

California Environmental Protection Agency

State Water Resources Control Board

Administrative Civil Liability Assessments

Pursuant to Water Code Section 13350

May 2001

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STATE WATER RESOURCES CONTROL BOARD
REPORT TO THE LEGISLATURE
ADMINISTRATIVE CIVIL LIABILITY ASSESSMENTS
PURSUANT TO WATER CODE SECTION 13350

EXECUTIVE SUMMARY

This report is required by California Water Code (Water Code) section 13350 (l). It provides information regarding administrative civil liabilities (ACLs) issued by the Regional Water Quality Control Boards (RWQCBs) during calendar year 2000 pursuant to Water Code section 13350. Water Code section 13350 is an important, but infrequently used tool for assessing ACLs. Other, more flexible code sections, notably Water Code section 13385, currently provide the primary authority used by the RWQCBs for assessing administrative civil liabilities.

During calendar year 2000, RWQCBs issued four ACLs pursuant to Water Code section 13350. The total dollar amount of the ACLs was \$312,657.

I. STATUTORY PROVISIONS

California's water quality control law (Division 7 of the Water Code) contains five sections whereby the RWQCBs have the discretion to assess ACLs.

In 1989, Water Code section 13350 (one of the five ACL sections) was amended to mandate that ACLs should not be assessed by the RWQCB for less than a specified minimum amount unless the RWQCB makes express findings setting forth the reasons for its actions. The maximum amounts in the law were left unchanged.

Section 13350 (l) of the Water Code requires an annual report from the State Water Resources Control Board to the Legislature that shall list:

...[A]ll instances in which civil liability has been administratively imposed by a regional board in accordance with [Water Code section 13350] subdivision (d), (e), or (f) during the preceding year, and set forth the express findings made by the regional board pursuant to subdivision (g), and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance.

II. HISTORY

Until 1988, Water Code section 13350 provided the primary authority for the assessment of administrative civil liability by RWQCBs. Most of the assessments and the vast majority of the money collected came as a result of the use of section 13350. However, in 1987 the Legislature amended Water Code section 13385 to achieve full conformance with federal water quality requirements. The amendment had the effect of making section 13385 a more effective enforcement tool than section 13350. The principal advantage of section 13385 as compared to section 13350 is that RWQCB need not find that a condition of pollution or nuisance exists. Section 13385 only requires that a violation of waste discharge requirements, monitoring and reporting programs, discharge prohibitions, pretreatment programs, or federal requirements exist for liability to be

assessed. Section 13385 is, for all practical purposes, a strict liability section. Section 13350 remains a more cumbersome statute that requires that a condition of pollution or nuisance be proved to assess an ACL for violation of waste discharge requirements.

Other civil liability sections in the Water Code are also more flexible than section 13350. For example, section 13268 allows RWQCBs to assess liability when a proper technical report is not prepared concerning a groundwater investigation. Failure to provide a report in response to an authorized request can be the subject of an ACL without further proof. Another example, section 13261, allows ACL assessments of any party who discharges after having been notified by an RWQCB it should not discharge without a permit.

III. DISCUSSION OF CASES FOR CALENDAR YEAR 2000

Four ACLs were issued by RWQCBs during 2000 pursuant to Water Code section 13350. The total dollar amount of the liabilities was \$312,657.

The details regarding minimum and maximum assessments for each ACL are listed below:

- The North Coast RWQCB (NCRWQCB) issued Order 1-00-073 for \$14,500 pursuant to Water Code section 13350(e)(1) for violations of waste discharge prohibitions contained in the water quality control plan. There is no applicable minimum assessment under Water Code section 13350(e)(1). The maximum assessment was \$14,500.
- The NCRWQCB issued Complaint 1-00-041 for \$40,000 pursuant to Water Code section 13350(d)(1) for violations of conditions in a cleanup and abatement order for spill response. The minimum assessment was \$123,500. The maximum assessment was \$1,235,000. Water Code section 13350 (g) states: "A regional board shall not administratively impose civil liability in accordance with subdivision (d), (e), or (f) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based on the specific factors required to be considered pursuant to section 13327." The express findings from ACL 00-041 are:

9. In determining the amount of the civil liability the NCRWQCB took into account the nature, circumstances, extent, and gravity of the violation; whether the discharge was susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation and such other matters as justice may require.
10. The dischargers have reimbursed the other responding agencies (including the Sheriff's Department, Fire Department, and Department of Fish and Game) for their costs in responding to the spill incident. In addition, some of the dischargers, in pleading no contest to violations of the Hazardous Waste Control Law, have paid restitution to several agencies, and have paid \$25,000 in mitigation to the County Fish and Wildlife Advisory Commission. Further, the discharger has commenced an industry education effort on compliance with environmental requirements. Therefore, pursuant to Section 13350(g) of the California

Water Code, this ACL Complaint seeks only the costs incurred by the Regional Water Quality Control Board in responding to and overseeing cleanup of the spill.”

- The Los Angeles RWQCB issued Order 4-00-102R for \$127,157 pursuant to Water Code section 13350(e)(1) for illegal disposal of sewage sludge. There is no minimum assessment under Water Code section 13350 (e)(1). The maximum assessment was \$216,140.
- The Lahontan RWQCB issued Order 6-00-060 for \$131,000 pursuant to Water Code section 13350(d)(1) for failure to comply with conditions in a cleanup and abatement order for a leaking underground storage tank. The minimum assessment was \$131,000 and the maximum assessment was \$1,310,000.