OF STREAMFLW
SOLIDS, VOLATILE DISSOLVED
SOLIDS, VOLATILE SUSPENDED
SOLIDS, VOLATILE SUSPENDED, % REMOVAL
SOLIDS, VOLATILE SUSP., IN MIXED LIQUOR

SOLIDS, DRY, DISCHARGETO SOL.HANDLING SYS.
SOLIDS, DRY, INCIN. AS % OF DRY SOL. FROM TRMT PLT
SOLIDS, DRY, REMOVED FROM SOL. HANDLING SYS.
SOLIDS, TOT. VOLATILE PERCENT REMOVAL
SOLIDS, VOLATILE % OF TOTAL SOLIDS
SULFATE
SULFATE (AS S)
SULFATE, DISSOLVED (AS SO4)
SULFATE, TOTAL (AS SO4)
SULFIDE, DISSOLVED, (AS S)
SULFIDE, TOTAL
SULFIDE, TOTAL (AS S)
SULFITE (AS S)
SULFITE (AS SO3)
SULFITE WASTE LIQUOR PEARL BENSON INDEX
SULFUR DIOXIDE TOTAL
SULFUR, TOTAL
SULPHUR, TOTAL ELEMENTAL
SUM BOD AND AMMONIA, WATER.
SURFACTANTS (MBAS)
SURFACTANTS (LINEAR ALKYLATE SULFONATE)
SURFACTANTS, AS CTAS, EFFLUENT
SUSPENDED SOLIDS
SUSPENDED SOLIDS, TOTAL ANNUAL
SUSPENDED SOLIDS, TOTAL DISCHARGE
TIN, DISSOLVED (AS SN)
TIN, TOTAL (AS SN)
TOTAL SUSP. SOLIDS- LB/CU FT PROCESS
TRIARYL PHOSPHATE
TURBIDITY, HCH TURBIDIMETER
VANADIUM, DISSOLVED (AS V)
VANADIUM, SUSPENDED (AS V)
VANADIUM, TOTAL
VANADIUM, TOTAL (AS V)
VANADIUM, TOTAL DRY WEIGHT (AS V)
VANADIUM, TOTAL RECOVERABLE
WLA BOD-5 DAY VALUE
ZINC, DRY WEIGHT

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Appendix B. Group 2 Pollutants

The following list of pollutants are hereby included as Group 2 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

1, 2, 4-TRIMETHYL- BENZENE	1,3-DICHLOROPROPENE, TOTAL WEIGHT
1, 3, 5-TRIMETHYL- BENZENE	1,4 DICHLOROBUTANE
1,1 DICHLORO 1,2,2,2 TETRAFLUOROETHANE	1,4 _____ DIOXANE
1,1 DICHLORO 2,2,2- TRIFLUOROETHANE	1,4'-DDT (O,P'-DDT)
1,1,1 TRICHLORO- 2,2,2TRIFLUOROETHANE	1,4-DICHLOROBENZENE
1,1,1,2,2-PENTA- FLUOROETHANE	1,4-DICHLOROBENZENE, DRY WEIGHT
1,1,1,3,3-PENTA- FLUROBUTANE	1,4-XYLENE
1,1,1-TRICHLORO- ETHANE	1-BROMO-2-CHLOROETHANE
1,1,1-TRICHLOROETHANE, DRY WEIGHT	1-CHLORO-1,1- DIFLUOROETHANE
1,1,1-TRIFLUORO- ETHANE	1-HYDROXY-ETHYLIDENE
1,1,2,2-TETRACHLORO-ETHANE	1-METHYLNAPHTHALENE
1,1,2,2-TETRACHLOROETHANE, DRY WEIGHT	1-NITROSOPIPERIDINE
1,1,2-TRICHLORO- ETHANE	2,2DIBROMO-3-NITRILOPROPIONAMIDE
1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE	2,2-DICHLOROVINYL
1,1,2-TRICHLOROETHANE, DRY WEIGHT	DIMETHYLPHOSPHATE
1,1-DICHLORO-1- FLUROETHANE	2,2-DIMETHYL-2,3-DI-HYDRO-7-
1,1-DICHLOROETHANE	BENZOFURANOL
1,1-DICHLOROETHANE, DRY WEIGHT	2,3 DICHLOROPROPYLENE
1,1-DICHLOROETHENE	2,3,4,6-TETRACHLORO-PHENOL
1,1-DICHLOROETHYLENE	2,3,7,8 CHLORO- DIBENZOFURAN
1,1-DICHLOROETHYLENE, DRY WEIGHT	2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN
1,1-DIMETHYL- HYDRAZINE	2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN
1,2,3 TRICHLORO- BENZENE	SED,
1,2,4,5-TETRACHLORO-BENZENE	2,3,7,8-TETRACHLORO-DIBENZO-P-DIOXIN
1,2,4,5-TETRAMETHYL-BENZENE	2,4,5 - T
1,2,4-TRICHLORO- BENZENE	2,4,5 - TRICHLORO- PHENOL
1,2,4-TRICHLOROBENZENE, DRY WEIGHT	2,4,5, TP(SILVEX)
1,2-BIS(2-CHLOROETH-ONY) ETHANE	2,4,5-TP(SILVEX) ACIDS/SALTS WHOLE
1,2-CIS-DICHLORO-ETHYLENE	WATER SAMPLE
1,2-DICHLOROBENZENE	2,4,5-TRICHLOROPHENOXYPROPIONIC ACID
1,2-DICHLOROBENZENE, DRY WEIGHT	2,4,6-TRICHLORO- PHENOL
1,2-DICHLOROETHANE	2,4-DB
1,2-DICHLOROETHANE, DRY WEIGHT	2,4-DICHLOROPHENOL
1,2-DICHLOROETHANE, TOTAL WEIGHT	2,4-DICHLOROPHENOXYACETIC ACID
1,2-DICHLOROPROPANE	2,4-DIMETHYLPHENOL
1,2-DICHLOROPROPANE, DRY WEIGHT	2,4-DINITROPHENOL
1,2-DICHLOROPROPENE	2,4-DINITROTOLUENE
1,2-DIPHENYL- HYDRAZINE	2,4-DINITROTOLUENE, DRY WEIGHT
1,2-DIPHENYL-HYDRAZINE, DRY WEIGHT	2,4-TOLUENEDIAMINE
1,2-PROPANEDIOL	2,5-TOLUENEDIAMINE
1,2-TRANS-DICHLORO- ETHYLENE	2,6-DINITROTOLUENE
1,2-TRANS-DICHLOROETHYLENE, DRY	2,6-DINITROTOLUENE, DRY WEIGHT
WEIGHT	2-ACETYL AMINO- FLOURCENE
1,3 DICHLOROPROPANE	2-BUTANONE
1,3-DIAMINOUREA	2-BUTANONE PEROXIDE
1,3-DICHLOROBENZENE	2-CHLOROANILINE
1,3-DICHLOROBENZENE, DRY WEIGHT	2-CHLOROETHANOL
	2-CHLOROETHYL VINYL ETHER (MIXED)

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2-CHLOROETHYL VINYL ETHER, DRY WEIGHT	ACRYLIC ACID
2-CHLORONAPHTHALENE	ACRYLONITRILE
2-CHLOROPHENOL	ACRYLONITRILE, DRY WEIGHT
2-ETHYL-1-HEXANOL	A-ENDOSULFAN-ALPHA
2-ETHYL-2-METHYL- DIOXOLANE	ALACHLOR (BRAND NAME-LASSO)
2-METHYL-2-PROPANOL	ALACHLOR, DISSOLVED
2-METHYL-4,6-DINITROPHENOL	ALDICARB
2-METHYL-4-CHLOROPHENOL	ALDICARB SULFONE
2-METHYLNAPHTHALENE	ALDICARB SULFOXIDE
2-METHYLNAPHTHALENE	ALDRIN
2-METHYLPHENOL	ALDRIN + DIELDRIN
2-NAPHTHYLAMINE	ALDRIN, DRY WEIGHT
2-NITROANILINE	ALKYL BENZENE SULFONATED (ABS)
2-NITROPHENOL	ALKYLDIMETHYL ETHYL AMMONIUM BROMIDE
2-SECONDARY BUTYL- 4,6-DINITROPHENOL	ALKYLDIMETHYLBENZYL AMMONIUM CHLORIDE
3,3'-DICHLORO- BENZIDINE	ALPHA ACTIVITY
3,3'-DICHLOROBENZIDINE, DRY WEIGHT	ALPHA EMITTING RADI-UM ISOTOPES, DISSOL.
3,4 BENZOFLUORAN- THENE	ALPHA GROSS RADIOACTIVITY
3,4,5 TRICHLORO- GUACACOL	ALPHA, DISSOLVED
3,4,6-TRICHLORO- CATECHOL	ALPHA, SUSPENDED
3,4,6-TRICHLORO- GUAIACOL	ALPHA, TOTAL
3-CHLOROPHENOL	ALPHA, TOTAL, COUNTING ERROR
3-NITROANILINE, TOTAL IN WATER	ALPHABHC DISSOLVED
4,4'-BUTYLDENE BIS- (6-T-BUTYL-M-CRESOL)	ALPHA-ENDOSULFAN
4,4'-DDD (P,P'-DDD)	AMIBEN (CHLORAMBEN)
4,4'-DDE (P,P'-DDE)	AMINES, ORGANIC TOTAL
4,4'-DDT (P,P'-DDT)	AMINOTROL - METHYLENE PHOSPHATE
4,6-DINITRO-O-CRESOL	ANILINE
4-BROMOPHENYL PHENYL ETHER	ANTHRACENE
4-CHLORO-3, 5-DIMETHYLPHENOL	ANTIMONY IN BOTTOM DEPOSITS (DRY WGT)
4-CHLORO-3-METHYL PHENOL	ANTIMONY, DISSOLVED (AS SB)
4-CHLOROPHENYL PHENYL ETHER	ANTIMONY, TOTAL (AS SB)
4-METHYLPHENOL	ANTIMONY, TOTAL RECOVERABLE
4-METHYLPHENOL	AROMATICS, SUBSTITUTED
4-NITRO-M-CRESOL	AROMATICS, TOTAL PURGEABLE
4-NITRO-N-METHYLPHTHALIMIDE, TOTAL	ARSENIC
4-NITROPHENOL	ARSENIC, POTENTIALLY DISSOLVD
9,10 DICHLOROSTEARIC ACID	ARSENIC, DISSOLVED (AS AS)
9,10 EPOXYSTEARIC ACID	ARSENIC, DRY WEIGHT
A-BHC-ALPHA	ARSENIC, TOTAL (AS AS)
ABIETIC ACID	ARSENIC, TOTAL RECOVERABLE
ACENAPHTHENE	ASBESTOS
ACENAPHTHENE, SED (DRY WEIGHT)	ASBESTOS (FIBROUS)
ACENAPHTHYLENE	ATRAZINE
ACETALDEHYDE	ATRAZINE, DISSOLVED
ACETAMINOPHEN	AZOBENZENE
ACETIC ACID	BALAN (BENEFIN)
ACETONE	BARIUM IN BOTTOM DEPOSITS (DRY WGT)
ACETONE IN WASTE	BARIUM, POTENTIALLY DISSOLVD
ACETOPHENONE	BARIUM, DISSOLVED (AS BA)
ACID COMPOUNDS	BARIUM, TOTAL (AS BA)
ACIDS,TOTAL VOLATILE (AS ACETIC ACID)	BARIUM, TOTAL RECOVERABLE
ACROLEIN	
ACROLEIN, DRY WEIGHT	
ACRYLAMIDE MONOMER	

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BASE NEUTRALS & ACID (METHOD 625),
TOTAL
BASE NEUTRALS & ACID (METHOD
625),EFFLNT
BASE/NEUTRAL COMPOUNDS
BAYER 73 LAMPREYCIDE IN WATER
B-BHC-BETA
B-BHC-BETA DISSOLVED
B-ENDOSULFAN-BETA
BENTAZON, TOTAL
BENZENE
BENZENE (VOLATILE ANALYSIS)
BENZENE HEXACHLORIDE
BENZENE SULPHONIC ACID
BENZENE, DISSOLVED
BENZENE, DRY WEIGHT
BENZENE, HALOGENATED
BENZENE, TOLUENE, XYLENE IN
COMBINATN
BENZENE,ETHYLBENZENETOLUENE,XYLENE
COMBN
BENZENEHEXACHLORIDE
BENZIDINE
BENZIDINE, DRY WEIGHT
BENZIOC ACIDS-TOTAL
BENZISOTHIAZOLE
BENZO(A)ANTHRACENE
BENZO(A)PYRENE
BENZO(A)PYRENE, DRY WEIGHT
BENZO(B)FLUORANTHENE (3,4-BENZO)
BENZO(GHI)PERYLENE
BENZO(K)FLUORANTHENE
BENZOFURAN
BENZY CHLORIDE
BENZYL ALCOHOL
BENZYL CHLORIDE
BERYLLIUM IN BOTTOM DEPOSITS (DRY
WGT)
BERYLLIUM, POTENTIALLY DISSOLVD
BERYLLIUM, DISSOLVED (AS BE)
BERYLLIUM, TOTAL (AS BE)
BERYLLIUM, TOTAL RECOVERABLE (AS
BE)
BETA, DISSOLVED
BETA, SUSPENDED
BETA, TOTAL
BETA, TOTAL, COUNTING ERROR
BETASAN(N-2-
MERCAPTOETHYLBENZENESULFAMID
BEZONITRILE (CYANOBENZENE)
BHC, TOTAL
BHC-ALPHA
BHC-DELTA
BHC-GAMMA
BIOASSAY (24 HR.)
BIOASSAY (48 HR.)
BIOASSAY (96 HR.)
BIS -- PHENOL-A (ALPHA)
BIS (2-CHLORO- ISOPROPYL) ETHER
BIS (2-CHLOROETHOXY) METHANE
BIS (2-CHLOROETHOXY) METHANE, DRY WT.
BIS (2-CHLOROETHYL) ETHER
BIS (2-ETHYLHEXYL) PHTHALATE
BIS (2-ETHYLHEXYL) PHTHALATE, DRY WGT
BIS (CHLOROMETHYL) ETHER
BIS (TRICHLOROMETHYL) SULFONE
BIS ETHER
BISMUTH, TOTAL (AS BI)
BISPENOL-A
BORIC ACID
BORON, DISSOLVED (AS B)
BORON, TOTAL (AS B)
BORON, TOTAL RECOVERABLE
BROMACIL
BROMACIL (HYVAR)
BROMOCHLOROMETHANE
BROMODICHLOROETHANE
BROMOFORM
BROMOFORM, DRY WEIGHT
BROMOMETHANE
BUTACHLOR
BUTANE
BUTANOIC ACID
BUTANOL
BUTHDIENE TOTAL
BUTOXY ETHOXY ETHANOL TOTAL
BUTYL ACETATE
BUTYL BENZYL PHTHALATE
BUTYLATE (SUTAN)
CADMIUM
CADMIUM TOTAL RECOVERABLE
CADMIUM IN BOTTOM DEPOSITS (DRY
WGT)
CADMIUM SLUDGE SOLID
CADMIUM SLUDGE TOTAL
CADMIUM, POTENTIALLY DISSOLVD
CADMIUM, DISSOLVED (AS CD)
CADMIUM, TOTAL (AS CD)
CAFFEINE
CAPTAN
CARBAMATES
CARBARYL TOTAL
CARBN CHLOROFRM EXT-RACTS,ETHER
INSOLUBL
CARBOFURAN
CARBON TETRACHLORIDE
CARBON TETRACHLORIDE, DRY WEIGHT
CARBON, CHLOROFORM EXTRACTABLES
CARBON, DISSOLVED ORGANIC (AS C)

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CARBOSULFAN, TOTAL
CERIUM, TOTAL
CESIUM, TOTAL (AS CS)
CHLOR, PHENOXY ACID GP, NONE FOUND
CHLORAL
CHLORAL HYDRATE
CHLORAMINE RESIDUAL
CHLORDANE (CA OCEAN PLAN DEFINITION)
CHLORDANE (TECH MIX & METABS), DRY WGT
CHLORDANE (TECH MIX. AND METABOLITES)
CHLORDANE, ALPHA, WHOLE WATER
CHLORDANE, GAMMA, WHOLE WATER
CHLORENDIC ACID
CHLORIDE, DISSOLVED (AS CL)
CHLORIDE, DISSOLVED IN WATER
CHLORIDE, ORGANIC, TOTAL
CHLORINATED DIBENZO-FURANS, EFFLUENT
CHLORINATED DIBENZO-FURANS, SLUDGE
CHLORINATED DIBENZO-P-DIOXINS, EFFLUENT
CHLORINATED DIBENZO-P-DIOXINS, SLUDGE
CHLORINATED ETHANES
CHLORINATED HYDRO- CARBONS, GENERAL
CHLORINATED METHANES
CHLORINATED ORGANIC COMPOUNDS
CHLORINATED PESTI- CIDES, TOTAL
CHLORINATED PESTI- CIDES, TOT & PCB'S
CHLORINATED PHENOLS
CHLORINATION
CHLORINE DIOXIDE
CHLORINE DOSE
CHLORINE RATE
CHLORINE USAGE
CHLORINE, COMBINED AVAILABLE
CHLORINE, FREE AVAILABLE
CHLORINE, FREE RESIDUAL, TOTAL EFFLUENT
CHLORINE, TOTAL RESIDUAL
CHLORINE, TOTAL RESIDUAL (DSG. TIME)
CHLORINE, TOTAL RES.DURATION
OFVIOLATION
CHLORITE
CHLOROBENZENE
CHLOROBENZENE, DRY WEIGHT
CHLOROBENZILATE
CHLOROBUTADIENE (CHLOROPRENE)
CHLORODIBROMOMETHANE
CHLORODIBROMOMETHANE, DRY WEIGHT
CHLORODIFLUORO- METHANE
CHLORODIMEFORM
CHLOROETHANE
CHLOROETHANE, TOTAL WEIGHT
CHLOROETHYLENE BISTHIOCYANATE

CHLOROFORM
CHLOROFORM EXTRACTABLES, TOTAL
CHLOROFORM, DISSOLVED
CHLOROFORM, DRY WEIGHT
CHLOROHEXANE, TOTAL
CHLOROMETHANE
CHLOROMETHYL BENZENE
CHLORONITROBENZENE
CHLOROPHENOXY PROPANANOL
CHLOROSYRINGEALDEHYDE, EFFLUENT
CHLOROTOLUENE
CHLOROXAZONE
CHLORPHENIRAMINE
CHLORPYRIFOS
CHROMIUM
CHROMIUM TOTAL RECOVERABLE
CHROMIUM SLUDGE SOLID
CHROMIUM SLUDGE TOTAL
CHROMIUM TRIVALENT IN BOTTOM DEPOSITS
CHROMIUM, DISSOLVED (AS CR)
CHROMIUM, HEXAVALENT
CHROMIUM, HEXAVALENT
CHROMIUM, HEXAVALENT (AS CR)
CHROMIUM, HEXAVALENT DISSOLVED (AS CR)
CHROMIUM, HEXAVALENT IN BOT DEP (DRY WT)
CHROMIUM, HEXAVALENT POTENTIALLY DISOLVD
CHROMIUM, HEXAVALENT TOT RECOVERABLE
CHROMIUM, SUSPENDED (AS CR)
CHROMIUM, TOTAL
CHROMIUM, TOTAL (AS CR)
CHROMIUM, TOTAL PERCENT REMOVAL
CHROMIUM, TOTAL DRY WEIGHT (AS CR)
CHROMIUM, TOTAL IN BOT DEP (WET WGT)
CHROMIUM, TRIVALENT (AS CR)
CHROMIUM, TRIVALENT,POTENTIALLY DISSOLVD
CHRYSENE
CIS-1,3-DICHLORO PROPENE
CITRIC ACID
CN, FREE (AMENABLE TO CHLORINE)
COBALT, TOTAL RECOVERABLE
COLUMBIUM, TOTAL
COMBINED METALS SUM
COPPER
COPPER TOTAL RECOVERABLE
COPPER AS SUSPENDED BLACK OXIDE
COPPER IN BOTTOM DEPOSITS (DRY WGT)
COPPER SLUDGE SOLID
COPPER SLUDGE TOTAL
COPPER, DISSOLVED (AS CU)
COPPER, POTENTIALLY DISSOLVED

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COPPER, SUSPENDED (AS CU)
COPPER, TOTAL (AS CU)
COPPER, TOTAL PER BATCH
COUMAPHOS
CRESOL
CYANATE (AS OCN)
CYANIDE (A)
CYANIDE AND THIOCYANATE - TOTAL
CYANIDE COMPLEXED TO RANGE OF
COMPOUND
CYANIDE FREE NOT AMENABLE TO
CHLORIN.
CYANIDE IN BOTTOM DEPOSITS (DRY WGT)
CYANIDE SLUDGE SOLID
CYANIDE, FILTERABLE, TOTAL
CYANIDE, FREE-WATER PLUS
WASTEWATERS
CYANIDE, TOTAL (AS CN)
CYANIDE, TOTAL RECOVERABLE
CYANIDE, WEAK ACID, DISSOCIABLE
CYANIDE, DISSOLVED STD METHOD
CYANIDE, FREE (AMEN. TO CHLORINATION)
CYCLOATE (RONEET)
CYCLOHEXANE
CYCLOHEXANONE
CYCLOHEXYL AMINE (AMINO
HEXAHYDRO)
CYCOHEXANONE
DACONIL (C8CL4N2)
DACTHAL
DDD IN WHOLE WATER SAMPLE
DDE
DDT
DDT/DDD/DDE, SUM OF P,P' & O,P' ISOMERS
DECACHLOROBIPHENYL (DCBP) TOTAL
DECHLORANE PLUS
DEHYDROABIEITIC ACID
DELNAV
DELTA BENZENE HEXACHLORIDE
DEMETON
DIAZINON
DIBENZO (A,H) ANTHRACENE
DIBENZO (A,H) ANTHRACENE, DRY WEIGHT
DIBENZOFURAN
DIBROMOCHLORO- METHANE
DIBROMODICHLOROMETHANE
DIBROMOMETHANE
DICHLONE
DICHLORAN, TOTAL
DICHLOROBENZENE
DICHLOROBENZENE, ISOMER
DICHLOROBENZYLTRIFLUORIDE
DICHLOROBROMOMETHANE
DICHLOROBROMOMETHANE, DRY WEIGHT
DICHLOROBUTADIENE
DICHLOROBUTENE- (ISOMERS)
DICHLORODEHYDRO- ABEIETIC ACID
DICHLORODIBROMOMETHANE
DICHLORODIFLUORO- METHANE
DICHLOROETHENE, TOTAL
DICHLOROFLUORO METHANE
DICHLOROMETHANE
DICHLOROPROPYLENE, 1,2
DICHLOROTOLUENE
DICHLOROTRIFLUORO- ETHANE
DICHLORVOS, TOTAL
DICHLORVOS, TOTAL DISSOLVED
DICHLORVOS, TOTAL SED DRY WEIGHT
DICHLORVOS, TOTAL SUSPENDED
DICYCLOHEXYLAMINE, TOTAL
DICYCLOPENTADIENE
DIDECYLDIMETHYL AMMONIUM
CHLORIDE
DIDROMOMETHANE, 1-2
DIELDRIN
DIELDRIN, DRY WEIGHT
DIETHL METHYL BENZENESULFONAMIDE
DIETHYL PHTHALATE
DIETHYL PHTHALATE, DRY WEIGHT
DIETHYLAMINE
DIETHYLAMINOETHANOL
DIETHYLBENZENE
DIETHYLENE GLYCOL DINITRATE, TOTAL
DIETHYLHEXYL PHTHALATE ISOMER
DIETHYLHEXYL- PHTHALATE
DIETHYLSTILBESTEROL
DIFOLATAN
DIISOPROPYL ETHER
DIMETHOXYBENZIDINE
DIMETHYL BENZIDINE
DIMETHYL DISULFIDE TOTAL
DIMETHYL NAPHTHALENE
DIMETHYL PHTHALATE
DIMETHYL PHTHALATE
DIMETHYL PHTHALATE, DRY WEIGHT
DIMETHYL SULFIDE TOTAL
DIMETHYL SULFOXIDE TOTAL
DIMETHYLAMINE
DIMETHYLANILINE
DI-N-BUTYL PHTHALATE
DI-N-BUTYL PHTHALATE, DRY WEIGHT
DI-NITRO BUTYL PHENOL (DNBP)
DINITROTOLUENE
DI-N-OCTYL PHTHALATE
DI-N-OCTYL PHTHALATE, DRY WEIGHT
DINOSEB
DINOSEB (DNBP)
DIOXANE
DIOXIN
DIOXIN (TCDD) SUSPENDED
DISSOLVED RADIOACTIVE GASSES
DISULFOTON

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DIURON	FUEL, DIESEL, #1
DOCOSANE	FURFURAL
DODECYLGUANIDINE SALTS	GAMMA, TOTAL
DYFONATE	GAMMA, TOTAL COUNTING ERROR
DYPHYLLINE	GAMMA-BHC
EDTA	GASOLINE, REGULAR
EDTA AMMONIATED	GERMANIUM, TOTAL (AS GE)
ENDOSULFAN SULFATE	GLYPHOSATE, TOTAL
ENDOSULFAN, ALPHA, IN WASTE	GROSS BETA
ENDOSULFAN, BETA, INWASTE	GUAFENSIN
ENDOSULFAN, TOTAL	GUANIDINE NITRATE
ENDRIN	GUTHION
ENDRIN + ENDRIN ALDEHYDE (SUM)	HALOGEN, TOTAL ORGANIC
ENDRIN ALDEHYDE	HALOGEN, TOTAL RESIDUAL
EPHEDRINE SULFATE	HALOGENATED HYDRO- CARBONS, TOTAL
EPICHLOROHYDRIN	HALOGENATED ORGANICS
EPTC (EPTAM)	HALOGENATED TOLUENE
ESTRADIOL	HALOGENS, ADSORBABLEORGANIC
ETHALFLURALIN WATER, TOTAL	HALOGENS, TOT ORGAN-ICS BOTTOM
ETHANE, 1,2-BIS (2- CLRETHXY), HOMLG SUM	SEDIMENT
ETHANOL	HALOMETHANES, SUM
ETHION	HEPTACHLOR
ETHYL METHANESULFONATE	HEPTACHLOR EPOXIDE
ETHYL ACETATE	HEPTACHLOR, DRY WEIGHT
ETHYL BENZENE	HEPTANE
ETHYL BENZENE	HERBICIDES, TOTAL
ETHYL ETHER BY GAS CHROMATOGRAPH	HEXACHLOROBENZENE
ETHYL METHYL- DIOXOLANE	HEXACHLOROBENZENE, DRY WEIGHT
ETHYL PARATHION	HEXACHLOROBIPHENYL
ETHYLBENZENE	HEXACHLOROBUTADIENE
ETHYLBENZENE, DRY WEIGHT	HEXACHLOROBUTADIENE
ETHYLENE CHLOROHYDRIN	HEXACHLOROBUTADIENE, DRY WEIGHT
ETHYLENE DIBROMIDE (1,2	HEXACHLOROCYCLO- PENTADIENE
DIBROMOETHANE)	HEXACHLOROCYCLOHEXANE (BHC) TOTAL
ETHYLENE GLYCOL	HEXACHLOROCYCLOPENTADIENE, DRY
ETHYLENE GLYCOL	WEIGHT
ETHYLENE GLYCOL DINITRATE	HEXACHLOROETHANE
ETHYLENE OXIDE	HEXACHLOROETHANE, DRY WEIGHT
ETHYLENE THIOUREA (ETU)	HEXACHLOROPENTADIENE
ETHYLENE, DISSOLVED (C2H4)	HEXADECANE
ETHYLHEXYL	HEXAHYDROAZEPINONE
EXPLOSIVE LIMIT, LOWER	HEXAMETHYL- PHOSPHORAMINE(HMPA)
EXPLOSIVES, COMBINED TNT + RDX +	HEXAMETHYLBENZENE
TETRYL	HEXANE
FERRICYANIDE	HEXAZIMONE
FLUORANTHENE	HMX-1,3,5,7-TETRA ZOCINE
FLUORANTHENE, DRY WEIGHT	HYDRAZINE
FLUORENE	HYDRAZINES, TOTAL
FLUORENE, DRY WEIGHT	HYDROCARBONS NITRATED
FLUORIDE - COMPLEX	HYDROCARBONS NITRATED, TOTAL
FLUSILAZOLE	HYDROCARBONS, AROMATIC
FOAMING AGENTS	HYDROCARBONS, TOTAL GAS
FORMALDEHYDE	CHROMATOGRAPH
FORMIC ACID	HYDROCARBONS,IN H2O,IR,CC14 EXT.
FREON 113 (1,1,1-TRIFLOURO-2,2-	CHROMAT
FREON, TOTAL	HYDROGEN CYANIDE

