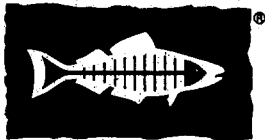


# Omission Accomplished:

The Lack of a Los Angeles  
Regional Water Board  
Enforcement Program,  
1992-1997



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# **Omission Accomplished:**

The Lack of a Los Angeles Regional Water Board  
Enforcement Program, 1992–1997

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## EXECUTIVE SUMMARY

In 1970, the California Legislature established the Los Angeles Regional Water Quality Control Board (Regional Board) as one of nine local implementing agencies for the State Water Resources Control Board (State Board). The Regional Board's jurisdiction covers nearly 4000 square miles and services more than 10 million people in Los Angeles and Ventura Counties. Within the Regional Board's jurisdiction, there are approximately 390 surface water body segments.

The mission of the Los Angeles Regional Board is "to preserve and enhance water quality in the Los Angeles Region for the benefit of present and future generations." In order to carry out this mission, the Regional Board characterizes part of its activities as (1) enforcing water quality laws, regulations and waste discharge requirements; and (2) implementing and enforcing local storm water control efforts.

Despite this, currently there are over 156 water bodies or sections of water bodies -- or 40% of the total number of water body segments under the jurisdiction of the Regional Board -- that are recognized as having impaired beneficial uses, including uses such as recreational water contact and aquatic life habitat. The sources of pollution contributing to the Bay's impairment vary greatly, from point sources to non-point sources, and from small septic treatment systems to large-scale sewage treatment plants.

In order to combat these problems, the Regional Board is given substantial authority to conduct enforcement activities against non-compliant businesses. Based on the results of this assessment, however, it is clear the Regional Board is not exercising this authority in a manner that prevents or deters violations of water quality laws.

The purpose of this general assessment was to determine the extent of the Los Angeles Regional Board's major enforcement efforts over the past six years, and to provide recommendations for improvements in those areas of special concern. The assessment included a general examination of:

- Past Regional Board enforcement actions, with an emphasis on penalty actions;
- Consistency of these enforcement actions with federal, state and local laws and policies; and
- The potential numbers of legal violations available for Regional Board enforcement response.

In particular, the assessment examines the extent of Regional Board enforcement actions and opportunities in the following four categories:

- (1) Spills of sewage, oil and hazardous substances;
- (2) Storm Water Permits for industrial activities;

- (3) Waste Discharge Requirements (WDRs) for Septic Systems in the City of Malibu;
- (4) Individual National Pollution Discharge Elimination System (NPDES) permits and WDRs for Dischargers.

Based on an extensive review of Regional Board files, Heal the Bay concludes that the Regional Board has failed in its implementation of an effective enforcement program. The inaction of the Regional Board to enforce the law undermines all laws that are designed to prevent millions of gallons of pollution from entering our waterways.

- **Only 14 penalty actions have occurred over the last six years, totaling a mere \$578,000 in fines.**
- **Over 99.5% of discharge violations do not result in the imposition of penalties. This is not aggressive enforcement and does not serve to deter future violations of the law.**
- **Penalties issued by the Board do not capture the economic benefit from non-compliance. In essence, it pays to pollute if you are doing business in Los Angeles and Ventura Counties.**
- **The Regional Board writes-off or substantially reduces penalties if a business simply agrees to comply with the law.**
- **Enforcement responses are slow and, when violations continue, the Regional Board rarely escalates its response.**

Spills of sewage, oil and chemicals can result in numerous types of problems for both humans, wildlife and aquatic species. Sewage spills can cause illness in those recreating in contaminated waters and the closure of popular beaches, thereby not only preventing recreational enjoyment, but impacting coastal economies. Oil and chemical spills can directly impact fish and plant life and can smother benthic communities that live in the sand and mud.

- **In the Los Angeles Region there have been 2,194 spills during the past six years: 464 sewage spills, 1,355 oil spills, and 375 chemical spills. At least 570 of these spills reached area waterways.**
- **At least 24.8 million gallons of sewage, 3.3 million gallons of oil and 240,000 gallons of chemicals have been spilled since 1992.**
- **The Regional Board has issued penalties in only four spill cases over the last six years.**

The Regional Board has numerous permitting options for industrial storm water discharges. Storm water discharges from these and other sources are the number one cause of pollution in Southern California coastal waters. Despite this fact, there are literally tens of thousands of potential violators in the Los Angeles Region alone. In particular:

- **Using only hazardous waste generator and treatment, storage and disposal facility lists, Heal the Bay estimates that there are potentially 1,558 facilities that have not filed an NOI for coverage under the GIP.**
- **UCLA estimates that there are potentially up to 34,000 facilities have not obtained permits for storm water discharges and are required to do so.**
- **The Regional Board is slow to act in determining non-compliance and in following up with violators. Nearly six years have passed since the state program came into effect, and yet most violators have not been contacted by the Regional Board. In addition, the Board still does not have a handle on the number of violators in the Region.**
- **Sometimes, years pass before violators are contacted for simple filing violations. For example, at a minimum 29% of those facilities with storm water permit coverage (728 facilities out of 2,474) failed to timely submit 1995/96 Annual Reports. 71% of those facilities (523 facilities) were late in reporting by more than one year.**
- **In the last six years, the Regional Board only issued one penalty for industrial storm water violations.**

All multi-family and commercial septic owners are required to obtain permits for these systems. The Regional Board has concluded that the use of septic systems can result in potential significant environmental impacts, including effects on water quality and nuisance odors. Because of these potential problems, the Regional Board “discourages the prolonged use of septic systems, except in isolated areas where connection to a wastewater connection system is not feasible and there is no threat to groundwater quality.” Despite this Regional Board “discouragement,” the use of septic systems has is widespread, particularly in areas like the City of Malibu, where permitting requirements are ignored.

- **Of the estimated 390 multi-family and commercial complexes likely using septic systems in the City of Malibu, only four multi-family complexes and seven businesses have permits for those systems. This data shows a potential non-compliance rate of 97% for both multi-family and commercial complexes.**



- **Endangered species have died as a result of the current septic system overflow management policy for the Malibu Lagoon area.**
- **Water quality at Surfrider Beach near Malibu Lagoon is consistently among the poorest in Santa Monica Bay's coastal waters.**
- **Enforcement for septic violations has been poor. Over the past six years, the Regional Board issued only one penalty for septic system violations.**

Industrial facilities or businesses that discharge into waters of the state must comply with NPDES and WDR permits issued by the Regional Board. A review of existing public records in order to assess permit violations revealed that:

- **Existing databases for these violations are poor. Examination of Discharge Monitoring Reports for several major facilities did not correlate with existing EPA databases for violations. Information is highly technical and not readily discernible by the general public.**
- **The Regional Board's Quarterly Report of Violations documented 394 NPDES and WDR permit violations.**
- **Examination of monthly and annual monitoring reports for four major facilities reveals that exceedances of permit conditions are occurring and that some of these exceedances present risks to receiving waters.**
- **In the last six years, the Regional Board has undertaken only four penalty actions against NPDES and WDR violators.**

### **Summary of Recommendations**

*All in all, the evidence reveals that the Regional Board is operating a voluntary compliance program, with more than 99.5% of all potential violations occurring without penalty. Clearly, this Regional Board's enforcement program offers no deterrence to polluters.*

Based on the results of this study, Heal the Bay makes the following recommendations for improvement of the Regional Board's enforcement program:

- **The Regional Board must establish priority enforcement schemes for each category of violation.**
- **The Regional Board must act quickly once violations are discovered.**

- **When enforcement does occur, the Regional Board must improve existing penalty practices. Penalties must be sufficient to deter violations of the law. Mandatory penalties are appropriate under certain circumstances.**
- **The Regional Board must begin immediate implementation of its 1997 Priority Plan.**
- **The Regional Board must improve its filing and reporting system to ensure that the general public has a true appreciation for the types of violations and enforcement actions that have occurred.**
- **Regional Board staff must improve methods of informing the Board of potential enforcement opportunities in all areas.**
- **All penalty actions should be subject to public comment and Board approval.**
- **The state should support the California Storm Water Enforcement Act of 1998.**
- **EPA should exercise its federal oversight powers under Section 1319 of the Clean Water Act.**
- **The State must provide increased and adequate funding for effective Regional Board programs that ensure compliance and enforcement.**



## I. INTRODUCTION

In 1970, the California Legislature established the Los Angeles Regional Water Quality Control Board (RWQCB or Regional Board) as one of nine local implementing agencies for the State Water Resources Control Board (SWRCB or State Board).<sup>1</sup> The Regional Board's jurisdiction covers nearly 4000 square miles<sup>2</sup> and services more than 10 million people in Los Angeles and Ventura Counties.<sup>3</sup> In this region, there are approximately 390 surface water body segments.<sup>4</sup>

The mission of the Los Angeles RWQCB is "to preserve and enhance water quality in the Los Angeles Region for the benefit of present and future generations."<sup>5</sup> In order to carry out this mission, the Regional Board characterizes part of its activities as (1) enforcing water quality laws, regulations and waste discharge requirements; and (2) implementing and enforcing local storm water control efforts.<sup>6</sup>

Currently, there are over 156 water bodies or sections of water bodies under the Board's jurisdiction. Despite the RWQCB's efforts over the last 27 years, 40 % of the total number of these water body segments are recognized as having impaired beneficial uses, including recreational water contact and aquatic life habitat.<sup>7 8</sup> Indeed, most of Santa Monica Bay itself -- from Palos Verdes to Malibu -- is listed as impaired due to contamination by heavy metals, pesticides and debris.<sup>9</sup> Other impaired waterways include the Los Angeles River and Malibu Creek, the latter of which drains to the Bay's most popular surfing location, Surfrider Beach, and is impaired due to high coliform levels, metals and nutrients.<sup>10</sup>

The sources of pollution contributing to the Bay's impairment vary greatly, from point sources to non-point sources, and from small septic treatment systems to large-scale treatment plants such as the Hyperion Treatment Plant in Playa Del Rey, which processes over 400 million gallons of Los Angeles' sewage per day. The types of pollutants contributing to the degradation of regional water bodies include, among other things, oil, grease, lead, copper, and fecal indicator bacteria.<sup>11</sup>

In order to combat problems like those facing waters in the Los Angeles Region, federal, state and local governments have enacted numerous legal requirements to protect and restore these waters and their corresponding beneficial uses. For the past several years,

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<sup>1</sup> See Water Code Section 13100. See also, Water Code Section 13200.

<sup>2</sup> RWQCB, *California Regional Water Quality Control Board - Los Angeles Region, Water Quality Control Plan, Los Angeles Region* (hereinafter *Basin Plan*) ( June 13, 1994), at 1-5.

<sup>3</sup> *Basin Plan*, at 1-13.

<sup>4</sup> State Water Resources Control Board, *1996 California Water Quality Assessment Report* (January 1997).

<sup>5</sup> RWQCB, *Your Guide to the Los Angeles Regional Water Quality Control Board* (1997) at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *California Water Quality Assessment Report*. See also, RWQCB, *Revised 303(d) List for the Los Angeles Region* (February 15, 1996). This report is named after Section 303(d) of the CWA .

<sup>8</sup> The number of impaired waters in the region may in fact be substantially higher, given that comments in the Water Quality Assessment indicate that numerous additional water bodies are impaired, but are not officially recognized as part of the official 303(d) List.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 3, 2.

<sup>11</sup> *Id.*

however, environmental groups and the public alike have criticized government agencies charged with protecting the nation's waters for their perceived reluctance to undertake enforcement actions against individuals and corporations in violation of state and federal laws.<sup>12</sup> In light of this perception and the continuing poor health of regional waters, Heal the Bay performed a full-scale assessment of the RWQCB's surface water and septic system enforcement programs, and the violations in the Region.

### Assessment

The purpose of the general assessment was to determine the extent of the Los Angeles RWQCB's major enforcement efforts over the past six years, and to provide recommendations for improvements in deficient areas. The assessment of surface water and septic system programs included a general examination of: (1) past RWQCB enforcement actions, with an emphasis on penalty actions; (2) consistency of these enforcement actions with federal, state and local laws and policies; and (3) the potential numbers of legal violations available for RWQCB enforcement response. In particular, the assessment examined the extent of RWQCB enforcement actions and opportunities in the following four categories:

- (1) Spills of sewage, oil and hazardous substances;
- (2) Storm Water Permits for industrial activities;
- (3) Waste Discharge Requirements (WDRs) for Septic Systems in the City of Malibu; and<sup>13</sup>
- (4) Individual National Pollution Discharge Elimination System (NPDES) permits and WDRs for Dischargers.<sup>14</sup>

The assessment was performed by gathering, examining, and, in many instances, cross-checking existing databases and local, regional and state files in order to obtain a general view of compliance in the above categories. Also, numerous site investigations were undertaken to ascertain likely violations, particularly of Malibu septic systems. The assessment included an examination of RWQCB enforcement efforts in the various targeted areas and compared the results with potential legal enforcement options available to the RWQCB.

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<sup>12</sup> See, e.g., California Public Interest Research Group, *California: A Polluter's Paradise. A Study of Pollution Problems in California* (November 1997) and U.S. Public Interest Research Group, *Dirty Water Scoundrels* (March 1997). See also, United States General Accounting Office, *Water Pollution - Many Violations Have Not Received Appropriate Enforcement Attention*, GAO/RCED-96-23 (March 1996). For additional reading and criticism of federal and state Clean Water Act enforcement programs, see Hunter and Waterman, *Enforcing the Law. The Case of the Clean Water Acts*. ME Sharpe, Inc., 248 pp. (1996).

<sup>13</sup> The City of Malibu was chosen because of the large number of septic tanks and the city's complete lack of a channelized sewer system. Further, the City abuts some of the most important recreational waters in the region. See Section VII herein.

<sup>14</sup> Under California law, WDRs are deemed the equivalent of the federal National Pollutant Discharge Elimination System (NPDES) permits. See Cal. Water Code Section 13374. The major distinction between the two permitting systems, however, is that the federal law does not regulate most groundwater. Compare 40 C.F.R. Part 122.2 definition of "waters of the United States" with California Water Code Section 13050 definition of "waters of the state."

## The Need For Regulatory Enforcement

Regulatory enforcement has been recognized as important for numerous reasons. First, in order for regulation to achieve its goals, it must induce compliance.<sup>15</sup> Enforcement is the critical bridge between statutory vision and the effort of industries to comply with legal requirements to carry out such a vision. These requirements are designed to achieve specific goals for water quality, thereby protecting public health and the environment. In fact, the First Conference of Environmental Enforcement characterized enforcement as “the set of actions that government or others take to achieve compliance within the regulated community and to correct or halt situations that endanger the environment and public health.”<sup>16</sup> Effective enforcement of environmental laws will by definition, therefore, result in compliance. Without enforcement of legal requirements, companies also are less likely to understand and appreciate the social and environmental importance of a given law and therefore are less likely to comply with the law.

Second, environmental enforcement serves to deter future violations of the law, and thus, further protects the environment. Effective regulations and government agencies with a clear framework for detection and punishment for non-compliance will result in greater compliance with the law.<sup>17</sup> Not only do penalties imposed on non-compliant firms lead those firms to broaden compliance efforts, effective and specific enforcement has a general deterrence effect on companies not inspected or punished.<sup>18</sup>

Also, regulatory enforcement lends vital credibility to environmental requirements. Enforcement must be predictable and consistent in order to maintain validity in the regulated community. This heightened credibility results in greater compliance than if regulations and regulatory agencies are seen as ineffectual and weak.<sup>19</sup>

In addition, consistent enforcement prevents problems associated with the competitive disadvantages of non-compliant businesses within a similar industry. If one company believes compliance is important and, as a result, is required to expend a given sum of money on compliance (and thereby providing society environmental protection), those businesses that do not believe compliance is necessary are at a competitive advantage because of the money saved through non-compliance. This money can then be used to upgrade capital, improve product design, or increase production. The free-rider problem is the result of “individuals holding out with the hope that others will provide the [public] good so that they need not contribute.”<sup>20</sup> This phenomenon is most commonly expressed in the absence of enforcement.<sup>21</sup> Enforcement provisions also should outline penalties

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<sup>15</sup> Percival, R.; Miller, A.; Schroeder, C.; and Leape, J., *Environmental Regulation: Law, Science, and Policy*. Little, Brown and Company, Boston, page 1039 (1996).

<sup>16</sup> Ercmann, Sevine, *Enforcement of Environmental Law in the United States and European Law: Realities and Expectations*, 26 *Environmental Law* 1213, 1215 (1996). The First Conference occurred in May 1990 in Utrecht, Netherlands.

<sup>17</sup> Gray, W. and Scholz, J., *Does Regulatory Enforcement Work? A Panel Analysis of OSHA Enforcement*, 27 *Law & Society Review* 177 (1993).

<sup>18</sup> *Id.* at 201.

