Leaking Enforcement

Analyzing The Effectiveness Of The 1999 Clean Water Enforcement & Pollution Prevention Act.
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EXECUTIVE SUMMARY

The 1999 Clean Water Enforcement and Pollution Prevention Act (CWEA) has improved Clean Water Act compliance dramatically in the Bay-Delta region and across the state in its first few years. However, a major loophole—the fact that CWEA does not penalize dischargers who fail to report their discharges to the state—continues to compromise the effectiveness of the law.

CWEA is one of the most powerful tools available to clean water regulators to curb pollution of the state’s waterways. Passed by the legislature in 1999, CWEA requires the State Water Resources Control Board and its nine regional affiliates to impose mandatory minimum penalties of $3,000 for serious and chronic violations of the Clean Water Act discharge permit program.

Improved Enforcement

A preliminary analysis of the first two years of CWEA implementation from the San Francisco Regional Water Quality Control Board and the State Water Resources Control Board demonstrates overall improved compliance with the state’s clean water laws and decreased levels of illegal pollution entering waterways.

1. The number of Clean Water Act permit violations in the San Francisco region and across the state has decreased 57% and 56%, respectively, since the passage of CWEA.

2. The number of enforcement actions taken across the state rose by 46% and the number of enforcement actions for all programs with penalties the San Francisco Bay Region rose by 212%.

3. The dollar amount of penalties assessed by the State Water Resources Control Board (SWRCB) has increased over $1 million in the San Francisco region and $6.5 million statewide.

Continued Weakness

Despite this apparent early success of CWEA in reducing violations of the Clean Water Act, however, a loophole allowing reporting violations to go unpenalized could undermine CWEA’s effectiveness.

Under the federal Clean Water Act and the state Porter Cologne Water Quality Act, facilities with permits to discharge into California waterways are required to submit periodic discharge monitoring reports (DMRs) with information about the quantity and quality of their effluent. These reports, required monthly for most facilities, are at the heart of the enforcement process. Because water enforcement programs rely on the honesty of dischargers to monitor their own effluent and report violations to the state, the frequent and accurate submittal of these reports is crucial to the enforcement process.

Despite the importance of DMRs, the mandatory minimum penalty provisions of CWEA, the backbone of its enforcement power, do not mandate penalties against dischargers who fail to submit mandatory discharge monitoring reports. Thus, this loophole has likely allowed thousands of Clean Water Act violations to go unreported and unpunished. The consequence of this loophole is to encourage dischargers not to report discharges to the SWRCB in order to avoid mandatory minimum penalties for effluent and other violations and to minimize the encouragement of those businesses and facilities that institute effective pollution prevention measures.

Our analysis of CWEA enforcement data found that:

1. Reporting violations remain almost entirely unpunished both in the San Francisco Region and across the state. Statewide, only 1% of reporting violations were fined between 1999 and 2002. In the San Francisco region, none of the 56 reporting violations committed
by dischargers in the same three-year period have been fined.

2. *Industrial and agricultural facilities commit more reporting violations than do municipal facilities.* Though municipal facilities commit more violations overall, industrial, agricultural and other facilities have incurred 42% more reporting violations than municipal dischargers: 2,391 compared to 1,680 since CWEA went into effect. In the San Francisco Region, municipal dischargers committed 13 reporting violations vs. 43 committed by other types of dischargers.

3. *Low-emitting facilities commit more reporting violations than do high-emitting facilities.* Low-emitting facilities can discharge up to a million gallons a day of contaminated water and comprise the majority of regulated facilities in the state. Across the state, low-emitting facilities committed 3,083 reporting violations, while high-emitting facilities committed only 993 reporting violations between July 1999 and September 2002. In the same time period, low-emitting facilities in the San Francisco region committed 35 reporting violations, compared with 17 by high emitting facilities.

**Policy Recommendations**

In order to continue the trend toward greater enforcement of the state’s clean water laws, the most important action for the San Francisco Regional Water Quality Control Board and the State Water Resources Control Board to take is to penalize dischargers that do not submit required National Pollution Discharge Elimination System (NPDES) permit compliance reports with mandatory minimum penalties.

