

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**A REVIEW OF THE SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-665

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WATER QUALITY CONTROL BOARD

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P-665

Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the San Diego Regional Water Quality Control Board's (regional board) regulation of waste dischargers in its region. The report concludes that the regional board did not meet its workload during 1985 and 1986. As a result, the regional board needs to improve its regulation of waste dischargers. We recognize that part of the reason that the regional board did not meet its workload was that it did not have sufficient staff to do so. The regional board has addressed the staffing shortage by hiring additional staff. The regional board also made other improvements during 1986 which will enable it to more effectively regulate the region's dischargers in the future. However, we recommend that the regional board take stronger enforcement action against dischargers when the regional board's cooperative approach toward getting dischargers to comply with water quality standards proves ineffective.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

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SUMMARY

RESULTS IN BRIEF

Although the San Diego Regional Water Quality Control Board (regional board) has recently made some improvements in its regulatory program, it needs to further improve its monitoring and enforcement activities. When the regional board does not sufficiently regulate facilities that discharge waste (dischargers), the regional board cannot ensure the highest possible quality of water in the region. During our audit, we noted the following specific conditions:

- As of December 31, 1986, the regional board had not reviewed or revised within the previous five years the requirements, which were established to regulate the discharge of waste, for 37 of 54 dischargers;
- Thirty-three of 80 dischargers did not submit all their required reports during calendar years 1985 and 1986; 16 of the 33 did not submit any required reports during this period;
- During fiscal year 1985-86, the regional board did not perform 25 of the 160 inspections that it was required to perform of those dischargers that pose the highest threat to water quality. Nine dischargers that pose less of a threat to water quality were not inspected at all during this period; and
- The regional board did not take enforcement actions against 6 of 13 dischargers that repeatedly violated the requirements.

BACKGROUND

The State Water Resources Control Board (state board) and nine regional boards are responsible for protecting and enhancing the quality of all waters of the State, both surface waters and

ground water. In fulfilling this responsibility, the state board establishes statewide policy and approves regional plans for water quality control. The nine regional boards are directly responsible for regulating the dischargers. To ensure that the dischargers do not jeopardize water quality, the regional boards issue and periodically review and revise the requirements established to regulate the waste from dischargers. The regional boards also monitor dischargers to ensure that they comply with these requirements. Dischargers that do not comply are subject to enforcement action by the regional boards.

PRINCIPAL FINDING

The San Diego Regional Water Quality Control Board Needs To Further Improve Its Regulatory Activities

In response to a 1984 report by the Auditor General's Office, the state board and the nine regional boards have established a regulatory program that establishes the specific workload that the regional boards are to meet. In implementing the regulatory program, the San Diego regional board should review and, if necessary, revise each of the requirements for dischargers once every five years. The regional board should also review each discharger's reports, inspect each discharger's operation from one to three times a year, and take prompt enforcement action against those dischargers that violate water quality standards.

However, as of December 31, 1986, the regional board had not reviewed or revised within the last five years the requirements for 37 of 54 dischargers. Also, 33 of 80 dischargers did not submit all of their required reports during calendar years 1985 and 1986. In addition, the regional board did not perform 25 of the 160 inspections that it was required to perform of those dischargers that pose the highest threat to water quality. Nine dischargers that pose less of a threat to water quality were not inspected at all. Finally, the regional board

did not take enforcement actions against 6 of 13 dischargers that had repeatedly violated the provisions of their requirements. When the regional board does not take prompt enforcement action against repeat violators, there is a greater likelihood that the violations will continue and the quality of the region's waters will suffer.

Insufficient staffing is partially to blame for the regional board's not meeting its workload in calendar years 1985 and 1986. Also, to get some dischargers that have repeatedly violated the provisions of their requirements to take corrective measures, the regional board has used a "cooperative approach" that the state board later indicated is not effective. Had the regional board used its limited staff time to take enforcement action against these dischargers rather than using the staff time trying to encourage them to voluntarily comply, it is less likely that these violations would have continued.

Corrective Action

During 1986 and 1987, the state board and the regional board took a number of steps that should enable the regional board to meet its workload in the future. The state board and the regional board have developed monthly management reports that enable the regional board to identify any previous violations of water quality standards by a discharger, to identify the regional board's enforcement actions against these dischargers, and to identify those dischargers that have not submitted their reports. Also, these management reports enable the regional board to schedule each month those inspections that it plans to complete and to record those that it has completed. The regional board also hired additional staff who will enable the regional board to expeditiously review the dischargers' reports and then promptly notify those dischargers that are late in submitting or that have not submitted their reports. The regional board has also implemented the state board's ten-year plan to update the region's requirements. According to the regional board's executive officer, during fiscal year

1986-87, the regional board reviewed 75 of the 80 requirements that it was scheduled to review.

RECOMMENDATION

To ensure that dischargers comply with their requirements, the regional board should take progressively stronger enforcement measures against those dischargers that do not promptly correct violations. This escalation of enforcement actions should be used when the regional board's cooperative approach proves ineffective.

AGENCY COMMENTS

The secretary of the Environmental Affairs Agency and the chairman of the State Water Resources Control Board agree that the San Diego Regional Water Quality Control Board has improved its regulatory program but that there is opportunity for further improvement. In addition, the executive officer of the regional board points out that in fiscal year 1986-87 the regional board accomplished more of its workload than it did during calendar years 1985 and 1986, which is the period covered by our review. Finally, the secretary of the Environmental Affairs Agency, the chairman of the State Water Resources Control Board, and the executive officer of the regional board all agree with the report's recommendation that the regional board should use stronger enforcement measures when dischargers do not promptly correct their violations.

INTRODUCTION

The State Water Resources Control Board (state board) and the nine regional water quality control boards (nine regional boards) are responsible for protecting and enhancing the quality of all waters of the State. The state board is responsible for developing an effective plan for water quality control and for administering grants to local governments to construct waste water treatment facilities. The state board also issues permits and licenses to facilities that use water from streams, rivers, and lakes. The nine regional boards, located throughout the State, are responsible for developing and enforcing standards for water quality control within their respective regions. This report focuses on the San Diego Regional Water Quality Control Board's (regional board) regulation of facilities that discharge wastes, which include sewage and other waste substances.

To protect the State's waters, the Porter-Cologne Water Quality Control Act, which took effect January 1, 1970, requires the State to regulate any activities that may affect the quality of the State's waters, both surface waters and ground water. (Ground water is the source of approximately one-half of the drinking water in the State.) The act also authorizes the state board to exercise those powers delegated to the State by the Federal Water Pollution Control Act. Through this federal law, the United States Environmental Protection Agency has authorized the State to issue permits regulating discharges into the State's navigable waters, including oceans, bays,

and rivers. For state fiscal year 1985-86, the federal government provided approximately \$3.7 million to assist the State in regulating facilities that discharge waste (dischargers) into navigable waters.

In fiscal year 1985-86, the regional board's program expenditures totaled \$1,443,000, and at the start of 1985-86, the number of staff positions totaled 23.6. This number increased in fiscal year 1986-87 to 27 positions. The regional board has assigned most of its staff the following basic regulatory activities: reviewing and revising the requirements that govern dischargers, monitoring the dischargers, and, when necessary, taking enforcement action against dischargers. During fiscal year 1985-86, the regional board spent approximately 60 percent of its available staff resources on these activities.

