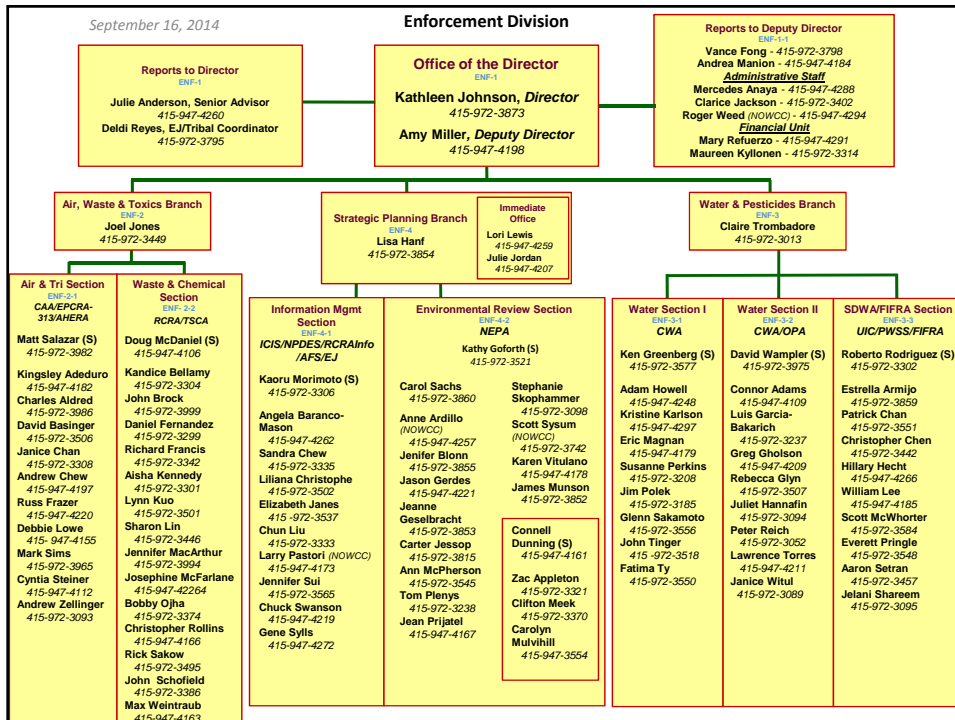


附錄1、美國環保署第9區環境執法處簡介

Enforcement Division- Overview



Amy C. Miller, Deputy Director
October 2014



Air/TRI Section CAA Highlights...

- Stationary source permits (Title V)
- Hazardous air pollutants
- NESHAP/AHERA -Asbestos
- Mobile Sources



Matt Salazar

12/1/2014

U.S. Environmental Protection Agency

3

Air/TRI Section EPCRA Highlights...

- Community Right to Know (Section 313)



12/1/2014

U.S. Environmental Protection Agency

4

Water I and Water II Sections CWA Highlights...

- National Pollution Discharge Elimination System Permit
- Pretreatment
- Stormwater
- Wetlands
- Oil Pollution Act



Ken Greenberg



David Wampler

12/1/2014

U.S. Environmental Protection Agency

5

SDWA/FIFRA Section SDWA Highlights...

- Public Water System Supervision
 - MCL
 - ETT
- Underground Injection Control
 - Cespools



Roberto Rodriguez

12/1/2014

U.S. Environmental Protection Agency

6

SDWA/FIFRA Section FIFRA Highlights...

- Pesticide Products
 - Unregistered
 - Misbranded/Adulterated
- Misuse
- Worker Protection Standards



12/1/2014

U.S. Environmental Protection Agency

7

Waste and Chemical Section RCRA Highlights...

- Treatment Storage and Disposal Facilities (Subtitle C)
- Generators of Hazardous Waste (Subtitle C)
- Sanitary Landfills (Subtitle D)
- Leaking Underground Storage Tanks (Subtitle I)



Doug McDaniel

12/1/2014

U.S. Environmental Protection Agency

8

Waste and Chemical Section TSCA Highlights...

- PCBs
- Lead Based Paint
- New Chemicals



12/1/2014

U.S. Environmental Protection Agency

9

Strategic Planning Branch

- Strategic Planning for the Enforcement Division
- Targeting
- Press/Outreach

Information Management Section

- Provide enforcement data management and analysis support to Enforcement Division's program offices.
- Coordinate with and provide data management support to Region 9 media divisions and state, local and tribal counterparts.
- Promote and pursue enhancement of existing and new information management systems.



Environmental Justice

- Advise senior management team on Environmental Justice Issues
- Convene groups/governments on specific environmental justice issues.
- Award Grants to community groups.



Environmental Review Section

- Review and comment on other federal agency's Environmental Impact Statements.
- Proactively work with federal agencies to reduce environmental impacts of their projects.
- Largest workload of any EPA regional office



附錄2、美國環保署2014年至2016年國家環境執法倡議

Announcing EPA's Selection of National Enforcement Initiatives for FY 2014-2016

The EPA's Office of Enforcement and Compliance Assurance (OECA) identifies multi-year national enforcement initiatives to address specific environmental problems, risks, or patterns of noncompliance. These initiatives are reevaluated every three years in order to assure that federal enforcement resources are focused on the most important environmental problems where noncompliance is a significant contributing factor, and where federal enforcement attention can have a significant impact.

The EPA appreciates the comments submitted in response to the January 28, 2013 Federal Register Notice (EPA-HQ-OECA-2012-0956), where the Agency requested public comment for the upcoming Fiscal Year (FY) 2014-2016 cycle of National Enforcement Initiatives.

After careful consideration of all comments, the EPA has decided that the current set of FY 2011-2013 National Enforcement Initiatives will continue for FY 2014-2016. These initiatives focus on:

- Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters
- Preventing Animal Waste from Contaminating Surface and Ground Waters
- Cutting Toxic Air Pollution that Affects Communities' Health:
- Reducing Widespread Air Pollution from the Largest Sources, Especially the Coal-fired Utility, Cement, Glass, and Acid Sectors
- Reducing Pollution from Mineral Processing Operations
- Assuring Energy Extraction Sector Compliance with Environmental Laws

This decision reflects the support expressed for continuing the current initiatives and further sustaining the investments and accomplishments these initiatives have made thus far. Although the EPA has made substantial progress in addressing noncompliance within the sectors addressed by these initiatives, more work remains to be done. Progress made in these initiatives is highlighted in graphs and maps available on this website.

The EPA plans to incorporate new strategies and tools such as Next Generation Compliance to more effectively and efficiently address noncompliance and reduce risk within the following areas:

- **Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters:** The EPA will continue its enforcement focus on reducing discharges of raw sewage and contaminated stormwater into our nation's rivers, streams and lakes. This National Enforcement Initiative focuses on reducing discharges from combined sewer

overflows (CSOs), sanitary sewer overflows (SSOs), and municipal separate storm sewer systems (MS4s) by obtaining cities' commitments to implement timely, affordable solutions to these problems. In FY 2012, the EPA developed the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, which is posted at <http://cfpub.epa.gov/npdes/integratedplans.cfm> to provide further guidance on developing and implementing effective integrated planning solutions to municipal wastewater and stormwater management. This approach allows municipalities to prioritize CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first, while maintaining existing regulatory standards. All or part of an integrated plan may be incorporated into the remedy of enforcement actions. These remedies may include expansion of collection and treatment system capacity and flow reduction measures including increased use of green infrastructure and other innovative approaches. The EPA is committed to working with communities to incorporate green infrastructure, such as green roofs, rain gardens, and permeable pavement, into permitting and enforcement actions to reduce stormwater pollution and sewer overflows where applicable.

- **Preventing Animal Waste from Contaminating Surface and Ground Waters:** Concentrated animal feeding operations (CAFOs) are a subset of livestock and poultry animal feeding operations (AFOs) that meet the regulatory thresholds of number of animals for various animal types. The EPA's goal is to take action to reduce animal waste pollution from livestock and poultry operations that impair our nation's waters, threaten drinking water sources, and adversely impact vulnerable communities. The EPA's regulations require permit coverage for any CAFO that discharges manure, litter, or process wastewater into waters of the U.S. CAFOs that discharge to U.S. waters but do not have National Pollutant Discharge Elimination System (NPDES) permits are in violation of the CWA. The EPA will continue to focus federal enforcement investigations primarily on existing large and medium CAFOs identified as discharging without a permit to waters of the U.S., particularly in areas of concern due to impacts from CAFO/AFO wastes. In addition, EPA's resources will be used to assure that CAFOs that already have permits are in compliance with those permits.
- **Cutting Toxic Air Pollution that Affects Communities' Health:** In 1990, Congress identified hazardous air pollutants (HAPs), currently totaling 187, that present significant threats to human health and have adverse ecological impacts (<http://www.epa.gov/ttn/atw/188polls.html>). The CAA and EPA's regulations impose strict emission control requirements (known as "Maximum Achievable Control Technology" or "MACT") for these pollutants, which are emitted by a wide range of industrial and commercial facilities. The EPA will target and reduce emissions of toxic air pollutants in three areas where the agency has determined there are high rates of noncompliance: (A) leak detection and repair; (B) reduction of the volume of waste gas to flares and improvements to flare combustion efficiency; and (C) excess emissions, including those associated with startup, shut down and malfunction. Through this Air Toxics Initiative, the EPA will undertake compliance monitoring

and enforcement activities to maximize environmental and human health benefits, which is particularly important for disproportionately burdened communities.

- **Reducing Widespread Air Pollution from the Largest Sources, Especially the Coal-fired Utility, Cement, Glass, and Acid Sectors:** The New Source Review/Prevention of Significant Deterioration (NSR/PSD) requirements of the CAA require certain large industrial facilities to install state-of-the-art air pollution controls when they build new facilities or make “significant modifications” to existing facilities. However, many industries have not complied with these requirements, leading to excess emissions of air pollutants such as sulfur dioxide, nitrogen oxides and particulate matter. These pollutants can be carried long distances by the wind and can have significant adverse effects on human health, including asthma, respiratory diseases and premature death. These effects may be particularly significant for communities overburdened by exposure to environmental risks and vulnerable populations, including children. In recent years, the EPA has made considerable progress in reducing excess pollution by bringing enforcement actions against coal-fired power plants, cement manufacturing facilities, sulfuric and nitric acid manufacturing facilities, and glass manufacturing facilities. However, work remains to be done to bring these sectors into compliance with the CAA and protect communities burdened with harmful air pollution.
- **Assuring Energy Extraction Sector Compliance with Environmental Laws** Vast natural gas reserves, unlocked through technological advances in horizontal drilling and hydraulic fracturing, are a key part of the nation’s clean energy future. The full promise of this resource will be realized only if it is developed responsibly and the new technologies are controlled in a manner that protects the nation’s air, water and land. For example, an unprecedented acceleration of natural gas development has led to a significant rise in air pollution throughout the intermountain West. Geospatial analysis suggests that a similar rise in air pollution is possible elsewhere as unconventional gas development grows in other shale plays. Meanwhile, citizens continue to voice concern that drilling and hydraulic fracturing pose a risk to drinking water sources, either through improper well construction, wastewater management or otherwise. OECA initiated its Energy Extraction National Enforcement Initiative in FY 2011 to address these concerns and to take action where violations of environmental laws may cause or contribute to significant harm to public health and/or the environment. The EPA will continue to utilize a wide range of authorities, including the Clean Water Act, the Clean Air Act and the Safe Drinking Water Act, among others, to ensure that natural gas development proceeds in a manner protective of human health.
- **Reducing Pollution from Mineral Processing Operations.** Mining and mineral processing facilities generate more toxic and hazardous waste than any other industrial sector, based on the EPA’s Toxic Release Inventory. Many of these facilities have impacted surrounding communities and continue to pose high risk to human health and the environment. For example, over 120 mining and mineral processing sites are on the Superfund National Priorities List and more sites are being

added every year, including operating facilities. The EPA has spent over \$2.4 billion to address the human health and environmental threats to communities as a result of mining and mineral processing. In some cases, the EPA had to sample drinking water wells due to potential impacts to children in low income communities. At some sites, EPA's inspections have found significant non-compliance with hazardous waste and other environmental laws. Some of the more serious cases required alternative drinking water supplies or removal of lead-contaminated soil from residential yards. In other cases, toxic spills into waterways from mining and mineral processing caused fish kills and impacted the livelihood of low income communities. The EPA will continue its enforcement initiative to bring these facilities into compliance with the law and protect the environment and nearby communities.

The National Enforcement Initiatives for FY 2014-2016 have been incorporated into the EPA's Office of Enforcement and Compliance Assurance FY2014 National Program Managers (NPM) Guidance, which identifies the national compliance and enforcement priorities for FY 2014, discusses national direction for all compliance assurance programs, identifies activities to be carried out by authorized programs, and describes how the EPA should work with states and tribes to ensure compliance with environmental laws. The FY 2014 NPM Guidance can be accessed at <http://www2.epa.gov/planandbudget/fy-2014-npm-guidances>.

附錄3、美國環保署與州政府環境執法權責 (清水法優先目標設定及績效評估)

U.S. EPA and STATE ENFORCEMENT RELATIONSHIPS

PRIORITY SETTING AND PERFORMANCE EVALUATION IN THE CLEAN WATER ACT CONTEXT

Ken Greenberg, Manager
Water Enforcement Section I
U.S. EPA, Region 9

EPA – STATE RELATIONSHIPS

- Delegation of Clean Water Act (CWA) Authority to States
- Requirements and Expectations for State Programs
- Assistance Grants and Workplan Commitments
- Data Systems
- Priority Setting
- Performance Evaluation
- EPA Actions in Authorized States

Delegation of CWA Authority to States

- CWA National Pollutant Discharge Elimination System Program
 - Discharge Permits
 - Inspections
 - Enforcement
- Delegation Requirements
 - CWA section 402 and Regulations at 40 CFR Part 123
 - Program Description
 - Attorney Generals Statement
 - Memorandum of Agreement with EPA

Delegation of CWA Authority to States

Memorandum of Agreement

- Signed by EPA Regional Administrator and State EPA Director
- EPA-State Information Sharing
- Permit Issuance Procedures
- EPA Review of and Objection to State Issued Permits
- State Inspection Programs
- State Enforcement Programs
- EPA Retains Independent Inspection and Enforcement Authority
- Criteria for Withdrawal of State Programs

Delegation of CWA Authority to States

Delegated Programs

- 46 of 50 States
- 1 Territory

EPA Region 9

- Delegated: Arizona, California, Hawaii, Nevada
- Not Delegated: 6 Pacific Island Territories (American Samoa, Guam....) and 147 Tribes

Delegation of CWA Authority to States: Typical Roles

State Programs

- Primary inspection and enforcement authority
- Routine inspections and enforcement
- Quick response
- Address public complaints
- Compliance assistance

EPA Program

- National priorities
- New regulations and programs
- Technical expertise
- Aggressive enforcement stance
- Legal resources (DOJ)
- Above political influence and economic concerns (level playing field)

Requirements and Expectations for State Programs

Requirements for Compliance Evaluation Programs (40 CFR 123.26)

- Inspection authority, procedures and program
- Compliance evaluation procedures including review of monitoring data
- Annual inspection of major dischargers

Requirements for Enforcement Authority (40 CFR 123.27)

- Restrain unauthorized activities by administrative order or judicial restraining order
- Judicial enforcement to enjoin violations
- Judicial penalty authority (civil and criminal)

Criteria and Procedures for Withdrawal of State Programs (40 CFR 123.63 and 123.64)

Requirements and Expectations for State Programs

EPA Policy and Guidance

- NPDES Inspection Manual (inspection procedures and reports)
- Compliance Monitoring Strategy (inspection frequency)
- Enforcement Management System
- Policy on Timely and Appropriate Enforcement Against Significant Noncompliance
- Penalty Policy

Requirements and Expectations for State Programs

EPA Policy and Guidance

- Do not create binding obligations for States
- Establish EPA expectations for State programs
- Basis for EPA evaluation of State programs
- Basis for grant workplan commitments
- Basis for EPA decisions on intervention with EPA enforcement
- Measure of diligent prosecution that bars EPA or citizen intervention

Assistance Grants and Workplan Commitments

- EPA assistance grants to State CWA programs
- Annual Grant Workplans with State commitments for:
 - Monitoring, standards, permits
 - Data management – data transfer to EPA ICIS database
 - Inspections – number and type of inspections
 - Enforcement – subjective commitment, no quotas
- Semi-annual workplan evaluations
- Sanctions for State failure to meet commitments

Data Systems

- EPA's National Database – Integrated Compliance Information System
- State Databases – AZURITE, CIWQS,
- State Data Transferred to EPA's ICIS database
 - Discharge Monitoring Report data
 - State Inspection activity and findings
 - State Enforcement activity and outcomes
- ICIS Database provides mechanism for EPA evaluation of State performance

Priority Setting

- EPA Headquarters annual program guidance
- EPA's National Enforcement Initiatives
- State Priorities
- Annual grant workplan commitments
- Quarterly Noncompliance Reports – significant noncompliance list
- Monthly EPA/State meetings
 - Individual and shared priorities
 - Work sharing

PRIORITIES

EPA Region 9

- Sewage Spills NEI
- Municipal Stormwater NEI
- Concentrated Animal Feeding Operations (CAFO) NEI
- Environmental Justice
- San Joaquin Valley
- Pacific Islands & Tribes
- Pretreatment

Arizona

- Minor dischargers

California

- Sewage Spills
- CAFOs
- Mandatory penalties

Hawaii

- Sewage spills
- Stormwater
- WWTP Operation & Maintenance

State Performance Evaluation

- Grant Workplan – midyear and end-of-year evaluations
- Quarterly Noncompliance Reports
- Monthly meetings
- Joint Inspections

State Review Framework

- Standardized review procedures and criteria for CWA, RCRA, Air
- Annual data review
- 4 year cycle for full scale audits
- Data Management
- Inspections – quantity and quality
- Compliance Determinations
- Enforcement – timely and appropriate
- Penalties

State Performance Evaluation

Sanctions for Poor Performance

- Withdraw State Program Authorization
- Withhold Grant \$
- Grant Conditions
- State Review Framework Report
- Data Transparency (State performance measures on ECHO website)
- EPA Intervention – inspections and enforcement

EPA Actions in Authorized States

- State Requests EPA lead enforcement
 - State lacks resources
 - State lacks technical expertise
 - State lacks political will
- State Requests or EPA Requests Joint Enforcement
- EPA Initiative
 - National Enforcement Priority
 - Inadequate or no State enforcement

EPA Actions in Authorized States

- State Requests EPA lead enforcement
 - State lacks resources - **Honolulu**
 - State lacks technical expertise - **Chevron**
 - State lacks political will – **Arizona Dept. of Transportation**
- State Requests or EPA Requests Joint Enforcement – **East Bay MUD**
- EPA Initiative
 - National Enforcement Priority – **Municipal Stormwater, Buckeye sewage spills**
 - Inadequate or no State enforcement – **Union Pacific, SNC enforcement**

Reliability of Self-Monitoring Reports

- EPA Approved Methods – sampling & laboratory analysis
- Permit Requirements
 - Sampling frequency and type
 - Standard methods
 - Records – sampling, analysis
 - Reports
 - **Certification Statement**
- EPA Inspections
 - Evaluate self monitoring
 - Independent monitoring (overt or covert)
- DMR Quality Assurance Program (test samples)
- **Criminal liability for false reports**



Strategic Planning Branch, Enforcement Division

- **Strategic Plan, Operating Plan, etc. – Lisa Hanf, Branch Chief**
- Information Management Section – Kaoru Morimoto, Section Chief
- Inspection and Enforcement Tracker – Elizabeth Janes
- Enforcement & Compliance History Online (ECHO) – Gene Sylls
- Targeting – Charles Swanson

Regional Strategic Plan

- National Enforcement Initiatives
 - **Air:** Reducing Air Pollution from the Largest Sources; Cutting Hazardous Air Pollutants
 - **Energy Extraction:** Ensuring Energy Extraction Activities Comply with Environmental Laws
 - **Hazardous Chemicals:** Reducing Pollution from Mineral Processing Operations
 - **Water:** Keeping Raw Sewage and Contaminated Stormwater out of our Nation's Waters and Preventing Animal Waste from Contaminating Surface and Ground Water

Regional Strategic Plan (continued)

- Regional Priorities
 - San Joaquin Valley
 - Islands and Tribes (Direct Implementation)
 - Drinking Water
 - Imports
 - Mobile Sources
- Trade-offs and Trends
 - Shifts in resources, importance, and new developments

Regional Strategic Plan (continued)

- We review our draft strategic plan with HQ, and revise as needed.
- We report our results to HQ, including:
 - Number of inspections,
 - Number of new enforcement cases initiated,
 - Number of enforcement cases concluded,
 - Penalties collected, etc.
- Results are available on our reporting “dashboard.”

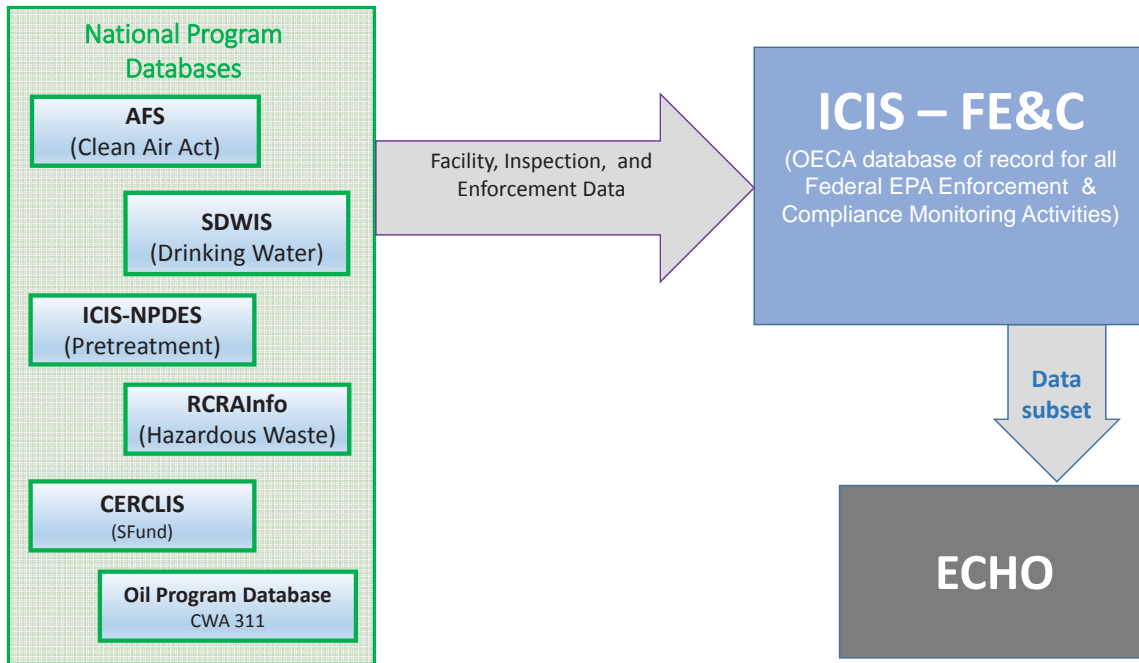
Operational Plans

- Each Section Chief prepares a quarterly operational plan:
 - Planned inspections
 - Case development
 - Goals for the quarter, projected results on performance measures
- Quarterly meetings with Division Director to review progress and projections.

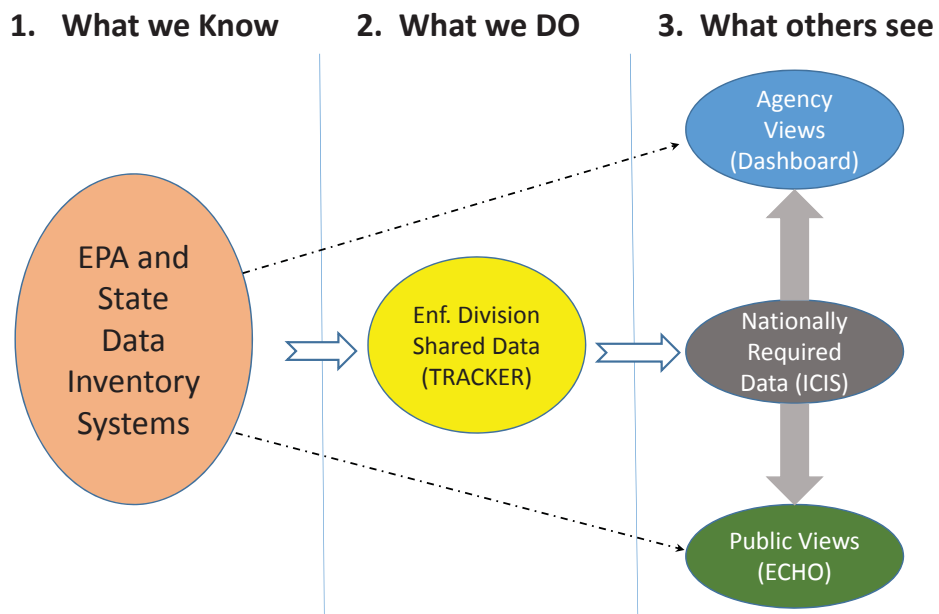
Case Screening Process

- After inspection is completed and the inspection report is prepared:
 - If the inspector and his/her supervisor recommend for case development
 - Meeting with Enforcement Division, Office of Regional Counsel, Criminal Investigation Division
 - Presentation of key aspects of case
 - Discussion
 - Decision made to proceed to case development or not (no further action)
 - Ensures cases in pipeline are consistent with goals and priorities.

Enforcement Databases & Data Flows



Data Management





Strategic Planning Branch, Enforcement Division

- Strategic Plan, Operating Plan, etc. – Lisa Hanf, Branch Chief
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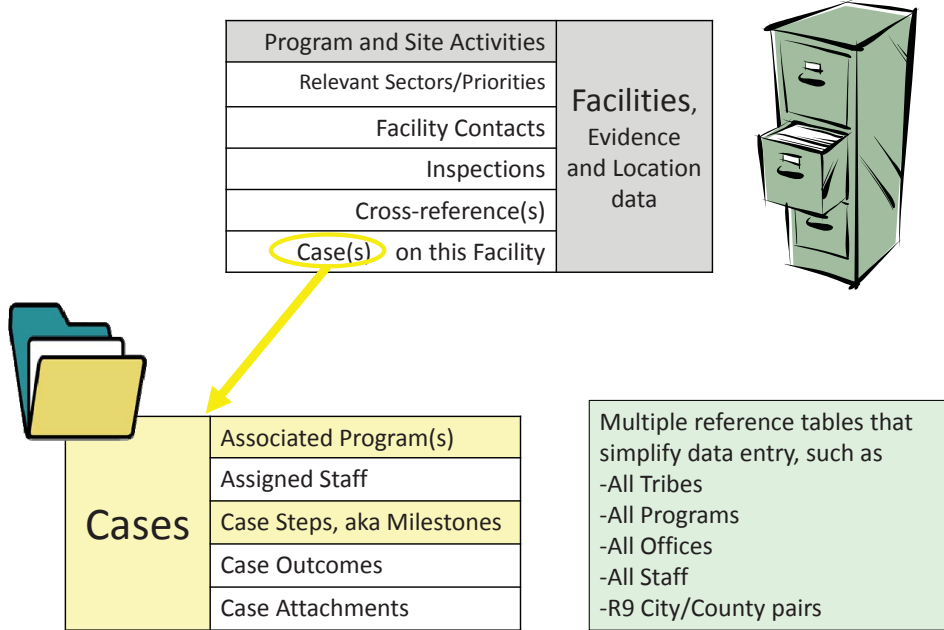
Find Characterize Regulate Verify Enforce Remediate Close


CAA 112R
CAA Acid Rain
CAA CFC
CAA GHG
CAA Mobile Sources
CAA NESHAP
CAA NSPS
CAA PSD/NSR
CAA SIP
CAA Title V
CWA 311 OPA
CWA 402 NPDES
CWA 404 Wetland
EPCRA 313
EPCRA Non313
FIFRA
RCRA C HW
SDWA PWSS
SDWA UIC
TSCA (PCBs)
TSCA (Pb/Lead)
TSCA - core

USEPA Region 9 Enforcement Activity Tracker Intranet-based Oracle/Apex application

- Single application for case tracking across all statutory programs
- Fosters multi-media collaboration by inspectors
- Builds case histories
- Stores documents
- Built in Apex (software that comes with Oracle license) in February 2014
- 85 users currently, soon to add attorneys (+30)
- Tracker is being used as a collection and staging area for other national databases

How is the Enforcement Activity Tracker organized?



 USEPA Region 9
Enforcement Activity Tracker

Home: **CASES** FACILITIES My Facilities DBA Tips/Complaints About/Help

Open Cases

116

Open Case Count	
60	ENF-2-1
32	ENF-2-2
14	ENF-3
12	ENF-3-2
4	ENF-3-3
2	SFD-9-3

05/05/2014

Email
janes.elizabeth@epa.gov or
call 2-3537 for help adding
facilities and cases.

CLICK TO OPEN any of the reports below to see a summary of all data added, and search for specific cases

1. View all open cases with related Program and Facility data, activity counts
2. View all Case Steps taken, Milestones due or done
3. View All Staff Assigned to Cases
4. View All Attachments by Case Name
5. View all Case Outcome records
6. View All Archived Case Records
7. View All Facilities data report (including counts of related detail records)
8. View all Facilities by National/Regional Priority or Sector
9. View All Facility Inspections, File Reviews
10. Case PIPELINE: last done/next due Case Steps Report

Help Documents

Download	Date	Document
View	03/05/2014	Instructions about attaching documents to the Enforcement Activity Tracker.pdf
View	02/18/2014	Quick Pipeline Tips and Tricks.pptx
View	02/24/2014	how to add new records.pptx

CLEAN HARBORS BUTTOWILLOW LLC


Programs & site info
 Priorities/Sectors
 Facility Contacts
 Inspections
 Cross-References
 Cases at this Facility
 Facility Attachment(s)
[Print all Facility Data](#)

Help adding Facilities
 Adding a new facility requires basic location, ownership, program and priority/sector data
 All fields in bold with a red asterisk are required to save a record. Once you save the initial record you can add more details and the case information.
 Select the state and the city first to autopopulate the county.

Save Changes **Cancel** Basic Facility Information

Facility Name: * CLEAN HARBORS BUTTOWILLOW LLC
 Street Address: 2500 WEST LOKERN ROAD
 State: * CA City: * Buttonwillow
 County: * Kern (Buttonwillow, CA)
 5 Digit Zip Code: * 93206
 Ownership: * Private
 Is facility on tribal land? * No
 Reason adding Facility * From WRI Pipeline
 (Optional) score notes on why Facility is being
 San Joaquin Valley
[Apply Changes](#)

More Place related Data - not required



MAP BY ADDRESS →

Decoding the acronyms– Enforcement Tracker provides cross-reference

USEPA Region 9 Enforcement Activity Tracker

My Pipeline Profile

Assigned Program: Case
 Assigned Program: Case

Reference (click to open links below)

- RA Offices in Pipeline
- EPA Regulatory Programs
- RA Staff in Pipeline
- Related Databases**
- Index by Region 9
- Authorizing Statutes and Sections
- View all Co-Regulatory Agencies
- User Questions

Pipeline Application Users in My Office

Last Name	First Name
Alvarado	Karen
Day	Chad
Bui	Jennifer
Divisio	Lizbeth
...	...

Reference Databases

Stat. Acronym	Database	Long Name	Epa Access	Public Access	Web Location
CAA	ADI	Applicability Determination Index	-	-	-
CAA	AES	Air Enforcement System	LAN	Agency use only	see ENF41, Jennifer Sul
CAA	AFS	Air Facility System	-	Online - partial	-
CERCLA	SDMS	Superfund Document Management System	intranet	Agency use only	-
CERCLA	CERCLIS	Comprehensive Environmental Response, Compensation and Liability Information System	intranet	Online - partial	see Kevin Castro
CWA	NetDMS	NetDMS	intranet	Online - partial	-
CWA	Wetlands Enf Tips Complaints	Clean Water Act Section 404 Compliance Database	LAN	Agency use only	see WTRB or Lawrence Torres
CWA	eNOI	Electronic Notice of Intent	internet	Agency use only	http://rtpub.epa.gov/npdes/vesseils/ves
CWA	ICS NPDES	Integrated	intranet	Online - partial	-

PHASE ↓	REGION 9 ENFORCEMENT TRACKER -- CASE STEPS OR MILESTONES			
9. Post-Case Compliance Tracking				Penalty Paid Supplemental Env. Program Compliance Tracking Measures Met
8. Conclusion/Other	Referral to CID Case Concluded	Notice of Non-Compliance Consent Agreement/Final Order Order Termination Letter Expedited Settlement Agreement Administrative Law Judge Decision	Case Entered (Jud. Case Conclusion)	Referral to State/Local Government Tribal Government Consultation Meeting Administrative Final Order
7. Public/Press				Press Release
6. Trial			Trial	
5. Process	Penalty Calculation Complete Administrative Order (Draft) ICIS Case Record Updated	Administrative Consent Order Tolling Agreement Signed Deposition Meeting (Admin/Civil) Administrative Hearing Administrative Penalty Order	Referral to DOJ Negotiation Meeting (Judicial) Consent Decree Lodged Executive Order Letter (from DOJ) Deposition Meeting (Judicial)	Other
4. Negotiation		Negotiation Meeting (Admin/Civil)		
3. Initiation	ICIS Case Record Initiated Attorney Assignment Requested	Notice of Violation Notice of Intent to File Enforcement Action	DOJ Complaint Filed	
2. Development	Information Request			
1. Basis	Case Screening Referral From State/Local Government Inspection Report Final			
FORUM →	1. Internal	2. Administrative/Civil	3. Judicial	4. Other/External

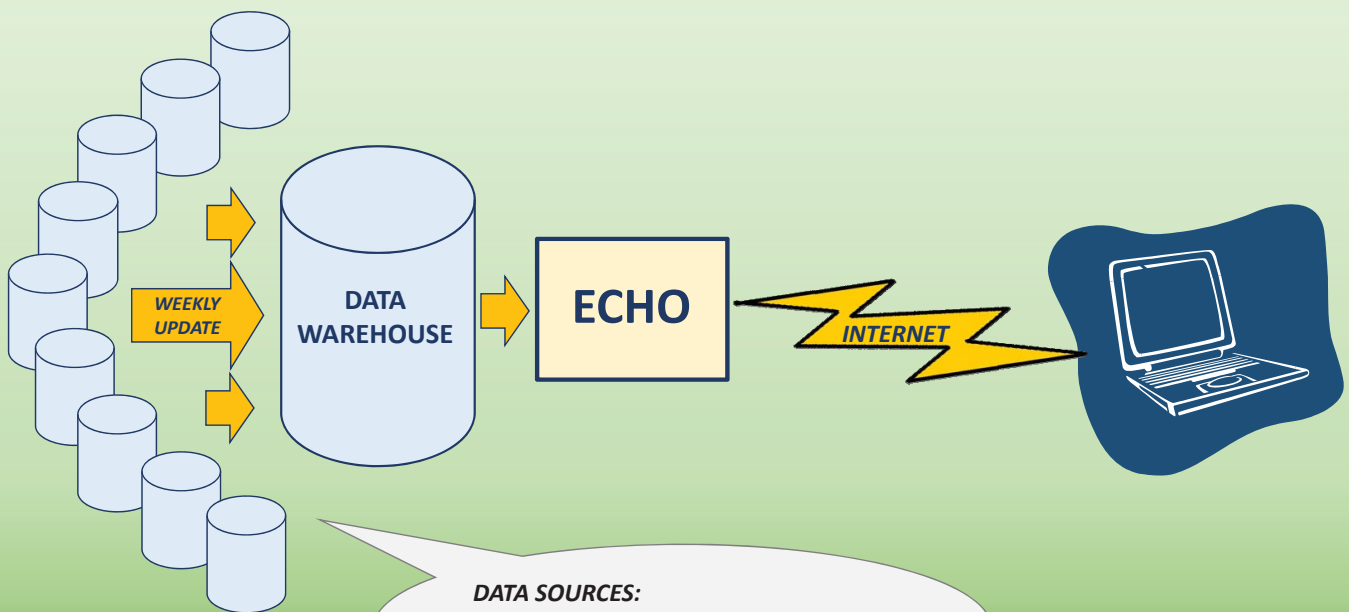
Strategic Planning Branch, Enforcement Division



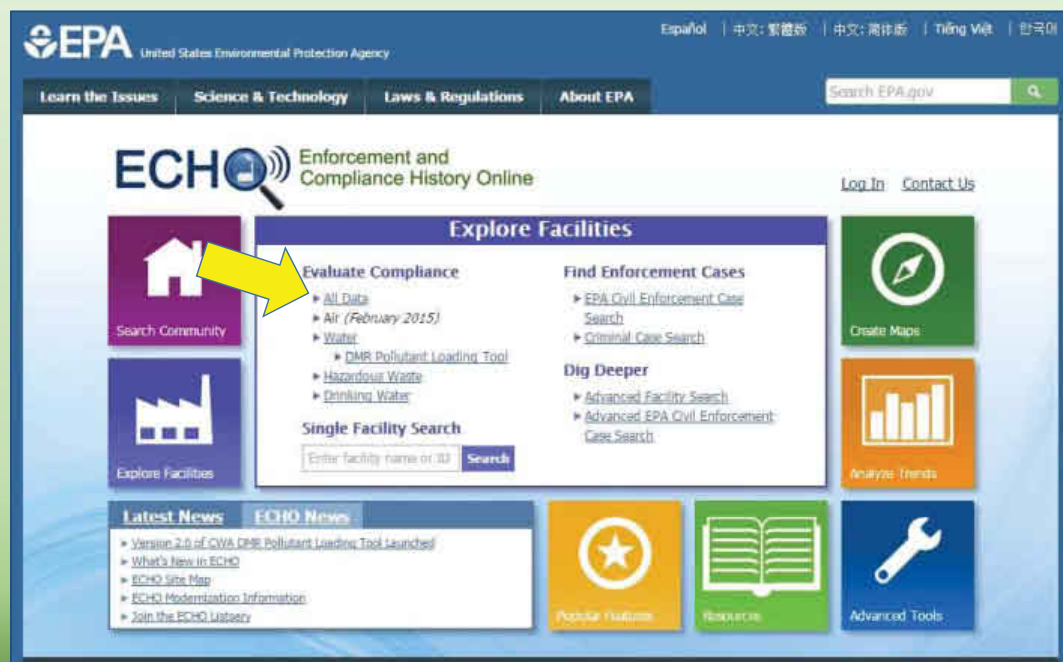
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- Targeting – Charles Swanson

ECHO Enforcement and Compliance History Online

<http://echo.epa.gov>



DATA SOURCES:
AFS, ICIS, ICIS-NPDES, FRS, RCRAinfo,
SDWIS, US Census and other databases



Search Type

Choose a Search Type All Data ▼

Geographic Location

EPA Region All regions ▼

City ?