<sup>19</sup> Ercmann, 26 *Environmental Law* at 1216

<sup>20</sup> Fort, R. and Baden, J., *The Federal Treasury as a common poll resource and the development of a predatory bureaucracy*, In *Bureaucracy vs. Environment: The Environmental Costs of Bureaucratic Governance*. University of Michigan Press (1981) pp. 9-21 at 10.

<sup>21</sup> *Id.*

that are sufficient to wipe out economic benefits gained from non-compliance in order to encourage future compliance.<sup>22</sup>

Finally, enforcement provides other social benefits including the provision of potential funding for site cleanups for which the State and, therefore, taxpayers might otherwise have to pay. Such funding also may provide compensation for damages caused to natural ecosystems which are used by human and non-human species and which are part of the public trust.<sup>23</sup>

All of these reasons are recognized by the SWRCB as justification for enforcement.<sup>24</sup> In fact, the SWRCB recognizes that “[t]imely and consistent enforcement of [water] laws is critical to the success of the water quality program and to ensure that the people of the State have clean water.”<sup>25</sup>

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<sup>22</sup> Percival, et. al., at 1054. *See also*, Hunter and Waterman at 57.

<sup>23</sup> *See, e.g.* 42 U.S.C. 9607(f)(1) (natural resource liability under the Comprehensive Environmental, Response, Compensation and Liability Act of 1980).

<sup>24</sup> For a partial summary of the SWRCB’s justification for enforcement, *See, SWRCB Enforcement Guidance*, Resolution No. 96-030 (April 1996) at 1.

<sup>25</sup> *Id*

## II. REGIONAL BOARD ENFORCEMENT AUTHORITY

The Los Angeles RWQCB, like all Regional Boards, is given substantial authority to conduct enforcement activities against non-compliant businesses. This authority includes enforcement provisions under the Porter-Cologne Water Quality Control Act,<sup>26</sup> the Federal Water Pollution Control Act (commonly known as the Clean Water Act),<sup>27</sup> the State Water Resources Control Board Water Quality Enforcement Policy, and several other provisions of state law. The Regional Board also has been delegated by U.S. EPA enforcement authority to pursue enforcement of federal NPDES permit requirements.<sup>28</sup> The RWQCB's particular enforcement authority is discussed below in the context of major categories of law or policy.

### Porter-Cologne Water Quality Control Act

The Porter-Cologne Act is California's primary statute for regulating the discharge of waste to both surface waters and groundwater. This is accomplished primarily through a system of reporting and permitting requirements for dischargers. Section 13260 of the Water Code requires any person who discharges or proposes to discharge waste that *could* affect the quality of waters of the state to file a report of waste discharge with the RWQCBs. In addition, Section 13263 then requires the RWQCB, after necessary hearing, to issue waste discharge requirements (WDRs) for the discharges.<sup>29</sup> The only exception provided is where the RWQCB issues a Waiver of Discharge Requirements under Water Code Section 13269. For new discharges or modifications to existing discharges, Water Code Section 13264 mandates reporting and the issuance of WDRs prior to the discharge initiation or change.

In 1996, the California legislature made amendments to the Porter-Cologne Act to provide reduced enforcement in situations where the agency finds violations are "minor."<sup>30</sup> In those cases where minor violations are found, a less formal "Notice to Comply" is, according to the statute, an acceptable form of enforcement.<sup>31</sup>

### The Federal Water Pollution Control Act (the Clean Water Act)

The objective of the Clean Water Act is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters."<sup>32</sup> This is accomplished through the regulation of the discharges of pollutants by way of the issuance of NPDES permits, which regulate the types and amounts of pollutants that may be discharged to waters of the United States.<sup>33</sup>

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<sup>26</sup> Water Code Section 13300 *et. seq.*

<sup>27</sup> 42 U.S.C. 1251 *et. seq.*

<sup>28</sup> EPA, *NPDES Memorandum of Agreement Between the U.S. Environmental Protection Agency and the California State Water Resources Control Board* (hereinafter *MOA*), at 38 (September 1989).

<sup>29</sup> Where discharges are to waters of the United States, as defined under the CWA, the RWQCB will substitute WDRs for required NPDES permits. *See* Basin Plan at pg. 4-4.

<sup>30</sup> Chapter 5.8, Water Code Sections 13399 *et. seq.*, sets out new provisions for enforcement of minor violations. The Chapter, enacted in 1996 by Assembly Bill 2937, sunsets in the year 2001. Violations that are "minor" in nature are defined by State Water Resources Control Board Resolution No. 97-085, *Water Quality Enforcement Policy Guidance Amendments* (Sept. 18, 1997).

<sup>31</sup> *See* Water Code Sections 13399.1 and 13399.2.

<sup>32</sup> 33 U.S.C. Section 1251(a).

<sup>33</sup> 33 U.S.C. Section 1342.



Under the Clean Water Act a comprehensive enforcement scheme is established. This scheme establishes the federal authority to enforce violations of permit requirements. This scheme also provides the federal EPA with various remedies where a delegated state fails to implement proper enforcement procedures.<sup>34</sup>

The RWQCB, however, generally does not directly enforce the Clean Water Act, which is a federal statute. Through delegation from US EPA, however, the Regional Boards have chief responsibility for pursuing “enforcement of NPDES permit requirements, and of all other provisions of the NPDES program under the State’s authority.”<sup>35</sup> The agreement between US EPA and the SWRCB requires the RWQCBs to “tak[e] timely and appropriate enforcement actions in accordance with the CWA, applicable Federal regulations, and State Law.”<sup>36</sup> In addition, the agreement requires the State Board to “assure that enforcement of the NPDES program is exercised aggressively, fairly, and consistently by all nine Regional Boards.”<sup>37</sup> The agreement also requires the RWQCBs to “assur[e] that no one realizes an economic advantage from noncompliance.”<sup>38</sup>

Further, while the Clean Water Act may not be directly enforceable by the state, through the Porter-Cologne Act, the RWQCB may impose administrative civil liability for any violations of Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act.<sup>39</sup> Maximum administrative penalties allowed to the RWQCB as part of its enforcement authority, however, are typically less than those available to EPA under the Clean Water Act.<sup>40</sup>

### **Water Quality Enforcement Policies**

In addition to the above statutory authorities, on April 18 , 1996, the State Board enacted Resolution No. 96-030, entitled the “State Water Resources Control Board Water Quality Enforcement Policy (SWRCB Enforcement Policy).” Along with this resolution, the SWRCB developed policy guidance in its “Guidance to Implement the Water Quality Enforcement Policy (April 1996)(SWRCB Enforcement Guidance).” Both of these documents are designed to “ensure that enforcement actions throughout the State are consistent, predictable and fair.”

In particular, these policies set forth the SWRCB’s overall enforcement policies, including, among other things, policy relating to the failure of industry to: (1) obtain permits under the storm water program and other types of discharges; and (2) comply with existing permitting requirements, including the submission of annual reports and monitoring results.

With regard to the timeliness of enforcement, the Enforcement Policy states the “violations of waste discharge requirements or applicable statutory or regulatory requirements should result in prompt enforcement response against the discharger” and

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<sup>34</sup> 33 U.S.C. Section 1319.

<sup>35</sup> *MOA* at 38.

<sup>36</sup> *MOA* at 6.

<sup>37</sup> *MOA* at 39.

<sup>38</sup> *MOA* at 6.

<sup>39</sup> Water Code Section 13385(a)(5).

<sup>40</sup> While Water Code Section 13385(c) provides for administrative penalties of \$10,000/day for Clean Water Act violations, Section 309(d) of the Clean Water Act allows for penalties of \$25,000/day.

that “[e]nforcement actions should be initiated as soon as possible after discovery of the violation.”<sup>41</sup>

With regard to assessment of penalties, the Policy states that “[s]imilar violations should result in similar [penalty] amounts.”<sup>42</sup> Also, given that one goal of enforcement is deterrence, the Guidance recommends that penalty “amounts should create a strong disincentive for future violations.”<sup>43</sup> Finally, the Guidance recognizes that “dischargers should not gain an economic benefit from violations.”<sup>44</sup>

On September 18, 1997, in response to recent state legislation, the SWRCB issued Enforcement Policy amendments for “minor violations” of the Porter-Cologne Act.<sup>45</sup> These new provisions allow relaxed enforcement response in situations where, for example, dischargers fail to maintain appropriate records on site, or for minor record keeping violations.<sup>46</sup> The reduced enforcement standard, however, is not available for all violations, particularly where violations are intentional or involve an economic gain, and where violations involve discharges which are not “insignificant” in nature.<sup>47</sup>

The Los Angeles RWQCB has agreed to “carry out enforcement in a manner that is consistent with the State Board’s [Enforcement] policy.”<sup>48</sup> In addition, the Regional Board’s enforcement scheme incorporates the concept of progressive enforcement action through a three-tiered approach. Under this approach, a “Level 1” action corresponds to a simple staff letter being sent to the discharger indicating that it is in violation of the law. Under “Level 2” the Executive Officer sends a letter if the discharger remains in violation. “Level 3” enforcement response corresponds with formal Board action where the discharger is required to comply with the law or formal enforcement will proceed.<sup>49</sup>

### **Other Authority**

Other laws providing the Regional and State Boards with enforcement authority include the Toxic Pit Cleanup Act, Chapters 6.67, 6.7 and 6.75 of Division 20 of the Health and Safety Code (HSC); HSC Section 25356.1; and Chapter 6 of Division 3 of the Harbors and Navigation Code.<sup>50</sup> For purposes of this assessment, these laws will not be addressed in detail.

### **Potential Enforcement Responses**

Once a violation is discovered, RWQCBs have numerous options for enforcement against violators of the above provisions of law. As was mentioned above, this RWQCB chooses a “progressive enforcement approach” to address noncompliance,<sup>51</sup> which in essence

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<sup>41</sup> *Enforcement Policy* at 3.

<sup>42</sup> *Id.* at 5.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> SWRCB Resolution No. 97-085 (Sept. 18, 1997) (Resolved new Policy text No. XI).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> RWQCB Resolution No. 97-XXXX (Draft - March 3, 1997)(adopted as written).

<sup>49</sup> See Staff Report for Item 7, RWQCB 401st Regular Meeting (March 3, 1997).

<sup>50</sup> See *Enforcement Policy* at 1.

<sup>51</sup> See RWQCB Agenda Item #9, RWQCB 400th Regular Meeting, *Regional Board Enforcement Strategy* (January 27, 1997).

means that over time, as a violation continues or is repeated, the level of enforcement response should increase. This section discusses RWQCB enforcement options,<sup>52</sup> in order of increasing severity.

**Notice to Comply** - In general, a Notice to Comply is a report written by a staff member of the RWQCB for allegations of minor violations by dischargers.<sup>53</sup> A Notice to Comply must state the nature of the alleged violation, a means by which compliance may be accomplished, and a time limit in which the discharger must comply.<sup>54</sup> Generally, penalties do not accompany these notices; however, the RWQCBs are not precluded from issuing penalties for minor violations if circumstances warrant such action.<sup>55</sup> This is essentially equivalent to a Level 1 enforcement response by the Regional Board.<sup>56</sup>

**Notice of Violation (NOV)** - An NOV is a letter issued by the Executive Officer designed to bring a violation to the discharger's attention and provide an opportunity to correct the violation before formal enforcement actions are taken.<sup>57</sup> The letter also alerts the discharger of the potential for civil liability if compliance is not achieved.<sup>58</sup> This essentially is equivalent to a Level 2 enforcement response by the Regional Board.<sup>59</sup>

**Time Schedule Order** - In instances where the RWQCB finds that an unlawful discharge is taking place or threatening to take place, the RWQCB may issue a time schedule for compliance. These orders include a detailed description of the specific actions a discharger must take in order to correct or prevent a violation within a particular time period.<sup>60</sup> Penalties typically are not imposed under this type of response, even if violations are allowed to continue for a considerable length of time.<sup>61</sup>

**Cease and Desist Order (CDO)** - A CDO is issued when the Regional Board finds that a discharge of waste is taking place or is threatening to take place in violation of requirements or prohibitions prescribed by the Regional Board.<sup>62</sup> Typically, a CDO is issued to chronic violators and includes volume, type or concentration limitations on discharges.<sup>63</sup> Also, CDOs normally establish a time schedule for compliance<sup>64</sup> and may be issued by the full board, or by a panel of board members.<sup>65</sup> According to Enforcement Guidance, "violations of CDOs should trigger further enforcement in the form of an

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<sup>52</sup> Numerous types of civil enforcement actions may be maintained in a court of law; however, these enforcement options are beyond the scope of this assessment because enforcement in that context is not by the RWQCBs.

<sup>53</sup> See California Water Code Division 7, Chapter 5.8, Sections 13399 *et. seq.*

<sup>54</sup> Water Code 13399.1.

<sup>55</sup> Water Code 13399.2(k).

<sup>56</sup> See Staff Report for Item 7, RWQCB 401st Regular Meeting at 1.

<sup>57</sup> *Enforcement Guidance* at 8.

<sup>58</sup> *Id.*

<sup>59</sup> See Staff Report for Item 7, RWQCB 401st Regular Meeting at 2.

<sup>60</sup> Water Code 13300. See also, Basin Plan at 4-32 and Enforcement Guidance at 8.

<sup>61</sup> See, e.g. Time Schedule Order No. 97-136 (November 3, 1997) accompanying NPDES for Las Virgenes Municipal Water District NPDES Permit CA0056014 (allowing TSO for full length of the permit for compliance, without penalty).

<sup>62</sup> Water Code 13301.

<sup>63</sup> *Id.*

<sup>64</sup> *Enforcement Guidance* at 8.

<sup>65</sup> Water Code Section 13302.

[Administrative Civil Liability action] or referral to the Attorney General for injunctive relief or monetary remedies.”<sup>66</sup> This type of action, and all more stringent enforcement options below, correspond to what the Regional Board defines as Level 3 enforcement.<sup>67</sup>

**Cleanup and Abatement Orders (CAO)** - These orders generally require dischargers to cleanup waste or abate the effects of discharges of waste to waters of the state.<sup>68</sup> If the order is ignored, the Regional Board may then request that the Attorney General take action<sup>69</sup> or the imposition of Administrative Civil Liabilities.<sup>70</sup> These orders may be issued by the Regional Board or by the Executive Officer; however, issuance by the Executive Officer is discouraged unless time is of the essence.<sup>71</sup> Generally, financial penalties do not accompany CAOs.<sup>72</sup>

**Administrative Civil Liability (ACL)** - ACLs are civil complaints with monetary penalties imposed by the Regional Board for certain instances of non-compliance. These penalties may be imposed for numerous reasons, including (1) failure to furnish reports of waste discharge or to pay fees,<sup>73</sup> (2) discharging waste without the issuance of WDRs;<sup>74</sup> (3) failure to furnish technical or monitoring reports;<sup>75</sup> and (4) violation of Board Orders,<sup>76</sup> WDRs or Basin Plan requirements.<sup>77</sup>

Generally the amount of fines in an ACL ranges from only a few dollars per violation to \$25,000 per day per violation. Board action is necessary for approval of an ACL;<sup>78</sup> however, violators may waive such a hearing if desired.<sup>79</sup>

**Referral to Attorney General or District Attorney** - In general, the RWQCB also can refer cases to the Attorney General or District Attorney for civil enforcement.<sup>80</sup> Such a referral, however, can only be made by the Regional Board and cannot be delegated to the

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<sup>66</sup> *Enforcement Guidance* at 8.

<sup>67</sup> *See* Staff Report for Item 7, RWQCB 401st Regular Meeting at 2.

<sup>68</sup> Water Code Section 13304.

<sup>69</sup> *Id.*

<sup>70</sup> *Enforcement Guidance* at 9.

<sup>71</sup> *Id.*

<sup>72</sup> In one known case, however, the RWQCB required Mobil Oil Co. to pay under a contamination CAO \$19,980.00 per month to the Metropolitan Water District (MWD). This “penalty” was the result of the fact that Mobil Oil’s contamination of drinking water supplies in the City of Santa Monica resulted in the city needing to purchase an alternative water supply because of the extensive contamination. Nineteen thousand, nine-hundred dollars was the additional cost the city incurred monthly to purchase needed drinking water from MWD.

<sup>73</sup> Water Code Section 13261.

<sup>74</sup> Water Code Section 13265.

<sup>75</sup> Water Code Section 13268.

<sup>76</sup> Water Code Section 13308. For negligent or intentional discharges in violations of Board Orders, *See* Water Code Section 13350.

<sup>77</sup> Water Code Section 13385. *See also*, Water Code Section 13350.

<sup>78</sup> Water Code Section 13323(b) specifies that, while the Executive Officer may issue proposed civil liabilities, at least three members of the entire Board must hear any ACL determination, unless waived by the discharger.

<sup>79</sup> Water Code Section 13323(b).

<sup>80</sup> *See, e.g.*, Water Code Section 13350(h).