Additional actions to strengthen the enforcement of the 1999 Clean Water Enforcement and Pollution Prevention Act should include:

- Full funding to implement a receiving and compliance checking system based on the experience of the San Francisco Regional Water Quality Control Board electronic monitoring system across the state.

- Full implementation of SB 72 to mandate the adoption of uniform statewide reporting and monitoring standards for stormwater.

- The continued adoption of strong NPDES permits with specific numerical discharge limits that protect the state’s waterways from dangerous pollution.

The adoption of these policy recommendations is particularly important in this time of fiscal strain. Clean water is good for the economy. California’s coastline and waterways generate billions of dollars in tourist revenue each year. Furthermore, the California Department of Finance estimates that penalizing reporting violations with mandatory minimum penalties can generate an additional $2 million a year in increased revenue for the State Water Resources Control Board. Thus, as policy-makers contemplate the budget future for the state, it is essential that funding for California’s Clean Water Enforcement program be strengthened.
INTRODUCTION

From the fishermen of San Francisco Bay to the urban families of Los Angeles, clean water is essential to Californians’ quality of life. Despite its importance, over 500 California lakes, rivers and streams are classified as seriously polluted.1 These contaminated waterways include some of California’s most important drinking water sources, tourist destinations and ecological treasures.

The San Francisco Bay-Delta Region, for example, is home to one of the most critical water systems in the country. It is also one of the most threatened water systems in the country. In 2002, the State Water Resources Control Board listed 78 water body segments in the San Francisco Bay region as seriously contaminated.2 Each year, 88 million pounds of pesticides and toxic chemicals drain into San Francisco Bay that kill wildlife and endanger people who eat fish from the Bay.3 Some of these chemicals include chlordane, copper, selenium and nickel.4

The pollution in the San Francisco Bay-Delta system and waterways across the state originates from both point and non-point sources. Point-source pollution originates from a single source, such as an outlet pipe. Non-point source can originate from non-discrete sources, such as stormwater runoff after the rains.

The National Pollution Discharge Elimination System (NPDES), mandated by the 1972 Clean Water Act, was instituted to curtail this pollution. One of the strongest clean water safeguards in law today, the NPDES program is implemented in California by the State Water Resources Control Board and its nine regional affiliates. These reports detail discharge levels and provide regulators and citizens with the information necessary to determine permit compliance and identify local water quality concerns.

Although the NPDES permit system forms the backbone of California’s water pollution prevention efforts, its enforcement record is spotty. In 1997, the non-profit group Heal the Bay published a report entitled Omission Accomplished that documented a complete failure by the Los Angeles Regional Water Quality Control Board (Los Angeles Regional Board) to enforce the NPDES program. Out of 9,000 NPDES violations in a seven-year period, the report found that only 14 were fined.5 A follow-up report by the CALPIRG Charitable Trust published in 1999 examined additional records in the San Diego, Sacramento and Los Angeles regions and found a similar trend – of 6,783 violations of NPDES permits over a two year period, only 1% resulted in penalties.6 The Legislative Analyst’s office, the research arm of the California legislature, also found similar problems.7

In response to this shoddy enforcement, the California legislature passed the 1999 Clean Water Enforcement and Pollution Prevention Act. The Act instituted mandatory minimum penalties of $3,000 for dischargers caught violating their NPDES permits in a serious or chronic manner.8

Three years after the passage of this law, information on its effectiveness has begun to trickle in. Through data provided by the San Francisco Regional Water Quality Control Board and the State Water Resources Control Board, the Environment California Research & Policy Center has compiled an initial analysis of the effectiveness of the 1999 Clean Water Enforcement and Pollution Prevention Act in tackling water pollution. Leaking Enforcement examines both the effectiveness of CWEA in the San Francisco Bay-Delta Region and the enforcement record of the Los Angeles Regional Board.
Francisco Bay Region and compares these findings to statewide trends. The evaluation of CWEA implementation from both perspectives provides valuable insight into the effectiveness of one of the most important clean water laws passed in the state’s history and offers guidance in ensuring that the law is used to its maximum capacity.
CWEA: KEY PROVISIONS