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HYDROQUINONE	MERCURY, TOTAL (AS HG)
HYDROXYACETOPHENONE	METALS TOXICITY RATIO
HYDROXYQUINOLINE TOTAL	METALS, TOTAL
HYDROXYZINE	METALS, TOX PRIORITY POLLUTANTS,
INDENE	TOTAL
INDENO (1,2,3-CD) PYRENE	META-XYLENE
INDENO (1,2,3-CD) PYRENE, DRY WEIGHT	METHAM SODIUM (VAPAM)
INDIUM	METHANE
IODINE 129	METHANOL, TOTAL
IODINE RESIDUAL	METHOCARBAMOL
IODINE TOTAL	METHOMYL
IRON, TOTAL (AS FE)	METHOXYCHLOR
ISOBUTYL ACETATE	METHOXYPROPYLAMINE
ISOBUTYL ALCOHOL	METHYL METHANESULFONATE
ISODECYLDIPHENYL- PHOSPHATE	METHYL ACETATE
ISO-OCTANE	METHYL BROMIDE
ISOOCXYL 2,4,5-T	METHYL BROMIDE, DRY WEIGHT
ISOOCXYL SILVEX	METHYL CHLORIDE
ISOPHORONE	METHYL CHLORIDE, DRY WEIGHT
ISOPHORONE, DRY WEIGHT	METHYL CYANIDE (ACETONITRILE)
ISOPIMARIC ACID	METHYL ETHYL BENZENE
ISOPRENE	METHYL ETHYL KETONE
ISOPROPALIN WATER, TOTAL	METHYL ETHYL SULFIDE
ISOPROPANOL	METHYL ISOBUTYL KETONE (MIBK)
ISOPROPYL ALCOHOL (C3H8O), SED.	METHYL MERCAPTAN
ISOPROPYL ETHER	METHYL METHACRYLATE
ISOPROPYLBENZENE	METHYL NAPHTHALENE
ISOPROPYLBIPHENYL, TOTAL	METHYL PARATHION
ISOPROPYLIDINE DIOXYPHENOL	METHYL STYRENE
ISOTHIAZOLONE	METHYLAMINE
ISOTHIOZOLINE, TOTAL	METHYLENE BIS-THIOCYANATE
ISOXSUPRINE	METHYLENE CHLORIDE
KELTHANE	METHYLENE CHLORIDE, DRY WEIGHT
KEPONE	METHYLENE CHLORIDE, SUSPENDED
LANTHANUM, TOTAL	METHYLHYDRAZINE
LEAD	METRIBUZIN (SENCOR), WATER, DISSOLVED
LEAD TOTAL RECOVERABLE	METRIOL TRINITRATE, TOTAL
LEAD 210, TOTAL	MIREX
LEAD SLUDGE SOLID	MOLYBDENUM DISSOLVED (AS MO)
LEAD SLUDGE TOTAL	MOLYBDENUM, TOTAL (AS MO)
LEAD, POTENTIALLY DISSOLVD	MONOCHLOROACETIC ACID
LEAD, DISSOLVED (AS PB)	MONO-CHLORO-BENZENES
LEAD, TOTAL (AS PB)	MONOCHLOROBENZYLTRIFLUORIDE
LINDANE	MONOCHLORODEHYDRO- ABIETIC ACID
LINOLEIC ACID	MONOCHLOROTOLUENE
LINOLENIC ACID	N PENTANE
M - ALKYL DIMETHYL BENZYLAMCL	N,N- DIMETHYLFORMAMIDE
MAGNESIUM, PCT EXCHANGE	N,N'DIETHYL CARBANILIDE
MALATHION	N,N-DIMETHYL FORMAMIDE
MB 121	NAPHTHALENE
MERCAPTANS, TOTAL	NAPHTHALENE, DRY WEIGHT
MERCAPTOBENZOTHAZOLE	NAPHTHENIC ACID
MERCURY	NAPROPAMIDE (DEVIRINOL)
MERCURY, POTENTIALLY DISSOLVD	N-BUTYL ACETATE
MERCURY, DISSOLVED (AS HG)	N-BUTYL-BENZENE SULFONAMIDE (IN
MERCURY, TOT IN BOT DEPOSITS (DRY WGT)	WAT)

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N-BUTYLBENZENE (WHOLE WATER, UG/L
NEPTUNE BLUE
N-HEPTADECANE
NIACINAMIDE
NICKEL
NICKEL TOTAL RECOVERABLE
NICKEL SLUDGE SOLID
NICKEL SLUDGE TOTAL
NICKEL, POTENTIALLY DISSOLVD
NICKEL, DISSOLVED (AS NI)
NICKEL, SUSPENDED (AS NI)
NICKEL, TOTAL (AS NI)
NICKEL, TOTAL PER BATCH
NICKEL, TOT IN BOTTOM DEPOSITS (DRY
WGT)
NITROBENZENE
NITROBENZENE, DRY WEIGHT
NITROCELLULOSE
NITROFURANS
NITROGEN, ORGANIC, DISSOLVED (AS N)
NITROGLYCERIN BY GAS
CHROMATOGRAPHY
NITROGUANIDINE
NITROSODIPHENYLAMINE
NITROSTYRENE
N-NITROSO COMPOUNDS, VOLATILE
N-NITROSO COMPOUNDS, VOLATILE
N-NITROSODIBUTYL- AMINE
N-NITROSODIETHYL- AMINE
N-NITROSODIMETHYL- AMINE
N-NITROSODIMETHYLAMINE, DRY WEIGHT
N-NITROSODI-N- PROPYLAMINE
N-NITROSODI-N-PROPYLAMINE, DRY
WEIGHT
N-NITROSODIPHENYL- AMINE
N-NITROSODIPHENYLAMINE, DRY WEIGHT
N-NITROSOPYRROLIDINE
N-PROPYLBENZENE
O - CHLOROBENZYL CHLORIDE
OCTACHLORO- CYCLOPENTENE
OCTYLPHENOXY POLYETHOXYETHANOL
OIL, PETROLEUM ETHER EXTRACTABLES
OIL/GREASE CALCULATED LIMIT
OLEIC ACID
ORDRAM (HYDRAM)
ORGANIC ACTIVE IN- GREDIENTS (40CFR455)
ORGANIC COMPOUNDS, CHLOROFORM
EXTRACT.
ORGANIC HALIDES, TOTAL
ORGANIC PESTICIDE CHEMICALS
(40CFR455)
ORGANICS, GASOLINE RANGE
ORGANICS, TOT PURGE-ABLES (METHOD 624)
ORGANICS, TOTAL
ORGANICS, TOTAL TOXIC (TTO)
ORGANICS, VOLATILE (NJAC REG. 7:23-17E)

ORGANICS-TOT VOLTILE (NJAC REG.7:23-17E)
ORTHENE
ORTHOCHLOROTOLUENE
ORTHO-CRESOL
ORTHO-XYLENE
O-TOLUIDINE
OXALIC ACID
P,P'-DDE - DISSOLVED
P,P'-DDT - DISSOLVED
PALLADIUM, TOTAL (AS PD)
P-AMINOBIHENYL
PANTHALIUM, TOTAL
PARABEN (METHYL AND PROPYL)
PARACHLOROMETA CRESOL
PARA-DICHLOROBENZENE
PARAQUAT
PARATHION
PCB - 1262
PCB, TOTAL SLUDGE, SCAN CODE
PCB, TOTAL, SCAN EFFLUENT
PCB-1016 (AROCHLOR 1016)
PCB-1221 (AROCHLOR 1221)
PCB-1232 (AROCHLOR 1232)
PCB-1242 (AROCHLOR 1242)
PCB-1248 (AROCHLOR 1248)
PCB-1254 (AROCHLOR 1254)
PCB-1260 (AROCHLOR 1260)
PCBS IN BOTTOM DEPS. (DRY SOLIDS)
P-CRESOL
P-DIMETHYLAMINO- AZOBENZENE
PEBULATE (TILLAM)
PENTACHLOROBENZENE
PENTACHLOROETHANE
PENTACHLOROPHENOL
PESTICIDES, GENERAL
P-ETHYLTOLUENE
PETROL HYDROCARBONS, TOTAL
RECOVERABLE
PHENACETIN
PHENANTHRENE
PHENANTHRENE, DRY WEIGHT
PHENOL, SINGLE COMPOUND
PHENOLIC COMPOUNDS, SLUDGE TOTAL,
DRY WEIGHT
PHENOLIC COMPOUNDS, UNCHLORINATED
PHENOLICS IN BOTTOM DEPOSITS (DRY
WGT)
PHENOLICS, TOTAL RECOVERABLE
PHENOLS
PHENOLS, CHLORINATED
PHENOXY ACETIC ACID
PHENYLPROPANOLAMINE
PHENYLTOLOXAMINE
PHORATE
PHOSPHATED PESTICIDES

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PHOSPHOROTHIOIC ACID 0,0,0-TRIETHYL
ESTR
PHTHALATE ESTERS
PHTHALATES, TOTAL
PHTHALIC ACID
PHTHALIC ANHYDRIDE
PLATINUM, TOTAL (AS PT)
POLONIUM 210
POLYACRILAMIDE CHLORIDE
POLYBROMINATED BIPHENYLS
POLYBROMINATED DIPHENYL OXIDES
POLYCHLORINATED BIPHENYLS (PCBS)
POLYMETHYLACRYLIC ACID
PROPABHLOR (RAMROD) DISSOLVED
PROPANE, 2-METHOXY- 2-METHYL
PROPANIL
PROPENE, TOTAL
PROPRANE, TOTAL
PROPYL ACETATE
PROPYLENE OXIDE
PROPYLENGLYCOL, TOTAL
PURGEABLE AROMATICS METHOD 602
PURGEABLE HYDRO- CARBONS, METH. 601
PYRENE
PYRENE, DRY WEIGHT
PYRETHRINS
PYRIDINE
QUARTERNARY AMMONIUM COMPOUNDS
QUINOLINE
RADIATION, GROSS BETA
RADIATION, GROSS ALPHA
RADIOACTIVITY
RADIOACTIVITY, GROSS
RADIUM 226 + RADIUM 228, TOTAL
RADIUM 226, DISSOLVED
RADIUM 228, TOTAL
RATIO OF FECAL COLIFORM TO FECAL
STREPOC
R-BHC (LINDANE) GAMMA
RDX, DISSOLVED
RDX, TOTAL
RESIN ACIDS, TOTAL
RESORCINOL
RHODIUM, TOTAL
ROTENONE
ROUNDUP
SAFROLE
SAMARIUM, TOTAL (AS SM IN WATER)
SELENIUM SLUDGE SOLID
SELENIUM, POTENTIALLY DISSOLVD
SELENIUM, DISSOLVED (AS SE)
SELENIUM, DRY WEIGHT
SELENIUM, SLUDGE, TOTAL DRY WEIGHT
SELENIUM, TOTAL (AS SE)
SELENIUM, TOTAL RECOVERABLE
SEVIN
SEVIN (CARBARYL) IN TISSUE
SILVER
SILVER TOTAL RECOVERABLE
SILVER IN BOTTOM DEPOSITS (DRY WGT)
SILVER, DISSOLVED (AS AG)
SILVER, IONIC
SILVER, POTENTIALLY DISSOLVED
SILVER, TOTAL (AS AG)
SILVER, TOTAL PER BATCH
SILVEX
SODIUM CHLORATE
SODIUM DICHROMATE
SODIUM DIMETHYL-DITHIOCARBAMATE,
TOTAL
SODIUM PENTACHLORO- PHENATE
SODIUM POLYACRYLATE, TOTAL
SODIUM-O-PPTH
SOLIDS-FLOTNG-VISUAL DETRMNTN-# DAYS
OBS
STRONTIUM 90, TOTAL
STRONTIUM, DISSOLVED
STRONTIUM, TOTAL (AS SR)
STYRENE
STYRENE, TOTAL
SULFABENZAMIDE
SULFACETAMIDE
SULFATHIAZOLE
SULFOTEPP(BLADAFUME)
TANNIN AND LIGNIN
TCDD EQUIVALENTS
TELLURIUM, TOTAL
TERBACIL
TERBUFOS (COUNTER) TOTAL
TETRA SODIUM EDTA
TETRACHLORDIBENZOFURAN,2378-(TCDF)
SED,
TETRACHLORO BENZENE
TETRACHLOROETHANE, TOTAL
TETRACHLOROETHENE
TETRACHLOROETHYLENE
TETRACHLOROETHYLENE
TETRACHLOROETHYLENE, DRY WEIGHT
TETRACHLOROGUAIACOL (4CG) IN WHOLE
WATER
TETRAHYDRO-3,5-DIMETHYL-2-HYDRO-1,3,5-
TH
TETRAHYDROFURAN
TETRAMETHYLBENZENE
THALLIUM IN BOTTOM DEPOSITS (DRY
WGT)
THALLIUM, POTENTIALLY DISSOLVD
THALLIUM, ACID SOLUBLE
THALLIUM, DISSOLVED (AS TL)
THALLIUM, TOTAL (AS TL)
THALLIUM, TOTAL RECOVERABLE
THC, DRY & 02

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THEOPHYLLINE
THIOCARBAMATES
THIOCYANATE (AS SCN)
THIOSULFATE ION(2-)
THORIUM 230
THORIUM 232
TIN
TIN, TOTAL RECOVERABLE
TITANIUM, DISSOLVED (AS TI)
TITANIUM, TOTAL (AS TI)
TITANIUM, TOTAL DRY WEIGHT (AS TI)
TOLUENE
TOLUENE, DISSOLVED
TOLUENE, DRY WEIGHT
TOLUENE-2,4 -DIISOCYANITE
TOLYTRIAZOLE
TOTAL ACID PRIORITY POLLUTANTS
TOTAL BASE/NEUTRAL PRIORITY
POLLUTANTS
TOTAL PESTICIDES
TOTAL PHENOLS
TOTAL POLONIUM
TOTAL PURGEABLE HALOCARBONS
TOTAL TOXIC ORGANICS (TTO) (40CFR413)
TOTAL TOXIC ORGANICS (TTO) (40CFR433)
TOTAL TOXIC ORGANICS (TTO) (40CFR464A)
TOTAL TOXIC ORGANICS (TTO) (40CFR464B)
TOTAL TOXIC ORGANICS (TTO) (40CFR464C)
TOTAL TOXIC ORGANICS (TTO) (40CFR464D)
TOTAL TOXIC ORGANICS (TTO) (40CFR467)
TOTAL TOXIC ORGANICS (TTO) (40CFR468)
TOTAL TOXIC ORGANICS (TTO) (40CFR469)
TOTAL TOXIC ORGANICS(TTO) (40CFR465)
TOTAL VOLATILE PRIORITY POLLUTANTS
TOXAPHENE
TOXAPHENE, DRY WEIGHT
TOXICITY
TOXICITY, CERIODAPHNIA ACUTE
TOXICITY, CERIODAPHNIA CHRONIC
TOXICITY, PIMEPHALES ACUTE
TOXICITY, PIMEPHALES CHRONIC
TOXICITY, CHOICE OF SPECIES
TOXICITY, FINAL CONC TOXICITY UNITS
TOXICITY, SALMO CHRONIC
TOXICITY, SAND DOLLAR
TOXICITY, TROUT
TOXICS, PERCENT REMOVAL
TRANS-1,2-DICHLORO- ETHYLENE
TRANS-1,3-DICHLORO PROPENE
TREFLAN (TRIFLURALIN)
TRIBUTYLAMINE
TRIBUTYL TIN
TRICHLOROBENZENE
TRICHLOROBENZENE 1,2,4 TOTAL
TRICHLOROETHANE
TRICHLOROETHENE
TRICHLOROETHYLENE
TRICHLOROETHYLENE, DISSOLVED
TRICHLOROETHYLENE, DRY WEIGHT
TRICHLOROFLUORO- METHANE
TRICHLOROGUAIACOL
TRICHLOROPHENATE- (ISOMERS)
TRICHLOROPHENOL
TRICHLOROTOLUENE
TRICHLOROTRIFLUORO- ETHANE
TRIETHANOLAMINE
TRIETHYLAMINE
TRIFLURALIN (C13H16F3N3O4)
TRIHALOMETHANE, TOT.
TRIMETHYL BENZENE
TRINITROTOLUENE (TNT), DISSOLVED
TRINITROTOLUENE (TNT), TOTAL
TRIPHENYL PHOSPHATE
TRITHION
TRITIUM (1 H3),TOTAL
TRITIUM, TOTAL
TRITIUM, TOTAL COUN-TING ERROR (PC/L)
TRITIUM, TOTAL NET INCREASE H-3 UNITS
TUNGSTEN, DISSOLVED
TUNGSTEN, TOTAL
U-236 TOTAL WTR
URANIUM, POTENTIALLY DISSOLVD
URANIUM, 235 TOTAL
URANIUM, 238 TOTAL
URANIUM, NATURAL, DISSOLVED
URANIUM, NATURAL, TOTAL
URANIUM, NATURAL, TOTAL (IN PCI/L)
URANIUM, TOTAL AS U308
URANYL-ION
UREA
VERNAM (S-PROPYLDI-
PROPYLTHIOCARBAMATE)
VINYL ACETATE
VINYL CHLORIDE
VINYL CHLORIDE, DRY WEIGHT
VOLATILE COMPOUNDS, (GC/MS)
VOLATILE FRACTION ORGANICS (EPA 624)
VOLATILE HALOGENATED HYDROCARBONS
VOLATILE HALOGENATED ORGANICS (VHO),
TOT
VOLATILE HYDROCARBONS
VOLATILE ORGANICS DETECTED
XANTHATES
XC POLYMER IN DRILLING FLUIDS
XYLENE
XYLENE, PARA- TOTAL
ZINC
ZINC TOTAL RECOVERABLE
ZINC IN BOTTOM DEPOSITS (DRY WGT)
ZINC SLUDGE SOLID
ZINC SLUDGE TOTAL
ZINC, DISSOLVED (AS ZN)

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ZINC, POTENTIALLY DISSOLVED
ZINC, TOTAL
ZINC, TOTAL (AS ZN)
ZIRCONIUM, TOTAL

ERRATA SHEET
For
Revised State Water Resources Control Board
Water Quality Enforcement Policy
January 10, 2002 Public Hearing

Attached is an errata for the Revised Draft Water Quality Enforcement Policy. The errata address pending changes to legislation (effective January 1, 2002), typographic errors and changes that were inadvertently omitted from the October 15, 2001 version of the policy. Page numbers used in these errata refer to the plain text version (without underline and strikeout) of the October 15, 2001 version of the draft policy.

In order to be fully considered at the January 10, 2002 hearing, the notice of the second public hearing required that all written comments be received by close of business December 21, 2001. Additional comments, related to the errata only, should be submitted by January 7, 2002. Comments should either be e-mailed to myoungs@swrcb.ca.gov or submitted to:

Margie Youngs
CAEU - SWRCB
PO Box 100
Sacramento, CA 95812
Fax (916)341-5896.

Background information: The State Water Resources Control Board (SWRCB) will hold a second public hearing to seek additional comments regarding the proposed revision of SWRCB Resolution 96-030 (amended by Resolution 97-085), the Revised Draft Water Quality Enforcement Policy and errata. The proposed revision addresses recommendations of the SWRCB's Enforcement Order Review Panel and is intended to promote statewide consistency in enforcement of water quality laws by the State and Regional Water Quality Control Boards. The SWRCB may consider whether to revise Resolution 96-030 (amended by Resolution 97-085) at the January 23rd Board Meeting. The Revised Draft Water Quality Enforcement Policy is available for review at the SWRCB or at any of the nine Regional Water Quality Control Boards. A copy of the proposed policy, with the errata included, and other support documents can be accessed on the internet at www.swrcb.ca.gov (and click on Water News) and may also be obtained by calling Debbie Irvin at (916) 341-5286.

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1. Page 3, third paragraph, third sentence: Revise to read:

Priority violations include: all NPDES violations that the United States Environmental Protection Agency (USEPA) requires to be reported on the Quarterly Non-Compliance Report (QNCR) for the purpose of tracking significant non-compliance; all "serious" and "frequent" violations as defined in California Water Code section 13385; and other violations that the SWRCB and/or RWQCB considers to be significant and therefore high priority.

2. Page 5, third complete paragraph: Revise to read:

In addition to other signatory requirements, WDRs for publicly-owned treatment works (POTWs) should explicitly state that reports of monitoring results must also be signed and certified by the chief plant operator and if the chief plant operator is not in the direct line of supervision of the laboratory function, the chief of the laboratory also.

3. Page 7, Section III.A(a): Revise to read:

- (a) Except as specified in subsections (a)(i) and (a)(ii), any violation of an effluent or receiving water limitation for a Group 1 pollutant (see Table III-1) by 40 percent or more or any violation of an effluent or receiving water limitation for a Group 2 pollutant (see Table III-2) by 20 percent or more.
 - (i) For discharges of pollutants subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the "California Ocean Plan", where the effluent or receiving water limitation for a pollutant is lower than the applicable Minimum Level, any discharge that equals or exceeds the Minimum Level is a priority violation. For exceedances of effluent limitations only, such a discharge would also be considered to be a serious violation pursuant to California Water Code section 13385(h)(2)(a).
 - (ii) For discharges of pollutants that are not yet subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the California Ocean Plan (e.g., i.e., discharges with waste discharge requirements issued prior to the adoption of the applicable plan, or pollutants that are not addressed by the applicable plan) where the effluent or receiving water limitation for a pollutant is lower than the applicable method detection limit² any ~~exceedance~~ discharge that equals or exceeds of the method detection limit is a priority violation. Where the effluent or receiving water limitation for a pollutant is greater than the applicable method detection limit and less than an applicable quantitation limit³, any discharge that: 1) equals or exceeds ~~exceedance~~ of the quantitation limit; and 2) exceeds the effluent or receiving water limitation by 40 percent or more for a Group 1 pollutant or by 20 percent or more for a Group 2 pollutant, is a priority violation. For exceedances of effluent limitations only, both of these discharges would be considered to be serious violations pursuant to California Water Code section 13385(h)(2)(a).

4. Page 7, Footnote number 2: Revise to read:

²This would also include the situation where the limitation is stated as "zero" or "non-detect." There are multiple definitions for the term "method detection limit." One generally accepted definition for the method detection limit is the concentration at which one or more state certified laboratories has determined with 99% confidence that the pollutant is present in the sample. For the purpose of this policy, the applicable method detection limit is the method detection limit (or detection limit) specified or authorized in the applicable waste discharge requirements.

5. Page 8, Section III.A(e): Revise to read:

- (e) Any waste discharge that violates an effluent or receiving water limitation for any other pollutant or monitored parameter that is not ~~listed~~ included in either Table III-1 or Table III-2 by 40 percent or more.

6. Page 9, Table III-1: Revise introductory text to read:

Table III-1. Group 1 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), the United States Environmental Protection Agency (USEPA) has identified an ~~exhaustive~~ list of those pollutants, which

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are included as Group 1 pollutants under the various classifications of "other." ~~The entire This list is included in Appendix A of this Policy and is hereby incorporated into this Table III-1. This change is prospective, including changes to the incorporated provisions as the changes take effect.~~

7. Page 10, Table III-2: Revise introductory text to read:

Table III-2. Group 2 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), USEPA has identified an ~~exhaustive list of these pollutants, which are included as Group 2 pollutants. The entire This list is included in Appendix B of this Policy and is hereby incorporated into this Table III-2. This change is prospective, including changes to the incorporated provisions as the changes take effect.~~

8. Page 11, Sections III.E(d) through (f): Revise to read:

- (d) spills of materials containing persistent, bioaccumulative pollutants;
~~(d)(e)~~ discharges of sediment that impact spawning habitat; and
~~(e)(f)~~ discharges of pollutants listed by SWRCB pursuant to the Clean Water Act section 303(d) into a water body identified as impaired under that section.

9. Page 13, Section III.K: Revise to read:

K. Violation of Water Quality Objectives or Receiving Water Limitations in Groundwater

Any discharge of waste resulting in, or likely to result in, a violation of an applicable water quality objective, groundwater limitations, groundwater protection standards or a receiving water other applicable concentration limits in waste discharge requirements for pollutants limitation in groundwater or surface water, or in the creation of a condition of nuisance, is a priority violation unless the discharge is permitted or otherwise specifically authorized by the SWRCB or RWQCB. ~~For storm water discharges, RWQCBs may allow the iterative approach discussed in SWRCB Orders WQ 91-03, 91-04, 96-13, 98-01 and 99-05 or allowed in the relevant NPDES permit.~~

10. Page 13, Sections III.L(d) through (f): Revise to read:

- (d) Any discharge that exceeds the Background Cumulative Adjusted Loading Rate in the requirements, or exceeds the Ceiling Pollutant Concentration Limits; and
(e) Any violation of the specific Class B Discharge Specifications; and
(f) Any violations of pathogen reduction requirements or violations of harvesting and site restriction requirements.

11. Page 17, Section IV.C.3, first paragraph: Revise to read:

California Water Code sections 13267(b) and 13383 allow RWQCBs to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste in accordance with the conditions in the section. The section requires that Regional Boards provide the person with a written explanation with regard to the need for the reports and identify evidence that supports requiring that person to submit the report. This generally requires a brief statement regarding the relationship between the information that is being sought and the water quality issue that is being investigated (e.g., to determine the level of the discharge's impact on beneficial uses or to determine compliance with waste discharge requirements.) The Regional Board is also required to explain a reason for suspecting that the recipient(s) of the order discharged, is discharging, or may discharge waste. This would typically require a brief statement regarding the person's current or former ownership or control over the location of the discharge or the person's control over the discharge itself. If the existence of a discharge is in question, the statement should also include a reason for suspecting a discharge (e.g., a brief description of the condition downstream or down-gradient of the suspected discharge). These statements required by 13267(b) may, for example, be contained in a transmittal letter, in the 13267(b) requirements, or in the findings in an order. Failure to

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comply with requirements made pursuant to Section 13267(b) is a priority violation and may result in administrative civil liability pursuant to Section 13268. Failure to comply with orders made pursuant to Section 13383 may result in administrative civil liability pursuant to Section 13385. Section 13267(b) and 13383 requirements are enforceable when signed by the Executive Officer of the RWQCB.

12. Page 17, Section IV.C.4, first paragraph: Revise to read:

Cleanup and Abatement Orders (CAOs) are adopted pursuant to California Water Code section 13304. CAOs may be issued to any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance (discharger). The CAO requires the discharger to clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. dischargers that are not being regulated by WDRs.

13. Page 19, Section IV.C.9: Revise footnote to read:

⁶Section 13627.3 (if AB 1664 is signed by Governor, then this should read, "Sections 13627.1, and 13627.2, 13627.3 and 13627.4") of the Water Code and section 25284.4 of the Health and Safety Code authorize the SWRCB to impose administrative civil liability on certified relative to wastewater treatment plant operators and licensed underground storage tank testers, respectively. This policy does not apply to, and is not intended to limit in any way, the SWRCB's imposition of any disciplinary action, including administrative civil liability, to these individuals pursuant to this authority, except that the types of enforcement actions discussed in subpart V. B. shall be considered.

14. Page 20, Section IV.C.9, last row on page: Revise to read:

§ 13350 (California Water Code)	<ul style="list-style-type: none">• Up to \$10 per gallon of waste discharged, <u>or</u> (if no cleanup and abatement order has been issued).• Between \$500 and \$5,000 per day if a cleanup and abatement order has been issued <u>Up to \$5000 per day of violation.</u> <p>If there is no discharge, but an order of the RWQCB is violated: Between \$100 and \$1,000 for each day of violation.</p> <p><u>The Regional Board is required to make a specific finding if it imposes civil liability in an amount less than \$100 per day of violation if there is no discharge, or less than \$500 per day of violation if there is a discharge and a CAO is issued.</u></p>
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15. Page 22, Sections IV.C.9(a) and (b): Revise to read:

a) ACL Complaint

California Water Code sections 13323-13327 describe the process to be used to assess ACLs. The California Water Code authorizes RWQCB Executive Officers to issue an ACL Complaint. California Water Code section 13261(b)(1) authorizes both the RWQCB Board Executive Officers and the State Board Executive Director to issue an ACL complaint for failing to furnish a report of waste discharge or pay a waste discharge requirement fee. The ACL Complaint describes the violation and provision of law authorizing imposition of the civil liability, proposes a specific civil liability, and informs the recipient that a hearing will be held within 60 days after the Complaint is served. Section VII of this policy provides specific instructions for staff to use when developing and documenting a recommendation for the amount of the assessment. ACLs issued under section 13385 for violations of the CWA must allow a 30-day public comment period for any proposed settlement of the ACL. It is the policy of the SWRCB that at least 30 days public comment period should be provided prior to the settlement of any ACL. The SWRCB or

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RWQCB should use appropriate methods to notify the public of the proposed action. At a minimum, public notice must include publishing a notice in a newspaper of general circulation.

Upon receipt of an ACL Complaint, the discharger(s) may waive its right to a hearing and pay the liability; negotiate a settlement (memorialized in the form of an amended complaint); or appear at the RWQCB or SWRCB hearing to dispute the Complaint. If the discharger waives its right to a hearing and pays the liability, a third party may still comment on the Complaint at any time during the public comment period. Following review of the comments, the Executive Officer may withdraw the ACL complaint. An ACL Complaint may be redrafted and issued as appropriate. In cases where a hearing before the RWQCB or SWRCB is not held, summary information regarding the final disposition of the Complaint should be included in the SWRCB or RWQCB Agenda.