Executive Officer.<sup>81</sup> In addition, actions by the Attorney General or the District Attorney often provide higher penalties than those that may be imposed by a RWQCB.<sup>82</sup>

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<sup>81</sup> Water Code Section 13223.

<sup>82</sup> *See, e.g.*, Water Code Section 13385, allowing administrative penalties of \$10,000 per day per violation and civil penalties of \$25,000 per day per violation.

### III. REGIONAL BOARD PENALTY ACTIONS FROM 1992-1997

In order to determine the exact number of major enforcement actions taken by the Regional Board over the last six years, Heal the Bay performed an extensive review of Regional and State Board enforcement documents. This review indicates that:

- **Only 14 penalty actions have occurred over the last six years, totaling a mere \$578,000 in fines.**
- **Over 99.5 % of discharger violations do not result in the imposition of penalties. This is not aggressive enforcement and does not serve to deter future violations of the law.**
- **Penalties issued by the Board do not capture the economic benefit from non-compliance. In essence, it pays to pollute if you are doing business in Los Angeles and Ventura Counties.**
- **The Regional Board writes-off penalties if businesses agree to comply with the law in the future.**
- **Enforcement responses are slow and, when violations continue, the Regional Board rarely escalates its response.**

#### Assessment

First, as most penalty actions come before the full Board for consideration or at least agendaized,<sup>83</sup> Heal the Bay staff examined all Regional Board monthly Meeting Agendas and monthly Executive Officer Reports from 1992 to 1997. Staff then compiled a list of all instances where the Board considered the issuance of Administrative Civil Liabilities. After this, Heal the Bay reviewed the SWRCB's annual "Cleanup and Abatement Account, Status of Accounts Receivable" for civil liabilities from 1992 to 1997. These lists, on file with the State Board in Sacramento, contain information on the amount of fines imposed by all Regional Boards, and the amount of penalties still due and owing from violators. Finally, Heal the Bay sent the RWQCB a Public Records Act<sup>84</sup> request for review of all ACLs issued by this Regional Board from 1992 to 1997. By reviewing these documents, Heal the Bay verified its research results with those on file at the Regional Board.

**The Regional Board Has Issued Very Few Penalties for Violations of the Law**  
Based on a review of this information, over the last six years the RWQCB has brought a total of only 14 enforcement actions seeking penalties for non-compliance.<sup>85</sup> These

<sup>83</sup> Under Water Code Section 13323 dischargers may waive their right to a Board hearing. Therefore, the item may not be agendaized in every instance.

<sup>84</sup> California Government Code Section 6250 *et. seq.*

<sup>85</sup> Based on available information, it appears that, when enforcement is forthcoming, the Regional Board is willing to issue penalties for all categories of violations. In the last six years, the Regional Board issued penalties in two spill cases, two storm water cases, three cases where discharges failed to pay required permit fees, one case involving the violation of a Board Order, two involving the failure to submit required

instances are listed in Table 1.<sup>86 87</sup> As is indicated, the RWQCB over the last six years has assessed a total of approximately \$804,480 in penalties for violations of state and federal law. Of this total amount, the Regional Board suspended \$232,555 in penalties in exchange for environmentally beneficial projects. The Regional Board, however, has suspended \$225,850 of the remaining penalties in exchange for mere compliance with the law. This has resulted in a net penalty assessment (through direct payments or environmental projects) of \$578,630 over a five year period.

Based on the results contained in Sections IV. through VII. of this report, this correlates to a less than 0.5% penalty rate for instances of non-compliance. This is hardly “aggressive” enforcement as is mandated by the State Board’s agreement with EPA. In addition, given that most of the penalties in the 14 penalty cases are relatively minor, it is doubtful that these penalties serve to deter future violations as is expressed in the State Board Enforcement Policy.

### **Penalties Do Not Capture Economic Benefit from Non-Compliance**

Regional Board penalty records also demonstrated that they rarely penalize violators for the economic benefit associated with noncompliance.<sup>88</sup> The objective of recovering the economic benefit of non-compliance is “to place violators in the same financial position as they would have been if they had complied” with the law.<sup>89</sup> According to EPA “every effort” should be made to recover this benefit from violators.<sup>90</sup> The State Board similarly concludes that penalties should, “at a minimum take away whatever economic savings a firm or agency gains as a result of those violations.”<sup>91</sup>

Of the 14 penalty cases brought by the Regional Board, the only case in which penalties for economic benefits were imposed was the case against Container Recycling Alliance, where the Board reduced the overall staff recommended penalty, but still found it necessary to impose the economic benefit portion of the penalty of \$4,419.

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reports, and four cases where discharges exceeded permit limits or were observed in the absence of a permit.

<sup>86</sup> The case involving Wilmington Liquid Bulk Terminals, Inc. involved a settlement agreement rather than the formal issuance of administrative civil liability complaint. This occurred after the case was referred to the Attorney General for civil prosecution. See Settlement Letter from Michael Lyons, RWQCB, to Wilmington’s General Manager (June 16, 1993).

<sup>87</sup> Unfortunately, despite a public records request, the RWQCB did not have many of the ACL file records that Heal the Bay had uncovered in its independent search of regional and state files. This included files for Stainless Steel Products Inc., which State Board Records showed receipt of \$45,000 during 1995. This also included Zero Halburton Inc., which paid to the state \$37,500 during 1995. The Regional Board could not confirm if these amounts were paid as penalties or as cleanup cost recovery, or even that payments were required. These totals were therefore not included in this summary.

<sup>88</sup> In fact, the Regional Board rarely even quantifies the figure of economic benefit. Instead, the Board usually makes general statement of economic gains. For example, Complaint No. 91-113 states that the violators “gained a significant economic benefit by failing or refusing to comply with Regional Board requirements.” Other complaints are not so generous and merely state that economic benefit was considered. See Complaint Nos. 92-028, 96-055 and 96-101.

<sup>89</sup> U.S. EPA, *Interim Clean Water Act Settlement Penalty Policy* (hereinafter *EPA Interim Settlement Policy*), at 4 (March 1, 1995). See also, *Enforcement Guidance* at 20 (concluding that “[d]ischargers should not enjoy a competitive advantage because they flout environmental laws”).

<sup>90</sup> *EPA Interim Settlement Policy*, at 4.

<sup>91</sup> *Enforcement Guidance*, at 20.



All other cases failed to incorporate the economic benefit into the final penalty. For example, in the case of Village Properties, Regional Board staff found the economic benefit from non-compliance to be \$105,000.<sup>92</sup> The Regional Board, however, imposed only an \$11,200 penalty, and suspended over \$200,000 in proposed penalties, including the economic benefit gained from non-compliance.<sup>93</sup>

The Regional Board's practice of ignoring economic benefits creates an incentive for permittees to break the law. One set of authors describe the problem of weak enforcement coupled with penalties that do not capture economic benefit in this manner, and concluded that "[n]ot only do [violators] have a better than average chance of avoiding detection for a violation ... but even if the violation is detected the chances are they will also still derive an economic benefit from the violation."<sup>94</sup> Rather than recognizing this, the Regional Board actually, at times, considers economic benefit in terms of whether a penalty *reduction* is warranted.<sup>95</sup> This is not justified, and is inconsistent with EPA and State Board penalty guidance.

### **The Regional Board Does Not Adhere to its Own Progressive Enforcement Strategy**

In addition to penalty actions, Heal the Bay examined all enforcement actions, significant or minor, initiated during the first nine months of 1997.<sup>96</sup> Examination of these enforcement records reveals that, despite the RWQCB's hierarchy of available action, progressive enforcement rarely occurs and the RWQCB still almost never reaches the level of major enforcement actions involving ACLs or Referrals to the Attorney General.

For example, on August 25, 1997, the RWQCB reported that it took 867 "enforcement actions" during the three month period from April through June of 1997.<sup>97</sup> (Earlier records of enforcement actions were not available since the RWQCB only began its tracking efforts in the Spring of 1997 as a response to the adoption of the Regional Board's enforcement policy.) Of the actions taken, 857 involved simple Level 1 letters to violators; seven involved Level 2 letters, and two involved recent Level 3 action (one of these involved a Cleanup and Abatement Order<sup>98</sup> and one involved the issuance of a Time Schedule Order). Not one of the 867 actions, however, involved the issuance of penalties or a referral to the Attorney General or the District Attorney.

Later, on December 8, 1997, the Regional Board released its summary of 226 enforcement actions during the period from July through September, 1997.<sup>99</sup> Of these actions, 192 involved Level 1 letters; 28 involved Level 2 letters; and six involved Level

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<sup>92</sup> See RWQCB Complaint No. 95-020.

<sup>93</sup> *Id.*

<sup>94</sup> Hunter and Waterman, at 57 (citing studies which indicate only 35% of federal penalty actions result in consideration of economic benefits -- and that state and local programs were even worse).

<sup>95</sup> See e.g. Complaint Nos. 92-045 and 92-028. In one case, the staff went so far as to conclude that because no economic benefit was received, a reduction was actually justified. See Complaint No. 96-077.

<sup>96</sup> This period was chosen because it correlates with the Regional Board's decision to more accurately track this information.

<sup>97</sup> RWQCB Executive Officer Report (Aug. 25, 1997).

<sup>98</sup> One of the Cease and Desist Orders referenced as an enforcement action occurring between April and June of 1997, actually was issued in November 1988.

<sup>99</sup> RWQCB Executive Officer's Report (Dec. 8, 1997).

3 enforcement actions (five of which were Cleanup and Abatement Orders and one of which was a Cease and Desist Order). This report showed only minimal escalation to Level 2 and 3 response from the last quarter. Again, none of the fall responses involved the issuance of penalties.

In addition, data reveals that sometimes months (or even years) pass before any subsequent enforcement steps are taken. For example, there were more than 534 violators that were issued Level 1 letters in the spring of 1997 from which the Regional Board received “no response,” and/or promised to send Level 2 letters in the future. Regional Board records, however, indicate that only 28 facilities received Level 2 letters in the fall. *This means that between the spring and fall, more than 500 facilities -- or 95% of those originally contacted -- remained in violation of the law and yet received no escalation in enforcement response. This demonstrates a lack of commitment on the part of the Regional Board to adhere to its tiered enforcement approach.*

Despite the general lack of enforcement efforts by this RWQCB, there has been more than enough opportunity for enforcement, as there are literally thousands of violators in this Region. The following sections highlight, by category of polluter, the myriad violations that either directly harm area waterways or impair the Regional Board’s ability to effectively implement clean water programs. All of these present potential enforcement opportunities. The following chapters examine these opportunities by category of violators, and then address the major enforcement actions by the Regional Board, in each category. The analysis begins with an assessment of spill violations and is followed by chapters on NPDES industrial storm water violators, septic systems in Malibu and NPDES and WDR permit violations.

#### IV. SPILLS OF SEWAGE, OIL AND HAZARDOUS SUBSTANCES

Spills present hazards to not only wildlife and drinking water supplies, but to people who swim in spill contaminated waters. Based on our review of Regional Board files:

- **There have been 2,194 spills in the past six years, with 464 sewage spills, 1,355 oil spills, and 375 chemical spills. At least 570 of these spills directly involved area waterways.**
- **At least 24.8 million gallons of sewage, 3.3 million gallons of oil and 240,000 gallons of chemicals have been spilled since 1992.**
- **The RWQCB has issued penalties in only four spill cases over the last six years.**

#### Assessment

Generally, there are three types of spills that, from a water quality standpoint, warrant the greatest concern to people and marine life: sewage, oil, and chemicals. Spills of sewage, oil, and chemicals can result in numerous types of problems for both humans and wildlife. Sewage spills can cause illness in those recreating in contaminated waters, and also can cause the closure of popular beaches, thereby preventing recreational enjoyment and effecting coastal economies. Oil and chemical spills can directly impact fish and plant life and can smother benthic communities that live in the sand and mud. Each of these types of spills also can contaminate human drinking water sources.

According to State Board Enforcement Guidance, “spills” generally “refer to unauthorized discharges” and should be considered as “significant violations of State law and Basin Plans.”<sup>100</sup> <sup>101</sup> According to the Porter-Cologne Act, unauthorized discharges of hazardous substances, sewage and petroleum products above reportable levels, must be reported to the state Office of Emergency Services, which then reports the spills to the appropriate RWQCB and local health officials.<sup>102</sup> Assuming this procedure is followed, the RWQCB may then conduct the appropriate response, including remediation and enforcement.

The SWRCB Enforcement Policy and accompanying Guidance state that the RWQCB should consider referring to the appropriate district attorney spills of hazardous substances, in all but the smallest of cases.<sup>103</sup> Admittedly, this is the SWRCB’s preferred method of enforcement for spills, rather than RWQCB direct enforcement.<sup>104</sup> However, if the district attorney chooses not to pursue a case, Enforcement Guidance dictates that RWQCB staff consider the appropriateness of issuing an ACL complaint themselves. In the case of large spills (i.e. 10,000 gallons or more), the Enforcement Guidance

<sup>100</sup> Enforcement Guidance, pg. 6.

<sup>101</sup> See also, Memo from Robert Perciasepe, EPA Assistant Administrator for Water, *Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES* (July 11, 1994), at 3.

<sup>102</sup> See Water Code Sections 13271 & 13272.

<sup>103</sup> *SWRCB Enforcement Guidance* indicates that spills less than 100 gallons are considered “small.” *Id.* at

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<sup>104</sup> *SWRCB Enforcement Guidance*, at 12.

recommends consideration to the state Attorney General for civil and criminal prosecution where appropriate. For oil spills, the State considers discharges of 10,000 gallons or more as being major and deserving RWQCB consideration for referral to the Attorney General for recovery of civil monetary remedies and damages.<sup>105</sup>

- Over the past six years, the RWQCB has compiled monthly lists of reported spills. Traditionally, these spill lists have been included in monthly Regional Board Hearing Agendas or monthly Executive Officer Reports. Table 2 presents a summary of those spill reports, their location, the responsible party, and the volume and type of material involved. Overall, there were 2,194 spills during the past six years: 1,355 oil spills; 464 sewage spills; and 375 chemical spills. Each of these spills is a potential violation of state and federal law.

*At least 24.8 million gallons of sewage, 3.3 million gallons of oil, and 240,000 gallons of chemical have been spilled, and it is known that at least 570 of these spills directly involved waterways.*<sup>106</sup> Unfortunately, many current spill reports do not indicate whether water bodies were involved, which limits information on the impact to waterways.

According to Regional Board records, the worst violators in all categories of spills, ranked by number of spills, are Los Angeles County, Texaco, and the City of Los Angeles, topping the spills list at 274, 131 and 73 spills, respectively. Over the past six years, Los Angeles County has spilled over 6.5 million gallons of sewage and the City of Los Angeles has spilled over 10.5 million gallons of sewage.<sup>107</sup> Based on information available, Texaco has spilled nearly 200,000 gallons of oil. Spills from all three have occurred without the imposition of fines.

### **Regional Board Enforcement for Spills**

Despite the thousands of spills -- and the millions of gallons of sewage, oil and chemicals released -- the RWQCB has invoked major enforcement activity in only four cases over the last six years. These cases were brought against Anheuser Busch, Inc., Southwest Marine Inc., Mobil Oil, and Berry Petroleum Company.

In the Anheuser Busch case, the Regional Board alleged that the company, on several occasions, spilled into the Haskell Channel a total of 10,400 gallons of sodium hydroxide, which eventually made its way to the Sepulveda Basin wildlife area. Once there, the spill resulted in the deaths of fish and amphibians in the wildlife area.<sup>108</sup> As a result of this action, Anheuser Busch paid \$98,000 to fund environmental projects in the Sepulveda Basin.<sup>109</sup>

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<sup>105</sup> *SWRCB Enforcement Guidance*, at 14.

<sup>106</sup> This number is likely much higher as RWQCB spill reports often fail to indicate if spills are to waterways or not.

<sup>107</sup> For February 10, 1992, Regional Board spill reports indicate that the County of Los Angeles spilled 4.6 million gallons of sewage in Culver City. Given the location, however, it seems more likely this spill is attributable to the City of Los Angeles. For purposes of this report, the spill is attributed to the County, as recorded.

<sup>108</sup> RWQCB Complaint No. 92-028 (June 10, 1992).

<sup>109</sup> RWQCB Order for Complaint No. 92-028 (Oct. 27, 1992)

In 1992 the Regional Board also issued an ACL against Southwest Marine Inc. In that case, Southwest Marine paid \$10,000 in fines for the discharge, on three separate occasions, of approximately 2560 gallons of “oily waste” into the Los Angeles Harbor.<sup>110</sup> The other two ACLs oil company cases which were eventually referred to the Attorney General.

