

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

STAFF SUMMARY REPORT (Stephen Hill)
MEETING DATE: February 11, 2009

ITEM: 7

SUBJECT: **Implementation of Memorandum of Agreement Among California Environmental Protection Agency, Water Boards, and Department of Toxic Substances Control Regarding Brownfields (“Brownfield MOA”) – Status Report**

CHRONOLOGY: October 2004 – Status report on Brownfield site cleanup and redevelopment

DISCUSSION: This status report documents the successful implementation of the Brownfield MOA – both statewide and in this region.

Brownfields are under-utilized properties where real or suspected contamination discourages owners or buyers from redeveloping. Brownfields are numerous in California, and a significant portion of the soil and groundwater cleanup sites overseen by the Water Boards and DTSC are Brownfields. Brownfield restoration has multiple benefits: it eliminates contamination problems, it provides economic benefits to the community, and it reduces development pressure on the urban fringe (“greenfield” development) – and the water quality impacts associated with that development. It is therefore in the Board’s interest to encourage Brownfield restoration.

Both the Water Boards and our sister agency, DTSC, are engaged in site cleanup and Brownfield restoration. The two agencies use somewhat different authority and procedures to accomplish these goals, and their efforts often overlap. In mid-2004, then-Cal/EPA Secretary Tamminen announced a Brownfield initiative aimed at improving the way Cal/EPA agencies coordinate their regulatory activities at Brownfield sites. A key element of this initiative was for the Water Boards and DTSC to enter into a “memorandum of agreement” (MOA). We provided you with a status report on Brownfields shortly after the initiative’s release.

The Brownfield MOA took effect in March 2005 and was signed by Cal/EPA, DTSC, the State Water Board, and all nine Regional Water Boards. It applies to all Brownfield sites, with certain exceptions, although it has been used for essentially all “voluntary” cleanup sites since it went into effect. It emphasizes the importance of a single lead agency for each site, and includes guidelines for lead agency determination. It clarifies the responsibility of lead and support agencies at a given site, to assure that both agencies’ concerns are addressed. Lastly, it defines minimum levels of effort for public participation at all cleanup sites.

MOA implementation activities over the last four years are described in the staff report (Appendix A). Key results are highlighted below:

- The Water Boards and DTSC have processed about 360 discharger requests for agency oversight. MOA applications have been heavily weighted to urban, coastal areas of the State, with 45% of the applications coming from the San Francisco Bay region.
- The Water Boards received more applications for oversight than DTSC, and DTSC was selected as the lead agency for more of the cases following lead agency determination. For 18% of the MOA applications, the selected agency was different than the requested agency.
- The agencies jointly developed *Uniform Site Assessment Tools* to assure that both agencies' concerns are addressed during site assessment and cleanup.
- The Water Boards developed public participation tools specific to cleanup sites in February 2005 and provided training to all Water Board offices later that year. The tools incorporate the opportunities for public input and involvement envisioned in the MOA.
- Brownfield coordinators from each office have been meeting several times per year to discuss new case intake and other aspects of MOA implementation.

This office has played a leadership role in MOA implementation. We have processed a large percentage of the MOA applications statewide and gained valuable experience using the lead-agency-determination guidance. We co-authored the *Uniform Site Assessment Tools* document. We also prepared an early version of the public participation tools that were later adapted for statewide use.

The Water Boards and DTSC have effectively and successfully implemented the provisions of the Brownfield MOA statewide. As a result, the process for new-site intake and oversight is more transparent and consistent. The concerns of both agencies are better addressed, regardless of which agency is lead, and there is improved coordination between the two agencies at both the statewide and regional level. This success is mirrored in our implementation of the Brownfield MOA in this region. We look forward to building on these efforts to address new challenges in the site cleanup programs.

**RECOMMEN-
DATION:**

Informational item – no action needed

Appendix A

Staff Report

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

I N T E R N A L M E M O

TO: Bruce Wolfe
Executive Officer

FROM: Stephen Hill
Toxics Cleanup Division Chief

DATE: January 29, 2009

SIGNATURE: _____

SUBJECT: Status Report on Implementation of Memorandum of Agreement among
Cal/EPA, Water Boards, and DTSC Regarding Brownfields (“Brownfield MOA”)