California’s mandatory minimum penalty provision provides a framework for enforcement action that increases permitted dischargers’ compliance with their NPDES permits. A set of strict definitions of serious effluent violations mandates penalties for the most egregious violations. Sets of affirmative defences, or legal exceptions, are clearly prescribed to protect dischargers that commit violations beyond their control. In addition, clear language in the law mandates the annual public release of information regarding compliance and enforcement activity.

1. Defining Violations

The California CWEA clearly defines effluent violations, distinguishing between two main categories: “serious” violations and “ongoing” violations.

The California CWEA classifies a “serious” violation as any waste discharge that exceeds permitted levels for a hazardous pollutant by 20 percent or more, or a non-hazardous pollutant by 40 percent or more. Federal regulations define the terms ‘hazardous pollutant’ and ‘non hazardous pollutant,’ and provide lists that identify specific constituents of concern.

The definition of “ongoing” violations addresses minor infractions. Ongoing violations are broken into four groups:

- Exceeding a numeric effluent limitation
- Failure to file an initial permit application report (as pursuant to California Water Code 13260)
- Filing an incomplete initial permit application report (pursuant to California Water Code 13260)
- Exceeding a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants

It should be noted that the definitions of ongoing violations do not include reporting violations. The reporting violations mentioned in this section refer to only one specific type of report – a report that is filed only once in order to first receive an NPDES permit. This section does not mention the discharge monitoring reports used by SWRCB to evaluate permit compliance. The definitions as written insulate dischargers who fail to file their discharge monitoring reports and dischargers who file incomplete reports from mandatory minimum penalties.

2. Calculating Minimum Penalties

CWEA establishes a system of mandatory minimum penalties for specific violations of NPDES permits.

The Regional Water Quality Control Boards assess a mandatory minimum penalty (“MMP”) of $3,000 for each serious violation.

CWEA also assesses mandatory minimum penalties of $3,000 for certain chronic violations, though the law is written such that these penalties rarely are issued. An MMP is only assessed for a facility that commits four or more “ongoing violations” in a six-month period. As discussed in the previous section, on-going violations, according to the California definitions, rarely occur.

In some cases, violators may be required to implement a supplemental environmental project in lieu of a mandatory penalty. Supplemental environmental projects and pollution prevention plans are potential alternatives to mandatory penalties for a serious violation and can cover up to half of the value of the penalty. A supplemental environmental project is defined as a measure that goes above and beyond the obligation of the discharger. An example is a discharger that establishes a habitat.
restoration program in the vicinity of discharges. Once a project is agreed upon, a pollution prevention plan is designed to prevent the circumstances that caused the violation from occurring again.11

3. Exceptions and Affirmative Defenses

California’s CWEA provides a set of affirmative defenses against mandatory penalties to protect dischargers who violate their permits due to circumstances out of their control.

There are several exceptions in place for mandatory minimum penalties. The first exceptions are for those dischargers who are in compliance with a cease and desist order or time schedule order (both are court orders to come into compliance). The second set of exceptions is for sewage treatment plants that serve small communities. The Regional Boards can require a POTW that serves a community with a population of 10,000 or less to spend the amount of the penalty toward the completion of a compliance project in lieu of assessing the mandatory penalty. The project must be designed to correct the violation within five years.12

CWEA also states that mandatory minimum penalties shall not be assessed for certain ‘startup conditions’ and if the violations are caused by one or any combination of (1) an act of war, (2) an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or (3) an intentional act of a third party, the effects of which could not have been prohibited or avoided by the exercise of due care or foresight.13
CWEA: OVERALL, A GOOD START

Although CWEA is relatively new and data is limited, existing data indicates that the Act has had a positive effect on compliance with NPDES permits.

