

2005 WATER BOARD ENFORCEMENT PLAN
March 30, 2005

Governor Schwarzenegger's Action Plan for California's Environment and the Cal/EPA Strategic Vision established a management priority of improving enforcement. The Strategic Vision specifies: "Enforcement of the law must be consistent, predictable, fair, and equitable. There can be no equivocation or hesitation in the pursuit of individuals or businesses violating laws that protect human health and the environment."

In November 2004, Cal/EPA released an Enforcement Initiative, which called for a number of actions by the boards and departments in the agency to strengthen their enforcement effort. Alan Lloyd, Cal/EPA Secretary, also recently sent a letter to Art Baggett identifying measures to improve the Board's enforcement program. This plan is designed to implement the Governor's Action Plan, Cal/EPA's Enforcement Initiative and Dr. Lloyd's recommendations.

Recent Improvements

The 2002 Water Board Enforcement Policy was developed to provide direction on firm, consistent enforcement to the Regional Water Boards. The Enforcement Policy includes:

- An overview of water quality enforcement options,
- A process for identifying enforcement priorities and choosing the appropriate enforcement response,
- Provisions for more efficient use of standardized, enforceable permit and enforcement order language,
- Information to assist in integrated enforcement efforts with other agencies,
- Procedures for response to fraudulent reporting or knowingly withholding data,
- Specific guidance regarding assessment of administrative civil liability, use of supplemental environmental projects and compliance projects, handling of criminal activities, and standards for violation and enforcement reporting.

The Water Boards have also focused on training to strengthen their enforcement program. The Compliance Assurance and Enforcement Unit at the State Water Board has developed curriculum and offered training since Enforcement Policy adoption covering inspections, investigations, and enforcement. In 2003, Malcolm Sparrow (a professor with the Kennedy School of Government at Harvard who specializes in issues of enforcement strategy, regulatory policy, risk control, and intelligence analysis, and author of "The Regulatory Craft" and "Imposing Duties: Government's Changing Approach to Compliance") provided sessions for management and staff on enforcement and successfully achieving compliance. The basic theme of this material was pick important problems and solve them.

In September 2004, Shelly Metzenbaum (Executive Director of the Environmental Compliance Consortium, visiting professor at the University of Maryland School of

Public Affairs, formerly an Associate Administrator with USEPA, formerly with the Kennedy School of Government, and author of several papers on measuring and improving program performance in the environmental arena) provided a session for Water Board management on performance management for water quality compliance and improvement. The performance management theme was prompted by direction expected from the California Performance Review to improve in this area. Ms. Metzenbaum explained proven techniques using outcome measurement for managing the performance of dischargers and regulatory agencies. Effective utilization of the regulatory toolkit, including strategies for more effective enforcement, was a prominent element of this discussion.

Effective regulation of dischargers and diverters depends on data and information. Most data collection processes at the Water Boards result in paper storage or rely on staff making input to databases. Either approach requires significant staff time for entry or analysis, and diverts staff from other productive endeavors. An internet-based electronic system (CIWQS) to capture discharger monitoring reports and automatically check for compliance is being developed to address this problem. The CIWQS system will be deployed in the fall of 2005. In addition to the automatic compliance checking function, this system will reduce staff workload, reduce data entry errors by capturing the data at the source, and capture data currently not captured because of resource shortfalls.

Near-term Future Activities

Enforcement Prioritization – A statewide consistent approach is being developed with the Regional Water Boards to better implement the enforcement prioritization identified in the Enforcement Policy. The approach will include standard criteria for consistent Regional Board application, monthly Regional Board management review of progress and assignment of new cases, and semi-annual review by State Board management. Chronic violators will be targeted through this prioritization effort.

Completion Date – June 30, 2005

State Board Enforcement Assistance and Progressive Intervention – Improving enforcement at the Water Boards requires increased support and cooperation among the State and Regional Water Boards. The Regional Water Boards have primary responsibility for enforcement activities within their jurisdiction. The State Board's authority to take independent action will be exercised to provide assistance at the request of a Regional Board and as necessary when a Regional Board is unable or unwilling to take appropriate action. The State Board will maintain a statewide inventory of the worst violators of water quality laws and ensure appropriate enforcement action is taken.