State ▼

AZ - Arizona
CA - California
 CO - Colorado
 CT - Connecticut

Zip Code **Add More**

County California - all counties ▼

In Indian Country
 Any Yes No

Near US-Mexico Border
 Any Yes No

Watershed (HUC) ▼

All HUC Codes
 15030101 - Havasu-Mohave Lakes, Arizona, California
 15030102 - Piute Wash, California, Nevada
 15030104 - Imperial-Bajaopima, Arizona, California

Search Criteria Selected

Search Type

All Data

Geographic Location

State ✕

CA - California

Zip Code ✕

94107

Facility Characteristics

Active/Operating ✕


Yes

Search

Facility Search Results | <https://echo.epa.gov/facilities/facility-search/results>

You are here: Home > Facilities > Facility Search > Facility Search Results

This page updates dynamically based on your search criteria and selections within the page.



Facility Name	Hasard	Street Address	City	State	495 91	Reports	Current Violations	Current Non-Compliance	Inspection (Y/N)	Permit Enforcement Action (Y/N)
San Francisco Bay Potrero Power Plant		8001 19 20th STREET, SAN FRANCISCO, CA	SAN FRANCISCO	CA	94107					
POTRERO POWER PLANT		1201 BLINNS STREET, SAN FRANCISCO, CA	SAN FRANCISCO	CA	94107					
POTRERO POWER PLANT		800 19TH STREET, SAN FRANCISCO, CA	SAN FRANCISCO	CA	94107					
POTRERO POWER PLANT		200 BROADWAY STREET, SAN FRANCISCO, CA	SAN FRANCISCO	CA	94107					
POTRERO POWER PLANT		500 (FRANCISCO), SAN FRANCISCO, CA	SAN FRANCISCO	CA	94107					
POTRERO POWER PLANT		375 BROADWAY, SAN FRANCISCO, CA	SAN FRANCISCO	CA	94107					


Search Statistics

146 Search Results

- 1. Facilities with a Current Violation
- 1. Facilities with Violations in the Last Three Years
- 2. Facilities with Normal Enforcement Action in the Last Five Years
- 1. CAA Sources
- 2. Facilities with CWA Permits
- 246. Facilities with RCRA Dis.
- 9. Facilities with TRI Releases

Facility Summary

POTRERO POWER PLANT
 1201 BLINNS STREET



Current Compliance Status

CAA	Violations
CWA	Not Inspected
RCRA	Not Inspected
SOWA	

Date Since Last Inspection: 1/11/11
 Date of Last Permit Enforcement Action: 05/21/2009
 Last Penalty Amount: \$5,250.00

Search Criteria

Facility Search Results (1) | Detailed Facility Report (1) | Effluent Charts | Enforcement | TSP Pollutants Loading | Facility Search Results (1)


https://efcho.epa.gov/detailed-facility-report?id=110000786178

Detailed Facility Report

This page updates dynamically based on your search criteria and selections within the page.

Expand All | Collapse All | Report Violation | Report Data Error | Data Dictionary | Print | Help

Facility Summary



POTRERO POWER PLANT
1201 ILLINOIS STREET, SAN FRANCISCO, CA 94107

Facility Information (FIS)
 FIS ID: 110000786178
 EPA Region: 10
 Latitude: 37.7546
 Longitude: -122.3894
 Locational Data Source: EIS
 Industry: Indian Country: N
[Go To Facility/System Characteristics](#)

Regulatory Interests
 Clean Air Act: Permanently Closed Major (9407944306)
 Clean Water Act: Major, Permit Terminated (CA0005657)
 Resource Conservation and Recovery Act: Active (H) SQG (CA00001732), Active (H) LUGS (CA710001770)
 Safe Drinking Water Act: No Information

Also Reports
 Air Emissions Inventory (EIS): T13MEL
 Greenhouse Gas Emissions (GGRT): 2005020
 Toxic Releases (TRI): 041079801F1201A

Enforcement and Compliance Summary

Source	Reg ID (Year)	Date of Last Inspection	Current Compliance Status	Days in NC (of 13)	Days in Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties from EPA Cases (5 years)
CAA	9	2014/03/31	Compliant	0	0	0	0	0	0	0
CWA	3	1993/04/11	Compliant	0	0	0	0	0	0	0
RCSA	--	--	Compliant	0	0	0	0	0	0	0

[Go To Enforcement/Compliance Details](#)

Related Reports: [View Effluent Charts](#) | [View Pollutants Loading Report](#)

Facility/System Characteristics

Source	Identifier	Overview	Status	Area	Permit Expiration Date	Indian Country	Latitude	Longitude
COMPLIANCE	CA0005657							
CAA	0407944306	Clean Air Act	Active	Total Pacific Drainside or West Side CO2 (excluding Organic CO2)		N	37.7546	-122.3894
CAA	0407944306	Major	Permanently Closed	SO ₂ , TSP & PM10		N	37.7546	-122.3894
CWA	0407944306	Electrical Generation or Combustion	Compliant			N	37.7546	-122.3894

Facility Search Results (1) | Detailed Facility Report (1) | Effluent Charts | Enforcement | TSP Pollutants Loading | Facility Search Results (1)

https://efcho.epa.gov/effluent-charts#CA0005657

You are here: Home > Effluent Charts

Effluent Charts

POTRERO POWER PLANT
1201A ILLINOIS ST, CA, 941073106

Selected Water Permit: CA0005657

View by: Current Compliance Overall Compliance

Specify Date Range: 2011-04-01 to 2014-03-31

[Download All Data](#) | [Report an Error](#) | [Help](#)

Compliance Status

- Compliant
- No violation
- Noncompliance
- Significant Noncompliance

Click a cell in the summary grid to display the effluent chart(s). By default the last three years of data are presented. Use the controls above to modify the date range, view charts for a different water permit and/or filter by compliance status.

Outfalls

All Pollutants	All outfalls		
	001	01C	INF
Temperature, water temp. fahrenheit	Compliant	Compliant	Compliant
Oxygen, dissolved (DO)	Compliant	Compliant	Compliant
pH	Compliant	Compliant	Compliant
Arsenic, total recoverable	Compliant	Compliant	Compliant
Selenium, total recoverable	Compliant	Compliant	Compliant
Thallium, total recoverable	Compliant	Compliant	Compliant
Beryllium, total recoverable [as Be]	Compliant	Compliant	Compliant
Nickel, total recoverable	Compliant	Compliant	Compliant
Silver total recoverable	Compliant	Compliant	Compliant
Zinc, total recoverable	Compliant	Compliant	Compliant

Discharge Monitoring Report (DMR) Pollutant Loading Tool

NOTE: This tool uses discharge monitoring report (DMR) data from ICG-NPDES to calculate pollutant discharge amounts. EPA has verified the accuracy of the year's calculations. EPA has also performed a limited review of the underlying data that has focused on facilities with the largest amounts of pollutant discharges. Due to the large amount of DMR data, additional errors exist in ICG-NPDES. Please see the User Guide on the ICG-NPDES, Enforcement Asset Database and Alerts, and Data Correction page for information on how to use the tool and how to correct errors in ICG-NPDES. The tool also uses wastewater pollutant discharge data from the Toxic Release Inventory (TRI). You can send an email to enforcement@pub.epa.gov with comments or questions about the tool. You can sign up for our e-mail news bulletin and be notified when new data, enhancements, or training materials are available.

Facility Information (DMR)

POTREBU POWER PLANT, SAN FRANCISCO, CA, 94107-3106

NPDES ID: CA0000337
 FWS ID: F8000F00178
 Other NPDES IDs associated with this FWS ID: None
 TRI ID(s): 9410731060712018
 (Click a TRI ID to view that facility's water page)
 Facility Type: NGW-INDW
 Permit Type: NPDES-Individual Permit
 Permit Effective Date: 07/01/2006
 Permit Expiration Date: 12/31/2018
 Major/Minor Pollution Type: --
 Permit Issuance: STATE OF CALIFORNIA
 Approved Pretreatment Program: N/A
 Combined Sewer Overflow (CSO) Outfall: N/A
 County: SAN FRANCISCO

Comprehensive District: California's 9th District
 Latitude: 37.7989
 Longitude: -122.3334
 Facility Design Flow (MGD): --
 Actual Average Facility Flow (MGD): 230
 4-Digit SIC Code: 4911 - ELECTRIC, SERVICES
 NAICS Code: --
 Likely Point Source Category: 423 - Steam (non-ferrous) power generating
 Step Enforcement (Complete Report)
 New Permit Loading
 View Non-Flow Loading Report

Indicates value control levels that are calculated using data that has been flagged as potential outliers or data errors.
 Indicates there was one or more exceedances of permit effluent limits for the pollutant sometime during the year. You can hover over the yellow flag to see the load over time table.

Select Reporting Year: 2014
 Loads for the current year are not based on a full reporting year because data are not complete.

Top Pollutants by Pounds (DMR, 2014)
 No discharge monitoring data found for this facility.

Top Pollutants by Toxic-Weighted Pounds (TWP) (DMR, 2014)
 No discharge monitoring data for toxic pollutants found for this facility.

Receiving Water Information
 Waterbody Name (from CMAQ): SAN FRANCISCO BAY
 Waterbody Number (WQCB Code): 1800004001798
 Waterbody Name and Number (7- Digit WQCB): San Francisco Bay
 Segment: 1800004001798
 Listed for Impairment? Yes
 Impairment Class: Impaired by a pollutant and in need of a TRSL
 Cause(s) of Impairment: None
 Discharges to 4 County with CSA-listed aquatic species? No

View Enforcement Case Reports

Click an enforcement case number below to view the enforcement case report.

[09-2001-0070](#)
[CA-N00002411](#)

Enforcement Case Report

Expand All Collapse All

Civil Enforcement Case

Basic Information
 Case Number: 09-2001-0070
 Case Name: MIRANT POTREBU
 Case Type: Administrative - Formal
 Case Status (as of 10/07/2001): Closed
 Case Lead: EPA
 Court Docket Number: --
 DCJ Docket Number: --

Penalties - Case Level
 Total Federal Penalty Assessed or Agreed To: \$0
 Total State/Local Penalty Assessed: \$0
 Total SEP Cost: \$0
 Total Compliance Action Cost: \$0
 Total Cost Recovery: \$0

Case Summary
 ON JAN. 17, FEB. 8 AND MARCH 7, 2001, GOV. GRAY DAVIS ISSUED EXECUTIVE ORDERS DIRECTING GENERATION OF ELECTRICITY IN CALIFORNIA. THE EXECUTIVE ORDERS DIRECT THE AIR QUALITY OPERATIONS IN AIR QUALITY PERMITS AS NECESSARY TO ENSURE THAT POWER GENERATION FACILITIES ARE NOT RESTRICTED TO OPERATE... THIS ACTION PURSUANT TO CA REG. 113(A)(3) ISSUED TO AIR QUALITY AND VOLTAGE STABILITY TO THE SAN FRANCISCO PENINSULA. ANY VIOLATION OF THIS TO \$27,500 PER DAY PER VIOLATION, 42 U.S.C. 6741(b)(2). EPA MAY ALSO FILE AN ACTION SEEKING

Laws and Sections

Law	Sections	Programs
CA	272	New Source Review Permit Requirements

Facilities

FWS Number	Facility Name	Address	City Name	State	Zip	SIC Codes	NAIC Codes
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Enforcement Case Report

This page updates dynamically based on your...

Expand All Collapse All

Civil Enforcement Case

Basic Information
 Case Number: CA-00000411
 Case Name: POTREBU POWER PLANT (Permit CA0000657) Civil Penalty Ac
 Case Type: Administrative - Formal
 Case Status (as of 05/20/1992): Complaint(A) Issued
 Case Lead: State
 Court Docket Number: 92-033
 DCJ Docket Number: --

Penalties - Case Level
 Total Federal Penalty Assessed or Agreed To: \$0
 Total State/Local Penalty Assessed: \$0
 Total SEP Cost: \$0
 Total Compliance Action Cost: \$0
 Total Cost Recovery: \$0

Relief Sought: --
 Enforcement Outcome: --
 Headquarters Division: --
 Branch: --
 Result of Voluntary Disclosure?: --
 Multi-media Case? No
 Enforcement Type: State (CWA Penalty A/C)
 Violations: --



ECHO Enforcement and Compliance History Online

You are here: Home » Error Report

Error Report

Submitter Information

You must enter personal identifying information so that we may keep you involved in the error correction process. This information is not made available for any other purposes (see [Notice of Use](#)). EPA will notify you of the progress of your reported error and may ask for additional information or documentation, if it is needed (see [Customer Support Standards](#)).

Please see [How to Report an Error](#) for detailed steps on the error reporting process. Note: Multiple data errors in the same table of the Detailed Facility Report can be consolidated into one submission.

Required fields are marked with an ()*

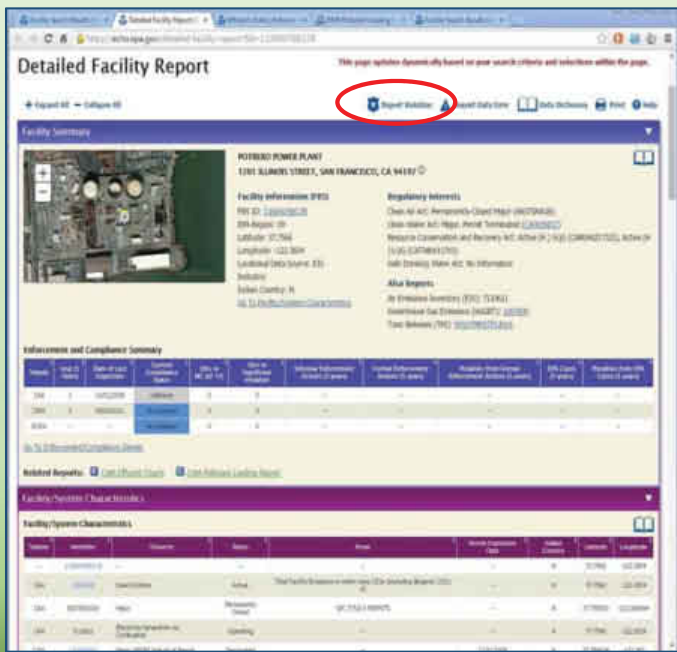
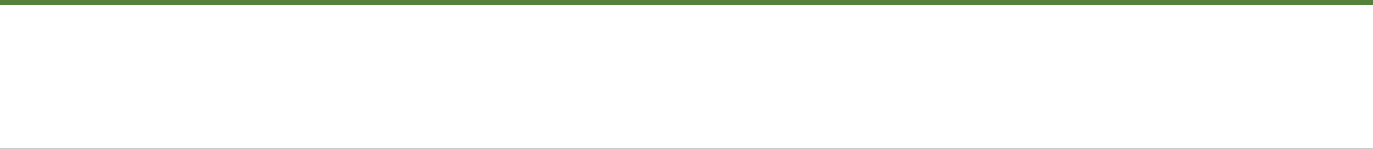
First Name: Last Name:

Email: Phone: Fax:

Preferred contact method (you is required): Email Phone

Affiliation type that best describes your role or interest in this error notification:
None Selected

Organization you are representing:



Report Environmental Violations

[En Español] OMB #2029-0032

Use this page to report what appears to you as a possible violation of environmental laws and regulations. Information you submit will be forwarded to EPA environmental enforcement personnel or to the appropriate regulatory authority. [More information.](#)

What Not to Report:
Many environmental programs have been delegated to other federal, tribal, state or local agencies and they have primary responsibility for them. Often, it is most appropriate to contact your local (city or county) or state environmental or health agency rather than EPA. [Examples of different situations and who to call.](#)

Emergencies
If you are seeing an environmental event that may lead to **immediate threat** to human health or the environment, you should report it through the [Report Spills and Environmental Violations](#) page. Learn the difference [between a possible violation and an emergency.](#)

Information about the suspected violation
Please provide as much information as you can in the form below. Asterisks (*) indicate required fields. If you do not know the name or address of the alleged violator, please enter "Unknown."

* Suspected Violator's Name and/or Company:

* Suspected Violator's address:

* Suspected Violator's city:

* Suspected Violator's state: Please Select

* Suspected Violator's zip code:

Date of Incident: mm/dd/yyyy. If known:

Your contact information
You are not required to provide your contact information in order for EPA to review your tip or complaint. However, if you do not provide contact information, EPA may be unable to contact you for additional information that may be needed to determine whether or not an investigation is warranted. If you do provide contact information, this information may be used to initiate follow-up communications with you and may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint. Please review the [EPA Web Privacy Policy](#) for more information.

Your name:

Your email:



Strategic Planning Branch, Enforcement Division

- Strategic Plan, Operating Plan, etc. – Lisa Hanf, Branch Chief
- Information Management Section – Kaoru Morimoto, Section Chief
- Inspection and Enforcement Tracker – Elizabeth Janes
- Enforcement & Compliance History Online (ECHO) – Gene Sylls
- **Targeting – Charles Swanson**

What is targeting?

Inspection targeting:

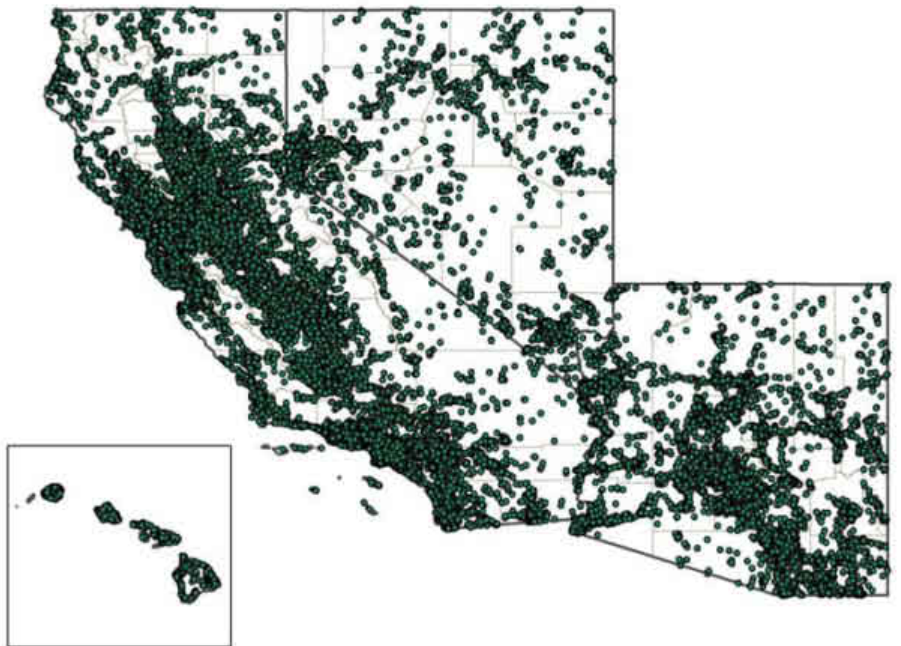
- Identify a universe of regulated facilities
- Apply criteria (Environmental Justice, proximity, etc.)
- Use GIS technology to see patterns and proximity in large data sets

Why target?

- Targeted inspections lead to good enforcement cases
- Incorporate strategic planning goals early in the process
- Use data to inform decisions about why/when/where to conduct inspections
- As a consolidated division, we can use data in new ways to streamline our work

Where do we go?

Federal Registry System
Facility count 187,730



Using GIS technology to see patterns and proximity in large data sets

10127
Schools
in California

Schools

RCRA
LQG

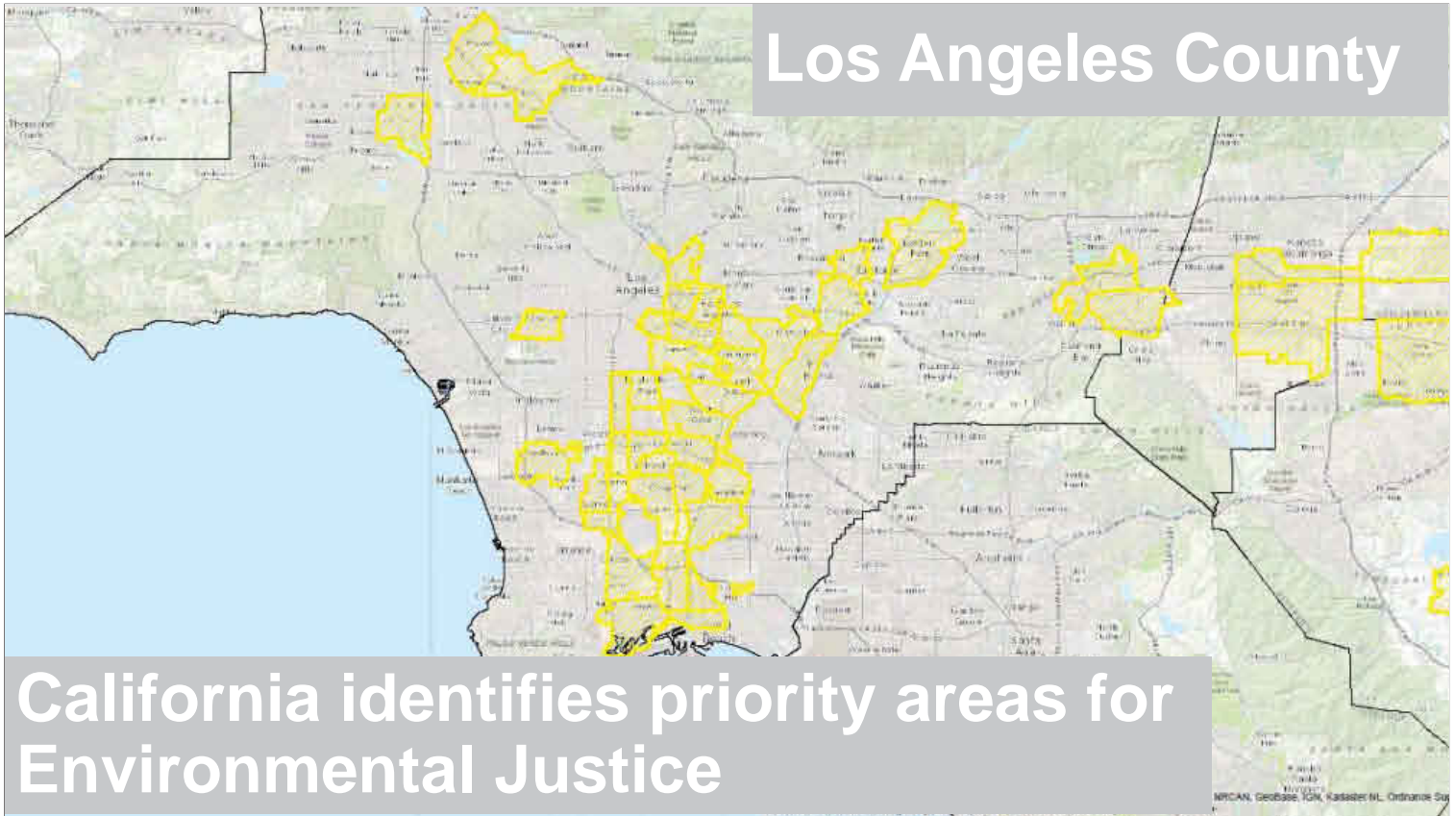
3282 RCRA LQG
in California

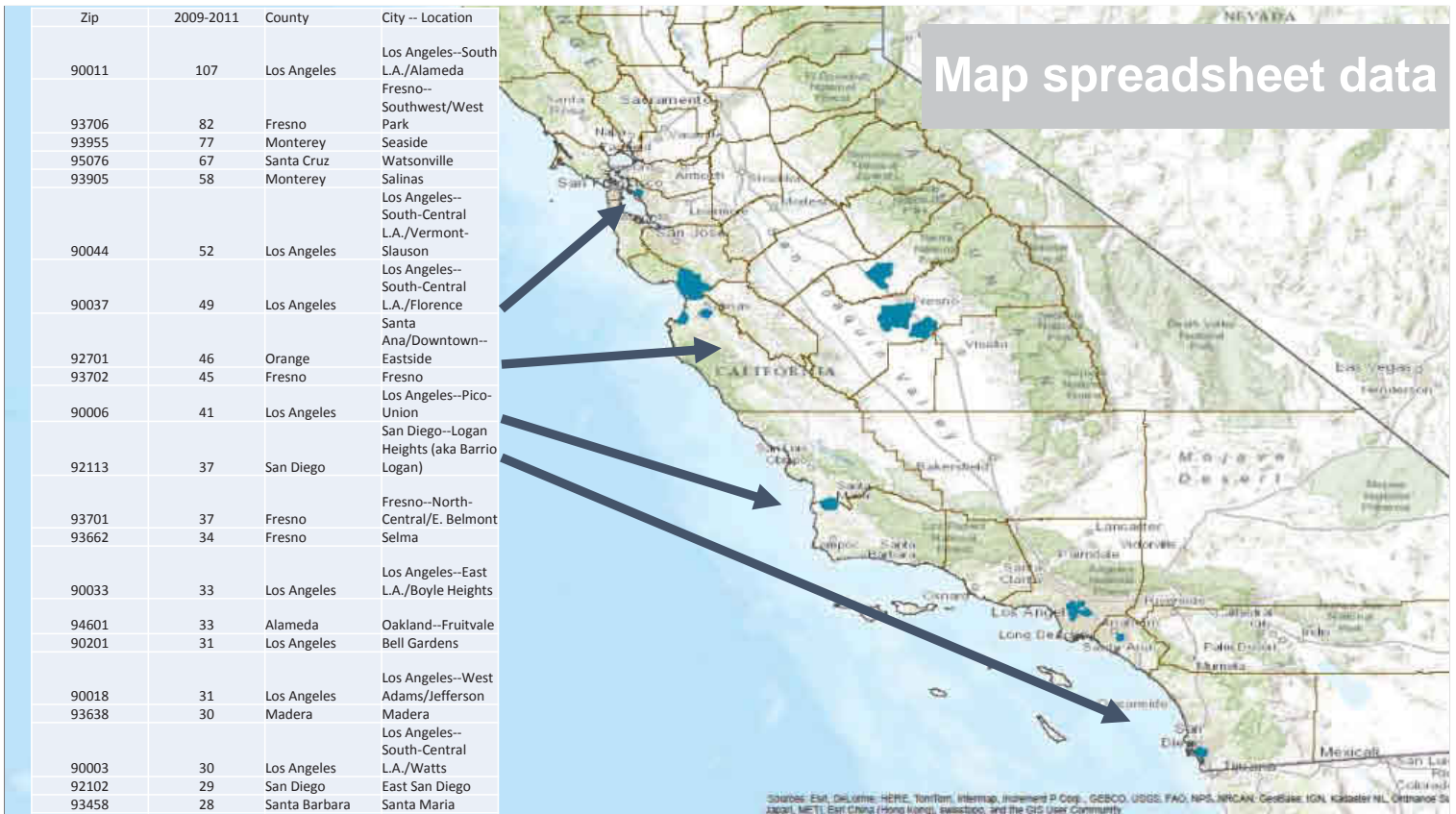
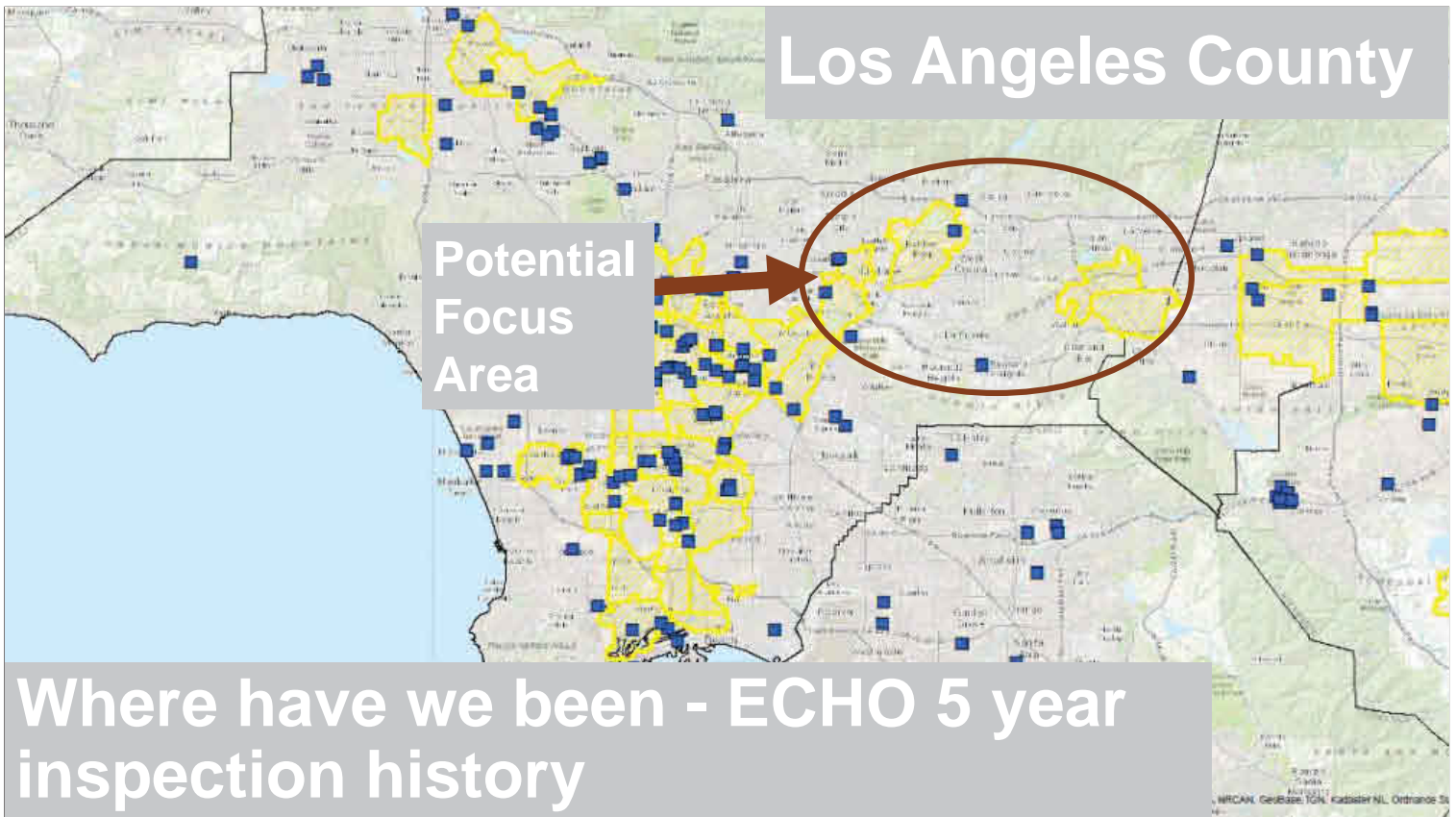
Sources: Esri, DeLorme, HERE, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community

How many
facilities are
500ft from a
school?

90 Facilities

Sources: Esri, DeLorme, HERE, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community





附錄5、美國環保署稽查電鍍工廠廢棄物稽查報告



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

WASTE MANAGEMENT DIVISION RCRA ENFORCEMENT OFFICE RCRA COMPLIANCE EVALUATION INSPECTION REPORT

Purpose: RCRA Compliance Evaluation Inspection

Facility: Industrial Plating Company, Inc.
803 American Street
San Carlos, CA 94070

EPA ID Number: CAD 981 449 416

Date of Inspection: March 31, 2011

EPA Representatives: Christopher Rollins
Enforcement Officer
(415) 947-4166
rollins.christopher@epa.gov

Amy C. Miller
Enforcement Officer
(415) 947-4198
miller.amy@epa.gov

Facility Representatives: Manuel G. Aguilar
Vice President, Administration
Environmental Compliance
(650) 593-1046

Frank Aguilar, Jr.
Vice President, Production
Industry Liaison
(650) 593-1046

Art Aguilar
Vice President, Production
Industry Liaison
(650) 593-1046

Henry J. Aguilar
President
(650) 593-1046

Report Prepared By: Christopher Rollins
Report Date: April 22, 2011

Investigation

On March 31, 2011, U.S. Environmental Protection Agency (“EPA”) representatives conducted an unannounced Resource Conservation and Recovery Act (“RCRA”) Compliance Evaluation Inspection (“CEI”) of the Industrial Plating Company, Inc. (“Industrial Plating”) facility located at 803 American Street, in San Carlos, California. The purpose of the CEI was to determine the facility’s compliance with the hazardous waste regulations under 40 Code of Federal Regulations (“CFR”) parts 261-266, 268, 270, 273, 279, and the California Health and Safety Code (HSC), Division 20, Chapter 6.5; and the California Code of Regulations (CCR), Title 22, Division 4.5.

The inspectors conducted a physical inspection of the facility. A record review was conducted and based on EPA’s inspection Industrial Plating is operating as a Large Quantity Generator (“LQG”).

This inspection report summarizes the events that transpired during the inspection, the observations and findings made by the EPA inspectors, and information received from the facility subsequent to the inspection.

Background

According to Industrial Plating representatives, the facility has operated in its current 803 American Street, San Carlos, California location since 1957. The company is family owned with many of the family members currently working on-site [Attachment I].

Industrial Plating operates a metal finishing facility offering a wide range of services including plating, anodizing, films and coatings, polishing, buffing and other finishing services. Industrial Plating specializes in small lots, prototypes, engineering models and research and development for the aerospace, science and defense industries [Attachment I].

The facility is currently operating as a LQG of hazardous waste and is not authorized to dispose of any hazardous waste on-site [Attachment II].

According to the facility representative, Industrial Plating employs approximately 12 people. The facility has been in the *ReferenceUSA*Gov’s database for approximately 28 years and listed under the SIC Codes for Metal Coatings (3499-13), Anodizing (3471-01) and Plating (3471-05) [Attachment III]. Industrial Plating has an approximate location sales volume of \$3.89 Million.

The facility was last inspected by the local CUPA on June 3, 2004. EPA Region 9 last conducted a hazardous waste inspection at this location on February 21, 2001. Both inspections resulted in informal actions for minor violations [Attachment IV].

Site Inspection

The EPA Region 9 inspectors arrived at Industrial Plating at around 8:35 am on Thursday, March 31, 2011. The inspectors announced their arrival at the receptionist's desk and were introduced to the Vice President of Administration, Mr. Manuel G. Aguilar.

The inspectors presented their inspector's badges to Mr. Aguilar and informed him that they were there to conduct a hazardous waste inspection under RCRA. The inspectors were then led to Mr. Aguilar's office area where EPA conducted an inspection in-brief.

During the in-brief, Mr. Aguilar mentioned that the facility recently obtained a new Environmental Consultant, Ms. Stacey Brunner after their former consultant Tim Londell passed away. Mr. Aguilar also mentioned that they had a Waste Water Treatment Unit (WWTU) on-site and they were in the process of modifying their plating operations layout to accommodate new tanks.

After finishing with the in-brief the EPA inspectors were escorted on a walkthrough of the facility.

Inspection Walkthrough

Epoxy Room

No hazardous waste violations were observed or documented in the Epoxy Room.

Gold Room

While in the Gold Room the inspectors did not observe any hazardous waste being stored. No hazardous waste violations were observed or documented in this area.

Main Plating Room

During EPA's inspection, EPA observed two 5-gallon containers of silver waste near tank 62 on Industrial Plating's main floor [Photograph 1]. Both containers were managed as satellite accumulation containers under RCRA.

One of the 5-gallon satellite accumulation containers was marked as "Silver Waste," but was not marked with any additional information including the accumulation start date, the generator's address, the physical state or the hazardous properties of the waste in the container [Photograph 1]. The container was over half full of liquid silver waste and properly closed.