Administration of the Regulatory Program

In fulfilling its responsibility to protect the quality of state waters, the state board establishes statewide policy for water quality control and reviews and approves regional plans for controlling water quality. The state board also provides guidance and legal and technical assistance to the regional boards. The state board reviews the nine regional boards' budgets and incorporates them into its own budget. The state board is also the final administrative authority for appeals of enforcement actions taken by the regional boards. The state board also oversees the nine regional boards' activities to regulate the dischargers within their regions.

The San Diego regional board, like the other eight regional boards, has direct responsibility for regulating dischargers. As part of its regulatory activity, the regional board issues and reviews the requirements that govern dischargers. These requirements, which specify the restrictions on the waste from the dischargers, are used to ensure that waste discharges do not jeopardize water quality. For example, the requirements that the San Diego regional board establishes for the region's sewage treatment facilities include provisions that limit the amount of sewage that each facility can process. The regional board issues these requirements under federal permits as part of the National Pollutant Discharge Elimination System for discharges to navigable waters. The regional board also establishes requirements under state law for discharges to nonnavigable waters.

To ensure that dischargers comply with the regional board's requirements, the regional board conducts surveillance and monitoring activities, which include inspections of dischargers and reviews of discharger's reports. These reports represent one self-monitoring requirement that the regional board must establish for dischargers. The discharger is usually required to sample and test the waste and to report the results to the regional board regularly. If the regional board identifies that a discharger has not complied with the regional board's requirements, the regional board may notify a discharger of its violations and encourage the discharger to comply voluntarily. If the discharger does not comply, the regional board is required to take the appropriate type of enforcement action.

The regional board can take any of several formal enforcement actions. It may issue a time-schedule order, which requires that a discharger take a set of specific actions within a given period to correct or prevent violations of water quality laws, or a cleanup-and-abatement order, which requires a discharger to clean up waste discharge or mitigate the effects of the discharge. The regional board may also issue a cease and desist order when significant violations are likely to occur or have occurred and may continue to occur. A cease-and-desist order requires that a discharger comply with specific requirements or prohibitions, that the discharger comply within a specified period, or, if a violation presents an immediate threat, that the discharger take appropriate remedial or preventative action. The regional board may also assess an administrative civil liability, which is a monetary penalty, against a discharger. If the regional board cannot gain compliance using any of these enforcement actions, the regional board may refer the matter to the attorney general or to the district attorney to pursue enforcement through the courts.

San Diego Bay

In 1985, as part of its responsibility to protect the quality of San Diego Bay, the regional board issued a special report describing the current condition and problems of the water in the San Diego Bay (bay). The report pointed out that, despite a highly successful cleanup effort between 1950 and 1969, water quality problems still exist in the bay, and new technology and a new awareness of pollutants

have resulted in the identification of problems in the bay that were not even conceived of 25 or 35 years ago. The report concluded that "toxic waste, oil, and human pathogens still present problems for the bay into the 1980's." Based on this report, the regional board recommended that it sponsor a study to be carried out by the regional board and the various agencies that are concerned with the water quality of the bay to identify problems and suggest solutions to protect the bay.

The regional board has adopted this recommendation and is in the planning stages of a proposed five-year study of the bay. The study will determine the source of a variety of pollution problems and suggest measures to solve them. These problems include concentrations of toxic polychlorinated biphenyls (PCBs), which have been found to be harmful to fish. PCBs have been found at various locations in the bay. The problems also include the presence of copper ore deposits on the bay bottom in National City and the continued discharge of sewage from vessels moored in the bay despite regulations prohibiting these releases. Furthermore, research has shown that organotin, a paint that retards the growth of marine organisms on boat and ship hulls, also kills valuable shellfish such as clams and oysters. The study will also assess the impact of organotin on marine life in the San Diego Bay. The study will also focus on other concerns such as the threat to the bay from heavy metals, synthetic compounds, aromatic hydrocarbons, pesticides, bacteria, and radioactivity.

Auditor General's 1984 Report

In April 1984, the Auditor General's Office issued a report entitled "The State of California Should Do More To Reduce and Prevent Contamination of Water Supplies," Report P-376. The review focused on the State's water quality control program, particularly four regional water quality control boards' procedures for regulating dischargers. The report did not review the San Diego regional board. The report concluded that the state and the four regional boards do not have an effective regulatory program to identify violators and to ensure that violations are corrected. The report also concluded that since 1979, the date of a previous report by the Auditor General's Office on this subject, the state and regional boards had done little to improve their regulation of dischargers. A summary of the specific findings of the 1984 report is presented in Appendix A of this report.

SCOPE AND METHODOLOGY

The purpose of this audit was to review the San Diego regional board's regulation of dischargers. To determine the responsibilities of the regional board and the dischargers, we reviewed and documented administrative manuals, requirements that govern the discharge of waste, National Pollutant Discharge Elimination System permits, and pertinent state and federal laws and regulations. We also interviewed staff of the regional board to determine how the regional board has implemented the state board's computerized information system, which

contains the current status of waste dischargers in the State. We also determined how the regional board ranks the enforcement actions it takes against dischargers that do not comply with its requirements. We also observed an inspection of a sewage treatment facility and the sampling of the water quality at numerous locations in the San Diego Bay.

To determine whether the regional board is meeting the objectives of its regulatory program, we reviewed the requirements for a sample of 99 of 425 dischargers. During this review, we independently verified whether the regional board periodically reviewed each discharger's requirements, whether the regional board received the required reports from each discharger, and whether the regional board regularly inspected each discharger and appropriately followed up with enforcement action when dischargers failed to meet their requirements. We also determined the actions taken by the state board and the regional board to implement the recommendations of the 1984 report by the Auditor General's Office concerning the regulation of dischargers. A summary of the state and the regional board's efforts to implement our 1984 recommendations is presented in Appendix B. During our audit, we also reviewed the specific steps that the regional board has taken to protect the water quality of the San Diego Bay.

AUDIT RESULTS

THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD NEEDS TO FURTHER IMPROVE ITS REGULATORY ACTIVITIES

In 1986, the San Diego Regional Water Quality Control Board (regional board) improved its regulatory program, the purpose of which is to protect the quality of the State's water by ensuring that facilities that discharge waste (dischargers) comply with state and federal requirements for water quality. However, the regional board needs to improve its efforts to ensure compliance. As of December 31, 1986, the regional board had not reviewed or revised within the previous five years the requirements for 37 of the 54 dischargers in our sample. During calendar years 1985 and 1986, 33 of the 80 dischargers had not submitted all of their required reports and 16 of the 33 did not submit any reports. Also, the regional board did not perform 25 of the 160 inspections that it was required to perform of those dischargers that pose the highest threat to water quality. Nine dischargers that pose less of a threat to water quality were not inspected at all. Finally, the regional board did not take prompt enforcement action against 6 of 13 dischargers that repeatedly violated the requirements that govern their discharge of waste. When the regional board does not take prompt enforcement action against repeat violators, there is a greater likelihood that these violations will continue and the quality of the region's waters will suffer. The regional board informed us that in the past it has not had enough staff

to address its regulatory workload. Also, to get some dischargers that have repeatedly violated the provisions of their requirements to take corrective measures, the regional board has used a "cooperative approach." However, the State Water Resources Control Board (state board), in an evaluation of the regional board in September 1986, has indicated that the cooperative approach is not effective. To more effectively handle its workload in the future, the regional board's executive officer explained that it has spent considerable staff time developing new procedures and reporting systems.

