

## **REPORT TO THE LEGISLATURE**

### **CALENDAR YEAR 2001 STORM WATER ENFORCEMENT ACTIONS RELATED TO NON-SUBMITTAL OF ANNUAL REPORTS AND FAILURE TO OBTAIN A PERMIT**

#### **SUMMARY**

Water Code section 13399.39 requires that the State Water Resources Control Board (SWRCB) report to the Legislature on May 1 each year summarizing the enforcement actions undertaken in the previous calendar year pursuant to the Storm Water Enforcement Act (Act) of 1998 (Water Code section 13399.25, et. seq.). The Act establishes specific notification and enforcement procedures to be implemented by the Regional Water Quality Control Boards (RWQCBs) to ensure compliance by industrial storm water dischargers with the requirements of the National Pollutant Discharge Elimination System (NPDES) storm water general permit. The Act also establishes reporting requirements for SWRCB in order to inform the public and the Legislature concerning specified storm water enforcement activities. This report summarizes the actions taken by the RWQCBs during the calendar year of 2001.

During 2001, SWRCB and RWQCBs continued the implementation and enforcement procedures of the Act for nonsubmittal of 2000 and 2001 annual reports (Tables 1 and 2). RWQCBs issued 13 Administrative Civil Liabilities (ACLs) in 2001 to facilities that had failed to file annual reports for 2000 after first and second warning letters (Notice of Violation [NOV]) had been sent in 2000. RWQCBs also issued 1,253 first warning letters and 471 second warning letters to those facilities that failed to file their 2001 annual reports. ACLs may be issued during 2002 for any facility that has not yet filed its 2000 and/or 2001 annual reports.

As required by the Act, SWRCB has been publishing on its web site a list of the dischargers who have failed to submit their annual reports and the notification and enforcement actions taken by RWQCBs with regard to the nonsubmittal of annual reports.

SWRCB has made some progress in 2001 in its effort to implement a statewide program to identify dischargers that have failed to obtain coverage under an NPDES storm water permit or failed to submit a notice of intent (NOI) to obtain coverage. The 2001 Budget Act initially included \$6.5 million in General Fund contract support for implementation of a comprehensive Non-Filer Identification Program, but that funding was reduced by Executive Order # E01/02-78 dated February 27, 2002. With remaining resources, SWRCB was able to initiate a contract for a statewide analysis of storm water database needs, which includes the development of a non-filer tracking system. The continued development of the non-filer tracking system will be funded with money included in the Governor's Fiscal Year (FY) 2002-03 budget proposal to the Legislature.

In the meantime, RWQCBs have continued to identify potential non-filers using existing resources. In 2001, RWQCBs issued 382 first warning letters and 95 second warning letters to dischargers who failed to obtain coverage under the storm water permit. Eight ACLs were issued for failure to obtain coverage (Table 3).

## **ENFORCEMENT ACTIONS TAKEN IN 2001**

### **1. Non-Submittal of Annual Reports (§13399.31).**

Under Section B.14 of the NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities, the facilities covered by the permit are required to submit an annual report by July 1 each year. The report is to summarize the dischargers' compliance activities, including visual observations, sampling and analysis, and an evaluation of the dischargers' storm water pollution prevention and monitoring programs.

The Act requires RWQCBs to (a) review the annual reports submitted by dischargers subject to the NPDES storm water permits; (b) identify the dischargers who have failed to submit the required annual report; (c) notify the dischargers of their noncompliance; and (d) impose penalties on those who fail to comply after being notified the second time by RWQCB.

Since 1999, SWRCB has in place an automated annual report tracking system that allows RWQCBs to fully implement the notification, enforcement, and public reporting requirements related to nonsubmittal of annual reports. RWQCBs took the following actions in 2001:

- a. Issued 13 ACLs against dischargers who failed to submit a 2000 annual report (Table 1).
- b. Mailed first warning letters in August 2001 to 1,253 dischargers for failure to submit the 2001 annual report (Table 2).
- c. Mailed second warning letters in September 2001 to 471 dischargers who failed to respond to the first warning letter within 30 days from the date the first warning letter was sent.

A total of 91 dischargers failed to file an annual report for 2001 after the second warning letters were mailed by RWQCBs. No ACLs were issued in 2001 for the violations; however, ACLs will be issued in 2002 to those dischargers that continue to be in violation.

Pursuant to the requirements established by section 13399.27, SWRCB has made available to the public via its web site ([www.swrcb.ca.gov](http://www.swrcb.ca.gov)) notification and enforcement information concerning non-submittal of annual reports.