In some instances, it is the local City Attorney who brings enforcement action against dischargers of major spills. This occurred, for example, against American Airlines for a 1996 jet-fuel spill into Santa Monica Bay.<sup>111 112</sup>

The Los Angeles District Attorney’s Office, which should receive RWQCB referrals for major spill cases, has indicated that the Los Angeles RWQCB “does not typically make civil referrals to [the office].”<sup>113</sup> In fact, the Former Head Deputy District Attorney in the Environmental Crimes Division, indicates that the RWQCB is the one state and local agency with which the District Attorney’s Office historically has had “the least contact.”<sup>114</sup>

The State Enforcement Policy states that when these local civil enforcement agencies choose not to enforce, the RWQCBs “shall consider issuing an administrative civil liability complaint.”<sup>115</sup> In addition, state law mandates that the Regional Board must, in assessing penalties, take into account past violations of the law.<sup>116</sup> Given the number of enforcement actions in this area, not only is the RWQCB not referring cases to the appropriate local enforcement agencies as is recommended by the SWRCB, but it is not exercising its own option of enforcement.

### Recommendations

In order to improve existing enforcement efforts for spills of sewage, oil and hazardous substances, Heal the Bay recommends the following actions by the Regional Board:

- **Regional Board staff must continue preparation of monthly spill summaries.** A new law amends Water Code Section 13271’s reporting procedures and no longer mandates the preparation of monthly spill reports by the Regional Boards.<sup>117</sup> These reports, however, provide the public with important information on the types and volume of spills to our waterways. In addition, current Regional and State Board enforcement policies continue to require Board staff to present spill reports to the Board for possible enforcement action.<sup>118</sup> Therefore, these reports must continue.

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<sup>110</sup> RWQCB Complaint No. 92-045 (July 20, 1992).

<sup>111</sup> See Outlook, *Three Agencies Share Spill Settlement* ( December 12, 1997) at B-1.

<sup>112</sup> Incidentally, this is the only recorded spill from American Airlines during the last 5 years.

<sup>113</sup> Statement of Mike Delany, then Head Deputy District Attorney Environmental Crimes Division, Los Angeles County District Attorney’s Office, at Los Angeles County Bar Association’s *Enforcement Policies for Clean Water Act Violations*, November 13, 1997.

<sup>114</sup> *Id.* Mr. Delany did state that he “expect[ed] to see this improve in coming months.”

<sup>115</sup> *SWRCB Enforcement Policy* at 4.

<sup>116</sup> Water Code Section 13327.

<sup>117</sup> This amendment took place as part of SB 105, which is Chapter 783 of the Statutes of 1997.

<sup>118</sup> See *SWRCB Enforcement Guidance*, at 5-6.

- **The Regional Board must improve monthly spill reports.** Staff should add columns regarding the amount of material that reaches waterways and include a summary of how much material is actually recovered. Staff also should add to these reports columns for the number of previous enforcement actions and the number and volume of spills over the last 5 years. This will allow the Board to better track the history of violations. Staff should include any known or suspected impacts from past spills. Staff also should ensure that spill reporting information is accurate by not including in spill reports emergency drills (where no discharge actually occurs).<sup>119</sup> All of this will allow the Board to better assess the need for administrative civil liabilities in instances of future spills.
- **The Regional Board must prioritize enforcement response for spills.** Priority for enforcement should be based on the volume of spill, the type of material spilled, the volume of the spill reaching a waterway, plus the impact of the spill on beneficial uses. Also, priority should be given for enforcement against those that consistently violate spill prohibitions and fail to initiate timely preventive improvements. Finally, penalties should be increased for those that fail to timely report to the public spills that threaten public health.
- **The Regional Board should impose mandatory penalties for spills that reach receiving waters.** These types of spills most directly impact the beneficial uses of the receiving waters and mandate the highest level of deterrence.

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<sup>119</sup> This occurred in at least one known instance, where spill reports indicated a 1,806,000 gallon oil spill by Chevron into a Montebello waterway on Oct. 16, 1996. See, RWQCB *Notification of Spills and Complaints for October 1996*. Follow-up with Regional Board staff, however, indicated this was merely a drill and that no discharge occurred

## V. INDUSTRIAL STORM WATER VIOLATORS

Storm water discharges are the number one source of pollution in Southern California coastal waters. Despite this, there are potentially tens of thousands of violators in Los Angeles and Ventura Counties. The Regional Board has done little to bring about meaningful compliance by the thousands of industries that have violated the minimum requirements of the state's general industrial permit.

- **Using only hazardous waste generator and treatment, storage and disposal facility lists, Heal the Bay estimates that there are potentially 1,558 facilities that have not filed an NOI for coverage under the GIP.**
- **UCLA estimates that there are potentially up to 34,000 facilities that have not obtained permit coverage for storm water discharges and are required to do so.**
- **The Regional Board is slow to act in determining non-compliance and in following up with violators. Nearly six years have passed since the state program came into effect, and yet most violators have not been contacted by the Regional Board. In addition, the Board still does not have a handle on the number of violators in the Region.**
- **Sometimes, years pass before known permit holders are contacted for simple filing violations. For example, 29% of those facilities with storm water permit coverage (728 facilities out of 2,474 active facilities) failed to timely submit 1995/96 Annual Reports. 71% of those facilities (523 facilities) were late in reporting by more than one year.**
- **In the last six years, the Regional Board only issued one penalty for an industrial storm water case.**

### The Problem with Storm Water

Traditionally, it was believed that large dischargers, such as treatment plants and refineries, were the number one cause of pollution to our nation's waterways. After initiation of the NPDES permit program to address these traditional sources of pollution, however, experts began to realize that there was much more to the nation's water quality problem than merely large, direct industrial discharges. In addition, it was observed in many areas that storm water runoff from streets, industrial yards, and construction activities contributed large quantities of pollutants to our waterways. This type of runoff is the largest source of pollution to Santa Monica Bay and Los Angeles County coastal waters.

Studies found that pollutants from these storm water sources included high concentrations of oil and grease, lead, zinc, copper, chromium and nickel, as well as many other harmful substances. Also, runoff contains high densities of fecal indicator bacteria from both animal and human sources. This contributes to water quality conditions that are often so poor it is recommended that beachgoers avoid contact with ocean water for at least three days after every rain event. In addition, any exposure to dry-weather run-off has been

demonstrated to result in adverse health effects.<sup>120</sup> Also, trace metals can be toxic to marine animals and can bioaccumulate to make such organisms unfit for human consumption. In areas like Los Angeles, it is now undisputed that storm water runoff is the current, number one cause of pollution to the Bay.

In light of the significance of storm water pollution, Congress, in 1987, amended the Clean Water Act to make certain types of storm water runoff, which traditionally were defined as “non-point source” pollution, now defined as “point source” pollution subject to the requirements of the National Pollution Discharge Elimination System permit program.<sup>121</sup> Under this program, these new “point source” categories provide requirements for, among other things, “storm water discharges associated with industrial activity.”<sup>122</sup> This is done through the state’s General Industrial Storm Water Permit (General Industrial Permit), which was first approved by the State Board in 1991, effective in October 1992.<sup>123</sup>

According to the State Enforcement Policy, noncompliance with the requirements of the State General Industrial Storm Water Permit should result in “prompt enforcement response against the discharger.”<sup>124</sup> Noncompliance requiring such response includes, among other things, the failure to submit a Notice of Intent (NOI) for coverage under the [permit] and the failure to submit annual reports after specific notification to the discharger.<sup>125</sup>

In the Los Angeles region, currently there are approximately 3,410 facilities identified as complying with the NOI requirements of the General Industrial Permit. Approximately, 2,474 of these facilities were still active as of June, 1997.<sup>126</sup> There are thousands more suspected of violating the permit by failing to submit an NOI.

### Assessment

There are several ways to identify potential violations of permitting requirements. In order to gain a picture of current non-compliance, Heal the Bay staff examined existing hazardous waste generator, and Treatment, Storage and Disposal Facilities lists from the Department of Toxic Substances Control’s Hazardous Waste Information System, which represents a small segment of those facilities that could be covered by the permit. Heal the Bay obtained the list because we believe it would most adequately reflect a population of industries potentially regulated by the General Industrial Permit. Cross comparison with other lists then identified those facilities likely required to obtain coverage under the permit, but have not.

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<sup>120</sup> Santa Monica Bay Restoration Project, *An Epidemiological Study of the Possible Adverse Health Effects of Swimming in Santa Monica Bay* (May 7, 1996)

<sup>121</sup> 33 U.S.C. 1342(p).

<sup>122</sup> See, 40 C.F.R. 122.1 and 122.26(a).

<sup>123</sup> SWRCB, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activity, Excluding Construction Activities*, Water Quality Order No. 91-13-DWQ (Nov. 19, 1991)(as amended by Water Quality Order 92-12-DWQ (Sept. 17, 1992)). This permit was modified and reissued effective August 1, 1997, under SWRCB, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activity, Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ (April 25, 1997).

<sup>124</sup> *SWRCB Enforcement Policy*, at 2.

<sup>125</sup> *SWRCB Enforcement Policy*, at 3.

<sup>126</sup> Regional Board Database of NOIs for Industrial Storm Water (Summer 1997).



Heal the Bay developed the following criteria for screening the generator list:

- Companies that generated less than 5 tons of waste per year, particularly when the waste reported was asbestos-containing construction materials and other types of solid wastes that are generally a one-time disposal activity, were not included.
- Automobile repair shops and service stations were not included because the vast majority are not covered by the General Industrial Permit, and because the 1996 Los Angeles County Municipal Storm Water Permit specifically targets these facilities for educational outreach. Also, the Western States Petroleum Association is developing a standardized Best Management Practices list for these types of facilities.
- Dry cleaners were not included because of a particular exemption under Title 22 and because, based on experience, the great majority of these facilities would fall into the no exposure exemption category since storage and operation are enclosed.
- Photo processing laboratories were not included because of a particular exemption under Title 22, and probable no exposure.

The generator list then was compared to the RWQCB's list of current filers under the General Industrial Permit. In comparing the two databases, Heal the Bay consistently tried to cross reference facility names and the actual facility addresses (the location of the facility). This is important because the NOI database includes fields for owner addresses, billing addresses, etc. The generator list only contains facility addresses as reported on a Hazardous Waste Manifest.

Our comparison of the generator list and the NOI database revealed that at least 1,521 facilities are in probable violation of the NOI requirements of the General Industrial Permit and should potentially file NOIs with the SWRCB.

Heal the Bay also reviewed the lists of facilities covered under the State's list of Treatment, Storage and Disposal Facilities (TSDFs). All of these facilities are required to file under the existing industrial storm water permit. Cross-checking these lists revealed that 37 known TSDFs had not obtained coverage under the existing permit. These are mandatory facilities which should be captured or enforced against immediately.

The SWRCB, under funding from US EPA and with the assistance of the University of California, has chosen to search for violators by identifying facilities within the Standard Industrial Classification (SIC) codes identified in the permit. This method has been successful in identifying a large number of potential storm water violators. This methodology, however, could result in substantial over-identification of facilities required to be covered under the permit.

In early 1996, the SWRCB entered into a contractual agreement with the University of California Los Angeles' Pollution Prevention Education and Research Center, to begin a comprehensive program of identifying and contacting potential industrial storm water violators. As part of the contract, UCLA prepared an initial summary of all industrial facilities that may be required to obtain coverage under the State's Industrial Storm Water Permit. Based on business identification codes, UCLA identified a range of 4,100 to 9,051 facilities in Los Angeles and Ventura Counties that fell within the category of "mandatory" (manufacturing and transportation) compliance with storm water

requirements.<sup>127</sup> UCLA also identified a range of 16,000 to 24,771 facilities that were “conditionally” required to comply with storm water requirements.<sup>128</sup> In total, UCLA estimates that there are potentially up to 34,000 violators (upper bound estimate) of the industrial storm water permit in Los Angeles and Ventura Counties.<sup>129</sup>

Although the UCLA efforts have identified up to 34,000 potential non-filers, the accuracy of the SIC databases is so poor that they cannot be used with any certainty to identify all the non-filers. As an example, in the fall and winter of 1996, the SWRCB sent mailings to 590 potential non-filers in the Region and identified in the mandatory compliance category. The results of the mailings indicate that over 36% of the facilities were non-responsive. Also, 7% of the facilities contacted were in violation and subsequently filed for permit coverage. After follow-up investigative efforts of facilities claiming exemptions from permit requirements, UCLA identified an additional 4% of the 590 facilities that were likely to be out of compliance.

The UCLA research demonstrates that a minimum of 11% of the facilities in the Region were out of compliance, but because of the inadequacy of the databases and the lack of resources for further investigation, their research has not and will not provide an accurate estimate of the total number of non-filing facilities in the Region (personal communication). In addition, due to lack of funding, UCLA will not be able to shed any light up to 24,771 facilities “conditionally” required to comply with storm water requirements.<sup>130</sup>

Using the results of UCLA’s work, and Heal the Bay’s assessment of Hazardous Waste databases, there are a minimum of 5,000 to 10,000 facilities in the Region that have failed to complete the minimum requirements for the State’s General Industrial Permit. Based on the above results -- regardless of the methodology chosen for identification -- one thing is clear: presently, there is more than enough opportunity for the development and implementation of a comprehensive Regional Board enforcement program against storm water violators in this Region.

In addition, our assessment is only for non-filers and for non-submittal of annual reports (see section below) -- not for violations of actual permitting requirements. A facility can, and many do, pay the appropriate fee and submit required reports, and yet still violate applicable laws. For example, facilities can have poor storm water pollution prevention plans and few best management practices to eliminate storm water pollution and dry weather runoff discharges. These types of violations were beyond the scope of this assessment.

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<sup>127</sup> UCLA Quarterly Progress Report #3 to California State Water Resources Control Board, August 15, 1996.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Pers. Comm. Donald Duke, UCLA Pollution Prevention Education and Research Center (January 17, 1998).

### Specific Regional Board Actions Against Storm Water Violators

Despite the thousands of storm water violators in this Region, over the past six years the Regional Board has brought major enforcement action against only two violators of storm water permit requirements. Only one of these was for violations of the industrial permit; the other was for construction storm water violations.

In 1996, the RWQCB issued penalties against Container Recycling Alliance (CRA) in Huntington Park, California. For more than a year, CRA operated its recycling center without a permit. During that time, runoff from the site resulted in the discharge of pollutants to surface waters on 24 separate days. As a result, the RWQCB imposed an ACL in the amount of \$15,600.00. This amount, however, was eventually reduced by \$7,000.00, provided the discharge comply with all existing storm water requirements.<sup>131, 132</sup>

Given that it is now 1998 and only one industrial storm water penalty action has occurred in the last six years, it is clear the Regional Board still has not acted in good faith on their responsibility to enforce storm water requirements.

The RWQCB's poor enforcement efforts -- and industries' corresponding lackadaisical approach to compliance -- are highlighted by the Board's own attempts to obtain required annual reports from those facilities that already have filed NOIs to comply with the permit. In the spring of 1997, the RWQCB sent over 728 letters to businesses -- or approximately 29% of all known permittees at the time -- that failed to submit 1995/96 Annual Reports under the storm water program. These reports were due on July 1, 1996. This represents more than six months in lag time between reporting deadlines and the RWQCB's initiation of any enforcement response. By August 25, 1997 -- more than one month after the *next* round of annual reports (for 1996/97) were due -- the RWQCB still had not received 1995/96 Annual Reports from more than 523 industrial facilities that received letters during the previous spring. This figure represents 21% of all captured facilities -- or 71% of those contacted in the spring by the Regional Board.

In addition, as part of the December 1997 enforcement summary, the Executive Officer report stated that the Board had sent only seven storm water enforcement letters (six of which were level one letters) during the period from July through September.<sup>133</sup> This evidences anything but prompt enforcement by the RWQCB.

As for the nearly 520 facilities that did not receive follow-up letters and were still in violation at the beginning of the enforcement period, the Regional Board has indicated that these permit holders will be cycled into the next round of letters targeting those

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<sup>131</sup> The second of the storm water ACLs issued by the Regional Board was against Village Properties for violating the general construction storm water permit and its erosion control requirements. These violations resulted in the creation of erosion channels 10 feet wide and three feet deep along a Calabasas construction site. In that 1995 case, the RWQCB imposed penalties of \$211,200.00, but suspended \$200,000.00 of the penalty if Village Properties complied with existing law by the end of a six month period. The \$11,200 in final penalties were wholly attributable to staff costs. RWQCB Complaint No. 95-020 (May 15, 1995).

<sup>132</sup> Over this time period the RWQCB has issued several CDOs to some of the larger storm water violators, including the California Department of Transportation, the City of Azusa and Mobil Oil Corporation.

<sup>133</sup> RWQCB Executive Officer's Report (August 25, 1997).

facilities that failed to submit 1996/97 annual reports.<sup>134</sup> In addition, there were 442 facilities that failed to submit their 1996-97 annual reports. According to staff, these letters are scheduled to be sent in the Spring of 1998, more than one-and-half years after the original compliance deadline.<sup>135</sup>

Inspection of storm water facilities also is inadequate. Currently, the Regional Board estimates that it inspects an average of 100 facilities a year. At this rate, assuming that a conservative estimate of 10,000 facilities need permit coverage, the Regional Board will take 100 years to inspect all facilities in the region. As a result, the Regional Board appears to over-rely on the efforts of the UCLA researchers. The Regional Board has taken few independent efforts to identify non-filers through other methods, including their inspection program.

