

Water Quality Control Boards:

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



December 2003
2003-102

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CALIFORNIA STATE AUDITOR

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December 17, 2003

2003-102

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the State Water Resources Control Board's (state board) and the Regional Water Quality Control Boards' (regional boards) collection of fines and their administration of water quality improvement projects funded with fines collected in accordance with the Porter-Cologne Water Quality Control Act (State water quality act).

This report concludes that, 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. Over the last five fiscal years, 1998–99 through 2002–03, the regional boards collected about \$26 million from fines and the state board has either spent or committed to spend \$24.9 million for water quality improvement projects throughout the State. Further, 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 to spend \$19.2 million of those funds. While the regional boards have three options for either recovering at least a portion of the money, or otherwise retaining some of the benefits of their enforcement actions, not all the regional boards are fully utilizing these options. Moreover, 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. Finally, the state board's staff does not always obtain written information on proposed water quality projects before submitting them to the state board for review. As a result, staff does not always fully analyze the proposed water quality projects and the state board may not be able to make a fully informed decision regarding which projects are the best use of state funds.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

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.*
- 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.*

RESULTS IN BRIEF

The State Water Resources Control Board (state board) and the nine Regional Water Quality Control Boards (regional boards) it oversees are responsible for establishing plans for meeting the State's water quality needs. However, the regional boards have not adequately followed up on enforcement actions they have taken against public or private entities that violate water quality laws and policies. Consequently, the State may have missed opportunities to implement water quality improvement projects that could have enhanced the State's water resources and benefited the public.

Created by the Legislature in 1969, the state board is responsible for creating objectives for meeting the State's current and future water quality needs. To meet those objectives, the state board establishes and implements water quality control plans for California's water resources and adopts a permitting system to enforce the plans. Sharing these responsibilities are nine regional boards, which the state board oversees. Organized according to the State's major watersheds, the regional boards establish water quality plans for their individual regions (subject to state board approval), issue waste discharge permits to public and private entities, monitor the permits, and take enforcement actions as regulated by the Porter-Cologne Water Quality Control Act (State water quality act). One enforcement action at the state and regional boards' disposal is the imposition of administrative civil liabilities (ACLs), or fines, on public or private entities or individuals that violate the State water quality act (polluters). State law allows the state board to allocate the funds these agencies collect from ACLs to projects that improve water quality within the State.

As allowed by law, there is no correlation between the ACLs that a given regional board collects and the amount of funds the regional board receives from the state board to spend on water quality improvement projects within that region. 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

finances are generated but on what represents the highest and best use of those funds, consistent with the priorities established by the state constitution and the State water quality act. From fiscal years 1998–99 through 2002–03, the regional boards collected about \$26 million in ACLs and either spent or committed to spend \$24.9 million for water quality projects throughout the State. Whereas two of the regional boards that assessed the smallest amount in fines received almost two to three times the money they collected, three of the regional boards that collected the most ACLs received only 55 percent to 60 percent of the money they collected.

Sometimes the State's efforts to enforce environmental laws result in a judicial review, which may lead to a settlement that requires actions or monetary payments that benefit a particular region and possibly the entire State. One such lawsuit was the *People of the State of California v. Atlantic Richfield Company and Prestige Stations, Inc.* (ARCO), which resulted in the State receiving \$25 million from ARCO in addition to improvements costing almost \$21 million that ARCO claims to have spent on the 59 locations of the underground tank systems identified in the lawsuit. Soon after the settlement was reached, the state board committed \$19.2 million of the \$20.1 million it collected from the ARCO settlement for water quality projects throughout the State.

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. For example, the Colorado River Basin regional board submitted no water quality projects to the state board during the last five fiscal years (1998–99 through 2002–03), and the Los Angeles regional board submitted no water quality projects in four of the last five fiscal years.

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. Again, four of the nine regional boards may have missed an opportunity.

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. A SEP is a project that enhances the uses of state water resources and benefits the public. The state board requires regional boards to ensure that each SEP addresses water quality issues that are related to the violation of the State water quality act. 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.

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.

Finally, 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 the ARCO 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.

RECOMMENDATIONS

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

- 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.

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

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

To ensure that division staff consistently review funding requests for water quality improvement projects, the members of the state board should establish and approve a policy to guide division staff in processing project requests. 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.

AGENCY COMMENTS

The California Environmental Protection Agency stated that the state board would attempt to implement the recommendations contained in this report. ■

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INTRODUCTION

BACKGROUND

In 1969 the Legislature created the State Water Resources Control Board (state board), giving it authority over both water allocation and water quality and directing it to establish water quality objectives to benefit California's water resources and the public, now and in the future. Based on the objectives it established, the state board was also charged with adopting and implementing water quality control plans and a permitting system to enforce the plans. The state board has five full-time members, whom the governor appoints and the Senate confirms. The state board oversees and funds nine Regional Water Quality Control Boards (regional boards) organized by major watersheds (see Figure 1 on the following page). This organization takes into account local differences in climate, topography, geology, and hydrology. Each regional board has nine part-time members, whom the governor appoints and the Senate confirms.

Since the passage of the Porter-Cologne Water Quality Control Act (State water quality act) in 1969, the regional boards have shared responsibility with the state board for regulating water quality. The state board sets overall water quality policy and develops a plan that contains the State's water quality objectives. The regional boards develop water quality plans for their individual regions, subject to the state board's approval. The regional boards are semiautonomous: They make certain water quality decisions for their respective regions, such as determining waste discharge requirements. The regional boards' responsibilities include the following activities:

- (1) issuing waste discharge permits to public and private entities discharging substances into the State's waters,
- (2) monitoring those entities for compliance with the terms of their permits,
- (3) implementing watershed management initiatives, and
- (4) inspecting facilities that treat industrial wastewater.

In addition, regional boards take enforcement actions against public or private entities that violate their permits or otherwise violate the State water quality act (polluters). For example, public entities include publicly owned waste treatment facilities and prisons, and private entities include residential homebuilders and energy production facilities.

FIGURE 1

Boundaries of the State's Nine Regional Water Quality Control Boards



As part of its regulatory activities, a regional board can take a series of enforcement actions against polluters based on the nature of the violations. Violations include failing to use the proper measures for preventing storm water pollution and releasing untreated wastewater into the State's waters. For a minor violation, the regional board's first step is usually an informal enforcement action. Regional board staff typically telephone the polluter, discuss how and why the violation occurred, and then discuss compliance. The regional board may instead send a

written notice of violation, another informal enforcement action. The polluter then has a chance to correct the violation before the regional board takes formal enforcement action.

Several formal enforcement actions are available to ensure that polluters correct their violations. For example, the regional board can issue a time-schedule order, which requires the polluter to take certain actions within a given period. The regional board also can issue a cleanup-and-abatement order, which requires the polluter immediately to clean up or terminate the discharge. Another option, usually taken when significant violations persist, is to issue a cease-and-desist order, which can also impose a time limit on cleanup or remediation. In addition, a regional board can assess a fine, known as an administrative civil liability (ACL). When a polluter continues to violate the State water quality act, the regional board can refer the matter to the state attorney general or to a district attorney for enforcement through the courts. The regional boards' collection of ACLs and the state board's subsequent use of those funds is the focus of this audit.

THE STATE WATER QUALITY ACT GIVES REGIONAL BOARDS VARIOUS LEVELS OF DISCRETION IN ENFORCING CORRECTIVE ACTIONS

Approximately 10 sections of the State water quality act grant regional boards the authority to issue ACLs, but not all these laws allow the same degree of discretion. The State water quality act and the state board's enforcement policy (state board policy) generally require regional boards to consider a variety of factors when determining ACL amounts. These factors include, but are not limited to, the extent and severity of the violation, the polluter's history of violations and any remediation it has undertaken, and any economic benefit the polluter may have received by committing the violation. However, in 1999 the Legislature passed new provisions of the State water quality act that took away some of the regional boards' discretionary power, requiring them to impose a new type of ACL, the mandatory minimum penalty (MMP), for certain types of violations.