If the discharger does not waive the right to a hearing, California Water Code section 13233(b) requires that a hearing be held within 60 days of the issuance of the complaint unless the discharger agrees in writing that the hearing can be held more than 60 days after the issuance of the complaint. The hearing shall be before a panel of the RWQCB or before the RWQCB or SWRCB. At the hearing the RWQCB or SWRCB will consider whether to affirm, modify or reject the liability. If the RWQCB or SWRCB adopts an ACL Order, it may be for an amount that is greater or less than the amount proposed in the complaint but may not exceed the maximum statutory liability. If the Executive Officer decides to dismiss the liability prior to the hearing, the Executive Officer must renew ~~renew~~ withdraw the Complaint.

b) Suspended Liability

The RWQCB or SWRCB may, by various means, allow a portion of the liability to be satisfied through the successful completion of a Supplemental Environmental Project (SEP) and/or a Compliance Project (CP). The remaining portion of the liability shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The specific procedures for suspending liability for SEPs and CPs are discussed in greater detail in Sections VIII and IX of this Policy.

16. Page 23, Sections IV.C.9(d): Revise to read:

d) ACL Order

ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB. ACL Orders can only be modified by the SWRCB pursuant to California Water Code section 13320 or in superior court if a petition for writ of mandate was properly filed in accordance with California Water Code section ~~13325~~ 13330. All cash payments to the SWRCB or RWQCBs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

17. Page 23, Section IV.C.10, first paragraph: Revise to read:

The RWQCB or SWRCB can refer violations to the state Attorney General for civil enforcement actions. The RWQCB or SWRCB can also request the appropriate county District Attorney or City Attorney seek criminal prosecution. A superior court may be requested to impose civil or criminal penalties. In some cases (e.g., when the District Attorney or Attorney General is unable or unwilling to accept a case), the RWQCB may find it appropriate to request the U.S. Attorney's Office to review potential violations of federal environmental statutes, including but not limited to the CWA, the Endangered Species Act, the Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act.

18. Page 23, Section IV.C.10(a), first paragraph: Revise to read:

At the request of the RWQCB or SWRCB, the Attorney General can seek judicial civil liabilities on behalf of the RWQCB or SWRCB for a variety of California Water Code violations, essentially the same ones for which the RWQCB or SWRCB can impose ACLs.

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19. Page 26, Section V.B.1: Revise to read:

1. The SWRCB's Office of Operator Certification shall promptly consider suspension or revocation of the Operator Certificate, or the imposition of administrative civil liability (~~ACL option must be removed if AB 1664 is not signed by the Governor~~), of any operator who knowingly commits any of the following acts if doing so impacts or threatens to impact water quality...

20. Page 27, Section V.D, first paragraph: Revise to read:

Mandatory penalty provisions are required by California Water Code section 13385(h) and (i) for specified violations of NPDES permits. California Water Code section 13385(h) ~~and (i)~~ requires that a mandatory minimum penalty of \$3,000 be assessed by the RWQCB for all serious violations. A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more. (See Tables III-1 and III-2). Section III.A.(a) of this policy addresses situations where the effluent limit for a pollutant is less than or equal to the quantitation limit. As an alternative to assessing \$3,000 for the first serious violation in a six-month period, the RWQCB may require the discharger to spend an amount equal to the penalty for a SEP or to develop a pollution prevention plan (PPP). An exception to the imposition of mandatory minimum penalties is an intentional act of a third party which could not have been prevented or avoided by the exercise of due care or foresight by the discharger. Such intentional acts are fact specific and should be evaluated on a case by case basis.

21. Page 28, third complete paragraph: Revise to read:

The intent of these portions of the California Water Code is to assist in bringing the State's waters into compliance with WDRs. RWQCBs should issue mandatory minimum penalties within seven months of the time that the violations qualify as ~~MMP~~ mandatory minimum penalty violations, or sooner if the total mandatory penalty amount is \$30,000 or more. This will encourage the discharger to correct the violation in a timely manner.

22. Page 29, third paragraph: Revise to read:

It is the policy of the SWRCB that "financial hardship" means that the median annual household income for the community is less than 80% of the California median annual household income. It is the policy of the SWRCB that "median annual household income" means the median annual household income of the community based on the most recent census data or a local survey approved by the SWRCB ~~or RWQCB~~. If a community believes that the census data does not represent the community, and the community is not a Census Designated Place, a City or a Town, the community may apply to the SWRCB for designation as a "small community with a financial hardship". The application must include a map of community boundaries, a list of properties, the number of households and the number of people in the community. Additional information including information regarding income and/or property values of the community may be submitted in support of the application. If the application does not provide an adequate basis for the calculation of median household income, the SWRCB may require an independent income survey must be conducted in accordance with a pre-approved methodology, guidelines published by the United States Department of Agriculture, Rural Economic and Community Development Service. A subdivision of state government ~~should~~ shall not be considered a small community with a financial hardship. The SWRCB will maintain a current list of designated small communities with a financial hardship.

23. Page 29, Section V.E, first paragraph, second sentence: Revise to read:

Failure to pay the fee when requested is a misdemeanor (and a priority violation) and may be subject to an ACL imposed by the RWQCB ~~or SWRCB~~ of up to \$1,000 per day pursuant to California Water Code section 13261.

24. Page 30, Section V.F, first paragraph: Revise to read:

The SWRCB should pursue collection of unpaid administrative civil liabilities. The California Water Code states that ACLs shall be paid within 30 days of the RWQCB's adoption of an ACL Order unless the petitioner files a petition for review under California Water Code section 13320. When a petition is filed with the SWRCB, payment is extended during the SWRCB review of the petition and shall be paid within 30 days of the SWRCB's decision on

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the petition unless the petitioner seeks judicial review pursuant to California Water Code section 13330. Payment of an ACL is also extended while a writ of mandate is pending before the superior court. If the petitioner fails to pay the liability and fails to seek judicial review within 30 days of the SWRCB action, the SWRCB may file for a judgment to collect the ACL pursuant to California Water Code section 13328. Application is made to the appropriate court in the county in which the liability was imposed, generally within 60 days of the failure to pay.

25. Page 32, Section VI.B.3, first paragraph, first sentence: Revise to read:

Responses to oil spills to inland waters that may impact fish and wildlife resources or to marine or estuarine waters should be coordinated ~~through~~with the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR).

26. Page 32, Section VI.B.3, second paragraph: Delete first sentence as follows:

~~Oil spills to inland (fresh) waters are not within the jurisdiction of OSPR.~~

27. Page 32, Section VI.B.4, first paragraph: Revise to read:

Hazardous wastes are those meeting the criteria specified in Title 22, Division 4.5, Chapter 11, California Code of Regulations. RWQCB staff should coordinate enforcement actions involving hazardous waste spills with the California Department of Toxic Substances Control and/or any local or county hazardous waste program. The Department of Fish and Game should be consulted whenever pollution events may impact fish and wildlife resources. Spills constitute unlawful disposal...

28. Page 33, Section VII, first paragraph: Revise to read:

The following provisions apply to all ACLs except mandatory minimum penalties required pursuant to California Water Code sections 13385(h) and (i) and penalties pursuant to California Water Code section 13399.33. Mandatory minimum penalties are discussed in Section V.~~CD~~ of this Policy.

29. Page 34, first complete paragraph: Revise to read:

The California Water Code lists a number of factors that must be taken into consideration when setting ACLs. California Water Code section 13327, governing ACL amounts for a wide variety of violations, states that:

[The Board] shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the ~~discharger violator~~, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

30. Page 34, second complete paragraph: Revise to read:

California Water Code section 13385(e), governing ACL amounts for violations subject to the CWA, requires consideration of different factors stating that:

~~{The Board}~~ regional board, the state board, or the superior court, as the case may be shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the ~~discharger violator~~, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

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31. Page 38, Section VII.F(d), last sentence: Revise to read:

This calculation should be done using the ~~most recent version of~~ USEPA's BEN⁷ computer program (the most recent version is accessible at <http://www.swrcb.ca.gov>) unless the SWRCB or RWQCB determines, or the discharger demonstrates to the satisfaction of the SWRCB or RWQCB, that an alternate method is more appropriate for a particular situation.

32. Page 38: Delete last sentence in footnote as follows:

~~^{7...} This change is prospective, including changes to the incorporated provisions as the changes take effect.~~

33. Page 42, Section VIII.C(a), first sentence: Revise to read:

An SEP ~~should~~ shall only consist of measures that go above and beyond the obligation of the discharger.

34. Page 48, Table XI-1: Revise table number and contents to read:

TABLE IXI-1

Type of Spill	Criteria	Reporting Requirements
Sewage Spill	Any spill that results in a discharge of sewage of 1000 gallons or more, or results in a discharge to surface waters ² (any volume) or environmentally sensitive areas	<p>24 Hour Reporting: The discharger shall report to RWQCB within 24 hours from the time that 1) the discharger has knowledge of the spill, 2) notification is possible, and 3) notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the RWQCB in this initial report shall include the name and phone number of the person reporting the spill, the responsible sanitary sewer system agency, the estimated total volume of the spill, the location, the receiving surface waters⁶, whether or not the spill is still occurring at the time of the report, and confirmation that the local health services agency was or will be notified as required un the reporting requirements of the local health services agency.</p> <p>5 Day Reporting: The discharger shall submit a written report, as well as any supporting documents, describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter².</p>
Sewage Spill	All sewage spills of less than 1,000 gallons that do not discharge to surface waters ⁶²	<p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>

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Recycled Water Spill	All spills of recycled water treated to less than disinfected tertiary level (> 2.2 MPN) of 1,000-gallons or more any volume that have entered or have the potential to enter surface waters ⁶²	<p>24 Hour Reporting: The discharger shall report to RWQCB within 24 hours from the time that 1) the discharger has knowledge of the spill, 2) notification is possible, and 3) notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the RWQCB in this initial report shall include the name and phone number of the person reporting the spill, the responsible sanitary sewer system agency, the estimated total volume of the spill, the location, the receiving surface waters⁶², whether or not the spill is still occurring at the time of the report, and confirmation that the local health services agency was or will be notified as required un the reporting requirements of the local health services agency.</p> <p>5 Day Reporting: The discharger shall submit a written report describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>
Recycled Water Spill	All spills of recycled water treated to disinfected tertiary level (2.2 MPN) of 50,000 gallons or more that have entered or have the potential to enter surface waters	<p>5 Day Reporting: The discharger shall submit a written report describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>
Recycled Water Spill	All recycled water spills, regardless of quantity, that have not entered and will not enter surface waters ⁶²	<p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>

35. Pages A-1 through B-11, Appendices A and B: Revise as follows:

Delete the following parameters from Appendix A and add them to Appendix B:

- 1,2,3 Trichloroethane
- 2,4,6 Trichlorophenol, dry weight
- 2-Hexanone
- 2-propanone
- Acetone, dry weight
- Butanone
- Cadmium, sludge, total dry weight (as Cd)
- Carbon disulfide
- Chromium, dry weight
- Gold, total (as Au)
- Hydrocarbon, Total Recoverable
- Lead, dry weight
- Lead, total dry weight (as Pb)
- Mercury, total recoverable

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Mercury, dry weight
Nicotine sulfate
Rare earth metals, total
Rubidium, total (as Rb)
Selenium, acid soluble
Tin, dissolved (as Sn)
Tin, total (as Sn)
Zinc, dry weight

Delete the following parameters from Appendix B and add them to Appendix A:

Boric acid
Boron, dissolved (as B)
Boron, total (as B)
Boron, total recoverable
Chloride, dissolved (as Cl)
Chloride, dissolved in water
Chlorite
Iron, total (as Fe)
Magnesium, pct exchange
Solids-floating-visual determination-# days obs

STATE WATER RESOURCES CONTROL BOARD

**WATER QUALITY
ENFORCEMENT POLICY**

DRAFT REVISED POLICY

With Errata

December 17, 2001

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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INTRODUCTION

The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) (together "Boards") are the principal state agencies with primary responsibility for the coordination and control of water quality. In the Porter-Cologne Water Quality Control Act (Porter-Cologne), the Legislature declared that the "state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation..." (California Water Code section 13000). Porter-Cologne grants the Boards the authority to implement and enforce the water quality laws, regulations, policies and plans to protect the groundwater and surface waters of the state. Timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the State have clean water. It is the policy of the SWRCB that the Boards shall strive to be fair, firm and consistent in taking enforcement actions throughout the State, while recognizing the individual facts of each case. The primary goal of this Enforcement Policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. Toward that end, it is the intent of the SWRCB that the RWQCBs operate within the framework provided by this Policy.

Enforcement serves many purposes. First and foremost, it assists in protecting the beneficial uses of waters of the State. Swift and firm enforcement can prevent threatened pollution from occurring and can promote prompt cleanup and correction of existing pollution problems. Enforcement ensures compliance with requirements in SWRCB and RWQCB regulations, plans, policies, and orders. Enforcement not only protects the public health and the environment, but also creates an "even playing field," ensuring that dischargers who comply with the law are not placed at a competitive disadvantage by those who do not. It also deters potential violators and, thus, further protects the environment. Monetary remedies, an essential component of an effective enforcement program, provide a measure of compensation for the damage that pollution causes to the environment and ensure that polluters do not gain an economic advantage from violations of water quality laws.

It is important to note that enforcement of the State's water quality requirements is not solely the purview of the Boards and their staff. Other agencies (e.g., the California Department of Fish and Game) have the ability to enforce certain water quality provisions in state law. State law also allows for members of the public to bring enforcement matters to the attention of the Boards and authorizes aggrieved persons to petition the SWRCB to review most actions or in-actions by the RWQCB. In addition, state and federal statutes provide for public participation in the issuance of most orders, policies and water quality control plans. Finally, the federal Clean Water Act (CWA) authorizes citizens to bring suit against dischargers for certain types of CWA violations.

I. FAIR, FIRM AND CONSISTENT REGULATION AND ENFORCEMENT

A. Standard, Enforceable Orders

Fair, firm and consistent enforcement depends on a foundation of solid requirements in law, regulations, policies, and the adequacy of enforceable orders. Such orders include but are not limited to: waste discharge requirements (WDRs), including National Pollutant Discharge Elimination System (NPDES) permits; waivers; certifications; and cleanup and abatement orders. The extent to which enforceable orders include well-defined requirements and apply similar requirements to similar situations affects the consistency of compliance and enforcement. Whenever the circumstances of a discharge are similar, the provisions of the enforceable orders should be comparable.

The SWRCB, with assistance and advice from the RWQCBs will compile and maintain examples of standard enforceable orders. RWQCBs' orders shall be consistent except as appropriate for the specific circumstances related to the discharge and to be consistent with applicable water quality control plans. Such modifications must be consistent with applicable state and federal law. RWQCB Water Quality Control Plans may include unique requirements that apply within a region and that must be implemented.

B. Determining Compliance

The Boards shall implement consistent and valid methods to determine compliance with enforceable orders. Compliance assurance activities include the review of self-monitoring reports, facility inspections and complaint response. Compliance assurance activities are discussed in more detail in section II of this Policy.

C. Timely and Appropriate Enforcement

An enforcement action is any informal or formal action taken to address the failure to comply or the threatened failure to comply with applicable statutes, regulations, plans, policies, or enforceable orders. Enforcement actions should be initiated as soon as possible after discovery of the violation.

Enforcement actions should be appropriate for each type of violation and should be similar for violations that are similar in nature and have similar water quality impacts. Appropriate enforcement informs the violator that the violation has been noted and recorded by the Board, results in a swift return to compliance, and serves as a deterrent for future violations. When appropriate, enforcement also requires remediation of environmental damage.

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D. Progressive Enforcement

Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources to: 1) assist cooperative dischargers in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance. For some violations, an informal response such as a phone call or staff enforcement letter is sufficient to inform the discharger that the violation has been noted by the RWQCB and to encourage a swift return to compliance. More formal enforcement is often an appropriate first response for more consequential violations. If any violation continues, the enforcement response should be quickly escalated to increasingly more formal and serious actions until compliance is achieved. Progressive enforcement is not appropriate in all circumstances. For example, where there is an emergency situation needing immediate response, immediate issuance of a cleanup and abatement order may be appropriate.

E. Enforcement Priorities

Every violation deserves an appropriate enforcement response. However, because resources are limited, the RWQCBs must continuously balance the need to complete non-enforcement program tasks with the need to address violations. Within available resources for enforcement, the RWQCBs must then balance the importance or impact of each potential enforcement action with the cost of that action. Informal enforcement actions are usually very cost effective and are therefore the most frequently used enforcement response. Most formal enforcement actions are relatively costly and must therefore be targeted to the RWQCB's highest priority violations.

The first step in enforcement prioritization is the determination of the relative importance of the violation. Section III of this Policy identifies criteria for determining if a violation should be identified as a priority violation. Priority violations include: all NPDES violations that the United States Environmental Protection Agency (USEPA) requires to be reported on the Quarterly Non-Compliance Report (QNCR) for the purpose of tracking significant non-compliance; all "serious" and "frequent" violations as defined in California Water Code section 13385; and other violations that the SWRCB and/or RWQCB considers to be significant and therefore high priority. Staff will indicate, for each violation, whether or not the violation meets the "priority violation" criteria in section III of this Policy.

The second step is for senior staff and management to review, for each newly identified priority violation, other characteristics of the violation that would affect decisions about the appropriate enforcement response. Once each month senior staff and management should meet and assign, for each priority violation, a relative priority value of "high", "medium" or "low". Except for confidential information regarding ongoing investigations or enforcement, the list of high priority violations should be reported to the RWQCB, should be available upon request from the RWQCB, and should be posted, along with the most recent violation report, on the RWQCB internet-site. The criteria for selecting the relative enforcement priority include, but are not limited to:

- (a) the applicability of mandatory minimum penalty provisions of California Water Code sections 13385 and 13399.33;

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- (b) evidence of, or threat of, pollution or nuisance and the magnitude or impacts of the violation;
- (c) evidence of negligence or recalcitrance;
- (d) the availability of resources for enforcement;
- (e) USEPA expectations for timely and appropriate enforcement for NPDES delegated programs¹;
- (f) specific recommended enforcement pursuant to Section V of this Policy;
- (g) case-by-case factors that may mitigate a violation including the compliance history of the violator and good-faith efforts of the violator to eliminate noncompliance;
- (h) impact or threat to watersheds or water bodies that the RWQCB considers high priority (e.g., due to the vulnerability of an existing beneficial use or an existing state of impairment);
- (i) issues of environmental justice, such that enforcement efforts should be fair and equitable across communities without socio-economic biases;
- (j) potential to cleanup and abate effects of pollution; and
- (k) the strength of evidence in the record to support the enforcement action.

Serious threats of violation must also be dealt with promptly in order to avoid or mitigate the effects of the threatened violation. Within available resources, formal enforcement actions should be targeted at the highest priority violations and threatened violations. Priority violations that do not receive formal enforcement should receive informal enforcement.

F. Environmental Justice

Environmental Justice is defined in Government Code section 65040.12(c) as: "... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Consistent with this, the Boards shall undertake enforcement efforts in a manner that is fair and equitable across communities without socio-economic bias and shall encourage community involvement. To do this, the Boards shall, within available resources:

- (a) Enter demographic data (e.g., census data, etc.) into the SWRCB data management system for use in making enforcement decisions;
- (b) Analyze data to evaluate relationships between socioeconomic factors and enforcement; and
- (c) Conduct effective outreach to inform communities of violations that affect them, to provide education regarding the role of the Boards, and to notify affected communities of

¹ For NPDES facilities that are listed on the Quarterly Noncompliance Reports (QNCR) USEPA considers timely enforcement of Significant Noncompliance (SNC) violations to be an enforcement action taken within five months after the first quarter of SNC (Guidance for Oversight of NPDES Programs, USEPA Office of Water, May 1987). USEPA considers appropriate enforcement to be an enforceable order or agreement that requires specific corrections to address the violations; in California, Cease and Desist Orders, Cleanup and Abatement Orders, or judicial consent decrees are considered by USEPA to meet this expectation.

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pending enforcement actions and encourage community involvement. Effective outreach may involve the use of alternative media (e.g., radio, internet, targeted news publications) as well as translation into plain English or non-English languages.

II. COMPLIANCE ASSURANCE

Compliance with WDRs, Water Quality Control Plan prohibitions, enforcement orders, and other provisions of law administered by the SWRCB or RWQCBs can be determined through discharger self-monitoring reports (SMRs), compliance inspections, facility reporting, complaints, or file review.

A. Self-Monitoring Reports (SMRs)

The Boards ensure compliance with WDRs and other Board orders by requiring dischargers to implement a monitoring and reporting program under California Water Code sections 13267 and 13383, and to periodically submit SMRs. Reporting frequency for regulated dischargers depends on the nature and impact of the discharge. The regulations that implement the CWA also specify monitoring requirements. Enforceable orders that require a monitoring and reporting program should explicitly require the discharger to clearly identify all violations of applicable requirements in a cover letter or in the SMR and to discuss corrective actions taken or planned and the proposed time schedule of corrective actions. Identified violations should include a description of the requirement that was violated and a description of the violation.

In addition to other signatory requirements, WDRs for publicly-owned treatment works (POTWs) should explicitly state that reports of monitoring results must also be signed and certified by the chief plant operator and if the chief plant operator is not in the direct line of supervision of the laboratory function, the chief of the laboratory also.

RWQCB staff shall regularly review all discharger SMRs and document all violations and any subsequent enforcement response in the Boards' enforcement data management system.

B. Compliance Inspections

On-site compliance inspections are conducted by the RWQCB staff under the authority provided in California Water Code sections 13267 and 13383. Compliance inspections provide the RWQCB an opportunity to verify that information submitted in SMRs is complete and accurate. Compliance inspections address compliance with WDRs, laboratory quality control and assurance, record keeping and reporting, time schedules, best management practices, pollution prevention plans, and any other pertinent requirements. RWQCB staff shall document all violations identified as the result of compliance inspections and any subsequent enforcement response in the facility file and in the Boards' enforcement data management system.

C. Direct Facility Reporting

California Water Code section 13271 requires any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state to notify the Office of Emergency Services of the discharge as specified in that section. The Office of Emergency Services then immediately notifies the appropriate RWQCB and the local health officer and administrator of environmental health of the discharge.

WDRs, including NPDES permits, shall require regulated facilities to report to the RWQCB by phone within a specified time, followed by a written report and/or a discussion in the next SMR, when certain events occur, such as:

- (a) Discharges that are not in accordance with WDRs and that pose an immediate public health threat;
- (b) Bypass of raw or partially treated sewage or other waste from a treatment unit or discharge of wastewater from a collection system in a manner inconsistent with WDRs;
- (c) Bypass of recycled water from a treatment unit or discharge of recycled water from a distribution system in a manner inconsistent with WDRs;
- (d) Treatment unit failure or loss of power that threatens to cause a bypass; and
- (e) Any other operational problems that threaten to cause significant violations of WDRs or impacts to receiving waters or public health.

D. Complaints and Complaint Investigations

Often information regarding an actual or potential violation or unauthorized discharge is obtained through telephone or written notification from a member of the public, another public agency or an employee working at a regulated facility. Complaints may also involve nuisance conditions, such as noxious odors that extend beyond a wastewater treatment plant boundary. During the course of an investigation additional violations that are indirectly related or unrelated to the original investigation may also be discovered. RWQCB staff shall document all complaints and findings resulting from complaint investigations.

E. Case Record Maintenance and Review

WDRs, enforcement orders (e.g., cleanup and abatement orders, cease and desist orders, and time schedule orders), and requests for reports required pursuant to California Water Code section 13267 frequently mandate completion of tasks, which the dischargers must confirm by submission of appropriate reports to the RWQCBs. Failure to submit the reports or to complete the required tasks may be the basis for additional enforcement. RWQCBs shall use data management systems to track tasks and reports required of dischargers.

Often the RWQCB first hears about spills or other violations from the California Department of Fish and Game, the California Department of Toxic Substance Control, the Office of Emergency

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Services or other agencies. District Attorneys are another source of information. The RWQCBs can use this information to decide whether to initiate joint or separate enforcement actions.

III. DETERMINING "PRIORITY" VIOLATIONS

The general criteria below have been developed to assist the RWQCBs in identifying priority violations in order to help establish priorities for enforcement efforts. Depending on the circumstances, violations that are not included on this list could nonetheless be considered "priority" as well. RWQCB staff should indicate, for each violation, whether or not the violation meets the "priority violation" criteria in this section. RWQCB senior staff and management should use the criteria specified in Section I. E. of this policy to further evaluate the priority violations and, within available resources, target formal enforcement actions at the highest priority violations.

The following subsections comprise a non-exclusive list of "priority" violations that will be identified as priority violations in the enforcement database, that will be further evaluated for possible formal enforcement, and that should, at a minimum, receive informal enforcement.

A. NPDES Effluent and Receiving Water Limitation Violations

For facilities with NPDES permits, the following effluent and receiving water limitation violations are priority violations:

- (a) Except as specified in subsections (a)(i) and (a)(ii), any violation of an effluent or receiving water limitation for a Group 1 pollutant (see Table III-1) by 40 percent or more or any violation of an effluent or receiving water limitation for a Group 2 pollutant (see Table III-2) by 20 percent or more.
 - (i) For discharges of pollutants subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the "California Ocean Plan", where the effluent or receiving water limitation for a pollutant is lower than the applicable Minimum Level, any discharge that equals or exceeds the Minimum Level is a priority violation. For exceedances of effluent limitations only, such a discharge would also be considered to be a serious violation pursuant to California Water Code section 13385(h)(2)(a).
 - (ii) For discharges of pollutants that are not yet subject to the SWRCB's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," or the California Ocean Plan (e.g., i.e., discharges with waste discharge requirements issued prior to the adoption of the applicable plan, or pollutants that are not addressed by the applicable plan) where the effluent or receiving water limitation for a pollutant is lower than the applicable method detection limit² any exceedance discharge that equals or exceeds of the method

² This would also include the situation where the limitation is stated as "zero" or "non-detect." There are multiple definitions for the term "method detection limit." One generally accepted definition for the method detection limit is the concentration at which one or more state certified

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detection limit is a priority violation. Where the effluent or receiving water limitation for a pollutant is greater than the applicable method detection limit and less than an applicable quantitation limit³, any discharge that: 1) equals or exceeds exceedance of the quantitation limit; and 2) exceeds the effluent or receiving water limitation by 40 percent or more for a Group 1 pollutant or by 20 percent or more for a Group 2 pollutant, is a priority violation. For exceedances of effluent limitations only, both of these discharges would be considered to be serious violations pursuant to California Water Code section 13385(h)(2)(a).

- (b) Any waste discharge that violates a flow limitation by ten percent or more.
- (c) Any waste discharge that violates a receiving water temperature limitation by three degrees Celsius (5.4 degrees Fahrenheit) or more.
- (d) Any waste discharge that violates an effluent or receiving water limitation for pH by one pH unit or more or, where the discharger is continuously monitoring pH, any discharge that violates the effluent or receiving water limit by 1 pH unit for ten minutes or longer.
- (e) Any waste discharge that violates an effluent or receiving water limitation for any other pollutant or monitored parameter that is not ~~listed~~ included in either Table III-1 or Table III-2 by 40 percent or more.

laboratories has determined with 99% confidence that the pollutant is present in the sample. For the purpose of this policy, the applicable method detection limit is the method detection limit (or detection limit) specified or authorized in the applicable waste discharge requirements.

³ There are also multiple definitions for the term "quantitation limit." One generally accepted definition for the quantitation limit is the concentration at which a state certified laboratory has determined with a specified degree of confidence, that the actual concentration of the pollutant present in the sample is within a specified percentage of the concentration reported. For the purpose of this policy, the applicable quantitation limit is the quantitation limit specified or authorized in the applicable waste discharge requirements.

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Table III-1. Group 1 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), the United States Environmental Protection Agency (USEPA) has identified an exhaustive list of these pollutants, which are included as Group 1 pollutants under the various classifications of "other." ~~The entire~~ This list is included in Appendix A of this Policy and is hereby incorporated into this Table III-1. ~~This change is prospective, including changes to the incorporated provisions as the changes take effect.~~

Oxygen Demand

Biochemical Oxygen Demand (BOD)
Chemical Oxygen Demand (COD)
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (TSS)
Total Dissolved Solids (TDS)
Other

Nutrients

Inorganic Phosphorous Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

Methylene Blue Active Substances
Nitrilotriacetic Acid
Oil and Grease
Other Detergents or Algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

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Table III-2. Group 2 Pollutants. This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations. For the purpose of data entry into the Permit Compliance System (PCS), USEPA has identified an exhaustive list of these pollutants, which are included as Group 2 pollutants. ~~The entire~~This list is included in Appendix B of this Policy and is hereby incorporated into this Table III-2. ~~This change is prospective, including changes to the incorporated provisions as the changes take effect.~~

Metals

All metals not specifically listed under Group 1.

Inorganics

Cyanide

Total Residual Chlorine

Organics

All organics not specifically listed under Group 1.

B. Chronic Violations

Chronic violations are priority violations. California Water Code section 13385(i) prescribes mandatory minimum penalties for specific instances of multiple violations for NPDES discharges. Those provisions are discussed in more detail in Section V.D. of this Policy. In addition to those provisions, and for non-NPDES discharges, a facility or discharger is in chronic violation when it has four or more similar types of violations during any six-month period, or it has violated a monthly average effluent limitation for a specific pollutant in the same season⁴ for two consecutive years.

C. Toxicity Violations

Discharges resulting in two or more violations of numeric or narrative toxicity requirements contained in WDRs, Water Quality Control Plan prohibitions or other provisions of law within any six-month period are priority violations.