Regulatory Program

In response to a 1984 report by the Auditor General's Office entitled "The State of California Should Do More To Reduce and Prevent Contamination of Water Supplies," Report P-376, the state board and nine regional boards implemented a regulatory program that establishes the workload that the regional boards are responsible for completing to ensure water quality in California. The regional boards issue and revise the requirements for dischargers, review reports submitted by dischargers, conduct compliance inspections, and take administrative or legal enforcement action when necessary. State laws and regulations provide the general requirements for the regulatory program. In addition, the state board developed a procedures manual that presents the specific policies of the program. These policies represent the state board's efforts to ensure that the regional boards operate consistently with the federal and state laws that govern water quality.

Requirements That Govern
the Discharge of Waste

As part of the regulatory program, the nine regional boards issue requirements to dischargers. The requirements are unique for each discharger and specify the type, quantity, and quality of the waste that it may discharge. For example, the San Diego regional board establishes requirements for each of the region's sewage treatment facilities that limit the amount of sewage that each facility can process, prohibit each facility from discharging waste water that contains excessive levels of pollutants, and outline each facility's self-monitoring responsibilities.

The nine regional boards issue the requirements under federal and state law. The requirements under the federal law apply to discharges into navigable waters and expire in five years or less. In contrast, the requirements issued under the state law apply to discharges into nonnavigable waters and do not specify an expiration date. However, Section 13263 of the State Water Code requires the nine regional boards to periodically review the requirements, and, according to the California Administrative Code, these regional boards should review the requirements at least once every five years.

In our review of 99 dischargers, we examined 54 with requirements issued under state law. As of December 31, 1986, the San Diego regional board did not review within the five-year period established by the California Administrative Code the requirements of

37 of these 54 dischargers. Although the regional board has reviewed the requirements of 3 of the 37 dischargers since December 31, 1986, the remaining 34 have still not been reviewed. Of these 34, 18 had not been reviewed by the regional board in over ten years, and 4 had not been reviewed in over twenty years.

In response to the 1984 finding of the Auditor General's Office that four regional boards did not have systematic procedures for identifying and updating the requirements for discharging waste, the state board implemented an update program in fiscal year 1984-85. The update program requires the nine regional boards to schedule and perform a predetermined number of reviews of requirements each year. The state board also asked the nine regional boards to implement a schedule to update each of the nine region's requirements that may be outdated.

According to the state board, these reviews help to ensure that the requirements for each discharger accurately reflect the discharger's current operation and current water quality standards. A discharger may change its method of operation or it may discharge different or additional types of waste. These changes need to be reflected in the requirements. Also, the technology for regulating water quality has changed over the years. The requirements that govern dischargers need to reflect the current technology to ensure the best possible protection of water quality.

Although the state board implemented the update program in fiscal year 1984-85, the regional board did not begin the program until the following fiscal year because the state board did not allocate resources to the regional board in 1984-85 for the update program. However, the regional board did not implement the update program until midway through fiscal year 1985-86 although, according to the chief of the state board's fiscal branch, after the state board received a budget increase for the update program in 1985-86, the state board allocated some resources to the regional board for fiscal year 1985-86 for the update program. The regional board did not implement the program immediately because the state board did not inform the regional board until September 1985 that the regional board's budget would be increased.

The state board's update program initially scheduled the regional board to review requirements for 40 dischargers in fiscal year 1985-86 and requirements for another 40 in fiscal year 1986-87. However, according to the regional board's senior engineer for permits and requirements, the regional board's late start in fiscal year 1985-86 hindered its efforts to complete these reviews as scheduled in that year. The regional board formally reviewed the requirements for only 16 of the 40 dischargers. However, the regional board's prompt start in fiscal year 1986-87 has improved its update program. Between July 1, 1986, and May 31, 1987, the regional board had reviewed the requirements for 42 dischargers. Thus, as of May 31, 1987, the regional board has completed 58 of the 80 reviews that it was scheduled

to complete by June 30, 1987. According to the regional board's executive officer, the regional board completed another 17 reviews during June 1987; therefore, between July 1, 1986 and June 30, 1987, the regional board has completed 75 of the 80 reviews that it was scheduled to complete.

Reports From Facilities That Discharge Waste

The procedures manual of the state board requires the nine regional boards to incorporate into the requirements for dischargers a provision that the dischargers periodically report to the regional boards on the characteristics of the waste they are discharging. The provision requires the discharger to sample and test both the waste discharge and the waters affected by the discharge. Depending upon the schedule established in the requirements, dischargers must submit their reports every month, quarter, one-half year, or year. In all cases, the procedures manual requires the dischargers to submit their reports at least once annually.

The requirements for 80 of the 99 dischargers in our review contained a provision that required the dischargers to submit reports in calendar years 1985 and 1986.* In calendar years 1985 and 1986, 33 of these 80 dischargers did not submit the required number of reports.

*Only 80 dischargers are included in this analysis since some of the 99 dischargers were regulated for only a portion of the two years that we reviewed. Also, some of the 99 dischargers were required to submit only one report, but their facilities consisted of two or more units.

For 6 of the 33 dischargers that had not submitted all of their reports, the regional board provided satisfactory explanations for the missing reports. According to the regional board's senior engineer for surveillance and enforcement, 2 of the 6 dischargers did not submit the required reports because their facilities were either closed or not in operation. The senior engineer stated that, under these circumstances, the regional board permits the dischargers to discontinue their self-monitoring activities. The senior engineer noted that the regional board should revise the requirements of these dischargers to reflect these changes in operation, but the regional board has not always done so because of other priorities. In the other 4 cases, the facilities underwent ownership changes during 1985 and 1986. The senior engineer also noted, however, that the previous owners of the facilities and the regional board may have failed to notify the new owners of the requirements of the regulatory program.

The regional board acknowledged that the other 27 dischargers had not submitted all of the required number of reports during calendar years 1985 and 1986 and that these dischargers were not complying with their requirements. Nineteen of these 27 dischargers submitted less than two-thirds of the required number of reports. Despite these clear violations, however, the regional board took no enforcement action against 26 of the 27 dischargers in 1985 or 1986 except to notify them that they had not submitted their reports.

However, in November 1986, the regional board decided to assess monetary penalties against dischargers that fail to submit their reports. According to the assistant executive officer of the regional board, issuing monetary penalties is the most effective enforcement action that the regional board can take against these dischargers. During April and May 1987, the regional board assessed monetary penalties against eight dischargers that failed to submit their reports. These penalties ranged from \$250 to nearly \$700.* Seven of the eight dischargers have paid the penalty. Moreover, according to staff of the regional board, at least five of the seven dischargers that paid the penalties have since begun submitting their reports as required.

The regional board's efforts to ensure that dischargers submit their reports have also improved since the regional board hired two persons to regularly monitor this part of the regulatory program. In addition, staff of the regional board have developed a monthly management report that identifies dischargers that have not submitted their reports. The regional board now notifies these dischargers that they may be subject to monetary penalties if they do not promptly submit the required reports. According to the senior engineer, the

*The amount of monetary penalties against these dischargers is determined by several factors, including the extent and severity of the violation, the type of threat that the violation presents to the region's water quality, the discharger's prior history of violations, and the cost to the regional board of processing the enforcement action.

regional board intends to continue to assess monetary penalties if the dischargers do not appropriately respond to its notifications.

