

出國報告（出國類別：考察）

美國加州水污染  
許可申報、稽查及裁罰制度考察報告

服務機關：行政院環境保護署

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## 摘要

我國水污染防治法係參考美國許可及事業自我管理之精神，於民國 80 年修正水污染防治法時，明定規範事業應取得許可證，始得從事水污染製程營運，設置專責人員，並定期檢測申報廢污水處理設施操作情形，以強化業者自我管理廢污水處理設施。對於違規者，依情節輕重處 1 萬至 60 萬元罰鍰，給予至多 90 天限期改善，屆期未改善者按日連續處罰，情節重大者得處停工(業)，必要時得廢止許可證。

我國雖有各類相關規定，但仍有部分業者未能確實依許可證登記內容，執行水污染防治工作，如 97 年觀音工業區因處理設施容量不足，長期偷排廢水(污泥)，或 98 年台塑仁武疏漏污染等事件，嚴重打擊許可等相關制度之執行，並已損害社會公眾利益。由於現行水污染防治法之處罰機制，無法追溯過去違規行為及追繳違法所得獲利，進而不肖業者寧可挺而走險，致使公眾利益及環境水體未獲保障等，乃規劃實地參與美國加州水污染管制之許可審查、個別許可核發流程、稽查蒐證及裁處流程，並參與裁罰聽證會及加州洛杉磯區水資源管理局委員會運作情形等，以檢討我國現行水污染許可申報、稽查及裁罰制度。

藉由本次考察成果，應可朝檢討方向包括逐步調整許可審查機制，量身訂做個別產業類型之許可要求，落實水污染管制。在稽查裁處上，逐步強化深入稽查，結合許可管制內容，督促業者依許可內容妥善操作廢水處理設施、維護、紀錄及適時更換設備，提升稽查管制之效率。適度運用行政罰法及建立第三公正單位審查，就所得利益酌量加重罰鍰，嚴懲違規行為，杜絕污染發生。

惟美國法制體制為不成文法，與我國成文法體制差異大，在變革上，非一蹴可及，仍需逐步透過重新體檢，建議後續逐步檢討及修訂水污染防治法相關規定，並不定期邀請美方專家召開研商會進行經驗交流，以強化我國水污染防治許可管理與裁罰機制，落實「鼓勵合法，嚴懲違法」。

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## 壹、目的

本次考察重點主要為實地參與許可審查、個別許可核發流程、稽查蒐證及裁處流程，並參與裁罰聽證會及加州洛杉磯區水資源管理局委員會運作情形，與申報不實或隱匿洩漏不報何種狀況下要求停工，另針對我國水污染防治法規定現況及個案進行深入討論及意見交流等，以檢討改進我國現行水污染許可申請及稽查裁罰制度，研析適合我國國情之作法。

## 貳、參訪人員

本次考察人員為行政環境保護署水質保護處第二科邱慈娟薦任技士及第三科林治宇薦任技士。



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## 參、參訪行程及地點

本次考察自 99 年 10 月 26 日至 99 年 11 月 6 日，共計 10 天，出國行程與內容概要如下表所述：

時間	主要內容
99.10.26~	啓程，出發至美國加州洛杉磯
99.10.27	出席加州洛杉磯區水資源管制局裁罰聽證會(Panel Hearing)，實地參與裁罰聽證過程及原告被告雙方辯論情形。
99.10.28	到洛杉磯水工處考察暴雨逕流管理及總量管制執行情形，另至加州洛杉磯區水資源管制局了解總量管制管制研擬及推動過程。
99.10.29	加州洛杉磯區水資源管制局許可審查組介紹許可類型及管制規定。
99.10.30	研讀美國許可審查資料。
99.10.31	研讀美國許可審查資料。
99.11.1	加州洛杉磯區水資源管制局許可審查組介紹許可個案之撰寫流程、審查及排放管限制制擬訂。下午參訪 West Basin 地下水注入井之再水生處理廠運作及管理，並就許可規範及遵循情形意見交流。
99.11.2	參訪 Hyperion 聯合污水廠許可廠運作及管理，並就許可規範及遵循情形意見交流。
99.11.3	加州洛杉磯區水資源管制局執法行動組介紹稽查裁罰流程及綜合意見交流。
99.11.4	參加加州洛杉磯區水資源管制局委員會(Board Meeting)，實地參與委員會執行運作及過程。
99.11.5~	返程
99.11.6	返程

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本次主要參訪地點為美國加州環保署(California Environmental Protection Agency) 所屬加州水質源管制局(State Water Quality Control Board, 縮寫為 SWQCB)之第 4 區洛杉磯水質源管制局(Los Angeles Regional Water Quality Control Board 縮寫為 RWQCB)。

加州水資源管制局(以下簡稱州水資局)，依地理區位及特性，劃分 9 區水質源管制局(以下簡稱區水資局)，各管轄範圍分別如圖 1 所示，其中因其水污管制以第 4 區加州洛杉磯之管制最具完整性及完備，故列為考察參訪目標地點，洛杉磯區位置如圖 1 所示。

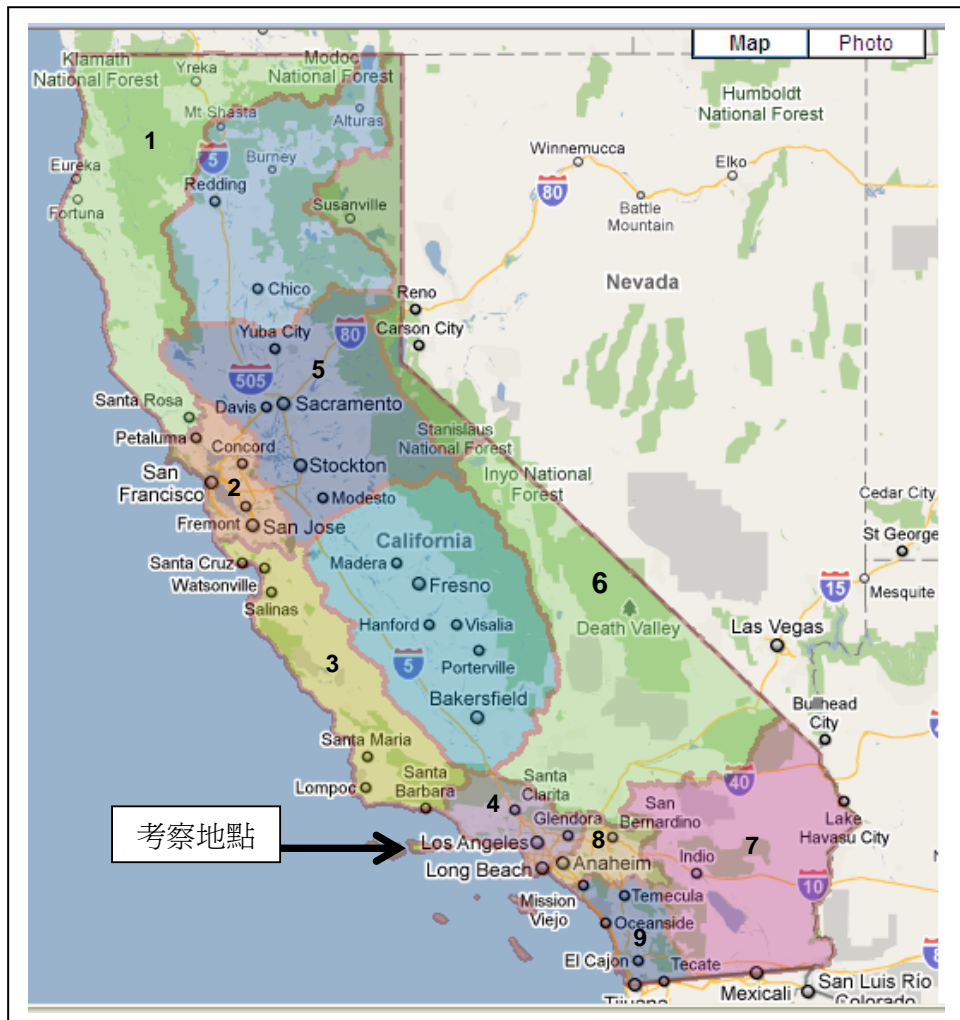


圖 1 加州水資局管轄分區及考察地點

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## 肆、主要考察成果

### 一、美國加州之許可審查及核發流程

#### (一)許可審查及核發流程

##### 1. 許可發展歷程

美國廢水排放之許可主要分兩大類型，包括個別許可(Individual Permit)及一般許可(General Permit)，並以個別許可為主，主要係產業發展及法規研修過程所致。最早於 1948 年，聯邦水污染控制法即有許可管制雛形，最初管制上，主要分事業類別之技術可行限制及承受水體可接受之放流水水質兩大項。於 1972 年再次修法時，增加對市政污水及工業廢水增加管制項目及限值，其中對市政污水，要求在 1977 年 7 月 1 日前達到廢水二級處理等級，而工業廢水則須分別於 1977 年 7 月 1 日及 1983 年 7 月 1 日前，達到最佳化操作控制技術及最佳化經濟可行技術。

起初在 1973-1976 年期間仍然沒有排放標準，大約 75%的許可是以個案狀況可符合之情形，予以核發，管制的項目也只有一般項目(Convention Pollutants)，如生物需氧量(BOD)、總懸浮固體物濃度(TSS)、酸鹼值(pH)、大腸桿菌數及油脂。於 1972 修正法案時，議會即要求美國環保署 90 天內提出毒性化合物清單，並於 6 個月後提出排放標準，但是當時沒有足夠資訊提出標準值，故起初只有管制 65 種毒性物質，21 種事業類別，後來增加為 126 種毒性物質。於 1977 年逐步將污染控制技術標準反映在毒物控制及最佳可行技術，並將非一般性污染物(如氰鹽及氨氮)納入。於 1987 年後，已增加很多規定及要求，包括逕流廢水、雨污分流、技術最佳化等，但許可整體架構並無太多變化。相關許可發展歷程可詳見 NPEDS 許可撰寫手冊。最新版本為 2010 年，美國聯邦環保署將不定期召集各州許可撰

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寫人員，進行一周左右的教育訓練，以傳達相關經驗及注意事項，而一般民眾亦可下載了解申請許可之流程及應準備文件，以順暢許可申請工作。

## 2. 許可類型

美國針對業者排放污染物，必須取得政府核准，規範排放一定量、污染濃度及相關限制，排放者沒有權力一定拿得到排放許可，而如有未遵行者，亦可被撤銷。其排放之污染物許可類型，包括廢水、暴雨逕流廢水、生活污水、污泥及廢棄物等。

針對排放廢水者，依申請對象類型，主要分為個別許可 (Individual Permit) 及一般許可 (General Permit)，如排放於聯邦管轄水體如河川及 3 海哩以外海域，由聯邦授權州政府核發或由聯邦環保署直接核發，其屬 National Pollutant Discharge Elimination System Permit 國家污染物排放削減系統之許可 (以下簡稱 NPDES 許可)，如排放於州政府管轄水體或受體，如地下水、濕地、土壤等，由州政府核發，其屬 Waste Discharge Requirement Permit 廢棄物排放規範之許可 (以下簡稱 WDR 許可)。

如業者排放受體包括聯邦及州政府管轄，則由州政府核發 NPDES/WDR 許可。不論核發機關為何，主要為個別許可 (Individual Permit) 及一般許可 (General Permit)，詳述說明如下節。

就加州洛杉磯區水資局的許可核發情形，可以網站查詢下載如圖 2 所示，均屬公開資料。

The screenshot shows the website interface for the California Environmental Protection Agency, specifically the Los Angeles Regional Water Quality Control Board. The page is titled 'Adopted Permits/Orders Listed By Year' and displays a list of permits for the year 2010. The table below is a representation of the data shown in the screenshot.

No	Order No	Gen/Ord	Discharger Name	Program Type	NPDES No	Effective Date	CIL
1	R10-002	I RES	Los Angeles City	NPDES	CA0109991	May 06, 2010	149
2	R10-002	I RES	Los Angeles City	NPDES	CA0053856	May 06, 2010	217
3	R10-004	I RES	International Risk Assumption Downey LLC	NON15	NA	Jun 03, 2010	872
4	R4-2008-0032	G NPD	Ventura County Transportation Department	NPDES	CAG994004	Mar 10, 2010	958
5	R4-2008-0032	G NPD	Interactive Corp	NPDES	CAG994004	Apr 22, 2010	668
6	R4-2010-0018	I NPD	VOPAK Terminal Long Beach Inc	NPDES	CA0064165	Mar 06, 2010	787
7	R4-2010-0019	I NPD	ConocoPhillips Company	NPDES	CA0059846	Mar 06, 2010	677
8	R4-2010-0020	I WDR	Port of Long Beach	NON15	NA	Feb 04, 2010	957

圖 2 加州洛杉磯區水資局歷年許可核發查詢系統

### 3. 個別許可(Individual Permit)

#### (1)個別許可定義

個別許可係指針對單一廠商之排放行為提出申請時，核發機關依據廠商申請項目及相關資料，量身訂作許可管制內容，包括製程特性、放流水質監測報告、水質標準、每日最大排放量、周邊環境水體品質及其他特殊研究等。

#### (2)個別許可申請類型

個別許可申請者須依據規定格式申請，包括 Form1、Form2A、Form2B、Form2C、Form2D、Form2E 及 Form2F 等。另有美國聯邦環保署 Form2S，係用作為污泥處理許可，此主要由聯邦環保署核發，非加州水資局核發範圍。

按申請類型及其應填寫相關申請表格分類如表 1。

表 1 個別許可申請類型及其應填寫表單

許可類型	申請類型	新申請	暨設申請者
NPDES	有製程廢水之工廠、商業活動、採礦、造林	Form 1 Form 2D	Form 1 Form 2C
	聯合污水廠	Form1、Form 2A、Form 2F	
	動物、水產飼養專用	Form 1、Form 2B	
	無製程廢水之工廠、拖車公園、服務站、商業專用等	Form 1、Form 2E	
	工業活動暴雨逕流(如納管廠商)	Form 1、Form 2F	
WDR	Form 200		

有關各類型申請表格，除 Form1 為基本資料表單外，其餘係針對不同業別之製程單元或特色而有不同，就 Form2A 表單係供既設聯合污水廠申請，其應填寫納管廠商資料，Form2B 表單應載明動物或水產飼養數量，Form2C 表單針對既設工廠過去 3 年之生物急毒性測試結果等水質檢測資料，Form2D 表單針對新設工廠應填寫相似製程之工廠名稱，及檢視是否屬環保署放流水指引適用類型等，Form2E 表單針對無製程廢水，應勾選廢(污)水來源為廚房、餐廳、生活污水或非接觸冷卻水等，而 Form2F 表單針對工業活動暴雨逕流，應填寫逕流面積、說明露天儲存、棄置之原物料及降低逕流廢水含原物料污染之方法等，已有針對污染特性予以分業別管制。

### (3)個別許可核發流程

許可申請程序大概需要 6 個月時間，甚至更長，依個案性質而定。許可證期限不超過 5 年，有效期限屆滿前 180 天，應依規定格式提出重新申請(RENEW)，而審核機關重新核發約需半年時間，惟核發機關沒有撰寫及審查時間之限制，故在新許可未核發前，舊許可仍可繼續沿用，最久有十年以上都沒有核發之情形。

個別許可核發流程如圖 3，步驟說明如下：

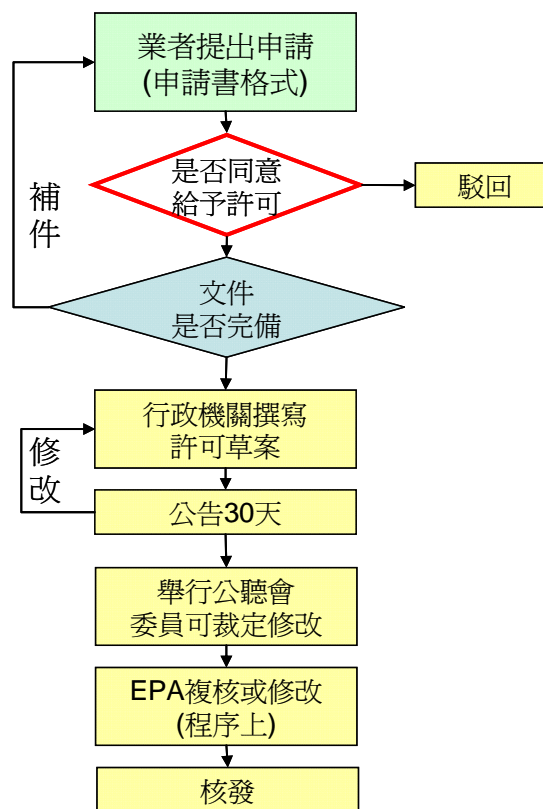


圖 3 個別許可審查核發流程

步驟一：申請者依據申請類型，填寫區水資局規定之各類表單。

步驟二：州水資局或區水資局官員審視申請文件是否完備，必要時，可要求補充相關資料。

步驟三：官員可檢視是否同意或駁回，如果許可是需要而且文件齊全，則官員會開始撰寫許可草案內容。如屬重新申請(RENEW)可視需要到申請者現地查察工廠廢水處理狀況及維護紀錄。

步驟四：主管機關公告許可草案，張貼於水資局網站及相關公開場合，公開徵詢陳述意見 30 天。

步驟五：重大開發案件之申請者，另會被要求在大型報刊中刊登 1 日，非屬重大開發案件之申請者，則需要公開在適合

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場合(如學校、社區活動中心等)，並於刊登 15 日內提交刊登證明給區水資局。

步驟六：區水資局將許可草案公告 30 日後，舉辦公聽會(即納入水資局委員會審議)，由州水資局或區水資局會多數投票方式決定發證、修改或者不發證。再由 USEPA 複核或修改，原則上 USEPA 於公聽會後 30 天內可予反對，但必須在發證生效前。

至於納管事業排放廢水之許可管制上，美國加州係由聯合污水廠管理並核發納管事業之許可，主管機關核發排放許可給聯合污水廠，於其許可內容中，可要求聯合污水廠每年提報納管事業管理各項紀錄及污水處理報告。此節與我國類似，惟我國針對納管事業尚有管制其水污染防治措施，如有未依核准之水污染防治措施運行，仍會對納管廠商開罰。

另由於美國加州年雨量少，對於路面、廠房、製程區及空地等區域，因長期累積油污、落塵等，一旦下雨，其初期降雨的逕流廢水收集非常重要，因此，暴雨逕流的處理排放之許可及管理較為重視，故對於納管廠商之暴雨逕流排放許可，應另行申請，而聯合污水廠的暴雨逕流則可整合於其排放許可文件內。

#### (4)個別許可撰寫架構及管制重點

有關加州洛杉磯區個別許可內容之基本架構，近幾年已有一致性撰寫架構，各章節彙整如表 2 所示。而早期個別許可內容則較無一致性，但仍具備主要項目如基本資料、排放限制、檢測申報等規範。

表 2 加州洛杉磯個別許可內容基本架構

章節	內容
第一章	排放者基本資料
第二章	水資局調查報告，包括申請者背景資料、排放描述、各項法規規定(技術管制值、水體管制值、毒性規定)，其他規定或方針等適用情形。
第三章	排放禁止事項
第四章	排放限值及規定，包括放流水排放標準。
第五章	承受水體限值，包括地表水限值、地下水限值
第六章	<b>規定事項</b> ，包括標準規定、監測報告執行規定、許可核發後限期提交相關計畫如洩漏清理應變計畫等其他特殊規定
第七章	應執行遵守事項，包括一般規定、複數採樣規定、數據資料規定、排放月平均限值(Average Monthly Effluent Limitation, AMEL)、排放週平均限值(Average Weekly Effluent Limitation, AWEL)、排放最大日限值(Maximum Daily Effluent Limitation, MDEL)、瞬間最大污水量限值(Instantaneous Minimum Effluent Limitation,)等，相關違規之對應罰則資料。
其他章	如特定項目或特定區域之總量排放上限規定
附錄 A	定義，如生物急毒性、生物慢毒性、連續流採樣、抓樣、稀釋度、最大管制值、檢測報告偵測極限等
附錄 B	地圖
附錄 C	廢水處理單元流程示意圖
附錄 D	排放限值及規定，如許可遵循規定內容(聯邦或州規定)、繞流規定、監測維護紀錄、各項違規行為之罰責規定等
附錄 E	檢測申報規定，如監測規定、檢測位置、進出流監測規定、生物急毒性測試規定、總毒性監測規定、毒性鑑定評估及減量評估流程規定步驟、自我監測報告及給環保署的監測報告規定、污泥管理報告、生態監測報告等。如有海洋放流管線，則亦有海岸及海洋水質檢測報告、特定生物檢測報告。洩漏清理應變計畫。
附錄 F	事件簿
其他附錄	其他附錄規定，如納管廠商管制規定、毒性鑑定評估、污泥管理、暴雨逕流管理規定等

由於美國加州洛杉磯之許可申請多屬個別許可，其量身訂作個別許可內容非常耗時，尤其在基本資料、調查報告、各類法規規定情形等之整理非常耗時，通常一個承辦人一年只能處理 4~5 案，因此，針對業者申請案件，會由委辦公司先行轉寫初步草案



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內容，再由承辦人針對允許排放量、標準值及其他規定進行檢視。

就許可內容第二章水資局調查報告(Findings)，包括申請者背景資料、排放描述、各項法規規定(技術管制值、水體管制值、毒性規定)，其他規定或方針等適用情形等資料，收集整理上最為耗時，尤其針對既設業者歷年違規情形，或因州法及總量管制值越來越嚴格，其許可准許的排放規定亦相對變嚴格；另亦有放寬情形，如針對合理性潛在污染物分析時，其歷年檢測均未檢出，則下一次重新申請許可時，可與免除監測，或降低監測頻率，此與我國水污染防治措施及檢測申報管理辦法第 84 條規定相似。

排放許可管制值之擬定，係依據所屬相關規定，包括聯邦清水法(Clean Water Act)、加州水污法(California Water Code)、聯邦環保署放流水指引、聯邦法第 40CFR133.102 技術可行排放標準、加州水體用途管制(Beneficial Use)、海洋管制(California Ocean Plan)、總量管制(Total Maximum Daily Load)等，就加州洛杉磯區管制上，通常以最嚴格管制值為許可(草案)排放管制值。

另針對水資局欲管制項目或研究方向，亦可納入許可要求內容，要求業者進行總氮監測或總氮削減的研究，並依規定提報，以作為後續水資局研訂管制規定之參考。

#### **(5)個別許可公聽會審核重點**

按前述所提個別許可審核流程，主管機關撰寫草案後，予以公告 30 日，供外界閱覽提供意見(如環保團體、附近居民)，相關資料修正檢討後，於公聽會上進行裁示，公聽會係納入區水資局委員會(Board meeting)討論案件之一。其流程細節如圖 4 所示。

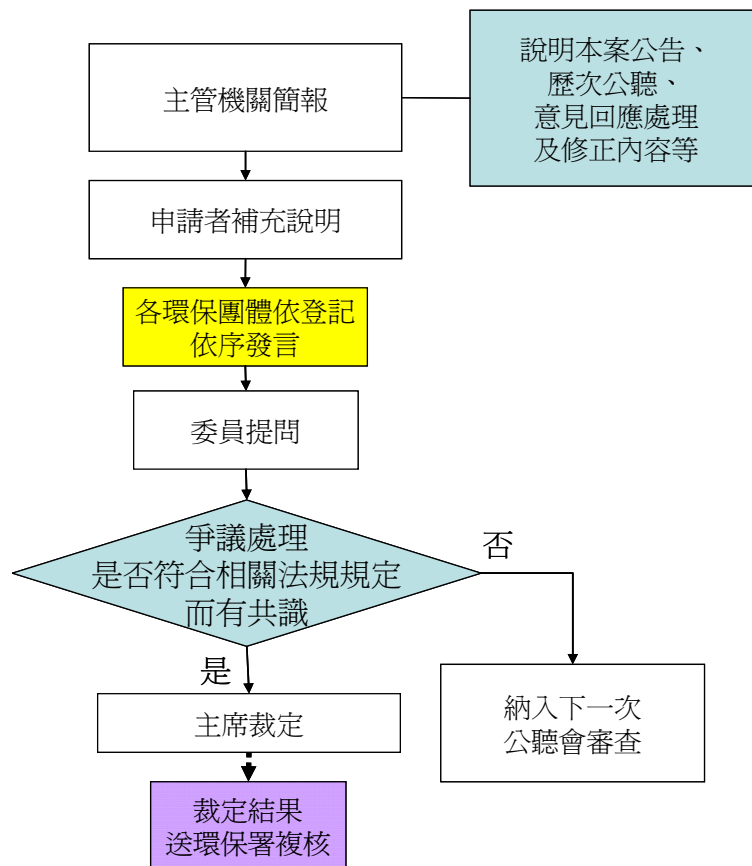


圖 4 個別許可公聽會審核流程

由於加州洛杉磯就許可(草案)之放流水標準管制限值，通常取各類規定之最嚴格限值或管制規定，其草案公開閱覽期間，申請者會提出其他法令規定(如州法規定何種情形下可放寬)、模式推算證據(如稀釋度及擴散範圍)或環境監測結果(如混合區界定)，從技術可行性及實際擴散稀釋度，去爭辯排放限值應予放寬等，而主管機關亦會依環境調查進行模式評估，提出對應之理由。

另針對水資局要求進行其他研究，如總氮削減研究，或加嚴各項管制項目之監測頻率等，均為公開閱覽時之陳述意見及公聽會之爭辯重點。

至於環保團體亦會針對許可排放者之歷年違規情節，或環境調查結果，要求加嚴某項管制、或持續監測等，各環保團體依序簡報說明，並不進行辯論，而許可申請者可就環保團體意見補充

說明，再由主席綜合法令規範情形，裁示最終結果。公聽會上，如遇到相關爭點需補充資料時，則納入下一次公聽會審議。

#### 4. 一般許可(General Permit)

##### (1)一般許可定義

一般許可係自個別許可所發展出來，較為成本低、快速之發證方式，多半用於廢水類型、地理環境、區位等因子相似之條件，其許可內容已經由公告及公聽程序，經水資局委員會核定在案，申請者僅先提出意向書(Notice of Intent,簡稱NOI)申請，經主管機關依個案條件加諸附加要求如監測規定，即可核發，免再透過公告及公聽等流程。

##### (2)一般許可申請類型

加州各區規定不同，洛杉磯區水質局委員會通過屬 NPDES 許可，計 6 種，如表 3，包括營建工程開挖所抽地下水、VOC 污染場址/地下儲槽污染之調查及整治過程所抽出之廢水等。

表 3 加州洛杉磯區一般許可(NPDES)類型

許可編號 Oder No.	適用類型
CAG674001 R4-2009-0068	進行低衝擊地下水力測試之排放
CAG994003 R4-2009-0047	無製程廢水之排放
CAG994004 R4-2008-0032	建築工地開挖抽出地下水排放
CAG914001 R4-2007-0022	VOC 污染場址整治場址之調查或整治過程之排放
CAG834001 R4-2007-0021	石化污染整治場址調查或整治過程之排放
CAG994005 R4-2003-0108	飲用水源之地下水井抽出處理後之廢水排放

資料來源 [http://www.waterboards.ca.gov/losangeles/board\\_decisions/adopted\\_orders/](http://www.waterboards.ca.gov/losangeles/board_decisions/adopted_orders/)

而 WDR 許可，計 8 種，如表 4，包括回收注入地下水或特定區域現地污水處理系統。據了解，加州洛杉磯廢水管制最為嚴格，其廢水排放許可大多為個別許可，惟因加州土壤地下水污染問題多，涉及地下水抽取的管制方式差異小，因此，土壤及地下水調查或整治之抽水排放行為，多採一般許可方式管制，而對於較嚴重污染區域之抽水排放管制，亦有可能採個別許可。

表 4 加州洛杉磯區一般許可(WDRS)類型

許可編號 Oder No.	適用類型
R4-2009-0049	回收注入於洛杉磯及 Ventura 區之沿岸地下水區非灌溉使用
R4-2008-0083	回收注入於地下水改善處理之非飲用水源地下水區
R4-2007-0019	注入於石油碳氫燃料污染、揮發性有機物及六價鉻之地下水污染整治場址
R4-2004-0146	住宅區現地生活污水處理系統
01-031	小型商業區及複合式住宅區生活污水處理系統
93-010	指定排放於 Santa Clara River and Los Angeles River Basins 之地下水區
91-94	位於使用地下水區或可能作為作畜牧用地下水區之私人地下污水處理系統
91-93	在洛杉磯或 Santa Clara River Basins 區棄置非有毒污染土壤或其他廢棄物

資料來源[http://www.waterboards.ca.gov/losangeles/board\\_decisions/adopted\\_orders/](http://www.waterboards.ca.gov/losangeles/board_decisions/adopted_orders/)

### (3)一般許可審核流程

一般許可內容之完成，係分為兩階段，第一階段由主管機關修定公布，第二階段由業者申請，經主管機關審核核發，對主管機關及業者而言，均相當簡化作業流程，審核流程如圖 5，詳敘說明如下：

第一階段，主管機關會針對通案性考量，提出某項特質之排放行為，經水資局內部研商後，開始撰寫許可草案，亦比照前述

個別許可審核流程，需公告 30 天，並舉聽公聽會，再經聯邦環保署複核後公布，該許可內容如需調整，亦比照重新申請(RENEW)之作法，經草案公告、公聽及聯邦環保署複核。

第二階段，申請者檢視是否符合申請要件，提出申請，在由主管機關審核是否符合申請要件，如不符合或不同意，則改量身訂做個別許可內容。如屬符合申請要件者，將依據第一段已審核通過之許可架構內容，填上申請者之基本資料、背景等，加上個案之其他要求(如監測報告頻率及項目)，即可核發。

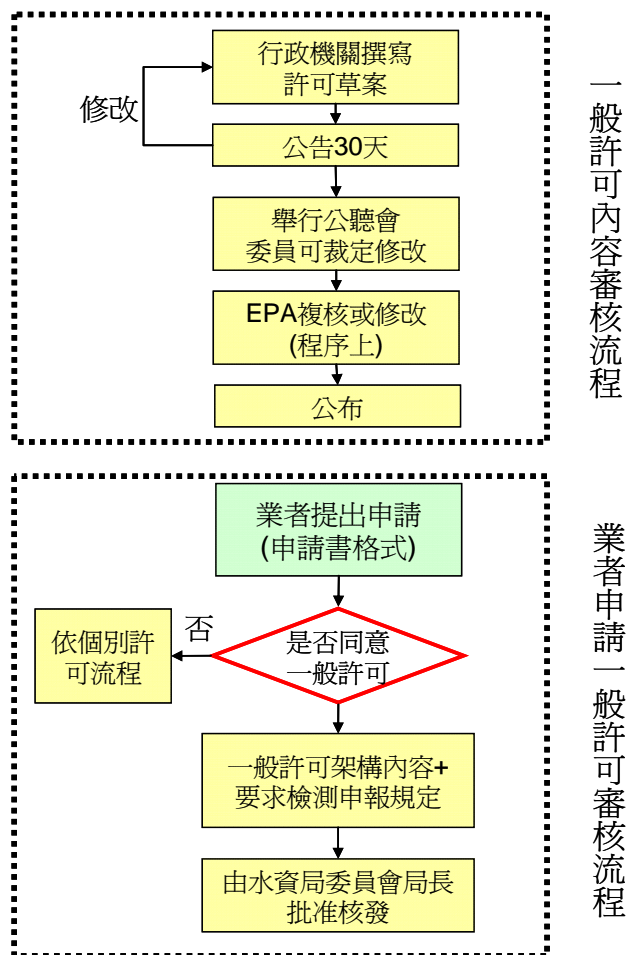


圖 5 一般許可審核流程圖

#### (4)一般許可撰寫架構及管制重點

就美國加州洛杉磯區的一般許可，屬 NPDES 許可共 6 種、WDR 許可共 8 種，其近年來一般許可內容架構均相同，其中就 2005 年後之許可內容，彙整如表 5 所示。

而 2004 年以前之許可內容則較無一致性架構，但原則上，項目仍包括水資局調查報告、資格標準、申請授權規定、排放禁止事項、一般規定、承受水體限值、檢測申報規定、應執行遵守事項等，就 2004 年以前之一般許可，如須重新檢討審核，則會依據前述第一階段之流程進行撰寫、公聽及核定等程序，撰寫時，主管機關將會使用新的一般許可內容架構。

表 5 加州洛杉磯區一般許可內容基本架構

章節	內容
第一章	排放者基本資料
第二章	通知要求，包括資格標準、非符合資格規定、授權、申請意向書、(如屬CAG674001需有回收水評估)
第三章	水資局調查報告，包括申請者背景資料、排放描述、是否屬授權核發範圍、各項法規規定(技術管制值、水體管制值、毒性規定)，其他規定或方針等適用情形。
第四章	排放禁止事項
第五章	排放限值及規定，包括放流水排放標準。 (有些需有土地排放特定規定)
第六章	承受水體限值，如地表水限值 (如排放於地下水，需有地下水限值)
第七章	<b>規定事項</b> ，包括標準規定、監測報告執行規定、其他特殊規定
第八章	應執行遵守事項，包括一般規定、複數採樣規定、數據資料規定、排放月平均限值(Average Monthly Effluent Limitation, AMEL)、排放週平均限值(Average Weekly Effluent Limitation, AWEL)、排放最大日限值(Maximum Daily Effluent Limitation, MDEL)、瞬間最大污水量限值(Instantaneous Minimum Effluent Limitation,)等
簡表	定義表、縮寫表、同義表
附錄	相關法令規定情形、監測報告規定等

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### (5)一般許可公聽會審核重點

由於一般許可之重新檢討申請案件，非常少見，因此，本次考察期間，並無機會參與一般許可公聽會審核情形，但據了解，其審核過程與個別許可公聽會相同。

## 5. 水資局委員會公聽會介紹

有關水資局委員會係監督水資局運作，包括稽查執法、裁處聽證、許可審查核發、總量管制標準核定等，其委員由州長指定專家、學者、業界或市長等，並有固定任期、非給薪制度，一年大約舉行 10~12 次 Board Meeting 委員會(以下簡稱大委員會)，其現場會議情形如圖 6，而裁罰聽證會時，則由其中 4 名委員擔任，此節有別於我國水污法管制方式，其運作亦為本次考察、實地參與委員會之重點事項。

而就洛杉磯區水資局係有 9 名委員，目前因有 3 名任期屆滿，正逢州長即將改選，故尚無再指定其他人擔任，而加州州水資局為水資局總部，因案件量較多，其委員 5 名，為全職監督，每個月定期召開 2 次大委員會。



圖 6 洛杉磯水資局委員會現場會議情形示意圖

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就水資局委員會審議，類似我國土壤及地下水污染整治基金管理委員會之委員審議制度，其審議內容包括水資局各項運作，如總量管制研訂、法令研訂、許可審查核發、裁罰處分、重要裁處行動決議等。

## 6. 總量管制(TMDL)推動及削減管理計畫

本次考察亦逢洛杉磯區水資局總量管制研訂專案小組推動垃圾之總量管制。各水資局分別依轄內各流域管制區訂有 Basin Plan，依其轄內流域河川之水體用途，劃分為不同「區域」之總量管制(Total Maximum Daily Load, TMDL)，各區域再依事業分布情形、水質狀況等條件，訂定各不同管制限值，且每 2 年定期進行更新。

於許可核發作業時，該計畫為最高位階，其放流水質皆不能超出此計畫所訂管制限值，以確保水體之安全。現階段 TMDL 之訂定，著重於垃圾限值、細菌限值、重金屬限值、農藥限值及油脂限值。