The overall number of violations committed each month across the state is down considerably, enforcement rates are up, and the number and dollar amount of penalties assessed have increased. Most importantly, there has been a noticeable decrease in the emissions of toxic pollution into waterways.

A. Violations

NPDES permit violations across the state have declined since MMPs were instituted.

The overall number of NPDES state permit violations per month in California in 2000 was 2,053. By 2002, this number was down to 874 violations per month, a decrease of 57%. The reduction in violations across California was similarly significant for those considered to be “serious.” In 2000, there were 942 significant violations. In 2001, that number dropped to 561.

The total number of NPDES violations statewide rose significantly in the first six months of MMPs compared to the previous six months, but have declined continually since then. In the six months before MMPs began, California averaged 1,800 violations per month, compared to 2,332 violations per month in the following six months. Despite the initial increase, the overall number of violations has decreased.

The sharp increase in violations in the first few months after January 2000 is probably the result of an increase in the reporting of violations more than a real increase in the number of violations occurring. The subsequent decline is most likely a result of steady enforcement action.

Effluent Violations

Effluent violation trends mimic the trends in overall violations. In the first month of 2000 when the CWEA went into effect, the number of violations across California increased dramatically. Between January 2000 and September 2001, however, the number of NPDES effluent violations occurring each month decreased 85%—from 600 to 90.

The increase in violations at the outset of the new law is likely due to an increase in reporting by facilities and attention by regulators, not because of actual increases in the number of violations occurring.
B. Enforcement Actions

More formal enforcement orders are issued since the passage of CWEA provision than before.

Formal enforcement actions are any enforcement action taken other than informal calls notifying dischargers of non-compliance, including notices to comply, staff enforcement letters, technical reports and investigations, cleanup and abatement orders, time schedule orders, cease and desist orders, and monetary penalties (administrative civil liability or MMPs).

Despite steadily decreasing violations across the state, formal enforcement orders have increased 46% from FY 98-99 to FY 00-01.

This trend in enforcement actions is encouraging. Similar to trends in NPDES permit and effluent violations, that data demonstrates that there was an immediate increase in 2000, and then a slight decrease in 2001. Looking at enforcement actions and violation trends together indicates that increased enforcement in 2000 has helped reduce violations in 2001.

C. Penalties

Both the number of enforcement actions with penalties and the total dollar amount of penalties assessed have increased since CWEA went into effect.

Enforcement actions with penalties have increased from 89 in FY 98-99 to 121 in FY 00-01, despite a significant drop in the number of violations. In addition, the total dollar amount of penalties assessed increased 120% from FY 98-99 to FY 00-01.

Figure-3 – Formal Enforcement Orders for NPDES Violations in California

Figure-4 – Dollar Amount of Penalties Assessed for NPDES Permit Violations
CWEA: THE REPORTING VIOLATIONS LOOPHOLE

Under the federal Clean Water Act and state law, facilities with permits to discharge into California waterways are required to submit periodic discharge monitoring reports (DMRs) with information about the quantity and quality of their effluent. These reports, required monthly for most facilities, are at the heart of the enforcement process. Because water enforcement programs rely on the honesty of dischargers to monitor their own effluent and report violations to the state, the frequent and accurate submittal of these reports is crucial to the enforcement process.

The importance of report submission is echoed by the State Water Resources Control Board ’State Water Quality Enforcement Policy’ adopted in February, 2002. This document highlights the violation of a reporting requirement as a ‘priority violation,’ and states that “Failure to submit reports required by WDRs, California Water Code sections 13267 and 13383, California Water Code section 13260, regulations or Water Quality Control Plans within 30 days from the due date, or submission of reports which are so deficient or incomplete as to impede the review of the status of compliance are priority violations.”

Despite the importance of these DMRs and the progress outlined in the previous sections, a major loophole that allows dischargers who fail to report their discharges to the state to go unpunished, threatens to derail future progress.

This weakness in CWEA implementation was evidenced by the following surprising trends: Reporting violations do not receive Mandatory Minimum Penalties. Without mandatory minimum penalties, reporting violations are rarely fined.

