

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

STAFF SUMMARY REPORT (Brian Thompson)
MEETING DATE: October 10, 2018

ITEM: 6C

SUBJECT: **Enforcement Actions and Priorities for Fiscal Year 2018/2019 –**
Summary Report

DISCUSSION: This item summarizes penalty enforcement actions for fiscal year (FY) 2017/18, including the issuance and/or settlement of administrative civil liability (ACL) complaints. It also summarizes compliance assistance the Board's enforcement section provided to regulatory programs, public outreach for enforcement, and enforcement priorities for FY 2018/19.

Penalties Imposed

A total of 22 cases we investigated during FY 2017/18 involved penalty assessments. The Board adopted final penalties in 20 of the cases totaling \$4,725,540 (see Tables A1 through A3). Another \$610,700 in proposed penalties remains in 2 cases that were in settlement discussions at the end of the fiscal year (see Table A4). These cases addressed various problems, such as unauthorized discharges of chlorinated water, sanitary sewer overflows, violations of discharge limits and other permit requirements, failure to recertify for coverage under a reissued general permit, and failure to submit annual reports of stormwater discharge. The penalty assessments, summarized below, were consistent with the State Water Board's Enforcement Policy and, as applicable, the State Water Board's Supplemental Environmental Project (SEP) Policy.

▪ **Table A1 – ACL Cases Initiated and Settled in FY 2017/18**

We pursued and settled 10 discretionary enforcement cases, adopted through stipulated ACL orders totaling \$2,326,770, of which \$1,213,560 was suspended for projects or directed to the Department of Fish and Wildlife: \$588,100 went to SEPs (\$338,600 for individual projects and \$249,500 for San Francisco Bay Regional Monitoring Program (RMP) projects); \$382,095 was for an enhanced compliance action; and \$243,365 went to Department of Fish and Wildlife funding for wildlife protection, penalties, or cost reimbursement.

▪ **Table A2 – FY 2017/18 Mandatory Minimum Penalties (NPDES)**

We issued 7 conditional offers to settle NPDES permit violations at the mandatory minimum of \$3,000 per violation. All these dischargers accepted the offers, which were adopted through stipulated ACL orders totaling \$48,000. Of this amount, \$16,500 went toward SEPs to fund RMP projects.

- **Table A3 – FY 2017/18 Industrial Stormwater Permit Coverage**

We issued 3 conditional offers to settle with dischargers that did not recertify for coverage under the State Water Board’s industrial stormwater general permit, an enforcement campaign initiated in FY 2016/2017 and discussed in last year’s enforcement actions report. The 3 cases settled with a total of \$24,000 in penalties adopted through stipulated ACL orders. Two of the dischargers settled for the initial offer of a \$5,000 mandatory minimum penalty. One discharger did not take the initial offer but agreed to settle a subsequent ACL complaint for a \$14,000 penalty, which consisted of the mandatory minimum penalty for two years of noncompliance (\$5,000 each) and staff costs (\$4,000). Of these penalties, \$2,500 went to a SEP to fund an RMP project.

- **Table A4 – ACL Complaints in Settlement Discussions**

As of the end of FY 2017/2018 (June 30, 2018), enforcement staff remained in settlement negotiations on two ACL complaints issued for proposed penalties totaling \$610,700. One of the cases has since settled.

Compliance Assistance

Our enforcement section assisted the Board’s regulatory programs during FY 2017/18:

- **Quarry Inspections** – In collaboration with the NPDES wastewater and stormwater programs, enforcement staff identified 36 quarries in the region and targeted 22 based on size, activity (some were inactive or closed), and proximity to surface water. This effort included some facilities whose primary operations were sand washing or aggregate processing. The objective was to assess potential water quality issues and evaluate permitting approaches, which currently range from coverage under either the sand and gravel general permit, the industrial stormwater general permit, both permits, or none. Staff are now following up with individual facilities on water quality issues and permit coverage.
- **Annual Stormwater Discharge Report Enforcement** – Enforcement staff collaborated with the stormwater program to enforce the annual report requirements in the industrial stormwater general permit and construction stormwater general permit. At the end of FY 2017/2018, staff were investigating 17 industrial facilities and 24 construction sites for not submitting the report due for the FY2016/2017 reporting year.

Public Outreach

Our notification of pending enforcement actions to the regulated community and the public is an integral part of our enforcement program. In addition to providing documents to interested parties and stakeholders by mail and email, anyone can obtain information about our enforcement cases by subscribing to an email list for enforcement items, checking the current status of enforcement cases and accessing documents on our website, and/or following press releases issued on significant proposed actions through the State Water Board’s Office of Public Affairs.

Additional enforcement-related information is also available on the websites of the State Water Board and the San Francisco Estuary Partnership. The State Water Board's enforcement web page provides the Enforcement Policy, SEP Policy, and enforcement reports. The San Francisco Estuary Partnership's website lists current and completed SEPs approved as part of penalty settlements, including the status of pending projects and links to associated documents.

Enforcement Priorities

Our enforcement priorities for FY 2018/19 will generally be focused on egregious violations with the highest adverse water quality impacts, followed by violations that threaten the integrity of the Board's requirements. These include discharges that result in fish kills or other acute aquatic impacts; illegal fill of streams or wetlands, including violations at permitted stream or wetland projects; violations of site cleanup requirements; and violations of construction, industrial, and municipal stormwater permits. We will also continue to prioritize enforcement of sanitary sewer overflows, particularly from agencies with inadequate sewer infrastructure rehabilitation programs. Finally, we will continue to maintain a near-zero backlog of mandatory minimum penalty assessments.

We prioritize enforcement efforts at internal monthly meetings with enforcement staff, the assistant executive officers, division chiefs, program staff, and State Water Board Office of Enforcement counsel, consistent with the State Water Board's Enforcement Policy. We prioritize potential enforcement cases that our regulatory programs develop. We also discuss potential cases identified by monitoring our complaint hotline, the CalEPA Complaint System, and State Office of Emergency Services spill reports; and cases identified through coordination with other local, State, and federal inspectors, such as local industrial waste inspectors, California Department of Fish and Wildlife and Office of Spill Prevention and Response wardens, and U.S. Coast Guard and U.S. EPA enforcement staff. Our interagency coordination includes participation at enforcement task force meetings hosted by county agencies. Factors we weigh in consideration of cases that would result in monetary penalties include our staff workload and resource availability and case-specific factors that include discharger compliance history, strength of evidence, magnitude of water quality impact, threat to high-priority watersheds, discharger culpability, and mitigating circumstances.

**RECOMMEN-
DATION:**

No action is necessary; this is an information item.

Appendix A: Tables of FY 2017/18 Penalty Enforcement Actions

APPENDIX A

Table A1 – ACL Cases Initiated and Settled in FY 2017/18

Discharger	Location	Violation	Proposed Penalty	Final Penalty
Equilon Enterprises LLC, dba Shell Oil Products US	Martinez	Effluent Limit Violations NPDES Permit	\$86,000	\$86,000 ¹
City of Petaluma	Petaluma	Sanitary Sewer Overflows	\$235,200	\$235,200 ²
San Francisco Public Utilities Commission Calaveras Reservoir	Santa Clara	Aquatic Pesticide Permit Violation	\$15,000	\$15,000
Granada Community Services District	San Mateo County	Sanitary Sewer Overflows	\$33,100	\$33,100
East Bay Municipal Utility District	San Ramon	Chlorinated Water Discharge	\$893,190	\$893,190 ³
Super Store Industries Fairfield Dairy	Fairfield	Permit Violations Industrial Stormwater	\$230,000	\$230,000 ⁴
Lehigh Southwest Cement Co	Cupertino	Effluent Limit Violations Cease and Desist Order	\$375,000	\$375,000 ⁵
Phillips 66 San Francisco Refinery	Rodeo	Effluent Limit Violations NPDES Permit	\$109,000	\$109,000 ⁶
Town of Hillsborough	San Mateo	Chlorinated Water Discharge	\$221,030	\$221,030 ⁷
Marin Municipal Water District	Fairfax	Chlorinated Water Discharge	\$129,250	\$129,250 ⁸
Total			\$2,326,770	\$2,326,770

¹ \$43,000 of the penalty will go to a SEP for a Polychlorinated Biphenyl (PCB) Synthesis Study, which will evaluate how dredging changes PCB concentrations in San Francisco Bay.

² \$117,600 of the penalty will go to a SEP for a Petaluma River Cleanup Program to remove trash and debris in the watershed.

³ \$382,095 of the penalty will go towards an Enhanced Compliance Action to install leak detection loggers. The settlement included payments to the Department of Fish and Wildlife of \$49,000 to the Fish and Wildlife Pollution Account and \$80,000 to the National Fish and Wildlife Foundation.

⁴ \$115,000 of the penalty will go to a SEP for a Napa River and Sonoma Creek Sediment Transport Monitoring Study to monitor sediment loads entering San Francisco Bay. \$207,750 was paid separately to the Solano County District Attorney's Office as part of the settlement agreement.

⁵ \$195,000 of the penalty will go to a San Francisco Bay Regional Monitoring Program SEP to study harmful algae blooms in San Francisco Bay.

⁶ \$54,500 of the penalty will go to a San Francisco Bay Regional Monitoring Program SEP for a North Bay Selenium Synthesis Study.

⁷ The settlement included \$114,365 in payments to the Department of Fish and Wildlife of which \$11,600 went to the Fish and Wildlife Pollution Account, \$102,765 went to the National Fish and Wildlife Foundation, and \$11,600 was for penalties and cost reimbursement.

⁸ \$63,000 of the penalty will go to a SEP for a Marin County Parks stream crossing project in the Cascade Canyon Open Space Preserve to prevent hikers and bikers from going through and causing erosion of San Anselmo Creek.

Table A2 – FY 2017/18 Mandatory Minimum Penalties (NPDES)

Discharger	Location	Violation	Final Penalty
Hibiscus Properties, LLC	Menlo Park	Effluent Limit Violations	\$3,000
SMI Holding LLC, Former Siemens Facility	Cupertino	Effluent Limit Violations	\$12,000 ¹
Hanover R.S. Construction, LLC	Danville	Effluent Limit Violations	\$12,000
East Bay Municipal Utility District Water Systems	Oakland	Effluent Limit Violations	\$3,000 ¹
Browning Ferris Industries	Half Moon Bay	Effluent Limit Violations	\$9,000 ¹
San Bruno Plaza, LLC	San Mateo	Effluent Limit Violations	\$3,000 ¹
Vallejo Sanitation & Flood Control District WWTP	Vallejo	Effluent Limit Violations	\$6,000 ¹
Total			\$48,000

¹ A portion of the penalty was paid to the SEP Fund for the San Francisco Bay Regional Monitoring Program. Individual contributions ranged from \$1,500 to \$6,000 and totaled \$16,500.

Table A3 –Industrial Stormwater Permit Coverage

Discharger	Location	Violation	Final Penalty
Pioneer Liquid Transport	San Jose	Failure to recertify permit coverage	\$5,000 ¹
Alum Rock Union Elementary School District	San Jose	Failure to recertify permit coverage	\$5,000
Isaias Munoz (Munoz Granite)	San Jose	Failure to recertify permit coverage	\$14,000
Total			\$24,000

¹ \$2,500 of the penalty was paid to the SEP Fund for the San Francisco Bay Regional Monitoring Program.

Table A4 – ACL Complaints in Settlement Discussion

Discharger	Location	Violation	Proposed Penalty
Stuart and Eric Depper (Glovatorium)	Oakland	Failure to Submit Technical Report	\$88,000
Sewer Authority Mid-Coastside	Half Moon Bay	Sanitary Sewer Overflows	\$522,700 ¹
Total			\$610,700

¹ Settlement reached and a stipulated ACL order adopted in August 2018 in the amount of \$600,000, which will be accounted for in the next fiscal year report (FY 2018/2019).