就垃圾之總量管制，主要來自路面、商家等非點源進入下水道，由於加州目前已全面分流，原則上雨水與廢（污）水不會混合，廢（污）水主要自下水道系統送至公共污水處理廠(如 Hyperion 聯合污水廠)處理，且處理廠放流水水質標準乃建構於 Basin Plan 規範下，不致對承受水體造成重大影響，水資局為避免暴雨逕流將路面垃圾及污染物帶入河川，特針對垃圾訂有削減期程及目標，非點源部分由市政機關提出削減計畫，包括初步攔截大型垃圾，篩網垃圾粒徑較大者，再於內部增設細篩攔除網，徹底避免垃圾排入污水道，造成污水處理流程之負荷，再配合應定期清運垃圾，減少新興污染物排入，確保水質進流濃度符合污水廠之設計標準。(如圖 7 所示)。

我國目前針對都市地區之非點源污染管制尚未成熟，公共污水下水道普及率不高，不肖事業長將污水繞流至雨水道，藉暴雨期間



偷偷排放污水，而影響承受水體之水質。惟公共污水下道之工程相當耗大，亦需龐大經費，除加強業者廢水管制，確保功能足夠，亦將強化稽查裁處，遏止違法行為。

另針對垃圾之非點源管制，亦可參考加州制度，先行改善道路兩側之收集系統，設置攔截大型垃圾之篩網，避免阻塞收集系統，並以循序漸進方式廣設攔截系統，並依區域特性設計收集系統篩網之顆粒大小，且加強清掃、清運頻率，如此應可解決都市垃圾所衍生之非點源污染問題。



圖 7 總量管制之非點源削減措施(垃圾)

## (二)參訪許可案例及意見交流

### 1. Hyperion Treatment Plant

#### (1)基本資料及運作說明

Hyperion Treatment Plant為美國加州最大聯合污水處理廠(排放許可證Order NO. R4-2010-0200, NPDES NO.CA0109991),係屬洛杉磯市所有,其廠區面積 144 公頃,每日處理水量為 450 萬加侖。自 1950 年開始,廠區廢水處理流程改為二級處理,經二級處理(採活性污泥法)後之廢水排放至Santa Monica Bay,再流至太平洋,其廢水處理流程如圖 8 所示。本次參訪期間,除瞭解廢水處理流程與其許可內容如何結合及因應,並由廠長親自解說各流程功效、使用技術及採用設備考量,為結合理論與實務之最佳機會。

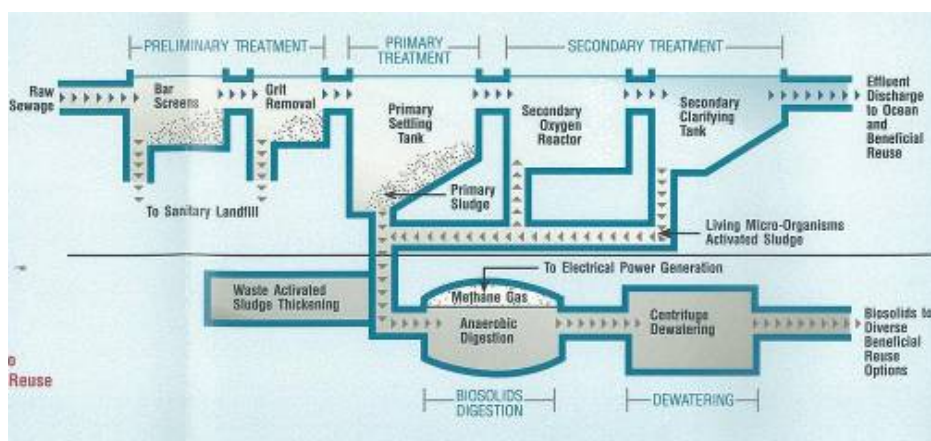


圖 8 Hyperion 聯合污水廠廢水處理流程

由於該廠因用地不足,且加州對該廠放流水標準漸趨嚴格,為進一步提升放流水排放水質,除許可要求規定下,另自行就廠內狀況進行各項研究,且已卓有成效,簡要分敘說明如下:

#### A. 暴雨逕流全面管制

為避免暴雨雨水逕流直接排入 Santa Monica Bay,致使放流水水質可能有不合乎標準情形,全廠區均為水泥鋪面,避免泥沙沖刷,並特設有暴雨逕流集水井,將收集後之廢水再迴送至污水

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流程中(Pertiary Setting Tank)再處理，如圖 9 所示。



圖 9 削減暴雨逕流措施

#### B. 以純氧曝氣系統提高活性污泥處理效率

因本廠建廠時，未考慮後續擴廠建設，故活性污泥池已無擴建用地。在用地受限下，為提升傳氧效率，採純氧曝氣系統，藉由純氧之高傳氧效率，提升污泥之活性，增進水質處理功效，如圖 10 所示。此外，於本次考察時，范廠長亦提及，為增進活性污泥法功效，於原先污水處理流程進行試驗，找出可有效增進水質降解功效、卻不會造成污泥膨化之絲狀菌，增進生物放流池之放流水水質。

#### C. 利用餐廳廢油回收，增進蛋型消化槽效率

由於蛋形消化槽為厭氧污泥消化作用，運作過程需加碳源，作為生物生長所需，該廠發現餐廳廢油回收作為消化槽之碳源，竟可增進消化能力，為研究最佳利用效率，該廠特利用 F.O.G 系統，與民間公司協力合作，於 2 個蛋型槽進行 oil & grease 示範計畫，如圖 11 所示，現階段試驗已有至少 30% 以上之效果，有許

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多民間公司皆有興趣參與至此示範計畫。

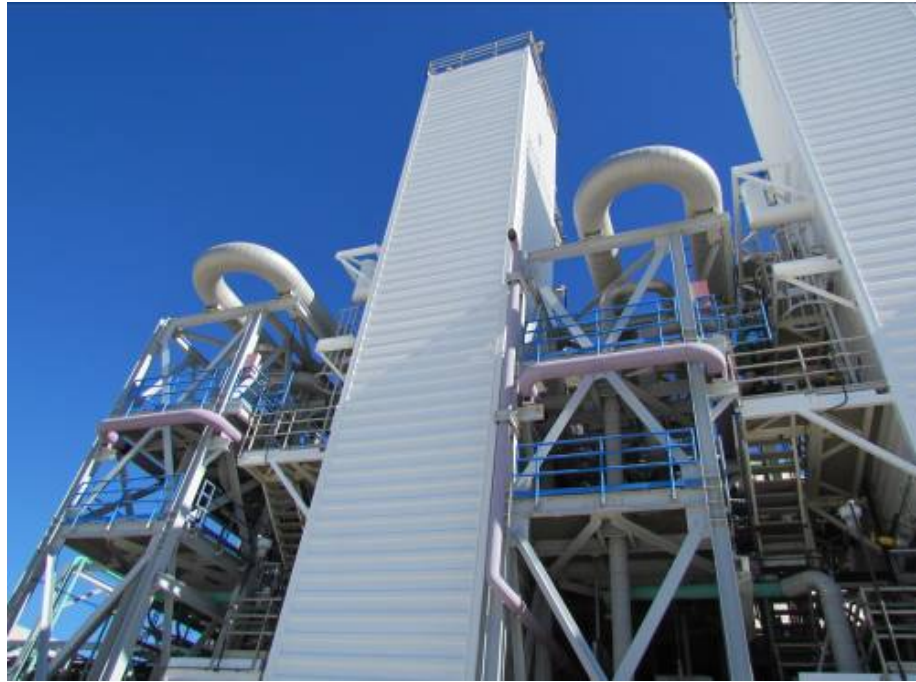


圖 10 以純氧方式進行活性污泥之曝氣



圖 11 蛋形消化槽利用 FOG 系統進行綠能再生計畫  
(2)許可管制及審核

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就許可管制及審核部分，由於加州水污染防治法規之罰鍰相當重，其許可列管之事業皆以不違反許可水質標準為努力目標，加上許可重新申請時，其水質操作標準係依據前次許可期間之水質監測結果來作核定之參考，故各事業皆會致力於設備更新或製程改善。此外，就 Hyperion 聯合污水廠雖為加州相當大之污水廠，但其企業責任心亦相當高，投注許多心力在水質改善。

經比較 Hyperion 聯合污水廠許可內容，和國內管制相較，在於「流域管理」觀念，統一規劃污水廠集水區範圍污染總量並管制，非僅考慮單一事業體放流水質，以維護承受水體及海域水質，並避免有毒性物質產生，進而影響海域生態。經審視該廠之許可內容，有以下特色：

#### A. 納入整體流域概念

以 Basin Plan 為主軸，作為許可核發之依據，各水質項目、排放標準皆審慎評估，非僅考量事業放流水，而是以該放流水流至承受水體，對整體流域之效益，如有更嚴格標準之情形，則會以最嚴者為標準，以保護水體品質，而針對海洋放流部分，依海洋放流管之設計、洋流季節狀況及海洋放流混合區範圍，計算出海洋稀釋率及其海洋放流水標準，以免影響海域水質及生態。

#### B. 強化水質監測管制

於水質監測部分，依據不同水質項目及現行法規標準，訂定每日、每週及每月應檢測項目等應執行工作之清單，且任一在許可放流口採樣之檢測均需確實申報，即使僅進行單一抽測，也需回報，如有檢測未回報，經查獲依法規需處以重罰，相關檢測申報資料均應提出切結，保證申報者明確知悉法規規定情形及裁罰罰則計算方式，如有虛偽不實，亦將受罰。另該廠管線分支管網處，皆設置有水質自動監測系統（如監測 pH 值、電導度等），隨時傳輸至污水廠控制中心，如有異常情形，污水廠亦會依據標準

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作業程序進行納管廠商之納管水質調查，以確保進入聯合污水廠之入流水水質狀況。

### C. 許可之特別要求

許可內容需包含污染削減計畫 (Pollutant Minimization Programm, 簡稱 PMP)，目的為確保放流水水質標準及避免具生物累積性污染物濃度過高，需訂有其應變計畫。另因其廢水量大，對於總氮的貢獻量相對多，因此，亦要求針對總氮進行削減計畫研究，以作為水資局研定管制策略之參考。

### (3)新舊許可差異說明

本次參訪期間，有幸參與水資局委員會公聽會，包括針對 Hyperion 聯合污水廠之新許可核發審查作業，經研析新許可 (Oder NO. R4-2010-0200) 與原許可 (Oder NO. R4-2005-0020)，其許可差異要點說明如下：

#### A. 加嚴排放限值及操作參數

依據原先許可期間歷次水質監測結果，及相關水質法規標準，在 Basin Plan 為管制大前提下，重新調整放流管線之放流水限值 (Effluent Limitations, ELs) 及操作值 (Performance Goals, PGs)，如 002 放流管線增加操作值標準等。

#### B. 增加新興污染物研究調查項目

因應工業發展迅速，為避免新製程、可能外來污染及環保趨勢等相關因素影響流域整體水質，持續辦理新興污染物 (Concerns of Emerging Chemicals, CEC) 研究調查計畫，並增加調查項目。

#### C. 強化水質自動監測系統及回報機制

水質監測系統持續更新，且如處理水量超過該廠設計值時，其應變與回報機制也將予以調整。

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綜上，該廠為因應日趨嚴格之放流水標準，亦持續檢討、改善廠區污水處理流程或設備，加上其排放限值逐次檢討加嚴，有助於環境水體品質的改善，其許可管制之經驗，皆可納入後續我國許可修正方向，達改善水質之成效。

## 2. West Basin Water Recycling Facility

### (1)基本資料及運作說明

West Basin Water Recycling Facility 再生水廠 (Order NO. R4-2002-0173, 為 WDRs 許可, 無排放), 係屬 West Basin Municipal water district 所有, 位於 Hyperion 聯合污水廠旁, 為加州廢水再利用最佳案例之一。

其運作上, 係因加州年均雨量為 15 mm, 自然水源相當缺乏, 在水資源逐漸匱乏情況下, 該廠向 Hyperion 聯合污水廠購買其經二級處理後之放流水(約 35 MGD), 並經下列處理流程(如圖 12)後, 產生之乾淨水資源, 分別打入注入地下水井, 以回收作為地下水補注使用、或販售給區外廠商(如高爾夫球場用於澆灌草皮及水池)以增加廠區收入與其他回收用途(如澆灌等)使用。

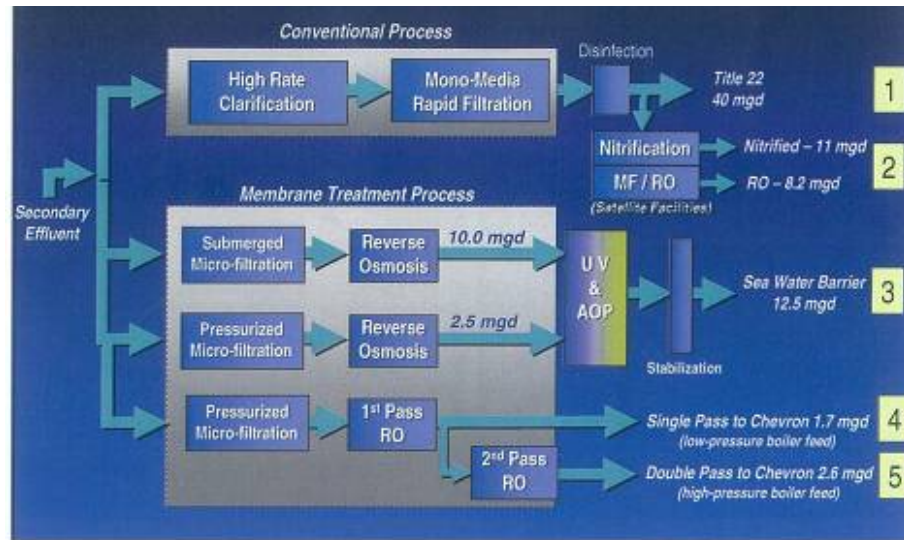


圖 12 廢水再水處理廠處理流程

該廠雖直接取用 Hyperion 聯合污水廠處理後之一股放流水, 但因加州地下水標準甚至較飲用水標準嚴格, 為符合此標準, 該廠將進流水視為廢水, 仍先在一次進行傳統二級處理, 將水質進一步去除有機物質和含有雜質後, 後續再進行各種高級氧



化處理(圖 13~圖 15)，包括 Microfiltration、UV 過氧化法及 RO 逆滲透等，將水質更進一步純化，以合乎地下水水質標準。



圖 13 利用 MF 系統進行高級氧化處理

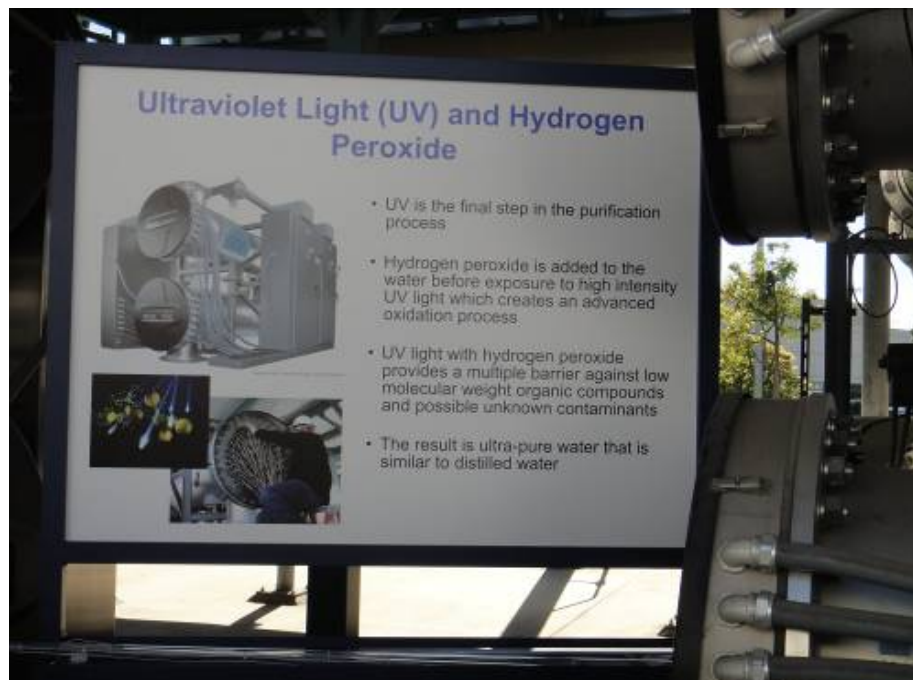


圖 14 利用 UV 結合過氧化氫系統進行高級氧化處理



圖 15 利用 RO 系統進行高級氧化處理

另外，該廠為符合近年「能源回收再利用」之環保觀念，特別利用太陽能板(如圖 16)，收集能源並進行發電利用，節省電力支出，並將可利用之太陽能進行有效利用。

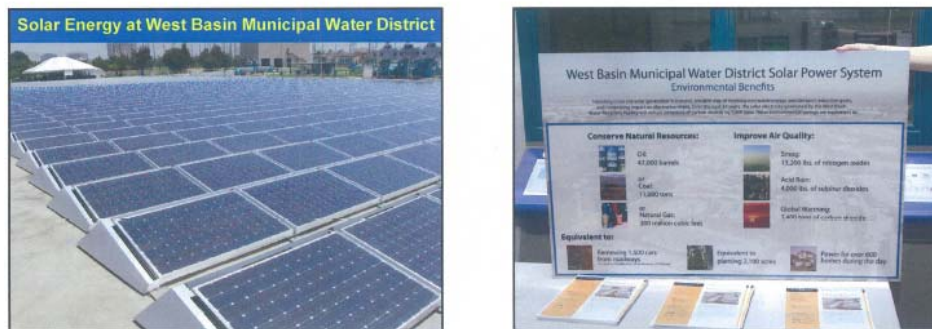


圖 16 利用太陽能板系統進行能源回收再利用

該廠自 1995 年起即開始推動廢水回收使用，截至目前為主，已投入超過 450 萬美金在設備投資、管線更新維護等方面，可知在水資源非常缺乏的加州，為尋覓水源，政府部門正投入相當多努力，未來此處理廠預計至少投入 500 萬美金，持續規劃與投資新型設備，並研擬節水方案，以提供既安全且可獲得民眾信賴之回收水水質。

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## (2)許可審查及管制重點

West basin 再生水廠自 2002 年核發許可後，依規定須於有效期限屆滿前 180 天內，提出重新申請，由於水資局受理後，迄今尚未完成新許可撰寫及審核作業，因此，原核發許可可繼續沿用。

### (三)與我國許可制度之比較與檢討

#### 1. 我國許可制度

我國許可制度係參考美國許可制度，規範事業應取得許可證，始得從事水污染製程營運、設置專責人員，並定期檢測申報廢(污)水處理設施操作情形，以強化業者自我管理廢污水處理設施。而許可類型包括排放許可、貯留許可、稀釋許可、土壤處理許可及暴雨逕流削減計畫，並於民國 95 年將多種類型許可證合一管理，相關申請表格整合為一種申請表格。

許可申請時，須依據「水污染防治措施計畫及許可申請審查辦法」辦理，包括設立前階段、營運前階段、營運階段及許可審查等工作，及許可變更與展延程序等應遵行事項，其中就設立前，申請者如符合公告修正「應先檢具水污染防治措施計畫之事業種類、範圍及規模」，應先辦理水污染防治措施計畫(以下簡稱水措計畫)申請審核，我國許可申請流程如圖 17 所示。

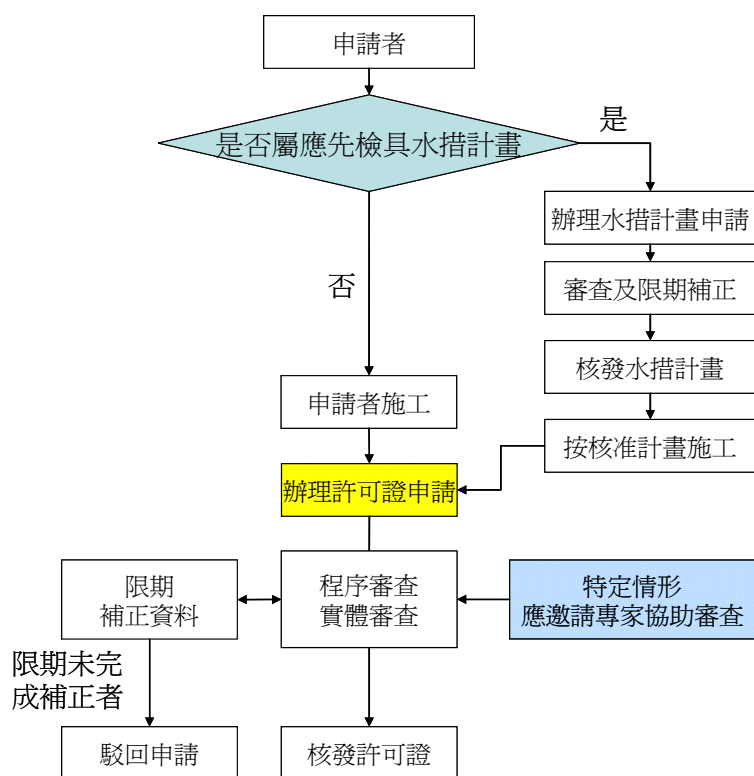


圖 17 我國許可申請流程

由於我國許可申請及核准文件，不論各類申請類型，均為同一表單，審查時，會依據檢具的製程規模、廢水處理單元設計之合理性及相關回收或委託規定情形，就所屬相關的表單，據以填報及提供附件，如有不足，通知限期補正，其許可內容架構如表 6 所示。

表 6 我國許可內容架構

項次	主要內容
壹	申請項目
貳	基本資料
參	水污染防治措施資料 <input type="checkbox"/> 水質水量平衡示意圖 <input type="checkbox"/> 用水、廢(污)水及生產、服務量彙總表 <input type="checkbox"/> 廢(污)水(前)處理設施資料表 <input type="checkbox"/> 廢(污)水貯留資料表 <input type="checkbox"/> 廢(污)水回收使用資料表 <input type="checkbox"/> 廢(污)水委託處理資料表 <input type="checkbox"/> 廢(污)水排放土壤資料表 <input type="checkbox"/> 以管線排放於海洋資料表 <input type="checkbox"/> 逕流廢水管理資料表 <input type="checkbox"/> 漁牧綜合經營資料表 <input type="checkbox"/> 排放地面水體放流口資料表 <input type="checkbox"/> 納入污水下水道系統排放口資料表
其他表單	<input type="checkbox"/> 貯油槽設施相關資料【貯油場專用】 <input type="checkbox"/> 水污染防治措施計畫及許可申請資料確認書 <input type="checkbox"/> 水污染防治措施資料技師簽證表 <input type="checkbox"/> 各項水污染防治措施及廢(污)水流向配置 <input type="checkbox"/> 重大違規者應設置作業範圍內所有用水來源之獨立專用累計型水量計測設施資料 <input type="checkbox"/> 水量計測設施位置配置圖及照片
相關附件	依據水污染防治措施資料表所要求檢附之圖表文件

我國許可證有效期限通常為 5 年，土壤處理許可為 3 年，有效期限屆滿前 180 天應提出展延申請，此與美國加州洛杉磯以重新申請(RENEW)有別。

取得許可後，應依據「水污染防治措施及檢測申報管理辦法」規範，應依據核准之水污染防治措施運行，及設置廢(污)水處理設

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施、納入污水下水道系統、土壤處理、委託與受託處理、管線海洋放流、貯留與稀釋、回收使用、代操作、排放等項之管理，並有檢測申報規定，其檢測申報依據採行水污染防治措施而有不同，其檢測申報表不分類型，均為同一份表單，並載明所有類型之檢測申報填寫說明，填寫時，就所屬相關的表單，據以填報即可。我國廢(污)水檢測申報表之類型如下所示，明定填寫內容及方式，與美國加州洛杉磯區檢測申報屬文字要求，兩者明顯不同。

#### 檢測申報類型

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- 基本資料
  - 製程設施、用水來源及原廢(污)水資料申報表
  - 廢(污)水貯留申報表
  - 廢(污)水(前)處理設施操作申報表
  - 廢(污)水委託處理申報表
  - 廢(污)水以海放管排放海洋申報表
  - 廢(污)水回收使用申報表
  - 廢(污)水排放地面水體申報表
  - 土壤處理申報表
  - 廢(污)水(前)處理設施操作申報表
  - 廢(污)水(前)處理設施操作申報表
  - 納管情形及用戶廢(污)水前處理相關資料申報表
  - 納管情形及用戶廢(污)水前處理相關資料申報表
  - 廢(污)水(前)處理設施操作申報表
  - 畜牧業採漁牧綜合經營申報表
  - 事業廢(污)水納入專用污水下水道系統申報表
  - 4,000 (含)頭豬隻以下廢(污)水檢測申報表
  - 重大違規者設置累計型水量計測設施及自動監測設施申報表
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我國檢測申報頻率規定僅每季或每半年，檢測項目均以「水污染防治措施及檢測申報管理辦法」附表 1 為主，並應符合放流水標準，另可依該辦法第 84 條規定，主管機關得依實際需要，增加申報項目，我國相關林林總總的規定，亦非常詳盡。

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## 2. 綜合比較與研析

依據本次考察收集個別許可審核資料及經意見交流，經研析綜合比較，其許可制度有以下特色：

### (1)類似環評審查之公眾參與及監督

由於申請者沒有必然取得排放許可之權力，且許可(草案)在公聽會時，會經公眾共同監督，因此，其許可取得不易，對於其應遵守法令亦相對重視，已確保後續許可有效期屆滿後，得重新取得許可。

### (2)聯合審查制度及代為核發制度

在美國跨轄區之許可核發，由其中一區撰寫，並經區委員會聯合審查，跨州者，則由州委員會聯合審查，環保署都會派員監督，業者應提出環境衝擊評估及廠內最佳化管理，而民眾也會於委員審查會上提出意見，最後經裁定，送環保署複核，由其中一區核發。

另聯邦環保署依據清水法授權地方政府可以修訂全部或部分許可管制方案，如環保署檢視州政府許可核發有違反聯邦法等規定時，可代為核發許可。而民眾有權可在聯邦法庭控訴違法者或控訴環保署未做好許可監督權責。

### (3)應遵循規定及適用標準均列於許可，以充分告知責任義務

由於許可內容係由主管機關針對業者檢附之申請資料，進行草擬，並審酌所有相關法令規定後，綜合歸納所有應遵守規定，如限制事項、排放限值、檢測頻率、檢測申報項目及類型、違規通報、各項要求所對應法條授權等，以充分告知業者之責任義務。

就我國情形，有些事業除應遵守放流水標準外，尚有灌溉用水水質標準、自來水水源標準及環境影響評估所承諾值等，現階段未能整合在許可內容中，對於正當經營業者而言，其對應遵守

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規定及責任義務不明瞭，而對不法業者，反造成稽查管制之漏洞。

#### **(4)賦予業者進行強化廢水處理單元之研究責任**

對於新興產業或廢水量較大之事業，美國所核准之許可中，除業者應符合核准的排放管制限值外，並應進行各項調查研究，如增進廢水處理單元操作對於總氮的削減效率等，並提出研究報告供水資局研擬管制策略之參考，大幅減少主管機關的行政人力成本，同時，對於參與之業者，亦可隨時與水資局互動，建立良好溝通橋樑。

#### **(5)檢測申報項目多且頻率高，可確保處理單元正常操作及足夠功能**

由於美國個別許可要求檢測申報項目非常多，而頻率每日及每週檢測，相關數據均應誠實申報，對於申報水質超過許可核准值，均可裁罰，並可追溯 5 年違規事件，在業者經常自我檢視情形下，其對於廢水處理單元之操作，不敢不確實操作，如有功能不足，亦會儘速改善。因此，許可撰寫審查及核發過程，並無強調廢水處理單元功能是否足夠，而是嚴格管制放流水水質，進而促使業者確實廢水處理單元正常操作及足夠功能，亦大幅減少稽查人力。



## 二、美國加州之稽查蒐證與裁處流程

### (一)稽查蒐證及裁處流程

美國稽查蒐證及裁處實務上，根據稽查蒐證行動，適時提出執法行動，包括非正式及正式等手段，最後在適當時機，開始計算裁罰金額，並向違規者提出裁罰控告信。業者可以放棄聽證會，直接支付罰款，或透過聽證會進行裁定，期間均可協談違規事實認定及裁罰金額計算方式。如有不服聽證會區水資局委員裁定結果，可向州水資局訴願，由州水資局委員之聽證裁定，如有不服，再提起司法訴訟。其流程如下圖 18，分述說明如下後。

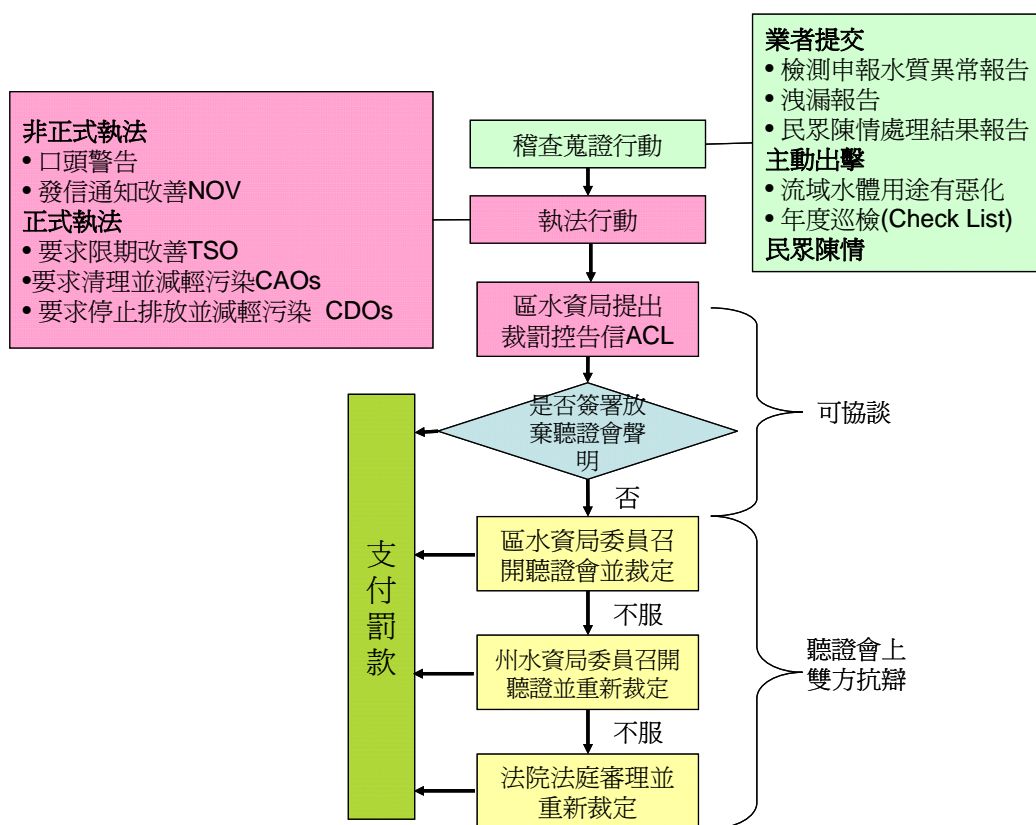


圖 18 稽查蒐證及裁處協商流程圖

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## 1. 稽查蒐證

根據水資局人員表示，加州洛杉磯水資局之稽查及執法人力約 4~5 人，主要追蹤檢測申報執行、查察業者提報污染洩漏處理或民眾陳情報告之內容，及處理民眾陳情案件稽查。主要辦理稽查巡檢的人員只有 1 名，相較於我國，人力非常精簡。

啓動稽查之機制，包括查察業者提交報告、主動出擊搜查及受理民眾陳情案件，其中針對業者提交報告，係針對許可有規定事項，如檢測申報水質異常報告、洩漏污染處理報告及業者受理附近居民陳情處理結果報告等，而主動出擊部分，則是經由定期監測流域水體水質，發現水質有惡化不符水體用途時，進而追查污染來源。而其中針對業者依許可規定所提的報告內容之監督，為主要核心重點工作。換言之，稽查執法人員大多可在辦公室內，查察業者報告後，配合偶而稽查蒐證證據，即可將相關資料錄案，以作為後續裁罰回溯處分之計算依據。

其中放流水水質採樣稽查部分，水資局雖有固定委託檢測機構，惟稽查時，主要由執法人員要求業者專責人員或採樣人員，採集水樣後，指定業者送交不同檢驗單位，相關費用均由業者負擔，較少情形交由固定委託檢測機構檢測，因此，除較無針對水樣採樣結果爭執外，亦大幅節省稽查之檢測分析成本。

至於針對業者廢水處理單元功能是否足夠或是否妥善操作維護之稽查蒐證乙節，據了解，其主要依據年度稽查巡檢之檢核表，原則上，檢查項目包括許可內容的執行情形、現場維護記錄資料核對、廢水處理設施狀況檢測，水量量測、放流水排放情形、承受水體狀況、污泥處理情形等，針對較大廠商，可能需要 2 天以上，才能完成檢核。有些小廠可能 2 年才去檢核一次，將人力資源用於大廠或不良廠商之檢核。

另 Hyperion 聯合污水處理廠廠長亦表示，因操作維護及相關報

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告均有提交，因此，數年來，主管機關都沒有到廠檢核過，顯見對於遵照許可內容運作之工廠，如水質報告無異常、亦無民眾陳情時，不一定會到廠檢核。

本次考察期間正逢裁處聽證會及水資局委員大會，並無稽查行動及排定巡檢工作，因此，我國考察人員未能實地跟著稽查人員到廠檢核，是本次考察未盡完備之憾。

## 2. 執法行動

針對違規事件之執行處分，主要分非正式與正式執法，並依據違反程度、範圍、影響嚴重性、對環境人體健康及社會福祉影響等因子予以考量。

就非正式執法，通常用於輕微違規、初次違規，僅予口頭告誡，或以書信通知違規情形 (Notices of Vilation, 簡稱 NOV)；而正式執法擇具有相當法令效力，包括要求限期改善 (Time Schedule Order, 簡稱 TSO)、要求清理並減輕污染 (Cleanup and Abatement Order, 簡稱 CAO)、要求停止排放並減輕污染 (Cease and Desist Order, 簡稱 CDO)，並視違規情形決定計算罰鍰，處以行政責任裁罰 (Administrative Civil Liability, 簡稱 ACL)。

其中針對要求清理並減輕污染 CAO 之處分，須由局長層級核定，而要求停止排放並減輕污染 CDO 之處分，則須提報水資局委員會，由委員會核發。其核發以上處分時，可依據污染改善遵守程度及污染減輕情形，不斷修正命令，最後在適當時機，以算總帳方式計算違規歷程之罰鍰。

加州水資局總局近期針對加州 9 個區之執法情形，依 2009 年執法年報，彙整對加州洛杉磯區 2009 年 NPDES 稽查處分件數統計(如表 7)，可知其列管對象數量較多為營建工程暴雨逕流許可，而稽查率最高者，為個別許可之主要重點設施。就個別許可之主要列管對

象，其執法率達 38%，主要多為許可異常情形，遠高於我國稽查處分率 2.9%。

表 7 加州洛杉磯 2009 年 NPDES 稽查處分件數統計表

項目		稽查 次數	被查 家數	列管 家數	稽查率%	違規 次數	執法 次數	執法率%
個別許可 (設施)	主要	47	37	45	82	269	101	38
	次要	24	19	78	24	326	131	40
一般許可(設施)		169	152	421	36	1068	63	6
營建工程暴雨逕流許可		373	366	2539	14	38	28	74
工業暴雨逕流許可		152	148	2815	5	68	60	88