## 2. Failure to Obtain Coverage under a Permit (NOI Non-Filers) (§13399.3).

The Act requires RWQCBs to undertake reasonable efforts each year to identify dischargers of storm water who have not obtained coverage under an appropriate storm water NPDES permit. It requires those dischargers to submit to the RWQCB an NOI to obtain coverage or a notice of nonapplicability within 30 days of receiving a notice from RWQCB. The law also requires RWQCBs to impose penalties on those dischargers who fail to submit NOIs after being notified the second time of noncompliance by RWQCB.

Due to the large number of industrial and construction activities in the state and the lack of an effective statewide tracking system, it is resource intensive to identify the NOI non-filers and to keep track of the notification and enforcement activities. The SWRCB has initiated an effort to implement a statewide comprehensive NOI non-filer identification program with the resources provided for this purpose in FY 2001-02. We have contracted for a statewide storm water database analysis of the existing storm water database and for tracking non-filers. The contracted tasks include the development of a non-filer tracking system and a research of address verification methods. The contractor is expected to produce a report in summer 2002 with recommendations regarding address verification methods. The continued development of the non-filer tracking system will be funded with money included in the Governor's FY 2002-03 budget proposal to the Legislature.

The nine RWQCBs were able to identify some NOI non-filers through ongoing activities, such as inspections, informal enforcement actions, and public awareness (e.g., outreach to trade associations, working with local agencies, etc.) A total of 382 first warning letters, 95 second warning letters, and eight ACLs were issued in 2001 to NOI non-filers (Table 3).

## **CONCLUSION**

The SWRCB and RWQCBs are actively implementing the requirements of the Act. In 2001, 1,253 (or 14 percent) of a total of 9,100 facilities failed to submit annual reports. The first and second warning letters were sent to those facilities in 2001, and ACLs will be issued in 2002 against the facilities that continue to be in violation after the second warning letter was issued. However, the SWRCB's and RWQCBs' NOI Non-Filer identification and enforcement effort will continue in its current pace without a comprehensive, statewide electronic tracking system.

**Table 1: Year 2001 Enforcement Summary**  
**(For Non-Submittal of 2000 Annual Report)**

Region	Annual Report Not Received <sup>1</sup>	ACL <sup>2</sup>	Penalty Assessed	Penalty Paid <sup>3</sup>
1	9	0	\$0	\$0
2	5	0	\$0	\$0
3	0	0	\$0	\$0
4	19	13	\$41,620	\$37,420
5	5	0	\$0	\$0
6	0	0	\$0	\$0
7	0	0	\$0	\$0
8	1	0	\$0	\$0
9	0	0	\$0	\$0
<b>Total</b>	<b>39</b>	<b>13</b>	<b>\$41,620</b>	<b>\$37,420</b>

**Table 2: Year 2001 Enforcement Summary**  
**(For Non-Submittal of 2001 Annual Report)**

Region	1 <sup>st</sup> NOV <sup>4</sup>	2 <sup>nd</sup> NOV	Annual Report Not Received	ACL	Penalty Assessed	Penalty Paid
1	38	8	2	0	\$0	\$0
2	259	125	9	0	\$0	\$0
3	46	20	0	0	\$0	\$0
4	363	152	22	0	\$0	\$0
5	315	89	54	0	\$0	\$0
6	28	4	0	0	\$0	\$0
7	11	4	0	0	\$0	\$0
8	163	69	4	0	\$0	\$0
9	30	0	0	0	\$0	\$0
<b>Total</b>	<b>1,253</b>	<b>471</b>	<b>91</b>	<b>0</b>	<b>\$0</b>	<b>\$0</b>

<sup>1</sup> Annual report not submitted after NOVs were sent in 2000.

<sup>2</sup> Administrative Civil Liabilities (ACLs).

<sup>3</sup> Penalty paid during calendar year 2001.

<sup>4</sup> Notice of Violation (NOV).

**Table 3: 2001 NOI Non-filer Enforcement Activities**

<b>Region</b>	<b>1<sup>st</sup> NOV</b>	<b>2<sup>nd</sup> NOV</b>	<b>ACL</b>	<b>Penalty Assessed</b>	<b>Penalty Paid</b>
1	0	0	0	\$0	\$0
2	0	0	0	\$0	\$0
3	8	3	1	\$10,000	\$0
4	207	80	3	\$20,940	\$0
5	70	6	0	\$0	\$0
6	8	0	0	\$0	\$0
7	0	0	0	\$0	\$0
8	75	6	4	\$30,000	\$0
9	14	0	0	\$0	\$0
<b>Total</b>	<b>382</b>	<b>95</b>	<b>8</b>	<b>\$60,940</b>	<b>\$0</b>