While the regional board did assess monetary penalties against eight dischargers in April and May 1987 for their failure to submit reports, the regional board did not assess penalties against six of seven dairies in our sample of 99 dischargers even though these six dairies have not submitted any of their required reports since 1976. According to a regional board senior engineer, two of the seven dairies are no longer in operation. However, the remaining five have yet to submit the required reports, but instead of assessing monetary penalties against these dairies, the regional board has chosen to bring the dairies into compliance using a "cooperative approach." The regional board has created a working committee of one of its members and dairymen to educate the dairymen on the steps that they need to take to achieve compliance with the reporting provisions and other provisions of their requirements. Before the regional board determines the steps that it will take to bring a dairy into compliance, the regional board has agreed to confer with the working committee. This working committee has been meeting for over a year, but all five of these dairies have yet to submit their reports to the regional board.

The operation of a dairy presents two threats to water quality. One of the threats is run-off from a dairy's corral. The milking cows of a dairy herd are usually kept in corrals that are next to the milking barns for easy access. Keeping the cows in the corrals

results in a high density of cows in a confined space and allows manure to accumulate rapidly on the corral floor. If the dairy operators do not take preventive measures, heavy rains can turn this manure into run-off that can wash into nearby creeks or rivers or percolate into the ground water. The other threat to water quality is from waste water that results from the operations in a dairy's milking barn. Before each milking, each of the cows is washed off, and, after the milking is completed, the floor and the equipment in the milking barn are hosed off. The waste water that results from these activities can flow into surface water or ground water and can have a worse effect on the water quality than unprocessed domestic sewage.

Inspections

The state board's regulatory program directs the nine regional boards to inspect dischargers. These inspections enable the nine regional boards to ensure that the dischargers comply with the provisions of their requirements. Moreover, the regional boards rely on these inspections to test the reliability of the dischargers' reports, to test the quality of the water affected by waste discharge, and to gather data for subsequent enforcement action when necessary.

The procedures manual of the state board specifies the number of inspections that the nine regional boards should regularly perform. The procedures manual requires that the regional boards conduct an annual average of one to three inspections of all dischargers,

depending on the threat that the discharger's waste poses to water quality and the types of waste. Some dischargers present a more serious threat to water quality than others. For example, a sewage treatment plant that discharges millions of gallons a day in sewage is a greater threat to water quality than a small campground, which discharges a smaller amount of waste to surface or ground water. Therefore, the nine regional boards would inspect the sewage treatment plant more frequently than the campground.

The procedures manual classifies these differences in potential threat into three categories. The greatest threat is posed by those discharges that can dramatically and rapidly alter water quality in the State's surface and ground waters. The San Diego regional board regulated 60 dischargers that posed this potential threat in fiscal year 1985-86. The regional board has categorized these dischargers as "Category I" dischargers. Category II and III dischargers, which pose less of a threat to the quality of the State's waters than Category I dischargers, generally require fewer inspections than Category I dischargers.

The annual number of inspections also depends on the type of discharger. The procedures manual mainly identifies four types of dischargers: industrial, municipal, agricultural, and solid waste. Industrial dischargers include the region's shipyards, manufacturing plants, and mining operations. The municipal dischargers consist primarily of sewage treatment plants. Agricultural dischargers consist

of the region's dairy farms, and solid waste dischargers are solid waste landfills. Table 1 presents the average number of inspections required annually for each type of discharger and category of discharger.

TABLE 1
AVERAGE NUMBER OF INSPECTIONS
REQUIRED ANNUALLY FOR WASTE DISCHARGERS

<u>Type of Discharger</u>	<u>Category I</u>	<u>Category II</u>	<u>Category III</u>
Industrial	3	3	1
Municipal	3	3	1
Agricultural	2	1	1
Solid Waste	3	1	1
Other	3	1	1

The procedures manual generally requires that the nine regional boards inspect the industrial and municipal dischargers more frequently than agricultural and solid waste dischargers. In all cases, however, the manual requires that the regional boards inspect each discharger at least once annually.

Six of the 60 Category I dischargers did not operate for the full fiscal year 1985-86. Therefore, we calculated the total number of inspections that the regional board should have performed for 54 of the 60 dischargers. According to our calculation, the regional board

should have performed a total of 160 inspections of these 54 dischargers in fiscal year 1985-86. However, the regional board conducted only 135 inspections of the 54 dischargers during this period. Table 2 illustrates the total number of inspections required and the total number of inspections actually performed during fiscal year 1985-86 for each type of Category I discharger in our sample.

TABLE 2
INSPECTIONS OF CATEGORY I DISCHARGERS
NUMBER REQUIRED AND NUMBER PERFORMED
SAMPLE OF 54 DISCHARGERS
FISCAL YEAR 1985-86

<u>Type of Discharger</u>	<u>Number of Dischargers</u>	<u>Inspections Required</u>	<u>Inspections Performed</u>
Municipal	33	99	100
Industrial	10	30	16
Agricultural	2	4	2
Solid Waste	9	27	17
Other	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>54</u>	<u>160</u>	<u>135</u>

In addition, in fiscal year 1985-86, the regional board did not inspect 9 of our sample of 99 dischargers. While 2 of the 9 were Category II dischargers, the remaining 7 were either Category III dischargers or no longer discharging waste and, therefore, posed a minimal threat to water quality.

According to one of the senior engineers of the regional board, the regional board did not conduct all of the inspections required in fiscal year 1985-86 partly because it redirected the technical staff that usually perform the inspections to other activities with higher priorities. For example, several of the region's sewage treatment facilities had applied for exemptions from specific provisions of the Federal Water Pollution Control Act (act). Had the regional board and the United States Environmental Protection Agency granted these exemptions, the sewage treatment facilities would have been allowed to provide a lower level of treatment to the sewage that they process than that required by the act. According to the executive officer of the regional board, processing these applications for exemption from the sewage treatment facilities consumed about 1,340 hours of staff time in 1985-86. However, relying on workload standards developed by the state board, we estimate that if the regional board had used these 1,340 hours of staff time to conduct inspections, it could have performed approximately between 170 to 200 additional inspections.

In addition, in July 1985, the state board directed the nine regional boards to enter into its computerized information system background information on all of the regulated dischargers. However, according to the assistant executive officer of the San Diego regional board, the state board did not allocate additional funds to the regional board for this task. As a result, the regional board redirected members of its inspection staff to this task. The assistant

executive officer further stated that the regional board used approximately 530 hours of staff time on this task. We estimate these hours could have been used to perform between 65 to 80 additional inspections during fiscal year 1985-86.

Corrective Action

The regional board acknowledges that its redirection of staff from inspections to other tasks hindered its performance of inspections during 1985-86. However, since fiscal year 1985-86, the regional board has implemented several procedures that have improved its ability to conduct regular inspections. First, the regional board appointed two existing staff members as full-time inspectors. Second, through the computerized information system, the regional board scheduled throughout the fiscal year the inspections required by the procedures manual. The regional board also uses this inspection schedule to monitor the inspectors' progress in completing the required number of inspections.

Enforcement Activities

Through its review of the discharger's reports and through its inspections, the regional board regularly identifies dischargers that have violated the terms of its requirements. For most of these violations, once the regional board brings them to the attention of the discharger, the discharger takes corrective action and the violations

cease. Because the regional board is short of staff, the regional board ranks its enforcement activities according to their priority so that it can focus on those dischargers that repeatedly violate the regional board's requirements.