資料來源：2009 Annual Enforcement Report (2010 出刊)

另就罰鍰處分上，就考察之前一個月(99 年 10 月)稽查處分，共發出 3 封裁處書(合計美金 12 萬餘元)，完成協談和解 13 件(合計美金 12 萬元)。裁罰依據大部分為查察業者提報之報告書，因此執法人員在辦公室即可依據許可執行情形予以裁處，節省大量人力。各類執法行動均可在網站查詢，如圖 19 所示。網址為 (<http://ciwqs.waterboards.ca.gov/ciwqs/enforcementOrders.jsp>)

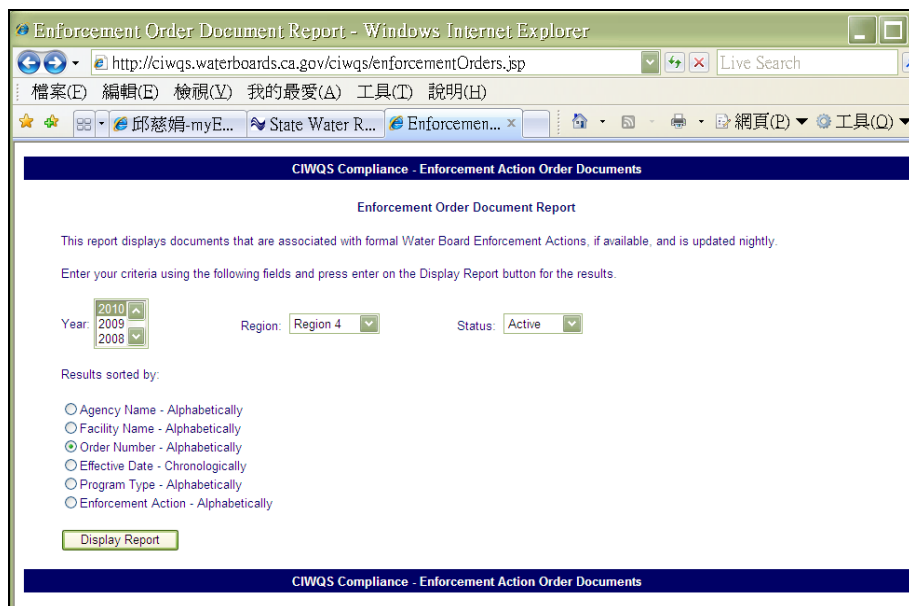


圖 19 美國加州執法行動之查詢系統

### 3. 裁罰計算與協商

加州水污法 (Porter-Cologne Water Quality Control Act 又稱 California Water Code, 新增修正 2009 版), 已有規定各項違規條文及其處罰最高額度(或最低額度), 其主要裁罰條次及內容摘述, 如表 8, 如有未通報者之主要裁罰條次及內容摘述, 如表 9, 主管機關在決定開始進行裁罰計算時, 先與律師溝通, 是否決定先以就 6 個月內違規, 如按次數計算最低強制罰鍰 (Mandatory Minimum Penalties, 以下簡稱 MMPs) 或者給予限期改善等其他執法手段, 再以算總帳方式, 屆時聽證會或訴訟時, 由稽查人員及律師組團進行攻防, 其經濟利益裁罰計算之蒐證權很大, 可要求業者提供所有資料, 大約要花半年以上時間整理, 因此, 大部分案件都採最低強制罰鍰 (MMPs)。

加州裁罰計算上, 係依據違規當時之加州水污執法方針 (Water Quality Enforcement Policy), 按最新 2010 年版之修訂說明, 已有相當裁量權的限縮, 以確保同一州相似案件之裁罰計算結果, 不至於差異過大, 詳如附件 1。

表 8 加州水污法主要裁罰條次及內容摘述

條次	主要裁罰內容摘述
§13261	(b)(1) 未按規定提出排放水質報告或繳交年度報告, 最高每日 US\$ 1,000 元。
§13265	(b)(1) 未經許可排放, 最高每日 US\$ 1,000 元。 (d)(1) 若屬疏忽而未經許可排放有害物質者, 最高每日 US\$ 5,000 元。
§13268	(b)(1) 未提報或拒絕提報技術、監測報告或偽造相關資料者, 最高每日 US\$ 1,000 元。 (d)(1) 如屬未經許可蓄意排放有害物質, 最高每日 US\$ 5,000 元。
§13308	違反限期改善時程, 最高每日 US\$10,000 元。
§13350	(e)(1)(2) 對於裁罰課處以日或水量計價, 但每日不超過 US\$5,000 元或每加侖廢水最高 US\$10 元。

條次	主要裁罰內容摘述
§13385	<p>(c)(1)違反 NPDES 相關許可規定，或排放地面水體之違規且排放後未完成改清理者，最高每日 US\$10,000 元，加上超過 1000 加侖者之每加侖課處 US\$10 元之額外罰款。</p> <p>(h)(1)第 1 次違反嚴重違規之規定或連續 6 個月內之任一額外嚴重違規，其最低強制罰鍰 MMPs 為每次 US\$3,000 元</p> <p>(i)在 6 個月內連續違反以下項目，達(含)4 次以上者，其最低強制罰鍰 MMPs 為每次 US\$3,000 元</p> <ol style="list-style-type: none"> <li>1.超過廢水排放標準</li> <li>2.未依據§13260 規定提出報告者</li> <li>3.依§13260 規定提出報告但不完整者</li> <li>4.超過毒性排放要求，但不包含特性毒性污染物排放標準之要求</li> </ol>

資料:摘述加州水污法(Porter-Cologne Water Quality Control Act,2009)

表 9 加州水污法未通報之主要裁罰條次及內容摘述

條次	主要裁罰內容摘述
§13271	(c)發生排放有害物質之量超過需提出通報之程度或超過 1,000 加侖而 <b>未通報者</b> ，最高每日 US\$ 20,000 元。
§13272	(c)發生排放廢油脂或廢油脂產品於水域而 <b>未通報</b> ，每日 US\$500 元以上 US\$5,000 元以下。

資料:摘述加州水污法(Porter-Cologne Water Quality Control Act,2009)

依據加州水污執法方針(Water Quality Enforcement Policy )2010版，針對水污違規之計算步驟如下：

步驟一：違規排放之危害程度(Potential for Harm for Discharge Violations)

應考量違規之範圍及程度、毒性及清理或分解難易，如排放物、排放量、承受水體之敏感度、涵容量及經濟使用、對水質、水棲生物及人體健康之影響及衝擊，以界定factor1(0~5)、factor2(0~4)、factor3(0或1)，三者合計最後積分，作為Potential for Harm值。

步驟二：排放違規評估(Per Gallon and Per Day Assessments for Discharge Violations)

依照步驟一計算之Potential for Harm值及三種違規程度，包括輕度、中度及嚴重，計算出每加侖或每天排放污染物之參數。

每加侖或每天排放污染物之參數表

程度	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
輕度	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
中度	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
嚴重	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

步驟三：非排放違規評估 (Per Day Assessments for Non-Discharge Violations)

倘非屬排放污染物所造成之違規，則以違規天數計算因子調整ACL罰款，此為一範圍值，括弧內則位中間值。

違規天數計算因子之參數表

程度	違規程度		
	輕度	中度	嚴重
輕度	0.1-0.2(0.15)	0.2-0.3(0.25)	0.3-0.4(0.35)
中度	0.2-0.3(0.25)	0.3-0.4(0.35)	0.4-0.7(0.55)
嚴重	0.3-0.4(0.35)	0.4-0.7(0.55)	0.7-1(0.85)

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#### 步驟四：調整因子（Adjustment factors）

違規調整因子包括針對違規行為之配合度，同一行為違反很多法條之調整，及同一行為持續很多天之調整。其中針對違規程度之配合度包括考量苛責因素、清理及配合因素、違規紀錄因素，計三種，包括如下：

CF1 = 苛責因素（Culpability Factor），屬故意或非故意之犯行，調整係數建議為0.5-1.5之間

CF2 = 清理及配合因素（Cleanup and Cooperation Factor），對於後續自行清理及改善之配合度，調整係數建議為0.75-1.5之間

CF3 = 違規紀錄因素（History of violations factor），最小調整係數建議為1.1

而針對同一行為持續很多天之調整(Multiple Day Violation，簡稱**複數天**)，如命違規者限期提送監測報告書而2年內未提送，如以日數計算，其裁罰金額過大，故在特定條件下，計算複數天。計算方式以第1天起當作第1日，每5天當做1日，超過30天後，每30天當作1日，換言之，第5天當作第2日，第60天為第8日，以此類推。

#### 步驟五：計算基本總額Total Base Liability Amount

基本額度為上述步驟計算結果之加總，且可依違規天數、洩漏量或同時考量計算之。

#### 步驟六：考量支付能力Ability to Pay and Ability to Continue in Business

#### 步驟七：其他考量Other Factors As Justice May Require

如有污染者或水資局提出更新且可作為調整裁罰金額計算之佐證資料時，或依環境公平原則考量，對特定族群產生重大衝擊時，或與過去類似案例之裁罰金額比較，明顯不合理時，可予以調整。



### 步驟八：經濟利益Economic Benefit

依據違規所得經濟利益，計算延遲或規避污染控制設施花費用之所得利益，再以聯邦環保署所開發之BEN model換算限值。

### 步驟九：最高及最低額度Maximum and Minimum Liability Amounts

於提告裁處書時，描述最高及最低額度，以方便比較。倘針對特殊案件之ACL計算結果高於最高額度，則必須調降ACL；同樣地，倘ACL計算結果低於最低額度，則必須調高ACL。

### 步驟十：最終計算結果

以上所提計算方式之參數，係由水資局官員先行計算，加州已針對計算公式，擬定簡單的 EXCEL 試算表，如圖 20，逐步依據考量參數填入，即可初步算出裁罰金額範圍。

		Violation 1	Violation 2
Discharger Name	Coast United Property Management		
Step 1	Potential Harm Factor (Generated from Button)		
Step 2	Per Gallon Factor (Generated from Button)		
	Gallons		
	Statutory / Adjusted Max per Gallon (\$)		
	Total		
	Per Day Factor (Generated from Button)		
	Days		
	Statutory Max per Day		
	Total		
Step 3	Per Day Factor	0.4	
	Days	31	
	Statutory Max per Day	\$ 1,000	
	Total		\$ 12,400.00
	Initial Amount of the ACL		\$ 12,400.00
Step 4	Culpability	1.5	\$ 18,600.00
	Cleanup and Cooperation	1.5	\$ 27,900.00
	History of Violations	1	\$ 27,900.00
	Step 5 Total Base Liability Amount		\$ 27,900.00
Step 6	Ability to Pay & to Continue in Business	1	\$ 27,900.00
Step 7	Other Factors as Justice May Require	1	\$ 27,900.00

圖 20 美國加州裁罰計算十步驟之 EXCEL 試算表

由於美國行政法制係不成文法，針對違反水污法等環保法令時，主管機關依個案審酌污染違規程度及所得經濟利益等因子，計算總罰款金額，由於審酌因子係有個人主觀意識，因此，在協談過程中，被處罰人亦就審酌因子提出不同意見，予以調整計算參數，或因有支付罰款意願，得予酌減，進而影響該計算金額結果。另主管機關如以最低強制罰鍰計算(MMPs)提出裁罰控告，則僅針對違規事實認定協談，但不能針對金額協商，即使委員聽證會亦不會修正金額，除非上法庭審理。

依據前述計算過程，提出初步裁罰金額範圍後，相關違規歷程、往來書信及法令規定情形均載明於裁處控告信，並函送違規行為人，並告知支付金額、協商或送交裁罰聽證會裁定。

違規者收受裁處控告信之後續辦理情形，如圖 21 所示。

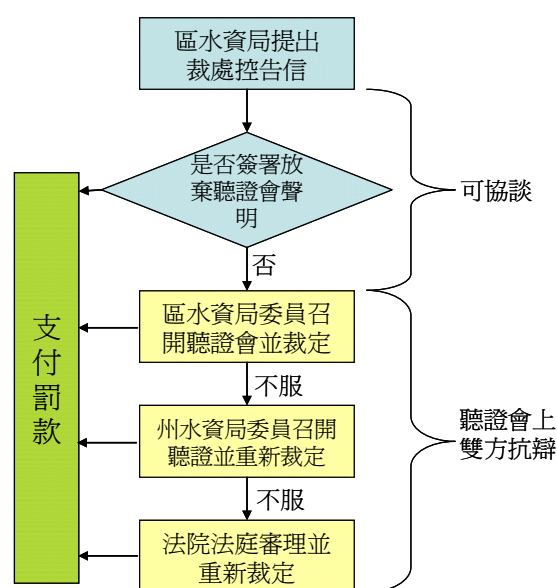


圖 21 美國協商、聽證會及訴訟程序

一般而言，違規者通常會收到裁處控告信後，會針對違規事實認定協談，進而調整計算參數及結果，而針對金額上協商，如有支付意願，往往可調降裁處金額(僅最低強制罰鍰 MMPs 除外)，依據其 California Government Code(以下簡稱加州政府法典)第§11415.60 規

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定，明定協商時，需受任何必要的機關同意，機關負責人有權可批准協商條款，但協商條款不得違反法規。因此，水資局承辦官員針對個案協商時，已有局長批准，可由 1 人或律師在場，進行小會議室協商，違規者可就審酌因子提出不同意見，予以調整計算參數，或有支付罰款意願及執行環境輔助計畫，得予酌減總金額，進而影響裁罰總額。協商後，再未繳款前，如有疑義，均可再提協商。另針對金額較大之處分案件，則可能有局長率隊進行協商。

而針對前述執行環境輔助計畫，適用於計畫金額高於 5 萬美元者，且依加州水污法第 13399.35 節規定，占總罰鍰比例不能超過 50%，其裁罰處分書，應載明支付金額及環境輔助計畫之工作內容、費用與期程等資料，且為避免環境輔助計畫執行弊病，應遵循加州環境輔助計畫方針(如附件 2)，其重點包括計畫內容應與違法事件有地域性及環境監控等相關性，除對於環境有益處外，亦可避免未來不再發生類似違規行為。且計畫不得用於法規義務之責任事項，亦不得做為特定團體捐款、捐助慈善用途或補助金援。執行環境輔助計畫下之裁罰金額為暫時性，如計畫執行總花費低於原規劃經費，其差額仍應繳回，且各階段成果未符合計畫預定內容，則該階段之原抵扣罰鍰則仍應繳回，以確保計畫執行。

就協商未共識後，將送交水資局委員會所組成之裁處聽證會 (Panel Hearing) 審議，再審議前，均可提出協商，一旦開始審議時，則不能再協商。針對區水資局委員會之裁處聽證會裁定，如有不服，則可向州委員會提起行政救濟，再有不服，則經法院開庭審議，類似我國向訴願會提起訴願及向法院提起訴願之程序。

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#### 4. 裁罰聽證會審查情形介紹

有關裁罰聽證會委員係由部分水資局委員組成，主要有 4 位，並由水資局人員就法律及技術方面協助審查。就洛杉磯區 1 年約召開 2~3 次，每次約 2~4 件，進入聽證會的案件並不多，約有 9 成以上裁處案件，在經協談後，直接支付罰款。

聽證會召開時間，於會前一個月公告，有興趣民眾或環保團體都可向水資局取得相關聽證會案件，並於現場填寫發言單，屆時發言意見，現場情形示意如圖 22。

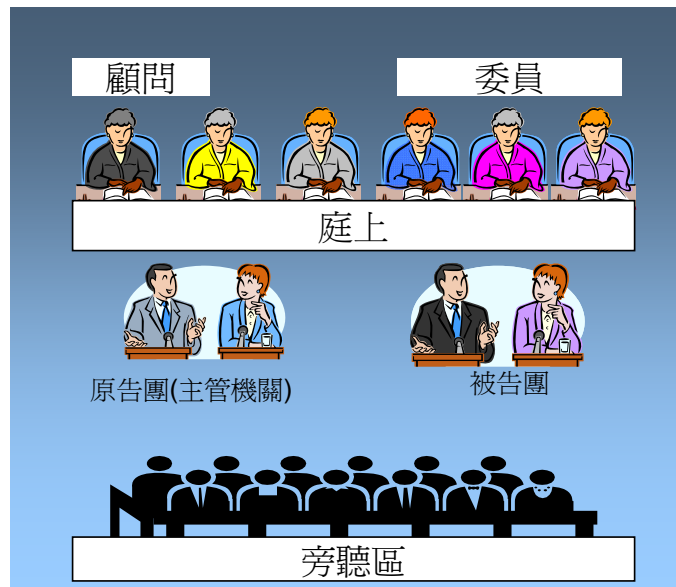


圖 22 聽證會現場配置示意圖

有關現場顧問包括法律顧問及技術顧問，法律顧問由水資局內 3 名律師之其一非牽涉者擔任，而技術顧問由局長或水資局內資深員工非牽涉者單任。至於原告團，係由主辦之律師、執法人員組成，如涉及許可內容，亦有該案許可核發者參與。

聽證會召開流程如下圖 23，主席宣讀法令授權後，由主管機關報告，包括進行簡報說明案件違規過程及建議處分金額，再由被告團及原告團互相詰問，現場如有登記發言者，可於此時提出說明意見，最後再由各委員及 2 名顧問提問，相關意見都諮詢後，委員及

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顧問將另闢會議室研商，約 30 分鐘後，宣讀裁定結果，最後送大委員會核定。

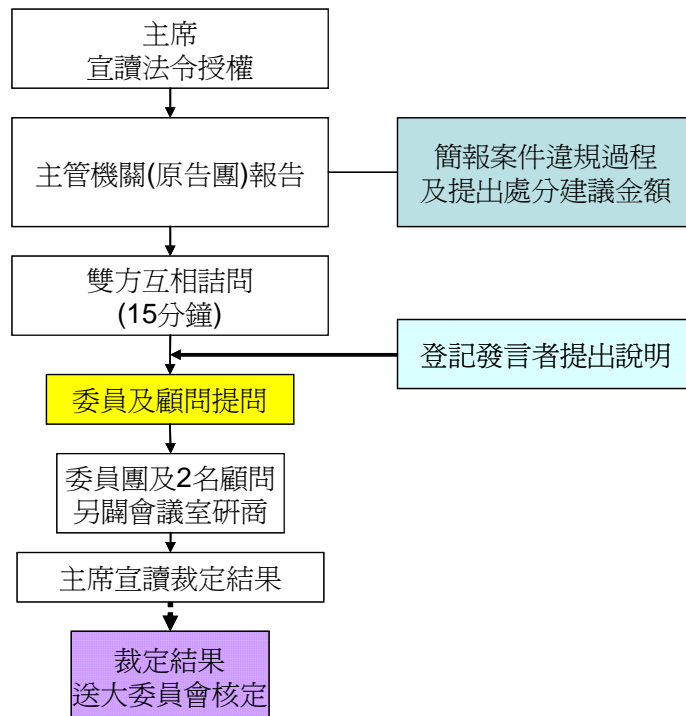


圖 23 裁罰聽證會進行流程

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## (二)稽查裁處案例及意見交流

### 1. 岸產公司(Coast United Property Management)

#### (1)事件說明

岸產公司於 1997 年購買一塊污染土地，污染項目包括重金屬、含氮揮發性有機物如三氯乙烯、四氯乙烯等，係屬第一種風險評估情節(Phase I)，污染土地所有者應提污染控制及監測報告。惟均未遵守，亦無人注意，於 2008 年時，因鄰近土地所有者之地下水監測調查，查出岸產公司的地下水污染物擴散至私人土地，才發現本違規事件。

#### (2)違規情形及主要執法情形

本案自 2008 年 2 月 20 日命令岸產公司提出污染控制及監測報告，後同意期程展延至 2008 年 6 月 30 日提出，惟期間該公司未確實執行並提交報告，乃於 2009 年 3 月 17 日提出違規通知書 (NOV)，期間信件、電話通知均置之不理。

#### (3)裁罰計算、協商及聽證裁定結果

水資局於 2010 年 7 月 29 日提出 ACL 裁處控告信，自 2008 年 6 月 30 日至 2010 年 7 月 29 日，共計 760 天違規，依違反加州水污法§13268 應依規定繳交指定報告，每日最高課處美元 1,000 元，最高可處 76 萬美元，金額相當高，依據加州水污法§13327 應考量各項參數，並依計算當時之加州水污執法方針 2009 年版，依規定 10 步驟進行裁罰金額計算，詳如表 10，最後提出 ACL 行政責任裁處金額為美金 39,900 元。違規歷程、違反法條、各參數選取及計算過程詳如裁處控告信附件 3。

自 2010 年 7 月 29 日提出裁處控告信後，岸產公司仍未重視，於協商過程亦無配合誠意，其認為不知法規規定，應無須受處

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分，並認為污染控制及監測是前任地主責任與他無關，故亦無繳交罰鍰，因此，屆期後，納入裁罰聽證會裁定。

本案裁罰聽證會於 2010 年 10 月 27 日早上舉行，主管機關簡報說明案情，為準備裁罰聽證會事宜，行政成本多 6,000 元，因此，裁罰聽證會上，建議處分金額為美金 45,900 元 (39,900+6,000=45,900 元)，經被告團及原告團(主管機關)雙方詰問後，由委員及 2 名顧問分別提問，再另闢研商會討論，經審查，違規事實明確及日數計算無疑義，最後主席裁定認為環境危害程度 minor，應調為 moderate。

後續考察返國追蹤後，查本案經重新計算，該參數選取自 0.4 修正為 0.55，則原裁處美金 39,900 元，調高為美金 56,362 元。再者，本案經水資局局長同意，如岸產公司於 2010 年 12 月 31 日前提出工作報告，得降為美金 50,762 元(折扣美金 5,600 元)。

#### (4)小結與心得

本案聽證會上，其一委員問到岸產公司其他資產狀況，是否有足夠資力支付罰鍰，被告認為所屬資產是兒子買的，他不知情。或被告提到太忙，每天事情很多，信件無法逐一檢視，電話亦無法回復等等，其一委員認為身為生意人，應該重視信件回應，根本是故意不理會，整個提問審查過程，主要著重被告資產真實性等，最後依據原告團建議計算參數，裁定予以調整。

就本案污染擴散乙案，依據加州水污法規定，應可處更高處分，主管機關依據律師討論結果，認為僅就未交報告部分予以裁處，聽證委員會仍可依水污法授權規定，裁定更高或更低處分金額，但本屆委員會委員原則上尊重主管機關提出建議，進行審查裁定，據了解，並非每屆委員會都會支持主管機關作法，委員仍有相當獨立審判權力。

表 10 岸產公司未交監測報告之裁罰計算表

步驟		參數或法 條金額	小計	說明
Step 1	Potential Harm Factor	無		無排放污染物行為
Step 2	(A)Per Gallon Factor	無		
	(B)Gallons	無		
	(C)Statutory / Adjusted Max per Gallon	無		
	Total=A*B*C	無	\$0	無排放污染物行為
	(D)Per Day Factor	無		
	(E)Days	無		
	(F)Statutory Max per Day	無		
	Total=D*E*F	無	\$0	無排放污染物行為
Step 3	(G)Per Day Factor	0.4		對環境危害 minor
	(H)Days	31		屬未交報告適用複數天計算要件，760 天相當於 31 日
	(I)Statutory Max per Day	\$ 1,000		每日未交報告課處金額
	Total=G*H*I		\$12,400	=0.4×31×\$ 1,000
	Initial Amount of the ACL= A*B*C+ D*E*F+ G*H*I		\$ 12,400	
Step 4	Culpability	1.5	\$ 18,600	無視水資局催交=\$ 12,400×1.5
	Cleanup and Cooperation	1.5	\$ 27,900	電話及信件未回復=\$ 18,600×1.5
	History of Violations	1	\$ 27,900	以前無其他違規紀錄=\$ 27,900×1
Step 5	Total Base Liability Amount		\$27,900	
Step 6	Ability to Pay & to Continue in Business	1	\$ 27,900	具備支付能力
Step 7	Other Factors as Justice May Require	1	\$ 27,900	無調整
	Staff Costs	\$ 12,000	\$ 39,900	準備裁處計算及提告之行政費用
Step 8	Economic Benefit	\$10,000	\$ 39,900	未交監測報告所獲經濟利益
Step 9	Minimum Liability Amount	\$10000		最低裁罰金額=未交監測報告所獲經濟 利益
	Maximum Liability Amount	\$760,000		最高裁罰金額=每日*760 日
Step 10	Final Liability Amount		\$39,900	



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## 2. 柏班克市(city of Burbank)

### (1) 事件說明

柏班克市所屬廢水再生廠，目前領有排放許可證(Order NO. R4-2010-0058)，其廢水排放於 Burbank Western Channel，許可證於 2010 年 5 月 21 日生效，其水質未符合排放標準之違規，係於之前許可證(Order NO. R4-2006-0085)，有效期限為 2006 年 12 月 29 日至 2010 年 5 月 21 日。核准排放 12.5MGD(每日百萬加侖)水量。其許可排放水質為列表如下：

表 11 2006 年許可證之主要管制項目及限值

項目	單位	排放限值	
		每日最大量	月平均
油脂	mg/L	15	10
總餘氯	mg/L	0.1	—
大腸桿菌	MPN/100mL	7 日測值=2.2 MPN/100 mL 30 日內任一水樣不大於 23 MPN/100mL	
濁度	NTU	日平均= 2 NTU 每日 5%時間不得超過 5 NTU	
水溫	°F	廢水排放溫度不超過 86°F	

### (2) 違規情形及主要執法情形

該廠排放水多次超過核准水溫 86°F，統計 5 次違反§13385(h) 因水溫嚴重違規，及 24 次違反§13385(i)因水溫超過許可核准 86°F。

依據加州水法規定§13385(h)(1)第 1 次違反嚴重違規之規定或連續 6 個月內之任一額外嚴重違規，其最低強制罰鍰為 US\$3,000 元。§13385(i)在 6 個月內連續水質超標，達（含）4 次以上者，其最低強制罰鍰 MMP 為 US\$3,000 元。其違規歷程、違反法條及計算過程詳如[裁處控告信附件 4](#)。

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### (3)裁罰計算、協商及聽證裁定結果

本案採用最低強制罰鍰之計算方式，即以§13385 規定之最低罰款按次數計算，處分美元 87,000 元(5×3,000 元/次 + 24×3,000 美元/次=87,000 美元)。

協商時，柏班克市認為在目前排放許可證 (Order NO.R4-2010-0058)已有提到水溫不得超過 86°F，除非環境溫度高 (The temperature of wastes discharged shall not exceed 86°F, except as a result of external ambient temperature)，其表示 2010 版許可證已有載明，顯見水溫偶爾超標是合理情形，惟水資局認為水溫是否違規，應依當時許可證核准內容，任何時間不得超過 86°F 辦理，因此協商不成，納入聽證會審查。

本案裁罰聽證會於 2010 年 10 月 27 日早上舉行，主管機關簡報說明案情及建議裁處 87,000 美元，經被告團及原告團(主管機關)雙方詰問後，由委員及 2 名顧問分別提問，再另闢研商會討論，經審查，因為違規事實明確及次數無疑義，最後主席依據原告團所提建議，採最低強制裁罰裁處金額，裁定 87,000 美元。

### (4)小結與心得

本案聽證會上，其一委員問到本案水溫超標情形，有無對環境損害，主管機關回應並沒有太多環境損害，並討論到水溫超標合理性等。經實地參與聽證會，可知委員來自不同領域，審查個案時，觀點比較感性，包羅萬象，乃須透過技術顧問及法律顧問協助深入了解及詢問，提供委員審查時判斷之參考，因此，在聽證會上，提問問題及回應結果並不代表委員接受程度，在裁罰審查本身，仍須依據法令及法令授權予以調整。

### (三)與我國稽查裁處之比較及檢討

#### 1. 我國稽查裁處制度

我國稽查裁罰制度，除水污染防治法第四章罰則篇外，尚計有「違反水污染防治法罰鍰額度裁罰準則」、「違反水污染防治法通知限期改善或補正裁量基準」及「違反水污染防治法按日連續處罰執行準則」等規定。裁處上，係對違規者依情節輕重，處 1 萬至 60 萬元罰鍰，並給予最多 90 天限期改善期限，屆期未改善按日連續處罰或按次處罰，情節重大者得處停工(業)，必要時得廢止許可證。針對稽查裁處流程如圖 24 所示。

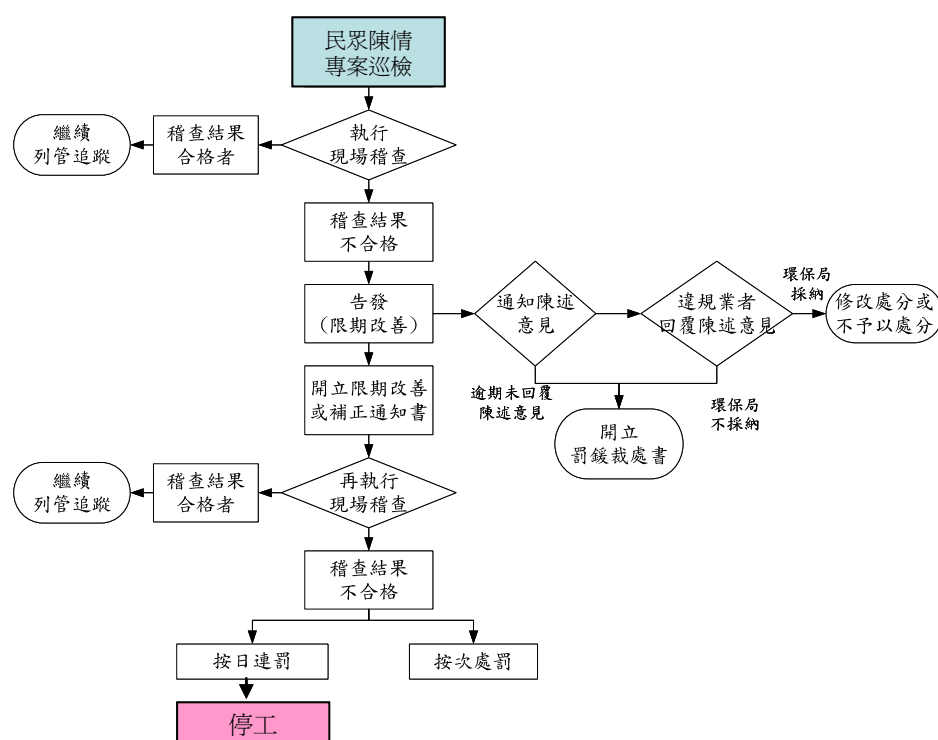


圖 24 我國稽查裁處流程圖

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在稽查蒐證上，常見違規包括放流水質未符合標準、無許可證、疏漏污染、繞流排放污染等，以水質未符合標準為主。我國水污染防治列管事業約有 2 萬餘家，以 98 年度之稽查結果，稽查次數達 6 萬次，處分次數約 1,726 次，處分率約 2.9%，相當多人力耗損。

而在裁罰計算上，主要依據水污染防治法第 66 條之 1 暨「違反水污染防治法罰鍰額度裁罰準則」，罰鍰計算因子包括(A)污染源規模或類型、(B)不符合放流水標準排放或其他污染行為、(C)違規紀錄、(D)承受水體或環境類型、(E)其他，將五大因子總和，其各因子將水污染防治法 1 萬~60 萬元罰鍰，切分成五個區段，縮小審酌空間，以強化裁處合理性及一致性。

縣市主管機關開立處分時，係由環保主管機關首長決行，並先給予陳述意見時間，再進行裁處，而違規者之陳述意見是否參採，由處分機關審視決定，並無第三公正單位，亦無需對其他環保團體說明，均依照法令授權及規定程序辦理。

另其他行政執法行動力，如通知限期改善係依據水污染防治法規定執行，其限期改善期限之時間，亦已明定於「違反水污染防治法通知限期改善或補正裁量基準」，屆期未改善，則按日連續處罰或按次處罰以督促改善，而針對情節重大者，得命其停工或停業，其情節重大之情形，已明訂於水污染防治法第 73 條，共 8 種情形，並以處分按日連續處罰逾 30 日，或欲停止按日連續處罰而自報停工者，最為常見。

而針對業者長期功能不足、未妥善處理廢水等不作為或未確實操作之行為，所省下的設備費、電費、藥品費、人事費及維護費等相關費用，將依行政罰法規定，就所得利益範圍內加重罰鍰，不受單一違規行為裁處一次罰鍰，惟目前案例甚少，相關裁罰計算及審酌等問題，仍需檢討研訂。

綜上，我國水污染防治法相關執法流程規範較為嚴謹，與美國

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執法行動力較依個案情節判定是否通知限期改善、是否命減輕污染與停止污染等，兩國情執行法行動力差異較甚大。

## 2. 綜合比較與研析

依據本次考察收集稽查裁罰制度及經意見交流，經研析綜合比較，其稽查裁罰有以下特色：

### (1)無命停工處分

美國法令無命停工作法，其考量命停工僅造成業者無經濟能力，反無力解決污染問題，可能影響停工的處分為「停止排放並減輕污染」(Cease and Desist Oder,CDO)，係針對業者違反加州水污法第 13301 規定，包括無法符合許可排放規定與禁止行為、無法符合限期改善命令及未採取預防或改善措施，經水資局委員會核定開立處分。一旦經處分，如事業無法尋求其他停止排放廢水之方法（如廢水委託處理、改變製程等），則只能停工。

### (2)申報不實處分嚴厲，需無有處分比例原則

美國就申報不實部分，如經隨機性採樣分樣，比對檢測申報結果，或查察實驗室資料，發現有申報不實情形，均依刑法移送負責人，且美國主管機關具備法律專業人士之顧問團隊，提供適時蒐證及補正意見，提高法院審理之勝訴率，因此業者大多誠實申報，故違規案件較少。

### (3)意外洩漏案件之通報制度完整

美國所核發的許可，已載明洩漏通報的義務跟責任，業者一旦發生故障洩漏或重大污染事件時，除依許可規定的通報對象通報外，尚需依照所提報洩漏清理應變計畫(Spill Clean-up Contingency Plan,簡稱 SCCP)之作業流程，進行搶修、通報、紀錄，並應提出完整報告，業者如有妥善處理及減輕污染，於裁處計算時，可予以審酌減低罰鍰金額，亦有鼓勵業者通報及積極改善之

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用意。

針對隱匿洩漏不報部分，依加州水污法第 13271 可處每日最高 2 萬美元，如經發現污染情事，將命其清理、調查、減輕污染及限期改善，仍依據違規情形及所得利益等予以計算裁罰，惟從未有未通報之處分案件，且相關計算方式亦有對應污染及清理責任，故加州裁罰計算方針(2010 版)之洩漏通報加重裁罰參數，已於近年刪除，並無加重處分情形。

#### **(4)裁罰審酌、協商制度及配套措施之法源授權完整**

美國法治發展過程，與我國不同，其在裁罰審酌、協談及環境輔助計畫之執行，均有法源授權及相關規範，以供主管機關遵循，且對於環境輔助計畫明定執行方針，不得用於補助金援。

而我國裁罰制度上，僅行政罰法第 18 條第 2 項明定得於所得利益之範圍酌量加重，或依「行政罰法」第二章非故意或過失、不知法規、未滿 14 歲等要件，經舉證後，才得有減輕或免除處罰，尚無協談及環境輔助計畫相關授權及規範。

#### **(5)就違規所得經濟利益裁處之發展與執行完備**

美國裁罰計算上，主要包括經濟獲利及違規程度兩大類，均無上限，其中經濟獲利係按違規條文的對應性、證據力掌握情形，要求業者將每年廠內運作支出報表全部提供，以估算維修費、電費、水費、人力成本、設備更換等，不提供者，結合檢察官蒐證權，或依相同類型工廠之費用估列。依據各違規事實認定予以審酌後，審酌上可考量管線、桶槽應更換維護之合理頻率，再與業者協商，並可考慮環境輔助計畫之執行，如協商不成，再透過公聽會由水資局委員裁定。

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## 伍、考察心得

經綜合美國考察成果及檢討我國水污染防治法許可/稽查/裁罰制度，我國許可證之申請，係依單一制式表格填報，較為簡易，於審查時，並無公眾參與機制，主要由環保機關就資料完整性及合法性進行審查，尚須予強化個別產業類型特性，落實許可管制。

業者定檢申報頻率僅半年或每季一次，相較於美國管制每日及每週等管制，自我檢視功能較弱，尚需投入人力勾稽業者填報需實或誤植，如能提升申報數據量及品質，應可強化業者自我管理，並可作為我國水體污染總量管制及政策推動之評估依據。

我國稽查類型係以民眾陳情及定期巡檢為主，並以放流水質採樣為稽查手段，相較於美國透過許可管制要求業者提報各類洩漏污染、水質超標檢討改善或居民陳情案件之處理成果等，由業者舉證污染事件之改善完成，再由政府機關從中進行把關監督，結合許可管制及稽查確認改善，應可大幅提昇污染管制成效。

再者，現行水污法最高罰鍰額度為 60 萬元，相較業者違規之不當得利為低，導致業者存有僥倖心態，鋌而走險，寧可甘冒被處分之風險，不願花錢投資改善污染，未能有效遏止污染發生，故可適度運用行政罰法嚴懲違法行為。

本次考察之心得認為，水污染防治管理之根基在於健全許可管理，而稽查裁處僅為一管制手段，在落實許可管制及稽查裁罰制度下，才能建構公平正義的產業環境。

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## 陸、建議事項

由於美國法制體制為不成文法，與我國成文法體制差異大，在變革上非一蹴可及，現階段我國水污染防治法檢討可行方向，應可朝逐步調整許可審查機制，量身訂做個別產業類型之許可要求，落實水污染管制。逐步擴大檢測申報項目與頻率，及落實資料正確性，將承受水體及排放水之水質水量等豐富資料，經整合資訊系統後，作為個別許可加嚴要求之依據，亦可作為水體管制決策之參考。

在稽查裁處上，逐步強化深入稽查，結合許可管制內容，督促業者依許可內容妥善操作廢水處理設施、維護、紀錄及適時更換設備，提升稽查管制之效率。適度運用行政罰法，嚴懲違規行為，杜絕污染發生，維護企業公平競爭之環境，逐步研訂相關配套措施，如建立行政罰法不當利得之計算原則、第三公正單位審查機制等，作為環保機關遵循之依據。

建議後續逐步檢討及修訂水污染防治法相關規定，並不定期邀請美方專家召開研商會進行經驗交流。



---

## 考察剪影



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---

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**STATE WATER RESOURCES CONTROL BOARD**

**WATER QUALITY  
ENFORCEMENT POLICY**

Effective May 20, 2010

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**Water Quality Enforcement Policy - November 17, 2009**

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## INTRODUCTION

The State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Water Boards) (together “Water Boards”) have primary responsibility for the coordination and control of water quality in California. In the Porter-Cologne Water Quality Control Act (Porter-Cologne), the Legislature declared that the “state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation...” (Wat. Code, § 13000). Porter-Cologne grants the Water Boards the authority to implement and enforce the water quality laws, regulations, policies, and plans to protect the groundwater and surface waters of the State. Timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the State have clean water. The goal of this Water Quality Enforcement Policy (Policy) is to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most efficient, effective, and consistent manner. In adopting this Policy, the State Water Board intends to provide guidance that will enable Water Board staff to expend its limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits. Toward that end, it is the intent of the State Water Board that the Regional Water Boards’ decisions be consistent with this Policy.