The second 5-gallon container was opened and marked with a hazardous waste label but had a start accumulation date more than one-year old (January 24, 2010). The container's label also did not comply with the state of California's hazardous waste marking requirements by not indicating the physical state or the hazardous properties of the waste on the label [Photograph 1].

The inspector lifted the lid sitting on top of the container and observed that this open container was partially full of silver waste.



Photograph 1: Two improperly labeled containers. One of the containers is dated 1/24/10 and opened.



Photograph 2: The facility consolidated the two containers of silver waste into a third container that is closed and marked.

After EPA's inspection, Mr. Manuel Aguilar stated that the second 5-gallon container of silver waste had the incorrect accumulation start date recorded on its label. According to the facility, the container should have been labeled January 24, 2011 instead on January 24, 2010.

Industrial Plating returned to compliance on or around April 28, 2011, after providing documentation that the last shipment of silver waste sent off from the facility took place on September 20, 2010, four months prior to the January 2011 date [Attachment V].

Mr. Aguilar also returned to compliance by consolidating the two 5-gallon containers of silver waste into a third container on or around May 18, 2011. The container was closed and marked in compliance with both state and federal requirements [Photograph 2].

Hard Anodize Room

Industrial Plating stored only product in the Hard Anodize Room. No hazardous waste violations were observed or documented in this area.

Polishing Dust Baghouse Area

The EPA inspectors continued on their walkthrough and observed a 55-gallon container of polishing dust attached to the facility's baghouse [Photograph 3]. The 55-gallon container was marked with a hazardous waste label. However, the label did not comply with all of California's hazardous waste labeling requirements.

On the day of EPA's inspection, the hazardous waste label did not identify the hazardous properties of the waste or document the proper accumulation start date of the waste currently inside the container. The container was marked with the words "Removed Every 3 Months." However, the last date recorded on the label read July 1, 2010, more than 3 months prior to EPA's inspection.

At the time of EPA's inspection, Industrial Plating's baghouse was generating hazardous waste polishing dust.



Photograph 3: A picture of a 55-gallon drum of hazardous waste polishing dust that was improperly labeled in CA.



Photograph 4: Industrial Plating returns to compliance on May 18, 2011.

The facility returned to compliance on or around May 18, 2011, when Industrial Plating marked the 55-gallon hazardous waste label to include the hazardous properties and the recent accumulation start date of the waste on the label [Photograph 4].

Polish and Buffing Room

After inspecting the Polishing Dust Baghouse Area, EPA inspected the Polish and Buffing Room. The inspectors observed one open 5-gallon satellite accumulation container in the room [Photograph 5].

According to the worker in the Polish and Buffing Room, the satellite accumulation container was emptied on a daily basis. The open container was marked with a hazardous waste label but did not contain any additional information on the label.



Photograph 5: An open 5-gallon container of hazardous waste polishing dust. The label was not properly marked.



Photograph 6: The facility returned to compliance by closing the container and properly labeling the container.

The inspectors informed the facility that they needed to keep the container closed when not in use. The inspectors also informed Industrial Plating representatives that the label did not comply with state or federal marking requirements.

EPA inspectors requested that Industrial Plating place a protective covering over the label to make it easier to inspect and to keep it clean while storing waste. The inspectors also informed the facility that the words “Empty Daily” could be substituted for the satellite accumulation date, if this drum is truly emptied daily.

The facility returned to compliance on or around May 18, 2011, when Industrial Plating representatives placed a new label on the drum with a plastic protective covering over it [Photograph 6]. Industrial Plating also indicated the name and address of the generator, as well as the physical state and hazardous properties of the waste on the label.

90-Day Hazardous Waste Storage Area

Industrial Plating’s 90-Day Hazardous Waste Storage Area (“HWSA”) was stored outside in the back of the facility. During the inspection, EPA observed three 55-gallon blue poly-drums of hazardous waste and five 55-gallon black poly-drums of hazardous waste stored in the area. The poly-drums contained copper bright dip dragout solution, nitric acid, paint strip, chromic acid and sulfuric acid.

The eight poly-drums were closed and marked with a hazardous waste label. However, the containers were stored in a manner that didn’t allow adequate aisle space between each container [Photograph 7].



Photograph 7: Eight 55-gallon containers of hazardous waste without proper aisle space.



Photograph 8: Industrial Plating returns to compliance by storing the eight poly-drums with adequate aisle space.

The facility returned to compliance regarding the aisle space on or around April 28, 2011, after storing the eight poly-drums in rows with each label easily accessible for inspections [Photograph 8].

EPA also observed that six of the eight poly-drums were in violation of the state of California's labeling requirements. Specifically, the drums were missing the generator's address, the physical state or the hazardous properties on each hazardous waste label [Photographs 9].



Photograph 9: One 55-gallon container of hazardous waste without the generator's address listed on the container.



Photograph 10: The facility returned to compliance by properly labeling each of the six containers on-site.

Industrial Plating returned to compliance with California's hazardous waste labeling requirements on or around May 18, 2011, by identifying and listing the generator's address, the physical state and the hazardous properties of each chemical on the six 55-gallon containers [Photograph 10] stored in this area.

Moreover, during EPA's walkthrough, EPA documented an open container of oily waste that was not properly labeled in the 90-Day Hazardous Waste Storage Area.

Specifically, the container was not marked with any type of label to indicate the presence of a hazardous waste substance [Photograph 11].



Photograph 11: An open and unlabeled container of oily waste stored within Industrial Plating's 90-Day Storage Area.

EPA inspector Ms. Amy C. Miller recommended that Industrial Plating add absorbent material to the oily waste substance, place it in a closed container and label it as a hazardous waste prior to disposal.

The facility returned to compliance on or around April 28, 2011, after adding absorbent to the oily waste and mixing it in with filter cake waste on-site. Industrial Plating states that the waste container was properly closed, labeled and sent off for disposal that same day.

Moreover, EPA also observed three plastic totes of spent nickel and copper dragout solution on-site, that were not labeled in accordance with the State of California's hazardous waste labeling requirements [Photograph 12]. Specifically, the three totes were missing the generator's address, the physical state or the hazardous properties of the waste contained in each container.



Photograph 12: A plastic tote of copper dragout solution without the generator's address on the label.



Photograph 13: The facility returns to compliance regarding labeling of the three plastic totes.

Furthermore, one of the plastic totes containing spent nickel solution didn't have adequate aisle space available to inspect the container [Photograph 14].



Photograph 14: A tote of spent nickel without adequate aisle space to inspect the container.



Photograph 15: Industrial Plating returns to compliance by creating adequate aisle space for the three plastic totes on-site.

Industrial Plating returned to compliance on or around May 18, 2011, when the facility properly labeled the three plastic totes to include the generator's address, physical state and the hazardous properties on each container [Photograph 13]. The facility also returned to compliance on or around April 28, 2011, when it created adequate aisle space for the three plastic totes on-site [Photograph 15].

Furthermore, EPA Region 9 also documented one open 55-gallon poly drum container of Black Oxide in the 90-Day Hazardous Waste Storage Area. Industrial Plating stored this poly-drum on a secondary containment pallet in the area [Photograph 16].

The label for this container did not indicate the physical state and hazardous property of the waste in accordance with the State of California's labeling requirements.



Photograph 16: EPA observed an open 55-gallon poly-drum of black oxide.



Photograph 17: The opened poly-drum was closed and properly labeled.

The facility returned to compliance on or around April 28, 2011, when Industrial Plating closed and properly labeled the 55-gallon container of waste [Photograph 17].

Waste Water Treatment Unit

No hazardous waste violations were documented or observed in this area.

Product Storage Area

No hazardous waste violations were documented or observed in this area.

Records Review:

Biennial Report

During the inspection, EPA requested a copy of the Industrial Plating's 2009 Biennial Report. Mr. Manuel Aguilar stated that they filed the report but could not locate a hard copy of the report at the time. Mr. Aguilar submitted a copy of the report to EPA Region 9 on April 28, 2011. According to the Biennial Report, Industrial Plating submitted the report on March 1, 2010 [Attachment VI].

Notification of Hazardous Waste Activity Form

Industrial Plating first submitted a Notification of Hazardous Waste Activity Form for hazardous waste activities at this location on March 4, 1986 [Attachment II].

Potential Violations of RCRA Hazardous Waste Requirements

1. Failure to label hazardous waste containers properly, 22 CCR § 66262.34 [40 CFR § 262.34(a)(2) and (3)].

Requirements:

As stated under 40 CFR § 262.34(a)(2) of RCRA, and in California regulation 22 CCR § 66262.34, generators who accumulate hazardous waste on-site without a permit shall have the date accumulation begins clearly marked on each container and visible for inspection. In addition, under 40 CFR § 262.34(a)(3) of RCRA, each container must also be clearly marked with the words "Hazardous Waste."

Findings:

During the inspection, EPA observed a small opened container of oily waste in Industrial Plating's 90-Day Hazardous Waste Storage Area. The container was not marked with the words "Hazardous Waste" or marked to identify the material as a waste in accordance with RCRA. The container also did not include a accumulation start date of the waste on the container.

The facility returned to compliance on April 28, 2011, when it placed the oily waste in a container that was closed and properly labeled in accordance with the Federal hazardous waste regulations.

2. Required Aisle Space, 22 CCR § 66265.35 [40 CFR § 265.35].

Requirements:

As stated under 40 CFR § 265.35 of RCRA, and in California regulation 22 CCR § 66265.35, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

Findings:

At the time of EPA's inspection, Industrial Plating failed to maintain the proper aisle space for two storage areas located in the facility's 90-Day Hazardous Waste Storage Area.

EPA observed eight 55-gallon containers of hazardous waste that were not stored in a manner that allowed for the unobstructed movement of personnel in the storage area. In addition, EPA observed three totes of hazardous waste liquids in the 90-Day Hazardous Waste Storage Area that were not stored in a manner that allowed for the unobstructed movement of personnel.

The facility returned to compliance regarding the eight 55-gallon drums and the three plastic totes on or around April 28, 2011.

3. Failure to close hazardous waste containers, 22 CCR § 66265.173 [40 CFR § 265.173(a)].

Requirements:

As stated under 40 CFR § 265.173(a) of RCRA, and in California regulation 22 CCR § 66265.173, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

Findings:

While inspecting the Main Plating Room, EPA observed a 5-gallon container of silver waste that was not properly closed in accordance with RCRA. Industrial Plating returned to compliance on or near May 18, 2011, after consolidating similar waste on-site and closing the container as required by law.

EPA also observed an opened 5-gallon container of polishing dust in the Polish and Buffing Room. The facility returned to compliance on or around April 18, 2011 after properly closing the container.

EPA also documented two open containers in Industrial Plating's 90-Day Hazardous Waste Storage Area. During the walkthrough, EPA observed and documented a 55-gallon drum of Black Oxide and a small blue open container of oily waste.

The facility returned to compliance regarding these two containers on or around April 28, 2011.

Areas of Concern Regarding California Only Hazardous Waste Management

1. Failure to label hazardous waste containers properly, 22 CCR § 66262.34(f)(1) – (3).

Requirements:

As stated under California regulation 22 CCR § 66262.34(f), generators who accumulate hazardous waste on site without a permit or grant of interim status shall have the date accumulation begins clearly marked on each container and visible for inspection, the container must also be clearly marked with the words "Hazardous Waste." In addition, under 22 CFR § 66262.34(f)(3)(A) – (C) of the State regulations, each container shall also be labeled with the composition and physical state of the waste; statements calling into attention the particular hazardous properties of the waste; and the name and address of the person producing the waste.

Findings:

On the day of the inspection, EPA observed two 5-gallon containers of silver waste in the Main Plating Room that were not properly labeled as required by California State law. One of the containers was not marked with the words "Hazardous Waste," or indicated the address of the facility on the label. Both containers also did not specify the physical states or the hazardous properties of the silver waste on the containers.

The facility returned to compliance on or near May 18, 2011 when it consolidated the silver waste into a third container and properly labeled the waste in accordance with California state requirements.

In Industrial Plating's Polishing Dust Baghouse Area, EPA documented one 55-gallon container that did not comply with California's state requirements regarding labeling of hazardous waste. The label did not include the hazardous properties of the waste or the proper accumulation state date on the container. The facility wrote "Removed Every 3 Months" in the accumulation start date areas instead.

The facility returned to compliance on or near May 18, 2011, when it properly labeled the container in accordance with State law.

EPA also observed a 5-gallon satellite accumulation container in the facility's Polish and Buffing Room that was marked with the words "Hazardous Waste," but did not include the physical state or the hazardous properties of the waste, the satellite accumulation date or the address of the generator on the label.

Industrial Plating returned to compliance on or near May 18, 2011, after the facility marked the new label to include all the elements required by the state of California.

附錄6、美國環保署有害廢棄物稽查確認表單

HAZARDOUS WASTE INSPECTION

Generator Checklist

Facility Name _____ Date _____

Site Address _____ Time In _____ Time Out _____

Owner/Operator _____ Phone _____ Misc. _____

Type of Inspection (circle) _____ EPA ID # _____

Routine Re-inspection/Follow-up Joint Inspection (State ___ or Local (CUPA) _____
 Complaint Focused Other _____

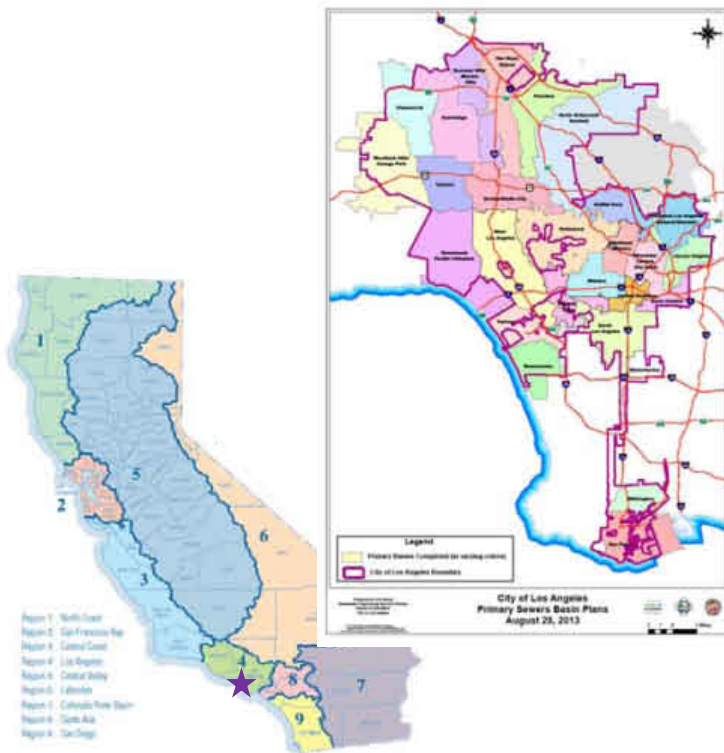
Generator Status (circle): CESQG SQG LQG

Inspection may involve obtaining photographs, review and copying of records, and determination of compliance with hazardous waste handling requirements.

Regulation	HAZARDOUS WASTE REQUIREMENTS	Y	N	N/A	COMMENTS/NOTES/DOCUMENT(S) REVIEWED MISSING INFORMATION/ UNRESOLVED ISSUES
Recordkeeping/documentation					
40 CFR 262.12	Generator has an EPA ID number				
40 CFR 262.11	Hazardous waste determination made for all wastes: <input type="checkbox"/> Analysis <input type="checkbox"/> Generator Knowledge				
	SQG: emergency contact information posted near phone				
	SQG: Facility personnel demonstrate training/awareness				
	Manifests/Consolidated Manifest receipts complete				
	A legible copy of manifest mailed to State				
	TSDf signed copy of manifest available w/in 35 days of waste shipment. Exception Report submitted				
	Bills of Lading/receipts available				
	LDRs available and complete				
	Onsite recycling reported using UPCF				
	LQG; Contingency Plan Complete with all elements				
40 CFR 265.16	LQG: written training program				
	LQG: have facility personnel received training program per written training program				
Container/tank management					
	Containers are in good condition				
	Containers are closed except when adding/removing				
	Empty containers are empty				
	Containers inspected weekly				
	Tanks inspected daily				
	Satellite containers at or near point of generation				
	Satellite containers under control of operator				
	Maximum of 55-gallons of waste(s) satellite area				
Accumulation Time Limits					
	Waste is accumulated not more than 90/180/270				
	Satellite wastes accumulated for less than 1 year (AZ and CA)				
	Empty containers managed within one year				
	Universal waste accumulated less than one year				
	Used oil filters offsite within 180 (1 year if <1 ton)				
	Pb-acid batteries offsite within 180 (1 yr. if < 1 ton)				
Labeling/Marking					
	Containers are properly labeled				
	Satellite containers have 2 nd ASD marked once full				
	Excluded recyclable materials marked properly				
	Universal waste container properly labeled				
	Used oil filters marked "drained used oil filters"				
	Date written on spent lead-acid batteries				
	"Used Oil" marked on all used oil tanks/containers				
	Tank marked with "haz waste", contents, start date				
	Empty containers marked with date emptied				

附錄7、洛杉磯市污水處理廠違規裁罰案件介紹

City of Los Angeles



DOJ, EPA, State Water Board, Regional Water Board, Santa Monica Baykeeper, & South LA Communities negotiated 2004 Consent Decree with the City of LA to address sewer overflows & odors.

10/23/2014

City of Los Angeles

- **Largest sewage collection system in the U.S.**
 - 4 million people
 - 600 mi² service area (LA & municipalities under contract with LA)
 - >6,700 mi sewers
 - 48 pump stations, drop structures, siphons, & odor treatment facilities
- **400 MGD to 4 WWTPs & water reclamation plants**
 - 1894 Hyperion Plant began operations discharging raw sewage
 - 1925 began screening sewage
 - 1950 built secondary treatment
 - 1980s-1990s rebuilt secondary treatment

10/23/2014

City of Los Angeles History

- Feb-May 1998 rainy El Nino season: 99 sanitary sewer overflows (SSOs) released 44 MG
- Sept 1998 Regional Board order (CDO) required construction of interceptor & relief sewers
- Nov 1998 Baykeeper sued for SSOs
- Jan 2001 EPA & State sued for SSOs & permit violations at 2 WWTPs, including odor nuisances
 - lawsuit was consolidated with Baykeeper's
- Jul 2001 community groups from South LA (Intervenors) sued for similar violations

10/23/2014

City of Los Angeles Consent Decree (CD)

Oct 2004 CD

- \$2B injunctive relief
- \$8.5M supplemental environmental projects (SEPs)
- \$1.6M civil penalty split with CA

10/23/2014

City of Los Angeles

CD Work Requirements

- Sewer maintenance
 - Sewer cleaning
 - Chemical root control
 - Sewer condition assessment (CCTV)
 - Fats, oils, & grease (FOG) control
- Sewer capacity assurance
- Sewer rehabilitation & replacement: at least 488 mi



Photo source: City of LA

10/23/2014

City of Los Angeles

Other CD Requirements

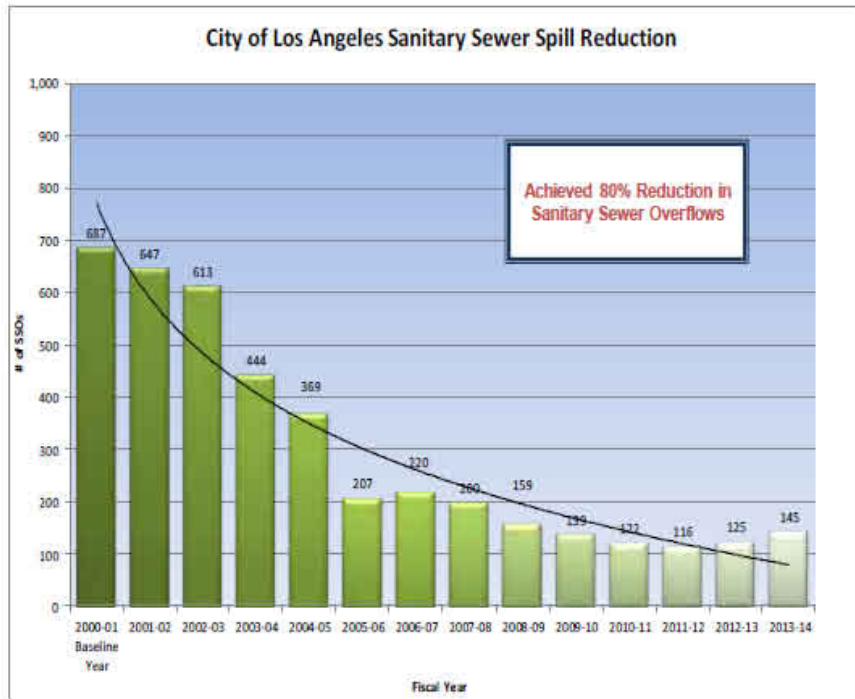


Photo source: City of LA

- Odor control: advisory board, carbon scrubbers, air treatment facilities
 - Later CD modifications included independent, technical odor expert & community liaison
- Various reports
- SEPs
 - Required to spend \$8.5M
 - Constructed wetlands
 - Captured & treated urban runoff

10/23/2014

City of Los Angeles



10/23/2014

附錄8、美國加州環保署水資源管理部水質環境執法政策

STATE WATER RESOURCES CONTROL BOARD

**WATER QUALITY
ENFORCEMENT POLICY**

Effective May 20, 2010

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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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;¹
- 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.

¹ 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										
	Potential for Harm									
Deviation from Requirement	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.

TABLE 4 – Violator’s Conduct Factors	
Factor	Adjustment
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 0.5 to 1.5 , 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 0.75 to 1.5 , 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 1.1 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 30th 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 BEN² computer program (the most recent

² 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

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.³

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 income⁴ for the community is less than 80 percent of the California median household income;
- The community has an unemployment rate⁵ of 10 percent or greater; or
- Twenty percent of the population is below the poverty level.⁶

“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 group⁷ 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.

³ 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.

⁴ **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.

⁵ **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.

⁶ **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.”

⁷ **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

- 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.

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

* 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
5-DAY SUM OF BOD5 DISCHARGED
7-DAY SUM OF WLA VALUES
7-DAY SUM OF BOD5 DISCHARGED
ACIDITY
ACIDITY, CO₂ PHENOL (AS CaCO₃)
ACIDITY-MINRL METHYL ORANGE (AS CaCO₃)
ACIDITY, TOTAL (AS CaCO₃)
ALGICIDES, GENERAL
ALKALINITY, BICARBONATE (AS CaCO₃)
ALKALINITY, CARBONATE (AS CaCO₃)
ALKALINITY, PHENOL-PHTHALINE METHOD
ALKALINITY, TOTAL (AS CaCO₃)
ALUMINUM
ALUMINUM, ACID SOLUABLE
ALUMINUM CHLORIDE, DISSOLVED, WATER
ALUMINUM, DISSOLVED (AS AL)

ALUMINUM, IONIC
ALUMINUM, POTENTIALLY DISSOLVD
ALUMINUM SULFATE
ALUMINUM, TOTAL RECOVERABLE
ALUMINUM, TOTAL
ALUMINUM, TOTAL (AS AL)
AMMONIA & AMMONIUM-TOTAL
AMMONIA (AS N) + UNIONIZED AMMONIA
AMMONIA, UNIONIZED
AVG. OF 7-DAY SUM OF BOD5 VALUES
BARIUM, SLUDGE, TOT, DRY WEIGHT (AS BA)
BICARBONATE ION-(AS HCO₃)
BIOCHEMICAL OXYGEN DEMAND-5
BIOCIDES
BOD % OVER INFLUENT
BOD (ULT. 1ST STAGE)
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
 REMVL
 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
 ENDRIIN 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 ₃ + NH ₃
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 ₃) 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 ₄)	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 ₄)
NITROGEN, NITRATE TOTAL (AS NO ₃)	PHOSPHATE, POLY (AS PO ₄)
NITROGEN, NITRITE TOTAL (AS N)	PHOSPHATE, TOTAL (AS PO ₄)
NITROGEN, NITRITE TOTAL (AS NO ₂)	
NITROGEN, ORGANIC TOTAL (AS N)	
NITROGEN, SLUDGE, TOT, DRY WT. (AS N)	

PHOSPHATE, TOTAL COLOR. METHOD (AS P)	SOLIDS, SETTLEABLE
PHOSPHORUS, DISSOLVED	SOLIDS, SETTLEABLE, NET VALUE
PHOSPHORUS, DISSOLVED REATIVE (DRP AS P)	SOLIDS, SLUDGE, TOT, DRY WEIGHT
PHOSPHOROUS, IN TOTAL	SOLIDS, SUSPENDED PERCENT REMOVAL
ORTHOPHOSPHATE	SOLIDS, TOTAL
PHOSPHORUS (REACTIVE AS P)	SOLIDS, TOTAL DISSOLVED
PHOSPHOROUS 32, TOTAL	SOLIDS, TOTAL DISSOLVED (TDS)
PHOSPHOROUS, TOTAL ELEMENTAL	SOLIDS, TOTAL DISSOLVED-180 DEG.C
PHOSPHOROUS, TOTAL, IN BOTTOM DEPOSITS	SOLIDS, TOTAL DISSOLVED PERCENT BY WEIGHT
PHOSPHOROUS, TOTAL ORGANIC (AS P)	SOLIDS, TOTAL DISSOLVED (INORGANIC)
PHOSPHORUS, TOTAL (AS P)	SOLIDS, TOTAL FIXED
PHOSPHORUS, TOTAL PERCENT REMOVAL	SOLIDS, TOTAL SUSPD. NON-VOLATILE
PHOSPHORUS, TOTAL SOLUBLE (AS PO4)	SOLIDS, TOTAL SUSPENDED
POTASSIUM, DISSOLVED (AS K)	SOLIDS, TOTAL VOLATILE
POTASSIUM, IN BOTTOM DEPOSITS	SOLIDS, TOTAL DISSOLVED, TOTAL TONS
POTASSIUM, PCT EXCHANGE	SOLIDS, TOTAL NON-VOLATILE, NON-FIXED
POTASSIUM, TOTAL PCTIN WATER, (PCT)	SOLIDS, TOTAL SUSP PER PRODUCTION
POTASSIUM, TOTAL RECOVERABLE	SOLIDS, TOTAL SUSP. PER 1000 GALLONS
PROPARGITE	SOLIDS, TOTAL SUSP. PER BATCH
RATIO FECAL COLIFORM & STREPTOCOCCI	SOLIDS, TOTAL SUSP. PER CFS OF STREAMFLW
RESIDUE, SETTLEABLE	SOLIDS, TOTAL SUSPENDED, LOADING RATE
RESIDUE, TOTAL FILTERABLE	SOLIDS, TOTAL SUSPENDED, NET VALUE
RESIDUE, TOTAL NON-SETTLEABLE	SOLIDS, VOLATILE DISSOLVED
RESIDUE, TOTAL VOLATILE	SOLIDS, VOLATILE SUSPENDED
RESIDUE, VOLATILE NONFILTERABLE	SOLIDS, VOLATILE SUSPENDED, % REMOVAL
SEAWATER GEL MUD	SOLIDS, VOLATILE SUSP., IN MIXED LIQUOR
SETTLEABLE SOLIDS PERCENT REMOVAL	SOLIDS, DRY, DISCHARGE TO SOL. HANDLING SYS.
SILICA, DISSOLVED (AS SIO2)	SOLIDS, DRY, INCIN. AS% OF DRY SOL. FROM TRMTPLT
SILICON, TOTAL	SOLIDS, DRY, REMOVED FROM SOL. HANDLING SYS.
SILICA, TOTAL (AS SIO2)	SOLIDS, TOT. VOLATILE PERCENT REMOVAL
SLUDGE BUILD-UP IN WATER	SOLIDS, VOLATILE % OF TOTAL SOLIDS
SLUDGE, RATE OF WASTING	SOLIDS-FLOTNG-VISUAL DETRMNTN-#
SLUDGE SETTLEABILITY 30 MINUTE	DAYS OBS
SLUDGE VOLUME DAILY INTO A WELL	SULFATE
SODIUM ADSORPTION RATIO	SULFATE (AS S)
SODIUM ARSENITE	SULFATE, DISSOLVED (AS SO4)
SODIUM CHLORIDE (SALT)	SULFATE IN SEDIMENT
SODIUM, DISSOLVED (AS NA)	SULFATE, TOTAL (AS SO4)
SODIUM HEXAMETA-PHOSPHATE	SULFIDE, DISSOLVED, (AS S)
SODIUM IN BOTTOM DEP (AS NA) (DRY WGT)	SULFIDE, TOTAL
SODIUM NITRITE	SULFIDE, TOTAL (AS S)
SODIUM, %	SULFITE (AS S)
SODIUM, % EXCHANGE- ABLE SOIL, TOTAL	SULFITE (AS SO3)
SODIUM, SLUDGE, TOT, DRY WEIGHT (AS NA)	SULFITE WASTE LIQUOR PEARL BENSON
SODIUM SULFATE, TOTAL	INDEX
SODIUM, TOTAL (AS NA)	SULFUR DIOXIDE TOTAL
SODIUM, TOTAL RECOVERABLE	SULFUR, TOTAL
SOLIDS ACCUMULATION RATE TOT DRY WEIGHT	SULPHUR, TOTAL ELEMENTAL
SOLIDS, FIXED DISSOLVED	
SOLIDS, FIXED SUSPENDED	

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.

Metals

All metals not specifically listed under Group 1.

Inorganics

Cyanide

Total Residual Chlorine

Organics

All organics not specifically listed under Group 1.

Other*

* 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-
TETRAFLUOROETHANE	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-FLUOROETHANE	1,2,3,4,6,7,8-HEPTACHLORODIBENZO-P-
1,1,1,3,3-PENTA-FLUOROBUTANE	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-FLUOROETHANE	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-NITRILOPROPIONAMIDE
 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
 DICHLORO BENZENE
 DICHLORO BENZENE, ISOMER
 DICHLORO BENZYLTRIFLUORIDE
 DICHLOROBROMOMETHANE
 DICHLOROBROMOMETHANE, DRY WEIGHT
 DICHLOROBUTADIENE
 DICHLOROBUTENE-(ISOMERS)
 DICHLORODEHYDRO-ABEIETIC 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
ISOCTYL 2,4,5-T	METAM POTASSIUM
ISOCTYL 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
 PROMETON, ORGANIC PESTICIDE
 PROMETRYN, ORGANIC PESTICIDE
 PRONAMIDE, ORGANIC PESTICIDE
 PROPABHLOR (RAMROD) DISSOLVED
 PROPACHLOR, ORGANIC PESTICIDE
 PROPANE, 2-METHOXY-2-METHYL (MTBE)
 PROPANIL
 PROPAZINE, ORGANIC PESTICIDE
 PROPRANE, TOTAL
 PROPYL ACETATE
 PROPYLENE OXIDE
 PROPYLENGLYCOL, TOTAL
 PROTACTINIUM 234, DRY WEIGHT
 PURGEABLE AROMATICS METHOD 602
 PURGEABLE HYDRO-CARBONS, METH. 601
 PURGEABLE ORGANIC HALIDES
 PYMETROZINE
 PYRENE
 PYRENE, DRY WEIGHT
 PYRETHRINS
 PYRIDINE
 PYRIFENOX
 QUARternary AMMONIUM COMPOUNDS
 QUINOLINE
 RADIATION-GROSS ALPHA TOT DISSOLVED
 RADIATION-GROSS ALPHA TOT
 SUSPENDED
 RADIATION, GROSS BETA
 RADIATION, GROSS ALPHA
 RADIOACTIVITY
 RADIOACTIVITY, GROSS
 RADIUM 224
 RADIUM 226 + RADIUM 228, TOTAL
 RADIUM 226, DISSOLVED
 RADIUM 228, TOTAL
 RARE EARTH METALS, TOTAL
 RATIO OF FECAL COLIFORM TO FECAL
 STREPOC
 R-BHC (LINDANE) GAMMA
 RDX, DISSOLVED
 RDX, TOTAL
 RESIN ACIDS, TOTAL
 RESORCINOL
 RHODIUM, TOTAL
 ROTENONE
 ROUNDUP
 ROVRAL
 RUBIDIUM, TOTAL (AS RB)
 SAFROLE
 SAMARIUM, TOTAL (AS SM IN WATER)
 SELENIUM SLUDGE SOLID
 SELENIUM, ACID SOLUBLE
 SELENIUM, DISSOLVED (AS SE)
 SELENIUM, DRY WEIGHT
 SELENIUM, POTENTIALLY DISSOLVD

SELENIUM, SLUDGE, TOTAL DRY WEIGHT
SELENIUM, TOTAL (AS SE)
SELENIUM, TOTAL RECOVERABLE
SEVIN (CARBARYL) IN TISSUE
SEVIN (CARBRYL)
SILVER
SILVER TOTAL RECOVERABLE
SILVER IN BOTTOM DEPOSITS (DRY WGT)
SILVER, DISSOLVED (AS AG)
SILVER, IONIC
SILVER, POTENTIALLY DISSOLVED
SILVER, TOTAL (AS AG)
SILVER, TOTAL PER BATCH
SILVEX
SODIUM CHLORATE
SODIUM DICHROMATE
SODIUM DIMETHYL-DITHIOCARBAMATE,
TOTAL
SODIUM-O-PPTH
SODIUM PENTACHLORO- PHENATE
SODIUM POLYACRYLATE, TOTAL
SOPP
SOPP, LOADING RATE
STIROFOS
STROBANE
STRONTIUM 90, TOTAL
STRONTIUM, DISSOLVED
STRONTIUM, TOTAL (AS SR)
STYRENE
STYRENE, TOTAL
SULFABENZAMIDE
SULFACETAMIDE
SULFATHIAZOLE
SULFOTEPP (BLADAFUME)
TANNIN AND LIGNIN
TCDD EQUIVALENTS
TCMTB
TEBUCONAZOLE
TEBUPIRIMFOS
TEBUTHIURON ORGANIC PESTICIDE
TECHNETIUM-99
TEFLUTHRIN
TELLURIUM, TOTAL
TEMEPHOS
TERBACIL
TERBUFOS
TERBUFOS (COUNTER) TOTAL
TERBUTHYLAZINE ORGANIC PESTICIDE
TERBUTRYN, ORGANIC PESTICIDE
TETRA SODIUM EDTA
TETRACHLORDIBENZOFURAN, 2378-(TCDF)
SED,
TETRACHLORO BENZENE
TETRACHLOROETHANE, TOTAL
TETRACHLOROETHENE
TETRACHLOROETHYLENE

TETRACHLOROETHYLENE, DRY WEIGHT
TETRACHLOROGUAIACOL (4CG) IN WHOLE
WATER
TETRAHYDRO-3,5-DIMETHYL-2-HYDRO-
1,3,5-TH
TETRAHYDROFURAN
TETRAMETHYL AMMONIUM HYDROXIDE
TETRAMETHYLBENZENE
THALLIUM 208
THALLIUM IN BOTTOM DEPOSITS (DRY
WGT)
THALLIUM, ACID SOLUBLE
THALLIUM, DISSOLVED (AS TL)
THALLIUM, POTENTIALLY DISSOLVED
THALLIUM, TOTAL (AS TL)
THALLIUM, TOTAL RECOVERABLE
THC, DRY & O2
THEOPHYLLINE
THIABENDAZOLE
THIOBENDAZOLE
THIOCARBAMATES
THIOCYANATE (AS SCN)
THIOSULFATE ION(2-)
THORIUM 230
THORIUM 232
THORIUM 232 PCI/G OF DRY SOLIDS
THORIUM 234
TIN
TIN, DISSOLVED (AS SN)
TIN, TOTAL (AS SN)
TIN, TOTAL RECOVERABLE
TIN, TRI-ORGANO-
TITANIUM, DISSOLVED (AS TI)
TITANIUM, TOTAL (AS TI)
TITANIUM, TOTAL DRY WEIGHT (AS TI)
TOLUENE
TOLUENE, DISSOLVED
TOLUENE, DRY WEIGHT
TOLUENE-2,4 -DIISOCYANITE
TOLYTRIAZOLE
TOPSIN
TOTAL ACID PRIORITY POLLUTANTS
TOTAL BASE/NEUTRAL PRIORITY
POLLUTANTS
TOTAL PESTICIDES
TOTAL PHENOLS
TOTAL POLONIUM
TOTAL PURGEABLE HALOCARBONS
TOTAL TOXIC ORGANICS (TTO) (40 CFR 413)
TOTAL TOXIC ORGANICS (TTO) (40 CFR 433)
TOTAL TOXIC ORGANICS (TTO) (40 CFR
464A)
TOTAL TOXIC ORGANICS (TTO) (40 CFR
464B)
TOTAL TOXIC ORGANICS (TTO) (40 CFR
464C)