Once the regional board discovers that a discharger is violating water quality standards, the regional board's first responsibility is to notify the discharger of the noncompliance and direct the discharger to take immediate corrective action. If the discharger fails to comply by a specified date, it is the regional board's responsibility to take a stronger enforcement action. For example, the regional board may discover during an inspection that the discharge from a sewage treatment facility contains excessive levels of harmful bacteria. The inspector would immediately notify the discharger of this violation. Ideally, the discharger would acknowledge the violation and then inform the regional board of the corrective measures it will take to prevent this violation in the future.

However, if the regional board reinspects this discharger and discovers that the discharger never took corrective measures and the same bacteria violations are occurring, the regional board may then choose to take a stronger enforcement action against this discharger such as issuing a "notice of violation." A notice of violation is simply a letter from the executive officer of the regional board to the violator directing it to provide to the regional board by a specified

date those corrective actions it will take to prevent high bacteria counts in its discharge. If these preliminary enforcement actions do not bring the discharger into compliance, the regional board can continue to escalate its enforcement actions. This pattern continues until the discharger is either brought into compliance or the regional board refers the matter to the Attorney General's Office for judicial action.

We identified 32 cases in our review in which the regional board promptly notified dischargers of violations of the regional board's requirements, and the dischargers took immediate corrective measures and the matter was resolved. In an additional 13 cases, we identified dischargers that had repeatedly violated the regional board's requirements. In 7 of these 13 cases, the regional board took some enforcement steps and eventually brought the dischargers into compliance. The regional board either inspected the facility, issued a formal notice of violation against the discharger, or took some stronger enforcement action.

However, in the other 6 cases, the regional board did not take enforcement action against the discharger. These 6 cases include 2 of the dairies that we cited earlier for failing to submit their reports. The regional board identified the violations of the 2 dairies during its inspections of them. Just as the regional board has not taken enforcement action against those dairies that failed to submit their reports, so too, the regional board has not taken enforcement action

against the 2 dairies that have repeatedly violated its requirements. Instead, the regional board has elected to bring the 2 dairies into compliance using its cooperative approach. The regional board's working committee has been meeting for over a year, but these 2 dairies have yet to correct the violations that the inspectors from the regional board noted. Also, in a September 1986 evaluation of the regional board's performance, the state board concluded that the regional board's cooperative approach was not working.

In the other 4 of the 6 cases of dischargers that repeatedly violated the regional board's requirements, once the regional board notified the discharger that a violation had occurred, the regional board did not follow up on this preliminary action to ensure that the discharger took appropriate corrective measures. The regional board failed to follow up because it did not have a tracking system to determine whether the discharger was continuing to violate its requirements. Without a tracking system, the regional board could only haphazardly follow up on dischargers that repeatedly violated the regional board's requirements.

Corrective Action

From September 1986, the regional board began to input information about dischargers' violations into a tracking system that enables the regional board to track and follow up on known violators and also track what enforcement actions the regional board has taken.

If the system reveals a repeat violator, the regional board can now take enforcement action as promptly as its staffing allows. Once a month, the executive officer of the regional board meets with the assistant executive officer and the senior engineers to determine the violators it should take action against during the next month. The managers rank these violators according to priority.

Effects of Insufficient Monitoring and Enforcement Activities

When the San Diego regional board does not vigorously monitor its region's dischargers, it cannot ensure that the dischargers do not jeopardize the region's water quality. Specifically, if the regional board does not review and revise the requirements that govern a discharger, the regional board cannot be sure that these requirements reflect the type of waste that the discharger is currently discharging or reflect the latest water quality standards. Additionally, when dischargers do not submit their reports to the regional board, the regional board lacks information about the nature of a discharger's waste and cannot readily determine whether the discharger's waste is harmful to water quality. Furthermore, when the regional board does not perform all of its inspections, it cannot provide an independent assessment of whether a discharger's waste threatens water quality.

When the regional board does not take appropriate enforcement action against dischargers that have violated its requirements, it is more likely that these dischargers will not take corrective measures.

For example, for several years the regional board has not enforced the requirements of the dairies that operate in its region. As of December 31, 1986, six of the seven dairies in our sample have failed to submit their reports since 1976. Additionally, the regional board had not inspected five of the seven dairies in our sample between 1983 and 1985. Then, in 1985, when the regional board began inspecting the dairies once again, the regional board found that four of the seven dairies were not keeping wastes from their operations on their own property, thus violating specific provisions of their requirements. In one instance, the inspector found evidence that one of these dairies had discharged dairy waste water directly into a nearby river. If this type of violation is allowed to continue, it will adversely affect the quality of the water in the river. This example illustrates what can occur when the regional board does not vigorously monitor all of its region's dischargers. It also confirms the state board's conclusion that the cooperative approach is ineffective in resolving instances of noncompliance by dischargers.

CONCLUSION

The San Diego Regional Water Quality Control Board needs to further improve its regulation of its region's dischargers. As of December 31, 1986, the regional board had not reviewed or revised within the previous five years the requirements for 37 of 54 dischargers in our sample. During calendar years 1985 and 1986, 33 of 80 dischargers in our sample had not

submitted all of their required reports, and the regional board did not perform 25 of 160 inspections that it was required to perform of those dischargers that pose the highest threat to water quality. Nine dischargers that pose less of a threat to water quality were not inspected at all. Finally, the regional board did not take prompt enforcement action against 6 of 13 dischargers that had repeatedly violated the provisions of their requirements, thus increasing the likelihood that these violations would continue and the quality of the State's waters would suffer.

Insufficient staffing at the regional board has partially contributed to the regional board's not completing this regulatory workload in 1985 and 1986. Also, to get some dischargers that have repeatedly violated the provisions of their requirements to take corrective measures, the regional board has used a "cooperative approach" that the State Water Resources Control Board, in an evaluation of the regional board in September 1986, has concluded is not effective.

However, during 1986, the state board and the regional board took a number of steps that should enable the regional board to meet its workload in the future. The state board and the regional board have developed management reports that enable the regional board to identify any previous violations of water quality standards by a discharger, to identify the

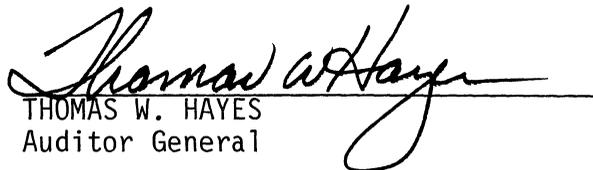
regional board's enforcement actions against these dischargers, and to identify those dischargers that have not submitted their reports. Also, these management reports enable the regional board to schedule each month those inspections that it plans to complete and to record those that it has completed. The regional board also hired additional staff who will enable the regional board to expeditiously review the dischargers' reports and then promptly notify the dischargers that are late in submitting their reports or that have not submitted them. The regional board has also implemented the state board's ten-year plan to bring all the requirements of the dischargers in the region up-to-date.