### **Recommendations**

In order to improve existing storm water enforcement efforts, Heal the Bay recommends the following action by the Regional Board.

- **The Regional Board should utilize its new databases to improve tracking of storm water violations and enforcement responses.** These databases should immediately track incoming reports and permit fees and non-filer status. Databases should developed in a format that allows for an immediate determination of compliance and whether any enforcement has been initiated against those facilities in violation of the law.
- **The Regional Board must prioritize industrial storm water enforcement.** As an initial step, the Regional Board should initiate a comprehensive enforcement program that captures and penalizes violators of the industrial permit. This should begin with the list of facilities that are most likely subject to the permit (i.e. hazardous waste generators and TSDFs) and then be expanded to include all facilities under regulated SIC codes.
- **Dischargers should be fined for failing to file for permit coverage, for failing to submit timely annual reports and monitoring reports, and for failing to prepare Storm Water Pollution Prevention Plans (based on inspection results).** These are all simple factual determinations that can be made in seconds once an appropriate storm water database is established. In this regard, the Regional Board should be able to use its limited resources efficiently and effectively in ensuring at least initial compliance with the Clean Water Act. Once these violators are captured, then the Regional Board should move on to the more time intensive enforcement actions, including whether Best Management Practices are implemented at industrial sites and whether Storm Water Pollution Prevention Plans are effective in reducing pollutant loading.

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<sup>134</sup> Pers. Comm. Dan Radulescu, RWQCB (December 16, 1997).

<sup>135</sup> This method is viewed by Regional Board staff as being more realistic from a resource perspective. Staff also has indicated that Regional Board response will “escalate” in those cases where “bad actors” are identified. Id.

- **The Regional Board must act quickly once violations are discovered.** The Regional Board should send letters to violators of reporting requirements immediately after such reports are due. Heal the Bay recommends that within 30 days of reporting deadlines, the Regional Board should send Level 1 enforcement letters to known violators. If no adequate response is received within 30 days of that letter, a Level 2 letter should be sent by the Executive Officer. This letter should include information about the violation as well as information on the likelihood of financial penalties if the matter is not resolved in a timely manner. If no response is forthcoming in 30 additional days, penalties should be imposed. Under this scheme, not only is enforcement progressive, but violations would be captured within 90 days of original deadlines, rather than after several years (i.e. the current process).

Similarly, immediately after the Regional Board identifies a non-filer under the permit, the Board should send Level 1 letters to these violators. If an adequate response is not received within 30 days of that letter, a Level 2 letter should be sent by the Executive Officer. Again, this letter should include information about the violation as well as information on the likelihood of financial penalties if the matter is not resolved in a timely manner. If no response is forthcoming in 30 additional days, penalties should be imposed. Again, violations would be captured within 90 days of discovery, rather than after several years.

- **The Regional Board must take advantage of AB 1186, a new California law which guarantees that a minimum of 50% of storm water permit fees will be returned to the Regional Board for storm water programs, inspections and enforcement actions.**<sup>136</sup> Presently, fees from the industrial program are used to fund other aspects of storm water quality control, including municipal permits. This new law is designed to make the industrial storm water program self funding. The Regional Board, with a current storm water budget of \$517,000.00,<sup>137</sup> has the potential to generate at least \$1.25 million in its storm water coffers. If 10,000 facilities file for permit coverage, at \$250 per facility, the Regional Board would receive \$1.25 million in annual storm water permit fee revenues for the industrial program.

Over time, as the program improves and non-filers are captured, permit fees will be returned directly to this program. This eventually should allow funding to rise to levels that allow the program to support itself. If the program is still under-funded despite the aims of AB 1186, the Regional and State Board should consider increasing storm water permit fees to improve the program.<sup>138</sup>

- **The State Board must revise its non-filer search.** The State Board should revise its current system in favor of a more aggressive, comprehensive initial mass mailing approach to all suspected non-filers. This will generate NOIs more quickly than if the State Board exhausts its resources on timely follow-up with non-responsive facilities

<sup>136</sup> AB 1186, authored by Assembly Member Wally Knox (D-Los Angeles), amends Water Code Section 13260 and is Chapter 775 of the Statutes of 1997.

<sup>137</sup> RWQCB, *Watershed Management Initiative Chapter, Draft* (May 10, 1997) at 56.

<sup>138</sup> Presently, permit fees are \$250.00 per permittee. Under Water Code Section 13260, permit fees cannot exceed \$10,000.00 per permittee.

(those facilities that have been contacted, but have not responded). This will also generate funds more quickly, which will provide the resources for additional follow-up, compliance and enforcement against recalcitrant businesses.

- **The Regional Board should utilize Municipal permittees in tracking non-filers.** Beginning in 1998, the County of Los Angeles Municipal Storm Water Permit requires that all Permittees identify those industries within their jurisdictions which would be regulated by the GIP and provide that information in a standardized database developed by the County.<sup>139</sup> The importance of this information, if accurately obtained, cannot be underestimated. This database should prove more valuable to the RWQCB staff for identifying non-filers than business databases. Permittees also are required to educate industrial facilities about storm water permitting requirements. If permittees have difficulty obtaining compliance, the Regional Board should initiate enforcement.
- **Given that the RWQCB is having difficulty with its storm water inspection program, they should request assistance from the State Water Board.** The Memorandum of Agreement between EPA and the State allows Regional Boards to request inspection assistance from the state and EPA. In such an instance, the State and EPA must provide assistance as soon as resources become available.<sup>140</sup> Regardless of whether or not resources are available in the near future, the State Board should request significant additional funding for inspections and/or increase permit fees.
- **State and Regional Boards should support the Storm Water Enforcement Act of 1998, authored by Assembly Speaker Pro Tem Sheila Kuehl (D-Santa Monica).** This bill incorporates many of the above suggestions and imposes a mandatory penalty scheme for violations of storm water permits. This way, all violators of these permits can be held accountable for violations of the law, and those that do not cooperate will be financially responsible.

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<sup>139</sup> RWQCB, *Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles*, Order No. 96-054 (NPDES No. CAS614001), pg. 54 (July 15, 1996).

<sup>140</sup> MOA at 36.

## VI. SEPTIC SYSTEMS IN MALIBU

Septic systems threaten both groundwater and surface water in the City of Malibu. Many of these systems, however, are operating in violation of the law.

- **Of the estimated 390 multi-family and commercial complexes on septic systems in the City of Malibu, only four multi-family complexes and seven businesses have permits for septic systems. This data shows a potential non-compliance rate of 97% for both multi-family and commercial complexes.**
- **Endangered fish have died as a result of the current septic system overflow management policy for the Malibu Lagoon area.**
- **Water quality at Surfrider Beach near Malibu Lagoon is consistently the poorest in Santa Monica Bay's coastal waters.**
- **Enforcement for septic violations has been poor. Over the past six years, the Regional Board only issued one penalty for septic system violations.**

### Problems Associated with Septic Systems in Malibu

According to the RWQCB, septic systems, if improperly sited or maintained, “can lead to untreated or poorly treated sewage seeping into yards, roadside ditches, streams, lagoons, or into groundwater -- creating a public health hazard.”<sup>141</sup> In addition, the Regional Board has concluded that the use of septic systems can result in potential significant environmental impacts including water quality impacts, public health risks and nuisance odors.<sup>142</sup> Because of these potential problems, the RWQCB “discourages the prolonged use of septic systems, except in isolated areas where connection to a wastewater connection system is not feasible and there is no threat to groundwater quality.”<sup>143</sup> Despite this RWQCB “discouragement,” the use of septic systems has flourished, particularly in areas like the City of Malibu with a population of 11,454.<sup>144</sup>

In 1992, Peter Warshall and Associates conducted a full scale assessment of Malibu's wastewater management program.<sup>145</sup> The study found that there were approximately 3,800 single family residences, 235 multi-family complexes and 140 commercial parcels with on-site septic systems.<sup>146</sup> These facilities generate an enormous amount of waste, as is indicated by the fact that approximately 14 million gallons of pumped water and solids is removed from septic tanks and seepage pits each year from these systems.<sup>147</sup>

<sup>141</sup> *Basin Plan*, pg. 4-46.

<sup>142</sup> RWQCB Septic Tank Workshop, overhead handouts, (December 15, 1997).

<sup>143</sup> *Basin Plan*, pg. 4-47.

<sup>144</sup> City of Malibu General Plan, *Draft Environmental Impact Report*, August 1995.

<sup>145</sup> Peter Warshall and Associates, *Malibu Wastewater Management Study* (hereinafter *Warshall Report*) (March, 1992).

<sup>146</sup> *Id* at 30, 32.

<sup>147</sup> *Id.* at 120.

As part of the comprehensive study, Warshall examined 242 on-site systems and found that, of those surveyed, 11% of the on-site systems were “marginal” or had “problems requiring immediate attention.”<sup>148</sup> In addition, Warshall studied sites which the Los Angeles County Department of Health indicated were functional failures. Of those sites revisited by Warshall, 22% “fit the DOH definition of functional failure without dispute.”<sup>149</sup> The study also concluded that in some cases, design features were 20 to 30 years out-of-date.<sup>150</sup> In many instances, the report concluded that “design was somewhat dangerous and technically unsound.”<sup>151</sup>

The report also found that commercial buildings had more marginal and problem systems than any other group.<sup>152</sup> For commercial systems, the report found that “poor maintenance schedules were common.”<sup>153</sup> The report recommended the need for wide-scale “improvement of on-site design, installation, maintenance, and site evaluation.”<sup>154</sup> Finally, the report found that adequate monitoring programs would ensure that tanks are checked or pumped as needed.<sup>155</sup>

Despite problems revealed by Warshall and other reports, the City of Malibu has, for many years, advocated against the construction of large-scale sewer systems.<sup>156</sup> The primary reason for this has been the City’s desire to fight the type of excessive urban growth which has plagued many communities in the area. As a result of this opposition to growth, the city currently is one of the few municipalities in the Los Angeles Region without uniform sewage service.

Heal the Bay supported the citizens of Malibu in their efforts to oppose the County’s proposed massive sewage treatment plant, in favor of a model for sewage treatment handled by septic systems and a series of small treatment facilities throughout the City. In addition, Heal the Bay received verbal assurances from community activists and civil leaders that actions would be taken to incorporate these improved technologies in retrofits of retired septic systems and in future development. To date, very few modifications or recommendations within the 1992 Warshall study have been implemented.

Part of Malibu’s vision for wastewater management was the hope that each local resident or business (i.e. multi-family residential apartments, condominiums, townhouses and commercial facilities) would treat waste water by using improved technologies with an emphasis on reuse. Further, single family dwellings would incorporate these alternative technologies when old systems needed replacement, and building codes for new dwellings would require improved technology systems. The result would be increased efficiency of treatment and reuse of treated sewage, reduced infrastructure and maintenance costs, and a sustainable waste water management approach that each citizen and/or enterprise has a vested interest in maintaining. Heal the Bay finds the current lack

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<sup>148</sup> *Id.* at iv.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at v.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 120.

<sup>156</sup> *Id.* at 1.



of implementation of the City's vision unacceptable to residents, visitors and wildlife, and urges Malibu to quickly adopt stronger building codes and maintenance regiments for septic systems.

Malibu's opposition to a sewage system has presented unique problems for the City. The types of problems potentially attributable to septic systems is seen nowhere better than in and around Malibu Lagoon. Malibu Lagoon, covering 13 acres and located near the heart of Malibu's business district, is one of the last two remaining estuaries in Los Angeles County.<sup>157</sup> The Lagoon and adjoining lower Malibu Creek have been severely degraded over the past twenty years due to urbanization of the Malibu Creek watershed.<sup>158</sup> This degradation includes impairment due to coliform and enteric viruses.<sup>159</sup> Because of these conditions, the Lagoon is permanently posted as unsafe for human contact. In addition, the Lagoon regularly breaches and causes poor water quality at Malibu's Surfrider Beach. In fact, Surfrider Beach has received a 'D' or an 'F' during dry weather for each of the last six years on Heal the Bay's Beach Report Card.<sup>160</sup> During wet weather, Surfrider Beach has received an 'F' for each of the last six years.<sup>161</sup> On a consistent basis, it is the most polluted beach in Santa Monica Bay.

Coliform and virus problems in Malibu Lagoon not only threaten human health, but also, indirectly, harm aquatic life. For example, in June 1997, the California Department of Parks and Recreation was required to breach the natural berm around Malibu Lagoon because excessively high water levels in the Lagoon caused flooding in nearby Malibu Colony and caused septic waste in Cross Creek to daylight.<sup>162 163 164</sup> This breach of the Lagoon resulted in the release of polluted Lagoon waters to Surfrider Beach, and the death of dozens of tidewater gobies, a federally listed endangered species of fish living in the brackish Lagoon.<sup>165</sup>

The City of Malibu is in the process of conducting a tracer study to determine if nearby businesses and residences are contributing to pollution levels at the Lagoon. The City, however, is requesting that individuals volunteer to participate in this program. Needless to say, few volunteers are coming forward.

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<sup>157</sup> City of Malibu, *Lower Malibu Creek and Lagoon Restoration and Management Plan* (July 7, 1995).

<sup>158</sup> *Id.*

<sup>159</sup> See RWQCB 303 List for the Los Angeles Region, February 15, 1996.

<sup>160</sup> Based on daily monitoring results from 1993-97 at Surfrider Beach and weekly results from Malibu Lagoon East in 1992.

<sup>161</sup> Based on weekly and daily monitoring results from 1992-1997.

<sup>162</sup> See, *Waste Discharge Requirements for Las Virgenes Municipal Water District (NPDES No. CA0056014)*, Finding 26 (November 1997).

<sup>163</sup> "Daylighting" is a term used to indicate that traditionally underground pollution has become visible on the surface.

<sup>164</sup> According to one report, the water table beneath nearby Malibu Colony Drive was at only 30-inches below ground surface at the time. See Woodward-Clyde, *Project Implementation Plan for Evaluation of Potential Water Quality Impacts on Malibu Creek and Lagoon from On-Site Septic Systems* (August 1997) at 1-3.

<sup>165</sup> See e.g., *Waste Discharge Requirements for Las Virgenes Municipal Water District (NPDES No. CA0056014)* (explaining the breaching event).

### Legal Obligations of Septic Owners

According to California law, discharges of waste that could affect waters of the state, including groundwater, require a report of the discharge by the responsible party, and the subsequent issuance of WDRs by the RWQCB. For septic tanks, which typically discharge to leach fields, the RWQCB has concluded that “[septic] effluent is considered a discharge of waste that could affect the quality of the waters of the State.”<sup>166</sup> Septic systems are therefore subject to WDRs.

The RWQCB, pursuant to Water Code Section 13269, however, has the discretion to waive WDRs in certain instances provided the waiver is not against the public interest.<sup>167</sup> As of this time, the RWQCB has determined that single family septic systems are exempt from WDRs so long as they are installed and operated in compliance with local ordinances.<sup>168</sup> The RWQCB, however, has made no such determination for multi-family or commercial facilities using septic systems.<sup>169</sup>

In November 1997, the State Board developed a statewide general permit for commercial and multi-family septic system owners.<sup>170</sup> This permit mandates certain activities for covered septic owners, including prohibition of certain discharges and recordkeeping requirements for septic maintenance.<sup>171</sup> The permit does not apply to single family residences.

In particular, the statewide permit mandates that septic systems be inspected and maintained “on a regular basis”<sup>172</sup> and that cleaning be performed by “duly authorized service.”<sup>173</sup> Also the permit contains general prohibitions on discharges and mandates that septic systems be maintained so that no daylighting occurs.<sup>174</sup> Further, the permit mandates training of employees on appropriate practices for minimizing pollutant discharges to septic systems.<sup>175</sup>

Presently, the RWQCB’s septic policy comprises RWQCB Order No. 91-94, entitled *General Waste Discharge Requirements for Private Subsurface Sewage Disposal Systems in Areas Where Groundwater is Used or May be Used for Domestic Purposes* (General Septic Permit). This permit only applies to multi-family residential units with more than one acre and less than five acres per lot, and only in areas where groundwater is or may

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<sup>166</sup> RWQCB, *General Waste Discharge Requirements for Private Subsurface Sewage Disposal Systems in Areas Where Ground Water is Used or May Be Used for Domestic Purposes*, Order No. 91-94, Finding 2 (July 3, 1991).

<sup>167</sup> Pers. Comm., Wendy Philips, Environmental Specialist IV, Standards Enforcement Unit, RWQCB, October 16, 1997, citing Regional Water Quality Control Board Resolution Nos. 52-3, 52-4, 53-6, and 54-4 (which waive for most cities and Los Angeles County reporting of sewage discharges from single family dwellings).