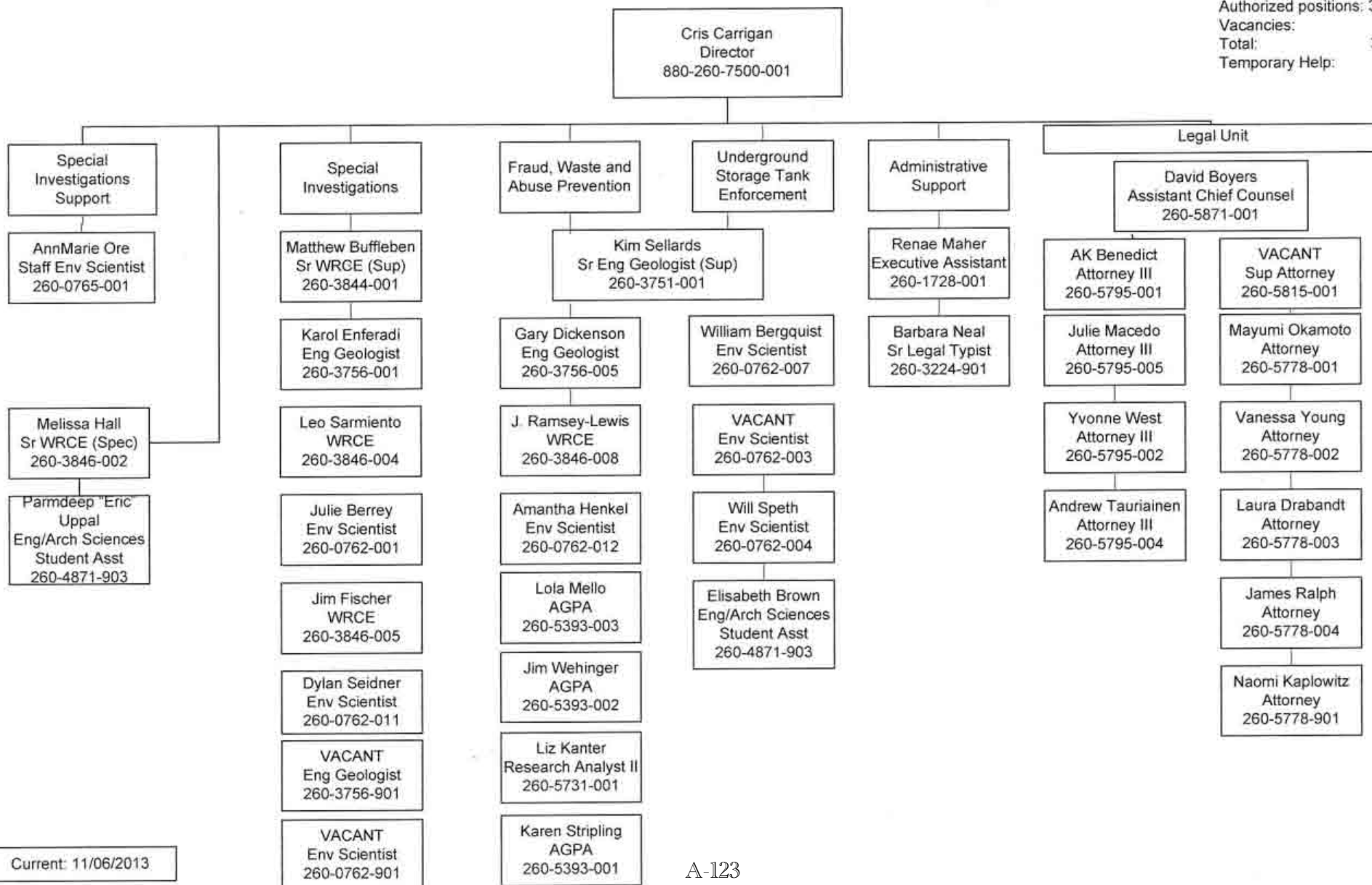
TOTAL TOXIC ORGANICS (TTO) (40 CFR 464D)	URANYL-ION
TOTAL TOXIC ORGANICS(TTO) (40 CFR 465)	UREA
TOTAL TOXIC ORGANICS (TTO) (40 CFR 467)	VERNAM (S-PROPYLDI-PROPYLTHIOCARBAMATE)
TOTAL TOXIC ORGANICS (TTO) (40 CFR 468)	VINYL ACETATE
TOTAL TOXIC ORGANICS (TTO) (40 CFR 469)	VINYL CHLORIDE
TOTAL VOLATILE PRIORITY POLLUTANTS	VINYL CHLORIDE, DRY WEIGHT
TOXAPHENE	VOLATILE COMPOUNDS (GC/MS)
TOXAPHENE, DRY WEIGHT	VOLATILE FRACTION ORGANICS (EPA 624)
TOXICS, PERCENT REMOVAL	VOLATILE HALOGENATED HYDROCARBONS
TRANS-1,2-DICHLORO-ETHYLENE	VOLATILE HALOGENATED ORGANICS (VHO), TOT
TRANS-1,3-DICHLORO PROPENE	VOLATILE HYDROCARBONS
TREFLAN (TRIFLURALIN)	VOLATILE ORGANIC COMPOUND (VOC)
TRIADIMEFON ORGANIC PESTICIDE	VOLATILE ORGANICS DETECTED
TRIBUTYLAMINE	XANTHATES
TRIBUTYLTIN	XC POLYMER IN DRILLING FLUIDS
TRICHLOROENZENE	XYLENE
TRICHLOROENZENE 1,2,4 TOTAL	XYLENE, PARA-TOTAL
TRICHLOROETHANE	ZINC
TRICHLOROETHENE	ZINC IN BOTTOM DEPOSITS (DRY WGT)
TRICHLOROETHYLENE	ZINC SLUDGE SOLID
TRICHLOROETHYLENE, DISSOLVED	ZINC SLUDGE TOTAL
TRICHLOROETHYLENE, DRY WEIGHT	ZINC TOTAL RECOVERABLE
TRICHLOROFLUORO-METHANE	ZINC, DISSOLVED (AS ZN)
TRICHLOROGUAIACOL	ZINC, DRY WEIGHT
TRICHLOROMETHANE	ZINC, PERCENT REMOVAL
TRICHLOROPHENATE-(ISOMERS)	ZINC, POTENTIALLY DISSOLVED
TRICHLOROPHENOL	ZINC, TOTAL
TRICHLOROTOLUENE	ZINC, TOTAL (AS ZN)
TRICHLOROTRIFLUORO-ETHANE	ZIRAM, ORGANIC PESTICIDE
TRICHLOROFON	ZIRCONIUM, TOTAL
TRIETHANOLAMINE	
TRIETHYLAMINE	
TRIFLURALIN (C ₁₃ H ₁₆ F ₃ N ₃ O ₄)	
TRIHALOMETHANE, TOT.	
TRIMETHYL BENZENE	
TRINITROTOLUENE (TNT), DISSOLVED	
TRINITROTOLUENE (TNT), TOTAL	
TRIPHENYL PHOSPHATE	
TRITHION	
TRITIUM (1 H ₃), TOTAL	
TRITIUM, TOTAL	
TRITIUM, TOTAL COUNTING ERROR (PC/L)	
TRITIUM, TOTAL NET INCREASE H-3 UNITS	
TUNGSTEN, DISSOLVED	
TUNGSTEN, TOTAL	
U-236 TOTAL WTR	
URANIUM 235, DRY WEIGHT	
URANIUM 238	
URANIUM, POTENTIALLY DISSOLVD	
URANIUM, 235 TOTAL	
URANIUM, 238 TOTALURANIUM, NATURAL, DISSOLVED	
URANIUM, NATURAL, TOTAL	
URANIUM, NATURAL, TOTAL (IN PCI/L)	
URANIUM, TOTAL AS U308	

附錄9、美國加州水資源管理部環境執法辦公室組織架構圖

Office of Enforcement

Cris Carrigan
 Cris Carrigan, Director, OE
 12/2/13
 Date:

Entire Org: 260
 Authorized positions: 30.5
 Vacancies: 2.0
 Total: 32.5
 Temporary Help: 4.0



附錄10、美國環保署須更新農藥及化學品執法裁罰政策及實務報告



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

EPA Needs to Update Its Pesticide and Chemical Enforcement Penalty Policies and Practices

Report No. 13-P-0431

September 26, 2013



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Report Contributors:

Ganesa Curley
Jerri Dorsey
Jeffrey Harris
Lauretta A. Joseph
Calvin Lin
Steve Weber

Abbreviations

EPA	U.S. Environmental Protection Agency
ERP	Enforcement Response Policy
ERPP	Enforcement Response and Penalty Policy
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FY	Fiscal Year
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
PCB	Polychlorinated Biphenyls
TSCA	Toxic Substances Control Act

Cover photo: A farmer mixes herbicide prior to application; the farmer wears complete protection while using the chemicals. (U.S. Department of Agriculture's National Resources Conservation Service photo)

Hotline

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1200 Pennsylvania Avenue, NW
Mailcode 2431T
Washington, DC 20460



At a Glance

Why We Did This Review

The purpose of this review was to evaluate how the U.S. Environmental Protection Agency's (EPA's) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) enforcement tools achieve intended outcomes; and whether penalty negotiations are managed to protect human health and the environment. This briefing report contains findings and recommendations related to FIFRA and TSCA good faith reductions and ability to pay penalties. FIFRA regulates the distribution, sale and use of pesticides. TSCA provides the EPA with authority to require reporting, recordkeeping and testing requirements, and restrictions to chemical substances and mixtures.

This report addresses the following EPA theme:

- *Taking action on toxics and chemical safety.*

For further information, contact our public affairs office at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130926-13-P-0431.pdf

EPA Needs to Update Its Pesticide and Chemical Enforcement Penalty Policies and Practices

What We Found

We found that EPA regions differed in how they documented decisions and justified penalties related to FIFRA and TSCA enforcement penalty reductions. EPA regions generally did not consistently determine and document reductions in proposed penalties based on good faith of the violators, and in some regions reductions appeared automatic without adequate justification. The lack of adequate guidance for determining good faith reductions and supporting documentation for good faith reductions creates a risk that violators may not be treated equitably. In addition, EPA may be losing opportunities to fully collect all penalties due.

We found that the EPA lacks a sufficient policy to address violators who are unable to pay FIFRA and TSCA penalties. The current "ability to pay" model and policy are limited to cases where an individual may not have the cash to pay a penalty. However, no guidance exists for applying non-monetary penalty alternatives such as public service for FIFRA and TSCA inability to pay cases when cash is not available to pay a penalty. Also, training for enforcement staff needs to be updated to include more guidance on ability to pay cases. Therefore EPA's enforcement actions for FIFRA and TSCA ability to pay cases may be limited by its outdated policy, model and training, which could impact the regions' consistent handling of the growing number of ability to pay claims being received from individuals.

Recommendations and Planned Corrective Actions

We recommend that the EPA provide adequate guidance for determining a good faith reduction, develop a systematic approach to ensure that justifications for good faith reductions are documented, revise the EPA's ability to pay penalty policy and evaluate the individual violator model, and provide regional staff with updated training for case development.

The Office of Enforcement and Compliance Assurance agreed with two of our five recommendations and provided alternative actions that meet the intent of the remaining recommendations. All recommendations are resolved and open with corrective actions underway. No further response to this report is required.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 26, 2013

MEMORANDUM

SUBJECT: EPA Needs to Update Its Pesticide and Chemical Enforcement Penalty Policies and Practices
Report No. 13-P-0431

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

This is a report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

You are not required to provide a written response to this final report because you provided agreed-to corrective actions and planned completion dates for the report recommendations. The OIG may make periodic inquiries on your progress in implementing these corrective actions. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. You should provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended.

We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Assistant Inspector General for Program Evaluation Carolyn Copper at (202) 566-0829 or copper.carolyn@epa.gov; or Acting Director for Toxics, Chemical Management, and Pollution Prevention Evaluations Jerri Dorsey at (919) 541-3601 or dorsey.jerri@epa.gov.

Purpose

- The purpose of this review was to evaluate how U.S. Environmental Protection Agency (EPA) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) enforcement tools achieve intended outcomes; and whether penalty negotiations are managed to protect human health and the environment.
- This briefing contains findings and recommendations related to FIFRA and TSCA:
 - Good faith reductions
 - Ability to pay

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1

Background

- FIFRA regulates the distribution, sale and use of pesticides.
- TSCA, which excludes pesticide regulation, provides the EPA with authority to require reporting, recordkeeping and testing requirements; and restrictions to chemical substances and mixtures.
- Enforcing environmental laws is part of the EPA's mission to protect human health and the environment.

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2

Background

Enforcement Response Policies (ERPs)

FIFRA and TSCA enforcement policies level the playing field by providing fair and consistent enforcement of companies nationwide.

- FIFRA
 - To provide fair and equitable treatment of the regulated community, including:
 - Predictable enforcement responses.
 - Fair penalty assessments.
 - Swift resolution of environmental problems.
 - Deterrence of future violations.
- TSCA
 - To assure that penalties are:
 - Equitable and consistent.
 - Eliminate economic incentives to violate.
 - Deter violations.

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Background

Lead Paint Disclosure Rule

- This rule requires disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed prior to 1978.
- Exposure to lead can contribute to elevated blood lead levels for children living in properties where lead paint exists due to lack of notification of possible existence of lead paint as required by EPA's Lead Rule.
- According to the Centers for Disease Control and Prevention, childhood lead poisoning is the most preventable environmental disease among children under age 6. Even low levels of lead exposure can cause developmental problems such as learning disabilities, decreased intelligence and behavioral problems.

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Methodology

- We selected a judgmental sample of 43 out of 290 FIFRA and TSCA Fiscal Year (FY) 2010 closed enforcement cases. This involved 23 FIFRA cases and 20 TSCA cases. The 20 TSCA cases involved 13 Lead Disclosure and 7 PCB (Polychlorinated Biphenyl) cases.
 - FIFRA enforcement penalties analyzed/addressed the sale of unregistered pesticides and label violations.
 - TSCA enforcement penalties analyzed/addressed the improper use and management of PCBs in schools, and the implementation of the Lead Paint Disclosure Rule in households.

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Methodology

- We reviewed FIFRA and TSCA statutes, as well as the applicable enforcement policies, processes and criteria.
- We conducted interviews of Office of Enforcement and Compliance Assurance (OECA) staff (specifically, the Waste and Chemical Enforcement Division and the Office of Compliance); as well as enforcement staff from EPA Regions 2, 4, 5, 7 and 10.
- We performed our evaluation from June 2011 to May 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient and appropriate evidence.

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Finding

Good Faith Reductions Lacked Support

- We found that EPA regions differed in how they documented and justified reduced penalties for sampled FIFRA and TSCA enforcement cases.
- Specifically, regions in general did not sufficiently document and/or justify good faith reductions to proposed penalties.
- Furthermore, the agency has not provided regions, who administer the enforcement process, guidance or policies that adequately delineate the processes to document the reduction of a penalty, establish the appropriate level of reduction for good faith, and assure that the reductions are in line with behavior of the respondent.

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Finding

Good Faith Reductions Lacked Support (cont.)

- Documentation within case files generally did not clearly delineate why and how reductions for good faith were determined.
 - One region used nothing more than a simple statement for justification. For example one region wrote, "...A 30% reduction is recommended based on respondent's cooperation and good faith efforts to comply."
 - Another regional justification stated, "...We are also giving the 20% reduction for good faith...."
- EPA policy, states: "...In all instances, the facts and rationale justifying penalty reduction must be recorded in the case file and included in any memoranda accompanying settlement."
(A Framework for Statute-Specific Approaches to Penalty Assessment: Implementing EPA's Policy on Civil Penalties, February 16, 1984)
- Without adequate documentation to justify reductions, there is no assurance that reduction decisions are consistent across like violators.

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Conclusion/Recommendations

Good Faith Reductions

We concluded that the lack of adequate guidance for determining good faith reductions and adequate documentation for good faith reductions creates a risk that violators may not be treated equitably. In addition, EPA may be losing opportunities to fully collect all penalties due.

Recommendations:

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Provide guidance for determining good faith reductions.
2. Develop an approach to ensure justifications for good faith reductions are adequately documented.

Conclusion/Recommendations

Good Faith Reductions (cont.)

Agency Response and OIG Evaluation

Agency Response to Recommendation 1:

The agency did not concur with recommendation 1 to update guidance for determining good faith reductions. Based on discussions with the agency on the draft report, it was agreed that the corrective actions to remedy recommendation 2, the re-issuance of GM-88 – “Documenting Penalty Calculations and Justifications in EPA Enforcement Actions” – will also address the condition of inadequate guidance. GM-88 will augment the current FIFRA and TSCA Enforcement Response Penalty Policies (ERPPs). The regions will utilize both the ERPs and GM-88 as guidance to determine and support reductions to penalties for good faith.

OIG Evaluation:

The agency’s corrective actions address the intent of the recommendation. Therefore, the OIG considers this recommendation to be resolved.

Conclusion/Recommendations

Good Faith Reductions (cont.)

Agency Response and OIG Evaluation (cont.)

Agency Response to Recommendation 2:

The agency concurs with recommendation 2 and provided a planned corrective action plan and a completion date.

OIG Evaluation:

We concur with this action. The agency provided a corrective action plan and completion date for this action. Therefore, the OIG considers this recommendation to be resolved.

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Finding

Challenges Exist for Ability to Pay Cases

We found that the EPA's enforcement actions for FIFRA and TSCA ability to pay cases may be limited by an outdated policy, model and training.

- EPA's ERPP does not prescribe alternatives (such as public service and payment plans) when a penalty cannot be paid.
 - Although alternatives are allowed, the current lead-based paint disclosure ERPP only provides guidance on penalty reductions. It does not include when and how alternatives can be used.
 - Consequently, if EPA does not apply a non-monetary alternative form of payment when a violator is unable to pay, enforcement against noncompliance is absent.

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Finding

Challenges Exist for Ability to Pay Cases (cont.)

- EPA's "INDIPAY" economic model is limited in its ability to help teams evaluate claims for FIFRA/TSCA ability to pay cases.
 - INDIPAY is intended to evaluate individual taxpayers' claims of inability to afford penalties, clean-up costs or compliance costs.
 - Currently, the model does not assess an individual's assets.
 - An updated model could help improve the accuracy of the agency's ability to pay claims.

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Finding

Challenges Exist for Ability to Pay Cases (cont.)

- EPA does not provide adequate guidance or training on evaluating ability to pay claims for case teams.
 - OECA does not currently provide any case development training.
 - The EPA guidance is inadequate for case teams or financial analysts on how to handle claims for individuals, except for under the Superfund program.
 - Lack of adequate guidance and training could impact the regions' consistent handling of the growing number of ability to pay claims being received from individuals.

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Conclusion/Recommendations

Ability to Pay

EPA needs to update its policy to better address violators who are unable to pay penalties.

Recommendations:

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

3. Update the existing Lead-Based Paint Disclosure ERPP to include guidance on:
 - a. How to evaluate ability to pay claims for individuals, and
 - b. When and how to apply alternatives such as payment plans and public service to ability to pay cases.
4. Evaluate the INDIPAY economic model to determine whether revisions would improve applicability to lead paint disclosure cases with individual violators.
5. Provide regional staff with updated training for case development, including evaluation of ability to pay claims.

Conclusion/Recommendations

Ability to Pay (cont.)

Agency Response and OIG Evaluation

Agency Response to Recommendation 3:

The agency provided alternative actions in lieu of the OIG recommendation 3. The agency recommended updating the 1986 "Guidance on Determining a Violator's Ability to Pay a Civil Penalty" guidance instead of the Lead-Paint Disclosure ERPP.

OIG Evaluation:

We concur with the alternative corrective action provided by the agency. Therefore, the OIG considers this recommendation to be resolved.

Conclusion/Recommendations

Ability to Pay (cont.)

Agency Response and OIG Evaluation (cont.)

Agency Response to Recommendation 4:

The agency in its response advised that the INDIPAY model “is not suitable” for these types of real estate fact-specific analyses. However, the agency believes that it is not necessary to update the INDIPAY model to address its limitations relating to the valuation of real estate assets. Based on discussions with the agency, the agency has agreed to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty,” which it believes will have more significant impact across the agency than updating the model.

OIG Evaluation:

We concur with the alternative corrective action provided by the agency. Therefore, the OIG considers this recommendation to be resolved.

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Conclusion/Recommendations

Ability to Pay (cont.)

Agency Response and OIG Evaluation (cont.)

Agency Response to Recommendation 5:

The agency concurs with recommendation 5 and provided a corrective action plan and completion date.

OIG Evaluation:

We concur with this action. The agency provided a corrective action plan and completion date for this action. Therefore, the OIG considers this recommendation to be resolved.

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Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	9	Provide guidance for determining good faith reductions.	O	Assistant Administrator for Enforcement and Compliance Assurance	9/30/13		
2	9	Develop an approach to ensure justifications for good faith reductions are adequately documented.	O	Assistant Administrator for Enforcement and Compliance Assurance	9/30/13		
3	15	Update the existing Lead-Based Paint Disclosure ERPP to include: a. How to evaluate ability to pay claims for individuals, and b. When and how to apply alternatives such as payment plans and public service to ability to pay cases.	O	Assistant Administrator for Enforcement and Compliance Assurance	6/30/14		
4	15	Evaluate the INDIPAY economic model to determine whether revisions would improve applicability to lead paint disclosure cases with individual violators.	O	Assistant Administrator for Enforcement and Compliance Assurance	6/30/14		
5	15	Provide regional staff with updated training for case development, including evaluation of ability to pay claims.	O	Assistant Administrator for Enforcement and Compliance Assurance	9/30/14		

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Agency Response to Draft Report

July 3, 2013

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Report: “EPA Needs to Update Its Pesticide and Chemical Enforcement Penalty Policies and Practices,” dated June 6, 2013, Report No. OPE-FY11-0018

FROM: Cynthia Giles
Assistant Administrator

TO: Carolyn Copper
Assistant Inspector General
Office of Program Evaluation

Thank you for the opportunity to respond to the draft findings and recommendations presented in the Office of Inspector General (OIG) Draft Report, “EPA Needs to Update Its Pesticide and Chemical Enforcement Penalty Policies and Practices” (Report). Following is a summary of comments from the Office of Enforcement and Compliance Assurance (OECA), followed by OECA’s position on each of the Report’s recommendations. For those Report recommendations with which OECA agrees, we propose corrective actions and estimated completion dates. For those Report recommendations with which OECA does not agree, we explain our position and either propose alternatives to those recommendations or, in the case of Recommendation 1, we propose that no further action is needed.

Summary Comments

The TSCA cases addressed in OIG’s Report involved the Lead-Based Paint Disclosure Rule. It is important to note that the focus of the lead enforcement program has shifted away from lead disclosure cases and toward renovation, repair, and painting (RRP) cases. As noted in the 2014 National Program Managers’ Guidance, 95 percent of lead enforcement resources should be allocated to RRP enforcement. With this shift in focus, OECA has worked with the regions to ensure national consistency in penalty calculations and documentation.

OIG Response: The OIG did not solely review Lead-Based Paint Disclosure Rule cases. The OIG reviewed 43 cases, of which 23 were FIFRA cases, seven were TSCA PCB cases, and 13 were TSCA Lead-Based Paint Disclosure Rule cases. The results of the OIG review disclosed that the lack of guidance and supporting documentation for good faith reductions pertained to both FIFRA and TSCA cases. Recommendations 1 and 2 relate to both FIFRA and TSCA policies.

Recommendation 1: OECA disagrees with the OIG’s recommendation that OECA update the criteria in the Lead-Based Paint Disclosure Rule Enforcement Response and Penalty Policy (LBP Disclosure ERPP) for determining good-faith reductions. While the Report states that documentation for good-faith reductions in case files was inadequate, the Report does not identify any specific deficiencies with regard to the criteria themselves. Therefore, rather than revising the guidance related to criteria for good-faith reductions in LBP Disclosure Rule cases, which are increasingly rare, OECA will continue to work with the regions on national consistency in RRP cases.

OIG Response: The OIG met with the agency to discuss the draft findings and recommendations. Based on discussions with the agency, it was agreed that the corrective actions to remedy recommendation 2, the re-issuance of GM-88, “Documenting Penalty Calculations and Justifications in EPA Enforcement Actions,” will also address the condition of lack of guidance. GM-88 will augment the current FIFRA and TSCA ERPPs. The regions will utilize both the ERPPs and GM-88 as guidance to determine and support reductions to penalties for good faith. The agency’s corrective actions address the intent of the recommendation. Therefore, the OIG considers this recommendation to be resolved.

Recommendation 2: In order to ensure justifications for good faith reductions are adequately documented in case files, OECA will re-circulate GM-88, “Documenting Penalty Calculations and Justifications in EPA Enforcement Actions,” to Enforcement Directors and Regional Counsel.

OIG Response: We concur with the corrective action provided by the agency and thus consider this recommendation to be resolved.

Recommendation 3.a: In its Report, the OIG found that “[t]here is no EPA guidance for case teams or financial analysts on how to handle claims for individuals, except for under the Superfund program.” See Report at 13. To address this finding, the OIG recommends that OECA update the existing LBP Disclosure ERPP to include guidance on how to evaluate ability-to-pay claims for individuals.

OECA disagrees with OIG’s statement that there is no EPA guidance on how to handle claims for individuals. In addition to the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty,” the EPA developed the INDIPAY model specifically for the purpose of assisting case teams in evaluating ability to pay claims by individuals. OECA does agree, however, that additional guidance may be needed on whether and the extent to which the EPA should assess a civil penalty where the INDIPAY model assesses an individual’s ability to pay as zero.

OIG Response: The OIG revised the final report to more accurately reflect the above statements regarding the lack of guidance. The OIG concurs that additional guidance is needed that adequately addresses the extent to which the EPA should assess a civil penalty where the INDIPAY model assesses an individual’s ability to pay as zero.

OECA plans to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty.” As part of that effort, OECA will consider whether more guidance is needed on (1) how to evaluate ability-to-pay claims in enforcement cases against individuals, and (2) when to allow a respondent/defendant to pay a civil penalty in installments and how best to structure settlement agreements with delayed payment schedules.

OIG Response: We concur with the alternative corrective action provided by the agency and thus consider this recommendation to be resolved.

Recommendation 3.b: After finding that EPA’s LBP Disclosure ERPP “does not prescribe alternatives (such as public service and payment plans),” the OIG recommends that OECA update the LBP Disclosure ERPP “to include when and how to apply alternatives such as payment plans and public service to ability to pay cases.” (See OIG Draft Report at 11 and 15.)

This OIG recommendation appears to be drawn from references in the EPA’s 1984 “A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA’s Policy on Civil Penalties” (Framework or “GM-22”) to the Agency’s consideration of “a delayed payment schedule” or “non-monetary alternatives, such as public service activities” when a violator cannot afford to pay a civil penalty. (See Framework at 23.)

Delayed Payment Schedules

OECA plans to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty.” As part of that effort, OECA will consider whether more guidance is needed on (1) how to evaluate ability-to-pay claims in enforcement cases against individuals, and (2) when to allow a respondent/defendant to pay a civil penalty in installments and how best to structure settlement agreements with delayed payment schedules.

Non-monetary Alternatives

Since issuing the 1984 Framework, the EPA issued the 1998 Supplemental Environmental Projects (SEP) Policy. A SEP is a beneficial environmental project a respondent/defendant agrees to undertake as part of an enforcement settlement. The project must be one that the respondent/defendant is not already required to perform. As a matter of fiscal law, SEPs must have a nexus to the underlying violation and cannot augment the EPA’s or another agency’s appropriations. Provided a project meets the conditions of the SEP Policy, the EPA may consider a respondent/defendant’s agreement to perform a SEP as a factor in determining the civil penalty to be assessed. Furthermore, EPA has provided specific guidance on the SEPs that may be appropriate in cases involving violations of lead-based paint rules under TSCA.¹

Finally, TSCA Section 16(a)(2)(C), 15 U.S.C. § 2615(a)(2)(C), authorizes the Administrator to compromise, modify or remit, with or without condition, any civil penalty that may be imposed

¹ See August 2010 “Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule” (LBP Consolidated ERPP) at 26 and Appendix D.

under this section. The EPA has issued policy on implementing this subsection.² As discussed in the August 2010 LBP Consolidated ERPP, an example of this policy would be the remittance of a portion of the unadjusted gravity-based penalty developed for violations of the RRP rule in consideration of the violator's acceptance of the suspension or revocation of the its LBP certification or training authorization. According to the LBP Consolidated ERPP, the violator would still be liable for a penalty for any economic benefit accrued as a result of the violation(s). In addition, the terms of the remittance and suspension or revocation must be incorporated in a Compliance Agreement and Final Order. Finally, the LBP Consolidated ERPP notes that TSCA Section 16(a)(2)(C) may also be used to remit penalties if respondent completes projects similar to those implemented under the SEP Policy.

Rather than revise the LBP Disclosure ERPP, OECA proposes to evaluate whether additional guidance is needed to clarify whether "non-monetary alternatives, such as public service activities," must meet the SEP Policy.

OIG Response: We concur with the alternative corrective action provided by the agency and thus consider this recommendation to be resolved.

Recommendation 4: In support of Recommendation 4 -- that OECA evaluate the INDIPAY model "to determine whether revisions would improve the applicability to lead disclosure cases with individual violators" -- the OIG found that "[c]urrently, the model does not assess an individual's assets." We disagree with this finding and the OIG's recommendation that changes to INDIPAY are necessary to "assess an individual's assets." Contrary to the OIG's draft finding, the INDIPAY model *does* take into account an individual's assets in assessing an individual's ability to pay based on information provided by the respondent/defendant. The reason the model is not equipped to provide the user with the assessed value of an individual's specific assets is that such determinations are very case-specific and based on market value. For example, the market value of real estate is based on an evaluation of the property (e.g., square footage, purpose, condition, improvements) and an assessment of its value in the market in which it is located at a particular point in time.

Because the model is not suitable for this kind of fact-specific analysis, OECA proposes that no further action is needed to update the INDIPAY model. Where appropriate in a particular case, the EPA may engage an expert to assess the value of a respondent/defendant's assets. If EPA decides to expend resources in a given case to estimate the value of specific assets, such values can then be loaded into the model to fine-tune the ability-to-pay analysis of a particular individual.

OECA will consider whether more guidance is needed on how to evaluate ability-to-pay claims in enforcement cases against individuals, as part of OECA's update of the Agency's 1986 "Guidance on Determining a Violator's Ability to Pay a Civil Penalty."

² See Appendix C, TSCA Enforcement Policy and Guidance Documents; Memorandum, "Settlement with Conditions," A.E. Conroy II (November 16, 1983).

OIG Response: As noted by the agency in its response, the current model “is not suitable” for these types of fact-specific analysis. However, the agency believes that it is not necessary to update the INDIPAY model to address its limitations relating to the valuation of real estate assets. Based on discussions with the agency, the agency has agreed to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty,” which it believes will have more impact than updating the model. We concur with the alternative corrective action provided by the agency and thus consider this recommendation to be resolved.

Recommendation 5: As indicated, OECA plans to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty.” Once that updated guidance is issued, OECA will provide training on evaluating a violator’s ability to pay a civil penalty to reflect the new guidance.

OIG Response: We concur with the corrective action provided by the agency and thus consider this recommendation to be resolved.

In Agreement

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
2	Develop a systematic approach to ensure justifications for good faith reductions are adequately documented.	OECA will re-circulate to the Enforcement Directors and Regional Counsel existing guidance on the documentation of penalties in case files. <i>See</i> memorandum dated August 9, 1990, “Documenting Penalty Calculations and Justifications in EPA Enforcement Actions,” from the former Assistant Administrator for Enforcement, James M. Strock.	4 th Quarter of FY 2013
5	Provide regional staff with updated training for case development, including evaluation of ability to pay claims.	OECA plans to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty.” Once that updated guidance is issued, OECA will provide training on evaluating a violator’s ability to pay a civil penalty to reflect the new guidance.	4 th Quarter of FY 2014

Not in Agreement

No.	Recommendation	Agency Explanation/Response	Proposed Alternative Recommendation
1	Update criteria for determining good faith reductions.	The criteria for determining good faith reductions are sound and readily accessible in the Lead-Based Paint Disclosure Rule ERPP.	No further action proposed.
3.a.	Update Lead-Based Paint Disclosure ERPP to include guidance on how to evaluate ability to pay for individuals.	The issue of how to evaluate ability to pay claims for individuals is not limited to the enforcement of TSCA’s Lead-Based Paint Disclosure Rule. Rather, whether a violator can afford to pay a civil penalty in addition to correcting noncompliance can arise in the enforcement of other environmental requirements under TSCA and other statutes. Because this issue is cross-media in nature, it should be addressed on a cross-media basis in lieu of revising the Lead-Based Paint Disclosure Rule ERPP.	OECA plans to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty.” As part of that effort, OECA will consider whether more guidance is needed on (1) how to evaluate ability-to-pay claims in enforcement cases against individuals, and (2) when to allow a respondent/defendant to pay a civil penalty in installments and how best to structure settlement agreements with delayed payment schedules. 3rd Quarter of FY 2014
3.b.	Update Lead-Based Paint Disclosure ERPP to include guidance on when and how to apply payment plans in ability to pay cases.	The issues of when to consider and how to structure delayed penalty payments are not limited to lead-based paint disclosure cases but can arise regardless of which statutory penalty authority is being enforced.	OECA plans to update the 1986 “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty.” As part of that effort, OECA will consider whether more guidance is needed on (1) how to evaluate ability-to-pay claims in enforcement cases against individuals, and (2) when to allow a respondent/defendant to pay a civil penalty in installments and how best to structure settlement

			<p>agreements with delayed payment schedules.</p> <p>3rd Quarter of FY 2014</p>
3.b.	<p>Update Lead-Based Paint Disclosure ERPP to include guidance on when and how to apply “alternatives...such as public service in ability to pay cases.”</p>	<p>This OIG recommendation appears to be drawn from a reference in EPA’s 1984 “A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA’s Policy on Civil Penalties” (Framework) to “non-monetary alternatives” when a violator cannot afford to pay a civil penalty. (<i>See</i> Framework at page 23.)</p> <p>In 1998, EPA issued the Supplemental Environmental Projects (SEP) Policy. A SEP is a beneficial environmental project a respondent/defendant agrees to undertake voluntarily as part of an enforcement settlement. The project must be one that the respondent/defendant is not already required to perform. As a matter of fiscal law, SEPs must have a nexus to the underlying violation and cannot augment EPA’s or another agency’s appropriations.</p>	<p>Rather than revise the Lead-Based Paint Disclosure ERPP, OECA proposes to evaluate whether additional cross-media guidance is needed to clarify whether “non-monetary alternatives, such as public service activities” must meet the SEP Policy.</p> <p>2nd Quarter of FY 2014</p>
4	<p>Evaluate the INDIPAY economic model to determine whether revisions would improve applicability to lead paint disclosure cases with individual violators.</p>	<p>This recommendation is based on the OIG’s draft finding that “[c]urrently, the [INDIPAY] model does not assess an individual’s assets.” We disagree with this finding and the OIG’s recommendation that changes to INDIPAY are necessary to “assess an individual’s assets.” The INDIPAY model <i>does</i> take into account an individual’s assets in assessing an individual’s ability</p>	<p>3rd Quarter of FY 2014</p>

		<p>to pay based on information provided by the respondent/defendant. The model is not the appropriate tool for assigning a dollar value to an individual's specific assets, which is fact-specific and based on market value.</p> <p>OECA will consider whether more guidance is needed on how to evaluate ability-to-pay claims in enforcement cases against individuals, as part of OECA's update of the Agency's 1986 "Guidance on Determining a Violator's Ability to Pay a Civil Penalty." See response to Recommendation 3.b.</p>	
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Contact Information

If you have any questions or concerns regarding this response, please contact the OECA Audit Liaison, Gwendolyn Spriggs, at 202-564-2439.

Attachment

- cc: Lawrence Starfield, OECA
- Susan Shinkman, OECA/OCE
- Pam Mazakas, OECA/OCE
- Rosemarie Kelley, OECA/OCE
- Andrew Stewart, OECA/OCE
- Susan O'Keefe, OECA/OCE
- Caroline Makepeace, OECA/OCE
- Lauren Kabler, OECA/OCE
- Gwendolyn Spriggs, OECA/OAP

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Principal Deputy Assistant Administrator for Enforcement and Compliance Assurance

Deputy Assistant Administrator for Chemical Safety and Pollution Prevention

Audit Follow-Up Coordinator, Office of Enforcement and Compliance Assurance

Audit Follow-Up Coordinator, Office of Chemical Safety and Pollution Prevention

Expedited Settlement Agreements

An enforcement tool to address minor non-compliance.

- ▶ Beginning of year, EPA makes plans to do inspections at regulated facilities.
Example: Oil Program
 - ❖ Oil Spill - illegal to discharge oil into waters of the US [CWA 311(b)(3)]
 - ❖ Spill Prevention, Control, and Countermeasure - program to prevent oil spill into waters of US [CWA 311(j) and 40 CFR 112]
 - ❖ 1320 gallons or more aggregate, stored in above ground storage tank(s), piping, etc.
 - ❖ Oil "reasonably be expected" to reach waters of the US
 - ❖ Estimated 438,000 facilities in the US subject to regulations (based on 1996 data)
 - ❖ Region 9 may inspect 100 facilities in one year.

- ▶ Goals:
 - ❖ Inspect facilities which may be in non-compliance and get those facilities back into compliance.
 - ❖ Prevent any harm to the environment or human health by addressing non-compliance as quickly as possible.
 - ❖ Send a message to the regulated community that EPA is checking to see if they are in compliance. EPA may inspect your facility next time.