Failure to implement a required Toxicity Identification Evaluation and/or a Toxicity Reduction Evaluation or to otherwise comply with conditions of WDRs in response to toxicity violations is a priority violation.

⁴ "Season" means either: 1) spring, summer, autumn, or winter; or 2) a time or part of the year during which a specified kind of agricultural work is performed or a specified kind of weather prevails (e.g., the harvest season, the rainy season, etc.).

D. Violations of Prohibitions

WDRs, Water Quality Control Plans, and enforcement orders often contain prohibitions (year-round or seasonal) against certain types of discharges of waste. Violations of such prohibitions that result in an adverse impact to beneficial uses or in a condition of nuisance or pollution are considered priority violations.

E. Spills (including other unauthorized discharges)

Priority violations include:

- (a) all sewage or treated wastewater spills that reach surface waters (including wetlands);
- (b) sewage or treated wastewater spills to soil that cause a public health threat and/or are greater than 5000 gallons;
- (c) spills of other materials that cause a public health threat or cause toxicity to fish or other aquatic or terrestrial species or that result in an adverse impact to other beneficial uses of groundwater or surface water;
- (d) spills of materials containing persistent, bioaccumulative pollutants;
- ~~(d)~~(e) discharges of sediment that impact spawning habitat; and
- ~~(e)~~(f) discharges of pollutants listed by SWRCB pursuant to the Clean Water Act section 303(d) into a water body identified as impaired under that section.

F. Failure to Submit Plans and Reports

Failure by waste water treatment facilities that are approaching treatment capacity to submit plans that are required to address capacity issues within six months of the date specified in WDRs is a priority violation.

Failure to submit reports required by WDRs, California Water Code sections 13267 and 13383, California Water Code section 13260, regulations or Water Quality Control Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to impede the review of the status of compliance are priority violations. In addition, failure to comply with the notification requirements contained in California Water Code sections 13271 and 13272 is a priority violation.

G. Violations of Compliance Schedules

Violations of compliance schedule dates (e.g., schedule dates for starting construction, completing construction, or attaining final compliance) by 30 days or more from the compliance date specified in an enforceable order are priority violations.

H. Pretreatment Program Violations

Failure of a publicly-owned treatment works (POTW) to substantially implement its approved pretreatment program as required in its WDRs, including failure to enforce industrial pretreatment requirements on industrial users and failure to meet pretreatment program compliance schedules is a priority violation.

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Discharges from Industrial Users (IUs) that cause a POTW to have a plant upset or an effluent limit violation are priority violations. Discharges from an IU that exceed a categorical limit for a Group 1 pollutant by 40% or more or for a Group 2 pollutant by 20% or more are priority violations. Note: The SWRCB or RWQCB only takes enforcement against an IU when the POTW fails to take appropriate enforcement actions.

I. Storm Water Program Violations

1. Industrial and Construction Discharges

Certain construction and industrial activities require compliance with either the General NPDES Permit for Storm Water Discharges Associated with Construction Activity (Construction Storm Water Permit) or the General NPDES Permit for Discharges of Storm Water Associated with Industrial Activity Excluding Construction (Industrial Storm Water Permit). Failure to submit a Notice of Intent for coverage under the general permits or a notice of non-applicability, after specific notification to the discharger, is a priority violation if the violation is not corrected within 30 days after notification. Failure to either develop a Storm Water Pollution Prevention Plan (SWPPP), to implement a SWPPP, to conduct required monitoring, or to submit an annual report is a priority violation.

2. Municipal Discharges

In most urban areas, discharges of storm water to and from municipal separate storm sewer systems (MS4s) require compliance with a Municipal NPDES Storm Water Permit. Failure to either submit a report of waste discharge, to develop a storm water management plan, to implement one or more components of its storm water management plan, to conduct monitoring, or to submit an annual report is a priority violation. An example of a priority violation is the failure of a municipality to enforce its ordinance resulting in sediment discharges from construction activity at sites in its jurisdiction that impact water quality.

3. Failure to attain performance standards, failure to report and address violations and unauthorized discharges

Most storm water permits require the discharger(s) to comply with general performance practices or standards. For example, performance standards applicable to storm water discharges are to implement best management practices using the best available technology economically achievable and best conventional technology (BAT/BCT), and to the maximum extent practicable (MEP). If storm water and/or authorized non-storm water discharges cause or substantially contribute to an exceedance of an applicable water quality standard, the discharger is usually required to take specific, iterative actions (e.g., modify its Storm Water Management Plan) to resolve such exceedances. For storm water and/or authorized non-storm water discharges that cause or substantially contribute to an exceedance of an applicable water quality standard, priority violations include the failure to comply with these iterative procedures to address exceedances required by the permit or for discharges of non-storm water that are not authorized by the permit. The criteria for priority violations in section III (A) of this Policy apply to NPDES storm water permits that contain numeric effluent limitations.

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J. Clean Water Act Section 401 Violations

Discharges into waters of the United States that require a federal permit or license also require certification (in accordance with Section 401 of the Clean Water Act) from the SWRCB or RWQCB that the discharge will comply with the State's water quality standards. Failure to obtain required certification prior to a discharge that causes or contributes to a condition of nuisance or pollution or violates water quality standards is a priority violation. Failure to comply with conditions specified in the certification is a priority violation.

K. Violation of Water Quality Objectives or Receiving Water Limitations in Groundwater

Any discharge of waste resulting in, or likely to result in, a violation of an applicable water quality objective, groundwater limitations, groundwater protection standards or a receiving water other applicable concentration limits in waste discharge requirements for pollutants limitation in groundwater or surface water, or in the creation of a condition of nuisance, is a priority violation unless the discharge is permitted or otherwise specifically authorized by the SWRCB or RWQCB. ~~For storm water discharges, RWQCBs may allow the iterative approach discussed in SWRCB Orders WQ 91-03, 91-04, 96-13, 98-01 and 99-05 or allowed in the relevant NPDES permit.~~

L. Discharge of Bio-solids to Land

The following violations of the SWRCB General WDRs for discharge of bio-solids to land are priority violations:

- (a) Any discharge in violation of the setback requirements;
- (b) Any discharge that exceeds 1.4 times the agronomic rate⁵ for nitrogen, where the site is not a land-reclamation site;
- (c) Any discharge of tail-water in violation of the requirements;
- (d) Any discharge that exceeds the Background Cumulative Adjusted Loading Rate in the requirements, or exceeds the Ceiling Pollutant Concentration Limits; and
- (e) Any violation of the specific Class B Discharge Specifications; and
- (f) Any violations of pathogen reduction requirements or violations of harvesting and site restriction requirements.

M. Waste Discharge Requirement (WDR) Program

The following violations of requirements in WDRs for facilities regulated by the WDR Program are priority violations:

- (a) The failure to maintain required freeboard in ponds;
- (b) Any discharge that exceeds flow limits by 20 percent or more;

⁵ Agronomic Rate: The nitrogen requirements of a plant needed for optimal growth and production, as cited in professional publications for California or recommended by the County Agricultural Commissioner, a Certified Agronomist or Certified Soil Scientist.

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- (c) Any discharge that exceeds the effluent limitation for biological oxygen demand or total dissolved solids by 100 percent or more;
- (d) Any discharge where the dissolved oxygen is less than 50 percent of the effluent limitation; or
- (e) Other violations as determined by the Board.

N. Aboveground Petroleum Storage Act

The following violations of the Aboveground Petroleum Storage Act (California Health and Safety Code section 25270 et.seq.) are priority violations:

- (a) Failure to file a storage report;
- (b) Failure to establish a required monitoring system; and
- (c) Failure to report spills as required.

O. Land Disposal

The following violations of requirements in WDRs for facilities regulated by the Land Disposal Program are priority violations:

- (a) The release of waste to groundwater;
- (b) Un-permitted discharge of leachate or waste to surface water;
- (c) Significant erosion and discharge of sediment to surface water;
- (d) Significant ponding or standing water on top of waste (or cover) in a landfill;
- (e) Lack of low permeability cover for a landfill in winter period (failure to winterize the site by established deadlines);
- (f) Failure to monitor (ground and surface water) as required;
- (g) Failure to develop and implement Evaluation Monitoring;
- (h) Failure to develop and implement Corrective Action;
- (i) Failure to submit adequate monitoring reports (with graphs, evaluation of data, groundwater elevation maps, certification statements, etc.);
- (j) Acceptance of un-permitted waste (i.e. inadequate waste load checking program);
- (k) Failure to submit Quality Assurance As-builts for construction of containment systems;
- (l) Inadequate preparation of sub-grades before liner placement;
- (m) Slope damage, rills, gullies, or exposed refuse resulting from lack of appropriate erosion control;
- (n) Uncontrolled discharge of leachate (i.e. seeps);
- (o) Excessive build-up (> 1') of leachate on underlying (lined or unlined) system; and
- (p) Failure to maintain required freeboard.

P. Failure to Pay Fees, Penalties or Liabilities

Failure to pay fees, penalties or liabilities within 30 days of the due date is a priority violation unless the discharger has filed a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty or liability; or an alternate payment schedule has been accepted by the RWQCB.

Q. Falsifying Information

Falsification of information submitted to the Board or intentional withholding of information required by applicable laws, regulations or an enforceable order is a priority violation.

IV. ENFORCEMENT ACTIONS

The Boards have a variety of enforcement tools to use in response to non-compliance by dischargers. This section describes the range of options and discusses procedures that are common to some or all of these options. With specified exceptions, including NPDES permits, California Water Code section 13360 (a) prohibits the SWRCB or RWQCB from specifying the design, location, type of construction, or particular manner in which compliance may be had with a particular requirement.

A. Standard Language

In order to provide a consistent approach to enforcement throughout the state, enforcement orders should be standardized where appropriate. The SWRCB intends to maintain model enforcement orders containing standardized provisions for use by the RWQCBs. RWQCBs should use the models and modify terms and conditions as appropriate for the specific circumstances related to the discharge and to be consistent with RWQCB plans and policies.

B. Informal Enforcement Actions

An informal enforcement action is any enforcement action taken by SWRCB or RWQCB staff that is not defined in statute. An informal enforcement action can include any form of communication (verbal, written, or electronic) between SWRCB and/or RWQCB staff and a discharger about a violation or potential violation. These actions may, in some circumstances, be petitioned to the RWQCB or the RWQCB Executive Officer but cannot be directly petitioned to the SWRCB.

The purpose of an informal enforcement action is to quickly bring a violation to the discharger's attention and to give the discharger an opportunity to return to compliance as soon as possible. The RWQCB may take formal enforcement action in place of, or in addition to, informal enforcement actions. Continued noncompliance is considered a priority violation and should trigger formal enforcement action.

1. Verbal Enforcement Actions and Enforcement Letters

For many violations, the first step is a verbal enforcement action. Staff should contact the discharger by phone or in person and inform the discharger of the specific violations, discuss how and why the violations occurred, and discuss how and when the discharger will correct the violation and achieve compliance. Staff shall document the conversation in the facility case file and in the enforcement database.

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An enforcement letter is often appropriate as a follow-up, or in lieu of, a verbal enforcement action. Enforcement letters are signed by staff or by the appropriate senior staff. The letter should inform the discharger of the specific violations, and, if known to staff, discuss how and why the violations occurred and how and when the discharger will correct the violation and achieve compliance.

Verbal enforcement actions and enforcement letters must not include language that excuses the violation or that modifies a compliance date in WDRs or other orders issued by the State or RWQCB.

2. Notice of Violation (NOV)

The NOV letter is the highest level of informal enforcement action. An NOV should be signed by the RWQCB Executive Officer or designated staff and should be addressed and mailed to the discharger(s) by certified mail. In cases where the discharger has requested that their consultant be notified of RWQCB actions, the consultant should also receive a copy of the NOV. The NOV letter should include a description of specific violations, a summary of potential enforcement options available for non-compliance (including the potential daily or per gallon maximum Administrative Civil Liability (ACL) available), and, when appropriate, a request for a written response by a specified date. The summary of potential enforcement options shall include appropriate citations to the California Water Code and should specify that the RWQCB reserves the right to take any enforcement action authorized by law.

C. Formal Enforcement Actions

Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation of water quality laws, regulations, policy or orders. Formal enforcement orders should contain findings of facts that establish all the statutory requirements of the specific statutory provision being utilized.

1. Notices to Comply

Notices to Comply are issued pursuant to California Water Code section 13399 et seq., which requires the use of Notices to Comply as the only means by which the SWRCB or RWQCB can issue citations for minor violations. A violation is determined to be minor by the SWRCB or the RWQCB after considering factors defined in California Water Code sections 13399(e) and (f) and the danger the violation poses to, or the potential that the violation has for endangering human health, safety, or welfare or the environment.

- (a) The violations listed below are considered to be minor violations for the purpose of compliance with California Water Code section 13399 et seq.:
 - (i) Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.
 - (ii) Records (including WDRs) not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.
 - (iii) Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.
 - (iv) Failure to have permits available during an inspection.

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- (v) Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment.
- (b) A violation is not considered minor in nature if it is a priority violation as described in Section III of this Policy or includes any of the following:
 - (i) Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the California Water Code.
 - (ii) It involves any violation that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
 - (iii) Chronic violations or violations committed by a recalcitrant violator.
 - (iv) Violations that cannot be corrected within 30 days.

2. Notices of Stormwater Noncompliance

The Stormwater Enforcement Act of 1998 (California Water Code section 13399.25 et seq.) requires that each RWQCB notify storm water dischargers who have failed to file a notice of intent to obtain coverage, a notice of non-applicability, a construction certification, or annual reports. If, after two notifications, the discharger fails to file the applicable document a mandatory civil liability shall be assessed against the discharger.

3. Technical Reports and Investigations

California Water Code sections 13267(b) and 13383 allow RWQCBs to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste in accordance with the conditions in the section. The section requires that Regional Boards provide the person with a written explanation with regard to the need for the reports and identify evidence that supports requiring that person to submit the report. This generally requires a brief statement regarding the relationship between the information that is being sought and the water quality issue that is being investigated (e.g., to determine the level of the discharge's impact on beneficial uses or to determine compliance with waste discharge requirements.) The Regional Board is also required to explain a reason for suspecting that the recipient(s) of the order discharged, is discharging, or may discharge waste. This would typically require a brief statement regarding the person's current or former ownership or control over the location of the discharge or the person's control over the discharge itself. If the existence of a discharge is in question, the statement should also include a reason for suspecting a discharge (e.g., a brief description of the condition downstream or down-gradient of the suspected discharge). These statements required by 13267(b) may, for example, be contained in a transmittal letter, in the 13267(b) requirements, or in the findings in an order. Failure to comply with requirements made pursuant to Section 13267(b) is a priority violation and may result in administrative civil liability pursuant to Section 13268. Failure to comply with orders made pursuant to Section 13383 may result in administrative civil liability pursuant to Section 13385. Section 13267(b) and 13383 requirements are enforceable when signed by the Executive Officer of the RWQCB.

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It is important to note that California Water Code sections 13267 and 13383 are not strictly enforcement statutes. RWQCBs should routinely cite those sections as authority whenever asking for technical or monitoring reports. California Water Code sections 13267 and 13383 should also be cited in all WDRs, waivers and certifications as authority for monitoring and reporting requirements.

4. Cleanup and Abatement Orders (CAOs)

Cleanup and Abatement Orders (CAOs) are adopted pursuant to California Water Code section 13304. CAOs may be issued to any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance (discharger). The CAO requires the discharger to clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. ~~dischargers that are not being regulated by WDRs.~~

RWQCBs should keep an accurate record of staff oversight costs for CAOs, because dischargers are liable for such costs. If staff costs are not recovered voluntarily or through civil court actions, the RWQCB may request that a lien be placed on the affected property. When a CAO specifies that staff costs are to be recovered from the discharger, failure to pay invoiced amounts for staff costs is a violation of the CAO that is subject to an ACL.

RWQCBs shall comply with SWRCB Resolution No. 92-49, "Policies And Procedures For Investigation And Cleanup And Abatement Of Discharges Under Water Code section 13304", in issuing CAOs. CAOs should require discharger(s) to clean up the pollution to background levels or the best water quality which is reasonable if background levels of water quality cannot be restored in accordance with Resolution No. 92-49. At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies. CAOs should name all dischargers for whom there is sufficient evidence of responsibility as set forth in California Water Code section 13304.

CAOs that require submission of technical and monitoring reports should always state that the reports are required pursuant to California Water Code section 13267. CAOs shall contain language describing likely enforcement options available for non-compliance and should specify that the RWQCB reserves its right to take any enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CAOs should trigger further enforcement in the form of an ACL, a Time Schedule Order (TSO) under California Water Code section 13308, or referral to the Attorney General for injunctive relief or monetary remedies.

5. Section 13300 Time Schedule Orders (TSOs)

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Pursuant to California Water Code section 13300, the RWQCB can require the discharger to submit a time schedule which sets forth the actions that the discharger will take to address actual or threatened discharges of waste in violation of requirements. TSOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267.

6. Section 13308 Time Schedule Orders (13308 TSOs)

California Water Code section 13308 authorizes the RWQCB to issue a Section 13308 Time Schedule Order (13308 TSO) which prescribes a daily civil penalty if compliance is not achieved in accordance with the time schedule. The RWQCB may issue a 13308 TSO if there is a threatened or continuing violation of a cleanup and abatement order, cease and desist order, or any requirement issued under California Water Code sections 13267 or 13383. The daily penalty must be set based on an amount reasonably necessary to achieve compliance and may not contain any amount intended to punish or redress previous violations. Therefore, the 13308 TSO should contain findings explaining how the daily penalty amount will induce compliance without imposing punishment. For example, it could include a calculation of how much money the discharger is saving each day by delaying compliance. The 13308 TSO provides the RWQCBs with their primary mechanism for motivating compliance, and if necessary, assessing monetary penalties against federal facilities.

If the discharger fails to comply with the 13308 time schedule, the daily penalty is imposed when the RWQCB Executive Officer issues a complaint for Administrative Civil Liability. The amount proposed in the complaint should be equal to the daily penalty multiplied by the days of violation. If the amount of proposed liability in the Complaint is less than the amount specified in the 13308 Order, the RWQCB is required by California Water Code 13308(c) to include specific findings setting forth the reasons for its action based on California Water Code section 13327. The penalty may not exceed \$10,000 for each day in which the violation of the 13308 TSO occurs.

7. Cease And Desist Orders (CDOs)

Cease and Desist Orders (CDOs) are adopted pursuant to California Water Code sections 13301-13303. CDOs may be issued to dischargers violating or threatening to violate WDRs or prohibitions prescribed by the RWQCB or the SWRCB. CDOs are often issued to dischargers with chronic non-compliance problems. These problems are rarely amenable to a short-term solution. Often, compliance involves extensive capital improvements or operational changes. The CDO will usually contain a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. CDOs may also include restrictions on additional service connections to community sewer systems and combined stormwater/sewer systems.

Section 4477 of the Government Code prohibits all state agencies from entering into contracts of \$5,000 or more for the purchase of supplies, equipment, or services from any nongovernmental entity who is the subject of a CDO which is no longer under review and which was issued for violation of WDRs or which has been finally determined to be in violation of federal laws relating to air or water pollution. The SWRCB provides the list of such violators to other state agencies and publishes the list on the internet at <http://www.swrcb.ca.gov>.

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CDOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267. CDOs shall contain language describing likely enforcement options available for non-compliance and specify that the RWQCB reserves its right to take any further enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CDOs should trigger further enforcement in the form of an ACL, 13308 Order or referral to the Attorney General for injunctive relief or monetary remedies.

8. Modification Or Rescission Of Waste Discharge Requirements

In accordance with the provisions of the California Water Code, the RWQCB may modify or rescind WDRs in response to violations. Depending on the circumstances of the case, rescission of WDRs may be appropriate for failure to pay fees, penalties or liabilities; discharges that adversely affect beneficial uses of the waters of the state; and violation of the SWRCB General WDRs for discharge of bio-solids due to exceedance of the Background Cumulative Adjusted Loading Rate. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a publicly owned treatment works (POTW).

9. Administrative Civil Liability (ACL)

ACL means monetary assessments imposed by a RWQCB or the SWRCB. The California Water Code and the Health and Safety Code authorize ACLs in several circumstances which are summarized in Table IV-1⁶. Staff working on ACLs should consult the appropriate section of the Code to review the entire text.

Table IV-1. Summary of Relevant California Water Code and Health and Safety Code Authority for Imposing Administrative Civil Liability Pursuant to this Policy.

STATUTE	COVERAGE
§ 13261 (California Water Code)	Up to \$1,000 per day for failure to furnish reports of waste discharge or failure to pay annual program fees. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a willful violation.)
§ 13265 (California Water Code)	Up to \$1,000 per day for discharging without a permit.

⁶ Section 13627.3 (if AB 1664 is signed by Governor, then this should read, "Sections 13627.1, and 13627.2, 13627.3 and 13627.4²²) of the Water Code and section 25284.4 of the Health and Safety Code authorize the SWRCB to impose administrative civil liability ~~on certified~~ relative to wastewater treatment plant operators and licensed underground storage tank testers, respectively. This policy does not apply to, and is not intended to limit in any way, the SWRCB's imposition of any disciplinary action, including administrative civil liability, to these individuals pursuant to this authority, except that the types of enforcement actions discussed in subpart V. B. shall be considered.

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	(\$5,000 per day for non-NPDES discharges if hazardous waste is involved and violation is due to negligence.)
§ 13268 (California Water Code)	Up to \$1,000 per day for failing or refusing to furnish technical or monitoring reports or falsifying information therein. (Up to \$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a knowing violation.)
§ 13271 (California Water Code)	Up to \$20,000 for failing to notify the Office of Emergency Services (OES) of a discharge of hazardous substances that exceeds the reportable quantity or more than 1000 gallons of sewage.
§ 13272 (California Water Code)(Limitation: Does not apply to spills of oil into marine waters as defined in Government Code §8670.3(f).)	Not less than \$500 and not more than \$5000 per day for each day of failure to notify OES of a discharge of any oil or product in or on the waters of the state.
§ 13308 (California Water Code)	Up to \$10,000 per day for violations of time schedules. Amount to be prescribed when time schedule is established.
§ 13350 (California Water Code)	<ul style="list-style-type: none"> • Up to \$10 per gallon of waste discharged, or (if no cleanup and abatement order has been issued). • Between \$500 and \$5,000 per day if a cleanup and abatement order has been issued <u>Up to \$5000 per day of violation.</u> • If there is no discharge, but an order of the RWQCB is violated: Between \$100 and \$1,000 for each day of violation. <p><u>The Regional Board is required to make a specific finding if it imposes civil liability in an amount less than \$100 per day of violation if there is no discharge, or less than \$500 per day of violation if there is a discharge and a CAO is issued.</u></p>
§ 13385 (a) (California Water Code)	For NPDES permit program violations or discharges to surface water: Up to \$10,000 per day of violation plus an additional liability of \$10 per gallon for each gallon over 1,000 gallons where there is a discharge that is not cleaned up. A "discharge" as used in this section is defined as any discharge from a point source to navigable waters of the United States, any introduction of pollutants into a POTW, or any use or disposal of sewage sludge.

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<p>§ 13385 (h) and (i) (California Water Code)</p>	<ul style="list-style-type: none"> • 13385 (h) (1) ... Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for the first serious violation as defined by statute and each additional serious violation in any period of six consecutive months, except that the SWRCB or RWQCB may elect to require the discharger to spend an amount equal to the penalty for the first serious violation on a supplemental environmental project or to develop a pollution prevention plan. • 13385 (i) Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations: <ol style="list-style-type: none"> (1) Exceeds a waste discharge requirement effluent limitation. (2) Fails to file a report pursuant to Section 13260. (3) Files an incomplete report pursuant to Section 13260. (4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
<p>§ 13399.33 (California Water Code)</p>	<ul style="list-style-type: none"> • Not less than \$5,000 per year or fraction thereof for failure to submit required notice of intent for coverage under stormwater permit. • Not less than \$1,000 per year or fraction thereof for failure to submit notices on non-applicability, annual reports or construction certification as required by stormwater program.
<p>§ 25270.12 (H&S Code) (Special provisions covering aboveground storage tanks)</p>	<p>Fines of up to \$10,000 per day for failure to file a storage report, submit fees, establish monitoring or report spills.</p>

a) ACL Complaint

California Water Code sections 13323-13327 describe the process to be used to assess ACLs. The California Water Code authorizes RWQCB Executive Officers to issue an ACL Complaint. California Water Code section 13261(b)(1) authorizes both the RWQCB Board Executive Officers and the State Board Executive Director to issue an ACL complaint for failing to furnish a report of waste discharge or pay a waste discharge requirement fee. The ACL Complaint

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describes the violation and provision of law authorizing imposition of the civil liability, proposes a specific civil liability, and informs the recipient that a hearing will be held within 60 days after the Complaint is served. Section VII of this policy provides specific instructions for staff to use when developing and documenting a recommendation for the amount of the assessment. ACLs issued under section 13385 for violations of the CWA must allow a 30-day public comment period for any proposed settlement of the ACL. It is the policy of the SWRCB that at least 30 days public comment period should be provided prior to the settlement of any ACL. The SWRCB or RWQCB should use appropriate methods to notify the public of the proposed action. At a minimum, public notice must include publishing a notice in a newspaper of general circulation.

Upon receipt of an ACL Complaint, the discharger(s) may waive its right to a hearing and pay the liability; negotiate a settlement (memorialized in the form of an amended complaint); or appear at the RWQCB or SWRCB hearing to dispute the Complaint. If the discharger waives its right to a hearing and pays the liability, a third party may still comment on the Complaint at any time during the public comment period. Following review of the comments, the Executive Officer may withdraw the ACL complaint. An ACL Complaint may be redrafted and issued as appropriate. In cases where a hearing before the RWQCB or SWRCB is not held, summary information regarding the final disposition of the Complaint should be included in the SWRCB or RWQCB Agenda.

If the discharger does not waive the right to a hearing, California Water Code section 13233(b) requires that a hearing be held within 60 days of the issuance of the complaint unless the discharger agrees in writing that the hearing can be held more than 60 days after the issuance of the complaint. The hearing shall be before a panel of the RWQCB or before the RWQCB or SWRCB. At the hearing the RWQCB or SWRCB will consider whether to affirm, modify or reject the liability. If the RWQCB or SWRCB adopts an ACL Order, it may be for an amount that is greater or less than the amount proposed in the complaint but may not exceed the maximum statutory liability. If the Executive Officer decides to dismiss the liability prior to the hearing, the Executive Officer must ~~revoke~~ withdraw the Complaint.

b) Suspended Liability

The RWQCB or SWRCB may, by various means, allow a portion of the liability to be satisfied through the successful completion of a Supplemental Environmental Project (SEP) and/or a Compliance Project (CP). The remaining portion of the liability shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The specific procedures for suspending liability for SEPs and CPs are discussed in greater detail in Sections VIII and IX of this Policy.

c) Staff Costs

The portion of the ACL amount that is intended to recover staff costs should always be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. Staff costs are discussed in greater detail in Section VII of this Policy.

d) ACL Order

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ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB. ACL Orders can only be modified by the SWRCB pursuant to California Water Code section 13320 or in superior court if a petition for writ of mandate was properly filed in accordance with California Water Code section ~~13325~~ 13330. All cash payments to the SWRCB or RWQCBs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

10. Referrals To Attorney General, District Attorney, United States (U.S.) Attorney or City Attorney

The RWQCB or SWRCB can refer violations to the state Attorney General for civil enforcement actions. The RWQCB or SWRCB can also request the appropriate county District Attorney or City Attorney seek criminal prosecution. A superior court may be requested to impose civil or criminal penalties. In some cases (e.g., when the District Attorney or Attorney General is unable or unwilling to accept a case), the RWQCB may find it appropriate to request the U.S. Attorney's Office to review potential violations of federal environmental statutes, including but not limited to the CWA, the Endangered Species Act, the Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act.

a) Attorney General

At the request of the RWQCB or SWRCB, the Attorney General can seek judicial civil liabilities on behalf of the RWQCB or SWRCB for a variety of California Water Code violations, essentially the same ones for which the RWQCB or SWRCB can impose ACLs. Maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the court instead of the RWQCB. The Attorney General can also seek injunctive relief in the form of a restraining order, preliminary injunction, or permanent injunction pursuant to California Water Code sections 13262, 13264, 13304, 13331, 13340 and 13386. Injunctive relief may be appropriate in emergency situations, or where a discharger has ignored enforcement orders or does not have the ability to pay a large ACL.

For civil assessments, referrals to the Attorney General should be reserved for cases where the violation merits a significant enforcement response but where an ACL would be inappropriate or ineffective. For example, when a major oil spill occurs, several state agencies can seek civil monetary remedies under different state laws; a single civil action by the Attorney General may be more efficient than numerous individual agency actions. A violation (or series of violations) with major public health or water quality impacts should be considered for referral in order to maximize the monetary assessment because of its effect as a deterrent. Referral for recovery of natural resources damages under common law theories, such as nuisance, may also be appropriate.

b) District Attorney, City Attorney, or U.S. Attorney

District Attorneys, City Attorneys, or U.S. Attorneys may seek civil or criminal penalties under their own authority for some of the same violations the RWQCB pursues. A request by the RWQCB is not required. The decision to file a criminal action and what charges to bring is within the sole discretion of the prosecutor who acts on behalf of the people of the state in general. A RWQCB can request prosecution or investigation and should cooperate with a prosecutor but the criminal action is not controlled by, or the responsibility of, the RWQCB.