<sup>168</sup> See *Basin Plan*, at 4-18. See also, RWQCB Order No. 91-94.

<sup>169</sup> Pers. Comm. with Wendy Philips, RWQCB, October 22, 1997 citing various policies enacted in the early 1950’s.

<sup>170</sup> SWRCB, *General Waste Discharge Requirements for Discharges to Land by Small Domestic Wastewater Treatment Systems*, Water Quality Order No. 97-10-DWQ (November 18, 1997)

<sup>171</sup> *Id.* at 3.

<sup>172</sup> *Id.* at 5.

<sup>173</sup> *Id.* at 3.

<sup>174</sup> *Id.* at 4.

<sup>175</sup> *Id.* at 6.

be used for domestic purposes.<sup>176</sup> Because the groundwaters of Malibu are listed as potential sources of drinking water in the Basin Plan, it is logical to assume that this permit includes septic systems in the Malibu area. The RWQCB's position, however, is that this general permit does not cover septic discharges in and around the City of Malibu, because ground water in most areas under the City is not actually used for water supply.<sup>177</sup> The Regional Board is in the process of reviewing the Statewide permit for its applicability to Regional septic policy.<sup>178</sup>

Regardless of which position is correct, the General Permit provides a good starting point for addressing septic system permits -- which, again, are required under California law.

The General Septic Permit recognizes that in most cases "there will be significant impact to the ground water" from septic systems and that therefore "mitigation measures are required."<sup>179</sup> To qualify for coverage under the General Septic Permit, multi-family property owners must submit to the RWQCB a Report of Waste Discharge,<sup>180</sup> and all mitigation measures must be in place at least 90 days prior to initiation of discharge.<sup>181</sup> Moreover, the permit either restricts or prohibits several types of discharges. For example, the permit prohibits the discharge of water softener regeneration brines. The permit also prohibits the daylighting of any septage,<sup>182</sup> and states that odors from septage may not occur and that seepage pits and leach fields may not extend to within 10 feet of the high ground water level.<sup>183</sup> In addition, the permit imposes certain monitoring and recordkeeping obligations on septic dischargers.<sup>184</sup>

In addition to permitting requirements, the RWQCB has several other options relating to septic system management. The Board has the authority to issue a complete prohibition on the use of septic systems in areas where the systems create a condition of nuisance or cause harm to water quality.<sup>185</sup> The Regional Board also has the option of conducting formal enforcement proceedings to, among other things, issue Cleanup and Abatement Orders or Cease and Desist Orders for individuals unlawfully discharging septic waste. To date, despite the numerous documented occurrences of illegally discharged septage, the Regional Board has not exercised any of these option.

Finally, as many of these septic systems are hydrologically connected to surface waters (e.g. septic systems near Malibu Lagoon), arguably these discharges are in violation of the Clean Water Act and therefore subject not only to penalties under the Porter-Cologne Act, but under the CWA for discharges to navigable waters without a permit.<sup>186</sup> This could result in the imposition of penalties of \$25,000 per day for each violation.

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<sup>176</sup> General Septic Permit, pg. 3.

<sup>177</sup> Pers. Comm. Wendy Philips, RWQCB.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 2.

<sup>180</sup> *Id.* at 4.

<sup>181</sup> *Id.* at 6.

<sup>182</sup> *Id.* at 7.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 8.

<sup>185</sup> Water Code Section 13280.

<sup>186</sup> See e.g., *Inland Steel Co. v. U.S. Environmental Protection Agency*, 901 F.2d 1419, 1422 (7th Cir. 1990) and *Washington Wilderness Coalition v. Hecla Mining Company*, 870 F. Supp. 983 (E.D. Wash. 1994) (holding that groundwater hydrologically connected to navigable waters are covered by the Act).

## Assessment

In order to determine general compliance with septic system permitting requirements, Heal the Bay conducted a drive-by survey of likely permit candidates, and then examined Regional Board files for permitted operations.

Using lists from the Malibu Chamber of Commerce, the phone book, the city's zoning map from the draft general plan, and the personal knowledge of Heal the Bay staff, a drive-by survey of all multi-family and commercial facilities was conducted. A dwelling was determined to be multi-family if a single structure occupied two distinct addresses, or had two distinct entrances and mailboxes, and had a multi-family zoning designation. Each building or complex, which may house many families, businesses, and septic systems was considered as a single entity to accurately characterize the number of permits required to achieve compliance with the law and RWQCB policies.

Based on drive-by surveys by Heal the Bay, there are approximately 223 multi-family complexes in Malibu likely to utilize septic systems as a waste management option. This number correlates closely with Warshall's estimate of 235 multi-family complexes.<sup>187</sup> It is important to note, as Warshall did, that the number of complexes is not identical to the number of on-site systems (septic tanks plus drain fields). For example, the Paradise Cove Mobile Home Park serves 290 units using approximately 32 on-site systems plus an overflow system.<sup>188</sup> This unit has been counted as one complex for purposes of permitting requirements.

The address of each facility was recorded and later compared to the Regional Board's files for permitted operations.<sup>189</sup> Currently, however, Regional Board records indicate that there only are four multi-family complexes that have fulfilled their legal obligation to file for a WDR permit.<sup>190</sup> This data shows a potential non-compliance rate of 98% for multi-family complexes.

For commercial complexes, drive-by surveys indicate there are approximately 167 separate commercial centers, housing hundreds more businesses, likely discharging to septic systems.<sup>191</sup> This list correlates with Warshall's estimate of 140 parcels.<sup>192</sup> As with multi-family complexes, these commercial complexes likely house more than one septic tank. For example, Cross Creek Plaza has 13 tanks with capacity for approximately 47,000 gallons of waste.<sup>193</sup> It is also important to note that 87 of these commercial complexes are located in the Civic Center/Malibu Creek area.<sup>194</sup> This is more than 50% of the City's permitted facilities.

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But c.f., *Umatilla Association v. Smith Frozen Foods, Inc.*, 962 F. Supp. 1312 (D. Ore 1997) (stating that no type of groundwater is covered by the Act).

<sup>187</sup> Warshall Report at 32.

<sup>188</sup> *Id.*

<sup>189</sup> Addresses for these facilities have not been included in this report, but have been provided to the Regional Board and the City of Malibu for follow-up.

<sup>190</sup> RWQCB, *Facility Location for All Active Dischargers (Index by Facility City)* (May 5, 1997) at 14. See also, RWQCB, *Current List of WDR's in City of Malibu* (June 1997).

<sup>191</sup> These addresses have been provided to the Regional Board and the City of Malibu for follow-up.

<sup>192</sup> Warshall Report at 30.

<sup>193</sup> Los Angeles County Department of Public Health septic file for Cross Creek Plaza.

<sup>194</sup> From Malibu Canyon Road to Carbon Canyon Road.

According to available RWQCB records, however, there are only seven businesses or business groups in Malibu that have applied for coverage under the RWQCB's General Septic Permit; three of which are located in the Civic Center/Malibu Creek area. Overall, this correlates to potentially a 95% permit non-compliance rate for commercial facilities. Table 3 is a general summary of Malibu septic compliance.

### **Regional Board Enforcement Against Septic Violators**

Despite this wide-spread non-compliance, over the last six years there has been only one septic system enforcement action. This action was brought against Malibu Cross Creek LTD. and Koss Real Estate Investment for violations at a shopping mall and office complex at 23410 Civic Center Way (Malibu Country Mart). In particular, in bringing the action the RWQCB charged the dischargers, which had obtained permit coverage, with "repeatedly failing to submit quarterly monitoring reports over the last six years."<sup>195</sup>

According to the Regional Board staff reports, the Board could have imposed penalties up to \$1,000 per day for each violation.<sup>196</sup> The RWQCB therefore reasoned that \$80,000 was the maximum penalty it could assess. However, since the discharger was in violation since early 1991, the better argument would have allowed maximum penalties to accrue since that earlier date. Instead, the RWQCB began telephone calls and letter writing in late 1994, and only began calculating maximum penalties when RWQCB staff gave up efforts in September 1996. This \$80,000 maximum figure was a gross underestimate of maximum penalties available, which should have been calculated in the millions of dollars if violations were counted from the initial date of violation.

In the end, however, the RWQCB settled for the imposition of \$20,000 in penalties, of which \$10,150 was attributable to staff costs. To date, however, no money has been collected. In fact, the discharger has filed suit in Superior Court contesting the penalties.<sup>197</sup>

In partial defense to this low level of compliance and enforcement effort, the RWQCB claims that it relies principally on local agencies to manage these systems.<sup>198</sup> Available information, however, shows that local agencies are doing little about septic system permitting, and even less about enforcement.

### **City of Malibu Responsibilities**

Currently, the city of Malibu conducts inspections before and during the installation of new septic systems. Despite what the RWQCB might believe, historically there have been no expressed permitting requirements implemented by the City of Malibu. In addition, currently there are no certification requirements for installers of septic tanks, only certification requirements for tank designers. Also, owners of septic systems have never been officially informed of WDR requirements.

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<sup>195</sup> *In the Matter of Malibu Cross Creek Ltd. and Koss Real Estate Investment*, RWQCB Complaint No. 96-101 (December 10, 1996).

<sup>196</sup> *Id.* See also Water Code Section 13268.

<sup>197</sup> Pers. Comm. Magdy Baiady, RWQCB (January 15, 1998).

<sup>198</sup> Pers. Comm. Wendy Phillips, citing agreement with various local cities.

The City of Malibu recently adopted a new policy for the design and installation of septic systems.<sup>199</sup> In response to the Warshall Report, this policy focuses on the installation and inspection of private sewage disposal systems, and is effective January 1, 1998. This policy includes specific guidance for new tank installation, including siting restrictions and disposal field requirements. According to City officials, this policy “will help to ensure the longevity, effectiveness, ease of maintenance and inspection” of septic systems.<sup>200</sup>

In the future, the City believes this policy could include permitting and certification requirements for installers of septic systems. Ultimately, the City hopes to have a program for inspection, on a seven year cycle for existing tanks. They have plans for permitting requirements, as well. According to City staff, this could occur within the next year or so.<sup>201</sup>

While the new Malibu septic policy makes important improvements to the installation techniques used for new tanks, the policy fails, to a large extent, to address problems associated with existing systems. One way it does address these concerns is to require that, during times of alterations or repair, existing systems undergo certain structural modifications.

Another major problem with the City’s program seems to be its failure to respond, in a timely fashion, to known septic problems. In addition, business owners in many of the larger business plazas have often contacted city officials regarding septic odors. Many of these complaints go un-addressed on a repeated basis.<sup>202</sup>

### **Los Angeles County Responsibilities**

Los Angeles County Department of Health has historically been responsible for ensuring inspection and proper installation of Malibu septic systems. With the incorporation of Malibu, however, the County has turned over septic design and monitoring responsibilities to the city.<sup>203</sup> In addition, the County, has “no authority for the issuance of WDRs or [for requiring] septic monitoring.”<sup>204</sup> In fact, the County has always taken the position that problems associated with multi-family dwellings and commercial facilities must be referred to the RWQCB. The County’s main concern regarding Malibu septic systems is public health.<sup>205</sup> According to one County health officer, so long as the systems are installed in compliance with the plumbing code, “there shouldn’t be a problem.”<sup>206</sup>

### **Recommendations**

In order to improve existing enforcement efforts against septic violators, Heal the Bay recommends the following actions by the Regional Board and the City of Malibu.

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<sup>199</sup> City of Malibu, *Guidelines and Standards for the Installation of Inspection of Private Sewage Disposal Systems* (Nov. 6, 1997).

<sup>200</sup> Letter to author from Craig George, City of Malibu Building Inspector (Nov. 14, 1997).

<sup>201</sup> Pers. Comm. Craig George, City of Malibu Building Inspector (Nov. 14, 1997).

<sup>202</sup> The individual making these observations asked not to be identified.

<sup>203</sup> *Warshall Report* at 83.

<sup>204</sup> Pers. Comm. Jack Petralia, Los Angeles County Department of Public Health. Nov. 1997.

<sup>205</sup> *Id* See also, *Warshall Report* at 83.

<sup>206</sup> *Id*

- **The Regional Board must recognize its ultimate responsibility for regulating septic systems.** The Board must establish permitting procedures, maintenance programs and reporting procedures that ensure water quality protection. As part of this, the Regional Board should implement a comprehensive WDR process for all multi-family dwellings and commercial septic systems, not simply those between one and five acres. This should include required schedule of maintenance, certification of maintenance, and annual reporting requirements by system owners. In order to assist in this process, Heal the Bay has included a comprehensive list of commercial and multi-family complexes in the city which are likely on septic systems. Strong enforcement is necessary in those areas where violations persist and where water quality is threatened. It is unacceptable and a violation of the Clean Water Act to allow disposal of waste into surface waters of the United States.
- **The Regional Board should ban septic system use in those areas where the water table is highest and the number of systems is the most dense.** This ban should include areas around Malibu Lagoon and near the coast, including parts of the Malibu Colony, the Civic Center, and Paradise Cove. In these areas, systems should be replaced with a sewer system attached to small scale community-based water reclamation systems that deliver treated water to storage facilities and back to residents for irrigation. The Regional Board and City of Malibu should embrace community or neighborhood-based package plant facilities for those areas of concern.
- **The RWQCB must address the ongoing problem of septic systems associated with food preparation facilities.** Commercial facilities that prepare food should not be on septic systems. At a minimum, these facilities must be required to install modern treatment systems that are specifically designed for food waste. It is apparent that special systems must be required for these facilities to protect the public health.
- **The RWQCB should implement mandatory penalties for daylighting septic systems.**
- **The City of Malibu must respond to complaints about failed septic systems and offensive odors in a timely fashion.** These responses should include an investigation as to the cause of the failure. If the septic system is determined to be inadequate, measures to update the system should be initiated. Persistent problems should be reported to the RWQCB. Malibu should enforce their existing ordinances which prohibit the discharge of septage to the storm drain system.
- **The City of Malibu should establish a local certification program for all system installers and owners.** Installers should be certified. Also, homeowners, in transferring property, should show they have maintained their septic systems through adequate installation and inspection.
- **Strict maintenance practices for septic systems need to be implemented and followed.** The City should require annual certification of proper operation and maintenance for multi-family complexes and commercial properties. The City should require biannual certification for single family homes. Certification inspections

should be conducted by either qualified city employees or certified private companies to ensure that the system operates as it was designed.

- **The City of Malibu and the RWQCB should use their police powers to require suspect residences and businesses to participate in the septic system tracer study.**
- **The RWQCB and the City of Malibu should implement a Geographic Information System.** They presently have the hardware and software to do this. This technology will greatly simplify the chore of ensuring that all multi-family and commercial facilities have a WDR. The existing parcel map created by the city in Autocad should be converted for use with GIS. This will allow the City and others to:  
(1) Map the number and locations of all septic systems within the city and whether or not they have a permit; (2) Aid the city staff in responding to emergency calls in a timely fashion; (3) Allow the city and the RWQCB to analyze those areas determined to be inappropriate for septic systems and help determine the best locations for community based treatment systems; (4) Locate and plan appropriately sized systems and the necessary green space required for water reuse. This also will allow inspectors and city employees to schedule and route inspections, respond to emergencies, and enforce the law.





## VII. NPDES AND WDR PERMIT VIOLATORS

Businesses that discharge into waters of the state must comply with permits issued by the Regional Board. This section examines the general level of compliance with these permitting requirements. Findings include:

- **Existing databases for these violations are poor. Examination of Discharge Monitoring Reports for several major facilities did not correlate with existing EPA databases for violations. Information is highly technical and not readily discernible by the general public.**
- **The RWQCB's Quarterly Report of Violations documented 394 NPDES and WDR permit violations in the first nine months of 1997.**
- **Examination of monthly and annual monitoring reports for four major facilities reveals that exceedances of permit conditions are occurring and that some of these exceedances present risks to receiving waters.**
- **In the last six years, the Regional Board has undertaken only four penalty actions against NPDES violators.**

### Assessment

Under the Clean Water Act and the California Porter-Cologne Act, industries that discharge pollution to waters of the state must do so under the requirements of a discharge permit. For many discharges, this is accomplished through either the federal NPDES permits or California's WDR program. As part of the permitting program, dischargers are required to meet specified limits on pollutants. Dischargers also are required to submit regular reports regarding their discharges, including information as to whether permit limits are being met.

In order to determine the extent of non-compliance under the federal NPDES program, Heal the Bay analyzed various sources of information from Federal and state files and other public sources, including various EPA databases, new Regional Board enforcement reports and individual permit reports.

### EPA's Quarterly Non-Compliance Reports

Heal the Bay reviewed EPA's Quarterly Non-Compliance Reports (QNCR) for major facilities.<sup>207</sup> The reports are prepared by Regional Boards and then submitted to EPA for formatting and consistency review. The reports contain basic information for "major" industrial, municipal and federal facilities, and highlight instances of non-compliance by those facilities. For EPA, this report is the primary source of information on enforcement needs.<sup>208</sup>

<sup>207</sup> "Major facility means any NPDES 'facility or activity' classified as such by the Regional Administrator, or, in the case of 'approved state programs,' the Regional Administrator in conjunction with the State Director." 40 CFR 122.2.

<sup>208</sup> Pers. Comm. Bob Wills, EPA (January 8, 1998).

In order to be included in a QNCR, facilities must be classified as “major facilities” and violations attributable to these facilities must exceed specific EPA criteria. These criteria include:<sup>209</sup>

- (1) Violations of enforcement orders;
- (2) Violations of compliance schedules by more than 90 days
- (3) Instances where effluent limit violations exceed limits by 40% for conventional pollutants or by 20% for toxic pollutants;
- (4) Reporting violations in excess of 30 days past deadlines; or
- (5) Exceedances that cause or have the potential to cause water quality or health problems.

There are three facilities in the Region which have been listed for continuous QNCR violations in every quarter since 1992. These are:

- City of Burbank’s Water Reclamation Facility;
- City of Los Angeles’ Hyperion Treatment Plant in El Segundo; and
- Los Angeles County Joint Water Pollution Control Plant in Carson.

For each of these, Federal, state or private enforcement action has been ongoing since the late 1980’s or early 1990’s. According to the QNCRs, each facility is presently in general compliance with settlement conditions and is therefore categorized as “resolved pending” by EPA, even though original permit conditions are not being met.<sup>210</sup>

### **EPA’s Permit Compliance System**

Because of the federal criteria for classification of facilities in the QNCR reports, this information appeared under-inclusive in terms of capturing known Clean Water Act violations for criteria 2,3 and 4 above. In light of this, Heal the Bay staff then examined NPDES enforcement records in the Right-to-Know Network’s copy of EPA’s Permit Compliance System (PCS).<sup>211</sup> This database catalogues many violations for each NPDES permit holder, including those violations involving significant and insignificant non-compliance by those facilities with major compliance problems. The database provides violation-by-violation analysis for those violations known by EPA. Finally, the database provides only information on monthly and quarterly violations, not daily violations.<sup>212</sup>

The PCS database contains information on specific permit parameters, permit limits for each parameter, monitoring frequency and locations, and violations of permit requirements. Violations are listed for every parameter at each outfall for the facility. Violations may be of the *numeric* type, in which case the facility exceeded their discharge limit by some percentage, or they may be *non-receipt* violations, in which case the violator failed to submit a monitoring report by the deadline.

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<sup>209</sup> 40 CFR 123.45

<sup>210</sup> See 40 C.F.R. 123.45(a)(2)(i)(B) for further explanation of “resolved pending” description.

<sup>211</sup> This information, along with numerous other environmental databases, can be found at <http://www.rtk.net>.

<sup>212</sup> Pers. Comm. Bob Wills, EPA (January 8, 1998).

Based on review of this database, Heal the Bay was alarmed because so many violations - - and so many severe violations -- are reported in the PCS database for this region. *However, because of the types and severity of some of the violations included in the database, Heal the Bay chose to examine individual monitoring reports, on file with the Regional Board, for specific facility violations.*

### **Individual Permits**

In order to determine the accuracy of all of the above reporting systems, Heal the Bay then examined annual and monthly discharge monitoring reports for four major permittees in this Region. These facilities included:<sup>213</sup>

- (1) Hyperion Water Treatment Plant in Playa Del Rey;
- (2) Los Angeles County's Joint Water Pollution Control Plant in Carson;
- (3) Tapia Water Reclamation Facility; and
- (4) Chevron's El Segundo Refinery.

Heal the Bay examined each file based on the permit conditions at the time of the reports. These limits included interim limits imposed by court order or by settlement agreement. Obvious reporting errors were omitted, as were instances where dischargers failed to report on certain constituents because of sampling difficulties. Mass exceedances and concentration exceedances were counted as separate exceedances. Table 4 presents a summary of exceedances for these facilities based on their own DMRs.

The Joint Water Pollution Plant had 21 permit exceedances, eight of which were violations of acute toxicity requirements. Hyperion had six exceedances; Tapia had 12; and Chevron showed 17 exceedances. It is important to note that not every exceedance necessarily correlates with a violation of the discharger's permit. For example, for arsenic the Chevron facility is allowed three exceedances per permit cycle before a violation is counted. This occurred in the summer of 1994. In that situation, rather than pursuing enforcement, however, the Regional Board relaxed permit standards so that compliance could be achieved.<sup>214</sup>

**In general, this data could not confirm the numerous violations listed in the PCS database.** Many violations contained in the PCS database were not observed in the DMRs. Many violations appeared to be based on old permit requirements, rather than existing permit conditions.<sup>215</sup> Further, some additional violations escaped the PCS database entirely.

*Based on this information, it is clear that the EPA and Regional Boards must coordinate reporting schemes so that documentation clearly reflects existing permit violations for major facilities. Without this type of synthesis, it is impossible for the government, let*

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<sup>213</sup> This was a very time-consuming process and could not be done for all facilities in the Region.

<sup>214</sup> See JWPCP, Discharge Monitoring Report (Sept. 1994).

<sup>215</sup> Follow-up investigation by one discharger, as well as EPA staff, revealed that there are several problems in the database. Accurate permit limits were not included for all dischargers, and there were discharger reporting errors when non-detection limits exceed permit conditions. These values are erroneously reported as violations, when in fact, they are not.

*alone the public, to be certain of just how many and what type of violations are occurring.*

It is also clear that some violations of major permits are being reported. Those of greatest concern include violations of acute toxicity limits and priority pollutant permit violations.

### **Regional Board Quarterly Report of Violations**

Over the past year, the Regional Board has initiated a more comprehensive enforcement reporting program for tracking NPDES and WDR violations. This was accomplished by way of a Report of Violations and Enforcement Actions (Report of Violations). These quarterly reports include violations for both major and “minor” dischargers, and are more comprehensive, in terms of identifying violators, than either the QNCR or PCS system.

The Regional Board’s Report of Violations includes information identifying the violator and the watershed involved; the non-compliance period; the type of violation; and the Board’s response and comments on the dischargers’ response to Board action. As for types of violations, the Regional Board groups violations by the following categories:

- (1) Effluent Limit Violations/Other Permit Violations - Major NPDES Dischargers;
- (2) Effluent Limit Violations/Other Permit Violations - Other NPDES/WDR Dischargers;
- (3) Toxic Violations - All NPDES Dischargers;
- (4) Violations of Compliance Schedules and Enforcement Orders;
- (5) Failure to Submit Reports/ Deficient Reports (Excluding Storm Water); and
- (6) Violations of POTW Pretreatment Programs.

*According to the Regional Board’s Report of Violations, during the first nine months of 1997 there were at least 394 facilities in violation of NPDES and WDR requirements (excluding storm water). Based on a cross-check with the DMRs from the JWPCP, Hyperion, Tapia and Chevron, the Regional Board Report of Violations accurately identified violations of NPDES and WDR requirements.*

- Category 1: During 1997 there were 14 major facilities in violation of their NPDES permits on one or more occasions. Twelve of these facilities were sewage treatment facilities. The other two were industrial facilities -- the Texaco Los Angeles Refinery and the Southern California Edison El Segundo Generating Station. These fourteen violators represent nearly one-third of the 44 major facilities in the Region.<sup>216</sup> Of these facilities, 10 received no response, two received a Level 1 response, and two were covered by Consent Decrees entered into in the late 1980’s.
- Category 2: Regional Board Reports of Violation reveals that 34 additional facilities violated NPDES or WDR effluent limitations. Six of these facilities received Level 1 enforcement letters, two received Level 2 enforcement letters, and one received a Level 3 response. Twenty-five of these facilities received no level of enforcement, either because compliance was achieved or violations were “marginal,” according to the Regional Board.

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<sup>216</sup> RWQCB, *List of Active Dischargers (Index by Discharger’s Name)* (Dec. 4, 1996).

- Category 3: Reports of Violation indicate that four facilities were in violation of applicable requirements. Among these, the Tapia Water Reclamation Plant violated acute toxicity requirements. The other three violators, which include the Mobil Oil Corporation refinery, the City of Burbank Water Reclamation Plant and the City of Los Angeles Tillman Water Reclamation Plant, were violating chronic toxicity standards. These latter violations appear to be continuous, and all three of these violators are conducting Toxic Identification Evaluation studies. In addition, Mobil Oil is subject to a Cleanup and Abatement Order which was issued in 1995.<sup>217</sup>
- Category 4: No facilities were listed as violating compliance schedules and enforcement orders.
- Category 5: The Regional Board documented 339 facilities in violation because of a failure to submit required reports. These violators included every type of discharger from large oil companies to small scrap yards. The list also included the California Department of Parks and Recreation, the California Department of Transportation, California Department of Water Resources, and the U.S. Forest Service. When sister state and federal agencies do not respect legal reporting requirements, it is no wonder industry fails to comply. Of these facilities, 296 received a Level 1 response, 34 received a Level 2 response and nine received a phone call or no response. None of the facilities received a Level 3 response.
- Category 6: Three facilities are listed as being in violation during 1997. These violators included the City of Los Angeles Hyperion Treatment Plant, the City of Burbank Water Reclamation and Power Plant, and the Ojai Valley Sanitation District plant in Ventura County. These violations correspond to information in the EPA's QNCR database for pretreatment violations at the Hyperion and Burbank facilities. Based on available information, the Ojai violations, however, do not meet the requirements for QNCR listing.<sup>218</sup>

*These Regional Board Enforcement Reports indicate that NPDES and WDR non-compliance is a problem in this region, particularly with regard to permit reporting. The fact that so many facilities consistently file late reports highlights the fact that many dischargers feel they can take a relaxed approach to the entire permitting program and self-monitoring reporting requirements.*

This information evidences other shortcomings as well. In most instances there is no evidence that the Regional Board considered penalties for violations or the harm resulting from such violation. Instead, eventual compliance with the law was sufficient to avoid penalties. For example, in May 1997 the Tapia Water Reclamation Plant exceeded coliform limits and violated acute toxicity limits. The report, however, makes no conclusions regarding the potential impact of these violations on water quality standards, or how many times they have occurred in the past. Instead, the report merely concludes that no enforcement action is required.

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<sup>217</sup> RWQCB Order No. 95-116 (Sept. 6, 1995).

<sup>218</sup> In the December 1997 *Report of Violations*, Regional Board staff reported that Ojai was back in compliance.

In other, more egregious instances, the report goes even farther. In at least one instance the Report indicates that permit conditions may be changed by the Regional Board so that the discharger could attain compliance.<sup>219</sup> Relaxing a permit is not a sanctioned enforcement response; nor, in the absence of exceptional circumstances, is it legal.<sup>220</sup>

### **Specific Regional Board Penalty Actions Against NPDES Violators**

According to the State's Enforcement Guidance, significant violations of NPDES permits should be brought to the Board's attention for potential enforcement action.<sup>221</sup> Over the past year, this process of informing the Board has improved because of new Quarterly Reports of Violations and Enforcement Actions contained in monthly Executive Officer Reports.<sup>222</sup>

Despite these recent efforts, however, the fact remains that over the last six years the Regional Board has issued only four formal enforcement actions against permit violators, either because discharges were in exceedance of permit limits, or because discharge took place in the complete absence of a permit. The Regional Board also issued one administrative complaint where the discharger failed to submit reports required in a permit.

For example, the Regional Board took action in 1996 against Wilmington Liquid Bulk Terminals Inc., which allegedly discharged more than one million gallons of "oily water" into the Dominguez Channel, in the complete absence of a discharge permit. Referral to the Attorney General was recommended, but "in order to avoid the expense and uncertainty of litigation," a settlement agreement was executed. As part of the settlement, Wilmington paid \$170,000 to various state funds.<sup>223 224</sup>

### **Recommendations**

In order to improve existing enforcement efforts under the Clean Water Act's NPDES program, Heal the Bay recommends the following actions by the Regional Board.

- **The Regional Board and EPA must improve their tracking system for NPDES permit violations.** QNCR data is extremely limited in its scope and PCS data does not correlate with existing DMRs. These agencies should work cooperatively with environmentalists and dischargers to ensure that violations are being tracked appropriately and in a format that is easily understandable.

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<sup>219</sup> Regional Board staff is considering relaxing Lindane standards for the Tillman Water Reclamation Plant, which allegedly cannot locate the source of contamination. See *RWQCB Quarterly Report of Violation and Enforcement Actions*, pg. A-3 (Dec. 8, 1997).

<sup>220</sup> See, 40 CFR 122.44(l) for CWA anti-backsliding requirements and limited exceptions to the rule.

<sup>221</sup> *State Enforcement Guidance* at 5.

<sup>222</sup> *RWQCB, 1996-97 Annual Report*, at 14 (Dec. 1997).

<sup>223</sup> *RWQCB Resolution No. 93-004* ( June 14, 1993).

<sup>224</sup> Fortunately, there has been some federal and state enforcement action against some of the worst NPDES violators. See note 210, *infra*, and accompanying text. These actions are the legacy of the late 1980's and very early 1990's and settlement agreements in those cases allow violations to occur for, in some case, many years into the future. In the meantime, Clean Water Act NPDES provisions continue to be violated by hundreds of facilities each year.





- **The Regional Board must continue its Quarterly Report of Violations.** This report accurately provides the comprehensive list of which facilities are in violation of the law. However, this report should be improved. The Regional Board should include more comprehensive information about the types of violations and the history of discharger non-compliance. This should include a detailed summary of the duration of non-compliance and a summary of the number of violations observed since recordkeeping began. Also, reports should include the date compliance is achieved. This will allow the Board to maintain a more comprehensive listing of all violations and a more accurate history of non-compliance.
- **An enforcement prioritization scheme must be developed.** At present, this scheme should focus enforcement against minor dischargers that continuously violate permit requirements and fail to provide required reports. In addition, the prioritized enforcement scheme should include penalties against major facilities to the extent there are violations of priority pollutant limitations or of acute toxicity requirements.
- **The Regional Board should impose mandatory penalties for acute toxicity violations and for trends of violations of priority pollutants.** Mandatory penalties should be imposed against chronic toxicity violators to the extent Toxic Identification Evaluations and Toxic Reduction Evaluations do not resolve the problems.
- **The Regional Board cannot tolerate instances where reports are not submitted on a timely basis.** These reports are the cornerstone to Clean Water Act and Porter-Cologne compliance. Without them, neither the Board nor the public can assess facility performance. The Board should establish a protocol for enforcement against permittees that ignore reporting requirements. These violations are simple to prove -- either the report was sent or it was not. From a resource perspective, it is in the Regional Board's best interest to issue penalties against repeat violators, even if compliance is always achieved after Regional Board letters are sent. Violators should not wait for Regional Board letters before coming into compliance. If violators come to rely on Regional Board reminders every time a report is due, the process of self-reporting has been substantially undermined.



## VIII. CONCLUSIONS AND RECOMMENDATIONS

Based on the results of this study, it is clear that industries are not being held accountable for their environmental violations and have little incentive for coming into compliance with existing law. Lack of enforcement leads to the potential for increased harm to the environment from the threat of future non-compliance. It also leads to lackadaisical compliance and thus poor environmental conditions and, in many cases, non-attainment of beneficial uses.

All in all, the evidence reveals that the Regional Board is operating a voluntary compliance program. In this Region there have been in excess of 2,200 spill violations, 5,000 storm water NOI filing violations, 1,170 industrial storm water annual reporting violations, 379 septic system violations, and 394 NPDES and WDR violations (non-storm water). With only 14 penalty actions in the last six years, this means that more than 99.5% of all potential violations occur without penalty. Clearly, this Regional Board's enforcement program offers no deterrence to polluters.

Given the rampant non-compliance and the significant lack of enforcement in the Los Angeles Region, it is clear that enforcement efforts by the RWQCB must be improved. In addition to the specific recommendations highlighted above, the following are overall recommendations to improve the enforcement program:

- **The Regional Board must establish priority enforcement schemes for each category of violation.** Suggestions for this type of prioritization are listed in each particular category above. These include increased enforcement for storm water non-filers and facilities that fail to submit required reports. Once these violators are captured, the Regional Board should focus enforcement attention on storm water pollution prevention plans, and the adequacy of best management practices implemented under these SWPPPs. Enforcement should also focus on spills of sewage, oil and chemicals. This prioritization should be based on water quality impacts and harm to beneficial uses. Also, septic systems in Malibu must be brought into compliance and NPDES permit holders must be held accountable for consistent violations. Information relevant to these priorities should be incorporated into enforcement reports to the Board.
- **When enforcement does occur, the Regional Board must improve existing penalty practices.** Penalties must be sufficient to deter violations of the law. In addition, the Regional Board must ensure that violators are required to disgorge all economic benefits that are gained from non-compliance. This is the most effective way to be certain that it doesn't pay for businesses to break the law. The Regional Board also must ensure that staff costs are recovered for enforcement efforts. With full cost recovery, the enforcement program should become self-funding over time.
- **The Regional Board must begin immediate implementation of its 1997 Priority Plan.** This plan includes a list of agency "priorities" to "achieve substantial improvements in water quality and the preservation or enhancement of watershed attributes."<sup>225</sup> This Priority Plan identified the following areas, among others, as

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<sup>225</sup> Los Angeles Regional Water Quality Control Board FY 1997-1998 Regional Board Priorities (1997), at 1.

being in the Regional Board's highest priority category in the coming fiscal year.<sup>226</sup>

(1) Development and implementation of an effective enforcement approach that ensures prompt, fair and consistent enforcement of observed violations and the application of appropriate fines where necessary; (2) Development of a septic system enforcement initiative and permitting requirements; (3) Development and implementation of a strategy to address contamination of Malibu Creek and Lagoon from septic systems and other sources.

- **The Regional Board should improve its filing system to ensure that Board members and staff have a true appreciation for the types of enforcement actions that have occurred.** It is clear that Regional Board files are inadequate and are not reflective of existing enforcement activities, or of existing violations. This should occur by maintaining separate filing systems for enforcement actions and developing a program to ensure that staff are aware of the need for a comprehensive enforcement filing system, and the need to track violations.
- **Regional Board staff must improve methods of informing the Board of potential enforcement opportunities in all areas.** The Regional Board should continue and improve violation reports to the Board. These reports should provide more detailed descriptions of all follow-up actions by staff and the reasons for the Board's failure to enforce. In addition, the Regional Board should include all critical information in enforcement reports. Presently it is difficult to make complete enforcement determinations based solely on staff reports. Improvements should include detailed lists of all violators and enforcement responses, with a status and trends analysis to give the Board an adequate picture of the problem areas. This is the only way that the Board will be able to accurately assess the need for enforcement action.
- **All penalty actions should be subject to public comment and Board approval.** This way, the public can be sure that penalties are consistent with existing enforcement policies and that everyone is fully informed of violations. Without some level of scrutiny, excessive discretion will favor the violators.
- **The state should support the California Storm Water Enforcement Act of 1998.** This bill provides for mandatory penalties for non-compliance with water quality laws.
- **EPA should exercise its federal oversight powers under Section 1319 of the Clean Water Act.** Under this authority, EPA should make a finding that Regional Board enforcement activities are inadequate and that intervention by EPA is necessary.<sup>227</sup> EPA should then intervene in state enforcement practices, and should formally proceed with the issuance of federal penalty actions.
- **The State must provide increased and adequate funding for effective Regional Board programs that ensure compliance and enforcement.** Currently, storm water inspection programs are completely inadequate due to underfunding. In addition, Regional Board staff must make a more concerted effort to review all required

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<sup>226</sup> *Id*

<sup>227</sup> See also 40 CFR Part 123.28(c) and accompanying note.

reports. Also, the Board only receives funding for three enforcement staff per year. The combination of compliance assurance and enforcement being a low priority, and the lack of dedicated funding for enhancing these programs, has led to the current dearth of enforcement in the Region.



**TABLE 1**  
**HEAL THE BAY-ENFORCEMENT AUDIT**  
**LOS ANGELES REGIONAL BOARD PENALTY ACTIONS**  
**1992-1997**

Date of Action	Company Name	ACL Imposed	Code Section Violation	Amount of penalty imposed	Maximum Penalty Available*	Economic Savings	Staff costs	Conditions of suspension	Notes
11/27/91	J.C. Incorporated Liquid Waste Disposal, Jack Barry Zwaehlen	Violation of terms of revised Cleanup & Abatement Order No. 90-38, of chemicals including organic compounds discharged to soil and groundwater	CWC Sect. 13267, 13304, & 13350	\$32,000	\$290,000	Not calculated	Not calculated	N/A	Recommend at Jan. 1992 hearing \$127,500 penalty. Zwaehlen spent \$21,000 for investigation and demonstrated inability to pay more. 4/21/92 hearing: assess \$32,000 penalty and request EPA reg IX to enforce under CERCLA.
6/10/92	Anheuser-Busch, Inc.	Discharge of caustic soda into the LA River, a water of the state, on 1/27 & 2/23-24/92. Reached Sepulveda Basin wildlife area	CWC Section 13376	\$98,000; all suspended for SEP	\$124,000	Not calculated	Not calculated	Amount of penalty may be used to fund environmental projects in the Sepulveda Basin.	
6/12/92	Southwest Marine, Inc.	Violated WDRs through discharge of oily waste from shipyard into Los Angeles Inner Harbor on 10/23/91, 3/24/92 & 4/18/92	NPDES No. CA0000868	\$10,000	\$30,000	Not calculated	Not calculated	N/A	
8/7/92	All Goods International	Non-payment of annual fees	CWC Sect. 13260	\$250	\$1000/day	Not calculated	Not calculated	N/A	
8/31/92	United Food Processors	Non-payment of annual fees	CWC Sect. 13260	\$8,750	\$1000/day	Not calculated	Not calculated	N/A	
8/31/92, 10/19/92	Operating Industries, Inc.	Non-payment of annual fees	CWC Sect. 13260	\$16,375	\$1000/day	Not calculated	Not calculated	Violations began 5/7/92	
11/30/92	Canale Foods, Inc.	Failure to submit monitoring reports	CWC Sect. 13267	\$45,500; \$18,850 suspended for compliance	\$91,000	Not calculated	\$3,900	Any future violations of NPDES permit will automatically result in assessment of suspended amount.	
3/1/93, 6/14/93	Wilmington Liquid Bulk Terminals, Inc.	Discharge of wastewater to Dominguez Channel from 6/12 - 8/24/88, 1,308,426 gals	CWC Sect. 13376	\$170,000*	\$13,234,260	Not calculated	Not calculated	N/A	Referral to Attorney General initially recommended, but settlement occurred prior to referral. Settlement Agreement: \$170,000 to Cleanup & Abatement Account, Mussel Watch, Toxic Substances Monitoring, BPTCP, CDFG
5/15/95, 1/22/96	Village Properties	Violation of requirements for construction activities: no SWPPP, no monitoring & reporting program, discharge for 19 days during rainy season, failing to submit SWPPP to Board. Did submit NOI, erosion controls insufficient	CWA Sect 301, CWC Sect 13376 & 13267	\$211,200; \$200,000 suspended for compliance	\$17,824,000	\$105,000	\$11,200	Must meet permit conditions by July 15, 1995.	Minor discharger. First site inspection June 3, 1994. Sediment discharged directly to Malibu Creek and Las Virgules Creek. Erosion channels wide as 10 feet and deep as 3 ft.

**TABLE 1**  
**HEAL THE BAY-ENFORCEMENT AUDIT**  
**LOS ANGELES REGIONAL BOARD PENALTY ACTIONS**  
**1992-1997**

Date of Action	Company Name	ACL Imposed	Code Section Violation	Amount of penalty imposed	Maximum Penalty Available*	Economic Savings	Staff costs	Conditions of suspension	Notes
7/30/96	Western Fuel Oil Co.	Violations of NPDES permit requirements and Consideration of Renewal of NPDES No. CA0001902. Exceeding effluent limits, discharging oil to surface waters of state, failing to perform wastewater analysis, falsifying data.	CWC Sect. 13267 & 13376	\$111,270; \$70,000 suspended for SEP	\$197,000	Not calculated	\$11,270	Western Fuel Oil Co. must fund a computer database system with GIS for cataloging water quality data for the Port of Los Angeles.	
10/23/96	Container Recycling Alliance	Violations of NPDES permit CAS000001 requirements, failure to obtain coverage under the general permit	CWC Sect. 13376 & 13377	\$15,600; \$7000 suspended for compliance	\$3,470,000	\$4,419	\$4,200	\$7000 suspended provided Container submit SWPPP, Monitoring & Reporting Program and Annual Monitoring Report to 95-96	
11/17/96	Ojai Valley Sanitary District	Violated WDRs by releasing chlonne into Ventura River that exceeded discharge requirements	NPDES No. CA0059961, RB Order No. 96-041	\$56,535; \$55,555 suspended for SEP	\$555,550	None	\$980	\$55,555 suspended provided Ojai restock Ventura River with 2000 fish.	
12/4/96	Simi Valley Landfill & Recycling Center	Discharged 80,000 gallons of untreated leachate on Aug. 23 & Aug. 29, 1996	CWC Sect. 13350 and Order No. 90-034	\$9,000; suspended for SEP	\$2,400,000	unclear	\$5,600		
12/10/96	Malibu Cross Creek, LTD. and Koss Real Estate Investment	Failure to submit technical reports	CWC Sect. 13267	\$20,000	\$80,000; based on number of days delinquent since extension deadline of 9/20/96	Not calculated	\$10,150	N/A	Out of compliance since 2nd quarter, 1991. Letters sent 2/7/94, 11/22/94, 2/16/95, 8/26/96. Site inspection 7/28/94. Given extension to 9/20/96.



**TABLE 2**  
**HEAL THE BAY-ENFORCEMENT AUDIT**  
**LOS ANGELES REGIONAL BOARD SPILLS SUMMARY**  
**1992-1997**

Rank	Discharger	Number of Spills	Oil** (gallons)*	Chemical*** (gallons)	Sewage**** (gallons)	Spills involving waterways
1	L.A. County^^	274	2,210	550	> 6,503,808^	33
2	Texaco	131	> 193,168	>8201	0	20
3	City of Los Angeles (includes Hyperion)	73	550	4,675	> 10,527,614^	13
4	Unocal	70	50,166	> 80	0	16
5	Mobil Oil	69	> 125,125	25,619	0	10
6	City of Oxnard	65	0	0	191,450	13
7	Arco	55	64,915	> 33,665	0	10
8	Union Pacific	48	82,631	150	500	2
9	Shell Western	38	10,735	0	0	2
10	Cal Resources	37	19,957	0	0	12
11	U.S. Navy	30	7,999	> 250	3,500	9
12	Chevron	26	219,473	> 42,000	0	1
13	Exxon	24	18,753	45	0	7
14	Shell Oil	23	90,419	42	0	1
15	GATX	20	47,957	420	0	0
16	Paramount Petroleum	19	11,658	420	0	1
17	Tidelands Oil	17	70,348	0	0	7
18	4 Corners Pipeline	15	35,648	0	0	0
19	Dept of Water & Power	14	216,464	0	3,150	7
20	Southern Pacific	13	6,025	> 45	0	0
21	Conoco	12	1,596	840	0	2
21	Oil Operators	12	58,555	0	0	9
21	Vintage Petroleum	12	4,810	0	0	6
24	City of Thousand Oaks	10	0	0	3,431,175	3
24	L.A. Fire Dept	10	804,750	11,190	0	7
26	City of Signal Hill	9	425	100	77,430	6
26	GEO Petroleum	9	4,137	0	0	0
26	Topco	9	5,292	200	0	1
26	Torch Operating Co	9	13,146	126	0	1
30	Aera Energy	8	14,133	0	0	3
30	Avery Dennison	8	0	950	0	0
30	Fletcher Oil & Refining Co	8	10,162	0	0	1
33	So Calif Gas Co	7	213,175	0	0	2
33	Ventura County	7	0	0	> 3,683,000	1
35	City of Long Beach	6	0	3,000	39,100	2
35	Powerine	6	540	2,436	0	1
37	Berry Petroleum Co	5	924	0	0	0
37	Chem Oil	5	8,590	0	0	2
37	Santa Fe Energy	5	2,310	0	0	1
37	Santa Fe Railroad	5	29,550	0	0	0
37	So. Calif. Edison	5	1,775	0	0	2
37	Ventura Reg. San. Dist.	5	0	0	2,750	0
	Unknown/Others	961	> 920,188	> 105,737	367,290	356
	<b>TOTAL</b>	<b>2,194</b>	<b>&gt; 3,368,259</b>	<b>&gt; 240,741</b>	<b>&gt; 24,830,767</b>	<b>570</b>
<b>Total Spills by Category</b>			<b>Oil</b>	<b>Chemical</b>	<b>Sewage</b>	
			1,355	375	464	
<b>Waterway Involvement</b>			<b>Yes</b>	<b>No</b>	<b>Unknown</b>	
			572	1196	432	
<p>* 'Greater than' sign (&gt;) indicates that some spill volumes are unknown or are not recorded in gallons, therefore not included in total volume</p> <p>** crude oil, jet, diesel, o&amp;w, produced water, transformer oil, hydraulic, gas and waste water from refineries</p> <p>*** naptha, PCBs and all others</p> <p>**** raw, treated, tertiary</p> <p>^ For Febraury 10, 1992, Regional Board spill reports indicate that the County of Los Angeles had a spill of 4.6 million gallons in Culver City. However, given the location, it seems more likely this spill is attributable to the City of Los Angeles</p> <p>^^ RWQCB reports did not differentiate discharges as LA County Sanitation Districts, LA County Department of Public Works, or some other LA County discharger</p> <p>Source: Regional Water Quality Control Board Monthly Notification of Spills and Complaints Reports from November 1991 - October 1997</p>						

**TABLE 3  
HEAL THE BAY-ENFORCEMENT AUDIT  
MALIBU SEPTIC SYSTEM COMPLIANCE SUMMARY**

Number of Multi-family Facilities likely Utilizing Septic Systems	Number of Multi-family Facilities with Permits	Number of Commercial Complexes likely Utilizing Septic Systems	Number of Commercial Complexes with Permits	Number of Commercial Complexes in the Civic Center/Malibu Creek area likely Utilizing Septic Systems	Number of Commercial Complexes in the Civic Center/Malibu Creek area with Permits
<b>233</b>	<b>4</b>	<b>167</b>	<b>7</b>	<b>87</b>	<b>3</b>

**TABLE 4**  
**HEAL THE BAY-ENFORCEMENT AUDIT**  
**SUMMARY OF NPDES VIOLATIONS AND/OR EXCEEDANCES FOR FOUR MAJOR FACILITIES**  
**1992-1997**

Discharger	Type of Violation or Exceedance	Date
<b>Joint Water Pollution Control Plant</b>	Acute Toxicity	Jan-92
	Acute Toxicity	Apr-92
	Acute Toxicity	Jun-92
	Acute Toxicity	Jul-92
	Acute Toxicity	Aug-92
	Acute Toxicity	Nov-92
	Effluent Violation, Chromium, daily	Feb-92
	Effluent Violation, Toluene, 30-day ave	Nov-92
	Effluent Violation, Toluene, 30-day ave	Dec-92
	Effluent Violation, Toluene, 30-day ave	Jan-93
	Acute Toxicity, 2x	Apr-93
	Chronic Toxicity, 6x	1994
	Effluent Violation, Toluene, 30 day ave.	May-95
	Effluent Violation, Selenium, 30-day ave	May-95
	Effluent Violation, Chlordane, 30 day ave.	May-95
<b>Hyperion Treatment Plant</b>	Effluent Violation, DDT, 30 day	Oct-94
	Acute Toxicity (ammonia)	May-95
	Acute Toxicity (ammonia)	Jun-95
	Acute Toxicity (ammonia)	Jul-95
	Acute Toxicity (ammonia)	Dec-95
	Effluent Violation, Arsenic, 30 day	May-95
<b>Tapia Water Reclamation Facility</b>	Effluent Violation for TSS, daily	Feb-92
	Residual Chlorine Violation	Oct-92
	Effluent Violation for TSS, daily	Jan-93
	Residual Chlorine Violation	Feb-95
	Acute Toxicity (chlorine)	Nov-96
	Residual Chlorine, daily (4xs)	Nov-96
	Foaming	Nov-96
	Acute Toxicity	Apr-97
Effluent Violation, Coliform, 7-day	May-97	
<b>Chevron Refinery</b>	Mass exceedance for Arsenic, 30-day ave.*	Nov-93
	Concentration exceedance for TSS, daily	Feb-94
	Chronic Toxicity, daily	Feb-94
	Chronic Toxicity, daily	Oct-94
	Mass exceedance for Arsenic, 30-day ave.	Apr-94
	Mass exceedance for Arsenic, 30-day ave	Jul-94
	Concentration exceedance for Arsenic, 30-day ave.*	Jul-94
	Concentration exceedance for Arsenic, 30 day ave **	Aug-94
	Concentration and Mass Discharge Exceedance For TSS, daily	Mar-95
	Concentration exceedance for CBOD5, daily	Mar-95
	Chronic Toxicity, daily	Mar-95
	Concentration exceedance for Total Suspended Solids, 30-day ave.	Mar-95
	Concentration and Mass Discharge Exceedance For Total Sulfides	Mar-95
	Concentration Exceedance for TSS, daily	Apr-95
	Permit Exceedance for TSS, daily	Jun-95

\* - discharger allowed three exceedances before a violation occurs

\*\* - permit condition modified In Sept. 1994 to make arsenic a goal rather than an enforceable limit

Source: Annual and Monthly Discharge Monitoring Reports from individual dischargers (on file with RWQCB)





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