Inspection Findings:

- Facilities in Compliance
- Facilities with Minor Non-Compliance
 - ❖ Little harm created from non-compliance.
 - ❖ Easily corrected violations.
 - ❖ Facility in compliance for the most part.
- Facilities with Moderate Non-Compliance
 - ❖ Environmental harm created; threat to human health created.
 - ❖ Requires money and time to correct violations.
 - ❖ Facility failed to meet significant portion of the compliance requirements.
- Facilities with Major Non-Compliance
 - ❖ Substantial environmental harm and/or human health threat created.
 - ❖ Requires substantial money and time to correct violations.
 - ❖ Facility failed to meet most or all of the compliance requirements.

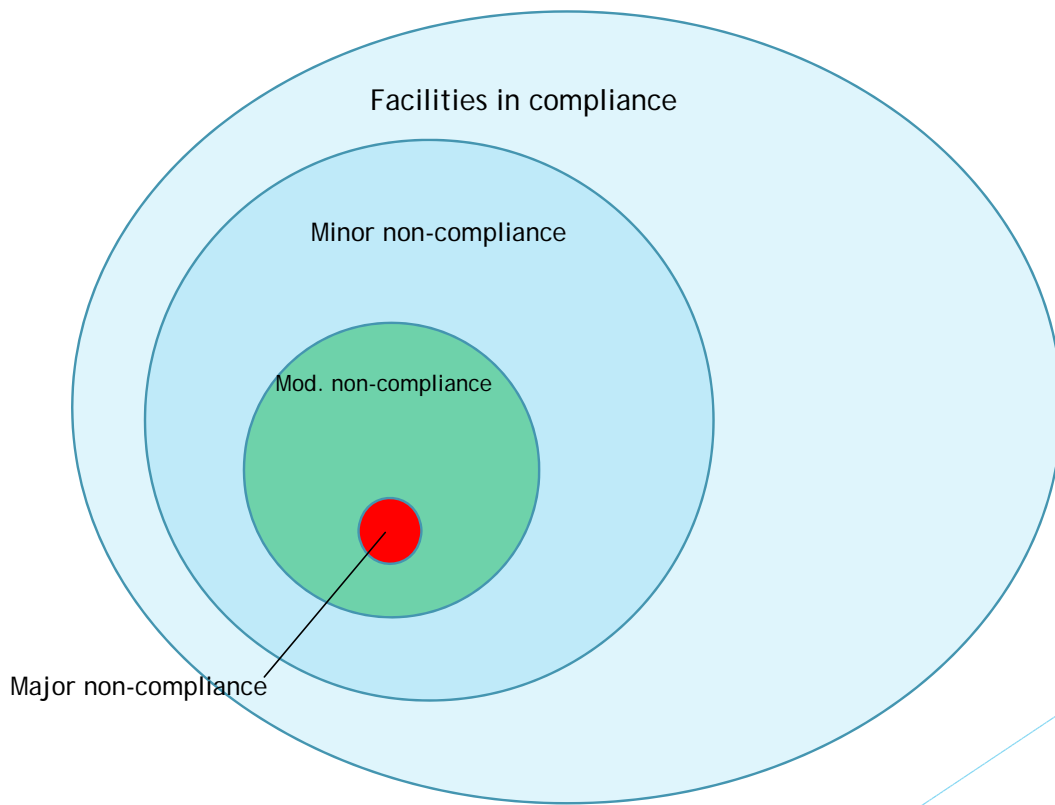
- Facilities in Compliance

Hopefully, most of the facilities are in compliance.
- Facilities with Minor Non-Compliance

15-40% may be in minor non-compliance
- Facilities with Moderate Non-Compliance

10-15% may be in moderate non-compliance
- Facilities with Major Non-Compliance

1-2% may be in major non-compliance.



What enforcement is appropriate?

- Compliance -- **No Enforcement Action**
- Minor Non-Compliance - **???????**
 - ❖ Little harm created from non-compliance.
 - ❖ Easily corrected violations.
 - ❖ Facility in compliance for the most part.
- Moderate Non-Compliance - **Administrative Enforcement Action**
 - ❖ Environmental harm created; threat to human health created.
 - ❖ Requires money and time to correct violations.
 - ❖ Facility failed to have significant portion of the compliance requirements.
- Major Non-Compliance - **Civil Enforcement Action in Federal Court**
 - ❖ Substantial environmental harm and/or human health threat created.
 - ❖ Requires substantial money and time to correct violations.
 - ❖ Facility failed to meet most or all of the compliance requirements.

Traditional Enforcement requires Time and Resources

- **Administrative Enforcement Action (Moderate non-compliance)**
 - ❖ Requires resources to pursue (inspector and attorneys)
 - ❖ Negotiation of potential settlements.
 - ❖ Administrative discovery and hearing take months.
 - ❖ Monitoring compliance tasks. Collecting payment of penalty.
 - ❖ Penalty from \$10,000 to \$200,000.
- **Civil Enforcement Action in Federal Court (Major non-compliance)**
 - ❖ Requires lots of resources to pursue (inspectors, attorneys, Department of Justice, expert witnesses, etc.)
 - ❖ Negotiation of potential settlements.
 - ❖ Active litigation. Civil discovery and trial takes years. Appeals process could take years.
 - ❖ Complicated and expensive compliance tasks. Monitoring compliance requirements takes years.
 - ❖ Penalty over \$200,000, likely greater than \$1 million.

How do we bring the facilities with minor non-compliance into compliance?

- ▶ Agency cost (time and money) of pursuing traditional enforcement at each facility is high.
- ▶ The number of facilities with minor non-compliance is large.
- ▶ The harm created at each facility is small.
- ▶ Cumulatively, the harm created by all of the minor non-compliance is great. Burden on society is great.
- ▶ Create a level playing field. We do not want to reward facilities for non-compliance. We do not want to penalize the facilities which incurred the cost to comply.
- ▶ Deterrent Effect. If we do not penalize a facility for non-compliance, other facilities may decide to ignore the requirements as well.

Expedited Settlement Agreements (ESAs)

- ▶ Shorten the process to settle cases.
- ▶ Reduce the agency's cost to pursue and resolve cases.
- ▶ Reduce the penalty amount to encourage quick settlement.
- ▶ Require facility to come into compliance within a short time (30 days).

Requirements:

- ▶ Violations must be minor, easily detected and easily corrected.
- ▶ Violations must not have resulted in significant harm to environment or human health.
- ▶ Facility can not be a repeat violator.

Expedited Settlement Agreements (ESAs) Process

- ▶ Inspection
- ▶ Inspection Report / Checklist
- ▶ Letter to facility with offer to settle and ESA. *No negotiation.*
- ▶ Facility sign ESA and return signed agreement to EPA within 30 days.
- ▶ Facility certifies that violations corrected and facility is in compliance.
- ▶ Penalty paid.

Timeline

Traditional Enforcement

- ▶ Inspection
- ▶ Inspection Report
- ▶ Letter to facility - notice of violation.
- ▶ Negotiate compliance tasks and penalty amount
- ▶ Reach agreement
- ▶ Draft settlement document
- ▶ Final document; obtain signatures.
- ▶ File signed agreement with court.
- ▶ Judge approves agreement.
- ▶ Facility pays penalty. Facility starts compliance tasks.
- ▶ Agency verifies compliance.

Expedited Enforcement

- ▶ Inspection
- ▶ Inspection Report (checklist)
- ▶ Letter to facility - offer to settle with draft agreement.
- ▶ Facility signs agreement, pays penalty, corrects violation in 30 days.
- ▶ Final signed agreement filed and approved by Judge.

Oil Program Expedited Settlement Agreements

- ▶ Oil Spill Prevention, Control, and Countermeasure (SPCC) program
 - ❖ \$400 to \$5,000 limit per ESA
 - ❖ "Grossly inadequate secondary containment" and "no SPCC Plan at bulk storage facilities over 1,000 barrels" are not eligible for ESA.
 - ❖ Guidance issued in Dec. 2003, amended on Jan. 15, 2010.
 - ❖ Review policy, checklist, letter, and model ESA
- ▶ Oil Spills
 - ❖ Less than 100 barrels; \$5,000 limit. State often takes lead for small spills.
 - ❖ No repeat violators.
 - ❖ R9 ESA program approved on Oct 21, 2005.
 - ❖ Review policy and draft ESA.

Documents:

- ▶ EPA Memo "Use of Expedited Settlements to Support Appropriate Tool Selection" December 2, 2003.
- ▶ EPA Memo "Approval of Region 9 Section 311 Expedited Spill Penalty Program" Oct 21, 2005.
- ▶ EPA Memo "Approval of Adjustments to SPCC Expedited Settlement Agreement Program" Jan. 15 2010.
- ▶ Example Region 9 Oil Spill ESA

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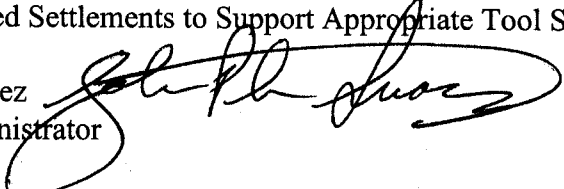
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 2 - 2003

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Use of Expedited Settlements to Support Appropriate Tool Selection

FROM: John Peter Suarez 
Assistant Administrator

TO: Regional Administrators
Deputy Regional Administrators
Regional Counsel
Regional Enforcement Division Directors
Regional Water Management Division Directors
Regional Enforcement Coordinators
OECA Office Directors
All ORE Employees
All OC Employees

As a follow-up to my April 15, 2003 "Smart Enforcement" memorandum, the Office of Regulatory Enforcement (ORE) encourages the Regions to use, where appropriate, expedited settlements as one of the tools to address compliance assurance and enforcement priorities. To further this objective, this memorandum authorizes all Regions to implement the Clean Water Act (CWA) § 311(j) Spill Prevention Control and Countermeasure (SPCC) Expedited Settlement Program and encourages Regions to continue to implement Underground Storage Tank (UST) Field Citation Enforcement pursuant to Subtitle I of the Resource Conservation and Recovery Act (RCRA).¹ Guidance regarding regional authorization and implementation of the SPCC Expedited Settlement Program is provided in Section VI of this memorandum, and the SPCC Expedited Settlement documents are provided in Appendix 2. Additionally, on August 21, 2003, OECA provided national approval of the Storm Water Expedited Settlement Program and, in the

¹ The UST Field Citation Enforcement program name will change to the UST Expedited Settlement Program. As indicated in note 4, infra, the Enforcement Action Type value in the Integrated Compliance Information System (ICIS) for this program will also be changed.

near future, will provide national approval of an expedited settlement program for certain violations of Clean Air Act (CAA) § 112(r)(7) (CAA § 112(r) Expedited Settlement Program).

The majority of this memorandum, however, is designed to provide Regions with necessary information to identify additional program areas appropriate for consideration of an expedited settlement approach and to outline the process Regions should follow in seeking Headquarters' approval for new expedited settlement pilots that deviate from the applicable penalty policy. To that end, Section II lists factors to identify program areas that may be appropriate for expedited settlements. Section III highlights general components of expedited settlement pilot proposals. Section IV articulates circumstances in which expedited settlements may be inappropriate. Section V discusses the process for implementing new expedited settlement pilots. Finally, Section VII addresses Integrated Compliance Information System (ICIS) data entry. An attachment to this memorandum, "Expedited Settlement Resources," provides: summaries of Headquarters-approved expedited settlement programs; contact information for media-specific Headquarters personnel; and the SPCC Expedited Settlement documents.

Expedited settlements should be part of a complete compliance and enforcement strategy that encompasses the full range of tools available to the compliance and enforcement program. Regions using an expedited settlement approach must remain committed to using existing administrative and judicial enforcement mechanisms against entities that choose to ignore an expedited settlement offer, and in situations where an expedited settlement is not the appropriate enforcement tool. Traditional enforcement actions should be pursued for all violations where an expedited settlement does not adequately address the level of noncompliance or the nature of the violator. Additionally, EPA always reserves the right to not extend an expedited settlement offer to any particular violator.

I. EXPEDITED SETTLEMENTS OVERVIEW

Expedited settlements are a valuable tool. They offer "real time" enforcement in situations where violations are corrected and a penalty is obtained in a short amount of time, generally a few months from EPA's discovery of the violation. The approach is generally appropriate for minor, easily correctable violations and provides a discounted, non-negotiable settlement offer in lieu of more formal, traditional administrative penalty actions. The mechanism used is typically a one-page expedited settlement agreement that the regional office mails. The respondent must accept the settlement offer, depending upon the program, within either 30 or 45 days of receipt, unless the respondent is granted an extension. When the respondent accepts the offer in exchange for a reduced penalty and minimized transaction costs, the respondent agrees to waive its opportunity for a hearing and certifies, under penalty of perjury, that the violation(s) and harm from the violation(s) has been corrected and, in some circumstances, that the respondent has taken steps to prevent future violations.

The expedited settlement approach offers both benefits to the environment and potential cost-savings to the Agency. When used appropriately, expedited settlements result in regulated entities returning to compliance and paying penalties more quickly than would be accomplished through issuance of a non-expedited administrative penalty order. Because the settlement document is standardized and its terms are non-negotiable, EPA saves resources that would otherwise be deployed in commencing and pursuing a more formal administrative action. Additionally, the expedited settlement approach allows EPA to increase its enforcement presence to address violators or sectors of the regulated community that EPA was previously unable to otherwise reach due to resource constraints.

Expedited settlements also strengthen future cases against repeat violators. Where a respondent to an expedited settlement subsequently repeats the same, or commits a closely-related, violation, EPA will have a stronger litigation position with evidence to support penalty factors, such as culpability or history of prior violations. Finally, while traditional administrative actions for penalties may take more than a year to resolve, a typical expedited settlement will resolve a regulated entity's penalty liability and ensure compliance within a few months of EPA's discovery of the violation.

II. FACTORS TO CONSIDER IN IDENTIFYING PROGRAM AREAS APPROPRIATE FOR EXPEDITED SETTLEMENT PILOTS

Headquarters has identified five factors to assist the Regions in identifying program areas that may be appropriate candidates for expedited settlement pilots. We encourage Regions that are interested in expanding their use of expedited settlements to analyze their programs using these, and any other relevant, factors to determine if their programs would benefit from an expedited settlement approach. In particular, program areas that may be explored as candidates include: certain violations of RCRA Subtitle C Generator requirements; Emergency Planning and Community Right-to-Know Act (EPCRA) §§ 311/312; and EPCRA § 313.

As a threshold matter, Regions should identify significant environmental problems that would benefit from an increased enforcement presence. They should then determine whether a significant period of time exists between inspections and the resolution of a formal enforcement response that could be minimized through use of an expedited settlement. Programs that may already have a fairly streamlined approach, or that do not experience a significant lapse between inspections and resolution, should not be considered as candidates for an expedited settlement approach.

Program areas characterized by all of the following factors may be appropriate candidates for an expedited settlement approach:

1. Programs with violations that an inspector can witness at the time of inspection or that can be readily determined through simple information requests, on-site document review, or data sources. For instance, violations eligible for expedited

settlement treatment under the SPCC Expedited Settlement Program must be witnessed by the inspector at the time of inspection.

2. Programs with violations that are easy to fix or require low-technology solutions such that, upon detection, the violator can quickly take measures to ensure compliance within the timeframe to accept the expedited settlement offer and concurrently certify that the violation has been corrected. Depending upon the program, this timeframe may range from 30 to 45 days after the violator's receipt of the expedited settlement offer from EPA. Violations that do not require the violator to take some affirmative action, in addition to payment of a penalty, are not appropriate for an expedited settlement approach. Thus, Regions should not design an expedited settlement approach aimed solely at collecting penalties. Rather, through these expedited settlements, EPA should both obtain environmental benefits and collect penalties.
3. Programs with violations that are considered minor, such as certain recordkeeping or reporting violations. Violations that are not appropriate for expedited settlement treatment are those that result in significant harm to human health or the environment or may present an imminent and substantial endangerment to human health or the environment (e.g., violations resulting in a release of hazardous substances that may impair a drinking water source).
4. Programs that have a limited enforcement presence and limited resources relative to the size of the regulated universe. For instance, with regard to the storm water program, EPA has estimated that the total number of construction activities in the United States subject to Phase I and II exceeds 521,000 starts per year. With such a large regulated universe and limited enforcement resources, EPA will be able to reach many more violators of the storm water regulations through the expedited settlement approach.
5. Programs that need to increase their enforcement presence due to widespread noncompliance.

After identifying programs that meet each of the factors listed above, it is important to identify and consider any statutory limitations that may further inform a decision whether to pursue an expedited settlement approach. For instance, under CWA § 309, EPA provides 30-day public notice of a proposed settlement. Under CAA § 113(d), EPA must seek a waiver from the Department of Justice (DOJ) when instituting an administrative penalty action for violations where the first alleged date of violation occurred more than twelve months prior to initiation of the administrative action. Though these types of statutory requirements do not necessarily bar an expedited settlement approach, such issues should be considered when determining whether an expedited approach will be effective.

III. GENERAL COMPONENTS OF EXPEDITED SETTLEMENT PILOT PROPOSALS

Drawing upon the Agency's experience in developing and implementing expedited settlement approaches, Headquarters has identified the following seven general components that should be incorporated into future expedited settlement pilot proposals.

1. Coordination with States, Tribes, and Local Governments

As with any enforcement approach used in an authorized state or tribe, Regions should coordinate with states, tribes, and local governments, as appropriate, in the planning and implementation of an expedited settlement tool.

2. Up-front Outreach and Compliance Assistance

If a Region wants to develop an expedited settlement pilot to reach a universe or sector of the regulated community that has had little or no regulatory interaction, the Region should consider using some form of outreach and compliance assistance prior to using the expedited settlement tool. For instance, in the SPCC Expedited Settlement Program, prior to implementation, a Region could provide outreach through workshops if a sector of this regulated universe has had limited regulatory interaction such that facility owners and operators may not be aware that their facilities are subject to SPCC requirements. A Region interested in facilitating outreach and compliance assistance prior to inspections may use one or more of the following measures:

- Conduct compliance assistance workshops throughout the Region in areas targeted for inspection. Explain the statute/regulations, inspection procedures, and the enforcement process. Address the full range of enforcement response tools, including informal administrative tools (warning, show cause letters, or Notice of Violation/Notice of Noncompliance), formal administrative tools (expedited settlement, pre-filing negotiation and settlement, and administrative order and complaint under 40 C.F.R. Part 22), and referrals to the Department of Justice for civil or criminal prosecution.
- Work with the Regional Compliance Assistance Coordinator through established compliance assistance communication networks and environmental assistance providers or provide information on how to access compliance assistance materials, e.g., through the National Environmental Compliance Assistance Clearinghouse (www.epa.gov/clearinghouse).

- Distribute compliance assistance materials that describe the relevant regulatory requirements and discuss the range of enforcement response tools, including expedited settlements.

A Region may also consider announcing impending inspections to the targeted, regulated community. We are not, however, mandating announced inspections as a requisite component of expedited settlement pilots. Regions choosing to provide notice of impending inspections should generally allow 30 to 60 days after conducting outreach and compliance assistance workshops so that the targeted, regulated community has an opportunity to obtain appropriate assistance and information and to implement what they learn to attempt to come into compliance.

3. Standard Operating Procedures for Inspections

EPA inspectors should continue to use standard methods for conducting inspections, regardless of whether the program offers an expedited settlement approach.² Thus, inspectors should continue to document violations identified during the inspection in the same manner used during a traditional inspection, such that the Region can substantiate the violation without additional investigatory follow-up. Similarly, Regions implementing an expedited settlement approach are encouraged to continue targeting their inspections to find the most significant violations and violators, unless the expedited settlement approach was specifically designed to deploy enforcement and compliance resources to a subset of the regulated universe. For instance, Regions implementing the forthcoming CAA § 112(r) Expedited Settlement Program will not specifically target facilities for inspection with an expectation that all violations will be resolved with expedited settlements. Rather, the approach is yet another enforcement response tool that the Region can use after discovering violations of CAA § 112(r)(7). However, because Regions are unable to inspect a significant number of construction sites under 50 acres in the Storm Water Expedited Settlement Program, they can specifically target these smaller sites for inspection for expedited settlement treatment, although the site would have to satisfy additional criteria to be eligible for a Storm Water Expedited Settlement.

In designing an expedited settlement pilot, Regions should consider whether an inspector may leave an unsigned draft expedited settlement form (draft form) with the facility at the time of the inspection to provide a preview of a potential settlement offer. It is important to note, however, that even if the inspector can leave a draft form, the regional office retains the ability to make a determination as to the type of enforcement action to take, if any, for violations observed during the inspection. Expedited settlement pilots can use either approach with regard to whether an inspector may leave a draft form at the time of inspection. For instance, in the SPCC Expedited Settlement Program, if the proposed penalty falls between \$400 and \$2,500, the

² The Regions should also ensure that all inspections, including inspections performed in programs with expedited settlements, use Inspection Conclusion Data Sheets (ICDSs) where applicable. In Fiscal Year 2004, ICDSs are required to be completed for two programs that have expedited settlements: CAA § 112(r) and the UST Expedited Settlement Program.

owner/operator is eligible for an expedited settlement offer. In addition, the inspector, having used an expedited settlement checklist, may leave a draft form with the violator at the time of the inspection to give preliminary notice of what violations may exist and the potential penalties associated with such violations. Thus, in the SPCC Expedited Settlement Program, inspectors must receive training in the use of this tool prior to including the approach during inspections so that the inspector can explain the expedited settlement approach, and, in particular, to clearly indicate that the draft form is not an official offer. However, in the forthcoming CAA § 112(r) Expedited Settlement Program, the inspector will neither indicate whether the inspection uncovered violations appropriate for expedited settlement nor specify any penalty amounts associated with such violations. Consequently, the inspector will not leave any expedited settlement documents with the facility owner or operator. As such, inspectors performing inspections in the CAA § 112(r) program do not need specific training in the CAA § 112(r) Expedited Settlement Program.

In cases where an expedited settlement program allows the inspector to leave a draft form at the facility, note that only EPA employees can complete the form (see "SPCC Inspection Findings, Alleged Violations, and Penalty Form" at Appendix 2). Thus, EPA contractors, SEE grantees, and EPA interns may not complete such forms. An official expedited settlement offer should be mailed from the regional office and served personally, by certified mail, return receipt requested.³ The recipient's response period is triggered by its signature of the return receipt. As this is an expedited process, the regional office should strive to make a post-inspection decision quickly of whether an expedited settlement is appropriate and, if appropriate, send the expedited settlement offer expeditiously.

4. Discounted Civil Penalties

It is important to have carefully developed expedited settlement penalties to provide an incentive to the regulated entity to accept the expedited settlement offer while also ensuring that EPA levies an appropriate penalty for the type of violation. As such, Regions interested in piloting a new expedited settlement approach must develop an expedited settlement penalty matrix or assign specific penalty amounts for particular types of violations. Generally, these expedited settlement penalties should be below the minimum calculation derived from the applicable penalty policy. As with the pilot proposal itself, the Region's proposed expedited settlement penalties must receive Headquarters' approval. Once an expedited settlement has been successfully piloted, Headquarters will authorize all Regions to implement the pilot nationally as an expedited settlement program, thereby ensuring national consistency with regard to penalty amounts.

³ Although 40 C.F.R. § 22.5(b)(2) provides for alternative means of service for documents, we recommend that the Region use certified mail, return receipt requested, or some other method that provides written verification of delivery and receipt to ensure that service has been completed.

When designing future expedited settlement pilots, the Region should place a cap on the cumulative dollar amount for penalties that may be cited in one expedited settlement. For instance, in the SPCC Expedited Settlement Program, the range of penalties is \$400 to \$2,500. If the cumulative dollar amount for penalties for violations discovered during the inspection is above or below this range, the entity is ineligible for an SPCC Expedited Settlement offer. In the Storm Water Expedited Settlement Program, the penalty calculated using the Expedited Settlement Worksheet must be no more than \$15,000 for the entity to be eligible for a Storm Water Expedited Settlement offer.

Similarly, the Region may propose an upper limit on the number of violations that may be cited at an inspection before rendering the entity ineligible for an expedited settlement offer. If such a threshold is set, it should be below the point beyond which the number of violations, regardless of the nature of those violations, suggests that the regulated entity requires a more formal enforcement response. The UST Expedited Settlement Guidance suggests a threshold between three and ten violations.

5. Expedited Settlement Documents

In the existing expedited settlement programs, EPA settles cases using the Administrator's authority to institute administrative proceedings under the relevant statute, and 40 C.F.R. § 22.13(b), enabling EPA to simultaneously commence and conclude an administrative proceeding pursuant to 40 C.F.R. § 22.18(b). The expedited settlement document is typically a one-page form with "Findings, Alleged Violations, and Proposed Penalty" attached and incorporated by reference. The settlement agreement must comply with all applicable provisions in 40 C.F.R. Part 22. For instance, when using 40 C.F.R. § 22.13(b), the settlement agreement must also contain the elements described at 40 C.F.R. §§ 22.14(a)(1)-(3), (8). See 40 C.F.R. § 22.18(b)(2).

An instruction sheet should accompany the expedited settlement offer, explaining the mechanics of accepting and complying with the offer. The settlement offer, in conjunction with an accompanying instruction sheet, must convey to the recipient that the terms of the proposed settlement are non-negotiable, and that the recipient must waive its right to a hearing and certify, under penalty of perjury, that the violations have been corrected and the penalty has been paid. If EPA has a statutory obligation to provide public notice before issuing an order assessing a civil penalty, the recipient can either submit its payment upon acceptance of the offer or certify that the payment will be made within a certain timeframe. See Storm Water Expedited Settlement Program.

Recipients are given a predetermined number of days to accept the offer. The offer is automatically withdrawn, without prejudice to EPA's ability to institute an enforcement action for noncompliance identified in the "Findings, Alleged Violations, and Proposed Penalty," if the recipient fails to accept within the designated timeframe. Regions have the discretion to extend the offer, for cause, but generally should not grant an extension beyond 60 to 90 days after the

violator's receipt of the official expedited settlement offer. The release language in the agreement should be consistent with longstanding form and procedural requirements in our administrative settlements to resolve only the civil and administrative claims narrowly and specifically identified in the administrative settlement agreement. As such, the expedited settlement agreement should indicate that once final, EPA will take no further civil action against the recipient for the violations of the specific regulations described in the attached "Findings, Alleged Violations, and Proposed Penalty" form.

6. Commitment to Escalate the Enforcement Response if the Offer is Rejected

Since the expedited settlement offer is optional, the recipient may choose to decline the offer or fail to respond to the offer at all. In either situation, the Region should be prepared to escalate the enforcement response by commencing an enforcement proceeding. Without this commitment to escalate, EPA's failure to pursue a more formal action for the violations could significantly detract from the regulated community's incentive to accept these expedited settlement offers.

7. Purpose and Goals of the Proposed Pilot

Though a pilot may contain the preceding six general components, Headquarters' decision to nationally authorize all Regions to implement a particular pilot as a national program will be based upon a review of the pilot, after it has been field-tested, to determine if it is a viable compliance and enforcement tool. After it has been field-tested for no more than one year, Headquarters, in consultation with the Regions, will either expand the pilot into a national program, with or without modifications, or decide to discontinue the pilot. In the event that substantial modifications are made to the pilot, Headquarters may decide that further field-testing is required.

In the pilot proposal, the Region should identify the purpose and goals of the pilot, the factors to be used in assessing whether the pilot accomplished its purpose and achieved the stated goals, and the means by which the information to measure effectiveness will be gathered. As part of the pilot proposal, the Region should describe how it will gather such information and indicate how this information will be communicated to Headquarters. One way to communicate this information could be through monthly or quarterly conference calls between Headquarters and regional personnel implementing the pilot.

Factors that Headquarters has previously considered in assessing whether a pilot is a viable compliance and enforcement tool include: the ease with which the inspectors could identify violations appropriate for expedited settlement treatment and use an accompanying checklist either during or after the inspection for such violations; whether the inspectors encountered any difficulties in using inspection forms during the inspection; the number of sites eligible for expedited settlement treatment that accepted the expedited settlement offer; whether the regulated community found the process confusing; whether the expedited settlement

approach saved the Region resources or enabled the Region to reach a universe of the regulated community that the Region would not otherwise have been able to reach; and whether there was an increase in compliance.

IV. CIRCUMSTANCES IN WHICH AN EXPEDITED SETTLEMENT APPROACH IS INAPPROPRIATE

The expedited settlement approach is not always the appropriate enforcement tool for a particular violator. For instance, an expedited settlement is not an appropriate enforcement response for violations that resulted in significant harm to human health or the environment, or may have presented an imminent and substantial endangerment to human health or the environment. Moreover, an expedited settlement is not an appropriate enforcement response for a repeat violator. For purposes of future expedited settlement pilot proposals, the definition of repeat violator can be either as stringent, or more stringent, than the following definition: a violator who, in the past five years, has had the same or closely-related violations: 1) at the facility where the instant violation occurred; or 2) at multiple facilities, *i.e.*, three or more facilities, under the ownership, operation, or control of the violator. The five-year period begins to run when a federal, state, tribal, or local government has given the violator notice of a specific violation, without regard to when the original violation cited in the notice actually occurred.

Traditional enforcement actions should be pursued for all violations where an expedited settlement is not adequate to address the level of noncompliance or the nature of the violator. In determining whether a particular violator should be eligible for an expedited settlement, Regions should consider whether the duration of noncompliance is significant, and whether the violator has gained significant economic benefit as a result of delayed compliance. Additionally, the expedited settlement approach is never appropriate for entities that deliberately conceal evidence of noncompliance, or fail or refuse to provide records or access necessary to determine compliance status.

V. PROCESS FOR SEEKING APPROVAL FOR NEW EXPEDITED SETTLEMENT PILOTS

Each Region seeking to pilot a new expedited settlement approach must communicate with the media-specific ORE Division prior to implementation. While the media-specific ORE Division will serve as the first point of contact for the Regions, ORE will coordinate with the appropriate OC Division to ensure that ORE and OC communicate regarding future expedited settlement pilots. ORE commits to decide whether to approve an expedited settlement pilot within ninety days of receiving a Region's pilot proposal.

Because Headquarters approval is generally necessary for any administrative settlement that deviates from the applicable penalty policy, Regions must obtain Headquarters' approval for any expedited settlement pilot for which the range of penalties is below the range of penalties assessed for such violations using the penalty policy. If a Region's enforcement response does not deviate from the applicable penalty policy, it is not an expedited settlement for purposes of

this memorandum. While such an enforcement response does not require advance Headquarters approval, we request that the Regions advise the media-specific ORE Division if the enforcement response is used for a class of violators or violations as opposed to use on a case-by-case basis. As the national compliance and enforcement program manager, OECA monitors the range of compliance and enforcement tools used by each Region. Once new expedited settlements have been successfully piloted, Headquarters will authorize the Regions to implement the pilot nationally as an expedited settlement program, though no Region is obligated to implement the tool.

To hasten the pilot approval process, the pilot proposal should embody the seven general components discussed in Section III and identify the circumstances in which an expedited settlement would be inappropriate as discussed in Section IV. Upon review of the Region's pilot proposal, and after reaching agreement with the Region with regard to its pilot proposal, ORE will issue an approval memorandum that communicates Headquarters' understanding of the monetary range for settlements, the type of violators and violations for which the expedited settlement pilot is appropriate, the mechanics for implementation and integration. In addition, this memorandum approves the expedited settlement documents to be used in the pilot.

The expedited settlement documents accompanying a Region's pilot proposal should follow the same basic format identified in Section III.5 and comply with 40 C.F.R. Part 22 (see 40 C.F.R. §§ 22.13(b); 22.14(a)(1)-(3), (8); 22.18(b)). The expedited settlement agreement must clearly identify the alleged violations, the basis for alleging such violations (e.g., inspectors' observations or simple information request letter), and EPA's authority to enter into the expedited settlement. The document should require the recipient to admit jurisdiction, waive any right to a hearing to contest the allegations and appeal the proposed order accompanying the consent agreement, and clearly delineate the terms and conditions of the settlement offer. Finally, the document must ensure compliance, such as requiring the recipient to certify that the violations have been corrected and that the penalty has been, or will be, paid. The settlement does not become final until the recipient, the settling complainant, and the approving Agency official have signed the document. Additionally, the expedited settlement offer is automatically withdrawn if not accepted within 30 to 45 days of receipt or, if an extension has been granted, not accepted within the extended timeframe.

VI. APPROVAL OF EXISTING EXPEDITED SETTLEMENT PROGRAMS

With the transmittal of this memorandum, all Regions are authorized, without prior Headquarters approval, to implement the SPCC Expedited Settlement Program and use the documents attached to this Memorandum at Appendix 2. In addition, Regions can continue using the UST Expedited Settlement Program. A Region not previously authorized to use the SPCC Expedited Settlement Program must communicate through a memorandum to ORE's Water Enforcement Division, prior to implementation, that it is committed to using the SPCC Expedited Settlement Program as part of a complete SPCC enforcement program that will encompass other Class I or Class II cases as well as judicial referrals. In addition, Regions must

commit to use the SPCC Expedited Settlement Program to complement, rather than a substitute for, other formal CWA § 311 enforcement. A Region choosing to implement the SPCC Expedited Settlement Program retains the right to not extend an expedited settlement offer to any particular violator.

A Region's memorandum to the Water Enforcement Division must also indicate that it will use the SPCC Expedited Settlement Program for violations that may be appropriately settled in the range of \$400 to \$2,500, and for the violations reflected in "Findings, Alleged Violations, and Proposed Penalty Form" (Form) at Appendix 2. If a Region wants to implement a program in which the eligible violations deviate from those identified in the Form, the Region must seek prior approval from the Water Enforcement Division. The Water Enforcement Division will not, however, allow Regions to deviate with regard to penalty amount, and, at this time, will not revisit the penalty amounts reflected in the Form. The Water Enforcement Division, however, has committed to review the SPCC Expedited Settlement Program, both in terms of the eligible violations and the penalty amounts, in the near future. Finally, consistent with the approach taken in previously authorized Regions, prior to implementation, a Region must ensure that its inspectors are trained in the use of this tool. To obtain training materials for the SPCC Expedited Settlement Program, please contact the Water Enforcement Division.

Regions previously authorized to implement an SPCC Expedited Settlement approach should note, however, that in issuing national approval of the SPCC Expedited Settlement Program, Headquarters has made two changes with regard to the types of violations eligible for expedited settlement treatment. In particular, for bulk storage tanks, excluding production facilities, "[s]econdary containment [that] appears to be grossly inadequate" is no longer an eligible violation under the SPCC Expedited Settlement Program and will now read "secondary containment appears to be inadequate." Additionally, "[n]o spill prevention control and countermeasure plan" is no longer an eligible violation for bulk storage facilities with greater than 1,000 barrels. Also note that the scope of the release language has been slightly narrowed to ensure consistency with the Agency's longstanding form and procedural requirements in administrative settlements, discussed in Section III.5.

With regard to other expedited settlement programs, OECA has issued national approval of the Storm Water Expedited Settlement Program and, in the near future, will issue national approval of an expedited settlement program for certain violations of CAA § 112(r)(7). Summaries of all four expedited settlement programs are provided in Appendix 1. Headquarters authorization to implement these programs, however, depends upon adherence to the components and structure of the respective expedited settlement programs. Documents for Storm Water Expedited Settlements have been provided under separate cover. Documents for CAA § 112(r) Expedited Settlements are expected to be finalized in the near future.

This transmittal does not authorize Regions to implement Spill Expedited Settlements without prior Headquarters approval. Until further notice, those Regions that have obtained Headquarters approval to deviate from the CWA § 311 Civil Penalty Policy and have implemented an expedited settlement approach for minor impact spills pursuant to CWA §311(b)

(i.e., Regions IV, VI, VIII, and X) may continue to do so. ORE's Water Enforcement Division is currently reevaluating the Spill Expedited Settlement Pilot. A forthcoming transmittal from the Water Enforcement Division will discuss the future role of this expedited settlement approach.

VII. INTEGRATED COMPLIANCE INFORMATION SYSTEM (ICIS) DATA ENTRY

The Office of Compliance (OC) has worked with ORE to enhance ICIS to ensure that expedited settlements, although counted as both Administrative Penalty Order (APO) complaints and settlements, can be segregated from non-expedited settlement APO complaints and settlements. Beginning November 10, 2003, new expedited settlement values will be operational in ICIS. For existing Headquarters-approved expedited settlements, ICIS will contain values in the Enforcement Action Type drop-down menu in which information on the expedited settlement must be entered.⁴ Pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), EPA must prepare a regulatory enforcement report that specifies civil penalties assessed against regulated entities and, in particular, small businesses.⁵ To comply with the reporting requirements of the SBPRA, EPA must track expedited settlement APOs separately from non-expedited APOs. The Regions, therefore, should use the small business flag if the facility receiving an expedited settlement is a small business, as defined in the Small Business Compliance Policy.