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Staff should always request that any settlement by the District Attorney require any actions that are necessary to prevent recurrence of a spill and/or to mitigate damage to the environment and include recovery of staff costs.

A major area where District Attorney involvement should be considered is where there is suspected criminal action related to releases of hazardous substances or toxic materials. A request for District Attorney involvement would support the local agency or another state agency that is taking the lead (e.g., county health department, city fire department, California Department of Fish and Game or the California Department of Toxic Substances Control). Many District Attorney offices have created task forces specifically staffed and equipped to investigate environmental crimes including water pollution. These task forces may request RWQCB support which should be provided within available resources. District Attorneys also have the resources to carry out investigations that may be beyond the expertise of RWQCB staff. For example, a District Attorney's investigator is skilled at interviewing witnesses and collecting evidence. Such assistance can help a RWQCB determine if enforcement action is required and help with developing the evidence needed to prove the basis for enforcement.

In addition to the criminal sanctions and civil fines, the District Attorney often pursues injunctive actions to prevent unfair business advantage. The law provides that one business may not gain unfair advantage over its competitors by using prohibited tactics. A business that fails to comply with its WDRs or an enforcement order competes unfairly with other businesses that obey the law.

In cases where there is a serious violation of the CWA and additional investigatory resources are needed, the U.S. Attorney may be contacted.

Investigations by prosecutors are confidential and are generally not subject to Public Records Act disclosure. It is essential that staff working with the prosecutor or prosecutor's investigators maintain this confidentiality.

c) Civil versus Criminal Actions

Enforcement actions taken by the RWQCB are administrative or civil actions. In cases where there is reason to believe that specific individuals or entities have engaged in criminal conduct, the RWQCB may refer the case to the District Attorney, City Attorney, Attorney General, or U.S. Attorney. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment.

While criminal statutes differ, most require some type of intent or knowing behavior on the part of the violator. This intent may be described as knowing, reckless, or willful. In addition to the required intent, criminal offenses usually consist of a number of elements, each one of which must be proven. Determining whether the required degree of intent and each of the elements exists often involves a complex analysis. If a potential environmental criminal matter comes to the attention of staff, staff should inform RWQCB management and the RWQCB's attorney.

D. Petitions of Enforcement Actions

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Persons affected by most formal enforcement actions or failures to act by a RWQCB may file petitions with the SWRCB for review of such actions or failures to act. The petition must be received by the SWRCB within 30 days of the RWQCB action. A petition on the RWQCB's failure to act must be filed within 30 days of the date the RWQCB refuses to act or within 60 days after a request has been made to the RWQCB to act. Actions taken by the Executive Officer of the RWQCB pursuant to authority delegated by the RWQCB (e.g., cleanup and abatement orders) are considered actions by the Board and are also subject to the 30-day time limit. In addition, significant enforcement actions by a RWQCB Executive Officer may be reviewed by the RWQCB at the request of the discharger. When a discharger has unsuccessfully petitioned the RWQCB and subsequently petitions the SWRCB for review, the petition to the SWRCB must be filed within 30 days of the Executive Officer's action. The SWRCB may, at any time and on its own motion, review most actions or failures to act by a RWQCB.

V. SPECIFIC RECOMMENDED ENFORCEMENT

It is the intent of the SWRCB that the following specific instances of non-compliance receive consistent enforcement responses from the SWRCB and all nine RWQCBs. These specific recommendations should be considered when senior staff and management establish the relative priority for enforcement pursuant to section I.E. of this Policy. Decisions by the SWRCB and RWQCB to deviate from these specific recommendations should be based on extenuating circumstances that are documented in the discharger/facility record (e.g., file, databases, other records).

A. Dischargers Knowingly Falsifying or Knowingly Withholding Information that is Required to be Submitted to State Regulatory Agencies

The foundation of the State's regulatory program relies on dischargers accurately, and honestly reporting information required by the Boards. This required information includes, but is not limited to: reports of waste discharge; self monitoring reports including influent and effluent quality; flow data; surface and groundwater data; spills of untreated or partially treated wastewater; and technical reports. Knowingly falsifying or knowingly withholding such information that would indicate violations of requirements contained in board orders, plans and policies erodes the State's regulatory program and places the health of the public and the environment at risk. The SWRCB views these violations as very important and strongly encourages the RWQCBs to respond to any instance of falsification or withholding of required information in accordance with this policy.

The discharger is responsible for compliance with orders and reporting of required information, including violations, to the SWRCB or RWQCB. The discharger is also responsible for ensuring that any employees, agents, or contractors acting on its behalf report required information truthfully, accurately and on time. WDRs should require training, specific signature authorization, audits, and procedures to ensure that dischargers, including their designees and employees are providing truthful, accurate, and timely reporting of required information.

Enforcement of statutes pertaining to falsification or withholding of required information should be a high priority and considered as follows:

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- (a) Initiate investigation of all instances of suspected falsification or withholding of water quality data within thirty days of becoming aware of the allegations. If the results of preliminary investigation suggest a possibility of criminal wrongdoing by the discharger, the SWRCB and RWQCB staff shall consult with management and the RWQCB's counsel to consider informing the appropriate criminal investigative agency.
- (b) Protect the confidentiality of all staff investigations of potential instances of knowingly falsifying or withholding required information. The RWQCBs shall protect the complainant's personal information such as name, address, phone numbers and employment data by providing a secure location for files about matters related to ongoing criminal investigations or licensing (e.g., treatment plant operator certification). The information in these files shall not be released to the public without consulting with the RWQCB attorney.
- (c) Forward all cases where the investigation supports the allegation of falsification or intentional withholding of water quality data to the District Attorney, Circuit Prosecutor, Attorney General or the U.S. Attorney for criminal investigation.
- (d) The SWRCB and the RWQCBs should pursue administrative actions against the discharger including assessment of civil liabilities and consideration of rescission of WDRs if there is sufficient evidence of falsification or intentional or negligent withholding of required information and the criminal investigators and/or prosecutors agree that the administrative and civil process will not interfere with, or jeopardize, the criminal investigation.
- (e) The RWQCB should implement an intensive inspection schedule (e.g., bi-monthly inspections for a period of six months) for any facility where the investigation supports the allegation of falsification or withholding of water quality data. Inspections should involve thorough review of facility water quality records, procedures and processes, logbooks, and sampling of effluent at regular intervals. Requesting the assistance of the District Attorney, Attorney General, or U.S. Attorney should be considered in complex cases.

B. Certified Wastewater Treatment Plant Operators and Licensed Underground Storage Tank Testers Knowingly Falsifying or Knowingly Withholding Information that is Required to be Submitted to State Regulatory Agencies

1. The SWRCB's Office of Operator Certification shall promptly consider suspension or revocation of the Operator Certificate, or the imposition of administrative civil liability ~~(ACL option must be removed if AB 1664 is not signed by the Governor)~~, of any operator who knowingly commits any of the following acts if doing so impacts or threatens to impact water quality:

- (a) knowingly falsifies required information submitted to the SWRCB or RWQCB;
- (b) withholds required information from the SWRCB or RWQCB;
- (c) knowingly submits false information on an application for operator certification; or
- (d) through threats, coercion, or intimidation forces others to falsify or withhold required information from the SWRCB or RWQCB. The Office of Operator Certification shall

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report to the SWRCB at a public meeting its decisions where formal disciplinary action has been taken against any operator for such action(s).

2. The SWRCB's Office of Tank Tester Licensing shall promptly consider suspension or revocation, or the imposition of administrative civil liability, of any licensed tank tester who knowingly commits any of the following acts if doing so impacts or threatens to impact water quality:

- (a) knowingly falsifies required information submitted to the SWRCB;
- (b) withholds required information from the SWRCB;
- (c) knowingly submits false information on an application for license, or
- (d) through threats, coercion, or intimidation forces others to falsify or withhold required information from the SWRCB.

C. Failure to Submit Reports and Submittal of Inadequate Reports

As stated above, the State's water quality regulatory program relies on dischargers to report information specified in the WDR or in another enforceable order. If the discharger fails to submit a report, or submits a report that is inadequate (i.e., so deficient or incomplete as to impede the review of the status of compliance) the RWQCB should notify the discharger of the violation. At a minimum, the RWQCB should require submission of the information pursuant to California Water Code section 13267 if the discharger does not correct the violation within 30 days of the notification, and should issue an ACL if the discharger does not correct the violation within 60 days of the notification.

D. Mandatory Minimum Penalties for NPDES Violations

Mandatory penalty provisions are required by California Water Code section 13385(h) and (i) for specified violations of NPDES permits. California Water Code section 13385(h) ~~and (i)~~ requires that a mandatory minimum penalty of \$3,000 be assessed by the RWQCB for all serious violations. A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more. (See Tables III-1 and III-2). Section III.A.(a) of this policy addresses situations where the effluent limit for a pollutant is less than or equal to the quantitation limit. As an alternative to assessing \$3,000 for the first serious violation in a six-month period, the RWQCB may require the discharger to spend an amount equal to the penalty for a SEP or to develop a pollution prevention plan (PPP). An exception to the imposition of mandatory minimum penalties is an intentional act of a third party which could not have been prevented or avoided by the exercise of due care or foresight by the discharger. Such intentional acts are fact specific and should be evaluated on a case by case basis.

If the RWQCB allows the discharger to prepare a PPP pursuant to California Water Code section 13263.3 or an SEP in lieu of paying \$3,000 for the first violation, the RWQCB must wait until the discharger has not had any serious violations for six months before it can allow the discharger to prepare an SEP or PPP in lieu of the mandatory penalty for additional serious violations. Any SEP or PPP allowed pursuant to California Water Code section 13263.3 should only consist of measures that go above and beyond the existing obligation of the discharger.

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The RWQCB is required by California Water Code section 13385(i) to assess mandatory minimum penalties of \$3,000 per non-serious violation, not counting the first three violations. A non-serious violation occurs if the discharger does any of the following four or more times in any period of six consecutive months:

- (a) exceeds WDR effluent limitations;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) exceeds a toxicity discharge limitation where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.

The six-month time period is calculated as a "rolling" 180 days.

The intent of these portions of the California Water Code is to assist in bringing the State's waters into compliance with WDRs. RWQCBs should issue mandatory minimum penalties within seven months of the time that the violations qualify as ~~MMP~~ mandatory minimum penalty violations, or sooner if the total mandatory penalty amount is \$30,000 or more. This will encourage the discharger to correct the violation in a timely manner.

A single operational upset which leads to simultaneous violations of one or more pollutant parameters shall be treated as a single violation. EPA defines "single operational upset" as "an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one CWA effluent discharge pollutant parameter. Single operational upset does not include... noncompliance to the extent caused by improperly designed or inadequate treatment facilities" ("Issuance of Guidance Interpreting Single Operational Upset" Memorandum from the Associate Enforcement Counsel, Water Division, U.S.EPA, September 27, 1989.). The EPA Guidance further defines an "exceptional" incident as a "non-routine malfunctioning of an otherwise generally compliant facility." Single operational upsets include such things as upset caused by a sudden violent storm, a bursting tank, or other exceptional event and may result in violations of multiple pollutant parameters. The discharger has the burden of demonstrating a single operational upset occurred. The RWQCB shall apply the above EPA Guidance in determining if a single operational upset occurred. A finding that a single operational upset has occurred is not a defense to liability, but may affect the number of violations.

California Water Code section 13385(j) includes several limited exceptions to the mandatory minimum penalty provisions. The primary exceptions are for discharges that are in compliance with a cease and desist order or time schedule order under narrowly specified conditions. California Water Code section 13385(k) provides an alternative to assessing mandatory minimum penalties against a POTW that serves a small community, "as defined by subdivision (b) of Section 79084". Under this alternative, the RWQCBs may require the POTW to spend an amount equivalent to the mandatory minimum penalty toward a compliance project that is designed to correct the violations.

California Water Code section 79084 defines "small community" as a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible

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segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the board.

It is the policy of the SWRCB that "rural county" means a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine.

It is the policy of the SWRCB that "financial hardship" means that the median annual household income for the community is less than 80% of the California median annual household income. It is the policy of the SWRCB that "median annual household income" means the median annual household income of the community based on the most recent census data or a local survey approved by the SWRCB or RWQCB. If a community believes that the census data does not represent the community, and the community is not a Census Designated Place, a City or a Town, the community may apply to the SWRCB for designation as a "small community with a financial hardship". The application must include a map of community boundaries, a list of properties, the number of households and the number of people in the community. Additional information including information regarding income and/or property values of the community may be submitted in support of the application. If the application does not provide an adequate basis for the calculation of median household income, the SWRCB may require an independent income survey must be conducted in accordance with a pre-approved methodology guidelines published by the United States Department of Agriculture, Rural Economic and Community Development Service. A subdivision of state government ~~should~~ shall not be considered a small community with a financial hardship. The SWRCB will maintain a current list of designated small communities with a financial hardship.

The following counties qualify as rural counties with a financial hardship		
Alpine	Inyo	Plumas
Calaveras	Kings	Sierra
Colusa	Lake	Siskiyou
Del Norte	Lassen	Tehama
Glenn	Mariposa	Trinity
Humboldt	Mendocino	Tuolumne
Imperial	Modoc	
Based on 1990 Census Data		

E. Failure To Pay Annual Fees

California Water Code section 13260 requires that each person prescribed WDRs shall pay an annual fee, except confined animal feeding or holding operations, which have a one-time \$2,000 fee and solid waste landfills, which are not subject to WDR fees pursuant to an exclusion in Public Resources Code section 48004(b). Failure to pay the fee when requested is a misdemeanor (and a priority violation) and may be subject to an ACL imposed by the RWQCB or SWRCB of up to \$1,000 per day pursuant to California Water Code section 13261.

If the annual fee is not paid within 30 days of the due date on the original invoice, the SWRCB staff shall issue a Demand Letter for the annual fee which informs the recipient of the amount

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due and states that non-payment of the fee within 30 days could result in one or more of the following:

- (a) an ACL imposed by the RWQCB not to exceed \$1,000 per day;
- (b) a civil liability imposed by the superior court not to exceed \$5,000 per day;
- (c) rescission of existing WDRs; or
- (d) prosecution as a misdemeanor.

If the fee is not paid within 30 days of the date of the Demand Letter, the SWRCB staff shall issue a Notice of Violation and an ACL Complaint should be issued by the RWQCB Executive Officer. The amount of an ACL for nonpayment of fees should reflect an escalation of liability if there is a past history of failure to pay fees. In addition to the ACL, the discharger remains responsible for payment of the annual fees.

F. Failure To Pay Administrative Civil Liabilities

The SWRCB should pursue collection of unpaid administrative civil liabilities. The California Water Code states that ACLs shall be paid within 30 days of the RWQCB's adoption of an ACL Order unless the petitioner files a petition for review under California Water Code section 13320. When a petition is filed with the SWRCB, payment is extended during the SWRCB review of the petition and shall be paid within 30 days of the SWRCB's decision on the petition unless the petitioner seeks judicial review pursuant to California Water Code section 13330. Payment of an ACL is also extended while a writ of mandate is pending before the superior court. If the petitioner fails to pay the liability and fails to seek judicial review within 30 days of the SWRCB action, the SWRCB may file for a judgment to collect the ACL pursuant to California Water Code section 13328. Application is made to the appropriate court in the county in which the liability was imposed, generally within 60 days of the failure to pay.

As an alternative to Section 13328, the SWRCB or RWQCB may pursue judicial collection for failure to pay an ACL imposed for CWA violations pursuant to California Water Code section 13385. After the time to file for judicial review has expired, the California Water Code provides that the Attorney General upon request must petition the appropriate court to collect the liability. The person failing to pay the liability on a timely basis is required to pay, in addition to that penalty, interest, attorney's fees, cost for collection proceedings and a quarterly nonpayment fee for each quarter during which the failure to pay persists. The nonpayment fee is equal to 20 percent of the aggregate amount of the person's liability and the nonpayment fees unpaid at the beginning of each quarter.

G. Acute and Chronic Toxicity and Public Health

Where any violation can be shown to be the result of a discharger's failure to exercise normal care in handling, treating, or discharging waste, and that failure has resulted in acute or chronic toxicity to fish or wildlife and/or a public health threat, the SWRCB or RWQCB should consider assessing civil liability.

Acute toxicity is toxicity that is severe enough to cause mortality or extreme physiological disorder rapidly (typically within 48 or 96 hours). Chronic toxicity is the toxicity impact that lingers or continues for a relatively long period of time, often 1/10 of a lifespan or more.

Chronic effects include, but are not limited to mortality, stunted growth, or reduced reproduction rates.

VI. SPECIAL CONSIDERATIONS

A. Violations at Federal Facilities

The CWA and the Resource Conservation and Recovery Act contain limited waivers of sovereign immunity. Due to sovereign immunity, the State cannot assess penalties or liabilities against federal agencies for past violations (i.e., no ACLs) under most circumstances. One significant exception is provided by the Federal Facilities Compliance Act of 1992 (42 USCA 6901 et seq), which allows the States to penalize federal agencies, under specified circumstances, for violations of state hazardous waste management requirements. In addition, under California Water Code section 13308, a RWQCB may seek an ACL, up to a maximum of \$10,000 per day of violation, against federal facilities for any violation of a time schedule order. The time schedule order issued pursuant to Section 13308 prescribes a daily civil penalty that is based upon the amount necessary to achieve future compliance with an existing enforcement order. The RWQCB should take the action administratively, but if the federal government declines to pay, the RWQCB must refer the matter to the Attorney General's Office to file an action in state or federal court.

B. Integrated Enforcement

SWRCB and RWQCB staff should cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordinated. The aggregate enforcement authorities of the Boards and Departments of the California Environmental Protection Agency (Cal/EPA) and the Resources Agency should be coordinated to eliminate inconsistent and inappropriately duplicative efforts. Where appropriate and as resources allow, RWQCB staff should take the following steps to assist in integrated enforcement efforts:

- (a) participate in multi-agency enforcement coordination;
- (b) share enforcement information;
- (c) participate in cross-training efforts;
- (d) participate with other agencies in enforcement efforts focused on specific individuals or categories of discharges; and
- (e) where other regulatory agencies have jurisdiction regarding site remediation, the RWQCB should inform and consult with those agencies to ensure that remedial activities will satisfy the aggregate requirements for all.

1. Solid Waste Facilities

Where a RWQCB has issued, or is likely to issue an enforcement action to a solid waste facility that is also under the jurisdiction of the Integrated Waste Management Board, the RWQCB must comply with California Public Resources Code sections 45016, 45019 and 45020.

2. Hazardous Waste Facilities

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The role of the RWQCBs regarding enforcement at "offsite hazardous waste treatment, storage, or disposal activities and onsite activities which are required to have a Resource Conservation and Recovery Act (RCRA) Subtitle C permit" was prescribed by the 1995 Cal/EPA "Framework for the Implementation of Health and Safety Code Section 25204.6(b) (SB 1082)". The RWQCB issues WDRs and monitoring programs that are no less stringent than RCRA requirements. The Department of Toxic Substances Control incorporates those WDRs by reference into its permit and carries out all oversight responsibilities associated with hazardous waste facilities, including oversight of groundwater monitoring and other requirements in WDRs. The Department of Toxic Substances Control must coordinate enforcement actions for violation of the WDRs with the RWQCB before initiation of enforcement.

Under RCRA Subtitle C Authorization, corrective action is normally implemented pursuant to the authority of the Department of Toxic Substances Control. The Framework, however, identified over 60 hazardous waste facilities where the RWQCB acts as lead agency for corrective action oversight of existing releases. RWQCBs shall consult with the Department of Toxic Substances Control to ensure that corrective action at those facilities is at least RCRA equivalent.

3. Oil Spills

Responses to oil spills to inland waters that may impact fish and wildlife resources or to marine or estuarine waters should be coordinated ~~through~~ with the Department of Fish and Game's Office of Oil Spill Prevention and Response (OSPR). Staff shall consult with the RWQCB management and the RWQCB attorney to determine appropriate action. Staff should assist in an investigation by providing documentation, sampling, etc. If the discharger has not prepared a spill prevention plan or the plan is not acceptable to the RWQCB, the RWQCB should request a technical report under California Water Code sections 13267 or 13383. Major oil spills, those in excess of 10,000 gallons, usually involve a number of governmental jurisdictions. Such spills should be brought to the RWQCB for consideration of referral to the Attorney General for recovery of civil liability and other remedies.

~~Oil spills to inland (fresh) waters are not within the jurisdiction of OSPR. If formal enforcement actions are taken, they are usually enforced by either the county District Attorney under either the Fish and Game Code or Health and Safety Code, or by the RWQCB under the California Water Code. In general, if the District Attorney is interested in pursuing the case, the RWQCB should consult with the District Attorney before pursuing its own enforcement action to avoid any potential double jeopardy issues. However, staff should always request that any settlement by the District Attorney include recovery of staff costs and require any actions that appear necessary to prevent recurrence of a spill and/or to mitigate damage to the environment. If a District Attorney is the enforcement lead, RWQCB staff should generally focus their efforts on cleanup and prevention of future spills.~~

4. Hazardous Waste Spills

Hazardous wastes are those meeting the criteria specified in Title 22, Division 4.5, Chapter 11, California Code of Regulations. RWQCB staff should coordinate enforcement actions involving hazardous waste spills with the California Department of Toxic Substances Control and/or any local or county hazardous waste program. The Department of Fish and Game should be

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consulted whenever pollution events may impact fish and wildlife resources. Spills constitute unlawful disposal of hazardous waste pursuant to the Health and Safety Code. RWQCB staff should consider referring spills of all but the smallest amounts to the appropriate District Attorney. In addition, the RWQCB should consider assessing an ACL unless the spill was very small or limited in impact. Due to the nature of the materials discharged, the RWQCB should consider assessing an ACL in an amount at or near the legal maximum. If the California Department of Toxic Substances Control is seeking penalties or damages through a referral to the Attorney General, the RWQCB should consider joining that action in lieu of assessing an ACL.

Large spills of hazardous waste or hazardous substances, 10,000 gallons or more, should be treated like large oil spills, and should be considered for referral to the Attorney General. If appropriate, RWQCB staff should coordinate with the District Attorney or U.S. Attorney to determine whether criminal prosecution is warranted. In addition, such spills may constitute the unlawful disposal of hazardous waste pursuant to the Hazardous Waste Control Act (Health and Safety Code section 25100 et seq.) and, in most cases, should be investigated in conjunction with the California Department of Toxic Substances Control.

C. Violations at Waste Water Treatment Facilities that are Operating at 80% or more of Design Capacity

In addition to any formal or informal response to a violation at a waste water treatment facilities that is operating at 80% or more of its permitted capacity, the RWQCB should require, pursuant to Water Code section 13300 or section 13301, a detailed time schedule of specific actions the discharger proposes to take in order to correct or prevent a violation of requirements.

VII. Monetary Assessments in Administrative Civil Liabilities (ACLs)

The following provisions apply to all ACLs except mandatory minimum penalties required pursuant to California Water Code sections 13385(h) and (i) and penalties pursuant to California Water Code section 13399.33. Mandatory minimum penalties are discussed in Section V. ~~CD~~ of this Policy.

The SWRCB or RWQCB must make several important decisions in specifying the conditions of an ACL. First, the Board must determine the amount of the liability considering the factors in law. The factors that must be considered are included in the stepwise approach presented later in this section. Next, the Board must consider whether the discharger should be allowed to satisfy some or all of that monetary assessment by completing or funding one or more supplemental environmental projects (SEPs). SEPs are discussed in Section VIII. Finally, when the underlying problem that caused the violation(s) has not been corrected, the Board may include provisions in the ACL to encourage future work by the discharger to address problems related to the violation. The Board does this by including an additional monetary assessment against the discharger that is based on the cost of returning to and/or maintaining compliance (a delayed cost that represents an economic benefit) and that will be suspended pending the satisfactory completion of the specified Compliance Projects (CPs). CPs are discussed in greater detail in Section IX.

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The California Water Code requires that the determination of the amount of the liability include the consideration of a number of factors. Prior to issuing a complaint the RWQCB Executive Officer should consider each factor. This consideration shall be documented in the ACL Complaint or in a staff report. If the RWQCB issues an ACL Order, the order shall contain findings explaining the Board's consideration of the factors. The documentation of elements such as the economic benefit, staff costs and avoided costs are necessary for the appropriate distribution of the total liability.

The California Water Code lists a number of factors that must be taken into consideration when setting ACLs. California Water Code section 13327, governing ACL amounts for a wide variety of violations, states that:

[The Board] shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the ~~discharger~~ violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

California Water Code section 13385(e), governing ACL amounts for violations subject to the CWA, requires consideration of different factors stating that:

~~{The Board}~~ regional board, the state board, or the superior court, as the case may be shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

The California Water Code does not specify how these factors are to be weighed or combined when setting the actual dollar amount of an ACL. This section describes the procedure to be used by SWRCB and RWQCB staff to develop a recommendation for the amount of the monetary assessment in an ACL based on the facts of the case. The steps in the procedure are shown in Table VII-1. This procedure applies to ACLs issued under both California Water Code section 13327 and California Water Code section 13385(e). Staff should carefully document each step in the ACL Complaint, ACL Order or the staff-report for the ACL. The manner in which the SWRCB or RWQCB considers these factors for any given situation is up to the discretion of the Board within the limits of statutory maximums and minimums described in Section VII.I.

Table VII-1. Procedure to set ACL amounts

Step	Procedure
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A. Initial Liability	Set an initial liability based on the extent and severity of the violation and the sensitivity of the receiving water. An initial liability should also be calculated for non-discharge violations.
B. Beneficial Use Liability	If possible, estimate the dollar value of any impacts of the violation on beneficial uses of the affected waters.
C. Base Amount	The Base Amount is a single amount that is a result of combining the figures derived from the first 2 steps. For many ACLs, the base amount will simply be the initial liability from step A, because the calculation of the beneficial use liability may not be appropriate. The base amount reflects the extent and severity of the violation and its impact on beneficial uses.
D. Adjustment for discharger's conduct	Determine factors to adjust the Base Amount with respect to the conduct of the discharger's history of violations and other considerations. Apply these factors to the Base Amount from step C.
E. Adjustment for other factors	Determine whether any other factors should be taken into consideration when setting the ACL amount. If appropriate, adjust the figure from Step D to include these factors.
F. Economic Benefit	Estimate the economic benefit to the discharger. Economic benefit is any savings or monetary gain derived from the acts that constitute the violation. Add the economic benefit to the amount in step E.
G. Staff Costs	Estimate the SWRCB and RWQCB staff costs resulting from the violation. Add this cost to the figure determined from steps A through F.
H. Adjustment for ability to pay	If appropriate, increase or reduce the figure from Steps A through G with respect to the discharger's ability to pay and ability to continue in business.
I. Check against statutory limits	Check the figure from steps A through H against the statutory maximum and minimum limits.

A. Initial Liability

Set an Initial Liability based on factors related to the discharge - the nature, circumstances, extent, and gravity of the violation, the degree of toxicity of the discharge, and the susceptibility of the discharge to cleanup or abatement. This may include the consideration of information such as the pollutants contained in a discharge, the volume of the discharge, the sensitivity of the receiving water and its beneficial uses, threats to water quality and aquatic life, threats to human health and the volume of the receiving water relative to the discharge. The way that this amount is calculated will depend on the type of violation. For spills, effluent limitation violations, and similar violations, the initial water quality liability can be based on a per-gallon and/or per day charge.

For non-discharge violations such as late reports, failure to submit reports, and failure to pay fees, this initial water quality liability should be set considering the impact on the RWQCB's ability to effectively administer its water quality programs in addition to the above factors. These impacts include, but are not limited to, additional RWQCB staff costs beyond the normally required effort and the potential consequences of delayed clean-up, coordination, mitigation and enforcement response by the RWQCB due to late or omitted reports. For late or missing reports, the initial water quality liability amount could also consider impacts to water quality caused by the delay or failure. Timely follow-up on these violations acts as a deterrent to the violator and others and supports those dischargers who readily commit the resources necessary to comply with similar requirements.

B. Beneficial Use Liability

Review the designated beneficial uses of the receiving water and determine whether the violation has resulted in any quantifiable impacts related to beneficial uses. Quantitative information may only be available for a limited number of impacts such as beach closure days, but where readily available the RWQCB should consider it.

C. Base Amount

The Base Amount is the Initial Liability, the Beneficial Use Liability or a combination of the Initial Liability and the Beneficial Use Liability. When it is possible to calculate the Beneficial Use Liability, the RWQCBs should assess the extent to which the Beneficial Use Liability represents the entire harm resulting from the violation. The RWQCBs may, at their discretion, find it appropriate to combine the amounts from Steps A and B in a way that reflects the significance of the impacts quantified in Step B relative to the total impacts of the violation.

The way that the Initial Liability and the Beneficial Use Liability should be combined will depend on how the violation harms the beneficial uses of the receiving waters and the extent to which this harm has been quantified. For example, a sewage spill will typically result in a wide variety of impacts, such as fish kills, degradation of wildlife habitat, and beach closures. For a sewage spill to the ocean in an urban area with high beach use, impacts on beach recreation may represent most of the harm resulting from the spill. If it is possible to estimate the value of the lost beach recreation in step B, it is appropriate to take this value and add it to some portion of the Initial Liability amount to reflect the total impact.