RECOMMENDATION

To ensure that facilities that discharge waste comply with their requirements, the San Diego Regional Water Quality Control Board should use stronger enforcement measures when it finds that its "cooperative approach" is ineffective. For example, the regional board could initially issue a notice of violation against a discharger that does not promptly correct violations that the regional board has brought to the discharger's attention. If this initial action is not effective, the regional board should continue to escalate its enforcement measures until the discharger corrects the violation.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: July 27, 1987

Staff: William S. Aldrich, Audit Manager
Steven M. Hendrickson
Frank Luera

APPENDIX A

SUMMARY OF A 1984 REPORT BY THE AUDITOR GENERAL'S OFFICE ON THE STATE'S REGULATION OF WASTE DISCHARGERS

In April 1984, the Auditor General's Office issued a report entitled "The State of California Should Do More To Reduce and Prevent Contamination of Water Supplies," Report P-376. The review focused on the State's water quality control program, particularly the regional water quality control boards' (regional boards) procedures for regulating facilities that discharge waste (dischargers). The Auditor General's Office concluded that the State Water Resources Control Board (state board) and the regional boards do not have an effective regulatory program to identify violators and to ensure that violations are corrected. The report concluded that since 1979, the date of a previous report by the Auditor General's Office on this subject, the state board and regional boards had done little to improve their regulation of dischargers. The 1984 report estimated that up to 50 percent of the requirements that govern the discharge of waste were outdated. The report also found that the regional boards were still inspecting dischargers irregularly and infrequently and that the regional boards did not have effective systems to schedule dischargers for inspections. Nor did the regional boards have standard inspection or reporting criteria. Furthermore, the regional boards did not always resolve violations discovered during inspections. Additionally, the report found that the regional boards do not have adequate systems to track reports from dischargers and the regional boards were not taking enforcement actions to ensure that dischargers were submitting their reports. As a result, dischargers were submitting their reports irregularly. Also, there was little evidence that the regional boards were resolving the violations reported in the dischargers' reports.

The report also stated that there was considerable variation in the procedures used by the regional boards to regulate dischargers. Even though the state board had developed a statewide procedures manual for the regional boards to use, the regional boards had considerable flexibility in implementing specific procedures to carry out their regulatory activities. The report attributed this flexibility to the state board's failure to oversee the regulatory activities of the regional boards. Finally, the report found that the state board and the Department of Health Services, which share responsibility for regulating the State's dischargers, had not fully carried out their regulatory responsibilities.

RECOMMENDATIONS

The Auditor General's Office recommended that the state board should adopt specific procedures to improve the regulation of

dischargers and that the state board should oversee the regulatory activities of the nine regional boards and make them accountable to the state board. Appendix B lists each of the specific recommendations made in the 1984 report concerning the state board's regulatory program and the status of the state board's efforts to implement these recommendations. Appendix B also discusses how the San Diego Regional Water Quality Control Board has improved its regulatory activities in response to this 1984 report.

APPENDIX B

THE STATE WATER RESOURCES CONTROL BOARD'S AND THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD'S IMPLEMENTATION OF THE RECOMMENDATIONS IN A 1984 REPORT BY THE AUDITOR GENERAL'S OFFICE

In April 1984, the Auditor General's Office made several recommendations to the State Water Resources Control Board (state board) concerning the state board's regulatory program. Below are the recommendations from this report followed by a summary of the state board's efforts to implement the recommendations and, where appropriate, the San Diego Regional Water Quality Control Board's (regional board) efforts.

Recommendation

Develop procedures to ensure the prompt review of dischargers' reports.

Status

The state board has established a policy that the regional boards should review the dischargers' reports within 30 days of the time that these reports are submitted.

The San Diego Regional Water Quality Control Board's management reports show that the regional board is meeting this policy.

Recommendation

Develop minimum criteria for inspecting dischargers, and develop standard reporting forms to ensure that all inspections meet the same minimum standards.

Status

In January 1985, the state board began implementing a comprehensive inspection program statewide. The state board received an additional 22 positions for this program. As part of this program, the state board established a goal of conducting an average of one to three inspections of its regions' dischargers depending on each discharger's threat to water quality. At a minimum, each discharger would be inspected once annually.

Our review found that the San Diego Regional Water Quality Control Board (regional board) did not meet either of these goals in fiscal year 1985-86. (See pages 18 through 24 of this report.) However, the regional board is recording the results of each of its inspections on a standard form that has been developed.

Recommendation

Develop specific procedures to identify, review, and revise outdated requirements.

Status

In fiscal years 1984-85 and 1985-86, the state board directed the regional board to update a total of 80 of the region's requirements. Then, in fiscal year 1986-87, the state board developed and adopted a ten-year plan in which a portion of each region's requirements are to be updated each year until all the requirements are up-to-date. The state board oversees the regional boards implementation of this plan by requiring monthly reports from the regions on the number of updates that have been scheduled and completed.

Our review found that in fiscal year 1985-86, the San Diego Regional Water Quality Control Board fell short of the goal of updating approximately 10 percent of its requirements. However, according to the executive officer of the regional board, the regional board completed 75 of 80 updates that were scheduled to be completed during 1985-86 and 1986-87. (See pages 11 through 14 of this report.)

Recommendation

Implement an effective information system to be used by all regional boards in the State. The regional boards should develop the system with the state board so that the system will be more responsive to the regional boards' needs. As we recommended in our 1979 audit report, the state board should adopt minimum requirements for reporting to and using the system. The system should at least provide a current inventory of dischargers and a compliance history for each discharger. The system could then be used to schedule inspections of facilities and revisions of requirements, to estimate workload, and to develop statewide policy.

Status

The state board has modified its information system so that the regional boards now have personal computers that enable them to keep the system's various data bases current. The state board has developed several reports that assist the regional boards in addressing their regulatory workload. These reports include a listing of regulated dischargers, a summary of compliance inspections scheduled and completed, and a summary of National Pollutant Discharge Elimination System permits that need to be reviewed before they expire.

The San Diego Regional Water Quality Control Board (regional board) has developed several of its own information reports that provide data not yet available through the information system. For example, the regional board has developed the "recorded violations" report that lists violations of requirements by dischargers. The report also shows whether or not the regional board has taken enforcement action against these dischargers and, if so, the type of enforcement action taken.

Recommendation

Develop specific procedures to ensure that violations that are discovered through dischargers' reports or inspections are resolved.

Status

One of the reports that the state board has developed as part of its information system is the "recorded violations" report. This report is a summary of violations that the regional boards have discovered through reviewing dischargers' reports or through performing inspections of dischargers. Each regional board list in the report those violations in its own region and has also developed its own enhanced version of the report. The San Diego Regional Water Quality Control Board's version of the report identifies the violation, in addition to identifying any enforcement action that the regional board has taken.

Recommendation

Develop accurate estimates of workload that the state board and the regional boards can use to determine the most efficient use of staff and to justify requests for additional staffing.

Status

At all nine regional boards, the state board has estimated the time that it takes staff of the regional boards to complete various regulatory tasks. Based on this estimate, the System and Management Analysis Office of the state board has developed workload estimates that are being used in the state board's preparation of its fiscal year 1987-88 budget. In July 1987, the System and Management Analysis Office will be presenting workload estimates for additional regulatory tasks to the management of the state board.

Recommendation

Adopt a uniform fee policy for revising the requirements of dischargers, and direct regional boards to apply that policy consistently.

Status

This recommendation was implemented at all regional boards in May 1984 with the publication of the administrative procedures manual of the state board.