For expedited settlement agreements issued pursuant to 40 C.F.R. § 22.13(b), the date that the Regional Administrator, Regional Judicial Officer, or Environmental Appeals Board signs the consent agreement and final order is the date that should be entered into ICIS for both the initiation and conclusion of the administrative enforcement action. We take this approach, because it is consistent with the plain meaning of 40 C.F.R. § 22.13(b), which provides that a

⁴ The following represents an example of the Enforcement Action Type drop-down list in ICIS for the Headquarters-approved expedited settlement programs and pilots:

CAA § 113D1 Action for Penalty - 112(r) Expedited Settlement Program

CWA § 309G2 AO For Class I Penalty - Storm Water Construction Expedited Settlement Program

CWA § 311B6B1 AO For Class I Penalty - SPCC Expedited Settlement Program

CWA § 311B6B1 AO For Class I Penalty - Spill Expedited Settlement Pilot (Approved in Individual Regions)

RCRA § 9006 AO For Comp And/Or Penalty (UST) - UST Expedited Settlement Program

⁵ The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107-198, requires agencies to prepare regulatory enforcement reports that contain the following: 1) the number of enforcement actions in which a civil penalty is assessed; 2) the number of enforcement actions in which a civil penalty is assessed against a small business; 3) the number of enforcement actions described in 1) and 2) in which a civil penalty is reduced or waived; and 4) the total monetary amount of the reductions or waivers referred to in 3). In January and June 2003, Headquarters issued two guidance documents to address EPA's obligations under the SBPRA. Contact the Office of Compliance to obtain copies of these guidance documents.

proceeding is simultaneously commenced and concluded by the issuance of a consent agreement and final order. Because we recognize the importance of tracking whether a respondent has signed and returned an expedited settlement offer within the requisite timeframe, ICIS is being revised to add an Administrative Enforcement Action Sub-activity for "expedited settlement offered." This Sub-activity will be operational on November 10, 2003. Additionally, the Regions are reminded that, pursuant to 40 C.F.R. § 22.6, these expedited consent agreements and final orders must be filed with the Regional Hearing Clerk. See also 40 C.F.R. § 22.31(b).

In reviewing each Region's enforcement program, Headquarters will consider whether the expedited settlement tool is used appropriately. Headquarters retains the discretion to revisit a Region's authorization to implement the tool. Similarly, Headquarters, coordinating with the Regions, may revisit national expedited settlement programs to ensure that such tools continue to address the compliance problem at issue. We look forward to working with the Regions in exploring meaningful and effective opportunities to use the expedited settlement tool. For program/pilot specific questions, please contact the media-specific ORE Divisions. Contact information for existing programs is provided in the Summary of Existing Expedited Approaches, attached to this memorandum in Appendix 1.

EXPEDITED SETTLEMENT RESOURCES

- APPENDIX 1: SUMMARY OF EXISTING EXPEDITED SETTLEMENT APPROACHES, AND CONTACT INFORMATION
- APPENDIX 2: SPCC EXPEDITED SETTLEMENT DOCUMENTS
- APPENDIX 3: UST EXPEDITED SETTLEMENT PROGRAM INFORMATION

APPENDIX 1: SUMMARY OF EXISTING EXPEDITED SETTLEMENT APPROACHES, AND CONTACT INFORMATION

Underground Storage Tank (UST) Expedited Settlement

The UST Expedited settlement approach offers a “traffic ticket”-styled citation that can be issued on-site to first-time violators for clear-cut violations that are relatively easy to correct. Part I of the citation document is the Compliance Order. In this section, the inspector identifies the violations observed during the inspection and the predetermined penalty amount. Part II contains the Settlement Agreement. In this section, the recipient agrees to waive any jurisdictional objections and certifies, under penalty of perjury, that the violations identified in Part I have been corrected and that the full penalty has been paid.

The recipient has thirty (30) days to accept and return the agreement or the compliance order and settlement agreement are withdrawn. The Region has the discretion to grant a 30-day extension if: 1) the owner or operator files a formal request for the extension; 2) the owner or operator demonstrates that there are factors beyond its control that necessitate an extension; and 3) the Region believes that compliance will be achieved within the period of the extension. Instructions accompanying the settlement offer explain the agreement’s terms and conditions.

Inspectors performing UST inspections exercise little discretion in citing violations eligible for expedited settlement treatment because the inspectors use a list of violations in 40 C.F.R. Part 280, with predetermined penalty amounts prescribed for each violation. Potential penalties for UST Expedited Settlement violations go up to \$1,300. Each Region has the discretion to place an upper limit on the number of violations that may be cited at one site. However, the threshold should be set below the point beyond which the number of violations, regardless of the nature, suggest that a facility is seriously out of compliance and requires a more formal enforcement response.

Regions interested in using UST Expedited Settlements should develop a set of Standard Operating Procedures (SOP). The SOP generally should include information on what training is required for inspectors, what procedures are required for issuing citations and conducting follow-up activities, how to handle requests for extensions, and what steps to follow when the terms of the expedited settlement agreement are not met.

For additional information on the UST Expedited Settlement Program, please contact Diana Saenz (202) 564-4209.

Clean Water Act (CWA) § 311(j) Spill Prevention Control and Countermeasure (SPCC) Expedited Settlement

The SPCC Expedited Settlement approach is aimed at less egregious violations of the SPCC regulations. The approach is used for violations that may be settled in the range of \$400 to \$2,500, and is limited to such violations witnessed and described by the field inspector. The

field inspector uses a "Findings, Alleged Violations, and Proposed Penalty" form that both documents the SPCC violations observed during the inspection and identifies the SPCC violations eligible for expedited settlement. The form also provides the predetermined penalty amount for the violation(s) observed.

The SPCC expedited settlement agreement cites the statutory and regulatory authority EPA uses to enter into the agreement for the alleged violations and incorporates, by reference, the inspectors' observations as documented in the form. Upon acceptance, the recipient must certify that the violations have been corrected and that the penalty has been paid, in full. By accepting the agreement, the recipient admits that it is subject to the SPCC regulations and that EPA has jurisdiction to enforce the SPCC regulations. The recipient has thirty (30) days to sign and return the agreement. Instructions accompanying the expedited settlement offer explain the agreement's terms and conditions.

For additional information on the SPCC Expedited Settlement Program, please contact David Drelich at (202) 564-2949.

CWA Storm Water Expedited Settlement

On August 21, 2003, Headquarters issued national approval of the Storm Water Expedited Settlement Program. Six Regions participated in the development of this expedited settlement program, advising Headquarters as to the appropriate scope of the program and penalty ranges. In addition, the Regions provided input on a one-page boilerplate settlement document. The Storm Water Expedited Settlement Program provides the Regions with expedited settlement tools, criteria, an inspector worksheet, an expedited settlement offer worksheet, and the expedited settlement agreement.

Use of an expedited settlement approach in the storm water program is appropriate because the universe of violators generally exceeds a Region's or state's resources for conducting traditional enforcement actions. Storm water expedited settlements will be limited to first-time violators of the storm water requirements where the threat to the environment and public health is not serious enough to warrant an escalated enforcement response. Penalty amounts are less than \$15,000, and will only be offered at construction sites that are no larger than 50 acres. The authority to sign the expedited settlement may be delegated to the Branch Chief level.

For additional information on the Storm Water Expedited Settlement Program, please contact Lauren Kabler at (202) 564-4052.

Clean Air Act (CAA) § 112(r) Expedited Settlement

The forthcoming CAA § 112(r) Expedited Settlement approach will afford owners and operators the opportunity to come into compliance with Part 68, and to settle their outstanding liability for a reduced penalty. The settlement offer will include a provision ordering the source to comply with Part 68. Settlement offer recipients will generally receive forty-five (45) days to

pay the monetary penalty and come into compliance. Recipients may be granted one extension to come into compliance with the Part 68 requirements.

For additional information on the CAA § 112(r) Expedited Settlement Program, please contact Craig Haas at (202) 564-6447.

APPENDIX 2: SPCC EXPEDITED SETTLEMENT DOCUMENTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION _____
SPCC EXPEDITED SETTLEMENT AGREEMENT

INSTRUCTIONS

The United States Environmental Protection Agency (EPA) has authority under Section 311 of the Clean Water Act to pursue civil penalties for violations of the Spill Prevention Control and Countermeasure (SPCC) regulations. However, EPA encourages the expedited settlement of easily verifiable violations of SPCC requirements, such as the violations cited in the Expedited Settlement Agreement for which these instructions are provided.

You may resolve the cited violations quickly by signing and returning the original Expedited Settlement Agreement and paying the penalty amount within 30 days of your receipt of the Expedited Settlement Agreement. As a condition of the settlement, you must also correct the violations within 30 days of your receipt of the Expedited Settlement Agreement. EPA, at its discretion, may grant one 30-day extension for the period to come into compliance where the owner or operator satisfactorily demonstrates that it is technically infeasible or impracticable to achieve compliance within 30 days. The Expedited Settlement Agreement is binding on EPA and the owner or operator. Upon signing and returning of the Expedited Settlement Agreement and a check for the amount of the penalty, copies of which should be retained by you, EPA will take no further civil action against you for these violations. EPA will not accept or approve any Expedited Settlement Agreement returned more than 30 days after the date of your receipt of the settlement agreement unless an extension has been granted by EPA.

If you do not sign and return the Expedited Settlement Agreement with payment of the penalty amount within 30 days of your receipt of the Expedited Settlement Agreement, unless an extension has been granted by EPA, the Expedited Settlement Agreement is automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the above or any other violations. Failure to return the Expedited Settlement Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correcting the violations that have been specifically identified in the SPCC Inspection Findings, Alleged Violations and Proposed Penalty Form. If you decide not to sign and return the Expedited Settlement Agreement and pay the penalty, EPA can pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$11,000 per violation up to a maximum penalty of \$27,500.

You are required in the Expedited Settlement Agreement to certify that you have corrected the violations and paid the penalty amount. The payment for the penalty amount must be in the form of a certified check payable to the "Oil Spill Liability Trust Fund," with EPA and the Docket Number of the Expedited Settlement Agreement on the check. The Docket Number is located at the top of the left column of the Expedited Settlement Agreement.

The original, signed, Expedited Settlement Agreement and the original, Certified Check Payment of the penalty amount must be sent via CERTIFIED MAIL to:

OPA Enforcement Coordinator
U. S. Environmental Protection Agency

By the terms of the Expedited Settlement Agreement, you waive your opportunity for a hearing pursuant to Section 311 of the Clean Water Act. EPA will treat any response to the proposed Expedited Settlement Agreement, other than acceptance of the settlement offer, as an indication that the recipient is not interested in pursuing this expedited settlement procedure.

If you have any questions, you may contact EPA Region _ at _____

Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form

(Note: Do not use this form if there is no secondary containment)

These Findings, Alleged Violations and Penalties are issued by EPA Region _____ under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990

Company Name <input style="width: 95%;" type="text"/>	Docket Number: <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <tr> <td>C</td><td>W</td><td>A</td><td>-</td><td>0</td><td>-</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>	C	W	A	-	0	-										
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State: <input style="width: 40px;" type="text"/> Zip Code: <input style="width: 150px;" type="text"/>	EPA Approving Official: <input style="width: 95%;" type="text"/>																
Contact: <input style="width: 95%;" type="text"/>	Enforcement Contacts: <input style="width: 95%;" type="text"/>																



Summary of Findings (Bulk Storage Facilities)

GENERAL TOPICS: 112.3(d), (e); 112.5(a), (b), (c); 112.7 (b), (c), (d)
(When the SPCC Plan review penalty exceeds \$1,000.00 enter only the minimum allowable of \$1,000.00.)

- No Spill Prevention Control and Countermeasure Plan (excluding Bulk Storage facilities over 1,000 barrels) \$1,000.00
- Plan not certified by a professional engineer 300.00
- No management approval of plan 300.00
- Plan not available for review 300.00
- Plan not maintained on site (applies if facility is manned at least eight (8) hours per day) 100.00
- No evidence of three-year review of plan by owner/operator 50.00
- No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential 50.00
- Amendment(s) not certified by a professional engineer 100.00
- Inadequate or no prediction of equipment failure which could result in discharges 100.00
- Plan does not discuss appropriate containment/diversionary structures/equipment 100.00

Claiming installation of appropriate containment/diversionary structures is impractical but:

- No contingency plan \$100.00
- No written commitment of manpower, equipment, and materials 100.00

Written Procedures and Inspection Records 112.7(e)(8)

- Inspections required by 40 CFR Part 112 are not in accordance with written procedures developed for the facility 50.00
- Written procedures and a record of inspections are not signed by facility supervisor 50.00
- Written procedures and a record of inspections are not made part of the plan 50.00
- Written procedures and a record of inspections are not maintained for three years 50.00

Personnel Training and Spill Prevention Procedures 112.7(e)(10)

- No training on the operation and maintenance of equipment to prevent discharges 50.00
- No training on the applicable laws, rules, and regulations 50.00
- No designated person responsible for spill prevention 50.00
- Spill prevention briefings are not scheduled and conducted periodically 50.00
- Plan has inadequate or no discussion of personnel and spill prevention procedures 50.00

FACILITY DRAINAGE, ONSHORE (excluding Production Facilities) 112.7(e)(1)

- Valves used to drain diked areas are not of manual, open-and-closed design (note: flapper-type valves should not be used). 200.00
- Pumps or ejectors not manually activated when diked storage areas drained 100.00
- Drainage from undiked areas not into ponds, lagoons, or catchment basins, or no diversion systems to return spills to the facility. 400.00
- Plan has inadequate or no discussion of facility drainage 50.00

BULK STORAGE TANKS (excluding Production Facilities) 112.7(e)(2)

- Material and construction of tanks not compatible to the material stored and the conditions of storage such as pressure and temperature 300.00
- Secondary containment appears to be inadequate 500.00
- Materials of construction are not sufficiently impervious 250.00
- Excessive vegetation which affects the integrity of the containment system 100.00
- Walls of containment system are slightly eroded or have low areas 200.00

When drainage from diked areas is to a storm drain, open water course, or lake or pond:

- Bypass valve not normally sealed closed 300.00
- Runoff rain water not inspected and/or will cause a harmful discharge as defined in 40 CFR 110 300.00
- Bypass valve is not opened and resealed under responsible supervision 100.00
- Adequate records of drainage events are not maintained 50.00
- Underground tanks are not protected from corrosion or are not subjected to regular pressure testing. . 100.00
- Partially buried tanks do not have buried sections protected from corrosion. 100.00
- Aboveground tanks not subject to periodic integrity testing, such as visual, hydrostatic, and nondestructive methods, etc. 300.00
- Outside of tank not frequently observed for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked area. 300.00
- Steam return /exhaust of internal heating coils which discharge into an open water course not monitored, passed through a settling tank, skimmer, or other separation system. 100.00
- Records of inspections of aboveground tanks are not maintained 50.00

Tanks are not "fail-safe" engineered:

- No audible or visual high liquid level alarm, or 300.00
- No high-level pump cutoff devices set to stop flow at a predetermined tank content level, or 300.00
- No direct communications between tank gauger and pumping station, or 300.00
- No fast response system for determining liquid levels, such as computers, telepulse or direct vision gauges. 300.00
- No testing of liquid level sensing devices to ensure proper operation 50.00
- Disposal facilities which discharge plant effluents directly to navigable waters are not monitored frequently to detect oil spills 100.00
- Visible oil leaks resulting in accumulations of oil in diked areas are not promptly corrected 300.00
- Mobile or portable storage tanks are not positioned to prevent spilled oil from reaching navigable water, or are in area subject to flooding. 100.00
- Secondary containment inadequate for mobile or portable storage tanks 500.00
- Plan has inadequate or no discussion of bulk storage tanks 50.00

**FACILITY TRANSFER OPERATIONS, PUMPING, AND IN-PLANT PROCESSES, ONSHORE
(excluding Production Facilities) 112.7(e)(3)**

- Buried piping not corrosion protected with protective wrapping, coating, or cathodic protection. 100.00
- Corrective action not taken on buried piping when corrosion damage found 300.00
- Terminal connections at transfer points on not-in-service or standby pipelines are not capped or blank-flanged and marked as to origin 50.00

- Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction. 50.00
- Aboveground valves and pipelines are not inspected regularly 200.00
- Periodic pressure testing of the valves and pipelines is not conducted 100.00
- Vehicle traffic not warned verbally or by appropriate signs of aboveground piping. 100.00
- Plan has inadequate or no discussion of facility transfer operations, pumping, and in-plant processes. . 50.00

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING RACK, ONSHORE 112.7(e)(4)

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin, treatment system, or quick drainage system. 500.00
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck. 300.00
- There is no interlocked warning light, physical barrier system, or warning signs to prevent vehicular departure before complete disconnect from transfer lines. 200.00
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck. 100.00
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack. 50.00

SECURITY (excluding Production Facilities) 112.7(e)(9)

- Facility not fully fenced and entrance gates are not locked and/or guarded when plant is unattended or not in production. 100.00
- Master flow and drain valves that permit direct outward flow of tank's contents to the surface are not secured in closed position when in a non-operating or standby status. 200.00
- Starter controls on pumps are not locked in the "off" position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status. 50.00
- Loading and unloading connection(s) of pipelines are not capped or blank-flanged when not in service. 50.00
- Facility lighting not commensurate with the type and location of facility to facilitate the discovery of spills during hours of darkness and to deter vandalism. 100.00
- Plan has inadequate or no discussion of facility security 50.00

TOTAL \$ _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Region __, Address]

SPCC EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. _____

On _____ Time _____
At: _____

Owned or operated by: _____

(Respondent)

an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection to determine compliance with the Oil Pollution Prevention (SPCC) regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), (the Act), and found that Respondent had failed to comply with the SPCC regulations as noted on the attached SPCC INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM (Form), which is hereby incorporated by reference. By its first signature below, EPA ratifies the Inspection Findings and Alleged Violations set forth in the Form.

EPA finds the Respondent is subject to the SPCC regulations and has violated the SPCC regulations as further described in the Form. The Respondent admits being subject to 40 CFR Part 112 and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent does not contest the Inspection Findings, and waives any objections Respondent may have to EPA's jurisdiction.

EPA is authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), as amended by the Oil Pollution Act of 1990, and by 40 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$_____. The Respondent consents to the assessment of this penalty.

This Expedited Settlement is also subject to the following terms and conditions: Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent has sent a certified check in the amount of \$_____, payable to the "Oil Spill Liability Trust Fund," to: [Regional addressee]. Respondent has noted on the penalty payment check "EPA" and the docket number of this case, " - - - "

After this Expedited Settlement becomes effective, EPA will take no further civil action against the Respondent for the violations of the SPCC regulations described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by the Respondent of the SPCC regulations or of any other federal statute or regulation.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or

appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is final upon the [appropriate official's] signature. If Respondent does not sign and return this Expedited Settlement as presented within [30] days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the noncompliance identified in the Form.

APPROVED BY EPA:

_____ Date: _____
[Complainant]
[Title]

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature: _____

IT IS SO ORDERED:

_____ Date _____
[Appropriate official]
[Title]

ORREV.4/3/02

APPENDIX 3: UST EXPEDITED SETTLEMENT PROGRAM INFORMATION

Visit: <http://www.epa.gov/OUST/directiv/od961016.htm#SELECTED VIOLATIONS> to obtain a list of UST regulations eligible for expedited settlement.

Visit: <http://www.epa.gov/OUST/directiv/od961016.htm#COMPLIANCE ORDER> for Model UST Compliance Order and Settlement Agreements for states with or without Approval.

附錄13、美國環保署第9區溢漏案件快速裁罰專案批准備忘錄



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 21 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Approval of Region 9 Section 311 Expedited Spill Penalty Program

FROM: Mark Pollins, Director
Water Enforcement Division, ORE *Mark Pollins*

TO: Keith Takata, Director
Superfund Division, Region 9

This office approves your request to carry out an expedited enforcement program for Clean Water Act Section 311 oil spills.

As noted in your correspondence, we understand that the expedited Regional oil spill program will apply only to minor impact spills to which the responsible party has conducted an adequate or superior spill response. The responsible party must have no more than minimal culpability for the discharge. Repeat violators are ineligible for this program. If the total amount spilled onto an adjoining shoreline and/or water of the United States exceeds 100 barrels, or the discharge fails to meet the other criteria as described above, the discharge will be ineligible for the expedited program and will be handled by a more traditional means. The Region should use the ERNS data base as a targeting tool, but before taking any action under this pilot the Region will obtain further information by use of a Section 308 information request to the discharger or by an on-scene report by a government inspector.

We agree on the following, non-negotiable settlement schedule for such spills:

<u>Amount discharged</u>	<u>Penalty</u>
Up to 20 barrels	\$500
21 to 30 barrels	\$3000
31 to 40 barrels	\$3500
41 to 50 barrels	\$4000
51 to 79 barrels	\$4500
80 to 100 barrels	\$5000

We further understand that, if the respondent does not agree to settle any expedited matter within thirty days (or sixty days upon an EPA extension), the settlement offer will be withdrawn in favor of the possibility of a more formal administrative penalty proceeding that conforms to the August 1998 Section 311 penalty policy.

The use of the program is approved, in large part, because of the Region's commitment to use it as part of a more complete enforcement program that will encompass other Class I cases, Class II cases, and judicial referrals that will be subject to the August 1998 penalty policy. It is my understanding that use of the expedited program will be to complement, rather than substitute for, other formal Section 311 spill enforcement by Region 9.

If you or your staff have any questions, please contact David Drelich of my staff by email or by telephone at (202) 564-2949.

Attachments

cc: Mark Samolis, Region 9
Andrew Helmlinger, Region 9

附錄14、以快速和解協定處理雨水污染案件修正備忘錄



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MAY 19 2006

MEMORANDUM

SUBJECT: Revised Expedited Settlement Offer Program for Storm Water (Construction)

FROM: Walker B. Smith, Director *WBS*
Office of Civil Enforcement

TO: Water Management Division Directors
Regions I, III, IV, V, VII, IX

Enforcement Division Directors
Regions II, VI, VIII, X

Regional Counsels
Regions I - X

This memorandum transmits the final revised framework for the Expedited Settlement Offer (ESO) Program for Storm Water, which supersedes the "Expedited Settlement Offer (ESO) Program for Storm Water" originally issued on August 21, 2003. The revised ESO program includes a variety of modifications based on issues identified during the initial pilot implementation period. This ESO program is intended to promote compliance with NPDES storm water regulations at construction sites by providing an expedited enforcement mechanism in situations where environmental impacts are potentially less significant, violations can be quickly corrected and appropriate penalties easily collected. I want to thank the Regions for their participation in revising this enforcement tool; their knowledge and experience were extremely valuable throughout the revision process.

Storm water violations at construction sites can involve potentially significant cumulative negative environmental impacts. Issuing timely and consistent enforcement actions to compel compliance with storm water requirements at construction sites ensures prompt correction of potentially harmful violations and deters future noncompliance. An expedited settlement offer provides an efficient "real time" enforcement mechanism in situations where violations can be quickly corrected and an appropriate penalty promptly collected.

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The purpose of expedited settlements is to supplement, not replace, other more traditional enforcement approaches. ESOs should be part of a comprehensive compliance and enforcement strategy that encompasses the full range of compliance and enforcement tools. Regions implementing the ESO program should also use traditional administrative and judicial enforcement mechanisms to ensure a well-balanced enforcement program. Traditional enforcement actions should be pursued for violations where an expedited settlement offer does not adequately address the level of noncompliance or the nature of the violator (e.g., where there is evidence of significant environmental harm, large economic benefit, or a recalcitrant violator).

In using the ESO approach, we encourage regions to consult additional storm water guidance in reaching their decisions. In particular, we recommend that the regions refer to the *Enforcement Response Guide for Storm Water (Construction) (ERG)*. The ERG describes factors to consider when selecting from the different types of enforcement actions. The *2003 Storm Water Compliance and Enforcement Strategy* and the *2005 Performance-Based Strategy for Storm Water*, both of which rely on an environmental harm-based targeting approaches, should also be consulted to focus priorities on storm water dischargers/discharges that pose the most significant harm to the environment (e.g., non-filers or high growth communities where storm water runoff may result in high sediment loadings).

Before applying the ESO, regions should familiarize themselves with the revised ESO program. The revisions have altered both the scope and the process of the program. The most significant revisions include the following:

- eliminating the 50-acre limit for ESO-eligible sites;
- extending eligibility to all operators except those who, in the past five years, have been issued a formal enforcement action for violation of either the multi-sector general permit (MSGP), the construction general permit (CGP), or an individual storm water permit issued by EPA or a state: 1) at the facility where the instant violation occurred; or 2) at two or more facilities, under the ownership, operation, or control of the operator;
- increasing the appropriate time between an inspection and EPA's mailing of an ESO from seven (7) to twenty-one (21) days;
- limiting the scope of respondent's certification in the *Expedited Settlement Agreement* to correction of deficiencies identified during the inspection and payment of penalties;
- capping the total penalties for Storm Water Pollution Protection Plan (SWPPP) violations at \$4500 so as not to exceed the penalty for failure to submit a SWPPP, which has been increased from \$4000 to \$5000; and
- clarifying that generally ESOs should not be issued simultaneously with administrative compliance orders for the same violation.

A joint regional and OCE workgroup revised the following documents: the ESO procedures (see Attachment 1), the penalty calculation worksheet (now called the *Expedited Settlement Deficiencies Form* or *Deficiencies Form*, see Attachment 2), the *Expedited Settlement Agreement Instructions* (see Attachment 3), and the *Expedited Settlement Agreement* (see

Attachment 4). Additionally, OCE has created a new informational document for site operators, the *Preliminary Inspection Observations* (see Attachment 5).

Each Region has provided my office with its commitment to use the storm water construction ESO as part of its comprehensive storm water compliance and enforcement effort. This revised guidance should replace the previous 2003 guidance as your reference for how to implement an effective and appropriate ESO program for storm water construction violations. We look forward to continuing to work with the Regions in exploring meaningful and effective opportunities to use the ESO for storm water enforcement. For specific questions regarding this memorandum and its attachments, please contact Everett Volk at (202) 564-2828, or Lauren Kabler at (202) 564-4052.

cc: Mark Pollins, Water Enforcement Division
Michael Alushin, Office of Compliance
Linda Boornazian, Office of Wastewater Management
Carol Ann Siciliano, Office of General Counsel
NPDES Regional Enforcement Managers

Attachments

REVISED EXPEDITED SETTLEMENT OFFER FOR STORM WATER (CONSTRUCTION) May 2006¹

Appropriate Use of the ESO

Storm water cases often involve facilities or sites where the cumulative effect of discharges can have significant environmental impact. In storm water cases, issuing timely and consistent enforcement actions is necessary to deter future violations and promote prompt return to compliance. This can be achieved through issuing an expedited settlement offer pursuant to the revisions to the “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*” (*Consolidated Rules*), 40 C.F.R. Part 22. This document provides guidance in implementing Part 22 with respect to certain violations of Clean Water Act storm water regulations for construction activities.

The *Consolidated Rules* provide that, where the parties agree to settle one or more causes of action before the filing of an administrative penalty complaint, a proceeding may be commenced and concluded simultaneously by issuance of a consent agreement and final Clean Water Act section 309(g) penalty order. 40 C.F.R. § 22.13(b).² As formulated in the Expedited Settlement Agreement Offer (ESO) program, this provides “real time” enforcement in situations where violations can be quickly corrected and a penalty collected within a short amount of time, generally a few months from EPA’s discovery of the violation. Under the ESO approach, in specified circumstances, a violator of storm water regulations may resolve its violation through an expedited process in which the violator (1) corrects identified deficiencies, (2) signs an agreement with EPA certifying prompt correction, and (3) pays a penalty.

Violations appropriate for expedited settlements are those that are easily correctable and that may pose some potential harm to human health or the environment, but which do not *result* in significant harm to, or present an imminent and substantial endangerment to, human health or the environment. EPA regions are strongly encouraged to continue targeting for serious violations that result in harm to the environment and human health. However, in those instances where easily correctable violations are discovered that pose some potential harm, the ESO would be an appropriate response mechanism.

The ESO is designed to provide an administratively streamlined approach to resolving violations where a full administrative compliance order (ACO) is not warranted. In requiring a respondent to correct deficiencies, certify to those corrections and pay a penalty, the *Expedited Settlement Agreement* achieves the same ends as an ACO, but in a shorter, more easily administered format. As a result, a separate compliance order requiring corrective action is

¹This version supersedes the “Expedited Settlement Offer (ESO) for Storm Water (Construction)” issued on August 21, 2003.

²An ESO developed under the approach described here is a tool for quickly resolving certain CWA storm water violations. It is not appropriate for use as a penalty demand in an administrative penalty hearing or a judicial trial. Further, whether the Agency decides to use the ESO approach at all is purely within EPA’s discretion.

unnecessary, and regions should generally not issue ACOs at the same time that they issue ESOs.³

Criteria

The criteria below describe when a site should be considered for the ESO program. The purpose of the ESO Criteria is to ensure that ESOs are issued under the appropriate circumstances. Sites that meet all of the following criteria may be eligible for an ESO: (1) sites where the penalty calculated via the ESO *Deficiencies Form* is no more than \$15,000; (2) sites where there is no evidence of significant environmental impact (*e.g.*, turbidity observed in receiving water); (3) sites where the operator is not a repeat violator⁴; and (4) sites where there is no evidence of non-allowable, non-storm water discharges (*e.g.*, industrial process wastewater discharge, such as discharge from a concrete batch plant operation). While there are no site size restrictions on the use of the ESO, generally the bigger the site the greater the potential for significant environmental harm. Therefore, Regions should carefully consider site size prior to using the ESO.

Terminology

Expedited Settlement Deficiencies Form. The *Deficiencies Form* is provided to the regions to calculate a proposed or recommended penalty for the site based on the inspector's findings. The values assigned to each permit requirement in the *Deficiencies Form* reflect the costs the operator would have incurred had the operator obtained and complied with a permit, and a gravity component. Penalties should be based on all deficiencies found at a site, including (1) statutory violations, (2) violations of an NPDES permit, and (3) in the case of facilities without an NPDES permit, deficiencies that would have constituted a violation at a properly permitted facility. In short, the region should consider all deficiencies at a site, whether or not the operator obtained a permit, when calculating a penalty. The *Deficiencies Form* will be incorporated by reference into the *Expedited Settlement Agreement*.

Preliminary Inspection Observations. The *Preliminary Inspection Observations* is an optional form that regions may choose to leave with a site operator at the time of inspection. It provides a simple checklist inspectors may use to highlight their initial observations about potential problems at a site. It is not a formal settlement offer and imposes no obligations on site operators who receive it. However, providing site-specific deficiency information at the time of inspection will afford operators an opportunity to achieve prompt compliance if they so choose.

³If regions believe the joint issuance of an ACO/ESO is necessary to ensure compliance, they must consult with the Water Enforcement Division (WED) on a case-by-case basis prior to issuance.

⁴A repeat violator is any operator who, in the past five years, has been issued a formal enforcement action, or an administrative penalty order (APO), by either EPA or a state for violation of either the multi-sector general permit (MSGP), the construction general permit (CGP), or an individual storm water permit issued by EPA or a state: 1) at the facility where the instant violation occurred; or 2) at two or more facilities, under the ownership, operation, or control of the operator.

Expedited Settlement Agreement. This agreement is a “Consent Agreement and Final Order” pursuant to 40 C.F.R. § 22.

Procedure

This section describes the steps the regions should follow in developing an individual ESO, and finalizing an *Expedited Settlement Agreement*:

1. The inspector targets a site after consulting appropriate storm water targeting guidance and conducts a storm water inspection.
2. The inspector consults the ESO Criteria (and other storm water guidance, including that referenced above) to determine whether the site is eligible for the ESO.
3. If the inspector determines that the site is eligible for the ESO, the inspector completes the *Deficiencies Form* (Attachment 2) and calculates a proposed penalty.
4. Regions should not leave a *Deficiencies Form* at a site after an inspection. Instead, regions can choose to have the inspector leave a *Preliminary Inspection Observations* (Attachment 5) form at the time of the inspection. It is important to note, however, that the *Preliminary Inspection Observations* form is only an informational tool and, if the inspector does leave a copy on site, the Region retains the ability to make a determination as to what type of enforcement action to take, if any, for alleged violations observed during the inspection. Inspectors should receive regional training in the use of this tool so that the inspector can explain the expedited settlement approach to the inspected entity, and, in particular, be able to clearly indicate that the *Preliminary Inspection Observations* form does not reflect EPA decisions regarding violations discovered during inspection and imposes no obligations on the facility/site operator.
5. Regional management reviews the *Deficiencies Form* and finalizes the appropriate penalty. Once the penalty is finalized, an *Expedited Settlement Agreement* (Attachment 4), along with *Expedited Settlement Agreement Instructions* sheet (Attachment 3) and the *Deficiencies Form* (Attachment 2) are mailed to each operator at the site within 21 business days of the inspection.
6. The site representative is given 30 days to return a signed *Expedited Settlement Agreement* and penalty payment to the Region in the manner outlined in the *Expedited Settlement Agreement Instructions*.⁵ If the signed *Expedited Settlement Agreement* is not received within 30 days, it is automatically withdrawn without prejudice to EPA’s ability to institute an enforcement action for noncompliance as identified in the *Deficiencies Form*. Regions have the discretion to extend the offer, for cause, but generally should

⁵Requesting the penalty payment prior to public notice guards against having to file collection actions in the future; however, some regions may choose not to require payment prior to public notice. If this is the case, a region may request that the respondent submit payment within ten days of receiving notice from EPA that the Agreement is effective.

not grant an extension beyond 60 to 90 days after the violator's receipt of the ESO. If the offer is withdrawn, the region should be prepared to escalate its enforcement response by commencing a traditional administrative enforcement proceeding under 40 C.F.R. Part 22.

7. Before issuing an *Expedited Settlement Agreement*, the region must provide public notice and a reasonable opportunity to comment on the proposed issuance of the ESO. See CWA section 309(g)(4)(A). EPA's regulations require that the agency must provide, in the case of settlement by consent agreement and final order, notice no less than 40 days before issuance of an order assessing a penalty. 40 C.F.R. § 22.45(b). We recommend a thirty-day comment period. Regions should consider any public comments received in that period regarding the *Expedited Settlement Agreement*. If, after reviewing the public comments, a region determines that the *Expedited Settlement Agreement* is appropriate (e.g. in the public interest), the region should proceed with issuance. The appropriate delegatee in the region must sign as complainant. 40 C.F.R. § 22.18(b)(2). No sooner than ten days after the close of the recommended comment period, 40 C.F.R. § 22.18(a), an appropriate official at the region (e.g., a Regional Judicial Officer) may sign and ratify the consent agreement. 40 C.F.R. § 22.18(b)(3). No settlement is final without a final order from the Regional Administrator or Regional Judicial Officer ratifying the *Expedited Settlement Agreement*.
8. Regions should file the original signed *Expedited Settlement Agreement* with the Regional Hearing Clerk, mail a copy back to the respondent, and mail a copy to any commenters informing them of their right to file, within 30 days of receipt of their copy of the *Expedited Settlement Agreement*, either a request with the Regional Administrator for a hearing on the penalty pursuant to CWA Section 309(g)(4)(c), or a petition for judicial review to set aside the *Expedited Settlement Agreement* pursuant to CWA Section 309(g)(8) and Part 22. The *Expedited Settlement Agreement* is effective 30 days after signature by the Appropriate Official, unless a request for a hearing on the penalty or a petition to set aside the *Expedited Settlement Agreement* is filed by a commenter. See CWA Section 309(g)(5).
9. Regions should consult the most current Office of Compliance (OC) "Call Memo" for reporting requirements. Pursuant to the discussion above, ESOs should not have accompanying AOs and therefore the only action reported in ICIS should be the ESO. Regions should report the environmental benefits of ESOs in ICIS. Environmental benefits can be calculated by estimating the sediment reduction at construction sites where deficiencies have been corrected pursuant to an ESO. The Storm Water Pollutant Reduction Calculator, which can be obtained from OC's Enforcement Targeting and Data Division or found online at: <http://intranet.epa.gov/oeca/oc/etdd/fy05eoy/wetweathercalculationtools.html>, should be used to estimate sediment reduction.

EXPEDITED SETTLEMENT AGREEMENT INSTRUCTIONS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION [Region]

INSTRUCTIONS

The United States Environmental Protection Agency (EPA) has authority under Section 309 of the Clean Water Act to pursue civil penalties for violations of the storm water regulations. EPA encourages the expedited settlement of certain violations of storm water requirements, such as the violations cited in the Expedited Settlement Agreement (“**Agreement**”) for which these instructions are provided.

You may resolve this matter quickly by: (1) correcting all deficiencies identified by EPA in the *Deficiencies Form*; (2) detailing your corrective actions in a written report; (3) signing the original Agreement; and (4) submitting your penalty payment by check with case name and docket number noted.

[Within THIRTY (30) DAYS from your receipt of the Agreement, you must send the original, signed Agreement, the report detailing your corrective actions, and a photocopy of your penalty check, via certified mail, to:

INSERT - REGION ADDRESS

You must also send a photocopy of the Agreement and your original penalty check with the case name and docket number noted, via certified mail, to:

INSERT- REGION’S PITTSBURGH P.O. BOX ADDRESS]

OR

[Within THIRTY (30) DAYS from your receipt of the Agreement, you must send the original, signed Agreement, which includes a certification that you will submit your penalty payment within TEN (10) days from the date you receive notice from EPA that the Agreement is effective, and the report detailing your corrective actions via certified mail, to:

INSERT- REGION ADDRESS

Within TEN (10) days from the date you receive notice from EPA that the Agreement is effective, you must send your original check with the case name and docket number noted and a copy of the Agreement, via certified mail, to:

INSERT- REGION’S PITTSBURGH P.O. BOX. ADDRESS]

Please retain copies of the signed agreement, the report detailing your corrective actions and the penalty checks for your own records.