Completion Date – August 30, 2005

Complaint Tracking – The State and Regional Water Boards will immediately establish a protocol to rapidly respond to citizen complaints and let complainants know the disposition of their complaint. Complainants are a significant source of information

about violations, discharger non-compliance, and water quality threats and impacts. This protocol will be superseded by the statewide complaint tracking system being developed under the Cal/EPA Enforcement Initiative.

Completion Date May 30, 2005

Discharger Reporting – The State's water quality program is dependent on prompt accurate reporting of water quality information by dischargers. Withholding this critical information is a threat to water quality and tantamount to fraud. The Water Boards will initiate enforcement actions against dischargers with long standing violations for failure to file.

Completion Date – September 1, 2005

Fraud – The existing water quality regulatory program relies on discharger self-monitoring and self-reporting. The Water Boards will prosecute dischargers who commit fraud. Regional Board staff will be trained to recognize potential fraudulent activities and how to respond to citizen reports of fraud. The Regional Boards will notify State Board fraud specialists of suspected fraud.

Training Completed – September 1, 2005

Enforcement Reorganization – To streamline and enhance the Water Boards' abilities to respond to violations, conduct enforcement, and return dischargers to compliance, dedicated enforcement units will be established at each regional board. This will be a departure from the current organizational structure in most Regional Water Boards where enforcement staff is intermingled with other program staff. These regional units will work with the State Water Board Enforcement Unit to develop a regional multi-media enforcement strategy, in cooperation with other state, regional, and local enforcement agencies.

Completion Date for formation of units- May 1, 2005

Completion Date for multi-media enforcement strategy – October 1, 2005

Improved use of data – The Water Boards intend to tell the public our enforcement priorities and how well we are meeting our goals. Using a consistent design template, all Water Boards will establish an Internet based water quality report card. The report card will identify enforcement priorities, top violators, and the actions being undertaken to respond. Equally important is better data and utilization of data by staff. Henceforward all violations will be recorded in the Water Board database. Database enhancements scheduled to deploy in fall 2005 will collect and upload much of this compliance data and flag violations. Additional efforts will enhance staff capabilities to analyze and use the data.

All RB
Programs
LST
Violations?

Completion Date – December 1, 2005

Enforceable Permits – The Water Boards will enhance the enforceability of permits and WDRs through the ongoing permit standardization efforts and in concert with an enforceable permits element of the Cal/EPA Enforcement Initiative. Without clear provisions in discharge permits and requirements, compliance becomes confusing and enforcement becomes challenging to accomplish.

Completion Date – December 1, 2005

Improve Compliance Evaluation Inspections (CEIs) – The Water Boards will develop and implement a standard protocol and standard report format for CEIs. A primary objective of the CEI is to determine if the information submitted by a facility in self-monitoring reports is accurate. The protocol will: 1) require that all inspections will be unannounced unless the inspector provides justification for providing the facility prior notice of the inspection; 2) require that a report of the inspection, including a list of all noted violations, be sent to the discharger; 3) specify that all violations discovered during the inspection be recorded in the Water Boards' central database within 10 days of determining the violation occurred; and 4) require that all instances of misreporting or possible fraud be reported to the State Board.

Completion Date – November 1, 2005

Standardize Mandatory Minimum Penalties - The State Water Board will develop a standard protocol for assessing and collecting mandatory minimum penalties to increase efficiency.

Completion Date – September 1, 2005

Staff Augmentation

To provide more effective leadership, guidance, and monitoring of effective enforcement at the Water Boards, a staff augmentation will be made to the State Boards' Compliance Assurance and Enforcement Unit. The new positions will be added to:

- Provide the leadership, vision, and coordination needed to implement the enforcement prioritization, and to monitor implementation and provide effectiveness feedback.
- Provide the resources to implement progressive intervention; including monitoring for intervention circumstances and the staff work in developing the State Board interventions.
- Identify effective outputs of data that support enforcement prioritization and targeting efforts, progressive intervention, and feedback for performance monitoring and management.
- Design and oversee implementation and maintenance of the Compliance Report Cards on the Internet.
- Monitor performance and provide ongoing training on effective inspections, investigations, and enforcement actions.

- Provide the fraud detection training, follow-up investigations, and prepare the follow-up enforcement responding to potential fraud cases identified by the Regional Water Boards.
- Improve coordination with environmental task forces, USEPA's Criminal Investigation Division, CalEPA BDOs, and other enforcement partners like the Department of Fish and Game.
- Lead Water Board conduct of search warrants and organize training in search warrant protocols.