

WATER QUALITY CONTROL BOARDS

Could Improve Their Administration of Water Quality Improvement Projects Funded by Enforcement Actions

REPORT NUMBER 2003-102, DECEMBER 2003

California Environmental Protection Agency response as of January 2005

Audit Highlights . . .

Our review of the State Water Resources Control Board's (state board) and Regional Water Quality Control Boards' (regional boards) collection of fines and subsequent expenditure of those funds under the Porter-Cologne Water Quality Control Act (State water quality act) revealed the following:

- As allowed by law, there is no correlation between the amount of fines collected by a given regional board and the amount the regional board receives from the state board for water quality projects.*
- From fiscal years 1998–99 through 2002–03, the regional boards collected about \$26 million in fines and the state board committed \$24.9 million for water quality projects throughout the State.*
- The state board received almost \$21 million from a legal settlement between the State and Atlantic Richfield Company and Prestige Stations, Inc., and shortly after committed \$19.2 million of those funds for water quality projects throughout the State.*

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The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to provide information to the Legislature and others to clarify how money designated to improve the State's water quality is distributed throughout the State. Specifically, the audit committee wanted the bureau to provide information related to the State Water Resources Control Board (state board) and a sample of Regional Water Quality Control Boards (regional boards), including how they assess and collect fines, whether they spend the fines in accordance with the Porter-Cologne Water Quality Control Act (State water quality act), and whether they spend the money they collect in or near the areas from which they collect it. The state board reports to the California Environmental Protection Agency (Cal EPA), which was created in 1991. The audit committee also asked us to identify any new funds available in the state board's operating budget and examine the ways those funds have been used. Additionally, the audit committee wanted to know the number and amount of fines the regional boards collected, the public or private entities or individuals who violate the State water quality act (polluters) most commonly, and the changes in the amount of fines assessed and collected over the last five years.

As allowed by law, there is no correlation between the amount of the fines collected by a given regional board and the amount the regional board receives from the state board. When allocating funds to regional boards, the state board attempts to determine how best to use available funds to meet the State's most urgent water quality needs. It appears reasonable that the state board would base its fund commitments not on where fines are generated but what represents the highest and best use

☑ *Despite appearing to focus on the main goal of ensuring that public and private entities comply with the State water quality act, regional boards sometimes fail to follow through on enforcement actions.*

of those funds. From fiscal years 1998–99 through 2002–03, the regional boards collected about \$26 million in Administrative Civil Liabilities (ACL) and either spent or committed to spend \$24.9 million in water quality improvement projects.

Finding #1: Regional boards can retain some benefits from their enforcement actions by approving supplemental environmental projects.

Although the regional boards do not keep the money associated with the ACLs they impose locally, they can recover at least a portion of the money or otherwise retain the benefits of their enforcement actions. First, a regional board can endorse a water quality improvement project within its region and forward it for approval to the state board, which then can allocate funds to projects it considers worthy. However, not all regional boards take advantage of this option, and they may miss opportunities to realize some benefits from their enforcement actions.

Second, regional boards might benefit from their enforcement actions, in accordance with state board procedures, by seeking partial reimbursement for staff costs they incurred in enforcing the State water quality act. However, over the last five fiscal years, only five of the nine regional boards used this option to submit a total of roughly \$670,000 in claims. Also, the state board could do a better job of clearly communicating how and when regional boards may submit claims and how they can use those funds once they receive reimbursement.

Third, a regional board can retain the benefits of some of the ACLs it assesses within its region by allowing a polluter to perform or fund a supplemental environmental project (SEP) in lieu of paying a portion of an ACL. Of the four regional boards we visited, one retained benefits in lieu of almost \$3.5 million and another retained benefits in lieu of more than \$2.2 million of the ACLs they assessed in their respective regions. The four regions we visited retained more than \$6.5 million total for SEPs.

We recommended the state board encourage and assist the regional boards in taking the following steps to ensure that the regional boards receive all the funding they are entitled to under the State water quality act:

- Identify any needed water quality improvement projects in their regions and submit the appropriate funding requests to the state board.

- Collect and compile staff costs associated with enforcing the State water quality act and submit periodic claims for these costs from the account, as the State water quality act allows.
- Evaluate strategies that other regional boards use to maximize water improvement activities in their respective regions.

We also recommended the state board take steps to communicate the intent of the practice to reimburse regional boards for staff costs and the proper way to claim and use such funds to ensure that regional boards are aware of and understand how to use and subsequently spend those funds.

State Board Action: Corrective action taken.