A regional board must impose an MMP each time a polluter violates certain provisions of its National Pollutant Discharge Elimination System Permit (NPDES permit). Issued to comply with federal laws, NPDES permits regulate discharges or releases of waste to state waters. With some exceptions, a regional

board must assess an MMP of \$3,000 for each serious violation of a NPDES permit (MMP violation), as defined by federal regulations. According to state board policy, the regional boards must issue an ACL at the MMP amount or for a greater amount for each MMP violation.

Examples of Supplemental Environmental Projects

- Program monitoring.
- Studies or investigations.
- Water or soil treatment.
- Habitat restoration or enhancement.
- Pollution prevention or reduction.
- Wetland, stream, or other waterbody protection, restoration or creation.
- Conservation easements.
- Stream augmentation.
- Reclamation.
- Public awareness projects.
- Watershed management facilitation services.

Since 2003 the state law related to MMPs has given regional boards the discretion to enter an agreement with any polluter that has committed an MMP violation, allowing the polluter to have up to \$15,000 in fines plus half the fine amount greater than \$15,000 allocated toward a supplemental environmental project (SEP).¹ State board policy also allows a polluter to substitute a SEP for a portion or all of any other type of ACL. Three things must be true of a SEP: It must enhance uses of state water resources; benefit the public at large; and, at the time the regional board allows it in lieu of an MMP or ACL, not otherwise be required of the polluter. The polluter can either perform the SEP itself or pay to have a third-party contractor perform the SEP. However, if the polluter or third-party contractor does not complete the SEP within the time that the regional board and polluter agreed to, the polluter must pay the amount of the suspended fine. The state board allows regional boards to use SEPs as substitutes for MMPs and ACLs because it recognizes that

SEPs can create a valuable opportunity to improve water quality within the region where the fine was assessed. State board policy suggests certain types of SEPs, some of which are listed in the text box. Figure 2 presents an overview of how regional boards take enforcement actions against polluters.

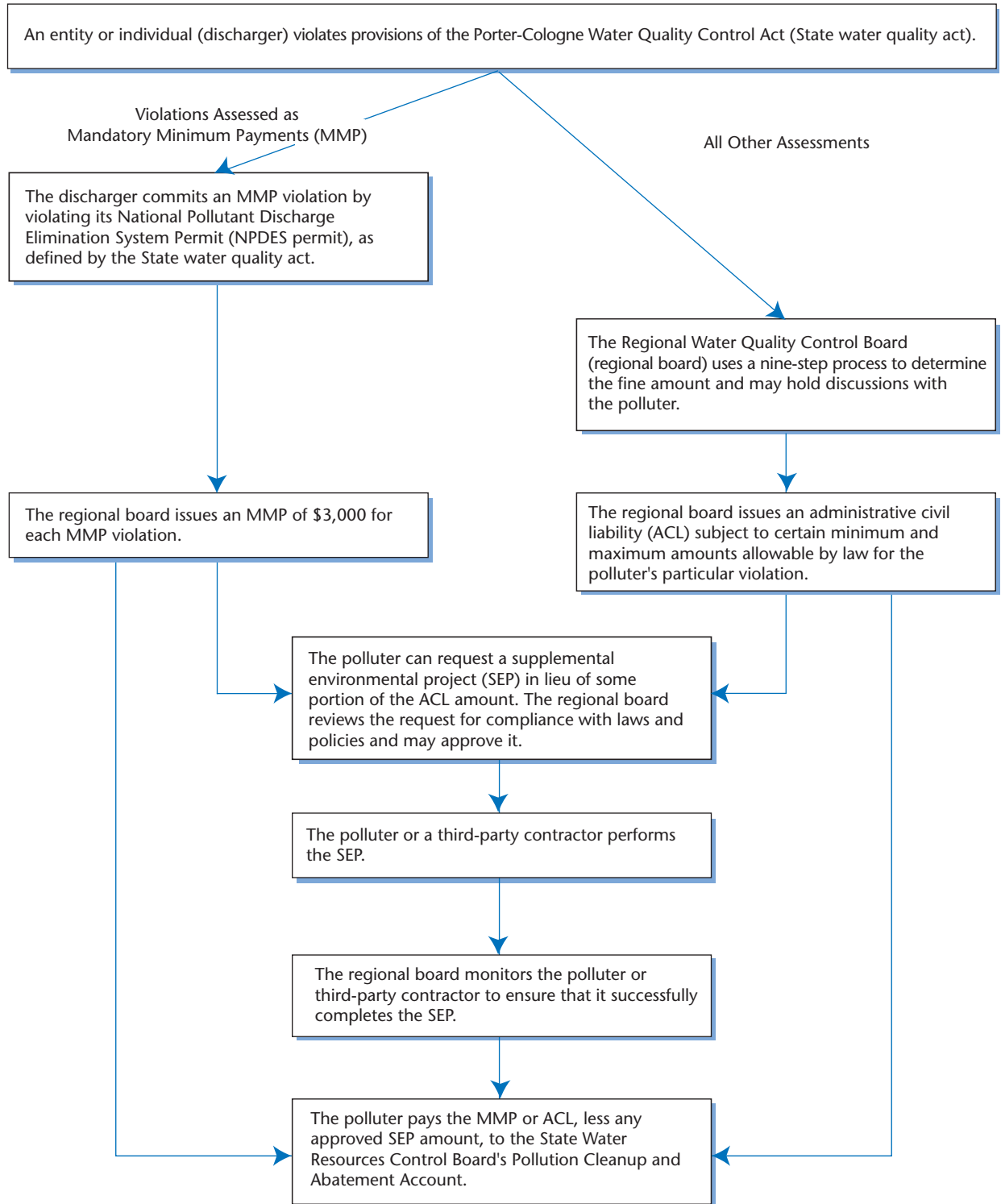
MONEY COLLECTED FROM MOST ENFORCEMENT ACTIONS GOES INTO THE POLLUTION CLEANUP AND ABATEMENT ACCOUNT TO FUND WATER QUALITY PROJECTS

The state board uses the Pollution Cleanup and Abatement Account (account) to pay for the water quality projects it approves. The account is the repository for most of the money that state and regional boards collect from ACLs. Additionally,

¹ Before the current law took effect, the limit for an SEP was \$3,000.

FIGURE 2

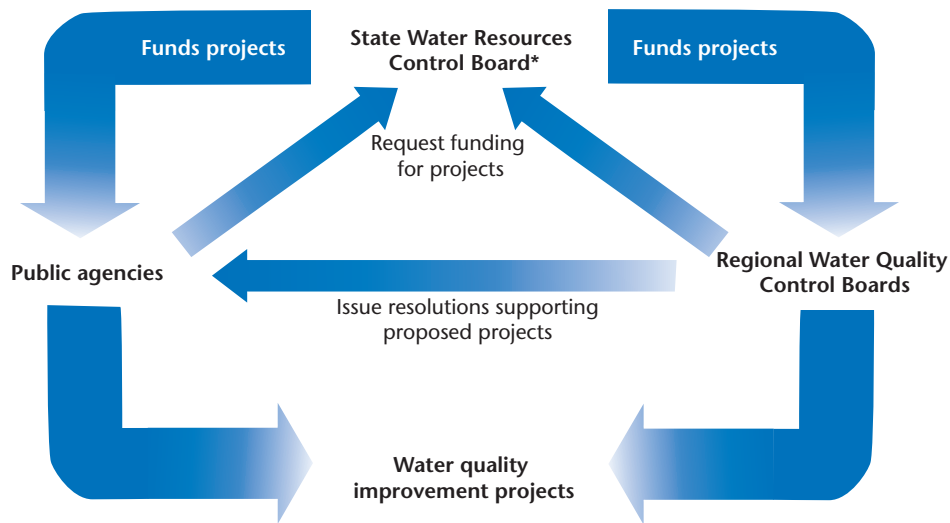
Overview of Regional Water Quality Control Boards' Procedures for Assessing Administrative Civil Liabilities



the account receives occasional appropriations from the Legislature; half of any money collected as a result of criminal penalties for violations of the State water quality act; and contributions to the account, if the state board accepts them. According to the 2003–04 Governor’s Budget, the State Water Quality Control Fund, the majority of which is the account, was only \$25.8 million (2.4 percent) of the state board’s total budget of \$1.071 billion in fiscal year 2002–03. The funds for the account come mainly from enforcement actions; the account does not regularly receive appropriations from the Legislature. As Figure 3 illustrates, the state and regional boards each have a role in how the state board approves funding for water quality improvement projects from the account.