A good enforcement program relies on well-developed compliance monitoring systems designed to identify and correct violations, help establish an enforcement presence, collect evidence needed to support enforcement actions where there are identified violations, and help target and rank enforcement priorities. Compliance with regulations is critical to protecting public health and the environment, and it is the preference of the State Water Board that the most effective and timely methods be used to assure that the regulated community stays in compliance. Tools such as providing assistance, training, guidance, and incentives are commonly used by the Water Boards and work very well in many situations. There is a point, however, at which this cooperative approach should make way for a more forceful approach.

This Policy addresses the enforcement component (i.e. actions that take place in response to a violation) of the Water Boards’ regulatory framework, which is an equally critical element of a successful regulatory program. Without a strong enforcement program to back up the cooperative approach, the entire regulatory framework would be in jeopardy. Enforcement is a critical ingredient in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Appropriate penalties and other consequences for violations offer some assurance of equity between those who choose to comply with requirements and those who violate them. It also improves public confidence when government is ready, willing, and able to back up its requirements with action.

In furtherance of the water quality regulatory goals of the Water Boards, this Policy:

- Establishes a process for ranking enforcement priorities based on the actual or potential impact to the beneficial uses or the regulatory program and for using progressive levels of enforcement, as necessary, to achieve compliance;
- Establishes an administrative civil liability assessment methodology to create a fair and consistent statewide approach to liability assessment;
- Recognizes the use of alternatives to the assessment of civil liabilities, such as supplemental environmental projects, compliance projects, and enhanced compliance actions, but requires standards for the approval of such alternatives to ensure they provide the expected benefits;

- Identifies circumstances in which the State Water Board will take action, even though the Regional Water Boards have primary jurisdiction;
- Addresses the eligibility requirements for small communities to qualify for carrying out compliance projects, in lieu of paying mandatory minimum penalties pursuant to California Water Code section 13385;
- Emphasizes the recording of enforcement data and the communication of enforcement information to the public and the regulated community; and
- Establishes annual enforcement reporting and planning requirements for the Water Boards.

The State's water quality requirements are not solely the purview of the Water Boards and their staffs. Other agencies, such as, the California Department of Fish and Game have the ability to enforce certain water quality provisions in state law. State law also allows members of the public to bring enforcement matters to the attention of the Water Boards and authorizes aggrieved persons to petition the State Water Board to review most actions or failures to act of the Regional Water Boards. In addition, state and federal statutes provide for public participation in the issuance of orders, policies, and water quality control plans. Finally, the federal Clean Water Act (CWA) authorizes citizens to bring suit against dischargers for certain types of CWA violations.

## I. **FAIR, FIRM, AND CONSISTENT ENFORCEMENT**

It is the policy of the State Water Board that the Water Boards shall strive to be fair, firm, and consistent in taking enforcement actions throughout the State, while recognizing the unique facts of each case.

### **A. Standard and Enforceable Orders**

The Water Board orders shall be consistent except as appropriate for the specific circumstances related to the discharge and to accommodate differences in applicable water quality control plans.

### **B. Determining Compliance**

The Water Boards shall implement a consistent and valid approach to determine compliance with enforceable orders.

### **C. Suitable Enforcement**

The Water Boards' enforcement actions shall be suitable for each type of violation, providing consistent treatment for violations that are similar in nature and have similar water quality impacts. Where necessary, enforcement actions shall also ensure a timely return to compliance.

## **D. Environmental Justice**

The Water Boards shall promote enforcement of all health and environmental statutes within their jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state.

Specifically, the Water Boards shall pursue enforcement that is consistent with the goals identified in Cal-EPA's Intra-Agency Environmental Justice Strategy, August 2004 (<http://www.calepa.ca.gov/EnvJustice/Documents/2004/Strategy/Final.pdf>) as follows:

- Ensure meaningful public participation in enforcement matters;
- Integrate environmental justice considerations into the enforcement of environmental laws, regulations, and policies;
- Improve data collection and availability of violation and enforcement information for communities of color and low-income populations; and,
- Ensure effective cross-media coordination and accountability in addressing environmental justice issues.

## **E. Facilities Serving Small Communities**

The State Water Board has a comprehensive strategy for facilities serving small and/or disadvantaged communities that extends beyond enforcement and will revise that strategy as necessary to address the unique compliance challenges faced by these communities (see State Water Resources Control Board Resolution No. 2008-0048). Consistent with this strategy, reference in this Section E. to small communities is intended to denote both small and disadvantaged small communities.

Publicly owned treatment works (POTWs) and sewage collection systems that serve small communities must comply with water quality protection laws. The State Water Board recognizes that complying with environmental laws and regulations will require higher per capita expenditures in small communities than in large communities. When water quality violations occur, traditional enforcement practices used by the Water Boards may result in significant costs to these communities and their residents, thereby limiting their ability to achieve compliance without suffering disproportionate hardships.

In recognition of these factors, informal enforcement or compliance assistance will be the first steps taken to return a facility serving a small community to compliance, unless the Water Board finds that extenuating circumstances apply. Informal enforcement is covered in Appendix A. Compliance assistance activities are based on a commitment on the part of the entity to achieve compliance and shall be offered in lieu of enforcement when an opportunity exists to correct the violations. Compliance activities that serve to bring a facility into compliance include, but are not limited to:

- Education of the discharger and its employees regarding their permit, order, monitoring/reporting program, or any applicable regulatory requirements;
- Working with the discharger to seek solutions to resolve violations or eliminate the causes of violations; and,
- Assistance in identifying available funding and resources to implement measures to achieve compliance.

Further, the Water Boards recognize that timely initiation of progressive enforcement is important for a noncompliant facility serving a small community. When enforcement is taken before a large liability accumulates, there is greater likelihood the facility serving the small community will be able to address the liability and return to compliance within its financial capabilities.

## **II. ENFORCEMENT PRIORITIES FOR DISCRETIONARY ENFORCEMENT ACTIONS**

It is the policy of the State Water Board that every violation results in the appropriate enforcement response consistent with the priority of the violation established in accordance with this Policy. The Water Boards shall rank violations and then prioritize cases for formal discretionary enforcement action to ensure the most efficient and effective use of available resources.

### **A. Ranking Violations**

The first step in enforcement ranking is determining the relative significance of each violation. The following criteria will be used by the Water Boards to identify and classify significant violations in order to help establish priorities for enforcement efforts.

#### ***1. Class I Priority Violations***

Class I priority violations are those violations that pose an immediate and substantial threat to water quality and that have the potential to cause significant detrimental impacts to human health or the environment. Violations involving recalcitrant parties who deliberately avoid compliance with water quality regulations and orders are also considered class I priority violations because they pose a serious threat to the integrity of the Water Boards' regulatory programs.

Class I priority violations include, but are not limited to, the following:

- a. Significant measured or calculated violations with lasting effects on water quality objectives or criteria in the receiving waters;
- b. Violations that result in significant lasting impacts to existing beneficial uses of waters of the State;
- c. Violations that result in significant harm to, or the destruction of, fish or wildlife;
- d. Violations that present an imminent danger to public health;
- e. Unauthorized discharges that pose a significant threat to water quality;
- f. Falsification of information submitted to the Water Boards or intentional withholding of information required by applicable laws, regulations, or enforceable orders;
- g. Violation of a prior enforcement action-- such as a cleanup and abatement order or cease and desist order--that results in an unauthorized discharge of waste or pollutants to water of the State; and

- h. Knowing and willful failure to comply with monitoring requirements as required by applicable laws, regulations, or enforceable orders because of knowledge that monitoring results will reveal violations.

## **2. Class II Violations**

Class II violations are those violations that pose a moderate, indirect, or cumulative threat to water quality and, therefore, have the potential to cause detrimental impacts on human health and the environment. Negligent or inadvertent noncompliance with water quality regulations that has the potential for causing or allowing the continuation of an unauthorized discharge or obscuring past violations is also a class II violation.

Class II violations include, but are not limited to, the following:

- a. Unauthorized discharges that pose a moderate or cumulative threat to water quality;
- b. Violations of acute or chronic toxicity requirements where the discharge may adversely affect fish or wildlife;
- c. Violations that present a substantial threat to public health;
- d. Negligent or inadvertent failure to substantially comply with monitoring requirements as required by applicable laws, regulations, or enforceable orders, such as not taking all the samples required;
- e. Negligent or inadvertent failure to submit information as required by applicable laws, regulations, or an enforceable order where that information is necessary to confirm past compliance or to prevent or curtail an unauthorized discharge;
- f. Violations of compliance schedule dates (e.g., schedule dates for starting construction, completing construction, or attaining final compliance) by 30 days or more from the compliance date specified in an enforceable order;
- g. Failure to pay fees, penalties, or liabilities within 120 days of the due date, unless the discharger has pending a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty, or liability, or a timely request for an alternative payment schedule, filed with the Regional Water Board;
- h. Violations of prior enforcement actions that do not result in an unauthorized discharge of waste or pollutants to waters of the State;
- i. Significant measured or calculated violations of water quality objectives or promulgated water quality criteria in the receiving waters; and
- j. Violations that result in significant demonstrated impacts on existing beneficial uses of waters of the State.

### **3. Class III Violations**

Class III violations are those violations that pose only a minor threat to water quality and have little or no known potential for causing a detrimental impact on human health and the environment. Class III violations include statutorily required liability for late reporting when such late filings do not result in causing an unauthorized discharge or allowing one to continue. Class III violations should only include violations by dischargers who are first time or infrequent violators and are not part of a pattern of chronic violations.

Class III violations are all violations that are not class I priority or class II violations. Those include, but are not limited to, the following:

- a. Unauthorized discharges that pose a low threat to water quality;
- b. Negligent or inadvertent late submission of information required by applicable laws, regulations, or enforceable orders;
- c. Failure to pay fees, penalties, or liabilities within 30 days of the due date, unless the discharger has pending a timely petition pursuant to California Water Code section 13320 for review of the fee, penalty or liability; or a timely request for an alternative payment schedule, filed with the Regional Water Board;
- d. Any "minor violation" as determined pursuant to California Water Code section 13399 et seq. (see Appendix A. C.1a);
- e. Negligent or inadvertent failure to comply with monitoring requirements when conducting monitoring as required by applicable laws, regulations, or enforceable orders, such as using an incorrect testing method;
- f. Less significant (as compared to class II violations) measured or calculated violations of water quality objectives or promulgated water quality criteria in the receiving waters; and
- g. Violations that result in less significant (as compared to class II violations) demonstrated impacts to existing beneficial uses of waters of the State.

### **B. Enforcement Priorities for Individual Entities**

The second step in enforcement ranking involves examining the enforcement records of specific entities based on the significance and severity of their violations, as well as other factors identified below. Regional Water Board senior staff and management, with support from the State Water Board Office of Enforcement, shall meet on a regular basis, no less than bi-monthly, and identify their highest priority enforcement cases. To the greatest extent possible, Regional Water Board shall target entities with class I priority violations for formal enforcement action.

In determining the importance of addressing the violations of a given entity, the following criteria should be used:



1. Class of the entity's violations;
2. History of the entity
  - a. Whether the violations have continued over an unreasonably long period after being brought to the entity's attention and are reoccurring;
  - b. Whether the entity has a history of chronic noncompliance;
  - c. Compliance history of the entity and good-faith efforts to eliminate noncompliance;
3. Evidence of, or threat of, pollution or nuisance caused by violations;
4. The magnitude or impacts of the violations;
5. Case-by-case factors that may mitigate a violation;
6. Impact or threat to high priority watersheds or water bodies (e.g., due to the vulnerability of an existing beneficial use or an existing state of impairment);
7. Potential to abate effects of the violations;
8. Strength of evidence in the record to support the enforcement action; and
9. Availability of resources for enforcement.

### **C. Automated Violation Priorities**

It is the goal of the State Water Board to develop data algorithms to assign the relative priority of individual violations consistent with this Policy by January 1, 2012. This automated system should simplify the ranking of violations and facilitate prioritization of cases for enforcement.

### **D. Setting Statewide and Regional Priorities**

On an annual basis, the State Water Board will propose statewide enforcement priorities. These priorities may be based on types of violations, individual regulatory programs, particular watersheds, or any other combined aspect of the regulatory framework in which an increased enforcement presence is required. These priorities will be documented in an annual enforcement report and reevaluated each year.

As part of the State Water Board's annual enforcement prioritization process, each Regional Water Board will identify and reevaluate its own regional priorities on an annual basis. This will also be included in a regional annual enforcement report.

## **E. Mandatory Enforcement Actions**

In addition to these criteria for discretionary enforcement, the Water Boards will continue to address mandatory enforcement obligations imposed by the law (e.g. Wat. Code § 13385, subds.(h) and (i)). As detailed in Section VII, these mandatory actions should be taken within 18 months of the time that the violations qualify for the assessment of mandatory minimum penalties.

### **III. ENFORCEMENT ACTIONS**

The Water Boards have a variety of enforcement tools to use in response to noncompliance by dischargers. With certain specified exceptions California Water Code section 13360, subdivision (a) prohibits the State Water Board or Regional Water Board from specifying the design, location, type of construction, or particular manner in which compliance may be had with a particular requirement. For every enforcement action taken, the discharger's return to compliance should be tracked in the Water Board's enforcement database. See Appendix A for additional information.

### **IV. STATE WATER BOARD ENFORCEMENT ACTION**

The Regional Water Boards have primary responsibility for matters directly affecting the quality of waters within their region. The State Water Board has oversight authority in such matters and may, from time to time, take enforcement action in lieu of the Regional Water Board as follows:

- In response to petitions alleging inaction or ineffective enforcement action by a Regional Water Board;
- To enforce statewide or multi-regional general permits;
- To address violations by the same discharger in more than one region;
- Where the Regional Water Board's lead prosecutor has requested that the State Water Board take over the enforcement action;
- Where a Regional Water Board is unable to take an enforcement action because of quorum problems, conflicts of interest, or other administrative circumstances;
- Where a Regional Water Board has not investigated or initiated an enforcement action for a class I priority violation in a manner consistent with this Policy; and
- Actions where the Executive Director has determined that enforcement by the State Water Board is necessary and appropriate.

Where the State Water Board decides to pursue such enforcement, the Office of Enforcement will coordinate investigation of the violations and preparation of the enforcement action with the staff of the affected Regional Water Board to ensure that the State Water Board will not duplicate efforts of the Regional Water Board. Except under unusual circumstances, the Regional Water Board enforcement staff will have the opportunity to participate and assist in

any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

## **V. COORDINATION WITH OTHER REGULATORY AGENCIES**

### **A. Hazardous Waste Facilities**

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxics Substance Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

### **B. Oil Spills**

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

### **C. General**

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

## **VI. MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS**

### **A. Penalty Calculation Methodology**

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;<sup>1</sup>
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs). Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

### **General Approach**

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

Step 1. *Potential for Harm for Discharge Violations* – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

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<sup>1</sup> When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

Step 2. *Per Gallon and Per Day Assessments for Discharge Violations* – For discharges resulting in violations, use Table 1 and/or Table 2 to determine Per Gallon and/or Per Day Assessments. Depending on the particular language of the ACL statute being used, either or both tables may be used. Multiply these factors by per gallon and/or per day amounts as described below. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

Step 3. *Per Day Assessments for non-Discharge Violations* – For non-discharge violations, use Table 3 to determine per day assessments. Multiply these factors by the per day amount as described below. Where allowed by the California Water Code, amounts for these violations should be added to amounts (if any) for discharge violations from Step 2, above. This becomes the initial amount of the ACL for the non-discharge violations.

Step 4. *Adjustment Factors* – Adjust the initial amounts for each violation by factors addressing the violator’s conduct, multiple instances of the same violation, and multiple day violations.

Step 5. *Total Base Liability Amount* – Add the adjusted amounts for each violation from Step 4.

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

Step 6. *Ability to Pay and Ability to Continue in Business* – If the ACL exceeds these amounts, it may be adjusted downward provided express findings are made to justify this.

Step 7. *Other Factors as Justice May Require* – Determine if there are additional factors that should be considered that would justify an increase or a reduction in the Total Base Liability amount. These factors must be documented in the ACL Complaint. One of these factors is the staff costs of investigating the violations and issuing the ACL. The staff costs should be added to the amount of the ACL.

Step 8. *Economic Benefit* – The economic benefit of the violations must be determined based on the best available information, and the amount of the ACL should exceed this amount. (Note that the Economic Benefit is a statutory minimum for ACLs issued pursuant to California Water Code section 13385.)

Step 9. *Maximum and Minimum Liability Amounts* - Determine the statutory maximum and minimum amounts of the ACL, if any. Adjust the ACL to ensure it is within these limits.

Step 10. *Final Liability Amount* – The final liability amount will be assessed after consideration of the above factors. The final liability amount and significant considerations regarding the liability amount must be discussed in the ACL Complaint and in any order imposing liability.

### **STEP 1 - Potential for Harm for Discharge Violations**

Calculating this factor is the initial step for discharge violations. Begin by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring

system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

***Factor 1: Harm or Potential Harm to Beneficial Uses***

The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

0 = Negligible - no actual or potential harm to beneficial uses.

1 = Minor - low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm).

2 = Below moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

3 = Moderate - moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).

4 = Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns).

5 = Major - high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health).

***Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge***

The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as outlined below. For purposes of this Policy, "potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

0 = Discharged material poses a negligible risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are benign and will not impact potential receptors).

1 = Discharged material poses only minor risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are relatively benign or are not likely to harm potential receptors).

- 2 = Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).
- 3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection).
- 4 = Discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors or receptor harm is considered imminent).

***Factor 3: Susceptibility to Cleanup or Abatement***

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the violator.

***Final Score – “Potential for Harm”***

The scores for the factors are then added to provide a Potential for Harm score for each violation or group of violations. The total score is used in the “Potential for Harm” axis for the Penalty Factor in Tables 1 and 2. The maximum score is 10 and the minimum score is 0.

**STEP 2 - Assessments for Discharge Violations**

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

This step addresses per gallon and per day assessments for discharge violations. Generally, it is intended that effluent limit violations be addressed on a per day basis only. Where deemed appropriate, such as for a large scale spill or release, both per gallon and per day assessments may be considered.

***Per Gallon Assessments for Discharge Violations***

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 below to determine a Per Gallon Factor for the discharge. Except for certain high-volume discharges discussed below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of gallons subject to penalty multiplied by the maximum per gallon penalty amount allowed under the California Water Code.

**TABLE 1 - Per Gallon Factor for Discharges**

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

### ***High Volume Discharges***

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of \$2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of \$1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

### ***Per Day Assessments for Discharge Violations***

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such



as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385. Where there is a violation of the permit not related to a discharge incident, Step 3/Table 3 below should be used instead.

**TABLE 2 - Per Day Factor for Discharges**

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The categories for **Deviation from Requirement** in Table 2 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

The Water Boards shall apply the above per day factor to the maximum per day amounts allowed under statute for the violations involved. Where allowed by code, both the per gallon and the per day amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

**STEP 3 - Per Day Assessments for Non-Discharge Violations**

The Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. The Water Boards shall use the matrix set forth below to determine the initial liability factor for each violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. For multiple day violations, please refer to the Adjustment Factors in Step 4, below.

Table 3 shall be used to determine the initial penalty factor for a violation. The Water Boards should select a penalty factor from the range provided in the matrix cell that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories. The numbers in parenthesis in each cell of the matrix are the midpoints of the range.

**TABLE 3 - Per Day Factor**

Deviation from Requirement	Potential for Harm		
	Minor	Moderate	Major
Minor	0.1 (0.15)	0.2 (0.25)	0.3 (0.35)
	0.2	0.3	0.4
Moderate	0.2 (0.25)	0.3 (0.35)	0.4 (0.55)
	0.3	0.4	0.7
Major	0.3 (0.35)	0.4 (0.55)	0.7 (0.85)
	0.4	0.7	1

The categories for **Potential for Harm** in Table 3 are:

Minor – The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The categories for **Deviation from Requirement** in Table 3 are:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major. If a facility has a prepared a required plan or submitted the required monitoring report, but significant elements are omitted or missing, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing, the deviation would be minor.

## **STEP 4 – Adjustment Factors**

### ***Violator’s Conduct Factors***

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator’s culpability, the violator’s efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator’s compliance history. Not all factors will apply in every liability assessment.

<b>TABLE 4 – Violator’s Conduct Factors</b>	
<b>Factor</b>	<b>Adjustment</b>
Culpability	Discharger’s degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.  Adjustment should result in a multiplier between <b>0.5 to 1.5</b> , with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.
Cleanup and Cooperation	Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between <b>0.75 to 1.5</b> , with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.
History of Violations	Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of <b>1.1</b> should be used to reflect this.

After each of the above factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

### ***Multiple Violations Resulting From the Same Incident***

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations within the facility;
- b. A single operational upset where violations occur on multiple days;
- c. The violation continues for more than one day;

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

### ***Multiple Day Violations***

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

### **STEP 5 – Determination of Total Base Liability Amount**

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

## **STEP 6 – Ability to Pay and Ability to Continue in Business**

If the Water Boards have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The ability of a discharger to pay an ACL is determined by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring its operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, the amount of the assessment may be reduced on the grounds of ability to pay. For a violation addressed pursuant to California Water Code section 13385, the adjustment for ability to pay and ability to continue in business can not reduce the liability to less than the economic benefit amount.

If staff anticipates that the discharger's ability to pay or ability to continue in business will be a contested issue in the proceeding, staff should conduct a simple preliminary asset search prior to issuing the ACL complaint. Staff should submit a summary of the results (typically as a finding in the Complaint or as part of staff's initial transmittal of evidence to the discharger), in order to put some evidence about these factors into the record for the proceeding and to give the discharger an opportunity to submit additional financial evidence if it chooses. If staff does not put any financial evidence into the record initially and the discharger later contests the issue, staff may then either choose to rebut any financial evidence submitted by the discharger, or submit some financial evidence and provide an opportunity for the discharger to submit its own rebuttal evidence. In some cases, this may necessitate a continuance of the proceeding to provide the discharger with a reasonable opportunity to rebut the staff's evidence. As a general practice, in order to maintain the transparency and legitimacy of the Water Boards' enforcement programs, any financial evidence that the discharger chooses to submit in an enforcement proceeding will generally be treated as a public record.

## **STEP 7 – Other Factors As Justice May Require**

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. Examples of circumstances warranting an adjustment under this step are:

- a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.
- b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.
- c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy.

## **Costs of Investigation and Enforcement Adjustment**

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. These costs may include the cost of investigating the violation, preparing the enforcement action, participating in settlement negotiations, and putting on a hearing, including any expert witness expenses. Such costs are the total costs incurred by

the Water Boards enforcement or prosecution staff, including legal costs that are reasonably attributable to the enforcement action. Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and other indirect overhead costs.

### **STEP 8 – Economic Benefit**

The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as BMPs), or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- a. Determine those actions required to comply with a permit or order of the Water Boards, an enforcement order, or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent a violation of the Water Code. Needed actions may have been such things as capital improvements to the discharger's treatment system, implementation of adequate BMPs, or the introduction of procedures to improve management of the treatment system.
- b. Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.
- c. Estimate the type and cost of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- d. Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. This calculation should be done using the USEPA's BEN<sup>2</sup> computer program (the most recent

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<sup>2</sup> USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an  
(Continued)

version is accessible at <http://www.waterboards.ca.gov/plnspols/docs/wqplans/benmanual.pdf>) unless the Water Board determines, or the discharger demonstrates to the satisfaction of the Water Board, that, based on case-specific factors, an alternate method is more appropriate for a particular situation. However, in more complex cases, such as where the economic benefit may include revenues from continuing production when equipment used to treat discharges should have been shut down for repair or replacement, the total economic benefit should be determined by experts available from the Office of Research Planning and Performance or outside experts retained by the enforcement staff.

- e. Determine whether the discharger has gained any other economic benefits. These may include income from continuing production when equipment used to treat discharges should have been shut down for repair or replacement.

The Water Boards should not adjust the economic benefit for expenditures by the discharger to abate the effects of the unauthorized conduct or discharge, or the costs to come into or return to compliance. In fact, the costs of abatement may be a factor that demonstrates the economic extent of the harm from the violation and, therefore, may be a factor in upwardly adjusting any monetary liability as a benefit from noncompliance. The discharger's conduct relating to abatement is appropriately considered under "cleanup and cooperation" liability factor.

The Economic Benefit Amount should be compared to the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

### **STEP 9 – Maximum and Minimum Liability Amounts**

For all violations, the statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed, and shall be described in any ACL complaint and in any order imposing liability. Where the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum. In such cases, the reasons for assigning a liability amount below this minimum must be documented in the resolution adopting the ACL.

### **STEP 10 – Final Liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The administrative record must reflect how the Water Board arrived at the final liability amount. In particular, where adjustments are made to the initial amount proposed in the ACL complaint, the record should clearly reflect the Water Board's considerations, as the staff report or complaint may not reflect those considerations, or for any adjustments that are made at hearing

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average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

that are different from those recommended in the ACL complaint or that further support the final liability amount in the administrative civil liability order.

## **B. Settlement Considerations**

The liabilities resulting from the above methodology are for adoption by the Water Boards after formal administrative proceedings. The calculated liabilities may be adjusted as a result of settlement negotiations with a violator. It is not the goal of the Enforcement Policy to address the full range of considerations that should be entertained as part of a settlement. It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an administrative civil liability complaint or through pre-filing settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement of an administrative civil liability that seeks approval by a Water Board or its designated representative.

Factors that should not affect the amount of the calculated civil liability sought from a violator in settlement include, but are not limited to, the following:

1. A general desire to avoid hearing or minimize enforcement costs;
2. A belief that members of a Water Board will not support a proposed liability before that Water Board has considered the specific merits of the enforcement case or a similar case;
3. A desire to avoid controversial matters;
4. The fact that the initiation of the enforcement action is not as timely as it might have been under ideal circumstances (timeliness of the action as it affects the ability to present evidence or other timeliness considerations are properly considered); or
5. The fact that a water body affected by the violation is already polluted or impaired.

Except as specifically addressed in this Policy, nothing in this Policy is intended to limit the use of Government Code 11415.60

## **C. Other Administrative Civil Liability Settlement Components**

In addition to a reduction of administrative civil liabilities, a settlement can result in the permanent suspension of a portion of the liability in exchange for the performance of a Supplemental Environmental Project (see the State Water Board's Water Quality Control Policy on Supplemental Environmental Projects) or an Enhanced Compliance Action (see Section IX).

As far as the scope of the settlement is involved, the settlement resolves only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.



## VII. MANDATORY MINIMUM PENALTIES FOR NPDES VIOLATIONS

Mandatory penalty provisions are required by California Water Code section 13385, subdivisions (h) and (i) for specified violations of NPDES permits. For violations that are subject to mandatory minimum penalties, the Water Boards must assess an ACL for the mandatory minimum penalty or for a greater amount. California Water Code section 13385(h) requires that a mandatory minimum penalty of \$3,000 be assessed by the Regional Water Boards for each serious violation. A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more (see Appendices C and D), or a failure to file certain discharge monitoring reports for a complete period of 30 days (Wat. Code §§ 13385, subd. (h)(2), 13385.1.). Section VII.D. of this Policy addresses special circumstances related to discharge monitoring reports. Section VII.E. of this Policy addresses situations where the effluent limitation for a pollutant is less than or equal to the quantitation limit.

California Water Code section 13385(i) requires that a mandatory minimum penalty of \$3,000 be assessed by the Regional Water Boards for each non-serious violation, not counting the first three violations. A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:

- (a) violates a WDR effluent limitation;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) violates a whole effluent toxicity effluent limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.

### **A. Timeframe for Issuance of Mandatory Minimum Penalties (MMPs)**

The intent of these provisions of the California Water Code is to assist in bringing the State's permitted facilities into compliance with WDRs. The Water Boards should issue MMPs within eighteen months of the time that the violations qualify as mandatory minimum penalty violations. The Water Boards shall expedite MMP issuance if (a) the discharger qualifies as a small community with financial hardship, or (b) the total proposed mandatory penalty amount is \$30,000 or more. Where the NPDES Permit is being revoked or rescinded because the discharger will no longer be discharging under that permit, the Water Boards should ensure that all outstanding MMPs for that discharger are issued prior to termination of its permit to discharge.

### **B. MMPs for Small Communities**

Except as provided below, the Water Boards do not have discretion in assessing MMPs and must initiate enforcement against all entities that accrue a violation. However, California Water Code section 13385, subdivision (k), provides an alternative to assessing MMPs against a POTW that serves a small community. Under this alternative, the Regional Water Boards may allow the POTW to spend an amount equivalent to the MMP toward a compliance project that is designed to correct the violation.

A POTW serving a small community is a POTW serving a community that has a financial hardship and that:

1. Has a population of 10,000 or fewer people or
2. Lies completely within one or more rural counties.<sup>3</sup>

A POTW serving incorporated areas completely within one or more rural counties is considered a POTW serving a small community.

“Financial hardship” means that the community served by the POTW meets one of the following criteria:

- Median household income<sup>4</sup> for the community is less than 80 percent of the California median household income;
- The community has an unemployment rate<sup>5</sup> of 10 percent or greater; or
- Twenty percent of the population is below the poverty level.<sup>6</sup>

“Median household income,” “unemployment rate,” and “poverty level” of the population served by the POTW are based on the most recent U.S. Census block group<sup>7</sup> data or a local survey approved by the Regional Water Board in consultation with the State Water Board.

“Rural county” means a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine. The table below identifies qualified rural counties at the time this Policy was adopted. The list of qualified rural counties may change depending on reclassification by ERS, USDA. Consult the classification by ERS, USDA in effect at the time the enforcement action is taken.

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<sup>3</sup> The determination of the size of population served by the POTW and “rural county” status shall be made as of the time the penalty is assessed, not as of the time the underlying violations occurred.

<sup>4</sup> **Median household income**

The median income divides the income distribution into two equal groups, one having incomes above the median and the other having incomes below the median.

<sup>5</sup> **Unemployed**

All civilians, 16 years and older, are classified as unemployed if they (1) were neither "at work" nor "with a job but not at work" during the reference week, (2) were actively looking for work during the last 4 weeks, and (3) were available to accept a job. Also included as unemployed are civilians who (1) did not work at all during the reference week, (2) were waiting to be called back to a job from which they had been laid off, and (3) were available for work except for temporary illness.

<sup>6</sup> **Poverty**

Following the Office of Management and Budget's Directive 14, the Census Bureau uses a set of income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being "below the poverty level."

<sup>7</sup> **Block group**

A subdivision of a census tract (or, prior to 2000, a block numbering area). A block group is the smallest geographic unit for which the Census Bureau tabulates sample data. A block group consists of all the blocks within a census tract beginning with the same number. Example: block group 3 consists of all blocks within a 2000 census tract numbering from 3000 to 3999. In 1990, block group 3 consisted of all blocks numbered from 301 to 399Z.

Qualified Rural Counties		
Alpine	Inyo	Nevada
Amador	Lake	Plumas
Calaveras	Lassen	Sierra
Colusa	Mariposa	Siskiyou
Del Norte	Mendocino	Tehama
Glenn	Modoc	Trinity
Humboldt	Mono	Tuolumne
<i>Based on 2003 USDA Rural-Urban Continuum Codes for California</i>		

For purposes of California Water Code section 13385, subdivision (k)(2), the Regional Water Boards are hereby delegated the authority to determine whether a POTW, that depends primarily on residential fees (e.g., connection fees, monthly service fees) to fund its wastewater treatment facility (operations, maintenance, and capital improvements), is serving a small community, in accordance with the requirements set forth in this Policy.

The State Water Board will continue to make the determination of whether a POTW, that does not depend primarily on residential fees to fund its wastewater treatment facility, is serving a small community for purposes of California Water Code section 13385 (k)(2).

If a POTW believes that the U.S. Census data do not accurately represent the population served by the POTW or that additional factors such as low population density in its service area should be considered, the POTW may present an alternative justification to the State or Regional Water Board for designation as a “POTW serving a small community.” The justification must include a map of service area boundaries, a list of properties, the number of households, the number of people actually served by the POTW, and any additional information requested by the State or Regional Water Board. The Regional Water Board shall consult with the State Water Board when making a determination based upon these additional, site-specific considerations.

### **C. Single Operational Upset**

In accordance with California Water Code section 13385, subdivision (f)(2), for the purposes of MMPs only, a single operational upset that leads to simultaneous violations of one or more pollutant parameters over multiple days shall be treated as a single violation. The Regional Water Board shall apply the following US EPA Guidance in determining if a single operational upset occurred: “Issuance of Guidance Interpreting Single Operational Upset” Memorandum from the Associate Enforcement Counsel, Water Division, U.S.EPA, September 27, 1989 (excerpted below).

US EPA defines “single operational upset” as “an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one CWA effluent discharge pollutant parameter. Single operational upset does not include... noncompliance to the extent caused by improperly designed or inadequate treatment facilities”. The US EPA Guidance further defines an “exceptional” incident as a “non-routine malfunctioning of an otherwise generally compliant facility.” Single operational upsets include such things as an upset caused by a sudden violent storm, some other exceptional event, or a bursting tank. A single upset may result in violations of multiple pollutant parameters. The discharger has the burden of demonstrating that the violations were caused by a single operational upset. A finding that a single operational upset has occurred is not a defense to liability, but may affect the number of violations.

## **D. Defining a “Discharge Monitoring Report” in Special Circumstances Under California Water Code 13385.1**

Section 13385.1(a)(1) states “for the purposes of subdivision (h) of section 13385, a ‘serious violation’ also means a failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.”

The legislative history of section 13385.1 indicates that the Legislature enacted the statute primarily to ensure better reporting by dischargers who might otherwise avoid penalties for violations of their NPDES permits by failing to submit monitoring reports that could disclose permit violations.

Because penalties under section 13385.1 are assessed for each complete period of thirty days following the deadline for submitting a report, penalties may potentially accrue for an indefinite time period. Dischargers who fail to conduct their required monitoring cannot go back and recreate and submit the data for a prior monitoring period. In such a case, an MMP for a missing report will continue to be assessed and reassessed for each 30 day period following the deadline for submission until an Administrative Civil Liability Complaint for MMPs is issued. This Policy is designed to assist dischargers by stopping the accrual of penalties for late or missing reports under the special circumstances described below. Nevertheless, under these circumstances, the discharger has the burden of submitting the required documentation pursuant to this Policy.

The following subsections provide additional guidance on the definition of a “discharge monitoring report,” for the purposes of subdivision (a) of section 13385.1 only, in situations where: (1) there was a discharge to waters of the United States, but the discharger failed to conduct any monitoring during that monitoring period, or (2) there was no discharge to waters of the United States during the relevant monitoring period.

### ***1. Defining a “Discharge Monitoring Report” Where There Is a Discharge to Waters of the United States and the Discharger Fails to Conduct Any Monitoring During the Monitoring Period***

For purposes of section 13385.1, in circumstances where a discharge to waters of the United States did occur, but where the discharger failed to conduct any monitoring during the relevant monitoring period, a “discharge monitoring report” shall include a written statement to the Regional Water Board, signed under penalty of perjury in accordance with 40 CFR 122.41(k) and 40 CFR 122.22(a)(1), stating:

- a. That no monitoring was conducted during the relevant monitoring period;
- b. The reason(s) the required monitoring was not conducted; and
- c. If the written statement is submitted after the deadline for submitting the discharge monitoring report, the reason(s) the required discharge monitoring report was not submitted to the Regional Water Board by the requisite deadline.

Upon the request of the Regional Water Board, the discharger may be required to support the written statement with additional explanation or evidence. Requiring a discharger to state under penalty of perjury that it did not conduct monitoring for the required period ensures that the discharger is not conducting monitoring and withholding data indicating there are effluent

limitation violations. This approach may not be used if the discharger did conduct monitoring during the monitoring period that it is required to report to the Regional Water Board because the results of that monitoring, even if incomplete, must be submitted to the Regional Water Board. This approach is consistent with the original legislative purpose of section 13385.1.

The written statement shall be treated as a “discharge monitoring report” for purposes of section 13385.1(a). MMPs for late or missing discharge monitoring reports assessed for each 30 day period will cease accruing upon the date the written statement is received by the Regional Water Board. While the submission of the written statement provides a cut-off date for MMPs assessed under 13385.1, the Regional Water Board may impose additional discretionary administrative civil liabilities pursuant to section 13385(a)(3).

## ***2. Defining a “Discharge Monitoring Report” Where There Is No Discharge to Waters of the United States***

Some waste discharge requirements or associated monitoring and reporting programs for episodic or periodic discharges require the submission of either a discharge monitoring report, if there were discharges during the relevant monitoring period, or a report documenting that no discharge occurred, if there were no discharges.

A report whose submittal is required to document that no discharge to waters of the United States occurred during the relevant monitoring period is not a “discharge monitoring report” for purposes of section 13385.1(a). Under these circumstances, that report would not ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations, and therefore, the late submittal of such a report would be subject to discretionary civil liabilities, but would not be subject to MMPs.

As a matter of practice, however, if such a report has not been received, the Regional Water Board may presume that there were discharges during the relevant monitoring period and should consider imposing MMPs for the failure to timely submit a discharge monitoring report. The Regional Water Board shall not take final action to impose the MMP if the discharger submits a written statement to the Regional Water Board, signed under penalty of perjury in accordance with 40 CFR 122.41(k) and 40 CFR 122.22(a)(1), stating:

- a. That there were no discharges to waters of the United States during the relevant monitoring period; and
- b. The reason(s) the required report was not submitted to the Regional Water Board by the deadline.

Upon the request of the Regional Water Board, the discharger may be required to support the written statement with additional explanation or evidence. Requiring a discharger to state under penalty of perjury that it did not discharge during the relevant monitoring period ensures that a discharger is not discharging and conducting monitoring and then withholding data indicating there are effluent limitation violations.

If such a statement is submitted, discretionary administrative civil liabilities, which the Regional Water Boards may assess under section 13385(a)(3), will cease upon the date the written statement is received by the Regional Water Board.

## **E. Defining a “Serious Violation” in Situations Where the Effluent Limitation Is Less Than or Equal to the Quantitation Limit**

1. For discharges of pollutants subject to the State Water Board’s “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” or the “California Ocean Plan”, where the effluent limitation for a pollutant is lower than the applicable Minimum Level, any discharge that: (1) equals or exceeds the Minimum Level; and (2) exceeds the effluent limitation by 40 percent or more for a Group 1 pollutant or by 20 percent or more for a Group 2 pollutant, is a serious violation for the purposes of California Water Code section 13385(h)(2).

2. For discharges of pollutants that are not subject to the State Water Board’s “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” or the California Ocean Plan (e.g., pollutants that are not addressed by the applicable plan) where the effluent limitation for a pollutant is lower than the quantitation limit specified or authorized in the applicable waste discharge requirements or monitoring requirements, any discharge that: (1) equals or exceeds the quantitation limit; and (2) exceeds the effluent limitation by 40 percent or more for a Group 1 pollutant or by 20 percent or more for a Group 2 pollutant, is a serious violation for the purposes of California Water Code section 13385(h)(2).

## **VIII. COMPLIANCE PROJECTS (CPs)**

A Compliance Project (CP) is a project designed to address problems related to the violation and bring the discharger back into compliance in a timely manner. CPs shall only be considered where they are expressly authorized by statute. At the time of the development of this Policy, CPs are expressly authorized by statute only in connection with MMPs for small communities with a financial hardship. (Wat. Code, § 13385, subd. (k).) Unless expressly authorized by future legislation, CPs may not be considered in connection with other ACLs. Absent such statutory authorization, if the underlying problem that caused the violations addressed in the ACL has not been corrected, the appropriate manner for compelling compliance is through an enforcement order with injunctive terms such as a Cleanup and Abatement Order (CAO), Cease and Desist Order (CDO), or Time Schedule Order (TSO).

It is the policy of the State Water Board that the following conditions shall apply to CPs authorized under California Water Code section 13385, subdivision (k):

1. The amount of the penalty that is suspended shall not exceed the cost necessary to complete the CP;
2. The discharger must spend an amount of money on the CP that is equal to or greater than the amount of the penalty that is suspended. Grant funds may be used only for the portion of the cost of the CP that exceeds the amount of the penalty to be suspended;
3. Where implementation of the CP began prior to the assessment of an MMP, all or a portion of the penalty may be suspended under these conditions:
  - a. The cost of the CP yet to be expended is equal to or greater than the penalty that is suspended;
  - b. The problem causing the underlying violations will be corrected by the project;

- c. The underlying violations occurred during, or prior to the initiation of, project implementation;
  - d. The completion date of the project is specified by an enforcement order (a CDO, CAO, TSO, or ACL Order) adopted at or before the time the penalty is assessed; and
  - e. The deadline for completion of the project is within 5 years of the date of the assessment of the MMP.
4. CPs may include, but are not limited to:
- a. Constructing new facilities;
  - b. Upgrading or repairing existing facilities;
  - c. Conducting water quality investigations or monitoring;
  - d. Operating a cleanup system;
  - e. Adding staff;
  - f. Providing training;
  - g. Conducting studies; and
  - h. Developing operation, maintenance, or monitoring procedures.
5. CPs shall be designed to bring the discharger back into compliance in a five-year period and to prevent future noncompliance.
6. A CP is a project that the discharger is otherwise obligated to perform, independent of the ACL.
7. CPs must have clearly identified project goals, costs, milestones, and completion dates and these must be specified in an enforceable order (ACL Order, CDO, CAO, or TSO).
8. CPs that will last longer than one year must have quarterly reporting requirements.
9. Upon completion of a CP, the discharger must submit a final report declaring such completion and detailing fund expenditures and goals achieved.
10. If the discharger completes the CP to the satisfaction of the Water Board by the specified date, the suspended penalty amount is dismissed.
11. If the CP is not completed to the satisfaction of the Water Board on the specified date the amount suspended becomes due and payable to the State Water Pollution Cleanup and Abatement Account (CAA) or other fund or account as authorized by statute.
12. The ACL complaint or order must clearly state that payment of the previously suspended amount does not relieve the discharger of its independent obligation to take necessary actions to achieve compliance.

## **IX. ENHANCED COMPLIANCE ACTIONS (ECAs)**

Enhanced Compliance Actions (ECAs) are projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. The Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary ACL for completion of an ECA. Except as specifically provided below, any such settlement is subject to the rules that apply to Supplemental Environmental Projects.

For these ECAs the Water Boards shall require the following:

1. ECAs must have clearly identified project goals, costs, milestones, and completion dates and these must be specified in the ACL order.
2. ECAs that will last longer than one year must have at least quarterly reporting requirements.
3. Upon completion of an ECA, the discharger must submit a final report declaring such completion and detailing fund expenditures and goals achieved.
4. If the discharger completes the ECA to the satisfaction of the Water Board by the specified date, the suspended amount is dismissed.
5. If the ECA is not completed to the satisfaction of the Water Board on the specified date the amount suspended becomes due and payable to the CAA or other fund or account as authorized by statute.
6. The ACL complaint or order must clearly state that payment of the previously suspended amount does not relieve the discharger of its independent obligation to take necessary actions to achieve compliance.

If an ECA is utilized as part of a settlement of an enforcement action against a discharger, the monetary liability that is not suspended shall be no less than the amount of the economic benefit that the discharger received from its unauthorized activity, plus an additional amount that is generally consistent with the factors for monetary liability assessment to deter future violations.

## **X. DISCHARGER VIOLATION REPORTING**

For permitted discharges, all violations must be reported in self-monitoring reports in a form acceptable to the Regional Water Board. Voluntary disclosure of violations that are not otherwise required to be reported to the Water Boards shall be considered by the Water Boards when determining the appropriate enforcement response.

Falsification or misrepresentation of such voluntary disclosures shall be brought to the attention of the appropriate Regional Water Board for possible enforcement action.



## **XI. VIOLATION AND ENFORCEMENT DATA**

The Water Boards will ensure that all violations and enforcement actions are documented in the appropriate Water Board data management system. Sufficient information will be collected and maintained regarding regulated facilities and sites to allow preparation of internal and external reporting of violation and enforcement information, and development and reporting of performance measures regarding the Water Boards' enforcement activities. To ensure timely collection of this information, all violations will be entered within 10 days of discovery of the violation, and all enforcement actions will be entered within 20 days of the date of the enforcement action.

## **XII. ENFORCEMENT REPORTING**

In order to inform the public of State and Regional Water Boards' performance with regard to enforcement activities, there are a number of legislatively mandated and elective reports the Water Boards are committed to producing on a regular basis. See Appendix B for additional information on these reports.

## **XIII. POLICY REVIEW AND REVISION**

It is the intent of the State Water Board that this Policy be reviewed and revised, as appropriate, at least every five years. Nothing in this Policy is intended to preclude revisions, as appropriate, on an earlier basis.

## **APPENDIX A: ENFORCEMENT ACTIONS**

### **A. Standard Language**

In order to provide a consistent approach to enforcement throughout the State, enforcement orders shall be standardized to the extent appropriate. The State Water Board will create model enforcement orders containing standardized provisions for use by the Regional Water Boards. Regional Water Boards shall use the models, modifying terms and conditions only as appropriate to fit the specific circumstances related to a discharge and to be consistent with Regional Water Board plans and policies.

### **B. Informal Enforcement Actions**

An informal enforcement action is any enforcement action taken by Water Board staff that is not defined in statute or regulation. Informal enforcement action can include any form of communication (oral, written, or electronic) between Water Board staff and a discharger concerning an actual, threatened, or potential violation. Informal enforcement actions cannot be petitioned to the State Water Board.

The purpose of an informal enforcement action is to quickly bring an actual, threatened, or potential violation to the discharger's attention and to give the discharger an opportunity to return to compliance as soon as possible. The Water Board may take formal enforcement action in place of, or in addition to, informal enforcement actions. Continued noncompliance, particularly after informal actions have been unsuccessful, will result in the classification of the next violation as either class I priority or a class II violation.

#### ***1. Oral and Written Contacts***

For many violations, the first step is an oral contact. This involves contacting the discharger by phone or in person and informing the discharger of the specific violations, discussing how and why the violations have occurred or may occur, and discussing how and when the discharger will correct the violation and achieve compliance. Staff must document such conversations in the facility case file and in the enforcement database.

A letter or email is often appropriate as a follow-up to, or in lieu of, an oral contact. Letters or emails, signed by staff or by the appropriate senior staff, should inform the discharger of the specific violations and, if known to staff, discuss how and why the violations have occurred or may occur. This letter or email should ask how and when the discharger will correct the violation and achieve compliance. The letter or email should require a prompt response and a certification from the discharger that the violation(s) has been corrected. In many cases, an email response may not be sufficient and a formal written response will be required. Correction of the violation by the discharger shall be recorded in the enforcement database.

Oral enforcement actions and enforcement letters or emails shall not include language excusing the violation or modifying a compliance date in waste discharge requirements (WDRs) or other orders issued by the Water Boards.

## **2. Notices of Violation (NOV)**

The NOV letter is the most significant level of informal enforcement action and should be used only where a violation has actually occurred. An NOV must be signed by the appropriate staff and mailed to the discharger(s) by certified mail. In cases where the discharger has requested that its consultant be notified of Regional Water Board actions, the consultant should also receive a copy of the NOV. The NOV letter shall include a description of specific violation, a summary of potential enforcement options available to address noncompliance (including potential ACL assessments), and a request for a certified, written response by a specified date that either confirms the correction of the violation or identifies a date by which the violation will be corrected. The NOV can be combined with a request for technical information pursuant to California Water Code section 13267. The summary of potential enforcement options must include appropriate citations to the California Water Code and must specify that the Regional Water Board reserves the right to take any enforcement action authorized by law. When combining NOV's and CWC section 13267 requests, it should be noted that only requests made pursuant to section 13267 are petitionable to the State Water Board.

## **C. Formal Enforcement Actions**

Formal enforcement actions are statutorily based actions to address a violation or threatened violation of water quality laws, regulations, policies, plans, or orders. The actions listed below present options available for enforcement.

### **1. Notices to Comply**

Water Code section 13399 *et seq.* deals with statutorily defined "minor" violations. When dealing with such a "minor" violation, a Notice to Comply is generally the only means by which the State Water Board or Regional Water Board can commence an enforcement action. Because these "minor" violations are statutorily defined, they do not directly correlate with the classification system defined in Section II of this Policy. Typically, however, "minor" violations may be considered equivalent to Class III violations.

A violation is determined to be "minor" by the State Water Board or the Regional Water Board after considering factors defined in California Water Code section 13399, subdivisions (e) and (f), and the danger the violation poses to, or the potential that the violation presents for endangering human health, safety, welfare, or the environment.

- a. Under most circumstances the violations listed below are considered to be "minor" violations:
  - (1) Inadvertent omissions or deficiencies in recordkeeping that do not prevent a Water Board from determining whether compliance is taking place.
  - (2) Records (including WDRs) not being physically available at the time of the inspection, provided the records do exist and can be produced in a reasonable time.
  - (3) Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.
  - (4) Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, that there is no significant threat to human health, safety, welfare, or the environment.

- b. A violation is not considered “minor” if it is a class I priority violation as described in Section II of this Policy or includes any of the following:
  - (1) Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the California Water Code.
  - (2) Any violation that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining an unfair competitive advantage.
  - (3) Chronic violations or violations committed by a recalcitrant violator.
  - (4) Violations that cannot be corrected within 30 days.

## ***2. Notices of Stormwater Noncompliance***

The Stormwater Enforcement Act of 1998 (Wat. Code, § 13399.25 et seq.) requires that each Regional Water Board provide a notice of noncompliance to any stormwater dischargers who have failed to file a notice of intent to obtain coverage, a notice of non-applicability, a construction certification, or annual reports. If, after two notices, the discharger fails to file the applicable document, the Regional Water Board shall issue a complaint for administrative civil liability against the discharger. Alternatively, the Water Boards may enforce most of these violations under Water Code section 13385.

## ***3. Technical Reports and Investigations***

California Water Code sections 13267, subdivision (b), and 13383 allow the Water Boards to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste in accordance with the conditions in the section. When requiring reports pursuant to Water Code section 13267, subdivision (b), the Water Board must ensure that the burden, including costs of the reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from them. Further, the Water Board shall provide a written explanation with regard to the need for the reports and identify the evidence that supports requiring them.

Failure to comply with requirements made pursuant to California Water Code section 13267, subdivision (b), may result in administrative civil liability pursuant to California Water Code section 13268. Failure to comply with orders made pursuant to California Water Code section 13383 may result in administrative civil liability pursuant to California Water Code section 13385. Sections 13267, subdivision (b) and 13383 requirements are enforceable when signed by the Executive Officer or Executive Director of the Water Boards or their delegates.

## ***4. Cleanup and Abatement Orders (CAOs)***

Cleanup and Abatement Orders (CAOs) are adopted pursuant to California Water Code section 13304. CAOs may be issued to any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance (discharger). The CAO requires the discharger to clean up the waste or abate the effects of the waste, or both, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

Regional Water Boards shall comply with State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304," in issuing CAOs. CAOs shall require dischargers to clean up the pollution to background levels or the best water quality that is reasonable if background levels of water quality cannot be restored in accordance with Resolution No. 92-49. At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the Regional Water Board allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO shall require the discharger(s) to abate the effects of the discharge.

Violations of CAOs should trigger further enforcement in the form of an ACL, a TSO under California Water Code section 13308, or a referral to the Attorney General for injunctive relief or monetary remedies.

#### **5. Section 13300 Time Schedule Orders (TSOs)**

Pursuant to California Water Code section 13300, a Regional Water Board can require the discharger to submit a time schedule that sets forth the actions the discharger will take to address actual or threatened discharges of waste in violation of requirements. Typically, those schedules, after any appropriate adjustments by the Regional Water Board, are then memorialized in an order. TSOs that require submission of technical and monitoring reports should state that the reports are required pursuant to California Water Code section 13267.

#### **6. Section 13308 Time Schedule Orders (13308 TSOs)**

California Water Code section 13308 authorizes the Regional Water Board to issue a Section 13308 Time Schedule Order (13308 TSO) that prescribes, in advance, a civil penalty if compliance is not achieved in accordance with the time schedule. The Regional Water Board may issue a 13308 TSO if there is a threatened or continuing violation of a cleanup and abatement order, cease and desist order, or any requirement issued under California Water Code sections 13267 or 13383. The penalty must be set based on an amount reasonably necessary to achieve compliance and may not contain any amount intended to punish or redress previous violations. The 13308 TSO provides the Regional Water Boards with their primary mechanism for motivating compliance, and if necessary, assessing monetary penalties against federal facilities. Orders under this section are an important tool for regulating federal facilities.

If the discharger fails to comply with the 13308 TSO, the discharger is subject to a complaint for Administrative Civil Liability. The State Water Board may issue a 13308 TSO if the violation or threatened violation involves requirements prescribed by a State Water Board Order.

#### **7. Cease and Desist Orders (CDOs)**

Cease and Desist Orders (CDOs) are adopted pursuant to California Water Code sections 13301 and 13303. CDOs may be issued to dischargers violating or threatening to violate WDRs or prohibitions prescribed by the Regional Water Board or the State Water Board.

Section 4477 of the California Government Code prohibits all state agencies from entering into contracts of \$5,000 or more for the purchase of supplies, equipment, or services from any nongovernmental entity who is the subject of a CDO that is no longer under review and that was issued for violation of WDRs or which has been finally determined to be in violation of federal laws relating to air or water pollution. If the CDO contains a time schedule for compliance and

the entity is adhering to the time schedule, the entity is not subject to disqualification under this section. A list of such entities is maintained by the State Water Board.

CDOs shall contain language describing likely enforcement options available in the event of noncompliance and shall specify that the Regional Water Board reserves its right to take any further enforcement action authorized by law. Such language shall include appropriate California Water Code citations. Violations of CDOs should trigger further enforcement in the form of an ACL, 13308 TSO, or referral to the Attorney General for injunctive relief or monetary remedies.

### ***8. Modification or Rescission of Waste Discharge Requirements (WDRs)***

In accordance with the provisions of the California Water Code, a Regional Water Board may modify or rescind WDRs in response to violations. Depending on the circumstances of the case, rescission of WDRs may be appropriate for failure to pay fees, penalties, or liabilities; a discharge that adversely affects beneficial uses of the waters of the State; and violation of the State Water Board General WDRs for discharge of bio-solids due to violation of the Background Cumulative Adjusted Loading Rate. Rescission of WDRs generally is not an appropriate enforcement response where the discharger is unable to prevent the discharge, as in the case of a POTW.

### ***9. Administrative Civil Liabilities (ACLs)***

Administrative Civil Liabilities (ACLs) are liabilities imposed by a Regional Water Board or the State Water Board. The California Water Code authorizes the imposition of an ACL for certain violations of law. The factors used to assess the appropriate penalties are addressed in Section VI.

In addition to those specific factors that must be considered in any ACL action, there is another factor that ought to be considered. When the underlying problem that caused the violation(s) has not been corrected, the Water Board should evaluate whether the liability proposed in the ACL complaint is sufficient to encourage necessary work by the discharger to address problems related to the violation. If not, the Water Board should consider other options. An ACL action may be combined with another enforcement mechanism such as a CAO, a CDO, or other order with a time schedule for obtaining compliance. The appropriate orders to bring a discharger into compliance via an enforcement action will vary with the circumstances faced by the Water Boards.

It is the policy of the State Water Board that a 30 day public comment period shall be posted on the Board's website prior to the settlement or imposition of any ACL, including mandatory minimum penalties, and prior to settlement of any judicial civil liabilities. In addition, for civil liabilities that are expected to generate significant public interest, the Board may consider mailing or e-mailing the notice to known interested parties, or publishing the notice in a local newspaper. The notice should include a brief description of the alleged violations, the proposed civil liability, the deadline for comments, the date of any scheduled hearing, a process for obtaining additional information, and a statement that the amount of the civil liability may be revised. Only one notice need be posted for each civil liability.

Upon receipt of an ACL Complaint, the discharger(s) may waive its right to a public hearing and pay the liability; negotiate a settlement; or appear at a Board hearing to dispute the Complaint. If the discharger waives its right to a public hearing and pays the liability, a third party may still comment on the Complaint at any time during the public comment period. Following review of the comments, the Executive Officer or his or her delegate may withdraw the ACL Complaint. An ACL Complaint may be redrafted and reissued as appropriate.

## **D. Petitions of Enforcement Actions**

Persons affected by most formal enforcement actions or failures to act by Regional Water Boards may file petitions with the State Water Board for review of such actions or failures to act. The petition must be received by the State Water Board within 30 days of the Regional Water Board action. A petition on the Regional Water Board's failure to act must be filed within 30 days of either the date the Regional Water Board refuses to act or a date that is 60 days after a request to take action has been made to the Regional Water Board. Actions taken by the Executive Officer of the Regional Water Board, if pursuant to authority delegated by the Regional Water Board (e.g., CAOs, ACL orders), are considered final actions by the Regional Water Board and are also subject to the 30-day time limit. In addition, significant enforcement actions by a Regional Water Board Executive Officer may, in some circumstances, be reviewed by the Regional Water Board at the request of the discharger, though such review does not extend the time to petition the State Water Board. The State Water Board may, at any time and on its own motion, review most actions or failures to act by a Regional Water Board. When a petition is filed with the State Water Board challenging an ACL assessment, the assessment is not due or owing during the State Water Board review of the petition. In all other cases, the filing of a petition does not stay the obligation to comply with the Regional Water Board order.

## APPENDIX B: ENFORCEMENT REPORTING

In order to inform the public of State and Regional Water Boards performance with regard to enforcement activities, there are a number of legislatively mandated and elective reports the Water Boards are committed to producing on a regular basis.

### A. Legislatively Mandated Enforcement Reporting

The following list summarizes legislatively mandated enforcement reporting requirements and State Water Board interpretations thereof:

- Section 13225, subdivision (e) - requires each Regional Water Board to report rates of compliance for regulated facilities. In accordance with the "Implementation Plan Regarding Information Reporting Requirements for Regional Board Enforcement Outputs" (January, 2008) compliance rates will be reported in the Annual Enforcement Report.
- Section 13225, subdivision (k) - requires each Regional Water Board, in consultation with the State Water Board, to identify and post on the Internet a summary list of all enforcement actions undertaken in that regional and the disposition of each action, including any civil penalty assessed. This list must be updated at least quarterly.
- Section 13225, subdivision (k) and Section 13225, subdivision (e) – In accordance with the "Implementation Plan Regarding Information Reporting Requirements for Regional Board Enforcement Outputs" (January, 2008) each Regional Water Board must post the information required by these sections on its website as a single table and update it quarterly.
- Section 13323, subdivision (e) requires information related to hearing waivers and the imposition of administrative civil liability, as proposed and as finally imposed, to be posted on the Internet.
- Section 13385, subdivision (o) – requires the State Water Board to continuously report and update information on its website, but at a minimum, annually on or before January 1, regarding its enforcement activities. The required information includes all of the following:
  - A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations;
  - A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions; and
  - An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.
- Government Code Section 65962.5, subdivision (c) – requires that the State Water Board annually compile and submit to Cal/EPA a list of:
  - All underground storage tanks for which an unauthorized release report is filed pursuant to Health and Safety Code Section 25295.
  - All solid waste disposal facilities from which there is a migration of hazardous waste and for which a Regional Water Board has notified the Department of



Toxic Substances Control pursuant to subdivision (e) of California Water Code section 13273.

- All CDOs issued after January 1, 1986, pursuant to California Water Code Section 13301, and all CAOs issued after January 1, 1986, pursuant to California Water Code section 13304, which concern the discharge of wastes that are hazardous materials.

## **B. Elective Enforcement Reporting**

To present a more comprehensive view of the Water Boards' enforcement activities and to identify enforcement goals and priorities, the Water Boards will prepare an annual integrated water quality enforcement report that will, at a minimum, address the following subjects:

- Budgetary and staff resources available for water quality enforcement at the Water Boards, as compared with the total resources for the regulatory programs and activities that they support, and the types of enforcement actions taken with those enforcement resources during the reporting period.
- All enforcement information required by statute to be reported to the public every year.
- The effectiveness of the Water Boards' compliance and enforcement functions using metrics such as those identified in the Annual Enforcement Report (to the extent that the information is available in the Water Boards' data base system), below.

## Recommended Performance Measures For Water Boards' Enforcement Programs

Measure Name	Measure Description
Self-Monitoring Report Evaluation	Number of self-monitoring reports due, received, and reviewed and percentage of reports reviewed
Inspection Monitoring	Number of inspections and the percentage of facilities inspected
Compliance Rates	Percentage of facilities in compliance, based upon the number of facilities evaluated
Enforcement Response	Percentage of facilities in violation that received an enforcement action requiring compliance
Enforcement Activities	Number and type of enforcement actions
Penalties Assessed and Collected	The amount of penalties assessed and collected, SEPs approved, and injunctive relief
MMP Violations Addressed	Number of facilities with MMP violations receiving a penalty at or above the minimum penalty assessed
Recidivism	Number and percentage of facilities returning to non-compliance for the same violation(s) addressed through an enforcement action
Environmental Benefits <i>(as a result of an enforcement action)</i>	Estimated pounds of pollutants reduced/removed through cleanup (soil or water), and wetlands/stream/beach/creek/river miles protected/restored (acres, miles, etc.)

*From FY 2007-2008 Annual Enforcement Report*

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/annual\\_enf\\_rpt\\_032609.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/annual_enf_rpt_032609.pdf)

- Proposed enforcement priorities for the State Water Boards for the next reporting period and staff's basis for these proposals.
- The extent of progress on enforcement priorities identified in prior Annual Enforcement Reports.
- Recommendations for improvements to the Water Boards' enforcement capabilities, including additional performance metrics, and an evaluation of efforts to address prior staff recommendations for enforcement improvements.

## APPENDIX C: GROUP 1 POLLUTANTS

This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations.

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### Oxygen Demand

Biochemical Oxygen Demand (BOD)  
Chemical Oxygen Demand (COD)  
Total Oxygen Demands  
Total Organic Carbon  
Other\*

### Solids

Total Dissolved Solids (TDS)  
Total Suspended Solids (TSS)  
Other\*

### Nutrients

Inorganic Phosphorous Compounds  
Inorganic Nitrogen Compounds  
Other\*

### Detergents and Oils

Methylene Blue Active Substances  
Nitrilotriacetic Acid  
Oil and Grease  
Other Detergents or Algicides\*

### Minerals

Calcium  
Chloride  
Fluoride  
Magnesium  
Sodium  
Potassium  
Sulfur  
Sulfate  
Total Alkalinity  
Total Hardness  
Other Minerals\*

### Metals

Aluminum  
Cobalt  
Iron  
Vanadium

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\* The following list of pollutants is hereby included as Group 1 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

5-DAY SUM OF WLA VALUES	ALUMINUM, IONIC
5-DAY SUM OF BOD5 DISCHARGED	ALUMINUM, POTENTIALLY DISSOLVD
7-DAY SUM OF WLA VALUES	ALUMINUM SULFATE
7-DAY SUM OF BOD5 DISCHARGED	ALUMINUM, TOTAL RECOVERABLE
ACIDITY	ALUMINUM, TOTAL
ACIDITY, CO2 PHENOL (AS CaCO3)	ALUMINUM, TOTAL (AS AL)
ACIDITY-MINRL METHYL ORANGE (AS CaCO3)	AMMONIA & AMMONIUM-TOTAL
ACIDITY, TOTAL (AS CaCO3)	AMMONIA (AS N) + UNIONIZED AMMONIA
ALGICIDES, GENERAL	AMMONIA, UNIONIZED
ALKALINITY, BICARBONATE (AS CaCO3)	AVG. OF 7-DAY SUM OF BOD5 VALUES
ALKALINITY, CARBONATE (AS CaCO3)	BARIUM, SLUDGE, TOT, DRY WEIGHT (AS BA)
ALKALINITY, PHENOL-PHTHALINE METHOD	BICARBONATE ION-(AS HCO3)
ALKALINITY, TOTAL (AS CaCO3)	BIOCHEMICAL OXYGEN DEMAND-5
ALUMINUM	BIOCIDES
ALUMINUM, ACID SOLUABLE	BOD % OVER INFLUENT
ALUMINUM CHLORIDE, DISSOLVED, WATER	BOD (ULT. 1ST STAGE)
ALUMINUM, DISSOLVED (AS AL)	BOD (ULT. 2ND STAGE)

BOD (ULT. ALL STAGES)  
BOD, 5-DAY (20 DEG. C)  
BOD, 5-DAY 20 DEG C PER CFS OF  
STREAMFLW  
BOD, 5-DAY DISSOLVED  
BOD, 5-DAY PERCENT REMOVAL  
BOD, 5-DAY (20 DEG. C) PER PRODUCTION  
BOD, 11-DAY (20 DEG. C)  
BOD, 20-DAY (20 DEG. C)  
BOD, 20-DAY, PERCENT REMOVAL  
BOD 35-DAY (20 DEG. C)  
BOD, CARB-5 DAY, 20 DEG C, PERCENT  
REMLV  
BOD, CARBONACEOUS 5 DAY, 5C  
BOD, CARBONACEOUS (5-DAY, 20 DEG C)  
BOD, CARBONACEOUS 05 DAY, 20C  
BOD, CARBONACEOUS 20 DAY, 20C  
BOD CARBONACEOUS, 25-DAY (20 DEG. C)  
BOD, CARBONACEOUS, 28-DAY (20 DEG. C)  
BOD, CARBONACEOUS, PERCENT  
REMOVAL  
BOD, FILTERED, 5 DAY, 20 DEG C  
BOD, MASS, TIMES FLOW PROP.  
MULTIPLIER  
BOD, NITROG INHIB 5-DAY (20 DEG. C)  
BOD, PERCENT REMOVAL (TOTAL)  
BOD-5 LB/CU FT PROCESS  
BORIC ACID  
BORON, DISSOLVED (AS B)  
BORON, SLUDGE, TOTAL DRY WEIGHT (AS  
B)  
BORON, TOTAL  
BORON, TOTAL (AS B)  
BORON, TOTAL RECOVERABLE  
BROMIDE (AS BR)  
BROMINE REPORTED AS THE ELEMENT  
CALCIUM IN BOTTOM DEPOSITS  
CALCIUM, DISSOLVED (AS CA)  
CALCIUM, PCT EXCHANGE  
CALCIUM, PCT IN WATER, (PCT)  
CALCIUM, TOTAL RECOVERABLE  
CARBON DIOXIDE (AS CO2)  
CARBON, TOTAL (AS C)  
CARBON, TOTAL INORGANIC (AS C)  
CARBON, TOT ORGANIC (TOC)  
CARBON, TOT ORGANIC (TOC) PER 1000  
GALS.  
CARBONACEOUS BOD, 5 DAY, 20 DEG C  
FILTRD  
CARBONACEOUS OXYGEN DEMAND, %  
REMOVAL  
CARBONATE ION- (AS CO3)  
CBOD5 / NH3-N  
CHEM. OXYGEN DEMAND (COD) %  
REMOVAL

CHEM. OXYGEN DEMAND PER  
PRODUCTION  
CHEMICAL OXYGEN DEMAND (COD)  
CHEMICAL OXYGEN DEMAND, SOLUBLE  
CHLORIDE  
CHLORIDE (AS CL)  
CHLORIDE, DISSOLVED (AS CL)  
CHLORIDE, DISSOLVED IN WATER  
CHLORIDE, PERCENT REMOVAL  
CHLORIDE, PER CFS OF STREAMFLOW  
CHLORIDE, SLUDGE, TOTAL DRY WEIGHT  
CHLORIDES & SULFATES  
CHLORINE DEMAND, 1 HR  
CHLORITE  
COBALT, DISSOLVED (AS CO)  
COBALT, TOTAL (AS CO)  
COBALT, TOTAL RECOVERABLE (AS CO)  
COPPER, SLUDGE, TOT, DRY WEIGHT (AS  
CU)  
DIGESTER SOLIDS CONTENT, PERCENT  
DITHIOCARBAMATE, RPTD AS  
DITHIOCARBONATE  
DRILLED SOLIDS IN DRILLING FLUIDS  
ENDRIN KETONE, IN WATER  
FERROCHROME LIGNO-SULFONATED  
FRWTR MUD  
FERROCYANIDE  
FERROUS SULFATE  
FIRST STAGE OXYGEN DEMAND, %  
REMOVAL  
FLUORIDE-FREE  
FLUORIDE, DISSOLVED (AS F)  
FLUORIDE, TOTAL (AS F)  
FLUOROBORATES  
FREE ACID, TOTAL  
HARDNESS, TOTAL (AS CACO3)  
HYDROCHLORIC ACID  
HYDROGEN PEROXIDE  
HYDROGEN PEROXIDE (T) DILUTION RATIO  
HYDROGEN SULFIDE  
HYDROGEN SULFIDE UNIONIZED  
IODIDE (AS I)  
IRON  
IRON AND MANGANESE-SOLUBLE  
IRON AND MANGANESE-TOTAL  
IRON, DISSOLVED (AS FE)  
IRON, DISSOLVED FROM DRY DEPOSITION  
IRON, FERROUS  
IRON, POTENTIALLY DISSOLVED  
IRON, SLUDGE, TOTAL, DRY WEIGHT (AS  
FE)  
IRON, SUSPENDED  
IRON, TOTAL (AS FE)  
IRON, TOTAL PER BATCH  
IRON, TOTAL PERCENT REMOVAL  
IRON, TOTAL PER PRODUCTION

LIGHTLY TREATED LIG-NOSULFONATED MUD	NITROGEN, TOTAL AS NO <sub>3</sub> + NH <sub>3</sub>
LITHIUM, DISSOLVED (AS LI)	NITROGEN, TOTAL KJELDAHL, % REMOVAL
LITHIUM, TOTAL (AS LI)	NITROGEN, INORGANIC TOTAL
MACROINVERTEBRATE ASSESSMENT	NITROGEN, OXIDIZED
MAGNESIUM, DISSOLVED (AS MG)	NITROGEN-NITRATE IN WATER, (PCT)
MAGNESIUM, IN BOTTOM DEPOSITS	NITROGEN-NITRITE IN WATER, (PCT)
MAGNESIUM, PCT EXCHANGE	NITROGENOUS OXYGEN DEMAND, % REMOVAL
MAGNESIUM, TOTAL RECOVERABLE	NITROGENOUS OXYGEN DEMAND (20-DAY, 20C)
MANGANESE IN BOTTOM DEPOSITS (DRY WGT)	NON-IONIC DISPERSANT (NALSPERSE 7348)
MANGANESE, POTENTIALLY DISSOLVED	NON-NITROGENOUS BOD
MANGANESE, DISSOLVED (AS MN)	OIL & GREASE
MANGANESE, SUSPENDED	OIL & GREASE AROMATIC
MANGANESE, TOTAL	OIL & GREASE, HEXANE EXTR METHOD
MANGANESE, TOTAL (AS MN)	OIL & GREASE (FREON EXTR.-IR METH)
MANGANESE, TOTAL RECOVERABLE	TOT, RC
METHYLENE BLUE ACTIVE SUBSTANCES	OIL & GREASE, NON POLAR MATERIAL
MICROSCOPIC ANALYSIS	OIL & GREASE % REMOVAL
MOLYBDENUM, DRY WEIGHT	OIL & GREASE PER CFS OF STREAMFLW
MONOBORO CHLORATE	OIL & GREASE, PER 1000 GALLONS
NICKEL, DRY WEIGHT	OIL & GREASE PER PRODUCTION
NITRILOTRIACETIC ACID (NTA)	OIL & GREASE (POLAR)
NITRITE NITROGEN, DISSOLVED (AS N)	OIL & GREASE (SOXHLET EXTR.) TOT.
NITRITE PLUS NITRATE DISSOLVED 1 DET.	OIL & GREASE VISUAL
NITRITE PLUS NITRATE IN BOTTOM DEPOSITS	OXYGEN DEMAND, CHEM. (COD), DISSOLVED
NITRITE PLUS NITRATE TOTAL 1 DET. (AS N)	OXYGEN DEMAND, CHEM. (HIGH LEVEL) (COD)
NITROGEN (AS NO <sub>3</sub> ) SLUDGE SOLID	OXYGEN DEMAND, CHEM. (LOW LEVEL) (COD)
NITROGEN OXIDES (AS N)	OXYGEN DEMAND, DISSOLVED
NITROGEN SLUDGE SOLID	OXYGEN DEMAND FIRST STAGE
NITROGEN SLUDGE TOTAL	OXYGEN DEMAND, NITROGENOUS, ULTIMAT
NITROGEN, AMMONIA DISSOLVED	OXYGEN DEMAND, SUM PRODUCT
NITROGEN, AMMONIA IN BOTTOM DEPOSITS	OXYGEN DEMAND, TOTAL
NITROGEN, AMMONIA, PERCENT REMOVAL	OXYGEN DEMAND, TOTAL (TOD)
NITROGEN, AMMONIA PER CFS OF STREAMFLW	OXYGEN DEMAND, ULT. CARBONACEOUS (UCOD)
NITROGEN, AMMONIA TOTAL (AS N)	OXYGEN DEMAND, ULT., PERCENT REMOVAL
NITROGEN, AMMONIA TOTAL (AS NH <sub>4</sub> )	OXYGEN DEMAND, ULTIMATE
NITROGEN, AMMONIA, SLUDGE, TOT DRY WGT	OZONE
NITROGEN, AMMONIA, TOT UNIONIZED (AS N)	OZONE-RESIDUAL
NITROGEN, DISSOLVED	PENTACHLOROPHENOL, REMOVAL EFFICIENCY
NITROGEN, KJELDAHL DISSOLVED (AS N)	PHOSPHATE TOTAL SOLUBLE
NITROGEN, KJELDAHL TOTAL	PHOSPHATE, DISSOLVED COLOR METHOD (AS P)
NITROGEN, KJELDAHL TOTAL (AS N)	PHOSPHATE,
NITROGEN, NITRATE DISSOLVED	DISSOLVED/ORTHOPHOSPHATE(AS P)
NITROGEN, NITRATE TOTAL	PHOSPHATE, ORTHO (AS P)
NITROGEN, NITRATE TOTAL (AS N)	PHOSPHATE, ORTHO (AS PO <sub>4</sub> )
NITROGEN, NITRATE TOTAL (AS NO <sub>3</sub> )	PHOSPHATE, POLY (AS PO <sub>4</sub> )
NITROGEN, NITRITE TOTAL (AS N)	PHOSPHATE, TOTAL (AS PO <sub>4</sub> )
NITROGEN, NITRITE TOTAL (AS NO <sub>2</sub> )	
NITROGEN, ORGANIC TOTAL (AS N)	
NITROGEN, SLUDGE, TOT, DRY WT. (AS N)	

PHOSPHATE, TOTAL COLOR. METHOD (AS P)  
PHOSPHORUS, DISSOLVED  
PHOSPHORUS, DISSOLVED REACTIVE (DRP AS P)  
PHOSPHOROUS, IN TOTAL  
ORTHOPHOSPHATE  
PHOSPHORUS (REACTIVE AS P)  
PHOSPHOROUS 32, TOTAL  
PHOSPHOROUS, TOTAL ELEMENTAL  
PHOSPHOROUS, TOTAL, IN BOTTOM DEPOSITS  
PHOSPHOROUS, TOTAL ORGANIC (AS P)  
PHOSPHORUS, TOTAL (AS P)  
PHOSPHORUS, TOTAL PERCENT REMOVAL  
PHOSPHORUS, TOTAL SOLUBLE (AS PO4)  
POTASSIUM, DISSOLVED (AS K)  
POTASSIUM, IN BOTTOM DEPOSITS  
POTASSIUM, PCT EXCHANGE  
POTASSIUM, TOTAL PCT IN WATER, (PCT)  
POTASSIUM, TOTAL RECOVERABLE  
PROPARGITE  
RATIO FECAL COLIFORM & STREPTOCOCCI  
RESIDUE, SETTLEABLE  
RESIDUE, TOTAL FILTERABLE  
RESIDUE, TOTAL NON-SETTLEABLE  
RESIDUE, TOTAL VOLATILE  
RESIDUE, VOLATILE NONFILTERABLE  
SEAWATER GEL MUD  
SETTLEABLE SOLIDS PERCENT REMOVAL  
SILICA, DISSOLVED (AS SiO2)  
SILICON, TOTAL  
SILICA, TOTAL (AS SiO2)  
SLUDGE BUILD-UP IN WATER  
SLUDGE, RATE OF WASTING  
SLUDGE SETTLEABILITY 30 MINUTE  
SLUDGE VOLUME DAILY INTO A WELL  
SODIUM ADSORPTION RATIO  
SODIUM ARSENITE  
SODIUM CHLORIDE (SALT)  
SODIUM, DISSOLVED (AS NA)  
SODIUM HEXAMETA-PHOSPHATE  
SODIUM IN BOTTOM DEP (AS NA) (DRY WGT)  
SODIUM NITRITE  
SODIUM, %  
SODIUM, % EXCHANGE- ABLE SOIL, TOTAL  
SODIUM, SLUDGE, TOT, DRY WEIGHT (AS NA)  
SODIUM SULFATE, TOTAL  
SODIUM, TOTAL (AS NA)  
SODIUM, TOTAL RECOVERABLE  
SOLIDS ACCUMULATION RATE TOT DRY WEIGHT  
SOLIDS, FIXED DISSOLVED  
SOLIDS, FIXED SUSPENDED

SOLIDS, SETTLEABLE  
SOLIDS, SETTLEABLE, NET VALUE  
SOLIDS, SLUDGE, TOT, DRY WEIGHT  
SOLIDS, SUSPENDED PERCENT REMOVAL  
SOLIDS, TOTAL  
SOLIDS, TOTAL DISSOLVED  
SOLIDS, TOTAL DISSOLVED (TDS)  
SOLIDS, TOTAL DISSOLVED-180 DEG.C  
SOLIDS, TOTAL DISSOLVED PERCENT BY WEIGHT  
SOLIDS, TOTAL DISSOLVED (INORGANIC)  
SOLIDS, TOTAL FIXED  
SOLIDS, TOTAL SUSP. NON-VOLATILE  
SOLIDS, TOTAL SUSPENDED  
SOLIDS, TOTAL VOLATILE  
SOLIDS, TOTAL DISSOLVED, TOTAL TONS  
SOLIDS, TOTAL NON-VOLATILE, NON-FIXED  
SOLIDS, TOTAL SUSP PER PRODUCTION  
SOLIDS, TOTAL SUSP. PER 1000 GALLONS  
SOLIDS, TOTAL SUSP. PER BATCH  
SOLIDS, TOTAL SUSP. PER CFS OF STREAMFLOW  
SOLIDS, TOTAL SUSPENDED, LOADING RATE  
SOLIDS, TOTAL SUSPENDED, NET VALUE  
SOLIDS, VOLATILE DISSOLVED  
SOLIDS, VOLATILE SUSPENDED  
SOLIDS, VOLATILE SUSPENDED, % REMOVAL  
SOLIDS, VOLATILE SUSP., IN MIXED LIQUOR  
SOLIDS, DRY, DISCHARGE TO SOL. HANDLING SYS.  
SOLIDS, DRY, INCIN. AS% OF DRY SOL. FROM TRMTPLT  
SOLIDS, DRY, REMOVED FROM SOL. HANDLING SYS.  
SOLIDS, TOT. VOLATILE PERCENT REMOVAL  
SOLIDS, VOLATILE % OF TOTAL SOLIDS  
SOLIDS-FLOTNG-VISUAL DETRMNTN-# DAYS OBS  
SULFATE  
SULFATE (AS S)  
SULFATE, DISSOLVED (AS SO4)  
SULFATE IN SEDIMENT  
SULFATE, TOTAL (AS SO4)  
SULFIDE, DISSOLVED, (AS S)  
SULFIDE, TOTAL  
SULFIDE, TOTAL (AS S)  
SULFITE (AS S)  
SULFITE (AS SO3)  
SULFITE WASTE LIQUOR PEARL BENSON INDEX  
SULFUR DIOXIDE TOTAL  
SULFUR, TOTAL  
SULPHUR, TOTAL ELEMENTAL

SUM BOD AND AMMONIA, WATER  
SURFACTANTS, AS CTAS  
SURFACTANTS (LINEAR ALKYLATE  
SULFONATE)  
SURFACTANTS (MBAS)  
SUSPENDED SOLIDS  
SUSPENDED SOLIDS, TOTAL ANNUAL  
SUSPENDED SOLIDS, TOTAL DISCHARGE  
TOTAL CHLORIDE RESIDUAL, BROMINE  
TOTAL SUSP. SOLIDS-LB/CU FT PROCESS  
TRIARYL PHOSPHATE

ULTRAVIOLET LIGHT TRANSMITTANCE  
VANADIUM, DISSOLVED (AS V)  
VANADIUM, SUSPENDED (AS V)  
VANADIUM, TOTAL  
VANADIUM, TOTAL (AS V)  
VANADIUM, TOTAL DRY WEIGHT (AS V)  
VANADIUM, TOTAL RECOVERABLE  
VEGETATIVE COVER  
WLA BOD-5 DAY VALUE

## APPENDIX D: GROUP 2 POLLUTANTS

**Group 2 Pollutants.** This list of pollutants is based on Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations.

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### Metals

All metals not specifically listed under Group 1.

### Inorganics

Cyanide

Total Residual Chlorine

### Organics

All organics not specifically listed under Group 1.

### Other\*

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\* The following list of pollutants are hereby included as Group 2 pollutants (pursuant to Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations) under the classifications of "other."

1, 2, 4-TRIMETHYL-BENZENE	1,2,3,4,6,7,8,9-
1, 3, 5-TRIMETHYL-BENZENE	OCTACHLORODIBENZOFURAN
1,1 DICHLORO 1,2,2,2	1,2,3,4,6,7,8,9-OCTACHLORODIBENZO-P-
TETRAFLUROETHANE	DIOX
1,1 DICHLORO 2,2,2-TRIFLUOROETHANE	1,2,3,4,6,7,8-HEPTA
1,1,1 TRICHLORO-2,2,2-TRIFLUOROETHANE	CHLORODIBENZOFURAN
1,1,1,2,2-PENTA-FLUROETHANE	1,2,3,4,6,7,8-HEPTACHLORODIBENZO-P-
1,1,1,3,3-PENTA-FLUROBUTANE	DIOXN
1,1,1-TRICHLORO-ETHANE	1,2,3,4,7,8,9-HEPTA
1,1,1-TRICHLOROETHANE, DRY WEIGHT	CHLORODIBENZOFURAN
1,1,1-TRIFLUORO- ETHANE	1,2,3,4,7,8-HEXACHLORODIBENZOFURAN
1,1,2,2-TETRACHLORO-ETHANE	1,2,3,4,7,8-HEXACHLORODIBENZO-P-DIOXIN
1,1,2,2-TETRACHLOROETHANE, DRY	1,2,3,6,7,8-HEXACHLORODIBENZOFURAN
WEIGHT	1,2,3,6,7,8-HEXACHLORODIBENZO-P-DIOXIN
1,1,2,2-TETRACHLOROETHYLENE	1,2,3,7,8,9-HEXACHLORODIBENZOFURAN
1,1,2-TRICHLORO-ETHANE	1,2,3,7,8,9-HEXACHLORODIBENZO-P-DIOXIN
1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE	1,2,3,7,8-PENTACHLORODIBENZOFURAN
1,1,2-TRICHLOROETHANE, DRY WEIGHT	1,2,3,7,8-PENTACHLORODIBENZO-P-DIOXIN
1,1-DICHLORO-1-FLUROETHANE	1,2,3-TRICHLOROPROPANE
1,1-DICHLOROETHANE	1,2,4,5-TETRACHLORO-BENZENE
1,1-DICHLOROETHANE, DRY WEIGHT	1,2,4,5-TETRAMETHYL-BENZENE
1,1-DICHLOROETHENE	1,2,4-TRICHLORO-BENZENE
1,1-DICHLOROETHYLENE	1,2,4-TRICHLOROBENZENE, DRY WEIGHT
1,1-DICHLOROETHYLENE, DRY WEIGHT	1,2-BIS(2-CHLOROETH-ONY) ETHANE
1,1-DIMETHYL-HYDRAZINE	1,2-CIS-DICHLORO-ETHYLENE
1,2,3 TRICHLORO-BENZENE	1,2-DICHLORO-1,1,2-T
1,2,3 TRICHLORO-ETHANE	1,2-DICHLOROBENZENE
	1,2-DICHLOROBENZENE, DRY WEIGHT



1,2-DICHLOROETHANE  
 1,2-DICHLOROETHANE, DRY WEIGHT  
 1,2-DICHLOROETHANE, TOTAL WEIGHT  
 1,2-DICHLOROPROPANE  
 1,2-DICHLOROPROPANE, DRY WEIGHT  
 1,2-DICHLOROPROPENE  
 1,2-DIPHENYL-HYDRAZINE  
 1,2-DIPHENYL-HYDRAZINE, DRY WEIGHT  
 1,2-PROPANEDIOL  
 1,2-TRANS-DICHLORO- ETHYLENE  
 1,2-TRANS-DICHLOROETHYLENE, DRY WEIGHT  
 1,3 DICHLOROPROPANE  
 1,3 DICHLOROPROPYLENE  
 1,3-DIAMINOUREA  
 1,3-DICHLOROBENZENE  
 1,3-DICHLOROBENZENE, DRY WEIGHT  
 1,3-DICHLOROPROPENE, TOTAL WEIGHT  
 1,4 DICHLOROBUTANE  
 1,4 \_\_\_\_\_ DIOXANE  
 1,4-DDT (O,P-DDT)  
 1,4-DICHLOROBENZENE  
 1,4-DICHLOROBENZENE, DRY WEIGHT  
 1,4-XYLENE  
 1-BROMO-2-CHLOROETHANE  
 1-CHLORO-1,1-DIFLUOROETHANE  
 1-ETHOXY-2-METHYLPROPANE  
 1-HYDROXY-ETHYLIDENE  
 1-METHYLNAPHTHALENE  
 1-NITROSOPIPERIDINE  
 2,2-DIBROMO-3-NITRILOPPROPIONAMIDE  
 2,2-DICHLOROPROPANE  
 2,2-DICHLOROVINYL DIMETHYLPHOSPHATE  
 2,2-DIMETHYL-2,3-DI-HYDRO-7-BENZOFURANOL  
 2,3 DICHLOROPROPYLENE  
 2,3,4,6,7,8-HEXACHLORODIBENZOFURAN  
 2,3,4,6-TETRACHLORO-PHENOL  
 2,3,4,7,8-PENTACHLORODIBENZOFURAN  
 2,3,7,8 CHLORO-DIBENZOFURAN  
 2,3,7,8 TETRACHLORO-DIBENZO FURAN (TCDF)  
 2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN  
 2,3,7,8 TETRACHLORODIBENZO-P-DIOXIN SED,  
 2,4,5 - T  
 2,4,5, TP(SILVEX)  
 2,4,5-TP(SILVEX) ACIDS/SALTS WHOLE WATER SAMPLE  
 2,4,5 - TRICHLORO- PHENOL  
 2,4,5-TRICHLOROPHENOXYPROPIONIC ACID  
 2,4,6 TRICHLOROPHENOL, DRY WEIGHT  
 2,4,6-TRICHLORO-PHENOL  
 2,4-D SALTS AND ESTERS  
 2,4-DB  
 2,4-DICHLOROPHENOL  
 2,4-DICHLOROPHENOXYACETIC ACID  
 2,4-DIMETHYLPHENOL  
 2,4-DINITROPHENOL  
 2,4-DINITROTOLUENE  
 2,4-DINITROTOLUENE, DRY WEIGHT  
 2,4-TOLUENEDIAMINE  
 2,5-TOLUENEDIAMINE  
 2,6-DINITROTOLUENE  
 2,6-DINITROTOLUENE, DRY WEIGHT  
 2-ACETYL AMINO- FLOURCENE  
 2-BUTANONE  
 2-BUTANONE PEROXIDE  
 2-CHLOROANILINE  
 2-CHLOROETHANOL  
 2-CHLOROETHYL VINYL ETHER, DRY WEIGHT  
 2-CHLOROETHYL VINYL ETHER (MIXED)  
 2-CHLORONAPHTHALENE  
 2-CHLOROPHENOL  
 2-ETHYL-1-HEXANOL  
 2-ETHYL-2-METHYL-DIOXOLANE  
 2-HEXANONE  
 2-METHYL-2-PROPANOL (TBA)  
 2-METHYL-4,6-DINITROPHENOL  
 2-METHYL-4-CHLOROPHENOL  
 2-METHYLNAPHTHALENE  
 2-METHYLPENTANE  
 2-METHYLPHENOL  
 2-METHYLPYRIDINE  
 2-NAPHTHYLAMINE  
 2-NITROANILINE  
 2-NITROPHENOL  
 2-PROPANONE  
 2-SECONDARY BUTYL-4,6-DINITROPHENOL  
 3,3-DICHLORO- BENZIDINE  
 3,3-DICHLOROBENZIDINE, DRY WEIGHT  
 3,4 BENZOFLUORAN-THENE  
 3,4,5 TRICHLORO- GUACACOL  
 3,4,6-TRICHLORO-CATECHOL  
 3,4,6-TRICHLORO-GUAIACOL  
 3-CHLOROPHENOL  
 3-METHYLHEXANE  
 3-METHYLPENTANE  
 3-METHYLPYRIDINE  
 3-NITROANILINE, TOTAL IN WATER  
 4,4-BUTYLDENE BIS-(6-T-BUTYL-M-CRESOL)  
 4,4-DDD (P,P-DDD)  
 4,4-DDE (P,P-DDE)  
 4,4-DDT (P,P-DDT)  
 4,6-DINITRO-O-CRESOL  
 4-BROMOPHENYL PHENYL ETHER  
 4-CHLORO-3, 5-DIMETHYLPHENOL  
 4-CHLORO-3-METHYL PHENOL  
 4-CHLOROPHENYL PHENYL ETHER  
 4-METHYLPHENOL

4-NITRO-M-CRESOL  
 4-NITRO-N-METHYLPHTHALIMIDE, TOTAL  
 4-NITROPHENOL  
 9,10 DICHLOROSTEARIC ACID  
 9,10 EPOXYSTEARIC ACID  
 A-BHC-ALPHA  
 ABIETIC ACID  
 ACENAPHTHENE  
 ACENAPHTHENE, SED (DRY WEIGHT)  
 ACENAPHTHYLENE  
 ACEPHATE (ORTHENE, ORTRAN)  
 ACETALDEHYDE  
 ACETAMINOPHEN  
 ACETIC ACID  
 ACETONE  
 ACETONE, DRY WEIGHT  
 ACETONE IN WASTE  
 ACETOPHENONE  
 ACID COMPOUNDS  
 ACIDS, TOTAL VOLATILE (AS ACETIC ACID)  
 ACROLEIN  
 ACROLEIN, DRY WEIGHT  
 ACRYLAMIDE MONOMER  
 ACRYLIC ACID  
 ACRYLONITRILE  
 ACRYLONITRILE, DRY WEIGHT  
 ACTINIUM 228  
 A-ENDOSULFAN-ALPHA  
 ALACHLOR (BRAND NAME-LASSO)  
 ALACHLOR, DISSOLVED  
 ALDICARB  
 ALDICARB SULFONE  
 ALDICARB SULFOXIDE  
 ALDRIN  
 ALDRIN + DIELDRIN  
 ALDRIN, DRY WEIGHT  
 ALKYL BENZENE SULFONATED (ABS)  
 ALKYLDIMETHYL ETHYL AMMONIUM  
 BROMIDE  
 ALKYLDIMETHYLBENZYL AMMONIUM  
 CHLORIDE  
 ALPHA ACTIVITY  
 ALPHA EMITTING RADI-UM ISOTOPES,  
 DISSOL.  
 ALPHA GROSS RADIOACTIVITY  
 ALPHA, DISSOLVED  
 ALPHA, SUSPENDED  
 ALPHA, TOTAL  
 ALPHA, TOTAL, COUNTING ERROR  
 ALPHABHC DISSOLVED  
 ALPHA-ENDOSULFAN  
 AMETRYN ORGANIC PESTICIDE  
 AMIBEN (CHLORAMBEN)  
 AMINES, ORGANIC TOTAL  
 AMINOTROL - METHYLENE PHOSPHATE  
 AMYL ALCOHOL  
 ANILINE  
 ANTHRACENE  
 ANTIMONY IN BOTTOM DEPOSITS (DRY  
 WGT)  
 ANTIMONY, DISSOLVED (AS SB)  
 ANTIMONY, TOTAL (AS SB)  
 ANTIMONY, TOTAL RECOVERABLE  
 AROMATICS, SUBSTITUTED  
 AROMATICS, TOTAL PURGEABLE  
 ARSENIC, POTENTIALLY DISSOLVED  
 ARSENIC, DISSOLVED (AS AS)  
 ARSENIC, DRY WEIGHT  
 ARSENIC, TOTAL (AS AS)  
 ARSENIC, TOTAL RECOVERABLE  
 ASANA  
 ASBESTOS  
 ASBESTOS (FIBROUS)  
 A-TERPINEOL  
 ATRAZINE  
 ATRAZINE, DISSOLVED  
 AZIDE  
 AZOBENZENE  
 BALAN (BENEFIN)  
 BARIUM IN BOTTOM DEPOSITS (DRY WGT)  
 BARIUM, POTENTIALLY DISSOLVED  
 BARIUM, DISSOLVED (AS BA)  
 BARIUM, TOTAL (AS BA)  
 BARIUM, TOTAL RECOVERABLE  
 BASE NEUTRALS & ACID (METHOD 625),  
 TOTAL  
 BASE NEUTRALS & ACID (METHOD 625),  
 EFFLNT  
 BASE/NEUTRAL COMPOUNDS  
 BAYER 73 LAMPREYCIDE IN WATER  
 B-BHC-BETA  
 B-BHC-BETA DISSOLVED  
 B-ENDOSULFAN-BETA  
 BENFLURALIN, (ORG. PESTICIDE ACT. INGD)  
 BENOMYL & CARBEND. ORGANIC  
 PESTICIDE  
 BENTAZON, TOTAL  
 BENZENE  
 BENZENE (VOLATILE ANALYSIS)  
 BENZENE HEXACHLORIDE  
 BENZENE SULPHONIC ACID  
 BENZENE, DISSOLVED  
 BENZENE, DRY WEIGHT  
 BENZENE, HALOGENATED  
 BENZENE, TOLUENE, XYLENE IN  
 COMBINATION  
 BENZENE, ETHYL BENZENE TOLUENE,  
 XYLENE COMBINATION  
 BENZENE HEXACHLORIDE  
 BENZIDINE  
 BENZIDINE, DRY WEIGHT  
 BENZISOTHIAZOLE

BENZO(A) FLUORANTHENE  
 BENZO(A) ANTHRACENE  
 BENZO(A) PYRENE  
 BENZO(A) PYRENE, DRY WEIGHT  
 BENZO(B) FLUORANTHENE (3,4-BENZO)  
 BENZO(GHI) PERYLENE  
 BENZO(K) FLUORANTHENE  
 BENZOFURAN  
 BENZY CHLORIDE  
 BENZYL ALCOHOL  
 BENZYL CHLORIDE  
 BERYLLIUM IN BOTTOM DEPOSITS (DRY WGT)  
 BERYLLIUM, DISSOLVED (AS BE)  
 BERYLLIUM, POTENTIALLY DISSOLVED  
 BERYLLIUM, TOTAL (AS BE)  
 BERYLLIUM, TOTAL RECOVERABLE (AS BE)  
 BETA, DISSOLVED  
 BETA, SUSPENDED  
 BETA, TOTAL  
 BETA, TOTAL, COUNTING ERROR  
 BETASAN(N-2-MERCAPTO ETHYL BENZENE SULFAMID  
 BEZONITRILE (CYANO BENZENE)  
 BHC, TOTAL  
 BHC-ALPHA  
 BHC-BETA  
 BHC-DELTA  
 BHC-GAMMA  
 BIFENTHRIN  
 BIS -- PHENOL-A (ALPHA)  
 BIS (2-CHLORO- ISOPROPYL) ETHER  
 BIS (2-CHLOROETHOXY) METHANE  
 BIS (2-CHLOROETHOXY) METHANE, DRY WT.  
 BIS (2-CHLOROETHYL) ETHER  
 BIS (2-ETHYLHEXYL) PHTHALATE  
 BIS (2-ETHYLHEXYL) PHTHALATE, DRY WGT  
 BIS (CHLOROMETHYL) ETHER  
 BIS (TRICHLOROMETHYL) SULFONE  
 BIS ETHER  
 BISMUTH 214  
 BISMUTH, TOTAL (AS BI)  
 BISPHENOL-A  
 BROMACIL  
 BROMACIL (HYVAR)  
 BROMACIL, LITHIUM  
 BROMOCHLOROMETHANE  
 BROMODICHLOROETHANE  
 BROMOFORM  
 BROMOFORM, DRY WGT  
 BROMOMETHANE  
 BROMOXYNIL ORGANIC PESTICIDE  
 BROMOXYNIL OCTANOATE  
 BUSAN 40 ORGANIC PESTICIDE  
 BUSAN 85 ORGANIC PESTICIDE  
 BUTACHLOR  
 BUTANE  
 BUTANOIC ACID  
 BUTANOL  
 BUTANONE  
 BUTHDIENE TOTAL  
 BUTOXY ETHOXY ETHANOL TOTAL  
 BUTYL ACETATE  
 BUTYL BENZYL PHTHALATE  
 BUTYLATE (SUTAN)  
 CADMIUM  
 CADMIUM TOTAL RECOVERABLE  
 CADMIUM IN BOTTOM DEPOSITS (DRY WGT)  
 CADMIUM SLUDGE SOLID  
 CADMIUM SLUDGE TOTAL  
 CADMIUM, POTENTIALLY DISSOLVD  
 CADMIUM, DISSOLVED (AS CD)  
 CADMIUM, PERCENT REMOVAL  
 CADMIUM, SLUDGE, TOTAL DRY WGT (AS CD)  
 CADMIUM, TOTAL (AS CD)  
 CAFFEINE  
 CAPTAFOL  
 CAPTAN  
 CARBAMATES  
 CARBARYL TOTAL  
 CARBN CHLOROFRM EXT-RACETS, ETHER INSOLUBL  
 CARBOFURAN  
 CARBON DISULFIDE (CS2)  
 CARBON TETRACHLORIDE  
 CARBON TETRACHLORIDE, DRY WEIGHT  
 CARBON, CHLOROFORM EXTRACTABLES  
 CARBON, DISSOLVED ORGANIC (AS C)  
 CARBOSULFAN, TOTAL  
 CERIUM, TOTAL  
 CESIUM 137  
 CESIUM, TOTAL (AS CS)  
 CHIRAL  
 CHLOR, PHENOXY ACID GP, NONE FOUND  
 CHLORAL  
 CHLORAL HYDRATE  
 CHLORAMINE RESIDUAL  
 CHLORDANE (CA OCEAN PLAN DEFINITION)  
 CHLORDANE (TECH MIX & METABS), DRY WGT  
 CHLORDANE (TECH MIX. AND METABOLITES)  
 CHLORDANE, ALPHA, WHOLE WATER  
 CHLORDANE, GAMMA, WHOLE WATER  
 CHLORENDIC ACID  
 CHLORETHOXYFOS  
 CHLORINATED DIBENZO-FURANS, EFFLUENT  
 CHLORINATED DIBENZO-FURANS, SLUDGE

CHLORINATED DIBENZO-P-DIOXINS,  
EFFLUENT  
CHLORINATED DIBENZO-P-DIOXINS,  
SLUDGE  
CHLORINATED ETHANES  
CHLORINATED HYDRO-CARBONS,  
GENERAL  
CHLORINATED METHANES  
CHLORINATED ORGANIC COMPOUNDS  
CHLORINATED PESTI-CIDES, TOTAL  
CHLORINATED PESTI-CIDES, TOTAL & PCBS  
CHLORINATED PHENOLS  
CHLORINATION  
CHLORINE DIOXIDE  
CHLORINE DOSE  
CHLORINE RATE  
CHLORINE USAGE  
CHLORINE, COMBINED AVAILABLE  
CHLORINE, FREE AVAILABLE  
CHLORINE, FREE RESIDUAL, TOTAL  
EFFLUENT  
CHLORINE, TOTAL RESIDUAL  
CHLORINE, TOTAL RESIDUAL (DSG. TIME)  
CHLORINE, TOTAL RES. DURATION OF  
VIOLATION  
CHLOROBENZENE  
CHLOROBENZENE, DRY WEIGHT  
CHLOROBENZILATE  
CHLOROBUTADIENE (CHLOROPRENE)  
CHLORODIBROMOMETHANE  
CHLORODIBROMOMETHANE, DRY WEIGHT  
CHLORODIFLUORO-METHANE  
CHLORODIMEFORM  
CHLOROETHANE  
CHLOROETHANE, TOTAL WEIGHT  
CHLOROETHYLENE BISTHIOCYANATE  
CHLOROFORM  
CHLOROFORM EXTRACTABLES, TOTAL  
CHLOROFORM, DISSOLVED  
CHLOROFORM, DRY WEIGHT  
CHLOROHEXANE, TOTAL  
CHLOROMETHANE  
CHLOROMETHYL BENZENE  
CHLORONEB ORGANIC PESTICIDE  
CHLORONITROBENZENE  
CHLOROPHENOXY PROPANANOL  
CHLOROSYRINGEALDEHYDE, EFFLUENT  
CHLOROTHALONIL ORGANIC PESTICIDE  
CHLOROTOLUENE  
CHLOROXAZONE  
CHLORPHENIRAMINE  
CHLORPYRIFOS  
CHROMIUM  
CHROMIUM SLUDGE SOLID  
CHROMIUM SLUDGE TOTAL  
CHROMIUM TOTAL RECOVERABLE

CHROMIUM TRIVALENT IN BOTTOM  
DEPOSITS  
CHROMIUM, DISSOLVED (AS CR)  
CHROMIUM, DRY WEIGHT  
CHROMIUM, HEXAVALENT  
CHROMIUM, HEXAVALENT (AS CR)  
CHROMIUM, HEXAVALENT DISSOLVED (AS  
CR)  
CHROMIUM, HEXAVALENT IN BOT DEP (DRY  
WGT)  
CHROMIUM, HEXAVALENT POTENTIALLY  
DISOLVED  
CHROMIUM, HEXAVALENT TOT  
RECOVERABLE  
CHROMIUM, SUSPENDED (AS CR)  
CHROMIUM, TOTAL  
CHROMIUM, TOTAL (AS CR)  
CHROMIUM, TOTAL DRY WEIGHT (AS CR)  
CHROMIUM, TOTAL IN BOT DEP (WET WGT)  
CHROMIUM, TOTAL PERCENT REMOVAL  
CHROMIUM, TRIVALENT (AS CR)  
CHROMIUM, TRIVALENT, POTENTIALLY  
DISSOLVED  
CHRYSENE  
CIS-1,3-DICHLORO PROPENE  
CITRIC ACID  
CN, FREE (AMENABLE TO CHLORINE)  
COLUMBIUM, TOTAL  
COMBINED METALS SUM  
COPPER  
COPPER AS SUSPENDED BLACK OXIDE  
COPPER IN BOTTOM DEPOSITS (DRY WGT)  
COPPER SLUDGE SOLID  
COPPER SLUDGE TOTAL  
COPPER TOTAL RECOVERABLE  
COPPER, DISSOLVED (AS CU)  
COPPER, PERCENT REMOVAL  
COPPER, POTENTIALLY DISSOLVED  
COPPER, SUSPENDED (AS CU)  
COPPER, TOTAL (AS CU)  
COPPER, TOTAL PER BATCH  
COUMAPHOS  
CRESOL  
CYANATE (AS OCN)  
CYANAZINE  
CYANIDE (A)  
CYANIDE AND THIOCYANATE - TOTAL  
CYANIDE COMPLEXED TO RANGE OF  
COMPOUND  
CYANIDE FREE NOT AMENABLE TO  
CHLORIN.  
CYANIDE IN BOTTOM DEPOSITS (DRY WGT)  
CYANIDE SLUDGE SOLID  
CYANIDE, FILTERABLE, TOTAL  
CYANIDE, FREE AVAILABLE

CYANIDE, FREE-WATER PLUS  
 WASTEWATERS  
 CYANIDE, DISSOLVED STD METHOD  
 CYANIDE, FREE (AMEN. TO CHLORINATION)  
 CYANIDE, TOTAL (AS CN)  
 CYANIDE, TOTAL RECOVERABLE  
 CYANIDE, WEAK ACID, DISSOCIABLE  
 CYCLOATE (RONEET)  
 CYCLOHEXANE  
 CYCLOHEXANONE  
 CYCLOHEXYL AMINE (AMINO HEXAHYDRO)  
 CYCOHEXANONE  
 CYFLUTHRIN  
 DACONIL (C8CL4N2)  
 DACTHAL  
 DAZOMET  
 DCPA, ORGANIC PESTICIDE  
 DDD IN WHOLE WATER SAMPLE  
 DDE  
 DDT  
 DDT/DDD/DDE, SUM OF P, P & O,P ISOMERS  
 DECACHLOROBIPHENYL (DCBP) TOTAL  
 DECHLORANE PLUS  
 DEF, ORGANIC PESTICIDE  
 DEHYDROABIETIC ACID  
 DELNAV  
 DELTA BENZENE HEXACHLORIDE  
 DELTAMETHRIN  
 DEMETON  
 DIAZINON  
 DIBENZO (A,H) ANTHRACENE  
 DIBENZO (A,H) ANTHRACENE, DRY WEIGHT  
 DIBENZOFURAN  
 DIBROMOCHLORO-METHANE  
 DIBROMODICHLOROMETHANE  
 DIBROMOMETHANE  
 DICHLONE  
 DICHLORAN, TOTAL  
 DICHLOROENZENE  
 DICHLOROENZENE, ISOMER  
 DICHLOROBENZYLTRIFLUORIDE  
 DICHLOROBROMOMETHANE  
 DICHLOROBROMOMETHANE, DRY WEIGHT  
 DICHLOROBUTADIENE  
 DICHLOROBUTENE-(ISOMERS)  
 DICHLORODEHYDRO-ABEITIC ACID  
 DICHLORODIBROMOMETHANE  
 DICHLORODIFLUORO-METHANE  
 DICHLOROETHENE, TOTAL  
 DICHLOROFLUORO METHANE  
 DICHLOROMETHANE  
 DICHLOROPROPYLENE, 1,2  
 DICHLOROTOLUENE  
 DICHLOROTRIFLUORO- ETHANE  
 DICHLORVOS, TOTAL  
 DICHLORVOS, TOTAL DISSOLVED  
 DICHLORVOS, TOTAL SED DRY WEIGHT  
 DICHLORVOS, TOTAL SUSPENDED  
 DICYCLOHEXYLAMINE, TOTAL  
 DICYCLOPENTADIENE  
 DIDECYLDIMETHYL AMMONIUM CHLORIDE  
 DIDROMOMETHANE, 1-2  
 DIELDRIN  
 DIELDRIN, DRY WEIGHT  
 DIETHL METHYL BENZENESULFONAMIDE  
 DIETHYL PHTHALATE  
 DIETHYL PHTHALATE, DRY WEIGHT  
 DIETHYLAMINE  
 DIETHYLAMINOETHANOL  
 DIETHYLBENZENE  
 DIETHYLENE GLYCOL DINITRATE, TOTAL  
 DIETHYLHEXYL PHTHALATE ISOMER  
 DIETHYLHEXYL- PHTHALATE  
 DIETHYLSTILBESTEROL  
 DIFOLATAN  
 DIISOPROPYL ETHER  
 DIMETHOXYBENZIDINE  
 DIMETHYL BENZIDINE  
 DIMETHYL DISULFIDE TOTAL  
 DIMETHYL NAPHTHALENE  
 DIMETHYL PHTHALATE  
 DIMETHYL PHTHALATE  
 DIMETHYL PHTHALATE, DRY WEIGHT  
 DIMETHYL SULFIDE TOTAL  
 DIMETHYLAMINE  
 DIMETHYLANILINE  
 DI-N-BUTYL PHTHALATE  
 DI-N-BUTYL PHTHALATE, DRY WEIGHT  
 DI-NITRO BUTYL PHENOL (DNBP)  
 DINITROTOLUENE  
 DI-N-OCTYL PHTHALATE  
 DI-N-OCTYL PHTHALATE, DRY WEIGHT  
 DINOSEB  
 DINOSEB (DNBP)  
 DIOXANE  
 DIOXATHION ORGANIC PESTICIDE  
 DIOXIN  
 DIOXIN (TCDD) SUSPENDED  
 DISSOLVED RADIOACTIVE GASSES  
 DISULFOTON  
 DIURON  
 DMDS  
 DOCOSANE  
 DODECYLGUANIDINE SALTS  
 DYPHYLLINE  
 EDTA  
 EDTA AMMONIATED  
 ENDOSULFAN SULFATE  
 ENDOSULFAN, ALPHA, IN WASTE  
 ENDOSULFAN, BETA, IN WASTE  
 ENDOSULFAN, TOTAL  
 ENDOTHALL SALTS & ESTERS, ORG. PEST.

ENDRIN	GLYPHOSATE, TOTAL
ENDRIN + ENDRIN ALDEHYDE (SUM)	GOLD, TOTAL (AS AU)
ENDRIN ALDEHYDE	GROSS BETA
EPHEDRINE SULFATE	GUAFENSIN
EPICHLOROHYDRIN	GUANIDINE NITRATE
EPTC (EPTAM)	GUTHION
ESTRADIOL	HALOGEN, TOTAL ORGANIC
ETHALFLURALIN WATER, TOTAL	HALOGEN, TOTAL RESIDUAL
ETHANE, 1,2-BIS (2- CLRETHXY), HOMLG	HALOGENATED HYDRO-CARBONS, TOTAL
SUM	HALOGENATED ORGANICS
ETHION	HALOGENATED TOLUENE
ETHOXYQUIN	HALOGENS, ADSORBABLEORGANIC
ETHYL ACETATE	HALOGENS, TOTAL ORGAN-ICS BOTTOM
ETHYL BENZENE	SEDIMENT
ETHYL ETHER BY GAS CHROMATOGRAPH	HALOGENS, TOTAL COMBINED
ETHYL METHANESULFONATE	HALOMETHANES, SUM
ETHYL METHYL-DIOXOLANE	HEPTACHLOR
ETHYL PARATHION	HEPTACHLOR + HEPTACHLOR EPOXIDE
ETHYLBENZENE	HEPTACHLOR, DRY WEIGHT
ETHYLBENZENE, DRY WEIGHT	HEPTANE
ETHYLENE	HERBICIDES, TOTAL
ETHYLENE CHLOROHYDRIN	HEXACHLOROBENZENE
ETHYLENE DIBROMIDE (1,2	HEXACHLOROBENZENE, DRY WEIGHT
DIBROMOETHANE)	HEXACHLOROBIPHENYL
ETHYLENE GLYCOL	HEXACHLOROBUTADIENE
ETHYLENE GLYCOL DINITRATE	HEXACHLOROBUTADIENE, DRY WEIGHT
ETHYLENE OXIDE	HEXACHLOROCYCLOHEXANE (BHC) TOTAL
ETHYLENE THIOUREA (ETU)	HEXACHLOROCYCLO-PENTADIENE
ETHYLENE, DISSOLVED (C2H4)	HEXACHLOROCYCLOPENTADIENE, DRY
EXPLOSIVE LIMIT, LOWER	WEIGHT
EXPLOSIVES, COMBINED TNT + RDX +	HEXACHLOROETHANE
TETRYL	HEXACHLOROETHANE, DRY WEIGHT
FENARIMOL ORGANIC PESTICIDE	HEXACHLOROPENTADIENE
FENVALERATE ORGANIC PESTICIDE	HEXACHLOROPHENE
FERRICYANIDE	HEXADECANE
FLUORANTHENE	HEXAHYDROAZEPINONE
FLUORANTHENE, DRY WEIGHT	HEXAMETHYL-PHOSPHORAMINE (HMPA)
FLUORENE	HEXAMETHYLBENZENE
FLUORENE, DRY WEIGHT	HEXANE
FLUORIDE-COMPLEX	HEXAZIMONE
FLUSILAZOLE	HMX-1,3,5,7-TETRA ZOCINE (OCTOGEN)
FOAMING AGENTS	HYDRAZINE
FOLPET WATER TOTAL	HYDRAZINES, TOTAL
FORMALDEHYDE	HYDROCARBON, TOTAL RECOVERABLE
FORMIC ACID	HYDROCARBONS NITRATED
FREON 113 (1,1,1-TRIFLOURO-2,2-	HYDROCARBONS NITRATED, TOTAL
FREON, TOTAL	HYDROCARBONS, AROMATIC
FUEL, DIESEL, #1	HYDROCARBONS, TOTAL GAS
FURANS	CHROMATOGRAPH
FURFURAL	HYDROCARBONS, IN H2O,IR,CC14 EXT.
GALLIUM, TOTAL (AS GA)	CHROMAT
GAMMA-BHC	HYDROGEN CYANIDE
GAMMA, TOTAL	HYDROQUINONE
GAMMA, TOTAL COUNTING ERROR	HYDROXYACETOPHENONE
GASOLINE, REGULAR	HYDROXYQUINOLINE TOTAL
GERMANIUM, TOTAL (AS GE)	HYDROXYZINE

INDENE	MERCAPTOBENZOTHAZOLE
INDENO (1,2,3-CD) PYRENE	MERCURY
INDENO (1,2,3-CD) PYRENE, DRY WEIGHT	MERCURY TOTAL RECOVERABLE
INDIUM	MERCURY, DISSOLVED (AS HG)
IODINE 129	MERCURY, DRY WEIGHT
IODINE RESIDUAL	MERCURY (HG), IN BARITE, DRY WEIGHT
IODINE TOTAL	MERCURY, POTENTIALLY DISSOLVD
ISOBUTYL ACETATE	MERCURY, TOT IN BOT DEPOSITS (DRY WGT)
ISOBUTYL ALCOHOL	MERCURY, TOTAL (AS HG)
ISOBUTYRALDEHYDE	MERCURY, TOTAL (LOW LEVEL)
ISODECYLDIPHENYL-PHOSPHATE	METALS TOXICITY RATIO
ISODRIN	METALS, TOTAL
ISO-OCTANE	METALS, TOX PRIORITY POLLUTANTS, TOTAL
ISOOCTYL 2,4,5-T	METAM POTASSIUM
ISOOCTYL SILVEX	META-XYLENE
ISOPHORONE	METHAMIDOPHOS ORGANIC PESTICIDE
ISOPHORONE, DRY WEIGHT	METHAM SODIUM (VAPAM)
ISOPIMARIC ACID	METHANE
ISOPRENE	METHANOL, TOTAL
ISOPROPALIN WATER, TOTAL	METHOCARBAMOL
ISOPROPANOL	METHOMYL
ISOPROPYL ACETATE	METHOXYCHLOR
ISOPROPYL ALCOHOL (C3H8O), SED.	METHOXYPROPYLAMINE
ISOPROPYLBENZENE	METHYL ACETATE
ISOPROPYL ETHER	METHYL BROMIDE
ISOPROPYLBIPHENYL, TOTAL	METHYL METHANESULFONATE
ISOPROPYLIDINE DIOXYPHENOL	METHYL BROMIDE, DRY WEIGHT
ISOTHIAZOLONE	METHYL CHLORIDE
ISOTHIOZOLINE, TOTAL	METHYL CHLORIDE, DRY WEIGHT
ISOXSUPRINE	METHYL CYANIDE (ACETONITRILE)
KELTHANE	METHYL ETHYL BENZENE
KEPONE	METHYL ETHYL KETONE
KN METHYL ORGANIC PESTICIDE	METHYL ETHYL SULFIDE
LANTHANUM, TOTAL	METHYL FORMATE
LEAD	METHYL ISOBUTYL KETONE (MIBK)
LEAD TOTAL RECOVERABLE	METHYL MERCAPTAN
LEAD 210	METHYL METHACRYLATE
LEAD 210, TOTAL	METHYL NAPHTHALENE
LEAD 212	METHYL PARATHION
LEAD 214	METHYL STYRENE
LEAD SLUDGE SOLID	METHYLAMINE
LEAD SLUDGE TOTAL	METHYLCYCLOPENTANE
LEAD, DISSOLVED (AS PB)	METHYLENE BIS-THIOCYANATE
LEAD, DRY WEIGHT	METHYLENE CHLORIDE
LEAD, POTENTIALLY DISSOLVD	METHYLENE CHLORIDE, DRY WEIGHT
LEAD, TOTAL (AS PB)	METHYLENE CHLORIDE, SUSPENDED
LEAD, TOTAL DRY WEIGHT (AS PB)	METHYLHYDRAZINE
LINDANE	METRIBUZIN (SENCOR), WATER, DISSOLVED
LINOLEIC ACID	METRIOL TRINITRATE, TOTAL
LINOLENIC ACID	MIREX
LINURON ORGANIC PESTICIDE	MOLYBDENUM DISSOLVED (AS MO)
M-ALKYLDIMETHLBENZYLAMCL	MOLYBDENUM, TOTAL (AS MO)
MALATHION	MONOCHLOROACETIC ACID
MB 121	
MCPA 2-ETHYLHEXYL ESTER	
MERCAPTANS, TOTAL	

MONO-CHLORO-BENZENES  
 MONOCHLOROBENZYLTRIFLUORIDE  
 MONOCHLORODEHYDRO- ABIETIC ACID  
 MONOCHLOROTOLUENE  
 MP062 (STEWART)  
 NABAM, ORGANIC PESTICIDE  
 NABONATE  
 N-AMYL ACETATE  
 NAPHTHALENE  
 NAPHTHALENE, DRY WEIGHT  
 NAPHTHENIC ACID  
 NAPROPAMIDE (DEVIRINOL)  
 N-BUTYL ACETATE  
 N-BUTYL-BENZENE SULFONAMIDE (IN WAT)  
 N-BUTYL-BENZENE (WHOLE WATER, UG/L)  
 NEPTUNE BLUE  
 N-HEPTADECANE  
 NIACINAMIDE  
 NICKEL  
 NICKEL SLUDGE SOLID  
 NICKEL SLUDGE TOTAL  
 NICKEL TOTAL RECOVERABLE  
 NICKEL, DISSOLVED (AS NI)  
 NICKEL, POTENTIALLY DISSOLVED  
 NICKEL, SUSPENDED (AS NI)  
 NICKEL, TOTAL (AS NI)  
 NICKEL, TOT IN BOTTOM DEPOSITS (DRY  
 WGT)  
 NICKEL, TOTAL PER BATCH  
 NICOTINE SULFATE  
 NITROBENZENE  
 NITROBENZENE, DRY WEIGHT  
 NITROCELLULOSE  
 NITROFURANS  
 NITROGEN, ORGANIC, DISSOLVED (AS N)  
 NITROGLYCERIN BY GAS  
 CHROMATOGRAPHY  
 NITROGUANIDINE  
 NITROSODIPHENYLAMINE  
 NITROSTYRENE  
 N-METHYL-2-PYRROLIDONE  
 N-NITROSO COMPOUNDS, VOLATILE  
 N-NITROSODIBUTYL-AMINE  
 N-NITROSODIETHYL-AMINE  
 N-NITROSODIMETHYL-AMINE  
 N-NITROSODIMETHYL-AMINE, DRY WEIGHT  
 N,N-DIETHYL CARBANILIDE  
 N,N-DIMETHYL FORMAMIDE  
 N-NITROSODI-N-BUTYLAMINE  
 N-NITROSODI-N-PROPYLAMINE  
 N-NITROSODI-N-PROPYLAMINE, DRY  
 WEIGHT  
 N-NITROSODIPHENYL-AMINE  
 N-NITROSODIPHENYLAMINE, DRY WEIGHT  
 N-NITROSOPYRROLIDINE  
 NONHALOGENATED VOLATILE ORGANICS  
 NONPURGEABLE ORGANIC HALIDES  
 NORFLURAZON ORGANIC PESTICIDE  
 N PENTANE  
 N-PROPYLBENZENE  
 O-CHLOROBENZYL CHLORIDE  
 OCTACHLORO-CYCLOPENTENE  
 OCTACHLORODIBENZO P DIOXIN  
 OCTACHLORODIBENZOFURAN  
 OCTYLPHENOXY POLYETHOXYETHANOL  
 OIL/GREASE CALCULATED LIMIT  
 OIL, PETROLEUM ETHER EXTRACTABLES  
 OLEIC ACID  
 ORDRAM (HYDRAM)  
 ORGANIC ACTIVE INGREDIENTS  
 (40 CFR 455)  
 ORGANIC COMPOUNDS, CHLOROFORM  
 EXTRACT.  
 ORGANIC HALIDES, TOTAL  
 ORGANIC PESTICIDE CHEMICALS  
 (40 CFR 455)  
 ORGANICS, GASOLINE RANGE  
 ORGANICS, TOTAL  
 ORGANICS, TOTAL HALOGENS (TOX)  
 ORGANICS, TOTAL PURGE-ABLES (METHOD  
 624)  
 ORGANICS, TOTAL TOXIC (TTO)  
 ORGANICS-TOTAL VOLATILE (NJAC  
 REG.7:23-17E)  
 ORGANICS, VOLATILE (NJAC REG. 7:23-17E)  
 ORTHENE  
 ORTHOCHLOROTOLUENE  
 ORTHO-CRESOL  
 ORTHO-XYLENE  
 O-TOLUIDINE  
 OXALIC ACID  
 OXYTETRACYCLINE HYDROCHLORIDE  
 P,P-DDE-DISSOLVED  
 P,P-DDT-DISSOLVED  
 PALLADIUM, TOTAL (AS PD)  
 P-AMINOBIIPHENYL  
 PANTHALIUM, TOTAL  
 PARABEN (METHYL AND PROPYL)  
 PARACHLOROMETA CRESOL  
 PARA-DICHLOROBENZENE  
 PARAQUAT  
 PARATHION  
 PCB-1016 (AROCHLOR 1016)  
 PCB-1221 (AROCHLOR 1221)  
 PCB-1232 (AROCHLOR 1232)  
 PCB-1242 (AROCHLOR 1242)  
 PCB-1248 (AROCHLOR 1248)  
 PCB-1254 (AROCHLOR 1254)  
 PCB-1260 (AROCHLOR 1260)  
 PCB-1262  
 PCB, TOTAL SLUDGE, SCAN CODE  
 PCBs IN BOTTOM DEPS. (DRY SOLIDS)



PCNB, ORGANIC PEST.  
 P-CRESOL  
 P-DIMETHYLAMINO-AZOBENZENE  
 PEBULATE (TILLAM)  
 PENDIMETHALIN ORGANIC PESTICIDE  
 PENTACHLOROBENZENE  
 PENTACHLOROETHANE  
 PENTACHLOROPHENOL  
 PENTANE, TOTAL EFFLUENT  
 PERFLUOROBUTANE SULFONAMIDE  
 PERFLUOROBUTANOIC ACID  
 PERFLUOROBUTANOIC SULFONATE  
 PERFLUOROOCTANE SULFONAMIDE  
 PERFLUOROOCTANE SULFONATE  
 PERFLUOROOCTANOIC ACID  
 PERMETHRIN, TOTAL  
 PERTHANE  
 PESTICIDES, GENERAL  
 P-ETHYLTOLUENE  
 PETROL HYDROCARBONS, TOTAL  
 RECOVERABLE  
 PHENACETIN  
 PHENANTHRENE  
 PHENANTHRENE, DRY WEIGHT  
 PHENOL, SINGLE COMPOUND  
 PHENOLIC COMPOUNDS, SLUDGE TOTAL,  
 DRY WEIGHT  
 PHENOLIC COMPOUNDS, UNCHLORINATED  
 PHENOLICS IN BOTTOM DEPOSITS (DRY  
 WGT)  
 PHENOLICS, TOTAL RECOVERABLE  
 PHENOLS  
 PHENOLS, CHLORINATED  
 PHENOXY ACETIC ACID  
 PHENYLPROPANOLAMINE  
 PHENYLTOLOXAMINE  
 PHORATE  
 PHOSMET, ORGANIC PESTICIDE  
 PHOSPHATED PESTICIDES  
 PHOSPHOROTHIOIC ACID 0,0,0-TRIETHYL  
 ESTR  
 PHTHALATE ESTERS  
 PHTHALATES, TOTAL  
 PHTHALIC ACID  
 PHTHALIC ANHYDRIDE  
 PIRIMICARB  
 PLATINUM, TOTAL (AS PT)  
 POLONIUM 210  
 POLYACRILAMIDE CHLORIDE  
 POLYBROMINATED BIPHENYLS  
 POLYBROMINATED DIPHENYL OXIDES  
 POLYCHLORINATED BIPHENYLS (PCBS)  
 POLYMETHYLACRYLIC ACID  
 POLY-NUCLEAR AROMATICS (POLYRAM)  
 POTASSIUM 40  
 PRIORITY POLLUTANTS TOTAL EFFLUENT  
 PROFENOFOS  
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 PROMETRYN, ORGANIC PESTICIDE  
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 PROPABHLOR (RAMROD) DISSOLVED  
 PROPACHLOR, ORGANIC PESTICIDE  
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 PROPANIL  
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 RADIATION-GROSS ALPHA TOT  
 SUSPENDED  
 RADIATION, GROSS BETA  
 RADIATION, GROSS ALPHA  
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 RADIOACTIVITY, GROSS  
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 RARE EARTH METALS, TOTAL  
 RATIO OF FECAL COLIFORM TO FECAL  
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 RDX, DISSOLVED  
 RDX, TOTAL  
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 RUBIDIUM, TOTAL (AS RB)  
 SAFROLE  
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 SELENIUM SLUDGE SOLID  
 SELENIUM, ACID SOLUBLE  
 SELENIUM, DISSOLVED (AS SE)  
 SELENIUM, DRY WEIGHT  
 SELENIUM, POTENTIALLY DISSOLVD

SELENIUM, SLUDGE, TOTAL DRY WEIGHT  
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 SEVIN (CARBARYL) IN TISSUE  
 SEVIN (CARBRYL)  
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 SILVER, POTENTIALLY DISSOLVED  
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 SILVER, TOTAL PER BATCH  
 SILVEX  
 SODIUM CHLORATE  
 SODIUM DICHROMATE  
 SODIUM DIMETHYL-DITHIOCARBAMATE,  
 TOTAL  
 SODIUM-O-PPTH  
 SODIUM PENTACHLORO- PHENATE  
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 464A)  
 TOTAL TOXIC ORGANICS (TTO) (40 CFR  
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TOTAL TOXIC ORGANICS (TTO) (40 CFR 464D)  
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 TREFLAN (TRIFLURALIN)  
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 TRIBUTYLAMINE  
 TRIBUTYLTIN  
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 TRICHLOROPHENOL  
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 DISSOLVED  
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URANYL-ION  
 UREA  
 VERNAM (S-PROPYLDI-  
 PROPYLTHIOCARBAMATE)  
 VINYL ACETATE  
 VINYL CHLORIDE  
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 ZINC  
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**STATE WATER RESOURCES CONTROL BOARD**

**POLICY  
ON  
SUPPLEMENTAL  
ENVIRONMENTAL PROJECTS**

February 3, 2009

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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## **INTRODUCTION**

The State Water Board or Regional Water Board may allow a discharger to satisfy part of the monetary assessment imposed in an administrative civil liability (ACL) order by completing or funding one or more Supplemental Environmental Projects (SEPs.) SEPs are projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger. California Water Code section 13385(i) allows limited use of SEPs associated with mandatory minimum penalties. California Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. In the absence of other statutory authority in the Water Code regarding the use of SEPs, Government Code section 11415.60 has been interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an ACL.

The State Water Board supports the inclusion of SEPs in ACL actions, even when SEPs are not expressly authorized, so long as these projects meet the criteria specified below to ensure that the selected projects have environmental value, further the enforcement goals of the State Water Board and Regional Water Boards (Water Boards), and are subject to appropriate input and oversight by the Water Boards. These criteria should also be considered when the State Water Board or a Regional Water Board considers a SEP as part of the settlement of civil litigation.

SEPs are an adjunct to the Water Boards' enforcement program and are never the basis or reason for bringing an enforcement action. While SEPs can be useful in the facilitation of settlements, the funding of SEPs is not a primary goal of the Water Boards' enforcement program nor is it necessary that a SEP always be included in the settlement of an enforcement action that assesses a monetary liability or penalty.

### ***A. Addressing the State Water Board's Interest in Supplemental Environmental Projects***

While many other jurisdictions require that penalties and administrative liabilities be paid into a general fund, administrative civil liabilities and civil penalties assessed under the Water Code are paid into special funds for specific environmental purposes. The State Water Board has a strong interest in monitoring the use of funds for SEPs that would otherwise be paid into accounts for which it has statutory management and disbursement responsibilities. As a general rule, unless otherwise permitted by statute, no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the discharger, absent compelling justification. The total adjusted monetary assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs.

If a Regional Water Board proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, that Regional Water Board shall affirmatively notify the Director of the Office of Enforcement of the State Water Board of that proposal. The notification shall describe in detail the proposed SEP, the settlement value of the SEP, the reasons why the Regional Water Board proposes to accept the SEP in lieu of a monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit. If the Director of the Office of Enforcement of the State Water Board determines that there is no compelling justification, he or she shall notify the Regional Water Board of that determination and the Regional Water Board will be limited to the 50 percent limit.

## ***B. General Considerations***

### **1. Types of SEPs**

There are two general categories of SEPs: (1) SEPs performed by the discharger; and (2) SEPs performed by third-parties paid by the discharger. Third-party entities that are paid to perform a SEP must be independent of both the discharger and the Water Board. Any actual or apparent conflict of interest must be avoided. A third-party is not independent if it is legally or organizationally related to the discharger or the Water Board. A contract between the discharger and the third-party for the performance of a SEP that allows the discharger to ensure that the SEP is completed pursuant to the terms of the contract, does not affect whether that third-party is otherwise independent of the discharger for the purposes of this Policy.

### **2. Accounting Treatment**

The monetary value of a SEP will be treated as a suspended liability. Unless otherwise required by law, any order imposing a SEP shall state that, if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended penalty, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone. Full payment of the penalty shall be in addition to any other applicable remedies for noncompliance with the terms of the order.

## ***C. General SEP Qualification Criteria***

Nothing in this policy restricts the Regional Water Boards from establishing additional, more stringent criteria for SEPs. All SEPs approved by a Water Board must, at a minimum, satisfy the following criteria:



1. A SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger. The SEP shall not be an action, process, or product that is otherwise required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s). (Note: "Compliance Projects" as authorized by Water Code section 13385(k)(1) are not SEPs.)
  
2. The SEP shall directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to<sup>1</sup>:
  - a. monitoring programs;
  - b. studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
  - c. water or soil treatment;
  - d. habitat restoration or enhancement;
  - e. pollution prevention or reduction;
  - f. wetland, stream, or other waterbody protection, restoration or creation;
  - g. conservation easements;
  - h. stream augmentation;
  - i. reclamation;
  - j. watershed assessment (e.g., citizen monitoring, coordination and facilitation);
  - k. watershed management facilitation services;
  - l. compliance training, compliance education, and the development of educational materials;
  - m. enforcement projects, such as training for environmental compliance and enforcement personnel; and
  - n. non-point source program implementation.

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<sup>1</sup> Nothing in this section is intended to affect the authority of the State Water Board to make disbursements from the State Water Pollution Cleanup and Abatement Account, including but not limited to, authorized disbursements for education projects.

3. A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff. Any indirect benefits provided to members, staff, or family shall be only those that are enjoyed by the public generally. A SEP shall not benefit or involve friends of members, staff, or family where there could be an appearance of undue influence, suggesting an actual or apparent conflict of interest for the Water Boards.
4. As contemplated by this policy, a SEP is a project or group of projects, the scope of which is defined at the time the SEP is authorized by a Water Board. The placement of settlement funds into an account or fund managed by a Regional Water Board that is not an account or fund authorized by statute or otherwise allowed by the State Water Board is not permissible. If a Regional Water Board wishes to establish any fund that is designed to receive money that is paid by a discharger to resolve a claim of liability under the Water Code, the Regional Water Board should obtain the express authorization of the State Water Board. Such authorization will be subject to conditions that the State Water Board may place on such a fund.

#### ***D. Additional SEP Qualification Criteria***

The following additional criteria shall be evaluated by the Water Boards during final approval of SEPs:

1. Does the SEP, when appropriate, include documented support by other public agencies, public groups, and affected persons?
2. Does the SEP directly benefit the area where the harm occurred or provide a region-wide or statewide use or benefit?
3. Does the SEP proposal, considering the nature or the stage of development of the project, include documentation that the project complies with the California Environmental Quality Act?
4. Does the SEP proposal address whether it can be the basis for additional funding from other sources?
5. Does the entity identified as responsible for completing the SEP have the institutional stability and capacity to complete the SEP? Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected.
6. Does the SEP proposal include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project?

## ***E. Nexus Criteria***

There must be a nexus between the violation(s) and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.

## ***F. Project Selection***

Each Regional Water Board will maintain a list of the SEPs that it has authorized pursuant to an order. The list of authorized SEPs shall be available on the Regional Water Board's web site. A Regional Water Board also may maintain and post on its web site a list of environmental projects that it has pre-approved for consideration as a potential SEP. Each Regional Water Board may determine when and how it wishes to consider an environmental project for placement on its list of potential SEPs.

## ***G. Orders Allowing SEPs***

When SEPs are appropriate, they are imposed as stipulated ACL orders, in settlement of an ACL complaint or some other order entered under the authority of a Water Board. There is no legal authority for an ACL complaint to contain a proposed SEP. Funding for SEPs is addressed as a suspended liability.

All orders that include a SEP must:

1. Include or reference a scope of work, including a budget.
2. Require periodic reporting (quarterly reporting at a minimum) on the performance of the SEP by the discharger to the Water Board to monitor the timely and successful completion of the SEP. Copies of the periodic reports must be provided to the Division of Financial Assistance of the State Water Board.
3. Include a time schedule for implementation with single or multiple milestones and that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP.
4. Contain or reference performance standards and identified measures or indicators of performance in the scope of work.

5. Specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators.
6. Require that whenever the discharger, or any third party with whom the discharger contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Water Board enforcement action.

Any portion of the liability that is not suspended shall be paid to the CAA or other fund or account as authorized by statute. The order shall state that failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and that the suspended amounts will become immediately due and payable.

It is the discharger's responsibility to pay the suspended amount(s) when due and payable, regardless of any agreements between the discharger and any third party contracted to implement or perform the project.

Upon completion of the SEP, the Water Board shall provide the discharger with a statement indicating that the SEP has been completed in satisfaction of the terms of the order and that any remaining suspended liability is waived.

#### ***H. Project Payment, Tracking, Reporting and Oversight Provisions***

Except under unusual circumstances, ACL orders shall include the provisions for project payment, tracking, reporting, and oversight as follows:

1. For any SEP that requires oversight by the State Water Board or Regional Water Board, the full costs of such oversight must be covered by the discharger. Based on its resource constraints, the Water Board may require the discharger to select and hire an independent management company or other appropriate third party, which reports solely to the Water Board, to oversee implementation of the SEP in lieu of oversight by Water Board staff. If no arrangement for the payment for necessary oversight can be made, the SEP shall not be approved, except under extraordinary circumstances. As a general rule, such oversight costs are not costs that should be considered part of the direct cost of the SEP to the discharger for the purposes of determining the value of the SEP for settlement purposes unless the Regional Water Board or State Water Board expressly finds that such costs should be considered part of the SEP.

2. A written acknowledgment and other appropriate verification and enforceable representation to the Water Boards by each third-party performing the SEP that any SEP funds it receives from the discharger will be spent in accordance with the terms of the order. The third-party performing the SEP must agree to an audit of its SEP expenditures, if requested by the Water Board.
3. The discharger must provide the Water Board and the Division of Financial Assistance of the State Water Board with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. Where a third-party performed the SEP, that entity may provide the report and the certification.
4. The discharger must provide the Water Board a final, certified, post-project accounting of expenditures, unless the Water Board determines such an audit is unduly onerous and the Water Board has other means to verify expenditures for the work. Such accounting must be paid for by the discharger and must be performed by an independent third-party acceptable to the Water Board.
5. The Water Board will not manage or control funds that may be set aside or escrowed for performance of a SEP unless placed in an account authorized by statute or permitted by the State Water Board.
6. The Water Board does not have authority to directly manage or administer the SEP.
7. Where appropriate, it is permissible for a SEP funding agreement between a discharger and a third-party to require pre-approval of invoices or confirmation of completed work by a Water Board before escrowed or set-aside funds are disbursed to the party performing the work.

### ***I. Public Reporting of SEP Status Information***

The State Water Board shall post on the State Water Board website, by March 1 of each year, a list, by Regional Water Board, of the completed SEPs for the prior calendar year, and shall post information on the status of SEPs that are in progress during that period.

**LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD  
SUPPLEMENTAL ENVIRONMENTAL PROJECTS  
FACT SHEET  
July 2009**

**INTRODUCTION:**

***Background***

Under the authority of the California Water Code (CWC), the State Water Resources Control Board (State Board) and Regional Water Quality Control Boards (Regional Boards) may issue administrative civil liability complaints (ACLCLs) to dischargers in response to violations of waste discharge requirements, discharge prohibitions, enforcement orders, or other orders of the Boards. Assessments collected through the ACLCL process are required by the CWC to be paid to the State Board Cleanup and Abatement Account (CAA) or other account as specified in law. The State Board administers the CAA, and funds are used to address important water quality cleanup and abatement activities throughout the state.

As an alternative to depositing ACLCL assessments in the CAA, the State Board's Water Quality Enforcement Policy recognizes that ACLCL assessments may be used for important and valuable water quality improvement projects within the Region in which the assessment was made. These are known as Supplemental Environmental Projects (SEPs). SEPs are projects that (1) enhance the beneficial uses of the waters of the state, (2) provide a benefit to the public at large, and (3) are not otherwise required or would be greatly accelerated by the funding provided by the ACLCL assessment. Examples of SEPs include pollution prevention projects, environmental restoration programs, environmental auditing, public awareness and education activities, watershed assessments, watershed management facilitation services, and non-point source program implementation. On February 28, 2002, in order to expedite and simplify the SEP selection process, the Regional Board adopted Resolution No. 02-007 allowing the Regional Board staff to maintain a SEP List containing SEPs solicited by the Regional Board and approved on a semi-annual basis by the Regional Board. This SEP List is posted on the Regional Board website and edited when necessary for up-to-date SEP project information.

***New SEP Policy***

The State Board supports the inclusion of SEPs in ACLCL actions, even when SEPs are not expressly authorized, so long as these projects meet the criteria specified below to ensure that the selected projects have environmental value, further the enforcement goals of the State Board and Regional Boards, and are subject to appropriate input and oversight by the Water Boards. In the interest of these goals, the SEP policy has been extensively revised and the new policy was adopted by the State Board on February 3, 2009. While SEPs are valuable resources for improving water quality in the Region impacted by the discharger, the new policy recognizes the need for increased oversight, accountability and limitations. This fact sheet is intended to notify Dischargers of the new policy so they are able to determine if they qualify for a SEP and if that option is in their best interest.

## SEP POLICY FACTS:

### *Summary of Important Policy Changes (See rest of sheet for more detailed descriptions)*

- Unless mandated by statute, the discharger cannot fund a SEP that costs more than 50 percent of the total assessment against the discharger.
- Each SEP must be tailored as a discrete project or sub-project commensurate with the funding proposed by the discharger. Thus, a discharger may not simply pay its penalty toward a specific project; it must pay for and be responsible for one complete project or sub-project. Liability for the complete amount placed towards a SEP remains until successful completion of the SEP and submittal of the final report to the Regional Board.
- The discharger must develop a detailed workplan for the project.
- The SEP and workplan must be agreed upon during negotiations and included an Order or Complaint issued by the Regional Board.
- In addition to funding the SEP, the discharger is also responsible for the costs of project oversight by the Regional Board and a third party.

### *General Criteria for a SEP*

- An individual SEP with a value less than \$50,000 will generally not be considered.
  - SEPs already on the Regional Board's approved SEP list may, with Regional Board approval, be granted for less than \$50,000.
- No settlement shall be approved by the Regional Board that funds a SEP in an amount greater than 50 percent of the total adjusted monetary assessment (total amount assessed, exclusive of a Regional Board's investigative and enforcement costs) against the discharger, absent compelling justification.
  - **Therefore**, for a discharger to be eligible for a SEP, the penalty assessed against it must be \$100,000 or more, otherwise it will violate either the \$50,000 or more requirement, or the 50 percent or less requirement.
- There must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remedies or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
- A SEP cannot be an action, process, or product that is already required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s).
- A SEP must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Non-exhaustive examples include:
  - Monitoring programs
  - Studies or investigations
  - Water or soil treatment
  - Habitat restoration or enhancement
  - Pollution prevention or reduction
  - Wetland, stream, or other waterbody protection, restoration or creation
  - Conservation easements
  - Stream augmentation

- Reclamation
- Watershed assessment
- Watershed management facilitation services
- Compliance training, compliance education, and the development of educational materials
- Enforcement projects, such as training for environmental compliance and enforcement personnel
- Non-point source program implementation
- A SEP may not fiscally benefit a Regional or State Board's functions, members, staff, or family of members and staff. Indirect benefits provided to these people may only be those enjoyed by the public generally. Also, the SEP may not *appear* to benefit any of these people suggesting a conflict of interest.
- If the discharger elects to select a SEP from the Regional Board approved SEP List, then in addition to the above criteria the discharger must tailor the SEP so that the discharger fully funds the entire SEP or fully funds a phase of the project.

#### ***Additional Considerations and Criteria***

- The Regional Board will also consider these criteria when evaluating the SEP:
  - Does the SEP, when appropriate, include documented support by other public agencies, public groups, and affected persons?
  - Does the SEP directly benefit the area where the harm occurred or provide a region-wide or statewide use or benefit?
  - Does the SEP proposal, considering the nature or the stage of development of the project, include documentation that the project complies with the CEQA?
  - Does the SEP proposal address whether it can be the basis for additional funding from other sources?
  - Does the entity identified as responsible for completing the SEP have the institutional stability and capacity to complete the SEP? Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected.
  - Does the SEP proposal include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project?

#### ***Revised SEP Adoption Process***

- When resolving the Complaint, the discharger can choose either:
  - An individual SEP proposed by the discharger, or
  - A SEP from the Regional Board pre-approved list (currently being phased out)
  - A possible SEP from a list of interested organizations.
    - These three types of SEPs can be performed by either the discharger or a third-party
    - If it is to be performed by a third-party, this party must be independent from both the discharger and the Regional Board so as to avoid actual or perceived conflicts of interest.
- If the discharger proposes an individual SEP then they must submit a proposal that meets the general criteria stated above.



- If the discharger proposes to fund a SEP off the Regional Board approved SEP List then the proposal must be tailored to fully fund the SEP or a phase of the SEP.
- Upon selection of a SEP the discharger must submit a workplan for approval by the Regional Board Executive Officer. The workplan must include:
  - A project title
  - The organization proposing the project [project manager's name, email address, and phone number; type of organization (public, private, non-profit, etc.)]
  - The name of the independent management company who would report solely to the Regional Board, to oversee the implementation of the SEP, including all contact information (If applicable).
  - The third party completing the project including all contact information (If applicable).
  - The names and statement of qualifications and experience for key project team members.
  - The name and location of the project, including watershed (creek, river, bay) where it is located.
    - Ventura Coastal, Ventura River, Santa Clara River, Santa Monica Bay, Los Angeles Country Coastal, Los Angeles River, or multiple watersheds.
  - A description of the project and how it fits into one or more of the following SEP categories:
    - Pollution prevention
    - Environmental restoration
    - Environmental auditing
    - Compliance education/development of education materials
    - Watershed assessment (e.g., citizen monitoring, coordination, and facilitation)
    - Watershed management facilitation services
    - Non-point source program implementation
  - A description of how the project benefits water quality and/or quantity.
  - A description of how the project benefits the public.
  - Documented support by one or more of the following:
    - Other agencies
    - Public groups
    - Impacted persons
  - A monitoring plan or Quality Assurance Project Plan (QAPP) if applicable – required for all projects and tasks involving use of existing environmental data and those involved with the collection of new information e.g. the sampling and analysis project.
    - Guidance for QAPP <http://www.epa.gov/quality/qs-docs/g5-final.pdf>
  - A detailed description of the scope of work, work products and project milestones.
  - Include or reference a scope of work, including a budget.
  - A schedule for periodic monitoring (quarterly at a minimum) on the performance of the SEP to monitor the timely and successful completion of the SEP.

- Reports should include a list of all activities on the SEP since its adoption, all SEP activities during the quarter, an accounting of funds expended, and the proposed work for the following quarter.
    - Copies of the reports must be provided to the Regional Board and the Division of Financial Assistance of the State Board.
  - A time schedule for implementation with single or multiple milestones and which identifies the amount of liability that will be suspended or excused upon the timely and successful completion of each milestone.
    - Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP.
  - Contain or reference performance standards and identify measures or indicators or performance in the scope of work.
  - Specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators.
- The approved workplan will be included in a draft Order subject to public notice and comment.
- Subsequent to adoption of the Order by the Regional Board:
  - The discharger must cover the costs of the Regional Board's oversight, or the Regional Board may allow the discharger to pay for an independent management company to report to the Regional Board and provide oversight. This is a mandatory function and the costs cannot be considered part of the SEP.
  - Third-parties must submit proper verification and acknowledgment that they will abide by the SEP rules and spend the money in accordance with the terms of the order and that they must agree to an audit of their expenditures if requested by the Regional Board.
  - The discharger or third-party must provide the Regional Board and the Division of Financial Assistance of the State Board with a final completion report under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcomes or performance standards were met.
  - The discharger must provide the Regional Board with a final, certified, post-project accounting of expenditures unless the Regional Board determines the audit to be unduly onerous and the Regional Board has other means to verify expenditures. The accounting must be funded by the discharger and performed by an independent third-party acceptable to the Regional Board.
  - It is permissible for a contract between a discharger and a third-party to require pre-approval of invoices or confirmation of completed work by a Regional Board before the funds are disbursed to the performing party.
- The Regional Board will not control the funds set aside for performance of a SEP unless placed in an authorized account.
- The Regional Board cannot directly manage or administer the SEP.
- The discharger's liability will be considered fully discharged only upon successful completion of the SEP and submittal of a final report approved by the Regional Board Executive Officer.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

**In the matter of:** ) **Complaint No. R4-2010-0115**  
 )  
**Coast United Property Management** ) **Violation of California Water Code § 13268**  
  
**Also known as** )  
**Coast-United Advertising Co., Inc.** )  
 )

This Complaint is issued to COAST UNITED PROPERTY MANAGEMENT, also known as COAST-UNITED ADVERTISING CO., INC. (Discharger), under authority of California Water Code (CWC) section 13323 to assess administrative civil liability pursuant to CWC section 13268. This Complaint proposes administrative civil liability in the amount of \$39,900 based on a violation of a CWC section 13267 Investigative Order issued February 20, 2008.

The Interim Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) hereby gives notice that:

1. The Discharger owns the property located at 8714 and 8716 Darby Avenue, Northridge, City and County of Los Angeles, California (the Site). Though there are two addresses, the property has one Assessor's Parcel Number (APN), 2769-024-030. Chlorinated volatile organic compounds known to be carcinogens to humans from the soil and groundwater have been detected at the Site in the past, and may have or threaten to detrimentally impact the quality of the waters of the state.
2. The Dischargers are alleged to have violated provisions of the law for which the Regional Board may impose civil liability pursuant to CWC section 13268 from the period from June 30, 2008 through July 29, 2010, the day this Complaint issues. This Complaint proposes to assess \$39,900 in penalties for the violation cited based on the considerations described herein. The deadline for public comments on this Complaint is 5:00 p.m. on **August 30, 2010**.
3. Unless waived, a hearing before a Regional Board Hearing Panel will be held on **October 27, 2010**, at 9:00 a.m. at 320 W. 4<sup>th</sup> Street, Los Angeles, CA 90013 on the 5<sup>th</sup> floor at the Public Utilities Commission Hearing Room. The Discharger or its representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of

4. The Dischargers must submit any written evidence and/or information concerning this Complaint to the Regional Board no later than 5:00 p.m. on **September 28, 2010**, for the Hearing Panel's consideration. Any written evidence submitted to the Regional Board after this date and time may not be accepted or responded to in writing.
5. At the hearing, the Hearing Panel will consider whether to affirm, reject, or modify the proposed administrative civil liability, or to refer the matter to the Attorney General, or take other enforcement action.
6. This issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

### **ALLEGATIONS**

7. **Site Location and Description:** The Site is 0.65 acres in a light industrial and residential area. The Site consists of various structures including a one level multi-unit building. There is an asphalt-paved driveway and parking lot area, and a mainly asphalt-paved open yard area. There are residences to the north and east, and light industrial properties across Darby Avenue to the south and west.
8. **Named Discharger:** The Discharger is the responsible party because it owns the Site property. COAST-UNITED ADVERTISING CO., INC owns the Site and, WILLIAM M. GIAMELA is the Agent for Service of Process. COAST-UNITED ADVERTISING CO., INC purchased the Site in 1997 for \$350,000. Though the business names are slightly different, it appears COAST-UNITED ADVERTISING CO., INC and COAST UNITED PROPERTY MANAGEMENT is the same corporation. WILLIAM M. GIAMELA has signed correspondence to the Regional Water Board regarding the Site on behalf of COAST UNITED PROPERTY MANAGEMENT, with the same business address in the letterhead as what is on file with the Secretary of State, 8020 Deering Avenue, Canoga Park, CA.
9. **Regulatory Status:** On February 20, 2008, the Regional Board issued a California Water Code (CWC) section 13267 investigative order (13267 Order) requiring the Discharger to submit two technical reports by March 24, 2008 (an extension was granted to June 30, 2008). The required reports were 1) a Phase I Environmental Site Assessment report containing a history of operations on the Site and identifying potential source areas and chemicals used/stored at the Site, and 2) a technical work plan to completely delineate soil, soil vapor and groundwater contamination. On March 17, 2009, Regional Water Board Executive Officer Tracy J. Egoscue issued a Notice of Violation (NOV) to the Discharger for failing to comply with the 13267 Order. The Discharger has never applied for coverage under any permit with the Regional Water Board.

**10. Site Background:** The Dischargers are suspected of allowing chlorinated volatile organic compounds including tetrachloroethylene (PCE), trichloroethylene (TCE), and 111-trichloroethane (TCA), in the Site's ground water to migrate off the Site and into the community. The 13267 Order sought to identify and delineate the chlorinated volatile organic compounds present on the Site.

- a. The site has been historically used as a circuit board manufacturing facility prior to the Discharger purchasing the property. It had been leased to Scrivner Electronics sometime through 1974, Darby Circuits from 1974 through 1982, and Lai Circuits from 1982 through 1985. The manufacturing operations at the former circuit board facility reportedly used a concrete clarifier and an adjacent pit to discharge various compounds and chemicals used or generated during the production processes. The clarifier was removed prior to 1986.
- b. In 1986, soil samples collected beneath the former clarifier to a depth of 40 feet below ground surface (bgs) detected PCE, TCA, and TCE. Maximum soil concentrations were 117 milligrams per kilogram (mg/kg), 1,270 mg/kg and 4,580 mg/kg, respectively. High concentrations of copper (20,200 mg/kg) and chromium (8,400 mg/kg) were also detected. The highest concentrations of the chemicals of concern were identified directly beneath and adjacent to a former copper sulfate pit and a former clarifier.
- c. Tetra Tech, Inc., described in their May, 1989 report titled *Results of Soil and Groundwater Sampling at the Henderson Property, Northridge, California* that they investigated soil and groundwater to determine the vertical extent of contamination beneath the location of the former clarifier. The results confirmed that contaminants had migrated vertically through the soil and impacted the first groundwater below the site. Monitoring well MW-1 was installed adjacent to the clarifier. Groundwater analysis from MW-1 verified that the groundwater beneath the site was contaminated at 1,700 micrograms per liter ( $\mu\text{g/L}$ ) TCA and 6,500  $\mu\text{g/L}$  TCE.
- d. In January, 1991, the County of Los Angeles Department of Health Services informed the Regional Water Board that the former business Lai Circuits that was on the Site handles acids, bases, solvents and heavy metals. Poor methods of disposal, housekeeping and maintenance led to contaminating the soil with ammonia, solvents and heavy metals. The Department of Health Services closed the business. Initial groundwater samples indicated significant levels of chlorinated organic contamination. The Department of Health Services concluded there was a threat to the quality of the groundwater.
- e. In October, 1991, the Regional Water Board sought a work plan for a complete site assessment to determine the extent of soil and groundwater contamination from San Chen Lai, the owner of Lai Circuits and the Site at the time.
- f. According to a letter dated February 10, 1992 from the Office of the District Attorney of the County of Los Angeles to the Regional Board, San Cheng Lai of Lai Circuits in California Superior Court, Los Angeles County, pled no contest to nine felony violations of California Health and Safety Code section 25189.5(b) (improper disposal of hazardous waste), based on his actions that contaminated the Site (Case

- g. The Discharger purchased the Site in 1997.
- h. On February 20, 2008, the Executive Officer of the Regional Water Board issued the 13267 Order requiring the Discharger to submit 1) a Phase I Environmental Site Assessment report to include a complete operational history of the Site and the identification of all potential source areas and chemicals used or stored at the site; and 2) a technical work plan to completely delineate soil, soil vapor and groundwater contamination. The reports were due to the Regional Water Board by March 24, 2008. On March 27, 2008, Mr. William Giamela requested via e-mail a 45-day extension which was granted by letter dated May 12, 2008. The revised due date for the reports was June 30, 2008.
- i. On March 17, 2009, the Executive Officer of the Regional Water Board issued a Notice of Violation for the Discharger's failure to submit the reports required under the 13267 Order. After several communications with Mr. William Giamela, no reports were submitted to the Regional Water Board and staff is not aware of any cleanup activity.
- j. After several phone calls, e-mails, and at least one meeting with Regional Board staff over the past two years since the 13267 Order issued, the Discharger has yet to submit either report.

### **VIOLATION**

- 11. Pursuant to CWC section 13268(a)(1) and (b)(1), any person failing or refusing to furnish technical reports required by a 13267 order may be civilly liable for an amount not to exceed \$1,000 for each day of violation.
- 12. The 13267 Order required the Discharger to submit the Phase I Environmental site assessment report and work plan by March 24, 2008. Three days after the due date, Mr. William Giamela requested a 45-day extension, which was granted, extending the due date to June 30, 2008.
- 13. If this matter proceeds to hearing, the Interim Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this complaint through completion of the hearing.

### **PROPOSED LIABILITY**

14. The State Water Resources Control Board's Water Quality Enforcement Policy (amended November, 2009)<sup>1</sup> establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13327. The liability methodology spreadsheet, Attachment A, is incorporated herein and made a part of this ACL Complaint by this reference. It presents the administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy.

15. **Initial Liability Determination:** The per day factor is 0.4. This factor is determined by a matrix analysis using the potential for harm and the deviation from applicable requirements. The potential for harm is determined to be minor because the requirements the Discharger failed to meet were to submit reports describing the history of operations and chemical use at the Site, and a work plan to delineate the extent of pollution. The failure to submit these reports did not increase the amount of the pollution. The deviation from the requirement to submit reports was major. The Discharger has failed for two years to delineate the pollution, disregarding the 13267 Order other than asking for an extension.

- a. There are 760 days of violation from June 30, 2008 through July 29, 2010. Regional Board staff has determined that the Enforcement Policy's alternative approach to penalty calculation is appropriate. A multiple-day approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis. The economic benefit is the cost of having the required reports prepared.
- b. Following the Enforcement Policy, for violations that last more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of violation, plus an assessment for each five day period of violations until the 30<sup>th</sup> day, plus an assessment for each 30 days of violation thereafter. Since the Discharger failed to submit the reports for 760 days, only 31 days worth of violations are accrued based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, etc.
- c. Applying the per day factor to the number of days of violation yields an initial liability of \$12,400. This is the number of days of violation (31) multiplied by the per day factor (0.4), multiplied by the statutory maximum penalty per day (\$1,000).

16. **Adjustments to Initial Liability Determination:** Based on the following adjustments, the amount revised from the initial liability is \$27,900.

- a. The Discharger's culpability factor is 1.5 based on the Discharger's intentional failure to submit the reports to comply with the 13267 Order. The Discharger was given sufficient notice with the 13267 Order, its extension at the Discharger's request, the Notice of Violation, and multiple e-mail and phone reminders.

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<sup>1</sup> The Enforcement Policy may be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

- b. The Discharger's cleanup and cooperation factor is 1.5. Cleanup is not a factor in this matter because the violation is failure to submit reports. The Discharger has not cooperated voluntarily or by complying with the 13267 Order. As of the date of this Complaint, the Discharger has yet to submit either required report despite the ample notification.
- c. The discharger's history of violations factor is 1 because it is a neutral multiplier. Enforcement staff is not aware of any prior violations.
- d. Based on these adjustments, the amount revised from the initial liability is \$27,900. This is the initial liability (\$12,400) multiplied by the culpability factor (1.5), multiplied by the cleanup and cooperation factor (1.5), multiplied by the history of violations factor (1).

17. **Total Base Liability Amount:** After considering the adjustment factors, the total base liability amount is calculated at \$27,900.

18. **Ability to Pay and to Continue in Business:** The discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the property and thus has a significant asset, 2) the Discharger leases the property and thus has an income, and 3) a records search indicates that the Discharger is operating at least one, if not multiple, businesses out of its offices located at 8116 and 8020 Deering Park Avenue in Canoga Park, CA 91304 (Coast United Advertising Co., Inc.; Coast United Bench Advertising Company; and Coast United Property Management). Based on the information, the total base liability amount is not adjusted.

19. **Other Factors as Justice May Require:** As of the date of the issuance of this Complaint, enforcement staff has incurred costs of investigation and enforcement in the amount of \$12,000. This represents approximately 80 hours staff time devoted to investigating and drafting the Complaint at \$150 per hour. This amount is added to the total base liability amount, equaling \$39,900. There are no additional factors as justice may require.

20. **Economic Benefit:** The economic benefit estimated for the violation(s) at issue is approximately \$10,000 based on current consulting costs of producing a Phase I Environmental Site Assessment (\$3,000) and a work plan for soil, soil vapor and groundwater assessment (\$7,000). The adjusted total base liability amount of \$39,900 is more than at least 10% higher than the economic benefit amount as required in the Enforcement Policy. Therefore, the liability amount is not adjusted for this factor.

21. **Maximum and Minimum Liability:** The statutory minimum liability is zero and the maximum liability amount for 760 days of violation is \$760,000. The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. There is no need to adjust the proposed liability amount since it is less than the statutory maximum amount.



22. **Final Proposed Liability Amount:** Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$39,900. Attachment A is a spreadsheet that demonstrates the use of the penalty calculation methodology.

July 29, 2010

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Samuel Unger, P.E.  
Interim Executive Officer  
Los Angeles Regional Water Quality Control Board

Attachment A: Liability Methodology Spreadsheet

## WAIVER FORM

### FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0115

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent COAST UNITED PROPERTY MANAGEMENT, also known as COAST-UNITED ADVERTISING CO., INC. (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R4-2010-0115 (hereinafter the “Complaint”). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing.”

- (*OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the recommended liability.*)
- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
  - b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$39,900** by check that references “ACL Complaint No. R4-2010-0115” made payable to the “*Cleanup and Abatement Account*”. Payment must be received by the Regional Water Board by **August 30, 2010** or this matter will be placed on the Regional Board’s agenda for a hearing as initially proposed in the Complaint.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board’s Prosecution Team) during this comment period, the Regional Water Board’s Interim Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
  - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

- ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under “Option 1.”

---

(Print Name and Title)

---

(Signature)

---

(Date)



# California Regional Water Quality Control Board

## Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams  
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

July 29, 2010

Ms. Bonnie Teaford  
Public Works Director  
City of Burbank  
275 East Olive Avenue  
Burbank, California 91510-6459

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7008 1830 0004 3360 5989

**COMPLAINT NO. R4-2008-0069-M FOR MANDATORY MINIMUM PENALTY AGAINST CITY OF BURBANK, BURBANK WATER RECLAMATION PLANT, 740 NORTH LAKE STREET, BURBANK, LOS ANGELES COUNTY, CA (ORDER NO. R4-2006-0085, NPDES PERMIT NO. CA0055531, CI-4424)**

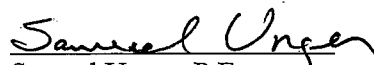
Dear Ms. Teaford:

Enclosed is Complaint No. R4-2008-0069-M for Mandatory Minimum Penalty in the amount of \$87,000 against City of Burbank (hereinafter Permittee) for violating waste discharge requirements contained in Regional Board Order No. R4-2006-0085. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2008-0069-M and return it to the Regional Board by 5:00 pm on **August 30, 2010**. If we do not receive the waiver and full payment of the mandatory minimum penalty by **August 30, 2010**, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

If you have any questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Mr. Russ Colby at (213) 620-6373.

Sincerely,

  
Samuel Unger, P.E.  
Interim Executive Officer

Enclosures: Complaint No. R4-2008-0069-M  
Exhibit "A"  
Notice of Public Hearing

cc: Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board  
Ms. Rebecca Chou, Los Angeles Regional Water Quality Control Board  
Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board

*California Environmental Protection Agency*



*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R4-2008-0069-M</b>
	)	<b>Mandatory Minimum Penalty for</b>
	)	<b>Violation of California Water Code § 13376</b>
<b>City of Burbank</b>	)	<b>and</b>
<b>Burbank Water Reclamation Facility</b>	)	<b>Order No. R4-2006-0085</b>
<b>Burbank, California</b>	)	<b>(NPDES No. CA0055531)</b>

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385, subdivisions (h) & (i) is issued to the City of Burbank (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in Order No. R4-2006-0085 (NPDES No. CA0055531, CI No. 4424).

**The Interim Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:**

1. The Permittee owns the Burbank Water Reclamation Facility (hereinafter facility) and contracts with United Water Service to operate the facility. The facility, a tertiary wastewater treatment plant is located at 740 North Lake Street in Los Angeles County. The wastewater is susceptible to exceeding the temperature limitation as well as containing coliform, oil and grease (O&G), total residual chlorine (TRC), turbidity, and other pollutants which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The wastewater flows to the Burbank Western Channel, tributary to the Los Angeles River, a navigable water of the United States.
2. On November 9, 2006, the Regional Board adopted Order No. R4-2006-0085 which serves as NPDES permit number CA0055531. Order No. R4-2006-0085 prescribes waste discharge requirements to the Permittee for the discharge of treated wastes from the facility. Order No. R4-2006-0085 is set to expire October 10, 2011.
3. On April 1, 2010, the Regional Board adopted Order No. R4-2010-0058 amending Order No. R4-2006-0085. Order No. R4-2010-0058 is effective May 21, 2010 through October 10, 2011. All violations being considered in Complaint No. R4-2008-0069-M occurred prior to the effective date of the amendment, Order No. R4-2010-0058.
4. Order No. R4-2006-0085, effective December 29, 2006 through October 10, 2011, includes the following effluent limitations for oil and grease (O&G), temperature, total residual chlorine (TRC), coliform and turbidity (Part I.A. pages 30-37):

July 29, 2010

Constituent	Unit of Measure	Discharge Limitations	
		Daily Maximum	Monthly Average
O&G	mg/L	15	10
Temperature	°F	86	--
TRC	mg/L	0.1	--
Coliform	MPN/100 mL	(a) 7-day median = 2.2 MPN/100 mL, (b) 30-day period = not to exceed 23 MPN/100 mL in > 1 sample	
Turbidity	NTU	(a) Daily Average = 2 NTU (b) Not to exceed 5 NTU > 5 percent of time (72 minutes) in 24 hours	

mg/L = milligrams/liter, MPN/100 mL = Most Probable Number/ 100 milliliters, NTU = Nephelometric Turbidity Units,  
°F = degrees Fahrenheit

5. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
6. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Board pursuant to the authority of CWC § 13383.
7. On September 30 2008, the Chief Deputy Executive Officer of the Regional Board issued the Permittee Settlement Offer No. R4-2008-0069-M to participate in the Expedited Payment Program (Settlement Offer). The Settlement Offer included a Notice of Violation notifying the Permittee of thirty-two (32) violations that occurred between February 2007 through January 2008, twenty-nine (29) of which are subject to mandatory minimum penalties.
8. Since issuance of Settlement Offer No. R4-2008-0069-M, Regional Board staff have dismissed one (1) violation and the Permittee has reported five (5) additional violations between July 2009 through March 2010.
9. Thirty-six (36) violations of Order No. R4-2006-0085 were noted in the Permittee's self-monitoring reports during the period February 2007 through March 2010. These violations include effluent limit exceedances for oil and grease (O&G), temperature, total residual chlorine (TRC), coliform and turbidity. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
10. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more.

Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.”

11. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
12. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385(c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

**YOU ARE HEREBY GIVEN NOTICE THAT:**

13. The Interim Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$87,000 for the violations which occurred during the February 2007 through March 2010 monitoring periods cited in Exhibit “A”. Refer to Exhibit “A” for the calculation of the amount of mandatory minimum penalty.
14. The Permittee may waive the right to a hearing and pay the recommended civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on **August 30, 2010**. If the hearing is waived, a check in the amount of \$87,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on **August 30, 2010**.
15. If the Regional Board does not receive a waiver and full payment of the recommended penalty by **August 30, 2010**, the Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
16. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
17. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
18. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the

Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

19. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
20. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Samuel Unger, P.E.

Interim Executive Officer

Los Angeles Regional Water Quality Control Board

July 29, 2010



Ms. Jennifer Fordyce  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814  
(916) 324-6682  
[jfordyce@waterboards.ca.gov](mailto:jfordyce@waterboards.ca.gov)

**Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.**

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on September 28, 2010** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

#### **IX. QUESTIONS**

If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: July 29, 2010

**WAIVER FORM**

**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2008-0069-M**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Burbank (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2008-0069-M (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)*
- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
  - b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$87,000** by check that references "ACL Complaint No. R4-2008-0069-M" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **August 30, 2010** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Interim Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
  - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.

- (OPTION 2: Check here if the Permittee waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Permittee may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Permittee will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Permittee requests that the Regional Water Board delay the hearing so that the Permittee and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

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(Print Name and Title)

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(Signature)

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(Date)

**EXHIBIT "A"**  
Violation Summary

Pipe	Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
002	02/20/07	Feb 07	>23>2x in 30 days	Total Coliform	280	23	MPN	--	--	Chronic	(i)1	\$0
002	03/18/07	Mar 07	>23>2x in 30 days	Total Coliform	110	23	MPN	--	--	Chronic	(i)1	\$0
002	04/16/07	Apr 07	>23>2x in 30 days	Total Coliform	350	23	MPN	--	--	Chronic	(i)1	\$0
002	05/01/07	May 07	>23>2x in 30 days	Total Coliform	1,300	23	MPN	--	--	Chronic	(i)1	\$3,000
002	05/06/07	May 07	>23>2x in 30 days	Total Coliform	40	23	MPN	--	--	Chronic	(i)1	\$3,000
002	07/09/07	Jul 07	>23>2x in 30 days	Total Coliform	30	23	MPN	--	--	Chronic	(i)1	\$3,000
002	07/13/07	Jul 07	Daily Maximum	TRC	1.8	0.1	mg/L	2	1700	Serious	(h)1	\$3,000
002	07/20/07	Jul 07	Daily Maximum	TRC	0.3	0.1	mg/L	2	200	Serious	(h)1	\$3,000
002	07/25/07	Jul 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	07/26/07	Jul 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	07/27/07	Jul 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	07/30/07	Jul 07	>23>2x in 30 days	Total Coliform	50	23	MPN	--	--	Chronic	(i)1	\$3,000
002	08/03/07	Aug 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/04/07	Aug 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/12/07	Aug 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/12/07	Aug 07	>23>2x in 30 days	Total Coliform	30	23	MPN	--	--	Chronic	(i)1	\$3,000
002	08/13/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/14/07	Aug 07	Maximum	Temperature	89	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/15/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/16/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/17/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/18/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/19/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/20/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/21/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/28/07	Aug 07	Maximum	Temperature	87	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/29/07	Aug 07	Maximum	Temperature	89	86	°F	--	--	Chronic	(i)1	\$3,000

**EXHIBIT "A"**  
Violation Summary

Pipe	Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
002	08/30/07	Aug 07	Maximum	Temperature	89	86	°F	--	--	Chronic	(i)1	\$3,000
002	08/31/07	Aug 07	Maximum	Temperature	88	86	°F	--	--	Chronic	(i)1	\$3,000
002	09/05/07	Sep 07	Daily Maximum	O&G	45	15	mg/L	1	200	Serious	(h)1	\$3,000
002	09/05/07	Sep 07	Daily Maximum	O&G	2,428	1,100	lbs/day	1	121	Serious	(h)1	\$3,000
002	07/26/09	Jul 09	7 Day Median	Total Coliform	4.0	2.2	MPN	--	--	Chronic	(i)1	\$0
002	07/27/09	Jul 09	7 Day Median	Total Coliform	4.0	2.2	MPN	--	--	Chronic	(i)1	\$0
002	02/06/10	Feb 10	Maximum	Turbidity	>5 (212 min.)	5	NTU	--	--	Chronic	(i)1	\$0
002	02/09/10	Feb 10	Maximum	Turbidity	>5 (225 min.)	5	NTU	--	--	Chronic	(i)1	\$0
002	03/05/10	Mar 10	Daily Maximum	TRC	4.0	0.1	mg/L	--	--	Serious	(h)1	\$3,000
											<b>Total</b>	<b>\$87,000</b>

**HEARING PANEL OF THE  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
(213) 576-6600

ACLIC No. R4-2008-0069-M

**NOTICE OF PUBLIC HEARING**

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND  
PROPOSE RECOMENDATIONS**

<u>DISCHARGER</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATER</u>
City of Burbank	Burbank Water Reclamation Facility 740 North Lake Street Burbank, CA	Burbank Channel

Administrative Civil Liability Complaint (“ACLIC”) No. R4-2008-0069-M alleges that City of Burbank violated Order No. R4-2006-0085 by failing to comply with the effluent limits during the period February 2007 through March 2010. During this time, thirty-six (36) violations of Order No. R4-2006-0085 were noted in the Permittee’s self-monitoring reports. Out of the thirty-six (36) effluent limit violations, twenty-nine (29) are subject to mandatory minimum penalties. As stated in the ACLIC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$87,000 be assessed against City of Burbank for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLIC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

**I. HEARING DATE AND LOCATION**

Date: October 27, 2010  
Time: 9:00 A.M.  
Place: The State of California

Public Utilities Commission Hearing Room, 5<sup>th</sup> Floor  
320 W. 4th Street  
Los Angeles, California 90013

## **II. AVAILABILITY OF DOCUMENTS**

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on October 7, 2010**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

## **III. NATURE OF HEARING**

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

## **IV. PARTIES TO THE HEARING**

The following are the parties to this proceeding:

1. City of Burbank
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on September 13, 2010**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

## **V. COMMUNICATIONS WITH THE PROSECUTION TEAM**

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Mr. Russ Colby, Staff Environmental Scientist. Ms. Mayumi Okamoto, Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Okamoto nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Mr. Russ Colby  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 620-6373  
[rcolby@waterboards.ca.gov](mailto:rcolby@waterboards.ca.gov)

## **VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE**

### **A. Submittals By Parties.**

Not later than **September 7, 2010**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

The City of Burbank is required to submit:



- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any testimony the Party intends to present, and
- 3) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) so that it is received by **5:00 pm on September 28, 2010**. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **October 15, 2010**.

#### **B. Submittals By Interested Persons.**

Persons who are not designated as parties above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on August 30, 2010**. If possible, please submit written comments in Word format electronically to [rcolby@waterboards.ca.gov](mailto:rcolby@waterboards.ca.gov). Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

#### **VII. HEARING PROCEDURES**

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That

decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on September 28, 2010** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

## **VIII. COMMUNICATIONS WITH THE HEARING PANEL**

### **A. Ex Parte Communications Prohibited.**

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

### **B. Hearing Panel Advisors.**

The Hearing Panel will be advised before and during the hearing by Ms. Rebecca Chou, and a Legal Advisor, Ms. Jennifer Fordyce, Staff Counsel for the Regional Board. Neither Ms. Chou nor Ms. Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

### **C. Objections to manner of hearing and resolution of any other issues.**

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.

2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on September 28, 2010**: