

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Yuri Won)
MEETING DATE: July 8, 2008

ITEM: 5

SUBJECT: Consideration of a Resolution Delegating Authority to Executive Officer to Issue Administrative Civil Liability Orders

CHRONOLOGY: January 1970 - Resolution Delegating Certain Powers to the Executive Officer

DISCUSSION: The State's Porter-Cologne Water Quality Control Act (Water Code) allows the Regional Water Boards to delegate to their Executive Officers any of their powers and duties under the Water Code except for the following:

- a. The promulgation of any regulations;
- b. The issuance, modification, or revocation of any water quality control plan, water quality objectives or waste discharge requirement;
- c. The issuance, modification, or revocation of any cease and desist order;
- d. The holding of any hearing on water quality control plans; and
- e. The application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order, and excluding the cases described in subdivision (c) of Section 13002, 13304, and 13340 of the Water Code.

The nine Regional Water Boards have acted to delegate to their Executive Officers all of the powers and duties they may legally delegate. The San Francisco Bay Regional Water Board ("Board") made this delegation to its Executive Officer in Resolution No. 70-11 (Appendix A).

The Water Code authorizes the Executive Officer to issue administrative civil liability ("ACL") complaints. Water Code § 13323(a). The Water Code provides the right to the discharger to have a hearing before the Board to contest an ACL complaint. Alternatively, the discharger may waive the right to a hearing and pay the liability proposed in the ACL complaint. Water Code § 13323(b).

The California Administrative Procedures Act ("APA") authorizes the Board to settle adjudicative matters without a hearing and provides that

the authority to approve a settlement may be delegated. Gov. Code § 11415.60.

Historically, the resolution of ACL complaints in this Region has occurred in one of two ways: 1) if the discharger contested the complaint, the Board held an adjudicatory hearing and issued an ACL order following the hearing, and 2) if the discharger did not contest the complaint, the discharger waived its right to a hearing and paid the ACL liability (including mandatory minimum penalties), and no ACL order was issued. In the latter instance, the Board was informed of the ACL complaint and the waiver. In addition to the above, occasionally where there were outstanding disputes, Board enforcement staff and the discharger were able to reach a settlement of the ACL complaint without a hearing before the Board. In such cases, no ACL order was issued, but the Board was informed of the settlement.

An ACL order is the preferred method to resolve ACL complaints, including complaints: 1) where the discharger does not contest the complaint and ask for a hearing, and is willing to pay the full amount of the proposed ACL liability, and 2) where the discharger has waived its right to a hearing, and the discharger and Board enforcement staff have reached an agreement to resolve the complaint. ACL orders are more easily enforceable than stand-alone ACL complaints or settlement agreements, because the Water Code provides for specific remedies for collecting unpaid ACL orders.

ACL orders are issued by the Board under its authority in Water Code § 13323 to assess discretionary liability. While Resolution No. 70-11 implicitly delegated to the Executive Officer the authority to issue ACL orders, the Executive Officer has not historically exercised this delegated authority. Therefore, if the Board wishes to authorize its Executive Officer to issue ACL orders where a hearing is not required such as when there has been a waiver or a settlement, it would be prudent that the delegation be explicit so that the authority for such a new practice is clearly expressed to the public and the regulated community. The Tentative Resolution (Appendix B) accomplishes this explicit delegation.

Several other Regional Water Boards have acted to explicitly delegate to their Executive Officers the authority to issue ACL orders where no hearing is required.

RECOMMEND-
ATIONS:

Adopt the Tentative Resolution.

APPENDICES:

- A. Resolution No. 70-1
- B. Tentative Resolution

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE RESOLUTION NO. R2-2008-XXX

DELEGATION OF AUTHORITY TO EXECUTIVE OFFICER TO ISSUE
ADMINISTRATIVE CIVIL LIABILITY ORDERS

WHEREAS:

1. The Porter-Cologne Water Quality Control Act (California Water Code, Division 7) § 13223(a) provides that a Regional Water Quality Control Board may delegate any of its powers and duties to its Executive Officer excepting only the following:
 - a. The promulgation of any regulations;
 - b. The issuance, modification, or revocation of any water quality control plan, water quality objectives or waste discharge requirement;
 - c. The issuance, modification, or revocation of any cease and desist order;
 - d. The holding of any hearing on water quality control plans; and
 - e. The application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order, and excluding the cases described in subdivision (c) of Section 13002, 13304, and 13340 of the Water Code.
2. On January 29, 1970, the California Regional Water Quality Control Board, San Francisco Bay Region ("Board"), adopted Resolution No. 70-11, delegating to its Executive Officer the powers and duties of the Board except those specified in Water Code § 13223(a) and those the Board has previously reserved to itself or any of its members by formal action.
3. Although Resolution No. 70-11 implicitly delegated to the Executive Officer the authority to issue Administrative Civil Liability Orders when it is not necessary for the Board to hold a hearing, it is prudent that the delegation be explicit in order that the authority for this new practice is clearly expressed to the public and the regulated community.

THEREFORE BE IT RESOLVED THAT:

Effective July 8, 2008, the Board hereby expressly delegates to its Executive Officer, under the general direction and control of the Board, the authority to issue final Administrative Civil Liability Orders where no hearing is required.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 8, 2008.

Bruce H. Wolfe
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. 70-11

DELEGATING CERTAIN POWERS AND DUTIES OF THE REGIONAL
BOARD TO ITS EXECUTIVE OFFICER

WHEREAS

Section 13223 of the California Water Code provides that each regional board may delegate any powers and duties vested in it by Division 7 of said Code with certain specified exceptions;

This Regional Board has previously adopted policy statements which reserve certain powers and duties to the Board, its chairman and other designated members;

This Regional Board believes that the delegation of certain of its powers and duties to its Executive Officer will strengthen its role in carrying out the objectives of the Porter-Cologne Act;

THEREFORE, BE IT RESOLVED

This Regional Board delegates the powers and duties vested in it by Division 7, California Water Code, to its Executive Officer, excepting those specifically listed in Section 13223(a) of said Code and excepting also any powers and duties that the Board has previously reserved to itself or any of its members by formal action.

WILLIAM C. WEBER
Chairman
January 29, 1970

I, Fred H. Dierker, hereby certify that the foregoing is a true and correct copy of Resolution No. 70-11 adopted by the California Regional Water Quality Control Board - San Francisco Bay Region at its regular meeting on January 29, 1970.



FRED H. DIERKER
Executive Officer
CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD - SAN FRANCISCO BAY REGION

FHD/emj
1/20/70