For a sewage spill contaminating a beach in a remote area, where beach use is relatively low, impacts on beach use may be less important than other impacts, such as degradation of wildlife habitat and harm to a pristine environment. In such a case, the combined liability (steps A and B) may be based more heavily on the Initial Liability, because the impacts quantified in step B may be less significant relative to the entire impacts of the violation.

D. Conduct of the Discharger

The Base Amount from Step C must then be adjusted to reflect the conduct of the discharger. This adjustment reflects factors such as the degree of culpability of the discharger, any voluntary cleanup efforts undertaken and the discharger's history of violations. This adjustment can be made by determining values for the four factors in Table VII-2, and using them to determine a conduct factor that is applied to the Base Amount. The RWQCB may apply the various conduct factors using percentages. A percentage less than 100 percent may be appropriate for a discharger that made exemplary efforts such as voluntary cleanup. Percentages greater than 100 percent are appropriate for dischargers that demonstrated less than exemplary behavior such as delaying notification of a spill. Large multiplier percentages 200 - 500 percent may be appropriate for cases involving falsification of data or other deliberate acts or in cases where the discharger disregarded warnings from Board staff or other parties about the threat of discharge.

This calculation is:

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$$ACL = \text{Base Amount} \times CF1 \times CF2 \times CF3 \times CF4$$

Table VII-2. Conduct Factors to adjust ACLs

Factor	Adjustment for
Culpability Factor (CF1)	Discharger's degree of culpability regarding the discharge. Higher ACL amounts should be set for intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.
Notification Factor (CF2)	Extent to which the discharger reported the violation as required by law or regulation.
Cleanup and Cooperation Factor (CF3)	Extent to which the discharger cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken.
History of violations factor (CF4)	Prior history of violations

In considering the discharger's prior history of violations careful consideration should be given to whether or not past violations that were not subject to previous ACLs should be included in the current ACL. Where there is a pattern of violations, the assessed liability could be substantially affected when considerations such as aggregate impacts and economic benefit are included.

E. Other Factors

If the RWQCB believes that the amount determined using Steps A through D is inappropriate, the amount may be adjusted. Examples of circumstances warranting an adjustment under this step are:

- (a) The discharger publicized the violation and the subsequent enforcement actions in a way that encourages others to violate water quality laws and regulations.
- (b) The threat to human health or the environment was so egregious that the preceding factors did not, in the opinion of the RWQCB, adequately address this violation.
- (c) The discharger has provided, or RWQCB staff has identified other pertinent information not previously considered that indicates a higher or lower amount is justified.
- (d) A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular socioeconomic group.

If such an adjustment is made, the reasons for the extent and direction of the adjustment must be noted in the administrative record.

F. Economic Benefit

Economic benefit is any savings or monetary gain derived from the acts that constitute the violation. In cases when the violation occurred through no fault of the discharger and it was demonstrated that the discharger exercised due care, there may be no economic benefit. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as Best Management Practices (BMPs)) or did not take other measures needed to prevent the violations, economic benefit should be estimated as follows:

- (a) Determine the actions that could have been taken to avoid the violation. Needed actions may have been capital improvements to the discharger's treatment system, implementation of adequate BMPs or the introduction of procedures to improve management of the treatment system.
- (b) Determine when these actions could have been taken in order to avoid the violation.
- (c) Estimate the type and cost of these actions. There are two types of costs that should be considered, delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g. for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices, etc) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of non-compliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- (d) Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on the delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of non-compliance. This calculation should be done using the ~~most recent version of~~ USEPA's BEN⁷ computer program (the most recent

⁷ USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty

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version is accessible at <http://www.swrcb.ca.gov>) unless the SWRCB or RWQCB determines, or the discharger demonstrates to the satisfaction of the SWRCB or RWQCB, that an alternate method is more appropriate for a particular situation.

- (e) Determine whether the discharger has gained any other economic benefits. These may include income from continuing in production when equipment used to treat discharges should have been shut down for repair or replacement.
- (f) The RWQCBs should not adjust the economic benefit for expenditures by the discharger to abate the effects of the discharge.

The economic benefit shall be added to the adjusted base amount calculated from the previous steps unless the RWQCB can demonstrate why this is not appropriate. This demonstration shall be made in the staff report and the ACLC or ACL Order shall include a finding that supports the demonstration.

G. Staff Costs

Staff costs may be one of the "other factors that justice may require", and should be estimated when setting an ACL. Staff should estimate the cost that investigation of the violation and preparation of the enforcement action(s) has imposed on government agencies. This can include all activities of a progressive enforcement response that results in the ACL. Staff costs should be added to the amount calculated from the previous steps.

H. Ability to Pay and Ability to Continue in Business

The procedure in Steps A through G gives an amount that is appropriate to the extent and severity of the violation, economic benefit and the conduct of the discharger. This amount may be reduced or increased based on the discharger's ability to pay.

The ability of a discharger to pay an ACL is limited by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, it may be reduced on the grounds of ability to pay. The RWQCBs may also consider increasing an ACL to assure that the enforcement action would have a similar deterrent effect for a business or public agency that has a greater ability to pay.

1. Businesses

Normally, an ACL should not seriously jeopardize the discharger's ability to continue in business. The discharger has the burden of proof of demonstrating lack of ability to pay and must provide the information needed to support this position. This adjustment can be used to reduce the ACL to the highest amount that the discharger can reasonably pay and still bring

payment date at the same cost of capital to determine the final economic benefit of noncompliance. This change is prospective, including changes to the incorporated provisions as the changes take effect.

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operations into compliance. The downward adjustment for ability to pay must be made only in cases where the discharger is cooperative and has the business ability and the intentions to bring operations into compliance within a reasonable amount of time. If the violation occurred as a result of deliberate or malicious conduct, or there is reason to believe that the discharger can not or will not bring operations into compliance, the ACL must not be adjusted for ability to pay.

The RWQCBs may also consider increasing the ACL because of a business's ability to pay. For example, if the RWQCB determines that the proposed amount is unlikely to have an appropriate deterrent effect on an uncooperative discharger with a greater ability to pay, the amount should be increased to the level that the Board determines is necessary to assure future compliance.

2. Public Agencies

ACLs paid by cities, sanitation districts and other public agencies are ultimately paid by their service populations, usually by taxes or user fees. In order to assure a similar deterrent effect for similar violations, the RWQCB may consider decreasing the total liability for cases of hardship or increasing the ACL if the agency is uncooperative or has a poor compliance history and has a large or affluent service population.

I. Statutory Maximum and Minimum Limits

The ACL must be checked against the statutory maximum and minimum limits to ensure that it is in compliance with the appropriate section of law. The maximum amount for an ACL issued under California Water Code section 13385 is \$10,000 for each day in which a violation occurs plus \$10 per gallon for amounts discharged but not cleaned up in excess of 1,000 gallons. The statutory maximum amounts for ACLs issued under California Water Code sections 13261, 13350, and 13399.33 are summarized in Table IV-1.

California Water Code section 13385, which applies to discharges regulated pursuant to the CWA, was amended effective January 1, 2000, to state that "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation". Therefore, for such violations occurring on or after January 1, 2000, the minimum amount for an ACL is the economic benefit.

It is the policy of the SWRCB that all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

VIII. Supplemental Environmental Projects (SEPs)

The SWRCB or RWQCB may allow a discharger to satisfy some or all of the monetary assessment imposed in an ACL Complaint or Order completing or funding one or more SEPs. SEPs are projects that enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger. California Water Code section 13385(h)(3) allows limited use of SEPs associated with mandatory minimum penalties. California Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section

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13399.33. In addition, the SWRCB supports the inclusion of SEPs in other ACL actions, so long as these projects meet the criteria specified in this section. These criteria should also be considered when the SWRCB or RWQCB is negotiating SEPs as part of the settlement of civil actions brought in court.

A. Process for Project Selection

Any public or private entity may submit a proposal to the SWRCB or RWQCB for an SEP that they propose to fund through this process. Each RWQCB shall evaluate each proposal and maintain a list of candidate SEPs that satisfy the general criteria in subsection C of this section. The list of candidate SEPs shall be made available on the Internet along with information on completed SEPs and SEPs that are in-progress. The discharger may select a SEP from the list of candidate SEPs or may propose a different SEP that satisfies the general criteria for SEPs. When the discharger submits a proposal for a SEP, it should include draft provisions for a contract to be executed between the discharger(s) who will be funding the project and the entity performing the SEP if different from the discharger. The discharger should be requested to provide information regarding the additional selection criteria in subsection D of this section and shall demonstrate to the satisfaction of the Board that the selected or proposed SEP also satisfies the Nexus requirements in subsection E of this section.

B. ACL Complaints and ACL Orders allowing SEPs

All ACL Complaints and Orders that include suspended liabilities for SEPs shall include or reference detailed specifications for evaluating the timely and successful completion of the SEP. The ACL Complaint or Order shall contain or reference specific performance standards, and identified measures or indicators of performance. The ACL Complaint or Order shall specify that the discharger is required to meet these standards and indicators.

Any portion of the liability that is not suspended must be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The ACL Complaint or Order shall state that failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and the suspended amounts will become immediately due and payable.

The ACL Complaint or Order shall either include a time schedule or reference a TSO with a single or multiple milestones and the amount of liability that will be permanently suspended upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP. The Complaint or Order should state that, if the final total cost of the successfully completed SEP is less than the amount suspended for completion of the SEP, the discharger must remit the difference to the State Cleanup and Abatement Account or other fund or account as authorized by statute. The Complaint or Order should state that if any SEP milestone is not completed to the satisfaction of the Executive Officer by the date of that milestone, the previously suspended liability associated with that milestone shall be immediately due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute. It is the discharger's responsibility to pay the amount(s) due, regardless of any agreements between the discharger and any third party contracted to implement the project. Therefore, the discharger may want to ensure that the third party is sufficiently bonded.

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Since ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB, the RWQCB may want to include a clause in the ACL Order that reserves its jurisdiction to modify the time schedule if it, or its Executive Officer, determines that the delay was beyond the reasonable control of the discharger. If the RWQCB fails to reserve jurisdiction for this purpose, the time schedule in the ACL Order can only be modified by the SWRCB pursuant to California Water Code section 13320.

The ACL Complaint or Order shall include provisions for project tracking, reporting, and oversight:

- (a) The ACL Complaint or Order shall require the discharger to provide the SWRCB or RWQCB progress reports, as appropriate, and shall require a final report, certifying the completion of the SEP.
- (b) The ACL Complaint or Order shall require the discharger to provide the SWRCB or RWQCB a post-project accounting of expenditures.
- (c) The SWRCB or RWQCB shall not manage or control funds that may be set aside or escrowed for performance of a SEP. Nor may the SWRCB or RWQCB retain authority to manage or administer the SEP. The SWRCB or RWQCB may require the discharger to hire an independent management company or other appropriate third party, which reports solely to the SWRCB or RWQCB, to audit implementation of the SEP. The company should evaluate compliance with performance measures and report to the SWRCB or RWQCB about the timely and successful completion of the SEP. Alternatively, as a condition of the SEP, the SWRCB or RWQCB may require the discharger to pay into the Cleanup and Abatement Account or other fund or account as authorized by statute an amount equal to the estimated cost for oversight of the SEP by the SWRCB or RWQCB.
- (d) The ACL Complaint or Order should require that, whenever the discharger publicizes an SEP or the results of the SEP, it will state in a prominent manner that the Project is being undertaken as part of the settlement of an enforcement action.

C. General SEP Qualification Criteria

All SEPs approved by the SWRCB or RWQCB must satisfy the following general criteria:

- (a) An SEP ~~should~~ shall only consist of measures that go above and beyond the obligation of the discharger. For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to:
 - (i) monitoring programs;
 - (ii) studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
 - (iii) water or soil treatment;

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- (iv) habitat restoration or enhancement;
- (v) pollution prevention or reduction;
- (vi) wetlands protection, restoration or creation;
- (vii) conservation easements;
- (viii) stream augmentation;
- (ix) reclamation;
- (x) public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.);
- (xi) watershed assessment (e.g., citizen monitoring, coordination and facilitation);
- (xii) watershed management facilitation services; and
- (xiii) non-point source program implementation.

(c) The SEP shall not directly benefit the SWRCB or RWQCB functions or staff. For example, SEPs shall not be gifts of computers, equipment, etc. to the SWRCB or RWQCB.

(d) The SEP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity (e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger's project(s).

D. Additional SEP Qualification Criteria

The following additional criteria should be evaluated by the SWRCB and RWQCB during final approval of SEPs proposed by the discharger:

- (a) The SEP should, when appropriate, include documented support by other resource agencies, public groups and affected persons.
- (b) The SEP should, when appropriate, document that the project complies with the California Environmental Quality Act.
- (c) **Regionwide use/benefit** - Some projects may benefit the specific geographic area yet still provide added value regionwide or even statewide. For example, development of a spill prevention course could benefit not just the local area but the whole region or state if properly packaged and utilized. Likewise, a monitoring program for a particular water body could also provide information that staff could use in assessing other discharges, spills, 401 certifications or flood control activities in a river. Projects, which provide the SWRCB or RWQCB with added value, are encouraged.
- (d) **Combined funding** - Some projects use seed money to create a much greater or leveraged impact. Often other agencies will contribute staff time, laboratory services, boat use, or other services as part of a monitoring project. While the applicant may propose to spend hard money on equipment or materials, they may be donating expertise and labor to accomplish a much larger project. Matching funds, in kind services and leveraged projects are encouraged.

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- (e) Institutional stability and capacity - The RWQCB shall consider the ability of the discharger or third party contractor to accomplish the work and provide the products and reports expected. This criterion is especially important when a Board receives money as the result of a settlement and must then select and fund projects proposed from many sources.
- (f) Projects that involve environmental protection, restoration, enhancement or wetlands creation should include requirements for monitoring to track the long-term success of the project.

E. Nexus Criteria

An SEP must have a nexus (connection or link) between the violation(s) and the SEP. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. An SEP must meet one or more of the following criteria. SEP approval is more likely for projects meeting more criteria.

Geographic Nexus - The proposed project should have a geographic link or nexus with the area where the water quality problem or violation occurred. For example, a spill to a river might require a plan to improve habitat or fish populations in the river in the general area of the spill. Work in a tributary watershed might be appropriate depending on the circumstances, however, work in a far different part of the region or state would likely not meet the geographic nexus criteria.

Spill Type or Violation - The proposed project should be related to the specific spill type or violation. For example, an SEP for a sewage spill ACL could include holding spill prevention workshops for other dischargers in the general area (both a geographic and violation type nexus). The workshops should go beyond what is necessary just to address mandatory work, equipment, and improvements required to correct the nature of the violation.

Beneficial use protection - Where specific beneficial uses were affected by the violation, it is appropriate to design SEPs that address protection and improvement of those uses. Where fish populations and habitats are affected, efforts to improve habitats and populations would be ideal. Water quality monitoring, including flows, channel morphology, and habitat characteristics would be appropriate projects. In this case, the nexus is between the type of violation and the specific beneficial uses impacted. It is also important to keep endangered species issues in focus and to consult with the Department of Fish and Game and US Fish and Wildlife Service about impacts of violations on these species and possible SEPs.

IX. Compliance Projects (CPs)

A CP is a project that is designed to address problems related to the violation and bring the discharger back into compliance in a timely manner.

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A. CPs under California Water Code Section 13385(k)

In lieu of assessing all or a portion of a mandatory minimum penalties against a POTW serving an eligible small community, the SWRCB or RWQCB may, pursuant to California Water Code section 13385 (k), require that the POTW to spend an equivalent amount toward the completion of a CP. CPs must be proposed by the POTW and the SWRCB or RWQCB must find all of the following:

- (a) The CP is designed to correct the violations within five years;
- (b) The CP is in accordance with this Enforcement Policy; and
- (c) The POTW has demonstrated that it has sufficient funding to complete the CP.

It is the policy of the SWRCB that the following conditions shall apply to Compliance Projects under California Water Code section 13385(k):

- (d) The amount of the penalty suspended shall not exceed the cost to return to and/or maintain future compliance.
- (e) CPs shall also comply with the general conditions for CPs specified in subsection C of this Section.

B. CPs in other ACLs

If the underlying problem that caused the violation(s) has not been corrected, the cost of returning to and/or maintaining compliance constitutes a delayed cost (and thus an economic benefit) until the necessary improvements are actually implemented. Under these circumstances, the RWQCB may include in the ACL an **additional** monetary assessment against the discharger that is based on the delayed cost and suspend that portion of the liability pending the satisfactory completion of a CP.

It is the policy of the SWRCB that the following conditions shall apply to Compliance Projects in all ACLs except ACLs under California Water Code section 13385(k):

- (a) The amount of the assessment suspended shall not exceed the **additional** portion of the monetary assessment that was based on the discharger's economic benefit from the delayed costs.
- (b) Either the RWQCB or the discharger may recommend specific CPs that could be included in the ACL action.
- (c) CPs shall also comply with the general conditions for CPs specified in subsection C of this Section.

C. General Conditions for all CPs

The following general conditions apply to all CPs:

- (a) CPs may include, but are not limited to: construction of new facilities; upgrade or repair of existing facilities; conducting water quality investigations or monitoring; operating a cleanup system; adding staff; training; studies; and the development of operation, maintenance and/or monitoring procedures.
- (b) CPs should be designed to bring the discharger back into compliance in a timely manner and/or prevent future noncompliance.

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- (c) A CP is a project that the discharger is otherwise obligated to perform independent of the ACL itself.
- (d) CPs shall have clearly identified project goals, costs, milestones, and completion dates and these shall be specified in the ACL action.
- (e) CPs that will last longer than one year shall have at least annual reporting requirements.
- (f) If the discharger completes the CP to the satisfaction of the RWQCB by the specified date, the suspended amount is permanently suspended.
- (g) If the CP is not completed to the satisfaction of the RWQCB on the specified date the amount suspended becomes due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute.
- (h) The ACL Complaint or Order shall clearly state that payment of the previously suspended amount does not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.

Since ACL Orders are final upon adoption and cannot be reconsidered by the RWQCB, the RWQCB should include a clause in the time schedule for completing CPs. Such clause should reserve the RWQCB's jurisdiction to modify the time schedule if it, or its Executive Officer, determines that the delay was beyond the reasonable control of the discharger. If the RWQCB fails to reserve jurisdiction for this purpose, the time schedule in the ACL Order can only be modified by the SWRCB pursuant to California Water Code section 13320. Another option that allows some flexibility in the time schedule for a CP is for the Board to adopt a CAO or a CDO at the same time it adopts the ACL Order. The ACL would require compliance with the time schedule in the CAO or CDO. All cash payments to the SWRCB or RWQCBs, including previously suspended liabilities assessed for failure to comply with CPs or SEPs, shall be paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

X. DISCHARGER SELF-AUDITING

It is desirable to encourage self-auditing, self-policing, and voluntary disclosure of environmental violations by dischargers. Self-auditing and voluntary disclosure of violations that are not otherwise required to be reported to the Boards shall be considered by the Boards when determining enforcement actions and in appropriate cases may lead to a determination to forego or lessen the severity of an enforcement action. Falsification or misrepresentation of such voluntary disclosures shall be brought to the attention of the appropriate RWQCB for possible enforcement action.

XI. ENFORCEMENT REPORTING

In order to ensure greater consistency in the reporting by the RWQCBs on violations and enforcement actions, the enforcement reports for all Regions will be standardized. These reports will include a listing of facilities with a water quality violation during the reporting period or unresolved from a previous reporting period, including violations without a RWQCB response. This listing shall include at least the following information:

- (a) The date of violation;

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- (b) An identification whether the violation is considered to be a priority violation (see Section III);
- (c) The RWQCB response, if any;
- (d) The date of the response;
- (e) The corrective action taken by the discharger, at least in cases of priority violations; and
- (f) A listing of all previous violations for the facility which occurred in the previous 12 months and the associated RWQCB response.

The enforcement reports will be presented to the RWQCBs on no greater than quarterly intervals. The report format will be produced by the State Water Information Management (SWIM) data system and the RWQCBs will utilize the SWIM to track and monitor discharger's violations and RWQCB's enforcement activities. Utilization of the SWIM data system by the RWQCBs is essential for the SWRCB's compliance with California Water Code section 13385 (m), which requires statewide reporting of violations to the Legislature.

A. Summary Violation and Enforcement Reports

All RWQCBs shall produce standard quarterly reports addressing priority violations. The SWRCB will specify the format of the summary reports.

B. Spill Reporting for Sanitary Sewer Collection Systems

The RWQCBs shall enter data on all spills into the Sanitary Sewer Overflow/Spills Module of the SWRCB's SWIM data system in accordance with this Policy. It is the SWRCB's goal to achieve consistent reporting of spills from regulated sanitary sewer collections systems. Therefore, all new and revised requirements and permits for owners or operators of sanitary sewer collection systems shall, at a minimum, contain language requiring reporting of spills consistent with Table IX-1 below. The SWRCB shall develop standard reporting forms for the listed reports. Quarterly reports shall include, for each spill, detailed information regarding the cause of the spill, spill quantity, and a discussion of the measures taken to prevent future spills.

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SUMMARY OF SPILL REPORTING REQUIREMENTS

TABLE IXI-1

Type of Spill	Criteria	Reporting Requirements
Sewage Spill	Any spill that results in a discharge of sewage of 1000 gallons or more, or results in a discharge to surface waters ⁸ (any volume) or environmentally sensitive areas	<p>24 Hour Reporting: The discharger shall report to RWQCB within 24 hours from the time that 1) the discharger has knowledge of the spill, 2) notification is possible, and 3) notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the RWQCB in this initial report shall include the name and phone number of the person reporting the spill, the responsible sanitary sewer system agency, the estimated total volume of the spill, the location, the receiving surface waters⁶, whether or not the spill is still occurring at the time of the report, and confirmation that the local health services agency was or will be notified as required un the reporting requirements of the local health services agency.</p> <p>5 Day Reporting: The discharger shall submit a written report, as well as any supporting documents, describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter⁹.</p>
Sewage Spill	All sewage spills of less than 1,000 gallons that do not discharge to surface waters ⁶²	<p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>

⁸ For the purposes of this Policy, surface waters include navigable waters, rivers, streams (including ephemeral streams), lakes, playa lakes, natural ponds, bays, the Pacific Ocean, lagoons, estuaries, man-made canals, ditches, dry arroyos, mudflats, sandflats, wet meadows, wetlands, swamps, marshes, sloughs and water courses of the United States as used in the federal Clean Water Act (see 40 CFR 122.2).

⁹ For the purposes of this Policy, the quarters of the year end on the follwong dates: March 31, June 30, September 31, and December 31.

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Recycled Water Spill	All spills of recycled water treated to less than disinfected tertiary level (> 2.2 MPN) of 1,000 gallons or more any volume that have entered or have the potential to enter surface waters ⁶²	<p>24 Hour Reporting: The discharger shall report to RWQCB within 24 hours from the time that 1) the discharger has knowledge of the spill, 2) notification is possible, and 3) notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the RWQCB in this initial report shall include the name and phone number of the person reporting the spill, the responsible sanitary sewer system agency, the estimated total volume of the spill, the location, the receiving surface waters⁶², whether or not the spill is still occurring at the time of the report, and confirmation that the local health services agency was or will be notified as required un the reporting requirements of the local health services agency.</p> <p>5 Day Reporting: The discharger shall submit a written report describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>
Recycled Water Spill	All spills of recycled water treated to disinfected tertiary level (<2.2 MPN) of 50,000 gallons or more that have entered or have the potential to enter surface waters	<p>5 Day Reporting: The discharger shall submit a written report describing the spill to the RWQCB no later than 5 days following the starting date of the spill.</p> <p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>
Recycled Water Spill	All recycled water spills, regardless of quantity, that have not entered and will not enter surface waters ⁶²	<p>Quarterly Reporting: The discharger shall report all spills, regardless of volume or final destination, to the RWQCB no later than 15 days following the end of each quarter.</p>

XII. POLICY REVIEW AND REVISION

It is the intent of the SWRCB that this Policy be reviewed and revised, as appropriate, at least every five years.

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Appendix A. Group 1 Pollutants

The following list of pollutants ~~are~~ is hereby included as Group 1 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

1,2,3 TRICHLORO-ETHANE
2,4,6 TRICHLOROPHENOL, DRY WEIGHT
2-HEXANONE
2-HEXANONE
2-PROPANONE
5-DAY SUM OF WLA VALUES
5-DAY SUM OF BOD5 DISCHARGED
7-DAY SUM OF WLA VALUES
7-DAY SUM OF BOD5 DISCHARGED
ACETONE, DRY WEIGHT
ACIDITY
ACIDITY, CO2 PHENOL (AS CACO3)
ACIDITY, TOTAL (AS CACO3)
ACIDITY-MINRL METHYL ORANGE (AS CACO3)
ALGICIDES, GENERAL
ALKALINITY, BICARBO-NATE (AS CACO3)
ALKALINITY, CARBO- NATE (AS CACO3)
ALKALINITY, PHENOL- PHTHALINE METHOD
ALKALINITY, TOTAL (AS CACO3)
ALUMINUM
ALUMINUM CHLORIDE, DISSOLVED, WATER
ALUMINUM SULFATE
ALUMINUM, POTENTIALLY DISSOLVD
ALUMINUM, TOTAL RECOVERABLE
ALUMINUM, ACID SOLUABLE
ALUMINUM, DISSOLVED (AS AL)
ALUMINUM, IONIC
ALUMINUM, TOTAL
ALUMINUM, TOTAL (AS AL)
AMMONIA & AMMONIUM- TOTAL
AMMONIA (AS N) + UNIONIZED AMMONIA
AMMONIA, UNIONIZED
AVG. OF 7-DAY SUM OF BOD5 VALUES
BARIUM, SLUDGE, TOT, DRY WEIGHT (AS BA)
BICARBONATE ION- (AS HCO3)
BIOCHEMICAL OXYGEN DEMAND-5
BIOCIDES
BOD % OVER INFLUENT
BOD (ULT. 1ST STAGE)
BOD (ULT. 2ND STAGE)
BOD (ULT. ALL STAGES)
BOD 35-DAY (20 DEG. C)
BOD CARBONACEOUS, 25-DAY (20 DEG. C)
BOD, 11-DAY (20 DEG. C)
BOD, 20-DAY (20 DEG. C)
BOD, 20-DAY, PERCENT REMOVAL
BOD, 5-DAY (20 DEG. C)
BOD, 5-DAY 20 DEG C PER CFS OF
STREAMFLW
BOD, 5-DAY DISSOLVED
BOD, 5-DAY PERCENT REMOVAL
BOD, 5-DAY (20 DEG.C) PER PRODUCTION
BOD, CARB-5 DAY, 20 DEG C, PERCENT
REMOVL
BOD, CARBONACEOUS 5 DAY,5 C
BOD, CARBONACEOUS (5-DAY, 20 DEG C)
BOD, CARBONACEOUS 05 DAY, 20C
BOD, CARBONACEOUS 20 DAY, 20C
BOD, CARBONACEOUS, 28-DAY (20 DEG.C)
BOD, CARBONACEOUS, PERCENT REMOVAL
BOD, FILTERED, 5 DAY, 20 DEG C
BOD, NITROG INHIB 5-DAY (20 DEG. C)
BOD, PERCENT REMOVAL (TOTAL)
BOD, MASS, TIMES FLOW PROP. MULTIPLIER
BOD-5 LB/CU FT PROCESS
BORIC ACID
BORON, DISSOLVED (AS B)
BORON, SLUDGE, TOTAL DRY WEIGHT (AS B)
BORON, TOTAL
BORON, TOTAL (AS B)
BORON, TOTAL RECOVERABLE
BROMIDE (AS BR)
BROMINE CHLORIDE
BROMINE REPORTED AS THE ELEMENT
BUTANONE
CADMIUM, SLUDGE, TOT DRY WEIGHT (AS
CD)
CALCIUM IN BOTTOM DEPOSITS
CALCIUM, TOTAL RECOVERABLE
CALCIUM, DISSOLVED (AS CA)
CALCIUM, PCT EXCHANGE
CALCIUM, PCT IN WATER, (PCT)
CALCIUM, TOTAL (AS CA)
CARBON DIOXIDE (AS CO2)
CARBON DISULFIDE
CARBON, TOT ORGANIC (TOC)
CARBON, TOT ORGANIC (TOC) PER 1000
GALS.
CARBON, TOTAL (AS C)
CARBON, TOTAL INORGANIC (AS C)
CARBONACEOUS OXYGEN DEMAND, %
REMOVAL
CARBONATE ION- (AS CO3)
CBOD5 / NH3-N
CHEM. OXYGEN DEMAND (COD) % REMOVAL
CHEM. OXYGEN DEMAND PER PRODUCTION
CHEMICAL OXYGEN DEMAND (COD)
CHEMICAL OXYGEN DEMAND (COD)
CHEMICAL OXYGEN DEMAND (COD)

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CHLORIDE
CHLORIDE (AS CL)
CHLORIDE, DISSOLVED (AS CL)
CHLORIDE, DISSOLVED IN WATER
CHLORIDE, PER CFS OF STREAMFLOW
CHLORIDE, PERCENT REMOVAL
CHLORIDE, SLUDGE, TOTAL DRY WEIGHT
CHLORIDES & SULFATES
CHLORINE DEMAND, 1 HR
CHLORITE
~~CHROMIUM, DRY WEIGHT~~
COBALT, DISSOLVED (AS CO)
COBALT, TOTAL (AS CO)
CONDUCTIVITY, NET
COPPER, SLUDGE, TOT, DRY WEIGHT (AS CU)
DIGESTER SOLIDS CONTENT, PERCENT
DITHIOCARBAMATE, RPTD AS
DITHIOCARBONATE
DRILLED SOLIDS IN DRILLING FLUIDS
E.COLI, MTEC-MF
ENDRIN KETONE, IN WATER
FERROCHROME LIGNO- SULFONATED
FRWTR MUD
FERROCYANIDE
FERROUS SULFATE
FIRST STAGE OXYGEN DEMAND, %
REMOVAL
FLOW, MAXIMUM FLOW RANGE
FLUORIDE - FREE
FLUORIDE, DISSOLVED (AS F)
FLUORIDE, TOTAL (AS F)
FLUOROBORATES
FREE ACID, TOTAL
~~GOLD, TOTAL (AS AU)~~
HARDNESS, TOTAL (AS CaCO3)
HYDROCARBON, TOTAL RECOVERABLE
HYDROCHLORIC ACID
HYDROCHLORIC ACID
HYDROGEN PEROXIDE
HYDROGEN PEROXIDE (T) DILUTION RATIO
HYDROGEN SULFIDE
IODIDE (AS I)
IRON
IRON AND MANGANESE -SOLUBLE
IRON AND MANGANESE -TOTAL
IRON, POTENTIALLY DISSOLVD
IRON, DISSOLVED (AS FE)
IRON, DISSOLVED FROM DRY DEPOSITION
IRON, FERROUS
IRON, SLUDGE, TOTAL, DRY WEIGHT (AS FE)
IRON, SUSPENDED
IRON, TOTAL (AS FE)
IRON, TOTAL PER BATCH
IRON, TOTAL PER PRODUCTION
IRON, TOTAL PERCENT REMOVAL
~~LEAD, DRY WEIGHT~~
~~LEAD, TOTAL DRY WEIGHT (AS PB)~~
LIGHTLY TREATED LIG-NOSULFONATED
MUD
LITHIUM, DISSOLVED (AS LI)
LITHIUM, TOTAL (AS LI)
MAGNESIUM, DISSOLVED (AS MG)
MAGNESIUM, IN BOTTOM DEPOSITS
MAGNESIUM, PCT EXCHANGE
MAGNESIUM, TOTAL (AS MG)
MAGNESIUM, TOTAL RECOVERABLE
MANGANESE IN BOTTOM DEPOSITS (DRY
WGT)
MANGANESE, POTENTIALLY DISSOLVD
MANGANESE, DISSOLVED (AS MN)
MANGANESE, SUSPENDED
MANGANESE, TOTAL
MANGANESE, TOTAL (AS MN)
MANGANESE, TOTAL RECOVERABLE
~~MERCURY TOTAL RECOVERABLE~~
~~MERCURY, DRY WEIGHT~~
METHYLENE BLUE ACTIVE SUBSTANCES
MICROSCOPIC ANALYSIS
MOLYBDENUM, DRY WEIGHT
MONOBORO CHLORATE
NICKEL, DRY WEIGHT
~~NICOTINE-SULFATE~~
NITRILOTRIACETIC ACID (NTA)
NITRITE NITROGEN, DISSOLVED (AS N)
NITRITE PLUS NITRATE DISSOLVED 1 DET.
NITRITE PLUS NITRATE IN BOTTOM
DEPOSITS
NITRITE PLUS NITRATE TOTAL 1 DET. (AS N)
NITROGEN (AS NO3) SLUDGE SOLID
NITROGEN OXIDES (AS N)
NITROGEN SLUDGE SOLID
NITROGEN SLUDGE TOTAL
NITROGEN, AMMONIA DISSOLVED
NITROGEN, AMMONIA PER CFS OF
STREAMFLW
NITROGEN, AMMONIA TOTAL (AS N)
NITROGEN, AMMONIA TOTAL (AS NH4)
NITROGEN, AMMONIA IN BOTTOM DEPOSITS
NITROGEN, AMMONIA, PERCENT REMOVAL
NITROGEN, AMMONIA, SLUDGE, TOT DRY
WGT
NITROGEN, AMMONIA, TOT UNIONIZED (AS
N)
NITROGEN, KJELDAHL DISSOLVED (AS N)
NITROGEN, KJELDAHL TOTAL (AS N)
NITROGEN, NITRATE DISSOLVED
NITROGEN, NITRATE TOTAL (AS N)
NITROGEN, NITRATE TOTAL (AS NO3)
NITROGEN, NITRITE TOTAL (AS N)
NITROGEN, NITRITE TOTAL (AS NO2)
NITROGEN, ORGANIC TOTAL (AS N)
NITROGEN, SLUDGE, TOT, DRY WT. (AS N)

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NITROGEN, TOTAL KJELDAHL, % REMOVAL
NITROGEN, INORGANIC TOTAL
NITROGEN, OXIDIZED
NITROGEN-NITRATE IN WATER, (PCT)
NITROGEN-NITRITE IN WATER, (PCT)
NITROGENOUS OXYGEN DEMAND (20-DAY,
20C)
NITROGENOUS OXYGEN DEMAND, %
REMOVAL
NON-IONIC DISPERSANT (NALSPERSE 7348)
NON-NITROGENOUS BOD
OIL & GREASE
OIL & GREASE AROMATIC
OIL & GREASE % REMOVAL
OIL & GREASE (FREON EXTR.-IR
METH)TOT,RC
OIL AND GREASE
OIL AND GREASE
OIL AND GREASE (SOXHLET EXTR.) TOT.
OIL AND GREASE PER CFS OF STREAMFLW
OIL AND GREASE PER PRODUCTION
OIL AND GREASE VISUAL
OIL AND GREASE, HEXANE EXTR METHOD
OIL AND GREASE, PER 1000 GALLONS
OXYGEN DEMAND FIRST STAGE
OXYGEN DEMAND, DISSOLVED
OXYGEN DEMAND, SUM PRODUCT
OXYGEN DEMAND, ULTIMATE
OXYGEN DEMAND, CHEM. (COD), DISSOLVED
OXYGEN DEMAND, CHEM. (HIGH LEVEL)
(COD)
OXYGEN DEMAND, CHEM. (LOW LEVEL)
(COD)
OXYGEN DEMAND, TOTAL
OXYGEN DEMAND, TOTAL (TOD)
OXYGEN DEMAND, ULT. CARBONACEOUS
(UCOD)
OXYGEN DEMAND, ULT., PERCENT
REMOVAL
OZONE
OZONE - RESIDUAL
PH, CAC03 STABILITY
PHOSPHATE TOTAL SOLUBLE
PHOSPHATE, DISSOLVED COLOR METHOD
(AS P)
PHOSPHATE, ORTHO (AS PO4)
PHOSPHATE, ORTHO (AS P)
PHOSPHATE, TOTAL (AS PO4)
PHOSPHATE, TOTAL COLOR. METHOD (AS P)
PHOSPHATE, DISSOLVED/ORTHOPHOSPHATE
(AS P)
PHOSPHATE, POLY (AS PO4)
PHOSPHOROUS 32, TOTAL
PHOSPHOROUS, IN TOTAL
ORTHOPHOSPHATE
PHOSPHOROUS, TOTAL ELEMENTAL

PHOSPHOROUS, TOTAL ORGANIC (AS P)
PHOSPHOROUS, TOTAL, IN BOTTOM
DEPOSITS
PHOSPHORUS (REACTIVE AS P)
PHOSPHORUS, DISSOLVED
PHOSPHORUS, TOTAL PERCENT REMOVAL
PHOSPHORUS, TOTAL SOLUBLE (AS PO4)
POTASSIUM, DISSOLVED (AS K)
POTASSIUM, IN BOTTOM DEPOSITS
POTASSIUM, PCT EXCHANGE
POTASSIUM, TOTAL RECOVERABLE
POTASSIUM, TOTAL PCTIN WATER, (PCT)
PROPARGITE
RARE-EARTH METALS, TOTAL
RATIO FECAL COLIFORM & STREPTOCOCCI
RESIDUE, SETTLEABLE
RESIDUE, TOTAL FILTERABLE
RESIDUE, TOTAL FILTERABLE
RESIDUE, TOTAL VOLATILE
RESIDUE, TOTAL NON- SETTLEABLE
RESIDUE, VOLATILE NONFILTERABLE
RUBIDIUM, TOTAL (AS RB)
SEAWATER GEL MUD
SELENIUM, ACID-SOLUBLE
SETTLEABLE SOLIDS PERCENT REMOVAL
SILICA, DISSOLVED (AS SIO2)
SILICA, TOTAL (AS SIO2)
SILICON, TOTAL
SLUDGE BUILD-UP IN WATER
SLUDGE SETTLEABILITY 30 MINUTE
SLUDGE VOLUME DAILY INTO A WELL
SLUDGE, RATE OF WASTING
SODIUM ADSORPTION RATIO
SODIUM ARSENITE
SODIUM CHLORIDE (SALT)
SODIUM HEXAMETA- PHOSPHATE
SODIUM IN BOTTOM DEP (AS NA) (DRY WGT)
SODIUM NITRITE
SODIUM SULFATE, TOTAL
SODIUM, %
SODIUM, % EXCHANGE- ABLE SOIL, TOTAL
SODIUM, DISSOLVED (AS NA)
SODIUM, SLUDGE, TOT, DRY WEIGHT (AS NA)
SODIUM, TOTAL (AS NA)
SODIUM, TOTAL (AS NA)
SODIUM, TOTAL RECOVERABLE
SOLIDS ACCUMULATION RATE TOT DRY
WEIGHT
SOLIDS, FIXED DISSOLVED
SOLIDS, FIXED SUSPENDED
SOLIDS, SETTLEABLE
SOLIDS, SLUDGE, TOT, DRY WEIGHT
SOLIDS, SUSPENDED PERCENT REMOVAL
SOLIDS, TOTAL
SOLIDS, TOTAL DISSOLVED
SOLIDS, TOTAL DISSOLVED (TDS)

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SOLIDS, TOTAL DISSOLVED- 180 DEG.C
SOLIDS, TOTAL FIXED
SOLIDS, TOTAL SUSPENDED
SOLIDS, TOTAL VOLATILE
SOLIDS, TOTAL DISS., PERCENT BY WEIGHT
SOLIDS, TOTAL DISSOLVED, TOTAL TONS
SOLIDS, TOTAL NON-VOLATILE, NON-FIXED
SOLIDS, TOTAL SUSP PER PRODUCTION
SOLIDS, TOTAL SUSP PER 1000 GALLONS
SOLIDS, TOTAL SUSP PER BATCH
SOLIDS, TOTAL SUSP PER CFS OF
STREAMFLW
SOLIDS, VOLATILE DISSOLVED
SOLIDS, VOLATILE SUSPENDED
SOLIDS, VOLATILE SUSPENDED, % REMOVAL
SOLIDS, VOLATILE SUSP IN MIXED LIQUOR
SOLIDS, DRY, DISCHARGETO SOL.HANDLING
SYS.
SOLIDS, DRY, INCIN.AS % OF
DRYSOL.FROMTRMTPLT
SOLIDS, DRY, REMOVEDFROM SOL.
HANDLING SYS.
SOLIDS-FLOTNG-VISUAL DETRMNTN-# DAYS
OBS
SOLIDS, TOT. VOLATILE PERCENT REMOVAL
SOLIDS, VOLATILE % OF TOTAL SOLIDS
SULFATE
SULFATE (AS S)
SULFATE, DISSOLVED (AS SO4)
SULFATE, TOTAL (AS SO4)
SULFIDE, DISSOLVED, (AS S)
SULFIDE, TOTAL
SULFIDE, TOTAL (AS S)
SULFITE (AS S)
SULFITE (AS SO3)
SULFITE WASTE LIQUOR PEARL BENSON
INDEX
SULFUR DIOXIDE TOTAL
SULFUR, TOTAL
SULPHUR, TOTAL ELEMENTAL
SUM BOD AND AMMONIA, WATER
SURFACTANTS (MBAS)
SURFACTANTS (LINEAR ALKYLATE
SULFONATE)
SURFACTANTS, AS CTAS, EFFLUENT
SUSPENDED SOLIDS
SUSPENDED SOLIDS, TOTAL ANNUAL
SUSPENDED SOLIDS, TOTAL DISCHARGE
TIN, DISSOLVED (AS SN)
TIN, TOTAL (AS SN)
TOTAL SUSP. SOLIDS- LB/CU FT PROCESS
TRIARYL PHOSPHATE
TURBIDITY, HCH TURBIDIMETER
VANADIUM, DISSOLVED (AS V)
VANADIUM, SUSPENDED (AS V)
VANADIUM, TOTAL
VANADIUM, TOTAL (AS V)
VANADIUM, TOTAL DRY WEIGHT (AS V)
VANADIUM, TOTAL RECOVERABLE
WLA BOD-5 DAY VALUE
ZINC, DRY WEIGHT

Appendix B. Group 2 Pollutants

The following list of pollutants are hereby included as Group 2 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

1,2,3 TRICHLORO-ETHANE
2,4,6 TRICHLOROPHENOL, DRY WEIGHT
2-HEXANONE
2-PROPANONE
1, 2, 4-TRIMETHYL-BENZENE
1, 3, 5-TRIMETHYL-BENZENE
1,1 DICHLORO 1,2,2,2 TETRAFLUROETHANE
1,1 DICHLORO 2,2,2- TRIFLUOROETHANE
1,1,1 TRICHLORO-2,2,2TRIFLUOROETHANE
1,1,1,2,2-PENTA- FLUROETHANE
1,1,1,3,3-PENTA- FLUROBUTANE
1,1,1-TRICHLORO- ETHANE
1,1,1-TRICHLOROETHANE, DRY WEIGHT
1,1,1-TRIFLUORO-ETHANE
1,1,2,2-TETRACHLORO-ETHANE
1,1,2,2-TETRACHLOROETHANE, DRY WEIGHT
1,1,2-TRICHLORO- ETHANE
1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE
1,1,2-TRICHLOROETHANE, DRY WEIGHT
1,1-DICHLORO-1- FLUROETHANE
1,1-DICHLOROETHANE
1,1-DICHLOROETHANE, DRY WEIGHT
1,1-DICHLOROETHENE
1,1-DICHLOROETHYLENE
1,1-DICHLOROETHYLENE, DRY WEIGHT
1,1-DIMETHYL- HYDRAZINE
1,2,3 TRICHLORO- BENZENE
1,2,4,5-TETRACHLORO-BENZENE
1,2,4,5-TETRAMETHYL-BENZENE
1,2,4-TRICHLORO- BENZENE
1,2,4-TRICHLOROBENZENE, DRY WEIGHT
1,2-BIS(2-CHLOROETH-ONY) ETHANE
1,2-CIS-DICHLORO-ETHYLENE
1,2-DICHLOROBENZENE
1,2-DICHLOROBENZENE, DRY WEIGHT
1,2-DICHLOROETHANE
1,2-DICHLOROETHANE, DRY WEIGHT
1,2-DICHLOROETHANE, TOTAL WEIGHT
1,2-DICHLOROPROPANE
1,2-DICHLOROPROPANE, DRY WEIGHT
1,2-DICHLOROPROPENE
1,2-DIPHENYL- HYDRAZINE
1,2-DIPHENYL-HYDRAZINE, DRY WEIGHT
1,2-PROPANEDIOL
1,2-TRANS-DICHLORO- ETHYLENE
1,2-TRANS-DICHLOROETHYLENE, DRY WEIGHT
1,3 DICHLOROPROPANE
1,3-DIAMINOUREA
1,3-DICHLOROBENZENE
1,3-DICHLOROBENZENE, DRY WEIGHT
1,3-DICHLOROPROPENE, TOTAL WEIGHT
1,4 DICHLOROBUTANE
1,4-____DIOXANE
1,4'-DDT (O,P'-DDT)
1,4-DICHLOROBENZENE
1,4-DICHLOROBENZENE, DRY WEIGHT
1,4-XYLENE
1-BROMO-2-CHLOROETHANE
1-CHLORO-1,1- DIFLUOROETHANE
1-HYDROXY-ETHYLIDENE
1-METHYLNAPHTHALENE
1-NITROSOPIPERIDINE
2,2DIBROMO-3-NITRILOPROPIONAMIDE
2,2-DICHLOROVINYL
DIMETHYLPHOSPHATE
2,2-DIMETHYL-2,3-DI-HYDRO-7-
BENZOFURANOL
2,3 DICHLOROPROPYLENE
2,3,4,6-TETRACHLORO-PHENOL
2,3,7,8 CHLORO- DIBENZOFURAN
2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN
2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN
SED,
2,3,7,8-TETRACHLORO-DIBENZO-P-DIOXIN
2,4,5 - T
2,4,5 - TRICHLORO- PHENOL
2,4,5, TP(SILVEX)
2,4,5-TP(SILVEX) ACIDS/SALTS WHOLE
WATER SAMPLE
2,4,5-TRICHLOROPHENOXYPROPIONIC ACID
2,4,6-TRICHLORO- PHENOL
2,4-DB
2,4-DICHLOROPHENOL
2,4-DICHLOROPHENOXYACETIC ACID
2,4-DIMETHYLPHENOL
2,4-DINITROPHENOL
2,4-DINITROTOLUENE
2,4-DINITROTOLUENE, DRY WEIGHT
2,4-TOLUENEDIAMINE
2,5-TOLUENEDIAMINE
2,6-DINITROTOLUENE
2,6-DINITROTOLUENE, DRY WEIGHT
2-ACETYL AMINO- FLOURCENE
2-BUTANONE
2-BUTANONE PEROXIDE

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2-CHLOROANILINE
2-CHLOROETHANOL
2-CHLOROETHYL VINYL ETHER (MIXED)
2-CHLOROETHYL VINYL ETHER, DRY WEIGHT
2-CHLORONAPHTHALENE
2-CHLOROPHENOL
2-ETHYL-1-HEXANOL
2-ETHYL-2-METHYL- DIOXOLANE
2-METHYL-2-PROPANOL
2-METHYL-4,6-DINITROPHENOL
2-METHYL-4-CHLOROPHENOL
2-METHYLNAPHTHALENE
2-METHYLNAPHTHALENE
2-METHYLPHENOL
2-NAPHTHYLAMINE
2-NITROANILINE
2-NITROPHENOL
2-SECONDARY BUTYL- 4,6-DINITROPHENOL
3,3'-DICHLORO- BENZIDINE
3,3'-DICHLOROBENZIDINE, DRY WEIGHT
3,4 BENZOFLUORAN- THENE
3,4,5 TRICHLORO- GUACACOL
3,4,6-TRICHLORO- CATECHOL
3,4,6-TRICHLORO- GUAIACOL
3-CHLOROPHENOL
3-NITROANILINE, TOTAL IN WATER
4,4'-BUTYLDENE BIS- (6-T-BUTYL-M-CRESOL)
4,4'-DDD (P,P'-DDD)
4,4'-DDE (P,P'-DDE)
4,4'-DDT (P,P'-DDT)
4,6-DINITRO-O-CRESOL
4-BROMOPHENYL PHENYL ETHER
4-CHLORO-3, 5-DIMETHYLPHENOL
4-CHLORO-3-METHYL PHENOL
4-CHLOROPHENYL PHENYL ETHER
4-METHYLPHENOL
4-METHYLPHENOL
4-NITRO-M-CRESOL
4-NITRO-N-METHYLPHTHALIMIDE, TOTAL
4-NITROPHENOL
9,10 DICHLOROSTEARIC ACID
9,10 EPOXYSTEARIC ACID
A-BHC-ALPHA
ABIETIC ACID
ACENAPHTHENE
ACENAPHTHENE, SED (DRY WEIGHT)
ACENAPHTHYLENE
ACETALDEHYDE
ACETAMINOPHEN
ACETIC ACID
ACETONE
ACETONE, DRY WEIGHT
ACETONE IN WASTE
ACETOPHENONE
ACID COMPOUNDS
ACIDS, TOTAL VOLATILE (AS ACETIC ACID)
ACROLEIN
ACROLEIN, DRY WEIGHT
ACRYLAMIDE MONOMER
ACRYLIC ACID
ACRYLONITRILE
ACRYLONITRILE, DRY WEIGHT
A-ENDOSULFAN-ALPHA
ALACHLOR (BRAND NAME-LASSO)
ALACHLOR, DISSOLVED
ALDICARB
ALDICARB SULFONE
ALDICARB SULFOXIDE
ALDRIN
ALDRIN + DIELDRIN
ALDRIN, DRY WEIGHT
ALKYL BENZENE SULFONATED (ABS)
ALKYLDIMETHYL ETHYL AMMONIUM BROMIDE
ALKYLDIMETHYLBENZYL AMMONIUM CHLORIDE
ALPHA ACTIVITY
ALPHA EMITTING RADI-UM ISOTOPES, DISSOL.
ALPHA GROSS RADIOACTIVITY
ALPHA, DISSOLVED
ALPHA, SUSPENDED
ALPHA, TOTAL
ALPHA, TOTAL, COUNTING ERROR
ALPHABHC DISSOLVED
ALPHA-ENDOSULFAN
AMIBEN (CHLORAMBEN)
AMINES, ORGANIC TOTAL
AMINOTROL - METHYLENE PHOSPHATE
ANILINE
ANTHRACENE
ANTIMONY IN BOTTOM DEPOSITS (DRY WGT)
ANTIMONY, DISSOLVED (AS SB)
ANTIMONY, TOTAL (AS SB)
ANTIMONY, TOTAL RECOVERABLE
AROMATICS, SUBSTITUTED
AROMATICS, TOTAL PURGEABLE
ARSENIC
ARSENIC, POTENTIALLY DISSOLVD
ARSENIC, DISSOLVED (AS AS)
ARSENIC, DRY WEIGHT
ARSENIC, TOTAL (AS AS)
ARSENIC, TOTAL RECOVERABLE
ASBESTOS
ASBESTOS (FIBROUS)
ATRAZINE
ATRAZINE, DISSOLVED
AZOBENZENE
BALAN (BENEFIN)
BARIUM IN BOTTOM DEPOSITS (DRY WGT)

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BARIUM, POTENTIALLY DISSOLVD
BARIUM, DISSOLVED (AS BA)
BARIUM, TOTAL (AS BA)
BARIUM, TOTAL RECOVERABLE
BASE NEUTRALS & ACID (METHOD 625),
TOTAL
BASE NEUTRALS & ACID (METHOD 625),
EFFLNT
BASE/NEUTRAL COMPOUNDS
BAYER 73 LAMPREYCID IN WATER
B-BHC-BETA
B-BHC-BETA DISSOLVED
B-ENDOSULFAN-BETA
BENTAZON, TOTAL
BENZENE
BENZENE (VOLATILE ANALYSIS)
BENZENE HEXACHLORIDE
BENZENE SULPHONIC ACID
BENZENE, DISSOLVED
BENZENE, DRY WEIGHT
BENZENE, HALOGENATED
BENZENE, TOLUENE, XYLENE IN
COMBINATN
BENZENE, ETHYLBENZENETOLUENE,
XYLENE COMBN
BENZENEHEXACHLORIDE
BENZIDINE
BENZIDINE, DRY WEIGHT
BENZIAC ACIDS-TOTAL
BENZISOTHIAZOLE
BENZO(A)ANTHRACENE
BENZO(A)PYRENE
BENZO(A)PYRENE, DRY WEIGHT
BENZO(B)FLUORANTHENE (3,4-BENZO)
BENZO(GHI)PERYLENE
BENZO(K)FLUORANTHENE
BENZOFURAN
BENZY CHLORIDE
BENZYL ALCOHOL
BENZYL CHLORIDE
BERYLLIUM IN BOTTOM DEPOSITS (DRY
WGT)
BERYLLIUM, POTENTIALLY DISSOLVD
BERYLLIUM, DISSOLVED (AS BE)
BERYLLIUM, TOTAL (AS BE)
BERYLLIUM, TOTAL RECOVERABLE (AS
BE)
BETA, DISSOLVED
BETA, SUSPENDED
BETA, TOTAL
BETA, TOTAL, COUNTING ERROR
BETASAN(N-2-
MERCAPTOETHYLBENZENESULFAMID
BEZONITRILE (CYANOBENZENE)
BHC, TOTAL
BHC-ALPHA
BHC-DELTA
BHC-GAMMA
BIOASSAY (24 HR.)
BIOASSAY (48 HR.)
BIOASSAY (96 HR.)
BIOASSAY (24 HR)
BIOASSAY (48 HR)
BIOASSAY (96 HR)
BIS -- PHENOL-A (ALPHA)
BIS (2-CHLORO-ISOPROPYL) ETHER
BIS (2-CHLOROETHOXY) METHANE
BIS (2-CHLOROETHOXY) METHANE, DRY WT.
BIS (2-CHLOROETHYL) ETHER
BIS (2-ETHYLHEXYL) PHTHALATE
BIS (2-ETHYLHEXYL) PHTHALATE, DRY WGT
BIS (CHLOROMETHYL) ETHER
BIS (TRICHLOROMETHYL) SULFONE
BIS ETHER
BISMUTH, TOTAL (AS BI)
BISPENOL-A
BORIC ACID
BORON, DISSOLVED (AS B)
BORON, TOTAL (AS B)
BORON, TOTAL RECOVERABLE
BROMACIL
BROMACIL (HYVAR)
BROMOCHLOROMETHANE
BROMODICHLOROETHANE
BROMOFORM
BROMOFORM, DRY WEIGHT
BROMOMETHANE
BUTACHLOR
BUTANE
BUTANOIC ACID
BUTANOL
BUTANONE
BUTHDIENE TOTAL
BUTOXY ETHOXY ETHANOL TOTAL
BUTYL ACETATE
BUTYL BENZYL PHTHALATE
BUTYLATE (SUTAN)
CADMIUM
CADMIUM TOTAL RECOVERABLE
CADMIUM IN BOTTOM DEPOSITS (DRY WGT)
CADMIUM SLUDGE SOLID
CADMIUM SLUDGE TOTAL
CADMIUM, POTENTIALLY DISSOLVD
CADMIUM, DISSOLVED (AS CD)
CADMIUM, TOTAL (AS CD)
CADMIUM, SLUDGE, TOT DRY WEIGHT (AS
CD)
CAFFEINE
CAPTAN
CARBAMATES
CARBARYL TOTAL

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CARBON CHLOROFORM EXTRACTABLES, ETHER
INSOLUBLE
CARBOFURAN
CARBON DISULFIDE
CARBON TETRACHLORIDE
CARBON TETRACHLORIDE, DRY WEIGHT
CARBON, CHLOROFORM EXTRACTABLES
CARBON, DISSOLVED ORGANIC (AS C)
CARBOSULFAN, TOTAL
CERIUM, TOTAL
CESIUM, TOTAL (AS CS)
CHLOR, PHENOXY ACID GP, NONE FOUND
CHLORAL
CHLORAL HYDRATE
CHLORAMINE RESIDUAL
CHLORDANE (CA OCEAN PLAN DEFINITION)
CHLORDANE (TECH MIX & METABS), DRY
WGT
CHLORDANE (TECH MIX. AND
METABOLITES)
CHLORDANE, ALPHA, WHOLE WATER
CHLORDANE, GAMMA, WHOLE WATER
CHLORENDIC ACID
~~CHLORIDE, DISSOLVED (AS CL)~~
~~CHLORIDE, DISSOLVED IN WATER~~
CHLORIDE, ORGANIC, TOTAL
CHLORINATED DIBENZO-FURANS, EFFLUENT
CHLORINATED DIBENZO-FURANS, SLUDGE
CHLORINATED DIBENZO-P-DIOXINS,
EFFLUENT
CHLORINATED DIBENZO-P-DIOXINS, SLUDGE
CHLORINATED ETHANES
CHLORINATED HYDRO-CARBONS, GENERAL
CHLORINATED METHANES
CHLORINATED ORGANIC COMPOUNDS
CHLORINATED PESTICIDES, TOTAL
CHLORINATED PESTICIDES, TOT & PCB'S
CHLORINATED PHENOLS
CHLORINATION
CHLORINE DIOXIDE
CHLORINE DOSE
CHLORINE RATE
CHLORINE USAGE
CHLORINE, COMBINED AVAILABLE
CHLORINE, FREE AVAILABLE
CHLORINE, FREE RESIDUAL, TOTAL
EFFLUENT
CHLORINE, TOTAL RESIDUAL
CHLORINE, TOTAL RESIDUAL (DSG. TIME)
CHLORINE, TOTAL RES. DURATION
OF VIOLATION
~~CHLORITE~~
CHLOROBENZENE
CHLOROBENZENE, DRY WEIGHT
CHLOROBENZILATE
CHLOROBUTADIENE (CHLOROPRENE)

CHLORODIBROMOMETHANE
CHLORODIBROMOMETHANE, DRY WEIGHT
CHLORODIFLUORO-METHANE
CHLORODIMEFORM
CHLOROETHANE
CHLOROETHANE, TOTAL WEIGHT
CHLOROETHYLENE BISTHIOCYANATE
CHLOROFORM
CHLOROFORM EXTRACTABLES, TOTAL
CHLOROFORM, DISSOLVED
CHLOROFORM, DRY WEIGHT
CHLOROHEXANE, TOTAL
CHLOROMETHANE
CHLOROMETHYL BENZENE
CHLORONITROBENZENE
CHLOROPHENOXY PROPANANOL
CHLOROSYRINGEALDEHYDE, EFFLUENT
CHLOROTOLUENE
CHLOROXAZONE
CHLORPHENIRAMINE
CHLORPYRIFOS
CHROMIUM
CHROMIUM, DRY WEIGHT
CHROMIUM TOTAL RECOVERABLE
CHROMIUM SLUDGE SOLID
CHROMIUM SLUDGE TOTAL
CHROMIUM TRIVALENT IN BOTTOM
DEPOSITS
CHROMIUM, DISSOLVED (AS CR)
CHROMIUM, HEXAVALENT
CHROMIUM, HEXAVALENT
CHROMIUM, HEXAVALENT (AS CR)
CHROMIUM, HEXAVALENT DISSOLVED (AS
CR)
CHROMIUM, HEXAVALENT IN BOT DEP (DRY
WT)
CHROMIUM, HEXAVALENT POTENTIALLY
DISSOLVED
CHROMIUM, HEXAVALENT TOT
RECOVERABLE
CHROMIUM, SUSPENDED (AS CR)
CHROMIUM, TOTAL
CHROMIUM, TOTAL (AS CR)
CHROMIUM, TOTAL PERCENT REMOVAL
CHROMIUM, TOTAL DRY WEIGHT (AS CR)
CHROMIUM, TOTAL IN BOT DEP (WET WGT)
CHROMIUM, TRIVALENT (AS CR)
CHROMIUM, TRIVALENT, POTENTIALLY
DISSOLVED
CHRYSENE
CIS-1,3-DICHLORO PROPENE
CITRIC ACID
CN, FREE (AMENABLE TO CHLORINE)
COBALT, TOTAL RECOVERABLE
COLUMBIUM, TOTAL
COMBINED METALS SUM

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COPPER
COPPER TOTAL RECOVERABLE
COPPER AS SUSPENDED BLACK OXIDE
COPPER IN BOTTOM DEPOSITS (DRY WGT)
COPPER SLUDGE SOLID
COPPER SLUDGE TOTAL
COPPER, DISSOLVED (AS CU)
COPPER, POTENTIALLY DISSOLVED
COPPER, SUSPENDED (AS CU)
COPPER, TOTAL (AS CU)
COPPER, TOTAL PER BATCH
COUMAPHOS
CRESOL
CYANATE (AS OCN)
CYANIDE (A)
CYANIDE AND THIOCYANATE - TOTAL
CYANIDE COMPLEXED TO RANGE OF
COMPOUND
CYANIDE FREE NOT AMENABLE TO
CHLORIN.
CYANIDE IN BOTTOM DEPOSITS (DRY WGT)
CYANIDE SLUDGE SOLID
CYANIDE, FILTERABLE, TOTAL
CYANIDE, FREE-WATER PLUS
WASTEWATERS
CYANIDE, TOTAL (AS CN)
CYANIDE, TOTAL RECOVERABLE
CYANIDE, WEAK ACID, DISSOCIABLE
CYANIDE, DISSOLVED STD METHOD
CYANIDE, FREE (AMEN. TO CHLORINATION)
CYCLOATE (RONEET)
CYCLOHEXANE
CYCLOHEXANONE
CYCLOHEXYL AMINE (AMINO
HEXAHYDRO)
CYCLOHEXANONE
DACONIL (C8CL4N2)
DACTHAL
DDD IN WHOLE WATER SAMPLE
DDE
DDT
DDT/DDD/DDE, SUM OF P,P' & O,P' ISOMERS
DECACHLOROBIPHENYL (DCBP) TOTAL
DECHLORANE PLUS
DEHYDROABIETIC ACID
DELNAV
DELTA BENZENE HEXACHLORIDE
DEMETON
DIAZINON
DIBENZO (A,H) ANTHRACENE
DIBENZO (A,H) ANTHRACENE, DRY WEIGHT
DIBENZOFURAN
DIBROMOCHLORO- METHANE
DIBROMODICHLOROMETHANE
DIBROMOMETHANE
DICHLONE
DICHLORAN, TOTAL
DICHLOROBENZENE
DICHLOROBENZENE, ISOMER
DICHLOROBENZYLTRIFLUORIDE
DICHLOROBROMOMETHANE
DICHLOROBROMOMETHANE, DRY WEIGHT
DICHLOROBUTADIENE
DICHLOROBUTENE- (ISOMERS)
DICHLORODEHYDRO- ABEIETIC ACID
DICHLORODIBROMOMETHANE
DICHLORODIFLUORO- METHANE
DICHLOROETHENE, TOTAL
DICHLOROFLUORO METHANE
DICHLOROMETHANE
DICHLOROPROPYLENE, 1,2
DICHLOROTOLUENE
DICHLOROTRIFLUORO- ETHANE
DICHLORVOS, TOTAL
DICHLORVOS, TOTAL DISSOLVED
DICHLORVOS, TOTAL SED DRY WEIGHT
DICHLORVOS, TOTAL SUSPENDED
DICYCLOHEXYLAMINE, TOTAL
DICYCLOPENTADIENE
DIDECYLDIMETHYL AMMONIUM CHLORIDE
DIDROMOMETHANE, 1-2
DIELDRIN
DIELDRIN, DRY WEIGHT
DIETHYL METHYL BENZENESULFONAMIDE
DIETHYL PHTHALATE
DIETHYL PHTHALATE, DRY WEIGHT
DIETHYLAMINE
DIETHYLAMINOETHANOL
DIETHYLBENZENE
DIETHYLENE GLYCOL DINITRATE, TOTAL
DIETHYLHEXYL PHTHALATE ISOMER
DIETHYLHEXYL- PHTHALATE
DIETHYLSTILBESTEROL
DIFOLATAN
DIISOPROPYL ETHER
DIMETHOXYBENZIDINE
DIMETHYL BENZIDINE
DIMETHYL DISULFIDE TOTAL
DIMETHYL NAPHTHALENE
DIMETHYL PHTHALATE
DIMETHYL PHTHALATE
DIMETHYL PHTHALATE, DRY WEIGHT
DIMETHYL SULFIDE TOTAL
DIMETHYL SULFOXIDE TOTAL
DIMETHYLAMINE
DIMETHYLANILINE
DI-N-BUTYL PHTHALATE
DI-N-BUTYL PHTHALATE, DRY WEIGHT
DI-NITRO BUTYL PHENOL (DNBP)
DINITROTOLUENE
DI-N-OCTYL PHTHALATE
DI-N-OCTYL PHTHALATE, DRY WEIGHT

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DINOSEB
DINOSEB (DNBP)
DIOXANE
DIOXIN
DIOXIN (TCDD) SUSPENDED
DISSOLVED RADIOACTIVE GASSES
DISULFOTON
DIURON
DOCOSANE
DODECYLGUANIDINE SALTS
DYFONATE
DYPHYLLINE
EDTA
EDTA AMMONIATED
ENDOSULFAN SULFATE
ENDOSULFAN, ALPHA, IN WASTE
ENDOSULFAN, BETA, INWASTE
ENDOSULFAN, TOTAL
ENDRIN
ENDRIN + ENDRIN ALDEHYDE (SUM)
ENDRIN ALDEHYDE
EPHEDRINE SULFATE
EPICHLOROHYDRIN
EPTC (EPTAM)
ESTRADIOL
ETHALFLURALIN WATER, TOTAL
ETHANE, 1,2-BIS (2- CLRETHXY), HOMLG SUM
ETHANOL
ETHION
ETHYL METHANESULFONATE
ETHYL ACETATE
ETHYL BENZENE
ETHYL BENZENE
ETHYL ETHER BY GAS CHROMATOGRAPH
ETHYL METHYL- DIOXOLANE
ETHYL PARATHION
ETHYLBENZENE
ETHYLBENZENE, DRY WEIGHT
ETHYLENE CHLOROXYDRIN
ETHYLENE DIBROMIDE (1,2
DIBROMOETHANE)
ETHYLENE GLYCOL
ETHYLENE GLYCOL
ETHYLENE GLYCOL DINITRATE
ETHYLENE OXIDE
ETHYLENE THIOUREA (ETU)
ETHYLENE, DISSOLVED (C2H4)
ETHYLHEXYL
EXPLOSIVE LIMIT, LOWER
EXPLOSIVES, COMBINED TNT + RDX +
TETRYL
FERRICYANIDE
FLUORANTHENE
FLUORANTHENE, DRY WEIGHT
FLUORENE
FLUORENE, DRY WEIGHT
FLUORIDE - COMPLEX
FLUSILAZOLE
FOAMING AGENTS
FORMALDEHYDE
FORMIC ACID
FREON 113 (1,1,1-TRIFLUORO-2,2-
FREON, TOTAL
FUEL, DIESEL, #1
FURFURAL
GAMMA, TOTAL
GAMMA, TOTAL COUNTING ERROR
GAMMA-BHC
GASOLINE, REGULAR
GERMANIUM, TOTAL (AS GE)
GLYPHOSATE, TOTAL
GOLD, TOTAL (AS AU)
GROSS BETA
GUAFENSIN
GUANIDINE NITRATE
GUTHION
HALOGEN, TOTAL ORGANIC
HALOGEN, TOTAL RESIDUAL
HALOGENATED HYDRO- CARBONS, TOTAL
HALOGENATED ORGANICS
HALOGENATED TOLUENE
HALOGENS, ADSORBABLEORGANIC
HALOGENS, TOT ORGAN-ICS BOTTOM
SEDIMENT
HALOMETHANES, SUM
HEPTACHLOR
HEPTACHLOR EPOXIDE
HEPTACHLOR, DRY WEIGHT
HEPTANE
HERBICIDES, TOTAL
HEXACHLOROBENZENE
HEXACHLOROBENZENE, DRY WEIGHT
HEXACHLOROBIPHENYL
HEXACHLOROBUTADIENE
HEXACHLOROBUTADIENE
HEXACHLOROBUTADIENE, DRY WEIGHT
HEXACHLOROCYCLO- PENTADIENE
HEXACHLOROCYCLOHEXANE (BHC) TOTAL
HEXACHLOROCYCLOPENTADIENE, DRY
WEIGHT
HEXACHLOROETHANE
HEXACHLOROETHANE, DRY WEIGHT
HEXACHLOROPENTADIENE
HEXADECANE
HEXAHYDROAZEPINONE
HEXAMETHYL- PHOSPHORAMINE(HMPA)
HEXAMETHYLBENZENE
HEXANE
HEXAZIMONE
HMX-1,3,5,7-TETRA ZOCINE
HYDRAZINE
HYDRAZINES, TOTAL

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HYDROCARBON, TOTAL RECOVERABLE
HYDROCARBONS NITRATED
HYDROCARBONS NITRATED, TOTAL
HYDROCARBONS, AROMATIC
HYDROCARBONS, TOTAL GAS
CHROMATOGRAPH
HYDROCARBONS, IN H₂O, IR, CC14 EXT.
CHROMAT
HYDROGEN CYANIDE
HYDROQUINONE
HYDROXYACETOPHENONE
HYDROXYQUINOLINE TOTAL
HYDROXYZINE
INDENE
INDENO (1,2,3-CD) PYRENE
INDENO (1,2,3-CD) PYRENE, DRY WEIGHT
INDIUM
IODINE 129
IODINE RESIDUAL
IODINE TOTAL
IRON, TOTAL (AS FE)
ISOBUTYL ACETATE
ISOBUTYL ALCOHOL
ISODECYLDIPHENYL- PHOSPHATE
ISO-OCTANE
ISOOCTYL 2,4,5-T
ISOOCTYL SILVEX
ISOPHORONE
ISOPHORONE, DRY WEIGHT
ISOPIMARIC ACID
ISOPRENE
ISOPROPALIN WATER, TOTAL
ISOPROPNOL
ISOPROPYL ALCOHOL (C₃H₈O), SED.
ISOPROPYL ETHER
ISOPROPYLBENZENE
ISOPROPYLBIPHENYL, TOTAL
ISOPROPYLIDINE DIOXYPHENOL
ISOTHIAZOLONE
ISOTHIOZOLINE, TOTAL
ISOXSUPRINE
KELTHANE
KEPONE
LANTHANUM, TOTAL
LEAD
LEAD TOTAL RECOVERABLE
LEAD 210, TOTAL
LEAD SLUDGE SOLID
LEAD SLUDGE TOTAL
LEAD, POTENTIALLY DISSOLVD
LEAD, DISSOLVED (AS PB)
LEAD, DRY WEIGHT
LEAD, TOTAL DRY WEIGHT (AS PB)
LEAD, TOTAL (AS PB)
LINDANE
LINOLEIC ACID

LINOLENIC ACID
M - ALKYL DIMETHYL BENZYLAMCL
MAGNESIUM, PCT EXCHANGE
MALATHION
MB 121
MERCAPTANS, TOTAL
MERCAPTOBENZOTHAZOLE
MERCURY
MERCURY, POTENTIALLY DISSOLVD
MERCURY, DISSOLVED (AS HG)
MERCURY, TOT IN BOT DEPOSITS (DRY WGT)
MERCURY, TOTAL (AS HG)
MERCURY TOTAL RECOVERABLE
MERCURY, DRY WEIGHT
METALS TOXICITY RATIO
METALS, TOTAL
METALS, TOX PRIORITY POLLUTANTS,
TOTAL
META-XYLENE
METHAM SODIUM (VAPAM)
METHANE
METHANOL, TOTAL
METHOCARBAMOL
METHOMYL
METHOXYCHLOR
METHOXYPROPYLAMINE
METHYL METHANESULFONATE
METHYL ACETATE
METHYL BROMIDE
METHYL BROMIDE, DRY WEIGHT
METHYL CHLORIDE
METHYL CHLORIDE, DRY WEIGHT
METHYL CYANIDE (ACETONITRILE)
METHYL ETHYL BENZENE
METHYL ETHYL KETONE
METHYL ETHYL SULFIDE
METHYL ISOBUTYL KETONE (MIBK)
METHYL MERCAPTAN
METHYL METHACRYLATE
METHYL NAPHTHALENE
METHYL PARATHION
METHYL STYRENE
METHYLAMINE
METHYLENE BIS-THIOCYANATE
METHYLENE CHLORIDE
METHYLENE CHLORIDE, DRY WEIGHT
METHYLENE CHLORIDE, SUSPENDED
METHYLHYDRAZINE
METRIBUZIN (SENCOR), WATER, DISSOLVED
METRIOL TRINITRATE, TOTAL
MIREX
MOLYBDENUM DISSOLVED (AS MO)
MOLYBDENUM, TOTAL (AS MO)
MONOCHLOROACETIC ACID
MONO-CHLORO-BENZENES
MONOCHLOROBENZYLTRIFLUORIDE

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MONOCHLORODEHYDRO- ABIETIC ACID
MONOCHLOROTOLUENE
N PENTANE
N, N- DIMETHYLFORMAMIDE
N, N'DIETHYL CARBANILIDE
N, N-DIMETHYL FORMAMIDE
NAPHTHALENE
NAPHTHALENE, DRY WEIGHT
NAPHTHENIC ACID
NAPROPAMIDE (DEVIRINOL)
N-BUTYL ACETATE
N-BUTYL-BENZENE SULFONAMIDE (IN
WAT)
N-BUTYLBENZENE (WHOLE WATER, UG/L
NEPTUNE BLUE
N-HEPTADECANE
NIACINAMIDE
NICKEL
NICKEL TOTAL RECOVERABLE
NICKEL SLUDGE SOLID
NICKEL SLUDGE TOTAL
NICKEL, POTENTIALLY DISSOLVD
NICKEL, DISSOLVED (AS NI)
NICKEL, SUSPENDED (AS NI)
NICKEL, TOTAL (AS NI)
NICKEL, TOTAL PER BATCH
NICKEL, TOT IN BOTTOM DEPOSITS (DRY
WGT)
NICOTINE SULFATE
NITROBENZENE
NITROBENZENE, DRY WEIGHT
NITROCELLULOSE
NITROFURANS
NITROGEN, ORGANIC, DISSOLVED (AS N)
NITROGLYCERIN BY GAS
CHROMATOGRAPHY
NITROGUANIDINE
NITROSODIPHENYLAMINE
NITROSTYRENE
N-NITROSO COMPOUNDS, VOLATILE
N-NITROSO COMPOUNDS, VOLATILE
N-NITROSODIBUTYL- AMINE
N-NITROSODIETHYL- AMINE
N-NITROSODIMETHYL- AMINE
N-NITROSODIMETHYLAMINE, DRY WEIGHT
N-NITROSODI-N-PROPYLAMINE
N-NITROSODI-N-PROPYLAMINE, DRY
WEIGHT
N-NITROSODIPHENYL- AMINE
N-NITROSODIPHENYLAMINE, DRY WEIGHT
N-NITROSOPYRROLIDINE
N-PROPYLBENZENE
O - CHLOROBENZYL CHLORIDE
OCTACHLORO- CYCLOPENTENE
OCTYLPHENOXY POLYETHOXYETHANOL
OIL, PETROLEUM ETHER EXTRACTABLES
OIL/GREASE CALCULATED LIMIT
OLEIC ACID
ORDRAM (HYDRAM)
ORGANIC ACTIVE IN- GREDIENTS (40CFR455)
ORGANIC COMPOUNDS, CHLOROFORM
EXTRACT.
ORGANIC HALIDES, TOTAL
ORGANIC PESTICIDE CHEMICALS (40CFR455)
ORGANICS, GASOLINE RANGE
ORGANICS, TOT PURGE-ABLES (METHOD 624)
ORGANICS, TOTAL
ORGANICS, TOTAL TOXIC (TTO)
ORGANICS, VOLATILE (NJAC REG. 7:23-17E)
ORGANICS-TOT VOLTILE (NJAC REG.7:23-17E)
ORTHENE
ORTHOCHLOROTOLUENE
ORTHO-CRESOL
ORTHO-XYLENE
O-TOLUIDINE
OXALIC ACID
P,P'-DDE - DISSOLVED
P,P'-DDT - DISSOLVED
PALLADIUM, TOTAL (AS PD)
P-AMINOBIHENYL
PANTHALIUM, TOTAL
PARABEN (METHYL AND PROPYL)
PARACHLOROMETA CRESOL
PARA-DICHLOROBENZENE
PARAQUAT
PARATHION
PCB - 1262
PCB, TOTAL SLUDGE, SCAN CODE
PCB, TOTAL, SCAN EFFLUENT
PCB-1016 (AROCHLOR 1016)
PCB-1221 (AROCHLOR 1221)
PCB-1232 (AROCHLOR 1232)
PCB-1242 (AROCHLOR 1242)
PCB-1248 (AROCHLOR 1248)
PCB-1254 (AROCHLOR 1254)
PCB-1260 (AROCHLOR 1260)
PCBS IN BOTTOM DEPS. (DRY SOLIDS)
P-CRESOL
P-DIMETHYLAMINO- AZOBENZENE
PEBULATE (TILLAM)
PENTACHLOROBENZENE
PENTACHLOROETHANE
PENTACHLOROPHENOL
PESTICIDES, GENERAL
P-ETHYLTOLUENE
PETROL HYDROCARBONS, TOTAL
RECOVERABLE
PHENACETIN
PHENANTHRENE
PHENANTHRENE, DRY WEIGHT
PHENOL, SINGLE COMPOUND

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PHENOLIC COMPOUNDS, SLUDGE TOTAL,
 DRY WEIGHT
PHENOLIC COMPOUNDS, UNCHLORINATED
PHENOLICS IN BOTTOM DEPOSITS (DRY
 WGT)
PHENOLICS, TOTAL RECOVERABLE
PHENOLS
PHENOLS, CHLORINATED
PHENOXY ACETIC ACID
PHENYLPROPANOLAMINE
PHENYLTOLOXAMINE
PHORATE
PHOSPHATED PESTICIDES
PHOSPHOROTHIOIC ACID 0,0,0-TRIETHYL
 ESTR
PHTHALATE ESTERS
PHTHALATES, TOTAL
PHTHALIC ACID
PHTHALIC ANHYDRIDE
PLATINUM, TOTAL (AS PT)
POLONIUM 210
POLYACRILAMIDE CHLORIDE
POLYBROMINATED BIPHENYLS
POLYBROMINATED DIPHENYL OXIDES
POLYCHLORINATED BIPHENYLS (PCBS)
POLYMETHYLACRYLIC ACID
PROPABHLOR (RAMROD) DISSOLVED
PROPANE, 2-METHOXY- 2-METHYL
PROPANIL
PROPENE, TOTAL
PROPRANE, TOTAL
PROPYL ACETATE
PROPYLENE OXIDE
PROPYLENGLYCOL, TOTAL
PURGEABLE AROMATICS METHOD 602
PURGEABLE HYDRO- CARBONS, METH. 601
PYRENE
PYRENE, DRY WEIGHT
PYRETHRINS
PYRIDINE
QUARTERNARY AMMONIUM COMPOUNDS
QUINOLINE
RADIATION, GROSS BETA
RADIATION, GROSS ALPHA
RADIOACTIVITY
RADIOACTIVITY, GROSS
RADIUM 226 + RADIUM 228, TOTAL
RADIUM 226, DISSOLVED
RADIUM 228, TOTAL
RARE EARTH METALS, TOTAL
RATIO OF FECAL COLIFORM TO FECAL
 STREPOC
R-BHC (LINDANE) GAMMA
RDX, DISSOLVED
RDX, TOTAL
RESIN ACIDS, TOTAL
RESORCINOL
RHODIUM, TOTAL
ROTENONE
ROUNDUP
RUBIDIUM, TOTAL (AS RB)
SAFROLE
SAMARIUM, TOTAL (AS SM IN WATER)
SELENIUM, ACID SOLUBLE
SELENIUM SLUDGE SOLID
SELENIUM, POTENTIALLY DISSOLVD
SELENIUM, DISSOLVED (AS SE)
SELENIUM, DRY WEIGHT
SELENIUM, SLUDGE, TOTAL DRY WEIGHT
SELENIUM, TOTAL (AS SE)
SELENIUM, TOTAL RECOVERABLE
SEVIN
SEVIN (CARBARYL) IN TISSUE
SILVER
SILVER TOTAL RECOVERABLE
SILVER IN BOTTOM DEPOSITS (DRY WGT)
SILVER, DISSOLVED (AS AG)
SILVER, IONIC
SILVER, POTENTIALLY DISSOLVED
SILVER, TOTAL (AS AG)
SILVER, TOTAL PER BATCH
SILVEX
SODIUM CHLORATE
SODIUM DICHROMATE
SODIUM DIMETHYL-DITHIOCARBAMATE,
 TOTAL
SODIUM PENTACHLORO- PHENATE
SODIUM POLYACRYLATE, TOTAL
SODIUM-O-PPTH
~~SOLIDS-FLOTNG-VISUAL-DETRMNTN #DAYS~~
 OBS
STRONTIUM 90, TOTAL
STRONTIUM, DISSOLVED
STRONTIUM, TOTAL (AS SR)
STYRENE
STYRENE, TOTAL
SULFABENZAMIDE
SULFACETAMIDE
SULFATHIAZOLE
SULFOTEPP (BLADAFUME)
TANNIN AND LIGNIN
TCDD EQUIVALENTS
TELLURIUM, TOTAL
TERBACIL
TERBUFOS (COUNTER) TOTAL
TETRA SODIUM EDTA
TETRACHLORDIBENZOFURAN,2378-(TCDF)
 SED,
TETRACHLOROBENZENE
TETRACHLOROETHANE, TOTAL
TETRACHLOROETHENE
TETRACHLOROETHYLENE

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TETRACHLOROETHYLENE
TETRACHLOROETHYLENE, DRY WEIGHT
TETRACHLOROGUAIACOL (4CG) IN WHOLE
WATER
TETRAHYDRO-3,5-DIMETHYL-2-HYDRO-1,3,5-
TH
TETRAHYDROFURAN
TETRAMETHYLBENZENE
THALLIUM IN BOTTOM DEPOSITS (DRY WGT)
THALLIUM, POTENTIALLY DISSOLVD
THALLIUM, ACID SOLUBLE
THALLIUM, DISSOLVED (AS TL)
THALLIUM, TOTAL (AS TL)
THALLIUM, TOTAL RECOVERABLE
THC, DRY & 02
THEOPHYLLINE
THIOCARBAMATES
THIOCYANATE (AS SCN)
THIOSULFATE ION(2-)
THORIUM 230
THORIUM 232
TIN
TIN, DISSOLVED (AS SN)
TIN, TOTAL (AS SN)
TIN, TOTAL RECOVERABLE
TITANIUM, DISSOLVED (AS TI)
TITANIUM, TOTAL (AS TI)
TITANIUM, TOTAL DRY WEIGHT (AS TI)
TOLUENE
TOLUENE, DISSOLVED
TOLUENE, DRY WEIGHT
TOLUENE-2,4 -DIISOCYANITE
TOLYTRIAZOLE
TOTAL ACID PRIORITY POLLUTANTS
TOTAL BASE/NEUTRAL PRIORITY
POLLUTANTS
TOTAL PESTICIDES
TOTAL PHENOLS
TOTAL POLONIUM
TOTAL PURGEABLE HALOCARBONS
TOTAL TOXIC ORGANICS (TTO) (40CFR413)
TOTAL TOXIC ORGANICS (TTO) (40CFR433)
TOTAL TOXIC ORGANICS (TTO) (40CFR464A)
TOTAL TOXIC ORGANICS (TTO) (40CFR464B)
TOTAL TOXIC ORGANICS (TTO) (40CFR464C)
TOTAL TOXIC ORGANICS (TTO) (40CFR464D)
TOTAL TOXIC ORGANICS (TTO) (40CFR467)
TOTAL TOXIC ORGANICS (TTO) (40CFR468)
TOTAL TOXIC ORGANICS (TTO) (40CFR469)
TOTAL TOXIC ORGANICS (TTO) (40CFR465)
TOTAL VOLATILE PRIORITY POLLUTANTS
TOXAPHENE
TOXAPHENE, DRY WEIGHT
TOXICITY
TOXICITY, CERIODAPHNIA ACUTE
TOXICITY, CERIODAPHNIA CHRONIC
TOXICITY, PIMEPHALES ACUTE
TOXICITY, PIMEPHALES CHRONIC
TOXICITY, CHOICE OF SPECIES
TOXICITY, FINAL CONC TOXICITY UNITS
TOXICITY, SALMO CHRONIC
TOXICITY, SAND DOLLAR
TOXICITY, TROUT
TOXICS, PERCENT REMOVAL
TRANS-1,2-DICHLORO-ETHYLENE
TRANS-1,3-DICHLORO PROPENE
TREFLAN (TRIFLURALIN)
TRIBUTHYLAMINE
TRIBUTYLTIN
TRICHLOROBENZENE
TRICHLOROBENZENE 1,2,4 TOTAL
TRICHLOROETHANE
TRICHLOROETHENE
TRICHLOROETHYLENE
TRICHLOROETHYLENE, DISSOLVED
TRICHLOROETHYLENE, DRY WEIGHT
TRICHLOROFLUORO- METHANE
TRICHLOROGUAIACOL
TRICHLOROPHENATE- (ISOMERS)
TRICHLOROPHENOL
TRICHLOROTOLUENE
TRICHLOROTRIFLUORO- ETHANE
TRIETHANOLAMINE
TRIETHYLAMINE
TRIFLURALIN (C13H16F3N3O4)
TRIHALOMETHANE, TOT.
TRIMETHYL BENZENE
TRINITROTOLUENE (TNT), DISSOLVED
TRINITROTOLUENE (TNT), TOTAL
TRIPHENYL PHOSPHATE
TRITHION
TRITIUM (1 H3), TOTAL
TRITIUM, TOTAL
TRITIUM, TOTAL COUN-TING ERROR (PC/L)
TRITIUM, TOTAL NET INCREASE H-3 UNITS
TUNGSTEN, DISSOLVED
TUNGSTEN, TOTAL
U-236 TOTAL WTR
URANIUM, POTENTIALLY DISSOLVD.
URANIUM, 235 TOTAL
URANIUM, 238 TOTAL
URANIUM, NATURAL, DISSOLVED
URANIUM, NATURAL, TOTAL
URANIUM, NATURAL, TOTAL (IN PCI/L)
URANIUM, TOTAL AS U308
URANYL-ION
UREA
VERNAM (S-PROPYLDI-
PROPYLTHIOCARBAMATE)
VINYL ACETATE
VINYL CHLORIDE
VINYL CHLORIDE, DRY WEIGHT

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VOLATILE COMPOUNDS, (GC/MS)
VOLATILE FRACTION ORGANICS (EPA 624)
VOLATILE HALOGENATED HYDROCARBONS
VOLATILE HALOGENATED ORGANICS (VHO),
TOT
VOLATILE HYDROCARBONS
VOLATILE ORGANICS DETECTED
XANTHATES
XC POLYMER IN DRILLING FLUIDS
XYLENE
XYLENE, PARA- TOTAL
ZINC
ZINC TOTAL RECOVERABLE

ZINC IN BOTTOM DEPOSITS (DRY WGT)
ZINC SLUDGE SOLID
ZINC SLUDGE TOTAL
ZINC, DISSOLVED (AS ZN)
ZINC, DRY WEIGHT
ZINC, POTENTIALLY DISSOLVED
ZINC, TOTAL
ZINC, TOTAL (AS ZN)
ZIRCONIUM, TOTAL