A revision to the Administrative Procedures Manual has been approved by the executive director and posted on the state board's internet and intranet sites. It includes specific direction for requesting funding for projects and reimbursement for staff costs. Copies have been routed to each state board organization for inclusion in their manuals. State board staff and management continue to meet and routinely discuss utilization of the Cleanup and Abatement Account (CAA), as appropriate.

Finding #2: Regional boards do not always ensure that polluters complete supplemental environmental projects or pay fines.

Despite appearing to focus on the main goal of ensuring that public and private entities comply with the State water quality act, regional boards sometimes fail to follow through on enforcement actions. For example, the Santa Ana and San Francisco Bay regional boards often approved SEPs for their enforcement actions but did not always ensure that the SEPs were completed. Further, all four regional boards we visited had, as state board policy allowed, suspended portions of or entire ACLs for polluters that agreed to clean up the pollution or to stop violations. However, the San Francisco Bay regional board did not always follow up to determine that polluters either came into compliance with the State water quality act in accordance with the ACL suspension agreements or paid the ACLs.

Additionally, although all the regional boards appear to collect the mandatory minimum penalties (MMPs) that they initially assessed against polluters, the San Francisco Bay and Santa Ana regional boards could assess fines more promptly when polluters

continue to commit violations subject to MMPs. Regional boards that do not assess and collect fines appropriately and ensure completion of SEPs limit their ability to protect the public health and the environment and do not ensure that violators of the State water quality act do not gain a competitive advantage over those that comply with it.

We recommended the state board require the regional boards to monitor and report on the progress and completion of these projects to ensure that the state water system receives the maximum benefit from SEPs the regional boards approve.

We also recommended the state board require the regional boards to promptly issue and collect all ACLs to ensure that the regional boards effectively use enforcement actions to discourage violations of the State water quality act.

State Board Action: Partial corrective action taken.

The System for Water Information Management Compliance Module is now able to track the successful completion of milestones, including requirements related to the successful completion of SEPs. The state board has been working with each regional board to ensure that staff understands the data entry requirements. The Office of Statewide Initiatives monitors data entry of SEP requirements and prepares a quarterly report on the status of all SEPs approved by the regional boards since January 1, 2004. The current report is posted on the state board's internet site (www.swrcb.ca.gov).

Efforts are ongoing to issue and collect outstanding MMPs. Competing priorities for resources remains a significant issue. Steps taken to address this include:

- The state board has focused efforts on implementation of electronic submittal and review of discharger self-monitoring reports (e-SMR). This is scheduled to phase in dischargers starting in July 2005. e-SMR will replace the current manual review of reports and will lead to semi-automated or automated issuance of mandatory penalties, thus assuring prompt issuance.
- Tracking of report submittal has been dramatically improved. Information about late and missing reports is now reliable for most facilities.

- New templates and process streamlining for MMPs are under development.
- A pilot project for MMP process streamlining and other improvements are planned for the Los Angeles Regional Board in winter 2004–05.
- Increased use of student help for report review and violation tracking until e-SMR is under consideration if resources can be identified.
- Improved prioritization for addressing our enforcement workload is being internally debated. Improved effectiveness with existing resources through MMPs and other enforcement authorities is the goal

Finding #3: Because the state board does not always obtain adequate information on all water quality project proposals, it cannot ensure that it funds the most meritorious projects.

The state board's Division of Financial Assistance (division) does not consistently obtain written information regarding proposed water quality improvement projects before submitting them to the state board for review. One reason it has not consistently obtained the information is inadequate direction from the state board. Specifically, we found that in fiscal year 2002–03, for 20 water quality projects costing \$17.9 million (64 percent of the \$27.9 million funded that required state board approval), although the division followed procedures it has informally established for reviewing water quality projects, it did not follow these procedures in two cases, failing to obtain documentation on two projects worth a total of \$10 million from funds the state board received from a legal settlement. By not gathering all the necessary written information, it is not clear whether the division analyzed the merits of the two projects before submitting them for the state board to consider along with other water quality projects; thus, the state board could not make a fully informed decision regarding which water quality projects were the best use of funds. One factor limiting the division's ability to evaluate and analyze requests for water quality projects is that the state board has not formally adopted a policy to guide the division in fulfilling this responsibility. Instead, the division has its own set of informal procedures that, lacking the authority of the state board behind them, the division is under no obligation to follow.

We recommended the members of the state board establish and approve a policy to guide division staff in processing project requests to ensure that division staff consistently review funding requests for water quality improvement projects. Further, to ensure that the state board has the information necessary to decide which of these water quality projects to fund, the division should follow the established policy in all instances.

State Board Action: Corrective action taken.

Administrative Procedures Manual for accessing the CAA has been revised as suggested. The division intends to follow the approved guidance for requests to access the CAA.