Recommendation

Monitor the regulatory activities of the regional boards and make regional boards accountable to the state board. The state board should also use its budgetary control to ensure that all regional boards adopt uniform administrative procedures and thus implement an effective regulatory program.

Status

During fiscal year 1985-86, the state board established a program control unit to evaluate the regulatory programs of the nine regional boards to ensure that the regional boards are complying with the procedures manual of the state board. In May 1986, the program control unit evaluated the operation of the San Diego Regional Water Quality Control Board's (regional board) regulatory program. This evaluation covered the regional board's issuance and revision of waste discharge orders, its update of the requirements for dischargers, its performance of inspections, its processing of complaints, its review of dischargers' reports, and, finally, its taking of enforcement action against dischargers.

Based on its evaluation, the state board made recommendations to the regional board, which the regional board is in the process of implementing.

APPENDIX C

**SUMMARY OF MONETARY PENALTIES IMPOSED BY THE
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
JULY 1985 THROUGH MAY 1987**

In 1984, the Legislature expanded the regional water quality control boards' (regional boards) authority to levy monetary penalties against dischargers that have not complied with their requirements. Chapter 1541, Statutes of 1984, established new civil monetary penalties that the state board and regional water quality control boards may impose through administrative rather than court action. Since July 1985, the San Diego Regional Water Quality Control Board (regional board) has levied \$2.5 million in penalties against its region's dischargers. These penalties are for a wide range of water quality violations. In several instances, the regional board levied \$250 penalties against dischargers for not submitting their reports. In another instance, the regional board levied a \$1.5 million penalty against the City of San Diego for spilling untreated sewage into an ecologically sensitive coastal lagoon. Portions of some of these penalties have been suspended provided that the discharger perform certain corrective actions. The regional board has collected \$365,431 of the \$2.5 million in penalties imposed. The following is a summary of the penalties imposed, suspended, and paid between July 1985 and May 1987.

**SUMMARY OF MONETARY PENALTIES IMPOSED BY THE
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
JULY 1985 THROUGH MAY 1987**

Type of Discharger	Type of Violation	Amount of Penalty	Amount of Penalty Suspended	Amount of Penalty Not Suspended	Amount of Penalty Paid	Amount of Penalty Due	Remarks
Sand and gravel quarry	Failure to comply with a regional board cleanup order	\$ 3,809	\$ 0	\$ 3,809	\$ 3,809	\$ 0	--
Aluminum milling company	Discharge of industrial waste to a creek	11,892	0	11,892	6,541	5,351	This company went bankrupt before paying the full amount of its penalty.
Dairy	Failure to comply with a regional board cleanup order	400	0	400	400	0	--
Municipal Water District	Exceeded the district's sewage treatment plant capacity	10,000	0	10,000	10,000	0	--
City sewage system	Series of sewage spills	646,800	482,826	163,974	11,392	152,582	--
Dairy	Created nuisance conditions by not properly disposing of dairy wastes	264,000	0	264,000	0	264,000	This dairy has appealed this penalty to the state board.
City sewage treatment facility	Submitted inaccurate self-monitoring data	71,000	51,000	20,000	20,000	0	--
Catering company	Discharge of food wastes to a creek	20,000	0	20,000	0	20,000	The regional board has referred this case to the attorney general.
City sewage treatment facility	Sewage spill to Mission Bay	11,000	0	11,000	11,000	0	--
City sewage system	Sewage spill to a coastal lagoon	1,500,000	1,200,000	300,000	300,000	0	--
Mobile home park	Failure to submit self-monitoring reports	345	0	345	345	0	--
Mobile home park	Failure to submit self-monitoring reports	250	0	250	250	0	--
Golf course	Failure to submit self-monitoring reports	694	0	694	694	0	--

Type of Discharger	Type of Violation	Amount of Penalty	Amount of Penalty Suspended	Amount of Penalty Not Suspended	Amount of Penalty Paid	Amount of Penalty Due	Remarks
Mobile home park	Failure to submit self-monitoring reports	250	0	250	250	0	--
Campground	Failure to submit self-monitoring reports	250	0	250	250	0	--
Builders' supply company	Failure to submit self-monitoring reports	250	0	250	250	0	--
Sand and gravel plant	Failure to submit self-monitoring reports	250	0	250	250	0	--
Campground	Failure to submit self-monitoring reports	250	0	250	\$ 0	250	Past due
Totals		<u>\$2,541,440</u>	<u>\$1,733,826</u>	<u>\$807,614</u>	<u>\$365,431</u>	<u>\$442,183</u>	

Memorandum

To : Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Date : JUL 21 1987

Subject :

From : **Secretary of Environmental Affairs**

Thank you for transmitting to me a copy of your draft review of the San Diego Regional Water Quality Control Board (Regional Board) for comment. While substantial steps have been taken by the Regional Board and State Water Resources Control Board (State Board) to improve the state's water quality regulatory program, there remains more to do. In my discussion with both the State Board and the San Diego Regional Board, they agree that the new procedures which both Boards have implemented will serve to correct the deficiencies noted in terms of waste discharge order updates, self-monitoring report review, compliance inspection, and enforcement.

I support your recommendation that the Regional Board should take progressively stronger enforcement actions against dischargers that do not promptly correct violations.


Jananne Sharpless
Secretary of Environmental Affairs

cc: Mary Jane Forster, Chairwoman
San Diego Regional Water
Quality Control Board

W. Don Maughan, Chairman
State Water Resources
Control Board

Memorandum

To : Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Date : JUL 17 1987



W. Don Maughan
Chairman

From : **STATE WATER RESOURCES CONTROL BOARD**

Subject:

The Environmental Affairs Agency provided me a copy of your draft report on your review of the San Diego Regional Water Quality Control Board. I appreciate your report acknowledging the steps that the State Water Resources Control Board (State Board) and the Regional Water Quality Control Board (Regional Board) have taken over the last two years to improve our regulatory program. I recognize that we have to make additional efforts. Nonetheless, we feel we have made substantial progress to date.

As you point out, the State Board through its Program Control Unit has previously questioned the efficiency of a voluntary compliance approach. We are in concurrence with your recommendation that enforcement actions should be promptly escalated until full compliance is achieved.

Thank you for the opportunity of reviewing and commenting on your report.

cc: State Board Members

James L. Easton
Executive Director

Jananne Sharpless, Secretary
Environmental Affairs Agency

Mary Jane Forster, Chairwoman
San Diego Regional Water
Quality Control Board

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

9771 Clairemont Mesa Blvd., Ste. B
San Diego, California 92124-1331
Telephone: (619) 265-5114

**RECEIVED**

JUL 20 1987

ENVIRONMENTAL AFFAIRS

July 17, 1987

Mr. Thomas W. Hayes
Auditor General
State of California
660 J Street, Suite 300
Sacramento, California 95814

Dear Mr. Hayes:

The San Diego Regional Water Quality Control Board appreciates the opportunity to review and comment on the report titled "A REVIEW OF THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD."