FIGURE 3

State Water Resources Control Board’s Commitment of Funds for Water Quality Improvement Projects From the Pollution Cleanup and Abatement Account



Source: State Water Resources Control Board Administrative Procedures Manual.

* The state board can also use funds from the Pollution Cleanup and Abatement Account.

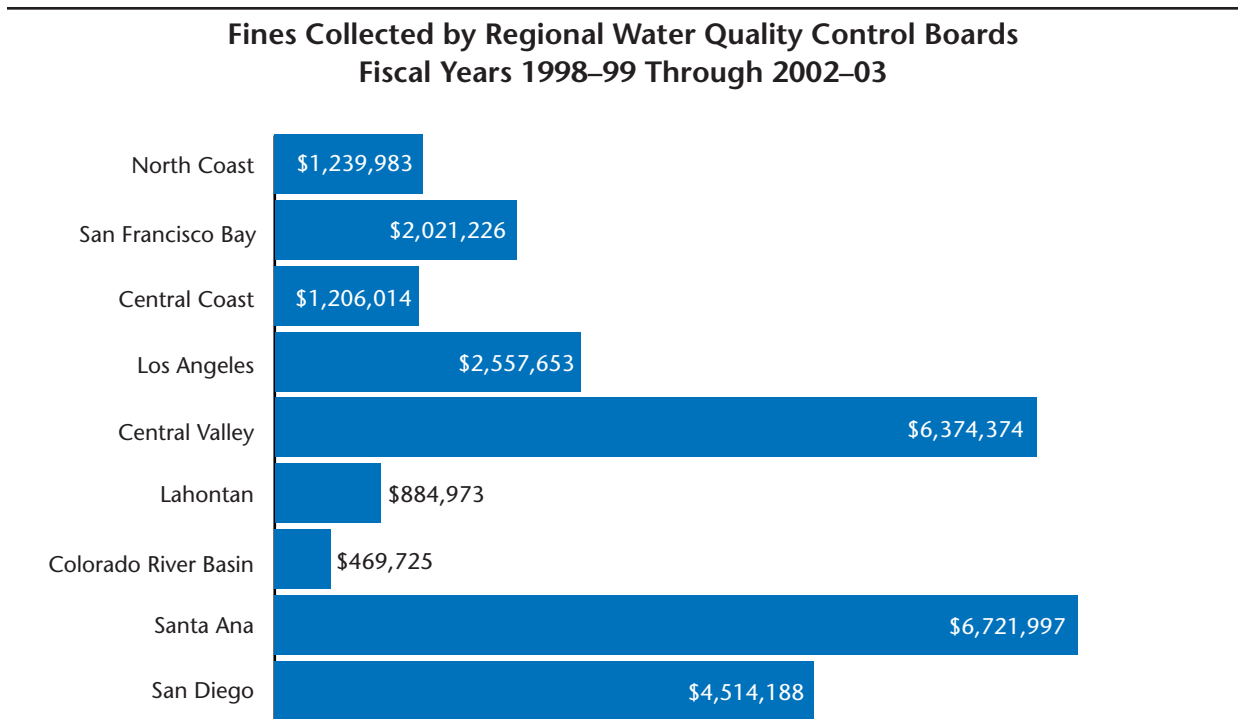
In addition to water quality improvement projects, the account supports the Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC). The state and regional boards are responsible for overseeing the cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely affecting the State’s waters. SLIC establishes a system for the state and regional boards to recover reasonable

costs associated with their oversight of cleanups once the boards have identified the responsible parties. Thus, the State may pay the cost of cleaning up a contaminated site, but the state board will attempt to identify a responsible party and recover the cost from that party.

THE STATE BOARD HAS COMMITTED THE MAJORITY OF FUNDS IN THE ACCOUNT TO WATER QUALITY IMPROVEMENT PROJECTS

Most of the almost \$26 million in fines collected and deposited in the account due to regional boards' enforcement actions over the five years from July 1, 1998, through June 30, 2003, originated from the Santa Ana, Central Valley, and San Diego regional boards. As Figure 4 indicates, these regional boards each collected between \$4.5 million and \$6.7 million. The Los Angeles regional board collected more than \$2.5 million. At the other end of the spectrum, the Colorado River Basin regional board collected less than \$500,000 over the five-year period, and the Lahontan regional board collected less than \$900,000. The Appendix provides a detailed accounting of the amounts that each regional board collected in each fiscal year.

FIGURE 4



Source: State Water Resources Control Board financial records.

The nearly \$26 million that the regional boards collected represents violations by polluters—state, local, and private entities. The regional boards collected roughly 40 percent from local governments, 40 percent from private-sector polluters, and 20 percent from other state agencies. From July 1, 1998, through June 30, 2003, the state board committed \$24.9 million to water quality projects; it has spent \$13.5 million of these funds.

To avoid skewing the percentage of funds collected, we excluded the \$20.1 million the account received from the July 2002 settlement with the Atlantic Richfield Company and Prestige Stations, Inc. (ARCO), a company that operates gas stations in California.² The ARCO settlement was a result of efforts by the state board, as well as other state and local agencies. Shortly after the State and ARCO reached a settlement, the state board

committed most of the money to fund water quality projects and reimburse the parties that were involved in investigating the allegations or that the settlement identified. The State’s investigation claimed that 59 of ARCO’s gas stations in California had underground tank systems that did not comply with provisions of state law, as further described in the text box. Of the \$20.1 million the account received from the ARCO settlement, the state board committed \$19.2 million for water quality projects in three of the nine regions and for statewide water quality projects. The state board made these commitments in a resolution in August 2002—roughly one month after the court settled the case.

When the Legislature passed the law in 1999 that required MMPs for NPDES permit violations, its intent was to achieve swift, timely, and full compliance with waste discharge requirements and to ensure that polluters not benefit from noncompliance. However, the law appears to have also affected the annual dollars that regional boards collect from ACLs. As the Table indicates, the average amount of ACLs collected over the last

three fiscal years, less any court-ordered settlement amounts over \$1 million, was double the average amount the regional boards collected the prior two fiscal years. However, given

The ARCO Settlement

The city of San Francisco and the San Francisco Department of Public Health assisted the state board and the California Environmental Protection Agency in investigating underground tank systems owned and operated by Atlantic Richfield Company and Prestige Station, Inc. (ARCO), to determine whether they contained the single walled, nonfiberglass components state law prohibited for use after December 1998. The plaintiffs’ investigations found that more than 150 underground tank systems at 59 gas stations were noncompliant and required upgrades. The San Francisco Superior Court approved the settlement of the case on July 17, 2002. The settlement required ARCO to pay \$25 million to state and local agencies in addition to the almost \$21 million it claimed to have spent for improvement activities for their underground tank systems identified in the settlement.