Since 1990, only 95 penalties have been issued to 16 facilities for reporting violations across the state. Between July 1999 and the September 2002, 4,071 reporting violations were committed but only 42 reporting violations were fined. Thus, only 1% of reporting violations committed were fined in that three-year period.

When reporting violations are fined, it is usually in conjunction with several other effluent violations. Though the SWRCB’s antiquated database management software makes it difficult to tell exactly how many reporting violations were fined singularly, it appears to be few if any at all. Of the 95 violations that were fined over the last decade almost all appear to be just one of many types of violations committed by the facility.

The reason for this failure is two-fold:

1. Incorrect code reference in statute.
   While the intent of the original legislation, the current CWEA does not require penalties to be issued for failure to submit a required NPDES permit compliance report. The code section referenced in the legislation that is intended to do this actually refers to a portion of the Porter-Cologne Water Quality Act that sets requirements for the initial issuance of an NPDES permit, not ongoing compliance evaluation. The correct code section to be referred to is Section 13383, which provides the statutory authority for the State Water Resources Control Board and its regional affiliates to require the
2. Definition of on-going violation in statute. The on-going violation definition appears to cover all the important areas of permit violations, but does not actually include reporting violations. The reporting violations mentioned refer to only one specific type of report – a report that is filed only once in order to first receive an NPDES permit, and does not refer to the monthly and annual discharge monitoring reports used by the SWRCB to evaluate permit compliance. The definitions as written ensure that no mandatory minimum penalties can be issued to dischargers who fail to file their discharge monitoring report, or file incomplete reports.

B. Industrial and agricultural dischargers commit more reporting violations as a percentage of their total violations than do municipal dischargers.

From July 1999 to September 2002, reporting violations made up only 14% of municipal NPDES violations. During that same time period, 37% of violations incurred by industrial, agricultural, and other facilities were reporting violations.

Municipal dischargers also receive a greater percentage of NPDES violations than other sources. In the last three years, municipal NPDES dischargers across California have received the majority of all NPDES violations with 9,998 compared to 3,996 incurred by industrial, agricultural and other facilities.

This discrepancy in NPDES violations received may be due to a discrepancy in compliance with reporting requirements. While municipal dischargers receive more NPDES violations, they receive the fewest reporting violations compared to other types of facilities. In fact, industrial, agricultural and other facilities have incurred 42% more reporting violations across the state than municipal dischargers in that same time period with 2,391 compared to 1,680. Thus, under current enforcement policy, dischargers that fail to file reports may be unintentionally rewarded for noncompliance with reporting requirements by avoiding mandatory minimum penalties.

C. Low-Emitting Facilities commit more reporting violations than High- Emitting Facilities

Low-emitting facilities, facilities that discharge fewer than one million gallons per day, commit more violations than do high-emitting facilities. Although classified as ‘low-emitting,’ these facilities can include discharges of hundreds of thousands of gallons of contaminated water each day and make up the largest proportion of facilities regulated by the state. Across the state, between January 1999 and September 2002, low-emitting facilities committed 3,083 reporting violations, while high-emitting facilities committed only 993 reporting violations.

Reporting violations also make up a larger percentage of all violations committed by low-emitting facilities than do reporting violations committed by high-emitting facilities. Reporting violations constitute 33% of all violations committed by minor facilities and only 11% of violations committed by major facilities.
Figure-6 - NPDES Violations by Facility Size Classification, 07/1999 to 09/2002

<table>
<thead>
<tr>
<th>High-Emitting Facilities</th>
<th>Low-Emitting Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Reporting Violations</td>
<td></td>
</tr>
<tr>
<td>Number of All Other Violations</td>
<td></td>
</tr>
</tbody>
</table>

- Number of Reporting Violations for High-Emitting Facilities
- Number of Reporting Violations for Low-Emitting Facilities
- Number of All Other Violations for High-Emitting Facilities
- Number of All Other Violations for Low-Emitting Facilities
The San Francisco Bay region is home to one of the most critical water systems in the country. Inextricably linked to the Bay-Delta network, the rivers, streams, and estuaries of the area supply drinking water to 22 million people, support a $27 billion agriculture industry and provide habitat to 750 plant and animal species.26

Despite this importance, however, the waters of the San Francisco Bay region are greatly polluted. In 2002, the State Water Resources Control Board listed 78 water body segments in the San Francisco Bay region as seriously contaminated.27 Each year, 88 million pounds of pesticides and toxic chemicals drain into San Francisco Bay that kill wildlife and endanger people who eat fish from the Bay.28 This contamination is due to stormwater and point source pollution that the NPDES permit system is designed to combat.

The San Francisco Regional Water Quality Control Board is responsible for regulating 295 facilities under its NPDES program, one of the highest number of facilities in the state.29 As such, the region is an effective barometer for regional implementation of CWEA. Our analysis of region-specific data finds that San Francisco Bay region reflects statewide trends, and further emphasizes the need to strengthen its implementation.

Similar to statewide trends, however, the enforcement of this program is shoddy. Analysis of implementation of CWEA in the San Francisco Regional Water Board found that while enforcement actions have increased and NPDES violations have decreased since passage of the law, the reporting violations loophole continues to hamper full implementation.

A. Violations

As reflected in statewide trends, the number of NPDES permit violations in the San Francisco Bay Region decreased after passage of CWEA. In the ‘99-’00 fiscal year dischargers committed 534 violations of the Clean Water Act. In the ‘01-’02 fiscal year, the number of violations decreased to 235. This reflected a decrease in violations of 56%.

B. Enforcement Actions

Reflecting statewide trends, enforcement actions with penalties rose significantly after passage of CWEA. In the San Francisco region, the number of enforcement actions for all programs with fines rose over 212%. This is despite a decrease in the number of violations over the same period.
C. The Reporting Violations Loophole

While the San Francisco Bay Region recently implemented an electronic reporting system that allows regulators to track report submittals much more effectively than other regions, the San Francisco Region’s efforts to fully implement CWEA are, similar to statewide trends, hampered by the reporting violations loophole.

Reporting Violations are never fined. Between July 1999 and September 2002, dischargers committed 56 reporting violations in the San Francisco region. None of these violations were fined.32

Industrial and agricultural dischargers commit more reporting violations as a percentage of their total violations than municipal dischargers. In the San Francisco Region, between 1999 and 2002, municipal dischargers in the San Francisco Region received 970 NPDES violations, compared to 408 incurred by industrial, agricultural and other facilities. The trend, however, is reversed when looking at reporting violations. Between 1999 and 2000, industrial, agricultural and other facilities incurred 43 reporting violations compared with 13 by municipal dischargers.

Low-emitting facilities commit more reporting violations than high-emitting Facilities. In the San Francisco Region low-emitting facilities committed more than twice as many reporting violations as high-emitting facilities. Between July 1999 and September 2002, low-emitting facilities in the San Francisco region committed 35 reporting violations, compared with 17 by high-emitting facilities.

D. CWEA Reporting Violations Loophole and Stormwater Discharges

Stormwater discharges pose the largest threat to water quality in the Bay-Delta region.33 Despite this threat, reporting requirements for stormwater discharges follow a similar pattern of lax enforcement.

In 2002, California Environmental Protection Agency submitted a report to the California Legislature that detailed the enforcement actions taken by the Regional Boards after stormwater dischargers failed to submit yearly required stormwater pollution reports.34

Figure-9- NPDES Reporting violations compared to other NPDES violations for municipal and other facilities35

![Figure-9](image_url)

Figure-10- San Francisco Region NPDES Violations by Facility Size Classification, 07/1999 to 09/200236

![Figure-10](image_url)

The results were discouraging. In the San Francisco Bay Region, out of 15 annual stormwater compliance reports not received, not a single violation was fined.37
CWEA, with its mandatory minimum penalty provision, could be a powerful tool to ensure that such violators are penalized. Unfortunately, however, CWEA does not apply equally to all stormwater permittees. In order to receive a Mandatory Minimum Penalty, a discharger with an NPDES permit must exceed a specific numerical limit in the permit. Although many stormwater permits such as construction industry permits contain numerical discharge limits, and are thus subject to mandatory minimum penalties, many stormwater permits do not. Often a stormwater permit simply requires permittees to adhere to non-numerical ‘Best Management Practices.’

SB 72 (2001, Kuehl) required the State Water Resources Control Board to develop stormwater monitoring and reporting standards for municipalities and industry by January 1, 2003. These standards would apply to all stormwater permits and could be used to as a basis to add numerical discharge limits to stormwater permits. Adding these numerical discharge limits would subject dischargers that fail to submit required reports more easily to mandatory minimum penalties.38

To date, however, although there has been some stakeholder participation, the standards for municipalities and industry required under SB 72 have not yet been adopted.

The adoption of these uniform and comprehensive monitoring standards are essential to ensuring that stormwater permits can be strengthened with numerical discharge limits and thus fall under the strong enforcement mechanism of CWEA.

E. Electronic Reporting System

While the San Francisco Regional Water Quality Control Board demonstrated a similar lack of enforcement of reporting violations as the rest of the state, the Board has made an important step toward increasing compliance.

The monitoring of NPDES permit discharge reports can involve reviewing hundreds of thousands of pages to ensure compliance. The San Francisco Regional Water Quality Control Board, for example, monitors 295 facilities that each submit up to twelve reports per year.

In 1998, the Board created the first Electronic Reporting System (ERS) of its kind to facilitate the review of these reports and allow regulators to determine compliance with exponentially greater ease. 39

ERS enables dischargers to submit required reports electronically. Instead of mailing a hard copy report each month, the discharger inputs the specific parameters required directly on-line. The Regional Board is then able to virtually instantaneously assess the presence or absence of data or permit violations.

Despite its usefulness in determining compliance, systems such as ERS have yet to be replicated throughout the state. The primary reason for this lack of replication is a lack of funding. An electronic reporting system implemented by the State Water Resources Control Board will cost up to $12 million. Federal agencies such as the U.S. Environmental Protection Agency should step in to fill the funding gap to ensure that electronic receiving and compliance checking systems similar to the Electronic Reporting System are implemented throughout California.
CONCLUSIONS

The 1999 Clean Water Enforcement Act has improved Clean Water Act compliance dramatically in its first few years across the state. However, a major loophole that allows dischargers who fail to report their discharges to the state to go unpunished compromises the effectiveness of the law.

Indications of Improvement

1. The number of NPDES permit violations across the state and in the San Francisco region has decreased since the passage of CWEA. Across the state violations decreased 57% and in the San Francisco region, violations decreased 56%.

2. The enforcement actions taken across the state and in the San Francisco region have increased since the passage of the CWEA. Across the state, enforcement actions for violations of NPDES permits increased by 46% after the passage of CWEA; In the San Francisco region, enforcement actions for all programs with fines increased 212%.

3. The CWEA has generated significant amounts of revenue for State Board programs over the past three years. The San Francisco regional board generated over $1.3 million in revenue to the Cleanup and Abatement account through CWEA and across the state the total dollar amount of penalties assessed increased 120% from FY98-99 to FY 00-01.

Indications of Continued Weakness

1. Reporting violations remain almost entirely unpunished both across the state and in the San Francisco region. Although self-monitoring reports form the backbone of California’s clean water enforcement system, across the state between July 1999 and September 2002, 4,071 reporting violations were committed but only 42 reporting violations were fined. This trend is also reflected in the San Francisco region, where none of the 56 reporting violations committed by dischargers since 1999 have been fined.

2. Industrial and agricultural facilities commit more total reporting violations than do municipal facilities. Across the state between July 1999 and September 2002, industrial, agricultural and other facilities incurred 42% more reporting violations than municipal dischargers in that same time period. Between 1999 and 2000, industrial, agricultural and other facilities incurred 43 reporting violations compared with 13 by municipal dischargers in the San Francisco region.

3. Municipal facilities commit more total NPDES violations than do industrial and agricultural facilities. Across the state, in the last three years, municipal NPDES dischargers committed the majority of all NPDES violations with 9,998 compared to 3,996 incurred by industrial, agricultural and other facilities. This is likely because compliance with reporting requirements is higher within the municipal sector than other sectors.

4. The number of reporting violations incurred by high-emitting facilities, is lower than the number of reporting violations incurred by low-emitting facilities. Between July 1999 and September 2002 across the state, low-emitting facilities committed 3,083 reporting violations, while high-emitting facilities committed only 993 reporting violations. In the same time period, low-emitting facilities in the San Francisco region committed 35 reporting violations, compared with 17 by high-emitting facilities.

The consequence of this failure to enforce reporting violations, while enforcing NPDES discharge violations, is
| the creation of a disincentive for disclosure and compliance and an unequal playing field for those dischargers that do rigorously report. |
POLICY RECOMMENDATIONS

In order to continue the improvement in Clean Water enforcement evidenced after the passage of the 1999 Clean Water Enforcement and Pollution Prevention Act decision-makers should adopt the following policy recommendations:

1. **Penalize dischargers that do not submit required NPDES permit compliance reports with mandatory minimum penalties.** The reporting violations loophole encourages dischargers who fear penalties for violating NPDES permit limits to fail to submit required compliance reports. In order to ensure that reduced reporting compliance is not an unintended consequence of CWEA, it is absolutely essential to penalize dischargers that do not submit their required reports.

2. **Finalize the standardization of monitoring and reporting requirements under SB 72.** Uniform reporting requirements in the context of stormwater are essential to efficient review of reports, analysis of reporting trends, and correct calculation of costs of compliance.

3. **Fully fund electronic compliance systems for the State Water Resources Control Board and its nine regional affiliates.** Each year thousands of dischargers submit hundreds of thousands of pages of reporting documentation for compliance assurance. Already the San Francisco Bay Regional Water Quality Control Board has instituted an electronic reporting compliance system that has enabled the enforcement division to monitor for violations with much greater efficiency. Similar electronic receiving & compliance checking systems based on the San Francisco experience should be put into place in all regional boards across the state. Federal agencies such as U.S. Environmental Protection Agency should step in to fill in the current budget gap to make this possible.

4. **Implement strong, numerical discharge limits in all NPDES permits issued by the State Water Resources Control Board and its regional affiliates.** Ensuring that all wastewater and stormwater discharge permits contain strong numerical discharge limits will encourage greater compliance with state and federal clean water laws. With the adoption of numerical limits, the Mandatory Minimum Penalty provision of CWEA can be used as a strong enforcement tool by clean water regulators throughout the state.

**Clean Water Enforcement Policy and the California Budget Crisis**

In an era of fiscal strain environmental enforcement programs are increasingly the target of potential funding cuts. This trend is particularly alarming given the conclusions of this report. As state policymakers contemplate the state’s finances for the next several years, strong funding for clean water enforcement is vital.

Strict enforcement of the state’s clean water enforcement laws generates revenue for the state. As mentioned in this report, increased clean water enforcement after the passage of CWEA generated an additional $6 million for the state. In testimony before the State Assembly Appropriations Committee, the California Department of Finance estimated that closing the reporting violations loophole could generate an additional $2 million in revenue for the state. Thus, cuts in the state’s enforcement programs could limit a potential revenue source for the state during these hard economic times.

In addition to short-term revenue gains, strict enforcement of California clean water laws will also generate long-term gain. California’s oceans and waterways contribute billions of dollars each year to the economy. In 1991, recreational fishing in California generated approximately $3.2 billion in economic output and employed nearly 40,000 people.
Beach closures and chemical build-up in our waterways drain money from the state’s economy when we need it most. As California’s policy-makers contemplate the state’s budget priorities for the next several years, it is thus absolutely essential that funding for clean water enforcement programs is considered a priority.
ENDNOTES

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