You may contact the person listed below and request an extension. EPA will consider whether to grant an extension on a case-by-case basis. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations) you must provide such information to EPA as soon as possible but no later than THIRTY

(30) days from your receipt of the Agreement.

If you choose to sign and return the Agreement, you waive your opportunity for a hearing and to appeal pursuant to Section 309 of the Clean Water Act. If you choose not to sign and return the Agreement, or contact EPA, within THIRTY (30) days, the Agreement will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations alleged herein or any other violations. EPA may choose to pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to a maximum penalty of \$32,500 per day per violation. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations.

[Insert Region-specific public notice procedure(s)].

[Insert Region-specific contact instructions].



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Region, Address]

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-_____-_____, NPDES No._____

[XXX] ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent [had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311,] or [failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.]

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the deficiencies specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of \$_____. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondent shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

[Respondent certifies that it has submitted a bank, cashiers, or certified check, with case name and docket number noted, for the amount specified above, payable to the "Treasurer, United States of America," via certified mail, to: INSERT- REGION'S PITTSBURGH P.O. Box No.]

or [Respondent certifies that, within ten (10) days of receiving

notice from EPA that the Agreement is effective (thirty (30) days from the date it is signed by the [Appropriate Official]), Respondent shall submit a bank, cashiers or certified check, with case name and docket number noted, for the amount specified above payable to the "Treasurer, United States of America," via certified mail, to: INSERT - REGION'S PITTSBURGH P.O. BOX.]

This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective [thirty (30) days from the date it is signed by the Presiding Officer unless a petition to set aside the Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), and Part 22] or [upon filing with the Regional Hearing Clerk.]

APPROVED BY EPA: _____ Date: _____

[Complainant] [Title]

APPROVED BY RESPONDENT: Name (print): _____ Title (print): _____ Signature: _____ Date: _____

[More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.]

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:

_____ Date _____ [Appropriate Official] [Title]

Expedited Settlement Offer Worksheet
Deficiencies Form
Consult instructions regarding eligibility criteria and procedures prior to use

version 10.3.4



1	LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number
		Inspector Name:	
		Inspector Agency:	Other
		Entrance Interview Conducted:	
	LOCATION AND ADDRESS OF SITE	Exit Interview Conducted:	
2		Exit Interview given to:	
		Exit Interview time:	Date:

	FACILITY DESCRIPTION / CONTACT NAMES
	Name of Site Contact (ESO Worksheet recipient):
	Name of Authorized Official (40 CFR 122.22):
	Inspection Date:
	Start Construction Date:
	Estimated Completion Construction Date:
	If Unpermitted, Number of Months Unpermitted:
	Name of Receiving Water Body (Indicate whether 303(d) listed):
	Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan:
	Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?

	PERMIT COVERAGE	Findings	Citation Reference**	R C A*	No. of Deficiencies	Dollar Amount	Total
3	Operator unpermitted for _____ months (# months unpermitted equals number of violations)		CWA 301		X	\$500.00 =	
	SWPPP REVIEW						
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A			\$5,000.00 =	
5	SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A		X	\$75.00 =	
6	SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc...		CGP 3.1.B			\$250.00 =	
7	SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control		CGP 3.3.A			\$500.00 =	
8	SWPPP does not have site description, as follows:						
	A Nature of activity in description		CGP 3.3.B.1			\$100.00 =	
	B Intended sequence of major activities		CGP 3.3.B.2			\$100.00 =	
	C Total disturbed acreage		CGP 3.3.B.3			\$100.00 =	
	D General location map		CGP 3.3.B.4			\$100.00 =	
	E Site map		CGP 3.3.C			\$500.00 =	
	F Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 8F as 1 violation)		CGP 3.3.C.1-8		X	\$50.00 =	
G Location/description industrial activities, like concrete or asphalt batch plants		CGP 3.3.D			\$500.00 =		
9	SWPPP does not:						
	A Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A			\$750.00 =	

	B	Describe sequence for implementation		CGP 3.4.A			\$250.00	=	
	C	Detail operator(s) responsible for implementation		CGP 3.4.A			\$250.00	=	
10		SWPPP does not describe interim stabilization practices		CGP 3.4.B			\$250.00	=	
11		SWPPP does not describe permanent stabilization practices		CGP 3.4.B			\$250.00	=	
12		SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B			\$250.00	=	
13		Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)		CGP 3.4.C.1-3		X	\$250.00	=	
14		SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		CGP 3.4.D			\$500.00	=	
15		SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed		CGP 3.4.E			\$500.00	=	
16		SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		CGP 3.4.F			\$500.00	=	
17		SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G			\$500.00	=	
18		SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials		CGP 3.4.H			\$250.00	=	
19		SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials		CGP 3.4.I			\$500.00	=	
20		SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CGP 3.5			\$500.00	=	
21		SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5			\$500.00	=	
22		Endangered Species Act documentation is not in SWPPP		CGP 3.7			\$500.00	=	
23		Historic Properties (Reserved)							
24		Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		CGP 3.8		X	\$250.00	=	
25		SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)		CGP 3.9			\$750.00	=	
26		SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		CGP 3.9			\$250.00	=	
27		Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		CGP 3.10.G			\$500.00	=	
28		SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under under 28 as 1 violation)		CGP 3.11.C		X	\$50.00	=	
29		Copy of SWPPP not retained on site		CGP 3.12.A			\$500.00	=	
	A	SWPPP not made available upon request		CGP 3.12.C			\$500.00	=	
30		SWPPP not signed/certified		CGP 3.12.D			\$500.00	=	

INSPECTIONS									
31	Inspections not performed and documented either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).		CGP 3.10.A, 3.10.B			X	\$250.00	=	
	No inspections conducted and documented (if True, then leave elements 32-39 blank)						True or False	=	
	Number of Inspections expected if performed every 7 days:	0						=	
	Number of Inspections expected if performed bi-weekly:	0						=	
	If known, number of days of rainfall of >0.5"							=	
32	Inspections not conducted by qualified personnel		CGP 3.10.D				\$50.00	=	
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 3.10.E.				\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E.				\$50.00	=	
35	Discharge locations are not observed and inspected		CGP 3.10.E.				\$50.00	=	
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E.				\$50.00	=	
37	Entrance/exit not inspected for off-site tracking		CGP 3.10.E.				\$50.00	=	
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)		CGP 3.10.G			X	\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G			X	\$50.00	=	
Subtotal Inspections Deficiencies									\$0
AVAILABILITY OF RECORDS									
40	Sign/notice not posted		CGP 3.12.B				\$250.00	=	
	A Does not contain copy of complete NOI		CGP 3.12.B				\$50.00	=	
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign		CGP 3.12.B				\$50.00	=	
Subtotal Records Deficiencies									\$0
BEST MANAGEMENT PRACTICES									
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water		CGP 3.13.F				\$500.00	=	
42	Control measures are not properly:							=	
	A Selected, installed and maintained		CGP 3.13.A				\$500.00	=	
	B Maintenance not performed prior to next anticipated storm event		CGP 3.6.B				\$250.00	=	
	(count each failure to select, install, maintain each BMP as one violation)							=	
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 3.13.B				\$500.00	=	
44	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)		CGP 3.13.C				\$500.00	=	

45	Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation		CGP 3.13.D			\$500.00	=	
	*Exceptions:							
	(a) Snow or frozen ground conditions							
	(b) Activities will be resumed within 14 days							
	(c) Arid or Semi-arid areas (<20 inches per							
46	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained		CGP 3.13.E.1			\$1,000.00	=	
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope		CGP 3.13.E.2			\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C			\$500.00	=	
47	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)		CGP 3.13.E.3			\$500.00	=	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C		X	\$500.00	=	

Subtotal BMP Deficiencies \$0

SMALL BUSINESS EVALUATION

48	Is the Owner/Operator a Small Business?							
	A <i>small business</i> is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.							

Total Expedited Settlement: \$0

* Requires Corrective Action

** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>

Cost of Compliance for Construction based on Acres

Assumption: Start, Inspection and Est. Completion Dates in E25-27 are correct.

0
70%
50%

No. of Acres Disturbed for Common Plan of Development or Sale
- Change # of Acres to a particular Operators acreage to determine their Cost of Complia.
Implementation Efficiency (100% = doing everything, 0% = did nothing)
Paperwork completeness (SWPPP & NOI) (100% = all done right)

Based on 63 FR 7896 & 1.7% annual inflation since 1997

For Acres: \$6382 annual costs for 5 acre site, \$882 in fixed NOI/SWPPP costs

For Case Conclusion Data Sheet: 0.00

\$0 Cost of Physical Actions
\$86 Cost of Non-Physical Actions (SWPPI
\$86 Total Cost of Compliance Saved

Numbers to use for the EPA BEN model:

Capital Investment	\$0	01/00/1900
One-Time, Nondepreciable Expenditure:	\$172	01/00/1900
Annually Recurring:	\$0	01/00/1900
Noncompliance Date:	01/00/1900	
Compliance:	01/30/1900	(Inspection Date + 30 days)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Region, Address]

Preliminary Inspection Observations

This form is provided for informational purposes only and does not reflect EPA decisions regarding violations discovered during inspection. EPA retains the ability to pursue an enforcement action for alleged violations it observes. Operators are not obligated to respond to this form.

PERMIT COVERAGE	
3	Operator unpermitted for _____ months (# months unpermitted equals number of violations)
SWPPP REVIEW	
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)
5	SWPPP prepared but prepared after construction start (# of months = # of violations)
6	SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc...
7	SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control
8	SWPPP does not have site description, as follows:
A	Nature of activity in description
B	Intended sequence of major activities
C	Total disturbed acreage
D	General location map
E	Site map
F	Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 8F as 1 violation)
G	Location/description industrial activities, like concrete or asphalt batch plants
9	SWPPP does not:
A	Describe all pollution control measures (e.g. BMPs)
B	Describe sequence for implementation
C	Detail operator(s) responsible for implementation
10	SWPPP does not describe interim stabilization practices

11	SWPPP does not describe permanent stabilization practices
12	SWPPP does not describe a schedule to implement stabilization practices
13	Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas
15	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust
18	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials
19	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges
22	Endangered Species Act documentation is not in SWPPP
23	Historic Properties (Reserved)
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)
25	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates
28	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under under 28 as 1 violation)
29	Copy of SWPPP not retained on site
	A SWPPP not made available upon request
30	SWPPP not signed/certified

INSPECTIONS	
31	Inspections not performed and documented either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).
	No inspections conducted and documented (if True, then leave elements 32-39 blank)
	Number of Inspections expected if performed every 7 days:
	Number of Inspections expected if performed bi-weekly:
	If known, number of days of rainfall of >0.5"
32	Inspections not conducted by qualified personnel
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected
34	All pollution control measures not inspected to ensure proper operation
35	Discharge locations are not observed and inspected
36	For discharge locations that are not accessible, nearby locations are not inspected
37	Entrance/exit not inspected for off-site tracking
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)
39	Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)
AVAILABILITY OF RECORDS	
40	Sign/notice not posted
A	Does not contain copy of complete NOI
B	Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign
BEST MANAGEMENT PRACTICES	
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water
42	Control measures are not properly:

	A	Selected, installed and maintained
	B	Maintenance not performed prior to next anticipated storm event
		(count each failure to select, install, maintain each BMP as one violation)
43		When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts
44		Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)
45		Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation
		*Exceptions:
		(a) Snow or frozen ground conditions
		(b) Activities will be resumed within 14 days
		(c) Arid or Semi-arid areas (<20 inches per year)
46		Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained
	A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries
	B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more
47		Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)
	A	Sediment not removed from sediment trap when design capacity reduced by 50% or more
SMALL BUSINESS EVALUATION		
48		Is the Owner/Operator a Small Business?
		A small business is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.

附錄15、快速和解協定範例



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 7, 901 North 5th Street, Kansas City, KS 66101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-07-2009-0075, NPDES No.:KSR-104545

09 AUG 24 PM 1:18

Heartland Midwest, LLC ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the deficiencies specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of \$3,150. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondent shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondent certifies that, within ten (10) days of receiving notice from EPA that the Agreement is effective thirty (30) days from the date it is signed by the Appropriate Official, Respondent shall submit a bank, cashiers or certified check, with case name and docket number noted, for the amount specified above payable to the "Treasurer, United States of America," via certified mail, to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondent for any other past, present,

or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Presiding Officer unless a petition to set aside the Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), and Part 22.

APPROVED BY EPA:

William A. Spratlin Date: 8/20/09
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): R. Lee Chapman
Title (print): Member
Signature: R. Lee Chapman Date: June 16, 2009

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:

Robert L. Patrick Date: August 24, 2009
Robert L. Patrick
Regional Judicial Officer

Expedited Settlement Offer Worksheet

Deficiencies Form

Consult instructions regarding eligibility criteria and procedures prior to use

KS-S-MCST-0701-1



LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number
1	Heartland Midwest, LLC 15795 S Mahaffie Street, Suite 100 Olathe, KS 66062	913-397-9911	KSR-104545
		Inspector Name:	St Germain
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	<input type="checkbox"/> Yes <input type="checkbox"/> No
		Exit Interview Conducted:	<input type="checkbox"/> Yes <input type="checkbox"/> No
		Exit Interview given to:	Jeff Hunt
		Exit Interview time:	12:00 Date: 07/24/2008
LOCATION AND ADDRESS OF SITE			
2	Lauren's Bay Villas, Phase 2 SW 44th and Manamaker Topeka, KS		

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient):	Doug Whitman
Name of Authorized Official (40 CFR 122.22):	
Inspection Date:	07/24/2008
Start Construction Date:	10/01/2007
Estimated Completion Construction Date:	09/01/2008
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed):	Tributary to West Branch of Shunganunga Creek
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan:	11:00
Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	

PERMIT COVERAGE	Notes	Citation Reference**	State Citation Reference***	R C A*	No. of Deficiencies	Dollar Amount	Total
3 Operator unpermitted for _____ months (# months unpermitted equals number of violations)		CWA 301	KAR 28-16-153		X	\$500.00	=
SWPPP REVIEW							
4 SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	KSGP Part 7		X	\$5,000.00	=
5 SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	KSGP Part 7		X	\$75.00	=
6 SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents.		CGP 3.1.B	KSGP Part 7.2.7		X	\$250.00	=
7 SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control		CGP 3.3.A	KSGP Part 7.1	1	X	\$500.00	= \$500
8 SWPPP does not have site description, as follows:	Site map does not show areas of disturbance or equipment storage areas.						
A Nature of activity in description		CGP 3.3.B.1	KSGP Part 7.2.1		X	\$100.00	=
B Intended sequence of major activities		CGP 3.3.B.2	KSGP Part 7.2.1		X	\$100.00	=
C Total disturbed acreage		CGP 3.3.B.3	KSPG Part 7.2.1		X	\$100.00	=
D General location map		CGP 3.3.B.4	KSPG Part 7.2.1		X	\$100.00	=
E Site map		CGP 3.3.C	KSPG Part 7.2.1		X	\$500.00	=
F Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 8F as 1 violation).		CGP 3.3.C.1-8	KSPG Part 7.2.1		2	X	\$50.00
G Location/description industrial activities, like concrete or asphalt batch plants	CGP 3.3.D	N/A					
9 SWPPP does not:							
A Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A	KSGP Part 7.2.2		X	\$750.00	=
B Describe sequence for implementation		CGP 3.4.A	KSPG Part 7.2.2		X	\$250.00	=
C Detail operator(s) responsible for implementation		CGP 3.4.A	N/A				

10	SWPPP does not describe interim stabilization practices		CGP 3.4.B	KSGP Parts 7.2.3 & 7.2.4			X	\$250.00	=	
11	SWPPP does not describe permanent stabilization practices		CGP 3.4.B	KSGP Parts 7.2.3 & 7.2.4			X	\$250.00	=	
12	SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	KSGP Part 7.2.2			X	\$250.00	=	
13	Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)		CGP 3.4.C.1-3	N/A						
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		CGP 3.4.D	KSGP Part 7.2.4			X	\$500.00	=	
15	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed		CGP 3.4.E	KSGP Part 7.2.4			X	\$500.00	=	
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		CGP 3.4.F	KSGP Part 7.2.4			X	\$500.00	=	
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	KSGP Part 7.2.7			X	\$500.00	=	
18	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials		CGP 3.4.H	KSGP Part 7.2.7			X	\$250.00	=	
19	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials		CGP 3.4.I	N/A						
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CGP 3.5	N/A						
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5	N/A						
22	Endangered Species Act documentation is not in SWPPP		CGP 3.7	KSGP Part 7.2.1			X	\$500.00	=	
23	Historic Properties (Reserved)									
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		CGP 3.8	N/A						
25	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)		CGP 3.9	N/A						
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		CGP 3.9	N/A						
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		CGP 3.10.G	KSGP Part 9.1			X	\$500.00	=	
28	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under under 28 as 1 violation)		CGP 3.11.C	KSGP Part 7.1		1	X	\$50.00	=	\$50
29	Copy of SWPPP not retained on site		CGP 3.12.A	KSGP Part 7.1			X	\$500.00	=	
	A SWPPP not made available upon request		CGP 3.12.C	KSGP Part 7.1			X	\$500.00	=	
30	SWPPP not signed/certified		CGP 3.12.D	KSGP Part 9.5		1	X	\$500.00	=	\$500
INSPECTIONS										
31	Inspections not performed and documented either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).		CGP 3.10.A, 3.10.B	KSGP Part 7.2.8			X	\$250.00	=	
	No inspections conducted and documented (if True, then leave elements 32-39 blank)								True or False	

	Number of Inspections expected if performed every 7 days:								
	Number of Inspections expected if performed bi-weekly:								
	If known, number of days of rainfall of >0.5"								
32	Inspections not conducted by qualified personnel		CGP 3.10.D	N/A				\$50.00	=
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 3.10.E	KSGP Part 7.2.8			X	\$50.00	=
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E	KSGP Part 7.2.8			X	\$50.00	=
35	Discharge locations are not observed and inspected		CGP 3.10.E	KSGP Part 7.2.8			X	\$50.00	=
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	KSGP VII p.9			X	\$50.00	=
37	Entrance/exit not inspected for off-site tracking		CGP 3.10.E	N/A					
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)		CGP 3.10.G	KSGP Part 7.2.8			X	\$50.00	=
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G	KSGP Part 7.2.8			X	\$50.00	=
AVAILABILITY OF RECORDS									
40	Sign/notice not posted		CGP 3.12.B	N/A					
	A Does not contain copy of complete NOI		CGP 3.12.B	KSGP Parts 5 & 9.1			X	\$50.00	=
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign		CGP 3.12.B	N/A					
BEST MANAGEMENT PRACTICES									
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water		CGP 3.13.F	KSGP Parts 7 & 7.2.4			X	\$500.00	=
42	Control measures are not properly:	Failure to install j-hooks in accordance with conditions of permit; failure to install silt fence according to SWPPP; failure to maintain silt fence that was installed.							
	A Selected, installed and maintained		CGP 3.13.A	KSGP Parts 7.1 & 7.2.1		3	X	\$500.00	= \$1,500
	B Maintenance not performed prior to next anticipated storm event (count each failure to select, install, maintain each BMP as one violation)		CGP 3.6.B	KSGP Parts 7.1 & 7.2.1			X	\$250.00	=
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 3.13.B	N/A					
44	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)		CGP 3.13.C	KSGP Part 7.2.8			X	\$500.00	=
45	Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation		CGP 3.13.D	KSGP Part 7.2.3		1	X	\$500.00	= \$500
	*Exceptions:			N/A					
	(a) Snow or frozen ground conditions			N/A					
	(b) Activities will be resumed within 14 days			N/A					
	(c) Arid or Semi-arid areas (<20 inches per			N/A					
46	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained		CGP 3.13.E.1	KSGP Part 7.2.5			X	\$1,000.00	=
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope		CGP 3.13.E.2	KSGP Part 7.2.5			X	\$1,000.00	=
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	KSGP Part 7.2.5			X	\$500.00	=

47	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)		CGP 3.13.E.3	KSGP Parts 7.1, 7.2.3 & 7.2.4			X	\$500.00	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C	KSGP Part 7.2.5			X	\$500.00	
SMALL BUSINESS EVALUATION									
48	Is the Owner/Operator a Small Business? A <i>small business</i> is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.								
								Total Expedited Settlement:	\$3,150
<p>* Requires Corrective Action ** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm *** Kansas Water Pollution Control General Permit and Authorization to Discharge - Issued by KDHE on January 2, 2007 - http://www.kdheks.gov/stormwater/# CURRENT - Effective</p>									

IN THE MATTER OF Heartland Midwest, LLC, Respondent
Docket No. CWA-07-2009-0075

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

R. Lee Chapman, Member
Heartland Midwest, LLC
15795 S. Mahaffie Street, Suite 100
Olathe, Kansas 66062

Dated: 8/24/09



Kathy Robinson
Hearing Clerk, Region 7

附錄16、溢漏預防、控制及對策專案快速和解協定修正備忘錄



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

JAN 15 2010

MEMORANDUM

SUBJECT: Approval of Adjustments to SPCC Expedited Settlement Agreement Program

FROM: Mark Pollins, Director
Water Enforcement Division

TO: Samuel Coleman, Director
Superfund Division, Region 6

In response to your recent request on behalf of the SPCC enforcement staff in the Regions, I am approving the recommended modifications to the Expedited Settlement Agreement program. As a result of these changes, the penalty schedules used for the SPCC expedited program will rise by fifty percent, and the top end of the range of expedited penalties will increase from the present \$2,500 to \$5,000. These changes reflect inflation occurring since the program began in 1998, the compliance and enforcement program's growth and development over that period, and the closer coordination of available settlement positions under the expedited and traditional penalty policies. I also approve the minor, editorial changes you have requested in the attached penalty checklists. These changes are effective for all expedited offers of settlement occurring on or after November 16, 2009.

Please accept my thanks for the good work done by Bryant Smalley of your staff in leading this effort. I would also like to express my appreciation to Beau Smith, Joan Armstrong of Region 3 and Jane Nakad of Region 8, who contributed significantly to this project. You may contact me, or have your staff contact David Drelich, if we can be of further assistance.

Attachments

cc: Adam Kushner
Regional SPCC Enforcement Managers
Bryant Smalley, Region 6
Beau Smith, Region 6
Joan Armstrong, Region 3
Jane Nakad, Region 8

附錄17、溢漏預防、控制及對策專案快速和解協定範例

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 HAWTHORNE STREET, SAN FRANCISCO, CALIFORNIA 94105

EXPEDITED DISCHARGE SETTLEMENT AGREEMENT



DOCKET NO.: OPA-09-2007-0008

On: July 17, 2007

At: Marathon Packing Corporation
1000 Montague Ave
San Leandro, CA

Owned or Operated by: Marathon Packing Corporation
(Respondent)

Respondent discharged 3,130 gallons of oil in violation of Section 311(b)(3) of the Clean Water Act (the "Act"), as noted on the attached FINDINGS and ALLEGED CIVIL VIOLATIONS FORM (Findings), which is hereby incorporated by reference.

EPA finds that the Respondent is subject to the Act and has violated the Act by discharging a harmful quantity of oil, as further described by 40 CFR § 110.3, into navigable waters of the United States or adjacent shorelines. The Respondent admits to being subject to the Act and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Findings. Respondent does not contest the Findings, and waives any objections Respondent may have to EPA's jurisdiction.

EPA is authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and by 40 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Findings for a penalty of \$4,500.00. The Respondent consents to the assessment of this penalty.

This Expedited Settlement also is subject to the following terms and conditions: Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it has investigated the cause of the spill, has cleaned up the spill pursuant to federal requirements, has taken any required corrective actions that will prevent future spills, and has sent a certified check in the amount of \$4,500.00, payable to the "Environmental Protection Agency" to "U S Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251." Respondent has noted on the penalty payment check "Spill Fund - 311" and the document number of the settlement agreement.

This Expedited Settlement must be returned by certified mail to: OPA Enforcement Coordinator, U.S. Environmental Protection Agency, Region 9 (SFD-9-4), 75 Hawthorne Street, San Francisco, California 94105-3901. The certified check for payment must be sent by certified mail to: U.S. Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251.

After this Expedited Settlement becomes effective, EPA will take no further civil action against the Respondent for the violations of the Act described in the Findings. However, EPA does not waive any rights to take any enforcement action

for any other past, present, or future violations by the Respondent of the Act or of any other federal statute or regulations.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, 33 U.S.C. § 1321, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective after signature by the Regional Judicial Officer.

APPROVED BY EPA:

Date: _____
Keith Takata, Director
Superfund Division

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Date: _____
Signature

IT IS SO ORDERED:

Date: _____
Steven Jawgiel
Regional Judicial Officer

R9 REV. 06/06/2005



APR 10 1998

附錄18、美國環保署1998年環境補償計畫政策

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Final Supplemental Environmental Projects Policy

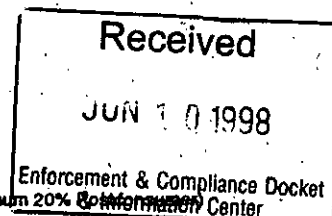
FROM: Steven A. Herman
Assistant Administrator

TO: Regional Administrators

I am pleased to issue the final Supplemental Environmental Projects (SEP) Policy, the product of almost three years of experience implementing and fine-tuning the 1995 Interim Revised SEP Policy. It is also the product of the cooperative effort of the SEP Workgroup, comprised of representatives of the Regions, various OECA offices, OGC and DOJ. This Policy is effective May 1, 1998, and supersedes the Interim SEP Policy.

Most of the changes made to the Interim SEP Policy are clarifications to the existing language. There are no radical changes and the basic structure and operation of the SEP Policy remains the same. The major changes to the SEP Policy include:

1. Community Input. The final SEP Policy contains a new section to encourage the use of community input in developing projects in appropriate cases and there is a new penalty mitigation factor for community input. We are preparing a public pamphlet that explains the Policy in simple terms to facilitate implementation of this new section.
2. Categories of Acceptable Projects. The categories of acceptable projects have remained largely the same, with some clarifications and a few substantive changes. There is now a new "other" category under which worthwhile projects that do not fit within any of the defined categories, but are otherwise consistent with all other provisions of the SEP Policy, may qualify as SEPs with advance OECA approval. The site assessment subcategory has been revised and renamed to "environmental quality assessments." The environmental management system subcategory has been eliminated.



3. Use of SEPS to Mitigate Stipulated Penalties. The final SEP Policy prohibits the use of SEPs to mitigate claims for stipulated penalties, but does indicate that in certain defined extraordinary circumstances, I may approve a deviation from this prohibition.
4. Penalty Calculation Methodology. The penalty calculation steps have been better defined and broken into five steps rather than three. A calculation worksheet, keyed to the text of the Policy, has been added. The penalty mitigation guidelines have not been substantively changed, only clarified.
5. Legal Guidelines. The legal guidelines have been revised to improve clarity and provide better guidance. The nexus legal guideline has been revised to make it easier to apply. The fifth legal guideline concerning appropriations has been revised and subdivided into four sections.

Questions regarding the final SEP Policy should be directed to Ann Kline (202-564-0119) in the Multimedia Enforcement Division.

Attachment

cc: (w/attachment)

OECA Office Directors
 Regional Counsels, Regions I-X
 Director, Office of Environmental Stewardship, Region I
 Director, Division of Enforcement and Compliance Assurance, Region II
 Director, Compliance Assurance and Enforcement Division, Region VI
 Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
 Regional Enforcement Coordinators, Regions I-X
 Chief, DOJ, EES

SEP Workgroup Members

David Hindin, Chair, EPTDD
 Leon Acierto, V
 Christopher Day, III
 Joe Boyle, V
 Lourdes Bufill, WED
 Becky Dolph, VII
 Karen Dworkin, DOJ, EES
 Gwen Fitz-Henley, IV
 Melanie Garvey, FFEO
 Mark Haag, DOJ, PSLs
 Tanya Hill, OGC
 Leslie Jones, OSRE
 Maureen Katz, DOJ, EES
 Amelia Katzen, I

Ann Kline, MED
 Gerard Kraus, MED
 Sylvia Liu, DOJ, PSLs
 Amy Miller, IX
 Peter Moore, MED
 Mike Northridge, OSRE
 Reginald Pallesen, V
 Rudy Perez, II
 Erv Pickell, AED
 JoAnn Semones, IX
 Efren Ordonez, VI
 Lawrence Wapensky, VIII

EPA SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY

Effective May 1, 1998

A. INTRODUCTION

1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) requires the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be part of the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, regulated entities would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. Penalties also encourage regulated entities to adopt pollution prevention and recycling techniques in order to minimize their pollutant discharges and reduce their potential liabilities.

Statutes administered by EPA generally contain penalty assessment criteria that a court or administrative law judge must consider in determining an appropriate penalty at trial or a hearing. In the settlement context, EPA generally follows these criteria in exercising its discretion to establish an appropriate settlement penalty. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor for EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP compared to the violator who does not agree to perform a SEP.

The Agency encourages the use of SEPs that are consistent with this Policy. SEPs may not be appropriate in settlement of all cases, but they are an important part of EPA's enforcement program. While penalties play an important role in environmental protection by deterring violations and creating a level playing field, SEPs can play an additional role in securing significant environmental or public health protection and improvements. SEPs may be particularly appropriate to further the objectives in the statutes EPA administers and to achieve other policy goals, including promoting pollution prevention and environmental justice.

2. Pollution Prevention and Environmental Justice

The Pollution Prevention Act of 1990 (42 U.S.C. § 13101 et seq., November 5, 1990) identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort ..." (42 U.S.C. §13103). Selection and evaluation of proposed SEPs should be conducted generally in accordance with this hierarchy of environmental management, i.e., SEPs involving pollution prevention techniques are preferred over other types of reduction or control strategies, and this can be reflected in the degree of consideration accorded to a defendant/respondent before calculation of the final monetary penalty.

Further, there is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population, i.e., low-income and/or minority populations, are disproportionately burdened by pollutant exposure. Emphasizing SEPs in communities where environmental justice concerns are present helps ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near, where the violations occur would be protected. Because environmental justice is not a specific technique or process but an overarching goal, it is not listed as a particular SEP category; but EPA encourages SEPs in communities where environmental justice may be an issue.

3. Using this Policy

In evaluating a proposed project to determine if it qualifies as a SEP and then determining how much penalty mitigation is appropriate, Agency enforcement and compliance personnel should use the following five-step process:

- (1) Ensure that the project meets the basic definition of a SEP. (Section B)
- (2) Ensure that all legal guidelines, including nexus, are satisfied. (Section C)
- (3) Ensure that the project fits within one (or more) of the designated categories of SEPs. (Section D)
- (4) Determine the appropriate amount of penalty mitigation. (Section E)
- (5) Ensure that the project satisfies all of the implementation and other criteria. (Sections F, G, H, I and J)

4. Applicability

This Policy revises and hereby supersedes the February 12, 1991 *Policy on the Use of Supplemental Environmental Projects in EPA Settlements* and the May 1995 *Interim Revised Supplemental Environmental Projects Policy*. This Policy applies to settlements of all civil judicial and administrative actions filed after the effective date of this Policy (May 1, 1998), and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the specific terms of a SEP.

This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers. It also may be used by EPA and the Department of Justice in reviewing proposed SEPs in settlement of citizen suits. This Policy also applies to federal agencies that are liable for the payment of civil penalties. Claims for stipulated penalties for violations of consent decrees or other settlement agreements may not be mitigated by the use of SEPs.¹

This is a settlement Policy and thus is not intended for use by EPA, defendants, respondents, courts or administrative law judges at a hearing or in a trial. Further, whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. Even though a project appears to satisfy all of the provisions of this Policy, EPA may decide, for one or more reasons, that a SEP is not appropriate (e.g., the cost of reviewing a SEP proposal is excessive, the oversight costs of the SEP may be too high, the defendant/respondent may not have the ability or reliability to complete the proposed SEP, or the deterrent value of the higher penalty amount outweighs the benefits of the proposed SEP).

This Policy establishes a framework for EPA to use in exercising its enforcement discretion in determining appropriate settlements. In some cases, application of this Policy may not be appropriate, in whole or part. In such cases, the litigation team may, with the advance approval of Headquarters, use an alternative or modified approach.

¹ In extraordinary circumstances, the Assistant Administrator may consider mitigating potential stipulated penalty liability using SEPs where: (1) despite the circumstances giving rise to the claim for stipulated penalties, the violator has the ability and intention to comply with a new settlement agreement obligation to implement the SEP; (2) there is no negative impact on the deterrent purposes of stipulated penalties; and (3) the settlement agreement establishes a range for stipulated penalty liability for the violations at issue. For example, if a respondent/defendant has violated a settlement agreement which provides that a violation of X requirement subjects it to a stipulated penalty between \$1,000 and \$5,000, then the Agency may consider SEPs in determining the specific penalty amount that should be demanded.

B. DEFINITION AND KEY CHARACTERISTICS OF A SEP

Supplemental environmental projects are defined as **environmentally beneficial projects** which a defendant/respondent agrees to undertake **in settlement of an enforcement action**, but which the defendant/respondent is **not otherwise legally required to perform**. The three bolded key parts of this definition are elaborated below.

"Environmentally beneficial" means a SEP must improve, protect, or reduce risks to public health, or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

"In settlement of an enforcement action" means: 1) EPA has the opportunity to help shape the scope of the project before it is implemented; and 2) the project is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).²

"Not otherwise legally required to perform means" the project or activity is not required by any federal, state or local law or regulation. Further, SEPs cannot include actions which the defendant/respondent is likely to be required to perform:

- (a) as injunctive relief³ in the instant case;
- (b) as injunctive relief in another legal action EPA, or another regulatory agency could bring;
- (c) as part of an existing settlement or order in another legal action; or,
- (d) by a state or local requirement.

SEPs may include activities which the defendant/respondent will become legally obligated to undertake two or more years in the future, if the project will result in the facility coming into compliance earlier than the deadline. Such "accelerated compliance" projects are not allowable,

² Since the primary purpose of this Policy is to obtain environmental or public health benefits that may not have occurred "but for" the settlement, projects which the defendant has previously committed to perform or have been started before the Agency has identified a violation are not eligible as SEPs. Projects which have been committed to or started before the identification of a violation may mitigate the penalty in other ways. Depending on the specifics, if a regulated entity had initiated environmentally beneficial projects before the enforcement process commenced, the initial penalty calculation could be lower due to the absence of recalcitrance, no history of other violations, good faith efforts, less severity of the violations, or a shorter duration of the violations.

³ The statutes EPA administers generally provide a court with broad authority to order a defendant to cease its violations, take necessary steps to prevent future violations, and to remediate any harm caused by the violations. If a court is likely to order a defendant to perform a specific activity in a particular case, such an activity does not qualify as a SEP.

however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the defendant/respondent for early compliance.

Also, the performance of a SEP reduces neither the stringency nor timeliness requirements of Federal environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

C. LEGAL GUIDELINES

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within EPA's authority and consistent with all statutory and Constitutional requirements may be a complex task. Accordingly, this Policy uses five legal guidelines to ensure that our SEPs are within the Agency's and a federal court's authority, and do not run afoul of any Constitutional or statutory requirements.⁴

1. A project cannot be inconsistent with any provision of the underlying statutes.
2. All projects must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if:
 - a. the project is designed to reduce the likelihood that similar violations will occur in the future; or
 - b. the project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or
 - c. the project reduces the overall risk to public health or the environment potentially affected by the violation at issue.

Nexus is easier to establish if the primary impact of the project is at the site where the alleged violation occurred or at a different site in the same ecosystem or within the immediate geographic⁵ area. Such SEPs may have sufficient nexus even if the SEP

⁴ These legal guidelines are based on federal law as it applies to EPA; States may have more or less flexibility in the use of SEPs depending on their laws.

⁵ The immediate geographic area will generally be the area within a 50 mile radius of the site on which the violations occurred. Ecosystem or geographic proximity is not by itself a sufficient basis for nexus; a project must always satisfy subparagraph a, b, or c in the definition of nexus. In some cases, a

addresses a different pollutant in a different medium. In limited cases, nexus may exist even though a project will involve activities outside of the United States.⁶ The cost of a project is not relevant to whether there is adequate nexus.

3. EPA may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. Nor may EPA retain authority to manage or administer the SEP. EPA may, of course, perform oversight to ensure that a project is implemented pursuant to the provisions of the settlement and have legal recourse if the SEP is not adequately performed.

4. The type and scope of each project are defined in the signed settlement agreement. This means the "what, where and when" of a project are defined by the settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be defined later (after EPA or the Department of Justice signs the settlement agreement) are not allowed.