Source: *People of the State of California v. Atlantic Richfield Company and Prestige Stations, Inc.* (S.F. Superior Court Case No. CGC-02-409327).

² Including the ARCO settlement, the total collected from fines and settlements statewide between July 1, 1998, and June 30, 2003, was more than \$46 million.

the decline of the fiscal year 2002–03 amount relative to the previous two fiscal years and the relatively short time that has elapsed since the Legislature passed the law implementing MMPs, it is difficult to know how much of the increase in the total amount collected from ACLs is the direct result of that law’s implementation.

TABLE

**Administrative Civil Liabilities Collected
Increased After the Implementation of
Mandatory Minimum Penalties on January 1, 2000**

Fiscal Year	Total ACLs Collected*	Fiscal Years’ Average
1998–99	\$1,943,678	\$2,331,190
1999–2000	2,718,701	
2000–01	6,693,819	5,498,164
2001–02	6,089,205	
2002–03	3,711,469	

Source: State Water Resources Control Board financial records.

* We removed settlements of \$1 million or more to avoid distorting the results of normal operations.

SCOPE AND METHODOLOGY

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 board and a sample of regional boards, including how they assess and collect fines, whether they spend the fines in accordance with the State water quality act, and whether they spend the money they collect in or near the areas from which they collect it. 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 polluters most commonly fined, and the changes in the amount of fines assessed and collected over the last five years.

To provide information related to the sources and collection of fines, as well as uses and allocations of the money, we interviewed state board staff and reviewed the state board's operating budget and accounting records; the regional boards' practices; and the applicable laws, rules, and regulations. Because our early testing found that some of the violations and enforcement actions were not included in the state board's statewide database, we did not rely on the information contained in this database for our testing. Instead, we used the state board's accounting records and information from the regional boards we visited. To verify the accuracy of the state board's accounting of the fines collected, we reviewed the state board's accounting records from the last five fiscal years, compared them to records from the State Controller's Office, tested a sample of transactions, and reconciled any discrepancies we found. Also, to ensure that the state board spent funds from ACLs in accordance with the State water quality act, we reviewed a sample of monetary commitments that the state board made over the last five fiscal years. Finally, to determine whether the regional boards collected ACLs appropriately, we reviewed applicable laws and state policies, as well as samples of ACLs that four of the nine regional boards assessed over the past five fiscal years.

We noted that the State water quality act names two places in which to deposit ACL funds: the account and the Waste Discharge Permit Fund (WDPF) and decided not to address the portion of ACLs deposited in the latter. After interviewing state board staff and reviewing records for the account and WDPF for the last five fiscal years (1998–99 through 2002–03), we found that the amounts placed in the WDPF were immaterial compared with the amounts deposited in the account. Specifically, during the five-year period, the state and regional boards deposited about \$250,000 in fines and penalties in the WDPF. By contrast, state and regional boards deposited about \$26 million in the account, not including one settlement of more than \$20 million, over the same time. Because the ACLs in the WDPF represented an immaterial amount compared with the account, we did not include it in our review.

Finally, we determined that the state board also uses the account to support SLIC. According to a manager at the Division of Financial Assistance, this program recovers 97 percent to 98 percent of cleanup costs. Although we did not verify this claim, we did observe that over the last five fiscal years, SLIC did

not appear to affect significantly the availability of funds for the water quality improvement projects that the regions requested. Therefore, we did not include SLIC in the areas we reviewed during the audit. ■

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AUDIT RESULTS

THE AMOUNT THE STATE WATER RESOURCES CONTROL BOARD ALLOCATES TO A REGION DOES NOT NECESSARILY EQUAL THE FINES COLLECTED IN THAT REGION

Over the last five fiscal years, the State Water Resources Control Board (state board) has not directly related the amount of money it allocates toward water quality improvement projects in a region to the amount of money the Regional Water Quality Control Board (regional board) collected in fines, or administrative civil liabilities (ACLs), from public and private entities that violated state laws regulating water quality (polluters) in that region. However, we did find that a few of the regional boards that collected the largest amounts of fines received at least half the amounts they collected in their regions. We also found that two of the three regions containing the majority of the underground tank systems that were the subject of a lawsuit received the largest proportion of the water quality project allocations from the revenue that the state board received from that lawsuit's settlement.

The Porter-Cologne Water Quality Control Act (State water quality act) seems to set priorities for the use of funds in the Pollution Cleanup and Abatement Account (account) by requiring the state board to make the money it collects for the account available for the following purposes:

- Administering cleanup and abatement activities throughout the State.
- Providing funding to a regional board that has received state board approval to remedy a significant unforeseen water pollution problem that poses an actual or potential public health threat or to oversee and track the implementation of a supplemental environmental project (SEP) required as a condition of an ACL.
- Assisting public agencies, including regional boards, in cleaning up waste or abating its effects on state water resources. The State water quality act specifically sets aside \$1 million of the first \$2 million in the account in any given fiscal year to fund regional boards' requests.

According to the state board, it periodically assesses the availability of funds and, within the parameters of the law, determines how to use the available funds to achieve the highest and best use of the State's waters. The state board, regional boards, and public agencies may apply for funds from the account for water quality improvement projects that meet the intent of the law. Since March 2002 the state board has directed its staff to ask any public agency requesting funding to obtain a concurring resolution from its respective regional board. The state board uses its Administrative Procedures Manual (procedures manual) to guide how it manages the account. The manual contains funding criteria that the Division of Financial Assistance (division) uses to judge each application for funds. According to the procedures manual, the division and the state board judge each application on its own merits and give highest priority to projects that clean up pollution and end or abate the conditions that cause it.

According to the division's chief, the state board has received numerous unanticipated requests over the years that it believes required immediate funding. Many of these requests related to spills or recent discoveries of water quality problems that were threatening public health, water supplies, or water quality. To ensure that adequate funds are available for such unanticipated requests, the state board passed a resolution in March 2002 stating its intent to attempt to maintain a \$3 million reserve in the account. In another revision to the procedures manual, the state board states its intent to solicit requests for water quality projects when the account balance exceeds the \$3 million threshold in a given year.

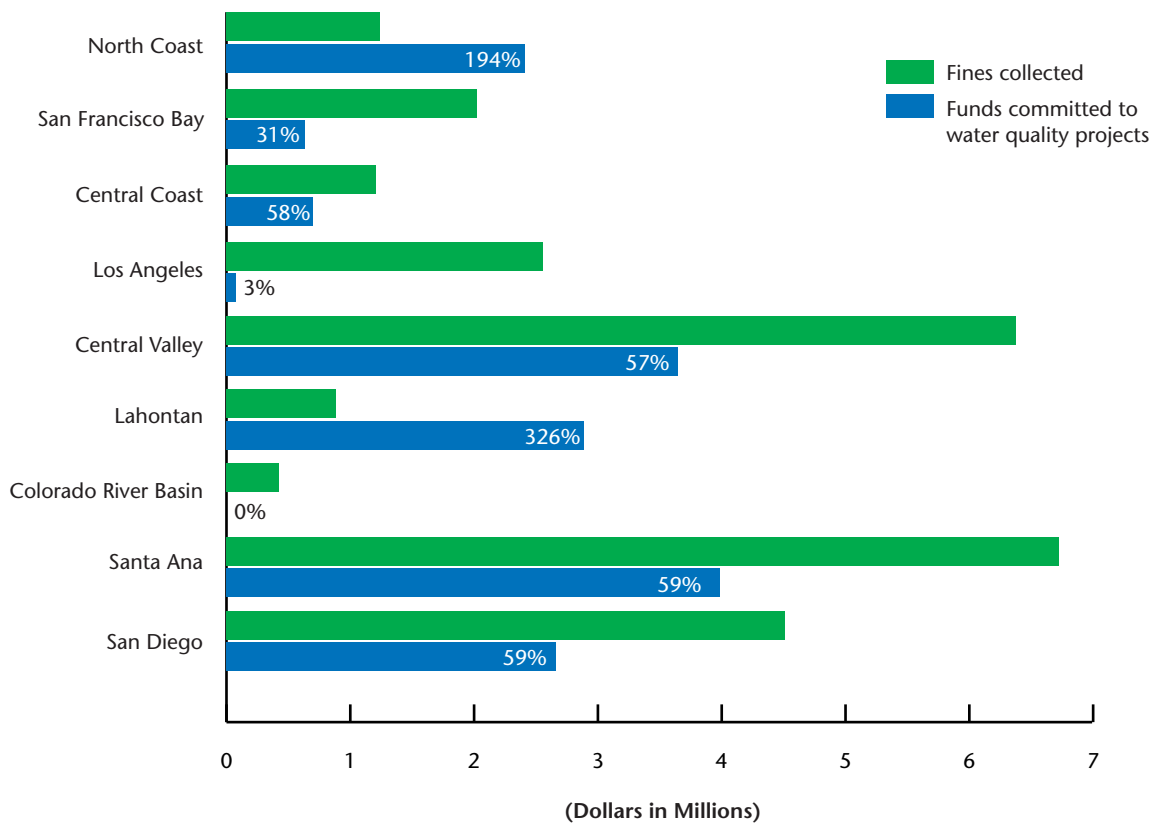
It appears reasonable that the state board would base its fund commitments not on where the funds are generated but on what represents the highest and best use of those funds.

According to the division's chief, the state board believes that allocating funds based on the regional source of the prior fiscal year's fine collections would not ensure that the state board is making the highest and best use of the funds. After reviewing the laws governing the use of these funds, we determined that the state constitution and the State water quality act require that the State put its water resources to the most beneficial use possible and that it prevent waste or unreasonable use of water. This principle plays a central role in California water policy. Further, the State holds its waters in trust for the people of California as a whole. Therefore, it appears reasonable that the state board would base its fund commitments not on where fines are generated but on what represents the highest and best use of those funds, consistent with the priorities established by the state constitution and the State water quality act.

Our review of account revenues and commitments over the last five fiscal years revealed no correlation between the amount of fines collected in a given region and the amount of money committed to water quality projects in that region. For example, as Figure 5 indicates, the two regional boards that collected some of the smallest amounts—North Coast and Lahontan—received from the account about two to three times the amount of fines they collected. The three regional boards that collected the largest amounts—Central Valley, Santa Ana, and San Diego—received between 55 percent and 60 percent of the fines they collected. Further, we observed that the state board committed more than \$6.3 million to statewide projects that would indirectly benefit all regions, including research studies intended to abate potential water pollutants.

FIGURE 5

**Percentage of Fines Collected by Regional Water Quality Control Boards That Was Committed to Water Quality Projects in the Source Region
Fiscal Years 1998–99 Through 2002–03**



Source: State Water Resources Control Board financial records.

Of the \$16.8 million the state board approved from the ARCO settlement funds, approximately \$5.2 million were for statewide water quality projects and services that all regions will benefit from indirectly.

We also determined that many of the regions that contained locations identified in the lawsuit against the Atlantic Richfield Company and Prestige Stations, Inc. (ARCO) received some of the largest water quality project allocations after the state board received the \$20.1 million from the settlement. Figure 6 indicates the six regions where the 59 ARCO gas stations that the settlement identified were located and the amount each regional board received. Of the \$20.1 million the state board received from the ARCO settlement, the settlement specifically allocated \$2.4 million for various projects and services to improve water quality. The state board approved \$16.8 million in water quality improvement projects from the remaining settlement money it received. From these allocations, two out of the three regions where the majority of the identified underground tank systems were located—Los Angeles (26 locations) and Central Valley (11 locations)—received \$2.5 million and \$5 million, respectively. In contrast, the Santa Ana region, with only four locations, received \$3.9 million. Further, the San Francisco Bay region, with 14 locations, did not receive any direct funding for water quality projects from the settlement. But it did receive some of the \$250,000 the state board approved to reimburse local agencies for eligible costs incurred while assisting in the ARCO investigation, and as noted in the Introduction, ARCO claimed to have made improvements to these locations. Moreover, of the \$16.8 million, the state board approved approximately \$5.2 million in statewide water quality projects and services that all the regions will benefit from indirectly.

NOT ALL REGIONAL BOARDS ARE TAKING ADVANTAGE OF STRATEGIES TO FINANCE WATER QUALITY IMPROVEMENT PROJECTS USING FUNDS FROM ENFORCEMENT ACTIONS

Although the regional boards can benefit from enforcement actions, many of them do not take full advantage of the opportunities they have to do so. To receive funding from the account, a regional board has the option either to request funding for water quality projects or claim reimbursements for staff costs for enforcement activities.

First, as we discussed previously, a regional board can support water quality improvement projects that public agencies in its region propose, and a regional board can propose its own water quality project for the state board to consider funding. In the last five fiscal years, eight of the nine regions requested funding

FIGURE 6

Amounts the State Board Returned to Regions Identified in the Atlantic Richfield and Prestige Stations, Inc. Lawsuit After Settlement (ARCO)



Source: State Water Resources Control Board.

Note: The state board committed \$7.6 million to statewide projects and costs to other agencies specifically identified in the settlement.

* Region received a portion of \$250,000 associated with reimbursements to local agencies for investigations associated with the lawsuit.

Over the past five fiscal years, the Colorado River Basin regional board did not submit any water quality project proposals for state board approval.

for water quality projects from the \$24.9 million that the state board committed to such projects. According to the state board's records, the Colorado River Basin regional board proposed no water quality projects for state board approval during our review period. We contacted this regional board's executive officer to determine why it did not submit any project requests. He stated that the Colorado River Basin regional board was generally able to seek funding from other sources but that it intends to request funds for future projects if surplus funds from the account become available.

The Los Angeles regional board requested no water quality projects for four fiscal years until the courts finalized the ARCO settlement in fiscal year 2002–03. The Los Angeles regional board told us it did not submit any requests because it was not sure whether the account had adequate funding and because it assumed that the state board would approve only projects focused on active cleanup. It did request funds received from the ARCO settlement because it felt that the region had contributed a significant number of dollars to the account from enforcement actions and that the project in question was a high priority. Even though these regional boards may have had legitimate reasons for not requesting water quality projects for their regions, this is one method of receiving the benefits of enforcement actions that they may not be fully using.

The state board's procedures manual defines a second opportunity for funding: It allows the regions to claim reimbursements for staff costs associated with obtaining court-ordered fines or assessing ACLs. The regions can receive the lesser of 50 percent of the total fine amount or the actual staff costs associated with the enforcement. But over the last five fiscal years, only five of the nine regions submitted claims for these types of activities to the state board, for a total of roughly \$670,000. The San Diego regional board received the most in staff costs at almost \$228,000, whereas the North Coast regional board submitted the most claims and received more than \$166,000. Of the four regions we visited, three submitted claims and received reimbursements.

Although the procedures manual describes how regional boards should submit such claims, it does not clearly state how a regional board must use the reimbursement it receives. After approving a reimbursement, the state board sends a standard letter to the regional board stating that it must use the reimbursement for investigations, cleanup oversight, or

the cleanup of a site with an actual or threatened discharge of pollution, consistent with the provisions that the State water quality act sets forth. However, the requirements that this letter spells out are not in the procedures manual, where all regional boards could read them before claiming costs.

One of the five regional boards we contacted stated that it did not become aware that it could claim reimbursement for staff costs until 2002.

Having the details of how to claim and spend reimbursement in two different places has created some confusion at the regional level. For example, one of the five regional boards we contacted stated that it did not become aware that it could claim reimbursement for staff costs until 2002. Further, two of the regions' responses to our inquiries seem to indicate that they did not fully understand how to spend the funds received from the reimbursement. Clearly, the state board could improve its method of communicating the intent and the proper use of this provision. Further, the four regional boards currently not claiming any reimbursement should reevaluate whether they can take advantage of this source of funding.

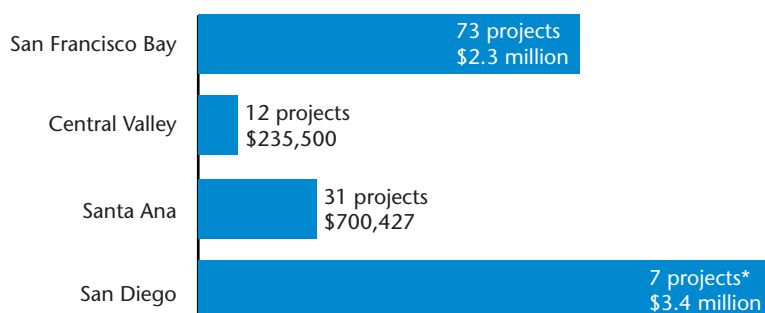
REGIONAL BOARDS CAN RETAIN SOME BENEFITS FROM THEIR ENFORCEMENT ACTIONS BY APPROVING SUPPLEMENTAL ENVIRONMENTAL PROJECTS

The State water quality act authorizes regional boards to approve SEPs in lieu of penalties imposed for certain violations—specifically, storm water violations and violations subject to mandatory minimum penalties (MMPs). The State water quality act's provisions regarding MMP violations limit SEPs to the first \$15,000 of the ACL plus half the amount above \$15,000. The State water quality act's provisions related to storm water violations limit SEPs to half the total ACL. The State water quality act was designed, in part, to enforce federal laws that allow the use of SEPs for a variety of purposes—purposes that the state board's enforcement policy (state board policy) reiterates and broadens. According to the state board's chief counsel, state board policy is based on its authority not only to enforce the federal laws but also to take actions to clean up and stop water pollution and to make settlement agreements. State board policy allows regional boards to approve SEPs for other violations as well. As Figure 7 on the following page shows, the four regional boards we visited show significant variation in the value and number of SEPs they approved. However, these four regional boards took advantage of the laws to retain benefits in lieu of a total of more than \$6.5 million in fines for 123 enforcement actions with approved SEPs. The San Francisco Bay regional

board approved the highest number of enforcement actions with SEPs, 73, and retained benefits in lieu of the second highest amount of fines, \$2.3 million. Although the San Diego regional board approved only seven enforcement actions with SEPs, it approved the largest dollar amount for SEPs, \$3.4 million. Two of the SEPs were against the city of San Diego for sewage spills and accounted for more than \$3.1 million of the total funds the regional board approved.

FIGURE 7

**Enforcement Actions With Supplemental Environmental Projects
Approved by Four Regional Boards
Fiscal Years 1998–99 Through 2002–03**



* Of the total amount approved for suspension by the San Diego regional board, \$3.1 million was from two enforcement actions against the city of San Diego.

The regional boards we visited also had different approaches to and philosophies on using SEPs. State board policy requires the state board to maintain a list of projects that satisfy the general criteria for SEPs, but in practice, only some regional boards maintain such lists. Specifically, the San Francisco Bay and Santa Ana regional boards generally encourage SEPs and maintain a list of SEPs that polluters may choose to substitute for ACLs, including ongoing projects performed by third parties. On the other hand, the San Diego and Central Valley regional boards approve few SEPs, thus not appearing to encourage their use, and do not maintain lists of candidate SEPs.

According to the San Francisco Bay regional board, SEPs result in many benefits to the region’s waters, but a downside to SEPs is the obligation to ensure that polluters or third parties complete them. The Santa Ana regional board stated that it uses this tool when negotiating with polluters because it has found that many polluters in the region prefer participating in SEPs to paying

penalties. On the other hand, the Central Valley regional board stated that although it uses SEPs as one of many tools to resolve negotiations with polluters, it only considers them on a case-by-case basis due to the costs of SEP oversight and administration. Finally, the San Diego regional board stated that SEPs are time-consuming and may weaken the enforcement message.

Regional boards that prefer to use SEPs to retain some benefit from their enforcement actions should examine methods for efficient SEP oversight.

Regional boards that prefer to use SEPs to retain some benefit from their enforcement actions should examine methods to oversee SEPs efficiently. The Santa Ana regional board primarily approves SEPs in which the polluters contribute money to nonprofit or public agencies performing large ongoing projects. Regional board staff's oversight of such SEPs is limited to reviewing status reports that the agencies submit. The San Francisco Bay regional board uses the services of a regional planning agency called the Association of Bay Area Governments (ABAG) to oversee most of its SEPs and has polluters pay ABAG's fees. According to the San Francisco Bay regional board, this arrangement makes only a small demand on its already overcommitted staff. We did not attempt to determine the effectiveness of these SEP oversight methods. However, because using SEPs is one way to reap the benefits of their enforcement actions, the regional boards should consider reviewing each other's strategies and practices for SEP oversight.

REGIONAL BOARDS DO NOT ALWAYS ENSURE THAT POLLUTERS COMPLETE SUPPLEMENTAL ENVIRONMENTAL PROJECTS OR PAY FINES

Although the regional boards appear to keep in focus the main goal of compliance with the State water quality act, sometimes they fail to follow through on enforcement actions. For example, the Santa Ana and San Francisco Bay regional boards often did not ensure that the SEPs they approved as enforcement actions were completed as they had agreed with polluters. Further, as state board policy allowed, the four regional boards we visited forgave portions of, or entire, ACLs for polluters that agreed to comply with the State water quality act; however, the San Francisco Bay regional board did not always follow up to ensure that the polluters either came into compliance or paid their ACLs. Finally, all the regional boards appear to collect appropriately the MMPs they initially assess; however, two of the four regional boards we visited could be more prompt in assessing MMPs for continuing violations. When regional boards do not collect monetary fines appropriately and ensure

completion of SEPs that polluters agreed to in lieu of fines, they limit their ability to protect the public health and the environment adequately and do not ensure that violators of the State water quality act not gain a competitive advantage over those who comply with it.

Some Regional Boards Do Not Determine That Their SEPs Are Completed Within the Terms of Their Agreements

The regional boards vary in their efforts to ensure that polluters or third parties successfully complete the SEPs they approve. As we mentioned earlier, a SEP is a water quality improvement project that enhances the beneficial uses of the State's waters and benefits the public at large. The polluter and the regional board agree to a SEP in exchange for a suspension of some portion of the enforcement action against the polluter. The polluter or a third-party contractor must complete the SEP by the deadline that the terms of the agreement establishes or immediately pay the fine amount associated with the SEP.

Ironically, of the regional boards we visited, the two regional boards that do not appear to actively pursue SEPs do a better job of enforcing the terms of the few they approve.

Ironically, of the four regional boards we visited, the two that approve few SEPs and appear not to pursue them actively—the San Diego and Central Valley regional boards—nevertheless appear to do a better job of enforcing the terms of the few SEP agreements they made. Specifically, staff at these two regional boards enforced the terms of the SEP agreements for all 10 enforcement actions we reviewed. The San Diego regional board went one step further: It even collected interest from one third-party contractor that failed to complete a SEP but continued to hold the fine amounts.

On the other hand, the two regional boards that apparently encourage the use of SEPs—the San Francisco Bay and Santa Ana regional boards—do not always follow through to ensure that polluters or third parties complete SEPs promptly and in accordance with the SEP agreements. Specifically, we reviewed five enforcement actions with SEPs that the Santa Ana regional board approved and found three cases in which the regional board did not follow through to determine that the polluters or third-party contractors either completed the SEPs to the regional board's satisfaction or paid the original fines to the account. In one case, the board approved a SEP for \$8,000 and required the polluter to complete the SEP by May 1, 1999. According to staff at the Santa Ana regional board, the SEP was not complete as of October 2003, when we inquired about its status, and staff had neither followed up to pursue payment nor tracked completion

of the SEP since last contacting the polluter in September 1999. In another case, the Santa Ana regional board approved a SEP for \$10,000 in September 2001, and the polluter promptly paid a third-party contractor to perform the SEP; but as of September 2003, regional board staff had not received a single progress report from the third party. In addition, the third party could not provide regional board staff with a clear accounting of the project's costs in response to our inquiry. Lastly, a third party completed a SEP for \$82,500 according to terms a polluter and the regional board agreed to in May 2002, but the polluter had not sent the final report for the SEP to the Santa Ana regional board as required. Once again, the regional board staff did not inquire whether the SEP had been completed until we inquired in September 2003.

In one case, as of October 2003, the staff of the San Francisco Bay regional board had not ensured that a third-party contractor had met the completion date of November 1999 for a \$40,000 SEP agreement.

Similarly, the San Francisco Bay regional board had not overseen the completion or progress of four of the five approved SEPs that we reviewed. In one case, as of October 2003, the staff of the San Francisco Bay regional board had not ensured that a third-party contractor had met the completion date of November 1999 for a \$40,000 SEP agreement. Following our inquiry, the regional board determined that the third party had not completed the SEP. In another case, although third parties had completed a \$25,000 portion of an approved \$114,000 SEP, they did so more than two years past the completion date that the agreement with the regional board required. In a third case, the San Francisco Bay regional board staff verbally approved a \$15,000 SEP with a required completion date of September 2000, but staff did not follow up with the polluter to ensure that it had completed the SEP until May 2003. When staff inspected the facility that month, it found that the polluter had gone out of business, so the regional board could neither determine whether the SEP was completed appropriately nor pursue payment. For another enforcement action, the polluter paid the third parties with which it contracted to perform a \$145,600 SEP, but the regional board could not provide a status report on a five-year portion of the SEP to be completed by December 2003 and valued at more than \$126,000. Despite its claim that the first status report was not yet due as of October 2003, the San Francisco Bay regional board should have been able to provide an accounting of the funds spent so far on a project that should have been very near completion.

The Santa Ana regional board stated that its staff needed to prioritize their responsibilities and that following up on SEPs was not as important as the staff's primary tasks of issuing

By failing to follow through on enforcement actions they take against polluters, regional boards limit their ability to ensure that polluters comply with the State water quality act and that the environment is protected.

waste discharge permits and pursuing enforcement actions. The San Francisco Bay regional board agreed that noncompliance with SEP deadlines is an issue and cited heavy staff workload as the primary cause. In addition, it stated that one way to resolve this issue would be to structure SEP agreements to allow for extending completion deadlines when the polluters or third parties performing the SEP demonstrate a serious effort toward completing the SEP. However, by failing to follow through on enforcement actions they take against polluters, regional boards limit their ability to ensure that polluters comply with the State water quality act and that the environment is protected.

One Regional Board Does Not Always Collect the Fines It Assesses

Although the four regional boards we visited exercise their allowed discretion by forgiving portions of, or entire, ACLs when the polluters achieve compliance with the State water quality act, the San Francisco Bay regional board does not always follow through to either determine that the polluters are in compliance or collect the ACLs. The regional boards have some discretion in determining ACL amounts, using ACLs as leverage to obtain compliance from polluters. A polluter can pay the ACL, negotiate a settlement that is documented as an amended complaint, or dispute the ACL at a regional board hearing. Often, a regional board negotiates with a polluter to clean up the pollution or stop the violation that prompted the ACL; once the polluter meets the terms of the negotiation, the regional board's executive officer may suspend the entire fine amount, cancel the ACL altogether, or agree to reduce the ACL to a lesser amount. We saw evidence of this at each of the regional boards we visited.

However, the San Francisco Bay regional board failed to collect fines on three ACLs it had not forgiven: a May 1999 ACL of \$13,000, a September 1999 ACL of \$5,000,³ and a May 2001 ACL of \$7,000. The regional board sent a letter to the third polluter demanding payment and stating that policy would require it to forward the matter to the Attorney General's Office for additional actions. However, the San Francisco Bay regional board did not forward the matter, nor did it collect any of the three fines. According to the regional board's assistant executive officer, one of the polluters went out of business, so staff did not

³ This fine is part of the same ACL for which San Francisco Bay regional board staff verbally approved a \$15,000 SEP as described on page 29.

When regional boards fail to follow up on fines, they undermine one of the purposes of enforcement actions—to discourage violations of the State water quality act.

pursue collection any further; limited staff resources resulted in the regional board's inability to pursue collection of the other two fines. Nevertheless, by failing to follow up on this matter, the regional board undermined one of the purposes of enforcement actions—to discourage violations of the State water quality act. Further, it did not ensure that these polluters did not gain a competitive advantage over entities that comply with the State water quality act.

Some Regions Are Not Always Assessing MMPs When Polluters Continue to Commit MMP Violations

Although the regional boards we visited seem to assess and collect MMPs for initial violations of NPDES permits, three of the four did not always assess fines when polluters repeated the MMP violations.⁴ Imposing MMPs is a relatively new mechanism designed to obtain compliance with federal regulations and California's State water quality act. The legislation imposes an MMP of \$3,000 for certain violations. The regional boards must enforce this penalty, unlike other ACLs, so that polluters comply with the law.

We reviewed 25 enforcement actions to determine whether the regional boards were collecting MMPs in accordance with the laws. We found that all the regional boards collected the total fine amounts from the polluters shortly after imposing the enforcements. However, the San Francisco Bay and Santa Ana regional boards did not promptly enforce at least 91 subsequent MMP violations of the same type that occurred in five of the 15 enforcement actions we tested in those regions. In addition, the San Diego regional board did not promptly assess a fine for a violation subject to an MMP. According to state board policy, regional boards should issue MMPs within seven months of violations subject to MMPs. The regional boards should have issued MMPs for at least 57 of the 92 violations more than a year ago. The enforcement officers from the Santa Ana and San Francisco Bay regional boards claim that they are behind in assessing MMPs because other priorities have drawn their limited resources away from these tasks. The enforcement officers stated that they plan to catch up on MMP assessments in the near future.

⁴ We only sampled enforcement actions where regional boards assessed MMPs. We did not attempt to determine whether regional boards took enforcement actions for all MMP violations.

If the regional boards are not continuously enforcing penalties to polluters with violations subject to MMPs, they are not accomplishing the goals of the federal and state water quality laws, which are to deter noncompliance and enhance water quality. Further, these 92 MMP violations represent \$276,000 in fines that regional boards could assess, collect, and deposit in the account.

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

Information the State Board Requests Before Deciding to Fund Water Quality Projects

- Agency's authority to clean up waste.
- Waste discharged or potentially discharged.
- Location of the discharge and impact on groundwater or surface water.
- Threat to water quality and public health the pollution poses.
- Agency's available resources to perform the cleanup.
- Efforts made to secure alternative funding.
- Impact on the community or surrounding area if the project is not approved for funding from the account.
- Entity or individual responsible for the discharge of the waste.
- Opportunity to recover the cost of cleanup and the efforts the agency will make to recover the costs from the responsible party.
- Steps the agency will take in conducting the cleanup or abatement.
- Evidence the local regional board has issued a cleanup-and-abatement order* regarding the site (if applicable).
- Regional board's support of the request.

* This order is issued to any person who has discharged or discharges waste in violation of the Porter-Cologne Water Quality Control Act.

The state board does not consistently require key written information regarding proposed water quality projects before determining whether to fund them. The state board requires regional boards and public agencies to submit written requests for project funding that include specific information, as shown in the text box, about the proposed project before it evaluates and determines which projects to fund from the account. Based on the information it receives in the request, the Division of Financial Assistance (division) evaluates which projects address a specific threat to water quality and brings those requests to the state board for review and approval. The state board then meets to review this information and decides which projects to fund. However, although the division normally follows its procedures by requiring the regional boards or public agencies requesting funds to submit the information, it did not follow these procedures for two projects the state board funded in fiscal year 2002–03 at a total of \$10 million.

As part of our review, we tested 26 water quality projects worth more than \$30 million that the state board approved within the last five years. During this testing, we found that four projects (worth a total of \$2.4 million) were required as part of the ARCO settlement and therefore did not need the state board's approval. Of the remaining 22 water quality projects, we found that requesting agencies submitted a written request to the state board for 20 projects (valued at \$17.9 million). However, the

The state board did not require written requests for two projects worth \$10 million.

state board did not obtain documentation on two projects worth a total of \$10 million from funds the state board received from the ARCO settlement. One \$5 million project was a media and communications campaign that the state board's public affairs office developed to target prevention of storm water pollution in the Los Angeles region. The other \$5 million project was for the Central Valley regional board to review and renew waivers and waiver policies regarding discharges from irrigated land and confined-animal operations.

According to the division's chief, members of the state board, acting as a public agency, verbally requested funding for these two projects. However, because the division did not obtain the same kind of written information that it usually requires, it did not evaluate or analyze these two requests in the same way it does other requests before forwarding them to the state board for approval. The division was unable to produce any documentation for these two requests and therefore could not demonstrate that it followed its normal evaluation process. The chief added that the state board heard and adopted these requests, like all other items on the state board's agenda, only after giving public notice of the meeting, including Internet postings.

Because the state board has not adopted a formal policy to guide the division in evaluating and analyzing requests for funding water quality projects, the division uses its own informal procedures, which it is not obligated to follow. However, by failing to obtain the information it usually requests from funding applicants, it is not clear whether the division analyzed the merits of these two projects adequately before submitting them to the state board for consideration along with other water quality projects. In addition, within two months of its approving these two projects, the state board received eight requests, totaling \$4.8 million, that it did not fund because the account did not have enough money available to fund them. Because the state board did not complete the normal process for approving these two projects, it is unclear that funding these projects was in fact the best use of the account. State board policy does not specify a period in which the state board must spend funds from the account; thus, the state board could have waited to fund these projects until its staff had the time to analyze the requests properly and perform due diligence. Although the two approved projects may have been as meritorious as the other eight projects that applicants submitted to the state board, they did not receive the same scrutiny; the division and the state board did not apply the same standards to the projects to decide which would

be the best use of account funds. Further, without adopting a formal policy to guide division staff in consistently reviewing all requests for funding before submitting them to the state board for consideration, the state board cannot ensure that it decides which are the best uses of account funds to clean up or stop water pollution.

RECOMMENDATIONS

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

- Identify any needed water quality improvement projects in their regions and submit the appropriate requests for funds from the account 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.

To ensure that regional boards are aware of and understand how to use and subsequently spend reimbursements for staff costs, the state board should take steps to communicate the intent of this practice and the proper way to claim and use such funds in its procedures manual.

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

To ensure that the regional boards effectively use enforcement actions to discourage violations of the State water quality act, the state board should require regional boards to promptly issue and collect ACLs for all continuing MMP violations.

To ensure that division staff consistently review funding requests for water quality improvement projects, the state board should establish and approve a policy to guide the division in

processing project requests. Further, to ensure that the state board has the information necessary to decide which of these water quality projects it should fund, the division should follow this policy in all instances.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE
State Auditor

Date: December 17, 2003

Staff: Ann K. Campbell, CFE, Audit Principal
Phillip Burkholder, CPA
Loretta T. Wright
Tameka V. Hutcherson

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APPENDIX

Fines and Penalties Collected by State and Regional Boards for Fiscal Years 1998–99 Through 2002–03, Excluding the ARCO Settlement

The following table shows the amounts that the nine Regional Water Quality Control Boards and the State Water Resources Control Board (state board) collected and deposited in the Pollution Cleanup and Abatement Account (account) from fiscal years 1998–99 through 2002–03. To avoid skewing the percentage of funds collected, we excluded the \$20.1 million the account received from the July 2002 settlement with the Atlantic Richfield Company and Prestige Stations, Inc. (ARCO). Of the \$20.1 million the account received from the ARCO settlement, the state board committed \$19.2 million for water quality projects in three of the nine regions and to statewide water quality projects. The state board made these commitments in an August 2002 resolution, roughly one month after the court settled the case.

TABLE

Regional Board	Fiscal Year 1998–99	Fiscal Year 1999–2000	Fiscal Year 2000–01	Fiscal Year 2001–02	Fiscal Year 2002–03	Totals
North Coast	\$ 80,000	\$ 180,000	\$ 313,000	\$ 411,683	\$ 255,300	\$ 1,239,983
San Francisco Bay	177,560	312,821	318,900	884,945	327,000	2,021,226
Central Coast	513,550	30,700	74,450	285,150	302,164	1,206,014
Los Angeles	232,697	618,900	554,553	803,058	348,445	2,557,653
Central Valley	432,971	363,137	2,916,699	1,316,030	1,345,537	6,374,374
Lahontan	273,100	310,000	12,000	112,000	177,873	884,973
Colorado River Basin	14,780	20,053	150,825	162,900	121,167	469,725
Santa Ana	206,200	664,676	4,670,226	731,995	448,900	6,721,997
San Diego	12,820	218,415	2,515,925	1,381,945	385,083	4,514,188
Other*	0	0	25,000	0	0	25,000
Totals	\$1,943,678	\$2,718,702	\$11,551,578	\$6,089,706	\$3,711,469	\$26,015,133

Source: State Water Resource Control Board financial records

* The "Other" category consists of fines and penalties the state board collected.

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Agency's comments provided as text only.

California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

December 5, 2003

Ms. Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

VIA FACSIMILE

Dear Ms. Howle:

Thank you for the opportunity to review the draft report titled "Water Quality Control Boards: They Could Improve Their Administration of Water Quality Projects Funded By Enforcement Actions." The report contains several recommendations and the State Water Resources Control Board will attempt to implement them.

There is one correction I would like to point out. On pages 4 and 22, there are references to the involvement of the Regional Water Quality Control Boards in the case of *People v. Atlantic Richfield Company (ARCO) et al*, San Francisco Superior Court. Please be informed that as this case involved operational issues in underground storage tanks (not clean up issues), the Regional Boards were not involved in the investigation nor were they parties in the litigation. This case was investigated by the State Board's Underground Tank Enforcement Unit and local agencies that implement Cal/EPA's Unified Program. This calls into question the caption on Figure 6 "Amounts Returned to the Regions...[in the ARCO case]." Not all the money in the Clean Up and Abatement Account comes from enforcement activity of the Regional Boards.

Please contact me if you have any questions.

Sincerely,

(Signed by: Jim Branham for)

Terry Tamminen
Agency Secretary

* California State Auditor's comment appears on page 41.

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COMMENT

California State Auditor's Comment on the Response From the California Environmental Protection Agency

To provide clarity and perspective, we are commenting on the California Environmental Protection Agency's response to our audit report. The number below corresponds to the number we have placed in the margin of the agency's response.

- For the purposes of clarity, we modified the text on pages 2 and 22.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press