

CHAPTER 15 PROGRAM NOTE #9:

WATER CODE ENFORCEMENT AUTHORITY

January 11, 1994

Although Regional Water Board enforcement authority is described elsewhere, we found this analysis by Ms. Frances McChesney, of the State Water Board's Office of the Chief Counsel, to be a succinct synopsis of the subject.

The Water Code provides the Regional Water Boards with several methods of enforcement to attain compliance with Water Code requirements. Water Code Section 13304 authorizes the Regional Water Boards to issue a cleanup and abatement order, which is similar to a hazardous waste corrective action order issued by the Department of Toxic Substances Control. The Regional Water Board may issue a cleanup and abatement order to:

"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirements 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, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action."

Section 13304 has been interpreted to include as responsible parties current and past owners of property on which the discharge is occurring and current and past operators that caused or permitted a discharge. Cleanup and abatement orders typically require the responsible parties to investigate the site and provide a report to the Regional Water Board. The report contains information acquired during the investigation and proposes a cleanup plan and time schedule. The Regional Water Board may approve the plan and time schedule and would establish cleanup standards. Implementation of the

plan may require the issuance of waste discharge requirements for such activities as constructing and operating a waste treatment facility or for discharging treated water to land, to ground water, or to surface water. Cleanup and abatement orders are usually issued directly by the Executive Officer of the Regional Water Board and are effective upon issuance.

All actions of the Regional Water Boards apply to the discharge of "waste". The term "waste" is very broadly defined and interpreted in Water Code Section 13050(d) and includes hazardous waste, and "sewage and any and all other waste substances, . . . associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Water Code Section 13267 provides that the Regional Water Boards may require any person who has discharged, discharges, is suspected of discharging, or who proposes to discharge waste to provide appropriate technical or monitoring program reports. The burden, including costs, of these reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. Compliance with cleanup and abatement orders usually requires the preparation of technical and monitoring program reports. Requests under Section 13267 are usually issued in the form of a letter from the Regional Water Board Executive Officer to the responsible party. Like cleanup and abatement orders, such requests constitute an order of the Regional Water Board.

Water Code Section 13300 authorizes the Regional Water Boards to issue a time schedule order for a violation or threatened violation of waste discharge requirements. Time schedule orders may be issued by the Regional Water Board Executive Officer and are considered an order of the Regional Water Board. Section 13301 authorizes the Regional Water Boards to issue cease and desist orders of waste discharge requirements or discharge prohibitions, which can include remedial action requirements. Cease

and desist orders may only be issued by the Regional Water Board itself, not by the Executive Officer.

If a person fails to comply with Regional Water Board orders or causes a discharge, the Regional Water Board may impose administrative civil liability. Alternatively, the Regional Water Board may request that the Attorney General seek to enjoin the action resulting in the violation or discharge and the Attorney General may seek to assess civil liability in state superior court. In most cases, the responsible parties have paid the administrative civil liability as imposed by the Regional Water Board, and there are few referrals to the Attorney General.

Any person aggrieved by any Regional Water Board order, including both direct actions by the Regional Water Board and actions by the Executive Officer, may challenge the action by filing a petition for review with the State Water Board within 30 days of the issuance of the order.

The order remains in effect unless the petitioner requests and is granted a stay of the order by the State Water Board. It is very rare for a stay to be granted. Regional Water Boards, however, may extend the time schedule in certain circumstances while the State Water Board considers the petition. The State Water Board has 270 days to act on the petition and frequently acts much sooner than 270 days. Any person aggrieved by the action of the State Water Board in reviewing the petition may file an action in state superior court. Very few State Water Board actions have been challenged in state superior court.