While the statistics are accurate for the time period reviewed, they do not take into account any of the needs for prioritization that required redirection of Board efforts to other pressing issues such as preparation of 301(h) waivers, Mexican border sanitation problems, Pump Station 64 failures in the City of San Diego, Brown Field sludge disposal, Proposition 65 implementation, and other highly sensitive public health issues. The statistics cited are currently overtaken by the performance of the Regional Board during the subsequent time period comprising the 1986-87 fiscal year.* For example, during FY 1986-87 we have already accomplished the following:

* THE BOARD INSPECTED ALL DISCHARGERS IN THE REGION AT LEAST AS FREQUENTLY AS SPECIFIED IN THE STATE BOARD'S ADMINISTRATIVE PROCEDURES MANUAL. SOME WERE INSPECTED MORE FREQUENTLY. SIX-HUNDRED-SEVENTEEN INSPECTIONS WERE SCHEDULED; 666 WERE ACTUALLY COMPLETED.

* IN CONFORMANCE WITH THE STATE BOARD'S TEN YEAR PLAN FOR REVIEW AND UPDATE OF REQUIREMENTS, THE REGIONAL BOARD SCHEDULED 40 REVIEWS AND UPDATES. THE BOARD ACTUALLY COMPLETED 59 REVIEWS AND UPDATES. FOR THE TWO YEAR PERIOD COVERED BY THE AUDIT 75 OF THE 80 SCHEDULED REVIEWS AND UPDATES WERE COMPLETED.

*The Auditor General's Comment: The audit covered the regional board's regulatory activities during calendar years 1985 and 1986. Therefore, the audit covered only the first six months of fiscal year 1986-87.

- * THE REGIONAL BOARD INSTITUTED A NEW PROGRAM FOR MONITORING REPORT SUBMISSION IN SEPTEMBER OF 1986. ON-TIME SUBMISSION OF MONITORING REPORTS HAS INCREASED FROM 50 PERCENT (IN SEPTEMBER OF 1986) TO 90 PERCENT (IN MAY 1987). MONITORING REPORT SUBMISSION IS EXPECTED TO APPROACH 100 PERCENT DURING THE CURRENT FISCAL YEAR.

- * VIGOROUS ENFORCEMENT ACTION FOR NONSUBMITTAL OF MONITORING REPORTS WAS INITIATED IN EARLY 1987 USING ADMINISTRATIVE CIVIL LIABILITY COMPLAINTS. TO DATE, 88 PERCENT OF THE COMPLAINTS HAVE BEEN PAID BEFORE BEING HEARD BY THE BOARD.

- * THE REGIONAL BOARD HAS VIGOROUSLY PURSUED ENFORCEMENT ACTION AGAINST MANY VIOLATORS AS EVIDENCED BY THE SUMMARY OF ADMINISTRATIVE CIVIL LIABILITY ACTIONS IN THE REPORT. SOME \$2,525,339 IN PENALTIES HAVE BEEN IMPOSED AGAINST 15 DISCHARGERS.

Specifically, with respect to review and revision of requirements, the State Water Resources Control Board (State Board) initiated this process in FY 1984-85, but did not allocate resources to the Regional Board until the 85-86 fiscal year. Because of vacancies and redirection of resources to other higher priority, but unfunded, tasks such as 301(h) waivers and Waste Discharger System implementation, only 16 of the scheduled 40 reviews and updates were performed in FY 85-86. In FY 86-87, the State Board initiated a new program of waste discharge order review spread out over a 10 year period. The Regional Board, in accordance with guidance provided by the State Board, submitted its 10 year plan to the State Board. Included in that 10 year plan were the reviews which had not been done in FY 1985-86. In conformance with the schedule submitted to the State Board, 40 reviews were to be done in FY 86-87. We are pleased to report that we actually performed 59 reviews and updates during that period. Overall, for the two year period discussed, the Regional Board completed 75 of the scheduled 80 updates. We expect to perform accordingly for the remainder of the schedule and thereby systematically continuously review and update all of the Board's waste discharge orders.

Lack of resources, vacancies, and the aforementioned redirection to other tasks contributed to problems on follow-up of non-submission of monitoring reports during calendar years 1985 and 1986. Equally important was the lack of a computerized tracking system. During FY 1986-87, using newly provided microcomputer capability, the Regional Board developed and implemented a computerized tracking system for all self-monitoring reports required by the Regional Board's orders. In addition to accurately inventorying all reports received, 10 days after the report is due the program allows the automatic production of computer-generated letters notifying the discharger that a report is past due. Should the discharger not respond to the computer letter, the Board follows through with the procedure outlined in the Administrative Procedures Manual for enforcement actions by issuing a formal notice of violation. Failure to respond to the notice of violation results in the issuance of a Complaint for Administrative Civil Liability.

Since its introduction in September of 1986, this program has resulted in an increase of on-time submission of monitoring reports from approximately 50 percent in September 1986 to approximately 90 percent in May 1987. To date, 88 percent of the Administrative Civil Liability complaints have been paid before the complaint was heard by the Board. We believe this is the best system in existence in the state, and have every expectation that it will result in close to a 100 percent monitoring report submission rate such that other time consuming enforcement actions for non-submittal of reports will not have to be taken.

The Regional Board's program for inspecting regulated dischargers suffered during fiscal year 1985-86 and the early part of fiscal year 1986-87 as a result of vacancies, work on issuance of waivers of federal secondary treatment requirements, and development of computer driven management reports. The computer generated reports now include inspection schedules and data on inspections that have been completed. As a result of filling technical staff vacancies, discontinuing work on 301(h) waivers and having the management reports, the number of completed inspections has increased markedly. For example, during FY 1986-87 the Regional Board scheduled, in strict compliance with the State Board's Administrative Procedures Manual, 617 inspections. The Board not only met the quota of scheduled inspections, but actually completed 666. Conducting compliance inspections, particularly for those dischargers posing the highest threat to water quality, will continue to have high priority in the San Diego Region.

With respect to the Recommendation in the Auditor General's report, the Regional Board concurs with the concept of taking progressively stronger enforcement measures against those dischargers that do not promptly correct violations. We have already implemented this approach in our program for monitoring report submittal, with outstanding success. Computer-generated management reports now available enable management staff to evaluate and prioritize all violations and to identify those violations for which the time frames specified in the Administrative Procedures Manual have been exceeded. As a result the Board's limited enforcement resources can be used to address those violations that are most significant.

The "cooperative approach" has been used over the years to conserve limited resources for formal enforcement actions of highest urgency. The Board recognizes there have been some problems using this approach with certain dischargers. We plan to resolve those problems this fiscal year.

The Regional Board would like to point out, however, that during FY 1986-87, in spite of redirecting 1.1 personnel years of effort to enforcement from other program areas, a backlog of in excess of 60 potential formal enforcement actions existed for most of the year. In future years, even though enforcement will be given a high priority, it will not be possible to address all potential actions. The Board will have to continue to select those formal enforcement actions of greatest urgency that it can accomplish within allocated resources.

In summary, we believe the Regional Board has made giant strides in waste discharge order update and review, compliance inspections, and monitoring report submittal during FY 1986-87. We have exceeded the quotas set by the State Board for order update and compliance inspection, and are fast approaching 100 percent submission of monitoring reports. We have initiated additional formal enforcement actions as witnessed by the imposition of the Administrative Civil Liability complaints--not only for monitoring report submission, but for other violations--and will be giving this area high priority this fiscal year.

Mr. Thomas W. Hayes

5

July 17, 1987

In closing, I again thank you for the opportunity to present our views on this very important document. I also would like to compliment William Aldrich, Steve Hendrickson and Frank Luera on their thorough and professional review of our operation and express my appreciation to you for your cooperation during the conduct of the audit.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jane Forster".

MARY JANE FORSTER
Chairman

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps