

## REPORT TO THE LEGISLATURE

### CALENDAR YEAR 2003 STORM WATER ENFORCEMENT ACTIONS RELATED TO NON-SUBMITTAL OF ANNUAL REPORTS AND FAILURE TO OBTAIN A PERMIT

Pursuant to section 13399.39 of the Water Code, the State Water Resources Control Board (SWRCB) has prepared this report to the Legislature summarizing actions undertaken during calendar year 2003 with regard to the failure of the regulated community to submit specified reports for storm water discharge and the results of those actions.

The Storm Water Enforcement Act of 1998 [Act] (commencing with section 13399.25 of the Water Code) establishes specific notification and enforcement procedures to be implemented by the Regional Water Quality Control Boards (RWQCBs) to ensure compliance with storm water permit requirements by industrial storm water dischargers. The Act also establishes reporting requirements for SWRCB to inform the public and the Legislature concerning specified storm water enforcement activities.

#### Enforcement Actions Taken in 2003

##### 1. Non-Submittal of Annual Reports

Under section B.14 of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharge Associated with Industrial Activities, facilities covered by the permit are required to submit an annual report by July 1 of each year. The report is to summarize the discharger's compliance activities, including visual observations, sampling and analysis, and an evaluation of the discharger's storm water pollution prevention and monitoring programs.

The Act requires RWQCBs to review the annual reports submitted by the dischargers, identify the dischargers that have not submitted the annual report, notify those dischargers of their noncompliance, and impose penalties on those that fail to comply after being notified a second time by the RWQCB.

During 2003, first warning letters were sent to 1,724 dischargers who did not submit an annual report in a timely fashion. Second warning letters were sent to 516 dischargers who did not respond to the first warning letters. There are 302 annual reports that have yet to be filed with RWQCBs. Of these, ten Administrative Civil Liabilities (ACL) were issued in 2003.

Pursuant to Water Code section 13399.27, SWRCB provides the public on its web site (<http://www.swrcb.ca.gov/stormwtr/annualreport.html>) the information related to the submittal of annual reports by industrial storm water dischargers.

## 2. Failure to Obtain Coverage under a Permit [Notice of Intent (NOI) Non-filers]

The Act requires RWQCBs to undertake reasonable efforts each year to identify dischargers of storm water who have not obtained coverage under an appropriate NPDES storm water permit. It requires those dischargers to submit to RWQCB an NOI to obtain coverage or a notice of non-applicability within 30 days of receiving a notice from that RWQCB. The law also requires RWQCBs to impose penalties on those dischargers who fail to submit NOIs after being notified the second time of noncompliance by an RWQCB.

Due to the large number of industrial and construction activities in the state and the lack of an effective statewide tracking system, it is extremely resource intensive to identify NOI non-filers and track the notification and enforcement activities. SWRCB and RWQCBs do not track this information electronically at this time. RWQCBs continued to track NOI non-filers manually and sent first warning letters to 180 facilities in 2003. Second notices were sent to 36 of these facilities and one ACL was issued.

Phase II of the NPDES storm water program has expanded the scope of the industrial storm water program by requiring that all industries be subject to the permit requirements or file a No Exposure Certification (NEC) form if a facility meets the "conditional exclusion" criteria. (Currently, Phase I of the program allows categorical exemptions without NEC filing requirements.) By the end of calendar year 2004, SWRCB is expected to implement these requirements. At that time, an additional 15,000 to 25,000 industrial dischargers will be required to file an NEC and could be potential non-filers. In expectation of this additional workload, SWRCB (1) has overhauled its storm water data management database, and (2) is completing implementation of an electronic NEC reporting system. We believe both these information technology upgrades will help future implementation of non-filer identification and enforcement activities required by the Act.

### **Conclusion**

SWRCB and RWQCBs have been successful in tracking the number of dischargers who have failed to file an annual report. After first and second warning letters were issued in 2003, only 302 annual reports (less than three percent of 9,723 facilities) remain unaccounted for. Upon further investigation, staff believes that a majority of the 302 facilities have discontinued operations and cannot be easily located for enforcement. The non-filer identification activities have been slowed due to resource constraints and other storm water program priorities. However, SWRCB is in the process of developing the capability for electronic filing of NEC under Phase II of the federal storm water program. This upgraded system will also provide the capability needed to identify non-filers and track any subsequent enforcement actions.

**TABLE 1  
CALENDAR YEAR 2003  
ANNUAL REPORT ENFORCEMENT ACTIONS**

REGIONAL BOARD	WARNING LETTERS		ACL	PENALTIES	
	1 <sup>ST</sup>	2 <sup>ND</sup>		ASSESSED	COLLECTED
1	95	0	0	0	0
2	389	104	0	0	0
3	83	1	3	5,725	2,000
4	508	201	0	0	0
5	458	147	0	0	0
6	21	2	0	0	0
7	0	0	0	0	0
8	146	52	7	14,000	0
9	24	9	0	0	0
<b>TOTAL:</b>	<b>1,724</b>	<b>516</b>	<b>10</b>	<b>\$19,725</b>	<b>\$2,000</b>

**TABLE 2  
CALENDAR YEAR 2003  
NON-FILER ENFORCEMENT ACTIONS**

REGIONAL BOARD	WARNING LETTERS		ACL	PENALTIES	
	1 <sup>ST</sup>	2 <sup>ND</sup>		ASSESSED	COLLECTED
1	0	0	0	0	0
2	0	0	0	0	0
3	23	0	0	0	0
4	80	20	0	0	0
5	0	0	0	0	0
6	0	0	0	0	0
7	0	0	0	0	0
8	77	16	1	5,000	0
9	0	0	0	0	0
<b>TOTAL:</b>	<b>180</b>	<b>36</b>	<b>1</b>	<b>\$5,000</b>	<b>0</b>