



Fact Sheet

Water Code Violators Held Accountable Under Mandatory Minimum Penalty Law

Legislature Established Mandatory Minimum Penalty Law

A mandatory minimum penalty (MMP) is a penalty of \$3,000 which must be assessed for certain, specified violations of the Water Code.

In 1999, the California Legislature passed SB 709, which required that certain state Water Code violations be subject to MMPs. This legislation changed the status quo. Previously, priorities and work loads of the State Water Resources Control Board and the nine Regional Water Quality Control Boards (collectively referred to as the California Water Boards) determined enforcement actions and penalties. That, inevitably, led to uneven assessments of penalties for violations.

After the passage of the MMP legislation, the California Water Boards began assessing MMPs. However, a variety of factors led to a backlog of unresolved cases.

Office of Enforcement Established

In 2006, the State Water Board established the Office of Enforcement to provide vigorous, statewide enforcement of state and federal water codes, and to improve the tracking and performance of the California Water Boards' enforcement program. The Office of Enforcement documented and reported on the MMP backlog in the California Water Boards' 2007 Enforcement Report, noting that according to the Water Board's data system, 7,880 violations, which had taken place between Jan. 1, 2000 and December 31, 2007, had not received a penalty at or above the mandatory minimum amount.

Statewide Initiative Developed

The work of the Office of Enforcement led to development of a Statewide Initiative on Mandatory Minimum Penalty Enforcement (Initiative). Through this Initiative California Water Boards' staff identified more than 12,000 backlogged MMP violations at more than 450 facilities that occurred between Jan. 1, 2000 and Dec. 31, 2007. Along with targeting the backlog of MMPs, the Initiative has resulted in more accurate and complete recording of violations in the California Water Boards enforcement data base.

As of May 2011, the Initiative had resulted in 147 Administrative Civil Liability Complaints and 274 Expedited Payment letters. The letters offered the facilities the option of resolving the violations by paying the penalties without contesting the finding. Of the 421 enforcement actions initiated, 382 have been completely resolved or settled and total \$25,288,478 in liabilities.



Enforcement action outcomes include:

- \$14,855,232 as liabilities paid or due to the State Water Board's Cleanup and Abatement account.
- \$7,896,000 as credits for completion of Compliance Projects (CP) at facilities serving small communities with financial hardship
- \$2,537,246 as credits for Supplemental Environmental Projects (SEP).

Violations Subject to MMPs Are a Statewide Priority for Enforcement

As of May 2011, there were 39 facilities with a total of 2,868 unresolved, backlogged violations (i.e., are disputed or outstanding). The unresolved violations represent potential liability of \$8.65 million. One facility represents \$4.5 million or more than 50 percent of the unresolved potential liability. The most recent Annual Enforcement Report (August 1, 2011) identifies the elimination of the remaining backlog of violations as a statewide priority for 2011.

To reduce the recurrence of a significant backlog of unresolved violations subject to MMPs, the Water Quality Enforcement Policy (adopted in 2010) directs the Water Boards to assess MMPs within 18 months of the discovery of the violation.

MMP Statute Amended

In 2010 the governor signed AB 1284, which made several amendments to the MMP statute. Among other things, the law now exempts dischargers from MMPs for failing to file a discharge monitoring report if the discharger files a written statement that no discharges to surface water occurred and explains the reasons the report was not filed.

Additional Resources on MMPs and Enforcement Activities

A complete description of AB 1284 can be found at: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1251-1300/sb_1284_bill_20100930_chaptered.pdf

The Mandatory Minimum Penalty Reports are available at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/rpts_mmpe.shtml

The Statewide Initiative on Mandatory Minimum Penalty Enforcement is available at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/mmpdraftreport.pdf

The California Water Boards Enforcement data base is available online at the California Integrated Water Quality System (CIWQS) web site at:

http://www.waterboards.ca.gov/water_issues/programs/ciwqs/

The latest Annual Enforcement Report can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/annl_rpt2010.pdf