5. a. A project cannot be used to satisfy EPA's statutory obligation or another federal agency's obligation to perform a particular activity. Conversely, if a federal statute prohibits the expenditure of federal resources on a particular activity, EPA cannot consider projects that would appear to circumvent that prohibition

b. A project may not provide EPA or any federal agency with additional resources to perform a particular activity for which Congress has specifically appropriated funds. A project may not provide EPA with additional resources to perform a particular activity for which Congress has earmarked funds in an appropriations committee report.⁷ Further, a project cannot be used to satisfy EPA's statutory or earmark obligation, or another federal agency's statutory obligation, to spend funds on a particular activity. A project, however, may be related to a particular activity for which Congress has specifically appropriated or earmarked funds.

c. A project may not provide additional resources to support specific activities performed by EPA employees or EPA contractors. For example, if EPA has developed a brochure to help a segment of the regulated community comply with

project may be performed at a facility or site not owned by the defendant/respondent.

⁶ All projects which would include activities outside the U.S. must be approved in advance by Headquarters and/or the Department of Justice. See section J.

⁷ Earmarks are instructions for changes to EPA's discretionary budget authority made by appropriations committee in committee reports that the Agency generally honors as a matter of policy.

environmental requirements, a project may not directly, or indirectly, provide additional resources to revise, copy or distribute the brochure.

d. A project may not provide a federal grantee with additional funds to perform a specific task identified within an assistance agreement.

D. CATEGORIES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

EPA has identified seven specific categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category plus all the other requirements established in this Policy.

1. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/ tissue samples, medical treatment and rehabilitation therapy.

Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.

2. Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through "source reduction," i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment.

merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water or other materials. This is consistent with the Pollution Prevention Act of 1990 and the Administrator's "Pollution Prevention Policy Statement: New Directions for Environmental Protection," dated June 15, 1993

3. Pollution Reduction

If the pollutant or waste stream already has been generated or released, a pollution reduction approach -- which employs recycling, treatment, containment or disposal techniques -- may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. Environmental Restoration and Protection

An environmental restoration and protection project is one which enhances the condition of the ecosystem or immediate geographic area adversely affected.⁸ These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. This category also includes any project which protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem.⁹ Examples of such projects include: restoration of a wetland in the same ecosystem along the same avian flyway in which the facility is located; or purchase and management of a watershed area by the defendant/respondent to protect a drinking water supply where the violation (e.g., a reporting violation) did not directly damage the watershed but potentially could lead to damage due to unreported discharges. This category also includes projects which provide for the protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation).

In some projects where a defendant/respondent has agreed to restore and then protect certain lands, the question arises as to whether the project may include the creation or

⁸ If EPA lacks authority to require repair of the damage caused by the violation, then repair itself may constitute a SEP.

⁹ Simply preventing new discharges into the ecosystem, as opposed to taking affirmative action directly related to preserving existing conditions at a property, would not constitute a restoration and protection project, but may fit into another category such as pollution prevention or pollution reduction.

maintenance of certain recreational improvements, such as hiking and bicycle trails. The costs associated with such recreational improvements may be included in the total SEP cost provided they do not impair the environmentally beneficial purposes of the project and they constitute only an incidental portion of the total resources spent on the project.

In some projects where the parties intend that the property be protected so that the ecological and pollution reduction purposes of the land are maintained in perpetuity, the defendant/respondent may sell or transfer the land to another party with the established resources and expertise to perform this function, such as a state park authority. In some cases, the U.S. Fish and Wildlife Service or the National Park Service may be able to perform this function.¹⁰

With regard to man-made environments, such projects may involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as soils, asbestos and lead paint, which are a continuing source of releases and/or threat to individuals.

5. Assessments and Audits

Assessments and audits, if they are not otherwise available as injunctive relief, are potential SEPs under this category. There are three types of projects in this category: a. pollution prevention assessments; b. environmental quality assessments; and c. compliance audits. These assessments and audits are only acceptable as SEPs when the defendant/respondent agrees to provide EPA with a copy of the report. The results may be made available to the public, except to the extent they constitute confidential business information pursuant to 40 CFR Part 2, Subpart B.

a. Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations. Pollution prevention assessments are acceptable as SEPs without an implementation commitment by the defendant/respondent. Implementation is not required because drafting implementation requirements before the results of an assessment are known is difficult. Further, many of the implementation recommendations may constitute activities that are in the defendant/respondent's own economic interest.

b. Environmental quality assessments are investigations of: the condition of the environment at a site not owned or operated by the defendant/respondent; the environment impacted by a site or a facility regardless of whether the site or facility is owned or operated by

¹⁰ These federal agencies have explicit statutory authority to accept gifts of land and money in certain circumstances. All projects with these federal agencies must be reviewed and approved in advance by legal counsel in the agency, usually the Solicitor's Office in the Department of the Interior.

the defendant/respondent; or threats to human health or the environment relating to a site or a facility regardless of whether the site or facility is owned or operated by the defendant/respondent. These include, but are not limited to: investigations of levels or sources of contamination in any environmental media at a site; or monitoring of the air, soil, or water quality surrounding a site or facility. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken. Expanded sampling or monitoring by a defendant/respondent of its own emissions or operations does not qualify as a SEP to the extent it is ordinarily available as injunctive relief.

Environmental quality assessment SEPs may not be performed on the following types of sites: sites that are on the National Priority List under CERCLA § 105, 40 CFR Part 300, Appendix B; sites that would qualify for an EPA removal action pursuant to CERCLA §104(a) and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.415; and sites for which the defendant/respondent or another party would likely be ordered to perform a remediation activity pursuant to CERCLA §106, RCRA §7003, RCRA 3008(h), CWA § 311, or another federal law.

c. Environmental compliance audits are independent evaluations of a defendant/respondent's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation since persons are required to achieve and maintain compliance with environmental requirements. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business or small community.^{11 12}

6. Environmental Compliance Promotion

An environmental compliance promotion project provides training or technical support to other members of the regulated community to: 1) identify, achieve and maintain compliance with applicable statutory and regulatory requirements or 2) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. For these types of projects, the defendant/respondent may lack the experience, knowledge or ability to implement the project itself, and, if so, the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project. Acceptable

¹¹ For purposes of this Policy, a small business is owned by a person or another entity that employs 100 or fewer individuals. Small businesses could be individuals, privately held corporations, farmers, landowners, partnerships and others. A small community is one comprised of fewer than 2,500 persons.

¹² Since most large companies routinely conduct compliance audits, to mitigate penalties for such audits would reward violators for performing an activity that most companies already do. In contrast, these audits are not commonly done by small businesses, perhaps because such audits may be too expensive.

projects may include, for example, producing a seminar directly related to correcting widespread or prevalent violations within the defendant/ respondent's economic sector.

Environmental compliance promotion SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements which were violated and where EPA has reason to believe that compliance in the sector would be significantly advanced by the proposed project. For example, if the alleged violations involved Clean Water Act pretreatment violations, the compliance promotion SEP must be directed at ensuring compliance with pretreatment requirements. Environmental compliance promotion SEPs are subject to special approval requirements per Section J below.

7. Emergency Planning and Preparedness

An emergency planning and preparedness project provides assistance -- such as computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training -- to a responsible state or local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

EPCRA requires regulated sources to provide information on chemical production, storage and use to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and Local Fire Departments (LFDs). This enables states and local communities to plan for and respond effectively to chemical accidents and inform potentially affected citizens of the risks posed by chemicals present in their communities, thereby enabling them to protect the environment or ecosystems which could be damaged by an accident. Failure to comply with EPCRA impairs the ability of states and local communities to meet their obligations and places emergency response personnel, the public and the environment at risk from a chemical release.

Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the same emergency planning district or state affected by the violations and EPA has not previously provided the entity with financial assistance for the same purposes as the proposed SEP. Further, this type of SEP is allowable only when the SEP involves non-cash assistance and there are violations of EPCRA, or reporting violations under CERCLA § 103, or CAA § 112(r), or violations of other emergency planning, spill or release requirements alleged in the complaint.

8. Other Types of Projects

Projects determined by the case team to have environmental merit which do not fit within at least one of the seven categories above but that are otherwise fully consistent with all other

provisions of this Policy, may be accepted with the advance approval of the Office of Enforcement and Compliance Assurance.

9. Projects Which Are Not Acceptable as SEPs

The following are examples of the types of projects that are not allowable as SEPs:

- a. General public educational or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, promoting recycling in a community;
- b. Contributions to environmental research at a college or university;
- c. Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to a non-profit, public interest, environmental, or other charitable organization, or donating playground equipment;
- d. Studies or assessments without a requirement to address the problems identified in the study (except as provided for in § D.5 above);
- e. Projects which the defendant/respondent will undertake, in whole or part, with low-interest federal loans, federal contracts, federal grants, or other forms of federal financial assistance or non-financial assistance (e.g., loan guarantees).

E. CALCULATION OF THE FINAL PENALTY

Substantial penalties are an important part of any settlement for legal and policy reasons. Without penalties there would be no deterrence, as regulated entities would have little incentive to comply. Additionally, penalties are necessary as a matter of fairness to those regulated entities that make the necessary expenditures to comply on time: violators should not be allowed to obtain an economic advantage over their competitors who complied.

As a general rule, the net costs to be incurred by a violator in performing a SEP may be considered as one factor in determining an appropriate settlement amount. **In settlements in which defendant/respondents commit to conduct a SEP, the final settlement penalty must equal or exceed either: a) the economic benefit of noncompliance plus 10 percent of the gravity component; or b) 25 percent of the gravity component only; whichever is greater.**

Calculating the final penalty in a settlement which includes a SEP is a five step process. Each of the five steps is explained below. The five steps are also summarized in the penalty calculation worksheet attached to this Policy.

Step 1: Settlement Amount Without a SEP

a. The applicable EPA penalty policy is used to calculate the economic benefit of noncompliance.

b. The applicable EPA penalty policy is used to calculate the gravity component of the penalty. The gravity component is all of the penalty other than the identifiable economic benefit amount, after gravity has been adjusted by all other factors in the penalty policy (e.g., audits, good faith, litigation considerations), except for the SEP.

c. The amounts in steps 1.a and b are added. This sum is the minimum amount that would be necessary to settle the case without a SEP.

Step 2: Minimum Penalty Amount With a SEP

The minimum penalty amount must equal or exceed the economic benefit of noncompliance plus 10 percent of the gravity component, or 25 percent of the gravity component only, whichever is greater. The minimum penalty amount is calculated as follows:

- a. Calculate 10 percent of gravity (multiply amount in step 1.b by 0.1).
- b. Add economic benefit (amount in step 1.a) to amount in step 2.a.
- c. Calculate 25 percent of gravity (multiply amount in step 1.b by 0.25).
- d. Identify the minimum penalty amount: the greater of step 2.c or step 2.b.¹³

Step 3. Calculate the SEP Cost

The net present after-tax cost of the SEP, hereinafter called the "SEP COST," is the maximum amount that EPA may take into consideration in determining an appropriate penalty mitigation for performance of a SEP. In order to facilitate evaluation of the SEP COST of a proposed project, the Agency has developed a computer model called PROJECT.¹⁴ There are three types of costs that may be associated with performance of a SEP (which are entered into the PROJECT model): capital costs (e.g., equipment, buildings); one-time nondepreciable costs (e.g., removing contaminated materials, purchasing land, developing a compliance promotion

¹³ Pursuant to the February 1995 Revised Interim Clean Water Act Settlement Penalty Policy, section V, a smaller minimum penalty amount may be allowed for a municipality.

¹⁴ A copy of the PROJECT computer program software and PROJECT User's Manual may be purchased by calling that National Technology Information Service at (800) 553-6847, and asking for Document #PB 98-500408GEI, or they may be downloaded from the World Wide Web at "<http://www.epa.gov/occa/models/>"

seminar); and annual operation costs and savings (e.g., labor, chemicals, water, power, raw materials).¹⁵

To use PROJECT, the Agency needs reliable estimates of the costs associated with a defendant/respondent's performance of a SEP, as well as any savings due to such factors as energy efficiency gains, reduced materials costs, reduced waste disposal costs, or increases in productivity. For example, if the annual expenditures in labor and materials of operating a new waste recycling process is \$100,000 per year, but the new process reduces existing hazardous waste disposal expenditures by \$30,000 per year, the net cost of \$70,000 is entered into the PROJECT model (variable 4).

In order to run the PROJECT model properly (i.e., to produce a reasonable estimate of the net present after-tax cost of the project), the number of years that annual operation costs or savings will be expended in performing the SEP must be specified. At a minimum, the defendant/respondent must be required to implement the project for the same number of years used in the PROJECT model calculation. (For example, if the settlement agreement requires the defendant/respondent to operate the SEP equipment for two years, two years should be entered as the input for number of years of annual expense in the PROJECT model.) If certain costs or savings appear speculative, they should not be entered into the PROJECT model. The PROJECT model is the primary method to determine the SEP COST for purposes of negotiating settlements.¹⁶

EPA does not offer tax advice on whether a regulated entity may deduct SEP expenditures from its income taxes. If a defendant/respondent states that it will not deduct the cost of a SEP from its taxes and it is willing to commit to this in the settlement document, and provide the Agency with certification upon completion of the SEP that it has not deducted the SEP expenditures, the PROJECT model calculation should be adjusted to calculate the SEP Cost without reductions for taxes. This is a simple adjustment to the PROJECT model: just enter a zero for variable 7, the marginal tax rate. If a business is not willing to make this commitment,

¹⁵ The PROJECT calculated SEP Cost is a reasonable estimate, and not an exact after-tax calculation. PROJECT does not evaluate the potential for market benefits which may accrue with the performance of a SEP (e.g., increased sales of a product, improved corporate public image, or improved employee morale). Nor does it consider costs imposed on the government, such as the cost to the Agency for oversight of the SEP, or the burden of a lengthy negotiation with a defendant/respondent who does not propose a SEP until late in the settlement process; such factors may be considered in determining a mitigation percentage rather than in calculating after-tax cost.

¹⁶ See PROJECT User's Manual, January 1995. If the PROJECT model appears inappropriate to a particular fact situation, EPA Headquarters should be consulted to identify an alternative approach. For example, PROJECT does not readily calculate the cost of an accelerated compliance SEP. The cost of such a SEP is only the additional cost associated with doing the project early (ahead of the regulatory requirement) and it needs to be calculated in a slightly different manner. Please consult with the Office Of Regulatory Enforcement for directions on how to calculate the costs of such projects.

the marginal tax rate in variable 7 should not be set to zero; rather the default settings (or a more precise estimate of the business' marginal tax rates) should be used in variable 7.

If the PROJECT model reveals that a project has a negative cost during the period of performance of the SEP, this means that it represents a positive cash flow to the defendant/respondent and is a profitable project. Such a project is generally not acceptable as a SEP. If a project generates a profit, a defendant/respondent should, and probably will, based on its own economic interests, implement the project. While EPA encourages regulated entities to undertake environmentally beneficial projects that are economically profitable, EPA does not believe violators should receive a bonus in the form of penalty mitigation to undertake such projects as part of an enforcement action. EPA does not offer subsidies to complying companies to undertake profitable environmentally beneficial projects and it would thus be inequitable and perverse to provide such subsidies only to violators. In addition, the primary goal of SEPs is to secure a favorable environmental or public health outcome which would not have occurred but for the enforcement case settlement. To allow SEP penalty mitigation for profitable projects would thwart this goal.¹⁷

Step 4: Determine the SEP Mitigation Percentage and then the Mitigation Amount

Step 4.a: Mitigation Percentage. After the SEP COST has been calculated, EPA should determine what percentage of that cost may be applied as mitigation against the amount EPA would settle for but for the SEP. The quality of the SEP should be examined as to whether and how effectively it achieves each of the following six factors listed below. (The factors are not listed in priority order.)

- Benefits to the Public or Environment at Large. While all SEPs benefit public health or the environment, SEPs which perform well on this factor will result in significant and quantifiable reduction in discharges of pollutants to the environment and the reduction in risk to the general public. SEPs also will perform well on this factor to the extent they result in significant and, to the extent possible, measurable progress in protecting and restoring ecosystems (including wetlands and endangered species habitats).
- Innovativeness. SEPs which perform well on this factor will further the development, implementation, or dissemination of innovative processes, technologies, or methods which more effectively: reduce the generation, release or disposal of pollutants; conserve natural resources; restore and protect ecosystems; protect endangered species; or promote compliance. This includes "technology forcing" techniques which may establish new regulatory "benchmarks."

¹⁷ The penalty mitigation guidelines provide that the amount of mitigation should not exceed the net cost of the project. To provide penalty mitigation for profitable projects would be providing a credit in excess of net costs.

- Environmental Justice. SEPs which perform well on this factor will mitigate damage or reduce risk to minority or low income populations which may have been disproportionately exposed to pollution or are at environmental risk.
- Community Input. SEPs which perform well on this factor will have been developed taking into consideration input received from the affected community. No credit should be given for this factor if the defendant/respondent did not actively participate in soliciting and incorporating public input into the SEP.
- Multimedia Impacts. SEPs which perform well on this factor will reduce emissions to more than one medium.
- Pollution Prevention. SEPs which perform well on this factor will develop and implement pollution prevention techniques and practices.

The better the performance of the SEP under each of these factors, the higher the appropriate mitigation percentage. The percent of penalty mitigation is within EPA's discretion; there is no presumption as to the correct percentage of mitigation. **The mitigation percentage should not exceed 80 percent of the SEP COST, with two exceptions:**

- (1) For small businesses, government agencies or entities, and non-profit organizations, this mitigation percentage of the SEP COST may be set as high as 100 percent if the defendant/respondent can demonstrate the project is of outstanding quality.
- (2) For any defendant/respondent, if the SEP implements pollution prevention, the mitigation percentage of the SEP COST may be set as high as 100 percent if the defendant/respondent can demonstrate that the project is of outstanding quality.

If the government must allocate significant resources to monitoring and reviewing the implementation of a project, a lower mitigation percentage of the SEP COST may be appropriate.

In administrative enforcement actions in which there is a statutory limit (commonly called "caps") on the total maximum penalty that may be sought in a single action, the cash penalty obtained plus the amount of penalty mitigation credit due to the SEPs shall not exceed the limit.

Step 4.b: SEP Mitigation Amount. The SEP COST (calculated pursuant to step 3) is multiplied by the mitigation percentage (step 4.a) to obtain the SEP mitigation amount, which is the amount of the SEP cost that may be used in potentially mitigating the preliminary settlement penalty.

Step 5: Final Settlement Penalty

5.a. The SEP mitigation amount (step 4.b) is then subtracted from the settlement amount without a SEP (step 1.c).

5.b. The greater of step 2.d or step 5.a is the minimum final settlement penalty allowable based on the performance of the SEP.

F. LIABILITY FOR PERFORMANCE

Defendants/respondents (or their successors in interest) are responsible and legally liable for ensuring that a SEP is completed satisfactorily. A defendant/respondent may not transfer this responsibility and liability to someone else, commonly called a third party. Of course, a defendant/respondent may use contractors or consultants to assist it in implementing a SEP.¹⁸

G. OVERSIGHT AND DRAFTING ENFORCEABLE SEPS

The settlement agreement should accurately and completely describe the SEP. (See related legal guideline 4 in § C above.) It should describe the specific actions to be performed by the defendant/respondent and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to EPA. The defendant/respondent may utilize an outside auditor to verify performance, and the defendant/respondent should be made responsible for the cost of any such activities. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, acceptable to EPA, and evidencing completion of the SEP and documenting SEP expenditures, should be required.

To the extent feasible, defendant/respondents should be required to quantify the benefits associated with the project and provide EPA with a report setting forth how the benefits were measured or estimated. **The defendant/respondent should agree that whenever it publicizes a SEP or the results of a SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.**

The drafting of a SEP will vary depending on whether the SEP is being performed as part of an administrative or judicial enforcement action. SEPs with long implementation schedules (e.g., 18 months or longer), SEPs which require EPA review and comment on interim milestone activities, and other complex SEPs may not be appropriate in administrative enforcement

¹⁸ Non-profit organizations, such as universities and public interest groups, may function as contractors or consultants.

actions. Specific guidance on the proper drafting of settlement documents requiring SEPs is provided in a separate document.

H. FAILURE OF A SEP AND STIPULATED PENALTIES

If a SEP is not completed satisfactorily, the defendant/respondent should be required, pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. Stipulated penalty liability should be established for each of the scenarios set forth below as appropriate to the individual case.

1. Except as provided in paragraph 2 immediately below, if the SEP is not completed satisfactorily, a substantial stipulated penalty should be required. Generally, a substantial stipulated penalty is between 75 and 150 percent of the amount by which the settlement penalty was mitigated on account of the SEP.
2. If the SEP is not completed satisfactorily, but the defendant/respondent:
a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty is necessary.
3. If the SEP is satisfactorily completed, but the defendant/respondent spent less than 90 percent of the amount of money required to be spent for the project, a small stipulated penalty should be required. Generally, a small stipulated penalty is between 10 and 25 percent of the amount by which the settlement penalty was mitigated on account of the SEP.
4. If the SEP is satisfactorily completed, and the defendant/respondent spent at least 90 percent of the amount of money required to be spent for the project, no stipulated penalty is necessary.

The determinations of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP should be reserved to the sole discretion of EPA, especially in administrative actions in which there is often no formal dispute resolution process.

I. COMMUNITY INPUT

In appropriate cases, EPA should make special efforts to seek input on project proposals from the local community that may have been adversely impacted by the violations.¹⁹ Soliciting community input into the SEP development process can: result in SEPs that better address the needs of the impacted community; promote environmental justice; produce better community understanding of EPA enforcement; and improve relations between the community and the violating facility. Community involvement in SEPs may be most appropriate in cases where the range of possible SEPs is great and/or multiple SEPs may be negotiated.

When soliciting community input, the EPA negotiating team should follow the four guidelines set forth below.

1. Community input should be sought after EPA knows that the defendant/respondent is interested in doing a SEP and is willing to seek community input, approximately how much money may be available for doing a SEP, and that settlement of the enforcement action is likely. If these conditions are not satisfied, EPA will have very little information to provide communities regarding the scope of possible SEPs.
2. The EPA negotiating team should use both informal and formal methods to contact the local community. Informal methods may involve telephone calls to local community organizations, local churches, local elected leaders, local chambers of commerce, or other groups. Since EPA may not be able to identify all interested community groups, a public notice in a local newspaper may be appropriate.
3. To ensure that communities have a meaningful opportunity to participate, the EPA negotiating team should provide information to communities about what SEPs are, the opportunities and limits of such projects, the confidential nature of settlement negotiations, and the reasonable possibilities and limitations in the current enforcement action. This can be done by holding a public meeting, usually in the evening, at a local school or facility. The EPA negotiating team may wish to use community outreach experts at EPA or the Department of Justice in conducting this meeting. Sometimes the defendant/respondent may play an active role at this meeting and have its own experts assist in the process.
4. After the initial public meeting, the extent of community input and participation in the SEP development process will have to be determined. The amount of input and participation is likely to vary with each case. Except in extraordinary circumstances and with agreement of the parties, representatives of community groups will not participate.

¹⁹ In civil judicial cases, the Department of Justice already seeks public comment on lodged consent decrees through a Federal Register notice. See 28 CFR §50.7. In certain administrative enforcement actions, there are also public notice requirements that are followed before a settlement is finalized. See 40 CFR Part 22.

directly in the settlement negotiations. This restriction is necessary because of the confidential nature of settlement negotiations and because there is often no equitable process to determine which community group should directly participate in the negotiations.

J. EPA PROCEDURES

1. Approvals

The authority of a government official to approve a SEP is included in the official's authority to settle an enforcement case and thus, subject to the exceptions set forth here, no special approvals are required. The special approvals apply to both administrative and judicial enforcement actions as follows:

- a. Regions in which a SEP is proposed for implementation shall be given the opportunity to review and comment on the proposed SEP.
- b. In all cases in which a project may not fully comply with the provisions of this Policy (e.g., see footnote 1), the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance. If a project does not fully comply with all of the legal guidelines in this Policy, the request for approval must set forth a legal analysis supporting the conclusion that the project is within EPA's legal authority and is not otherwise inconsistent with law.
- c. In all cases in which a SEP would involve activities outside the United States, the SEP must be approved in advance by the Assistant Administrator and, for judicial cases only, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.
- d. In all cases in which an environmental compliance promotion project (section D.6) or a project in the "other" category (section D.8) is contemplated, the project must be approved in advance by the appropriate office in OECA, unless otherwise delegated.

2. Documentation and Confidentiality

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials (including the PROJECT model printout, where applicable) must be included as part of the case file. The explanation of the SEP should explain how the five steps set forth in Section A.3 above have been used to evaluate the project and include a description of the expected benefits associated with the SEP. The explanation must include a description by the enforcement attorney of how nexus and the other legal guidelines are satisfied.

Documentation and explanations of a particular SEP may constitute confidential settlement information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual Agency evaluations of proposed SEPs are confidential, privileged documents, this Policy is a public document and may be released to anyone upon request.

This Policy is primarily for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at variance to this Policy. This Policy does not create any rights, duties, or obligations, implied or otherwise, in any third parties.

ATTACHMENT

SEP PENALTY CALCULATION WORKSHEET

This worksheet should be used pursuant to section E of the Policy.

Specific Applications of this Worksheet in a Case Are Privileged, Confidential Documents.

STEP	AMOUNT
STEP 1: CALCULATION OF SETTLEMENT AMOUNT WITHOUT A SEP.	
1.a. BENEFIT: The applicable penalty policy is used to calculate the economic benefit of noncompliance.	\$
1.b. GRAVITY: The applicable penalty policy is used to calculate the gravity component of the penalty; this is gravity after all adjustments in the applicable policy.	\$
1.c. SETTLEMENT AMOUNT without a SEP: Sum of step 1.a plus 1.b.	\$
STEP 2: CALCULATION OF THE MINIMUM PENALTY AMOUNT WITH A SEP	
2.a. 10% of GRAVITY: Multiply amount in step 1.b by 0.10	\$
2.b. BENEFIT PLUS 10% of GRAVITY: Sum of step 1.a plus step 2.a.	\$
2.c. 25 % of GRAVITY: Multiply amount in step 1.b by 0.25.	\$
2.d. MINIMUM PENALTY AMOUNT: Select greater of step 2.c or step 2.b.	\$
STEP 3: CALCULATION OF THE SEP COST USING PROJECT MODEL.	\$
STEP 4: CALCULATION OF MITIGATION PERCENTAGE AND MITIGATION AMOUNT.	
4.a. SEP Cost Mitigation Percentage. Evaluate the project pursuant to the 6 mitigation factors in the Policy. Mitigation percentage should not exceed 80 % unless one of the exceptions applies.	%
4.b. SEP Mitigation Amount. Multiply step 3 by step 4.a.	\$
STEP 5: CALCULATION OF THE FINAL SETTLEMENT PENALTY.	
5.a. Subtract step 4.b from step 1.c	\$
5.b. Final Settlement Penalty: Select greater of step 2.d or step 5.a.	\$

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Supplemental Environmental Projects (SEPs) An Introduction to the SEP Policy

Presented by:
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

October 2014

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Organization – Where We Are?

Office of Enforcement and Compliance Assurance
Cynthia Giles, Assistant Administrator

Office of Civil Enforcement
Susan Shinkman, Director
Pam Mazakas, Deputy Director

Special Litigation and Projects Division
Andrew Stewart, Acting Director
Susan O'Keefe, Associate Director

Litigation and Cross Cutting Policy Branch
Caroline Makepeace, Chief

National SEP Policy Coordinators

Beth Cavalier
(202) 564-3271, cavalier.beth@epa.gov

Jeanne Dross
(202) 564-6595, duross.jeanne@epa.gov

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What is a SEP?

Part 1: SEP Basics

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What is a Supplemental Environmental Project (SEP)? EPA's 1998 SEP Policy Describes a SEP As:

- Occurs only in the context of an enforcement settlement;
- Provides environmental or public health benefits to the community or environment harmed or potentially harmed as a result of a violation of environmental law;
- Is undertaken voluntarily by violator;
- Goes beyond what violator is required to do under federal, state or local environmental requirements;
- Is not otherwise required by law.

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Unacceptable as SEPs

- Projects that are not complete, discrete actions with environmental or public health benefits.
- Projects, which, though beneficial to a community, are unrelated to environmental protection.
- Projects which the defendant/respondent, SEP recipient, or third party SEP implementer will undertake, in whole or part, with low-interest federal loans, federal contracts, federal grants, or other forms of federal financial assistance or non-financial assistance (e.g., loan guarantees).
- General public educational or public environmental awareness projects
- Contributions to environmental research at a college or university.
- Cash donations.
- Studies or assessments without a requirement to address problems identified in the study.
- Projects that are expected to become profitable to the defendant/respondent.
- Projects providing raw materials only.
- Projects for which completion depends on actions/contributions of individuals or entities who are neither party to the settlement nor hired by the defendant/respondent as a third party implementer. (i.e., where the defendant is not in a position to ensure completion of the SEP.)

Part 2: Legal Guidelines

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Legal Guidelines: Prosecutorial Discretion

- SEPs are one of several factors that EPA may consider under its general enforcement discretion in determining an appropriate settlement.
- A SEP may not be inconsistent with any provision of the underlying statute; and
- A SEP must advance at least one objective of the underlying statute.

Legal Guidelines: Nexus

- SEPs must have a “nexus”, or connection, with the underlying violation. Nexus can never be waived.
- Nexus ensures appropriate use of prosecutorial discretion.
- Nexus helps ensure compliance with the Miscellaneous Receipts Act (MRA). The MRA requires that funds due and owing the federal government be sent directly to the Treasury.
- Without nexus, it could appear that EPA is diverting penalty dollars that should otherwise go to the US Treasury.

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Legal Guidelines: Augmentation of Appropriations

- The SEP Policy provides that EPA may not manage, direct or control funds used for a SEP, nor may EPA retain authority to manage or administer a SEP.
 - EPA cannot require a defendant to perform a SEP, nor can EPA require a defendant to perform a specific SEP.
- SEPs may not be used to satisfy EPA’s statutory obligation to perform a particular activity.
- EPA may not use SEPs to provide the Agency with additional resources to perform a particular activity for which Congress has specifically appropriated funds. To do so would usurp Congress’s authority to determine how federal funds are expended.
- SEPs may not be used to perform, or add to, a project being implemented with federal financial assistance.

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Part 3: SEPs and Penalties

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SEPs and Penalties

- **SEPs ARE NOT PENALTIES**, nor are they accepted in lieu of penalties;
- SEPs are one of several factors that EPA may consider when determining an appropriate final settlement package consisting of penalty, injunctive relief, and SEP.
- EPA may mitigate a potential penalty for a violator's offer to perform a SEP.
- Penalties may be mitigated by up to 80% of the estimated cost of the SEP.

SEPs and Penalties – Minimum Penalty Requirement

- Settlements with a SEP must include a minimum penalty that is the greater of:
 - 25% of the gravity-based penalty, or
 - 10% of the gravity-based penalty + economic benefit.
- AA for OECA must approve a waiver from the SEP Policy for settlements with SEPS that do not collect the minimum penalty amount.



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Evaluating a SEP to Determine Appropriate Penalty Mitigation Amount

- SEP proposals should be reviewed carefully to determine the extent to which the SEP will:
 - provide significant, quantifiable benefits to public health or the environment;
 - mitigate damage or reduce risk to communities with environmental justice concerns;
 - reflect community input;
 - further the development and implementation, of innovative processes, technologies, or methods;
 - reduce emissions to more than one media;
 - develop and implement pollution prevention techniques and practices that reduce the generation of a pollutant.



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Examples of Community-Based SEPs

- ▶ Lead-Based Paint Abatement
- ▶ Asthma Screening and Treatment
- ▶ Diesel Emissions School Bus Retrofits
- ▶ School Chemical Clean-Outs
- ▶ Green Space Conservation
- ▶ Woodstove Changeouts
- ▶ Septic Tank Removal/Lateral Line Hook Ups
- ▶ Emergency Response Equipment
- ▶ Enhanced Facility Pollutant Controls
- ▶ Solar Panels to Power Drinking Water System for Tribal Community
- ▶ Fenceline Monitoring, where not already required

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Accessing SEP Information

- ▶ EPA's SEP Intranet Site:
 - ▶ <http://intranet.epa.gov/oecaftp/intranet/oeca/oc/slpd/sep.html>
 - General SEP Information;
 - Policy and Guidance Documents;
 - Resources for Case Teams;
 - SEP Highlights; and
 - Q&A's
- ▶ Enforcement Compliance History On-Line (ECHO) Database:
 - ▶ <http://www.epa-echo.gov/echo/>
 - Retrieve case reports for settlements that include a SEP.
 - Data available for FY 2001 – Present.

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附錄20、美國加州環保署水資源管理部環境補償計畫政策

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 to¹:
 - 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.

¹ 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.

附錄21、洛杉磯區水資源管理局環境補償計畫

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.

附錄22、加州中央谷地區水資源管理局環境補償案例一覽表

http://www.waterboards.ca.gov/centralvalley/water_issues/enforcement/index.shtml

(Revised 8 February 2013)

	Project Title, Proponent/Contact Information	SEP Funding Requested/Total Cost	Project Completion Date	Project Description
1	<i>North Laguna Creek Watershed Land Acquisition & Conservation Easements</i> Sacramento Valley Conservancy Aimee Rutledge www.sacramentovalleyconservancy.org 916-425-5879	\$2,590,000	8 to 12 months from the initiation	This project will add 158 acres (via conservation fee title purchase and by the recording of a conservation easement) to the Sacramento Prairie Vernal Pool Preserve, along N. Laguna Creek, and enhance vegetation along the creek, as appropriate. <ul style="list-style-type: none"> • Laguna Creek SEP, 27 KB, PDF • Laguna Creek Site Map, 76 KB, PDF • Laguna Creek SEP Budget, 27 KB, PDF
2	<i>Deer Creek/Cosumnes Watershed Land Acquisition & Conservation Easements</i> Sacramento Valley Conservancy Aimee Rutledge www.sacramentovalleyconservancy.org 916-425-5879	\$2,138,500	8 to 12 months from the initiation	This project would add 475 acres (via fee title purchase) to the Deer Creek Hills Preserve and would connect the Preserve to a significant portion of Deer Creek, as well as enhancing riparian vegetation along Deer Creek and controlling grazing access to Deer Creek. <ul style="list-style-type: none"> • Deer Creek\Preserve Site Map, 1.93 MB, PDF • Deer Creek SEP, 29 KB, PDF • Deer Creek SEP Budget, 15 KB, PDF
3	<i>Riparian Woodland and Riparian Brush Rabbit Flood Refugia Habitat Restoration</i> San Joaquin Valley River Partners www.riverpartners.org 209-521-1700	\$119,072 - \$1,155,992	Scalable - Up to 36 months from initiation	<ul style="list-style-type: none"> • San Joaquin River National Wildlife Refuge, 3.7 MB, PDF
4	<i>Eightmile Valley Sediment Reduction and Habitat Enhancement Project</i> West Lake Resource Conservation District 707-263-4180	\$164,975	Up to three months from initiation	<ul style="list-style-type: none"> • Eight Mile Valley SEP, 351 KB, PDF

	Project Title, Proponent/Contact Information	SEP Funding Requested/Total Cost	Project Completion Date	Project Description
5	<i>Cosumnes Floodplain Mitigation Bank (Bank)</i> Westervelt Ecological Services (916) 646-3544	Varies per unit	Immediate	<ul style="list-style-type: none"> • Cosumnes Floodplain Site Map, 1.31 MB, PDF • Cosumnes Floodplain Service Area, 835 KB, PDF • Cosumnes Floodplain SEP, 46 KB, PDF
6	<i>Land Cover Effects on Runoff and Non-Point Source Nitrogen Export in Residential Areas of Metropolitan Sacramento</i> UC Davis, Office of Research (530) 754-6151	\$128,562	Up to nineteen months from initiation	<ul style="list-style-type: none"> • Nutrient Export file, 194 KB, PDF
7	<i>Big Chico Creek Watershed Citizen Monitoring Program (The Stream Team)</i> California Urban Streams Alliance-The Stream Team 530 342-6620	\$75,000	Scalable - Up to 6 months from initiation	<ul style="list-style-type: none"> • Big Chico Creek SEP file, 194 KB, PDF
8	<i>The Adverse Outcome Pathway Characterization For Three Neurotoxic Pesticides And Their Mixture</i> UC Davis, Office of Research 530-754-8183	\$217,052	1 year	<ul style="list-style-type: none"> • Three Neurotoxic Pesticides SEP file, 1.79 MB, PDF
9	<i>Long Term Effect Assessment of Pesticide Mixtures on Aquatic Invertebrate Communities</i> UC Davis, Office of Research 530-752-3141	\$66,459	1 year	<ul style="list-style-type: none"> • Aquatic Invertebrate SEP file, 1.46 MB, PDF
10	<i>The Assessment of Wastewater Effluent Effects on Phytoplankton Carbon And Nitrogen Assimilation In The Sacramento – San Joaquin Delta</i>	\$227,293	1 year	<ul style="list-style-type: none"> • Wastewater Effluent Effects SEP file, 1.21 MB, PDF

	Project Title, Proponent/Contact Information	SEP Funding Requested/Total Cost	Project Completion Date	Project Description
	San Francisco State University 415-338-3746			
11	<i>Improving The Utility of Hyalella Azteca As a Tool For Monitoring And Management</i> University of California Berkeley 510-665-3421	\$229,661	1 year	<ul style="list-style-type: none"> • Hyalella Azteca SEP file, 182 KB, PDF