The Water Boards and DTSC are successfully implementing the 2005 Brownfield MOA in California. This agreement was intended to improve coordination between the agencies, enhance consistency in cleanup decisions, and ensure effective and expeditious investigation and cleanup of Brownfield sites. The agencies established Brownfield coordinators in each office to guide MOA implementation. Most implementation has focused on determining the appropriate lead agency for new cases. Requests to oversee the investigation and/or remediation of potential Brownfield sites are received by either DTSC or a Water Board. The agencies have applied the MOA’s lead agency determination guidelines to about 360 requests. Of these, 18% have been transferred to the other agency for oversight. The agencies have also prepared uniform site assessment tools, to improve consistency and assure that each agency’s concerns are addressed during site cleanup. MOA implementation has improved day-to-day coordination between DTSC and Water Board offices and has led to an inter-agency workgroup to focus on dry cleaner contamination, a shared concern. No significant problems have been identified during the first four years of implementation. This positive experience statewide is mirrored in the San Francisco Bay region, and staff in this office have played a leadership role in MOA implementation.

Background

Brownfields are under-utilized properties where real or suspected contamination discourages owners or buyers from redeveloping. Brownfields are numerous in California. The Governor’s 2003 *California Performance Review* estimated that there are about 100,000 such properties statewide. A significant portion of the cleanup sites overseen by DTSC and the Water Boards are Brownfields, and most new sites are Brownfields.

Brownfield restoration has multiple benefits: it eliminates contamination problems, provides economic benefits to the community, and reduces development pressure on the urban fringe (“greenfields”). Due to the generally denser nature of redevelopment within urban areas (“infill”

development), it is estimated that every acre of infill development avoids more than four acres of “greenfield” development – and the water quality impacts associated with that development. It is therefore in the Boards’ interest to encourage Brownfield restoration.

Both the Water Boards and our sister agency, DTSC, are engaged in site cleanup and Brownfield restoration. The two agencies use somewhat different authority and procedures to accomplish these goals, and their efforts often overlap. In mid-2004, then-Cal/EPA Secretary Tamminen announced a Brownfield initiative aimed at improving the way Cal/EPA agencies coordinate their regulatory activities at Brownfield sites. A key element of this initiative was for the Water Boards and DTSC to enter into a “memorandum of agreement” (MOA).

Brownfield MOA

The *Memorandum of Agreement between the Department of Toxic Substances Control, the State Water Resources Control Board, the Regional Water Quality Control Boards, and the California Environmental Protection Agency for the Oversight of Investigation and Cleanup Activities at Brownfields Sites* (Brownfield MOA) was developed jointly by staff at Cal/EPA, DTSC, and the Water Boards over a six-month period. It took effect on March 1, 2005, following signature by top management at all three agencies (including all nine Regional Water Board Executive Officers). A copy of the Brownfield MOA, along with supporting information, is located on Cal/EPA’s website at: <http://www.calepa.ca.gov/Brownfields/MOA/>. The MOA contains several elements: scope, principles and objectives, lead agency determination, public involvement, target timeframes, agency coordination, and dispute resolution. Key features are highlighted below:

- **Scope:** The MOA applies to Brownfield sites as defined by USEPA, although as a practical matter the agencies have applied it to all “voluntary” cleanup sites. The MOA does not apply to existing sites (those being overseen by either agency prior to March 2005) or sites in certain programs that already statutorily specify lead agency (e. g., Water Boards for fuel UST sites, DTSC for schools sites).
- **Lead agency determination guidelines:** The MOA underscores the agencies’ intention to have a single lead agency for each site whenever possible. It contains specific guidelines for determining the appropriate lead agency. In general, the lead agency should be the Water Board if the primary concern is the threat to water quality (groundwater and/or surface water) and the lead agency should be DTSC if the primary concern is the risk posed to human health.
- **Lead and support agency roles:** The MOA clarifies the responsibilities of each agency, to assure that both agencies’ concerns are addressed at each site while maintaining a single lead agency.
- **Public involvement:** The MOA establishes minimum levels of effort for all sites, including public notification of major regulatory decisions and 30-day comment periods for site cleanup plans.

Implementation Results

Since 2005, the agencies have effectively carried out the MOA's provisions. Each DTSC and Water Board office designated a Brownfield coordinator to address MOA implementation. These Brownfield coordinators have processed discharger requests for agency oversight (MOA applications) and have led efforts to implement other MOA elements. Specific implementation results are highlighted below:

- Applications: For the period March 2005 through December 2008, the agencies have processed about 360 discharger requests for agency oversight.
- Time trends: MOA application rates have varied with economic conditions, rising significantly in mid-2006 and then dropping in early 2007 (see Attachment 1). We have seen some additional decline in mid-2008, and expect application rates to remain depressed during the current economic downturn.
- Geographic trends: MOA applications have been heavily weighted to urban, coastal areas of the state, with 45% of the applications from the San Francisco Bay region, 28% from coastal Southern California, 23% from the Central Valley, and less than 5% from other areas (see Attachment 2).
- Processing times: The agencies took 14 days on average to process an MOA application and make a lead agency determination. Half the applications were processed within 10 days and 75% were processed within 20 days (see Attachment 3). Dischargers have been satisfied with these "front end" processing times.
- Lead agency determinations: The Water Boards received more applications for oversight than DTSC; however, DTSC was selected as the lead agency for more of the cases following lead agency determination (see Attachment 4). For 18% of the MOA applications, the selected agency was different than the requested agency.
- Disputes: Virtually all lead agency determinations and all other MOA implementation steps have proceeded amicably. The agencies have used the MOA's dispute-resolution process only once in mid-2005, for a lead agency determination, and the matter was resolved between the two agencies without needing to involve Cal/EPA.
- Uniform site assessment: The agencies jointly developed *Uniform Site Assessment Tools* to assure that both agencies' concerns are addressed during site assessment and cleanup. The *Uniform Site Assessment Tools* were completed in June 2007.
- Public involvement: The Water Boards developed public participation tools specific to cleanup sites in February 2005 and provided training to all Water Board offices later that year. The tools incorporate the opportunities for public input and involvement envisioned in the MOA.

- Agency coordination: Brownfield coordinators have been meeting several times per year to discuss new case intake and other aspects of MOA implementation. In 2007, the agencies formed a dry cleaner contamination workgroup, to share ideas for addressing this common problem.

Regional Perspective

Our experience with MOA implementation here in the Bay Area is very similar to the statewide experience. We and our colleagues at the DTSC/Berkeley office have processed 158 MOA applications for San Francisco Bay region sites since March 2005. The table below shows the results:

Agency	Applied	Selected	Change	% Change
DTSC	37	63	+26	+70%
Water Boards	121	95	-26	-21%
Total	158	158	--	--

About 20% of the MOA applicants received a different oversight agency than they requested, based on our application of the lead agency determination factors. The single dispute over lead agency determination occurred in our region, shortly after the MOA went into effect. That site, the “Oak to Ninth” project on the Oakland Estuary, ultimately went to DTSC for cleanup oversight. Another MOA application in our region initially went to DTSC but the two agencies mutually agreed to transfer the case to the Water Board a year later, based on additional site investigation data.

A number of our staff have played a role in MOA implementation. Our Brownfield coordinator, Randy Lee, has processed numerous MOA applications and has participated in regular coordination meetings/teleconferences. I have regular interactions with my counterparts at DTSC/Berkeley over lead agency determinations and issues of concern at these new sites. Chuck Headlee of our staff was a primary author of the *Uniform Site Assessment Tools* noted above. Roger Papler is a regular participant in the dry cleaner remediation workgroup. Supervisors in the Board’s two groundwater divisions recently began quarterly meetings with our counterparts in the DTSC/Berkeley office to discuss issues of mutual interest. Virtually all staff in these two divisions have been involved in public participation efforts (e.g., preparation of fact sheets).

Further, staff in our office have played a leadership role in statewide MOA implementation. We have processed a large percentage of the statewide MOA applications and gained valuable experience using the lead-agency-determination guidance. In addition to co-authoring the *Uniform Site Assessment Tools* document, we also prepared an early version of the public participation tools that were later adapted for statewide use.

Discussion and Conclusions

MOA implementation has addressed the key goals of the MOA. A single oversight agency has been designated for each new voluntary cleanup case since March 2005, thereby reducing

potential duplication of effort and conflicting oversight results. Using the MOA's oversight agency selection guidelines, cases assigned to the Water Boards decreased by 21% and increased to DTSC by 28%. The lead-agency-determination process has fostered more and better coordination between the two agencies, particularly at the supervisory level.

The MOA application has also improved the quality of the process for intake of new Water Board and DTSC cases. The MOA application provides useful basic information about the new case to the agencies when a request for oversight agency determination is submitted. The uniform case intake form and procedures, along with the *Uniform Site Assessment Tools*, have educated staff at both agencies about the other agency's concerns and priorities, resulting in better oversight of new cases by both agencies.

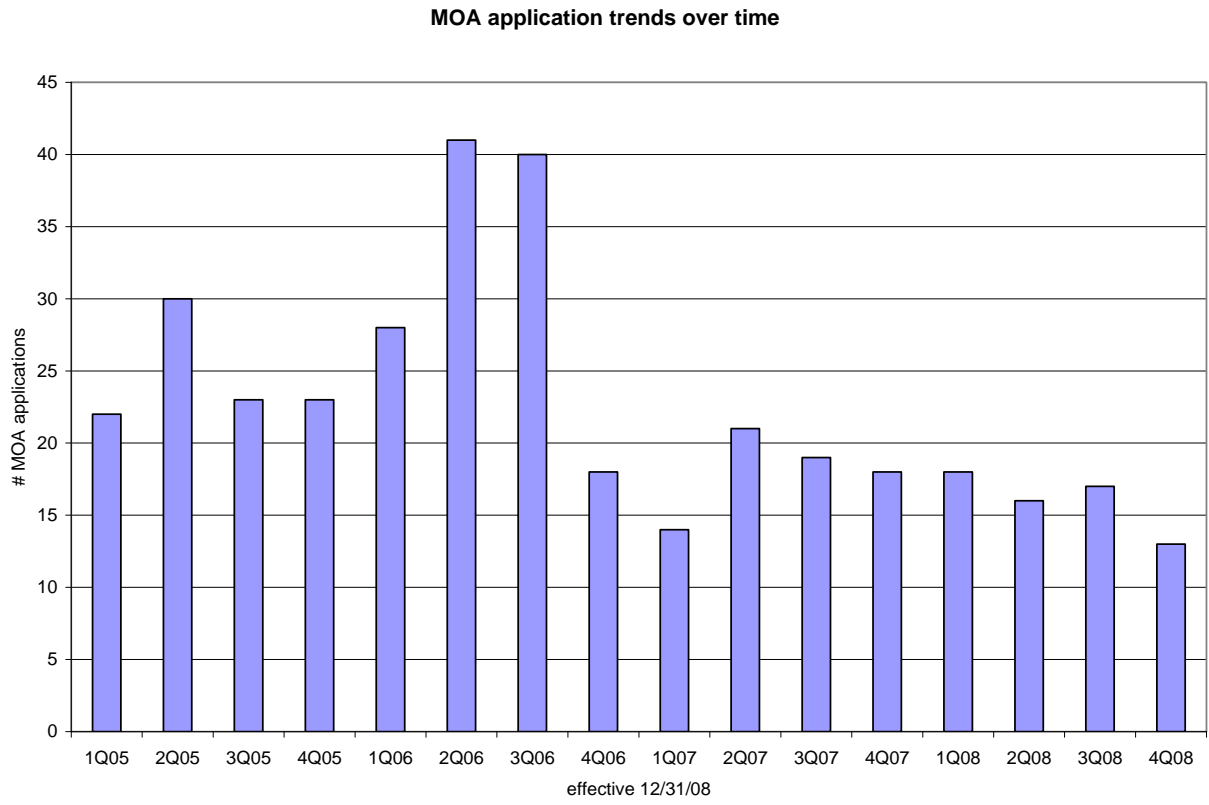
No significant problems have been identified during the first four years of implementation.

In conclusion, DTSC and the Water Boards have successfully implemented the provisions of the Brownfield MOA statewide. As a result, the process for new-site intake and oversight is more transparent and consistent. The concerns of both agencies are better addressed, regardless of which agency is lead, and there is improved coordination between the two agencies at both the statewide and regional level. This success is mirrored in our implementation of the Brownfield MOA in this region. We look forward to building on these efforts to address new challenges in the site cleanup programs.

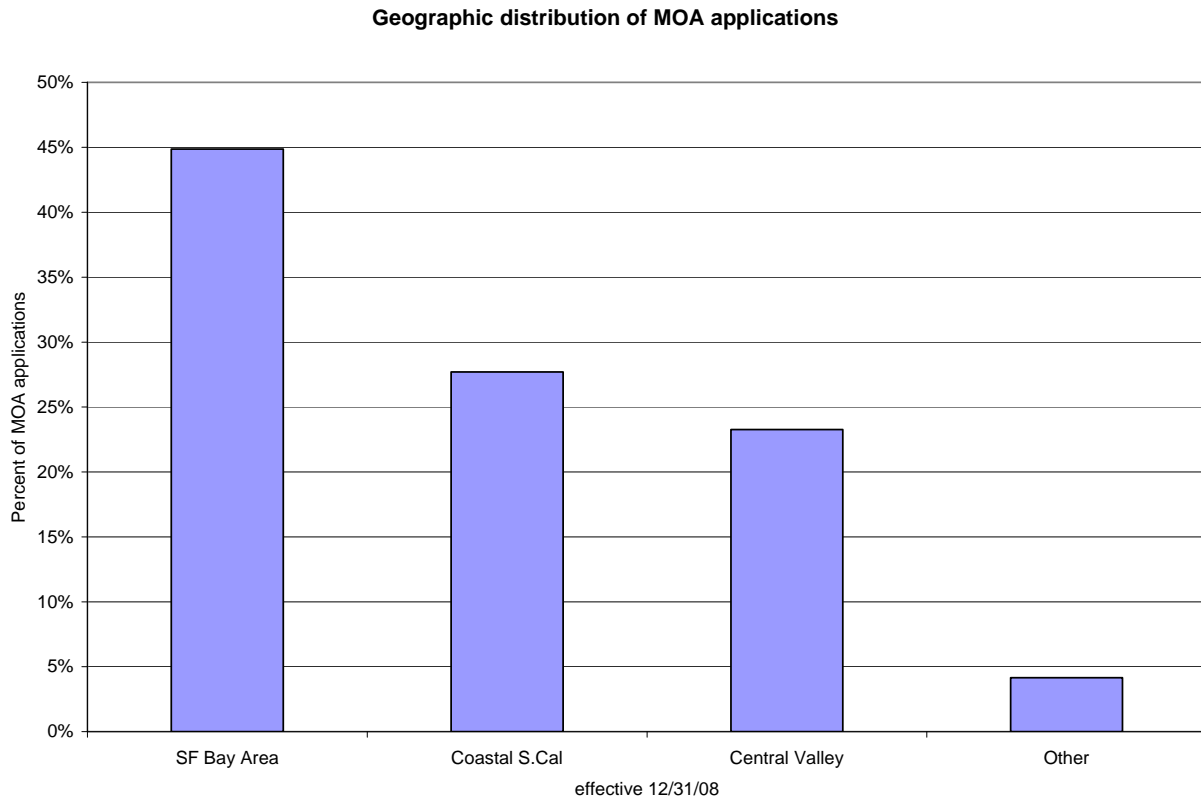
Attachments

1. Application trends over time
2. Geographic distribution of applications
3. Time to select lead agency
4. Lead agency determinations

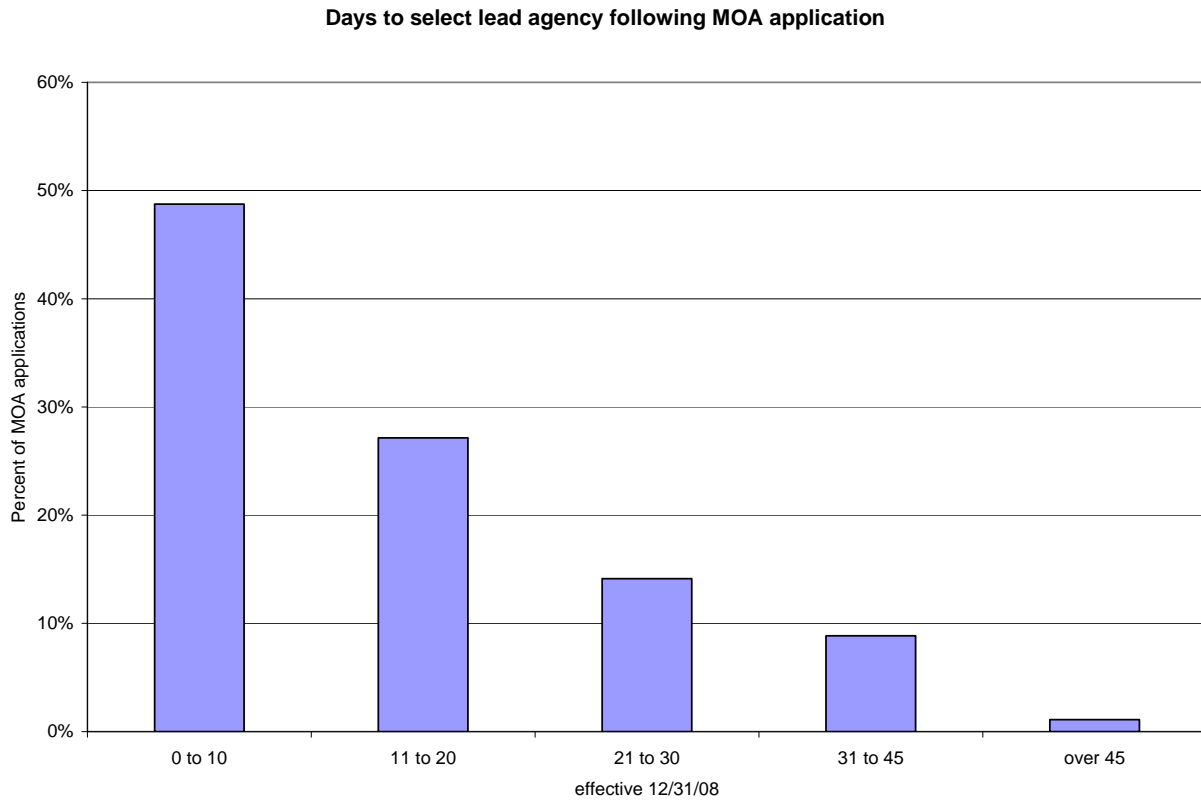
Attachment 1: Application trends over time



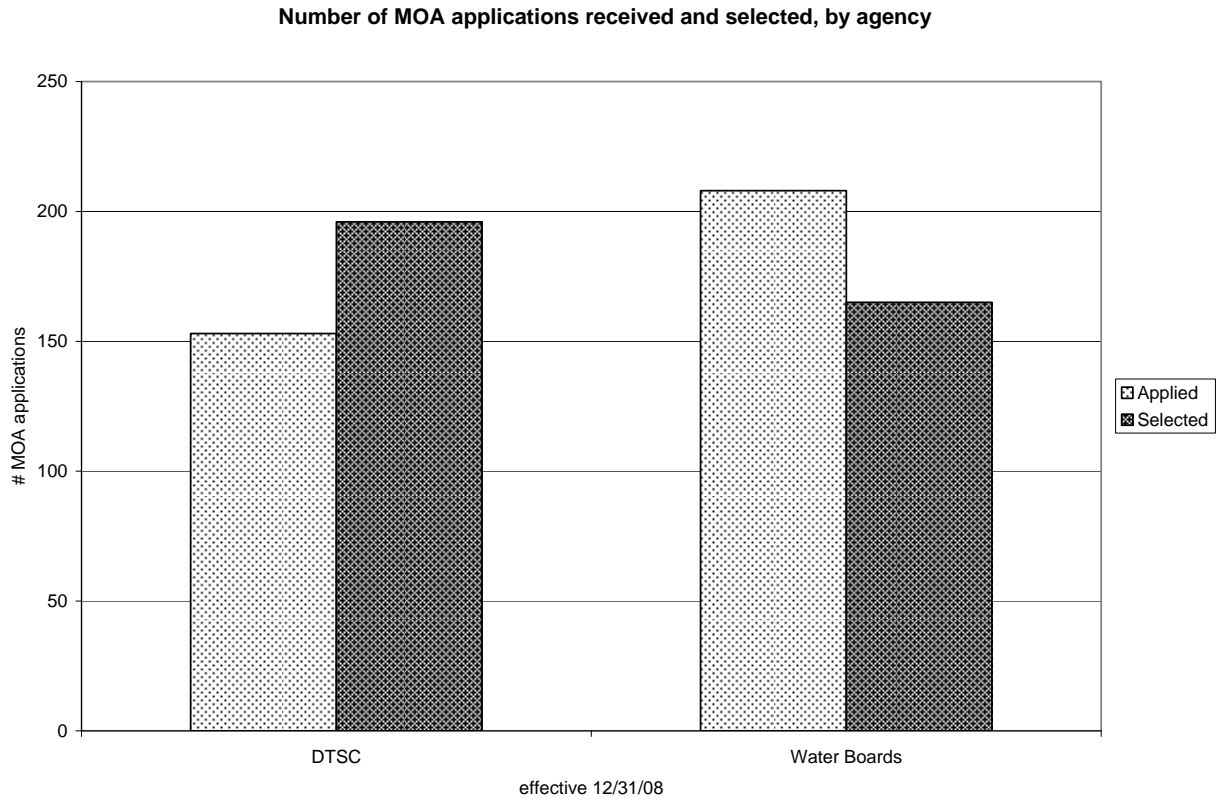
Attachment 2: Geographic distribution of applications



Attachment 3: Time to select lead agency



Attachment 4: Lead agency determinations



Agency	Applied	Selected	Change	% Change
DTSC	153	196	43	28%
Water Boards	208	165	-43	-21%
Total	361	361		