

Staff Report 71

PARTY:

California State Lands Commission

PROPOSED ACTION:

Consider approval of the proposed amendments to the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.9 Marine Invasive Species Act Enforcement and Hearing Process.

AREA, LAND TYPE, AND LOCATION:

Statewide.

PROPOSED RULEMAKING:

The purpose of the proposed regulatory action is to amend the administrative enforcement process for violations of the Marine Invasive Species Act (Act; Public Resources Code section 71200 et seq.) and associated regulations. Article 4.9 contains procedures Commission staff shall undertake in assessing administrative civil penalties as allowed by section 71216 of the Public Resources Code.

Although compliance with the Act and associated regulations by the regulated community is high, every noncompliant vessel poses the threat of introducing nonindigenous species (NIS) and risks harming California's coastal environment, coastal economy, and public health. The Commission's existing transparent and consistent process for assessing penalties in Article 4.9 has enhanced compliance. Amending Article 4.9 to include noncompliance with biofouling management and ballast water performance standards regulations (neither of which were in effect at the time Article 4.9 was initially adopted) within the existing transparent and consistent process will further improve compliance with the provisions of Title 2 of the California Code of Regulations section 2298.1 et seq. (Article 4.8), and section 2291 et seq. (Article 4.7). Reducing violations of biofouling management

requirements and ballast water performance standards will help protect the waters of the state from NIS introductions and associated impacts.

The objectives of this rulemaking are to:

1. Establish the penalties for noncompliance with existing vessel biofouling management requirements and ballast water performance standards and deter violations.
2. Apply an administrative civil penalty process in a consistent way, allowing parties to forecast each step.

BACKGROUND:

The California Marine Invasive Species Program (MISP) is a multi-agency program designed to reduce the likelihood of introducing NIS into State waters from vessels 300 gross registered tons and above that can carry ballast water. MISP was established by the Ballast Water Management for Control of Nonindigenous Species Act of 1999 and reauthorized and expanded by the Marine Invasive Species Act of 2003. The purpose of MISP is to move the state expeditiously toward elimination of the discharge of NIS into the waters of the state (Public Resources Code section 71201, subdivision (d)). MISP is funded exclusively through fees assessed on vessels arriving at California ports.

NIS are organisms that have been transported by humans to locations where they do not naturally or historically occur. Once established, NIS can have adverse economic, ecological, and public health consequences. The Marine Invasive Species Act addresses NIS introduction by establishing operational, recordkeeping, and reporting requirements for ocean-going vessels arriving at the state's ports.

To implement the Act, Public Resources Code section 71201.7 provides authority for the Commission to adopt regulations. To that end, the Commission has adopted Articles 4.5 (Title 2 of the California Code of Regulations, section 2270 et seq.), 4.6 (Title 2 of the California Code of Regulations, section 2280 et seq.), 4.7 (Title 2 of the California Code of Regulations, section 2291 et seq.), 4.8 (Title 2 of the California Code of Regulations, section 2298.1 et seq.) and 4.9 (Title 2 of the California Code of Regulations, section 2299.01 et seq.). These regulations represent a comprehensive set of requirements, both operational (ballast water and biofouling management) and administrative (reporting and recordkeeping), to help prevent vessel-borne introductions of NIS into the waters of the State.

PROBLEM STATEMENT

If a vessel is deemed to be noncompliant with any biofouling management or ballast water management provisions of the Act or associated regulations (Article 4.8 and Article 4.7), Public Resources Code section 71216 authorizes the Commission to assess administrative civil penalties in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) for each violation. Although the Commission has an existing transparent and consistent process for assessing risk-based penalties for violations of ballast water exchange and recordkeeping requirements, there are currently no regulations clearly defining the process by which penalties are assessed for violations of biofouling management requirements (Article 4.8) and ballast water discharge performance standards (Article 4.7). No new requirements or violations are proposed. The proposed amendments simply categorize, with potential penalties, violations of existing statutes and regulations that are already in effect. Without consequences to deter biofouling and performance standards violations, some parties may ignore existing law and consequently increase the risk of NIS introductions and associated impacts.

Amendment of Article 4.9, therefore, is necessary to codify the procedures to assess administrative civil penalties for noncompliance with biofouling management requirements and ballast water performance standards.

SUMMARY OF RULEMAKING PROCESS

The proposed regulations were published in the California Regulatory Notice Register (Register 2025, Notice File Number Z2025-0527-04) on June 6, 2025. A complete copy of the proposed regulations is included as Exhibit A.

The Public Comment Period for the proposed regulations spanned 45 days, ending on July 21, 2025, and included a Public Hearing held on July 16, 2025. After consideration of the written and oral comments, Commission staff revised the proposed regulations, warranting a 15-day Public Comment Period from October 17, 2025, to November 3, 2025. All comments received will be addressed formally in the Final Statement of Reasons as part of the rulemaking process and are summarized with responses below.

SUMMARY OF RESPONSES TO PUBLIC COMMENTS

Commission staff identified 138 comments from 14 written and verbal communications received from 7 organizations:

Name	Affiliation
Jacqueline Moore	Pacific Merchant Shipping Association
Eileen Maher	Port of San Diego
Mark Haskell	Lloyd's Register
Theodore Wells	N/A
Caitlyn Stewart	American Waterways Operators
Patty Senecal	Western States Petroleum Association
Kelly A. Baughman	Crowley
Antonio Machado	Western States Petroleum Association
Jennifer Cohen	Pacific Merchant Shipping Association
Kathy Metcalf	Western States Petroleum Association <u>Chamber of Shipping America</u>
Lillie Wightman	American Waterways Operators

Summaries and responses to the most relevant groups of comments are presented here.

Comment Summary 1: One commenter noted the repeated use of the phrase “coastal waters of the state” in the descriptions of Class 1 violations while the term is not clearly defined in the regulations. The commenter pointed out that while “coastal waters” and “waters of the state” are separately defined in existing law, the term “coastal waters of the state” could create confusion about the geographic scope of the Commission’s enforcement authority. The commenter’s suggestion was to either reference the existing definition of “waters of the state” or revise the language to consistently use that defined term.

Comment Response 1: Commission staff agree that the clarity of the proposed regulatory text could be improved by the commenter’s suggestion. In response to this comment, the proposed regulatory text was modified to remove the definition of “coastal waters” from the regulation text and remove any instance where “coastal” was referenced prior to “waters of the state.” The modified regulatory text was released for a 15-day public comment period that concluded on November 3, 2025.

Comment Summary 2: Several commenters expressed concern over the Commission's proposal to classify the failure to comply with an existing requirement to document required biofouling management as a Class 1, Major II violation, the most serious category with penalties up to \$27,500. Commenters argued that this is an administrative recordkeeping violation, not an operational failure, and should be categorized as a Class 2 (recordkeeping) or Class 3 (reporting) violation, which carries lower penalties. Overall, commenters supported the need for accurate documentation but stressed that penalties should reflect the nature and severity of the violation, not just the absence of paperwork.

Comment Response 2: No changes to the proposed text were made in response to these comments. The required documentation is directly tied to the required management action because it is evidence of compliance with the required management action. Therefore, the evidentiary documentation is inextricably linked to the management violation. Without evidence, staff cannot confirm whether required management actions were performed, which could create enforcement gaps that disincentivize the implementation of the required management actions.

Comment Summary 3: Some comments indicated concerns about the same violation—failure to report a ballast water treatment system (BWTS) malfunction—being classified as both a Class 1 Major I and a Class 3 violation. Commenters recommend that the violation be classified under only one category to avoid confusion and potential double penalties.

Comment Response 3: No changes to the proposed regulations were made in response to these comments. The violations discussed in these comments are classified in two different violation classes (Class 1 Major I and Class 3) because they pertain to two different violation scenarios. If a vessel fails to report a ballast water treatment system malfunction and does not discharge ballast water in the waters of the state, that is considered a Class 3 violation. If a vessel fails to report a ballast water treatment system malfunction and discharges ballast water in the waters of the state or fails to employ an alternative identified by the Commission, that is considered a Class 1 Major I violation. Although the two violations both include a ballast water treatment system malfunction, they pose very different risks to the environment, hence the different violation classification in the proposed amendments.

Comment Summary 4: Commenter suggests that the proposed amendment to replace the term "Executive Officer" in several uses with the term "Commission

staff" may mean that any staff at any level within the Commission can impose penalties.

Comment Response 4: No changes to the proposed regulation were made in response to this comment. The proposed regulations clearly outline the process for penalty assessment. Penalties can be imposed only by the Executive Officer (Public Resources Code 71216). Proposed changes from "Executive Officer" to "Commission staff" in some uses are to ensure the regulation is consistent with practice, as assessment and commencement of administrative enforcement actions are processed by Commission staff and not typically by the Executive Officer. Additionally, these amendments aim to streamline the enforcement process for both parties because these amendments improve efficiency for timely communication and meeting coordination. (e.g., If the Executive Officer needs to attend the preliminary meeting, negotiations will likely be unduly delayed due to the Executive Officer's many competing responsibilities and priorities.)

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code section 71201.7, 71204, 71204.3, 71205, 71205.3, 71206, and 71216.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The proposed amendments will further the interests of the Public Trust by providing greater protection of Public Trust resources. Currently, the introduction of NIS to California's waters threatens Public Trust resources and values, including ecosystem preservation and the promotion and protection of fishing, water-related recreation, maritime commerce, and water-dependent tourism. These regulations will establish penalties for violations of the Marine Invasive Species Act and associated regulations, which will further improve compliance and help prevent vessel-borne introductions of NIS into the waters of the State. The proposed regulations are expected to benefit California's coastal environment, coastal economy, and public health and welfare.

The proposed amendments satisfy the purpose of the Marine Invasive Species Act (Public Resources Code, § 71201, subd. (d)) "to move the State expeditiously toward elimination of the discharge of nonindigenous species into the waters of the

State." Thus, staff believes that adoption of the proposed regulations would further enhance and protect Public Trust resources and is in the State's best interests.

CONCLUSION:

For these reasons, staff believes that the proposed amendments would benefit existing Public Trust uses and resources and be in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The proposed regulations interpret, implement, and make specific the provisions of Public Resources Code sections 71200, 71201, 71207, 71216, and 71217; Section 11506, Government Code.
2. No alternatives would be more effective in carrying out the purposes for which the regulations are proposed, would be as effective as and less burdensome, or would more greatly lessen any adverse economic impact on small businesses or affected private persons, than the proposed regulations.
3. Commission staff has determined that this proposed regulatory action is not a major regulation as defined by Government Code section 11342.548.
4. This action is consistent with Strategic Goal 1, Key Action 1.1.2 of the Commission's Strategic Plan, which calls for staff to review existing safety standards and regulations for continued relevance, and use the public rulemaking processes to amend or adopt new regulations to enforce lease compliance and promote environmental protection and public health and safety, while reducing unnecessary bureaucracy.
5. Adoption of the proposed amendments to California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.9, is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

EXHIBIT:

- A. Text of the proposed regulation

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that adoption of the proposed amendments, or amendments substantially in the same form, will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this time; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Adopt the amendments of the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.9, substantially in the form as set forth in the attached Exhibit A.
2. Authorize Commission staff to make non-substantive modifications to the proposed regulations in response to recommendations by the Office of Administrative Law.
3. Authorize Commission staff to take whatever action is necessary and appropriate to comply with provisions of the Government Code regarding the lawful adoption and publication of the regulations and to ensure that the regulations become effective.
4. Authorize Commission staff to take whatever action is necessary and appropriate to implement the regulations at such time as they become effective.

EXHIBIT A

EXPRESS TERMS

**TITLE 2. ADMINISTRATION
DIVISION 3. STATE PROPERTY OPERATIONS
CHAPTER 1. STATE LANDS COMMISSION
ARTICLE 4.9. MARINE INVASIVE SPECIES ACT ENFORCEMENT AND HEARING
PROCESS**

Staff has illustrated changes to the original text in the following manner:

- Originally proposed language is underlined; deletions from the original text are shown in strikeout using a “-”.
- Modified proposed additions after comment consideration are double underlined; modified proposed deletions after comment consideration are shown in double strikethrough.

California State Lands Commission staff proposes to amend Article 4.9 of Chapter 1, Division 3 of Title 2 of the California Code of Regulations, to read as follows:

Section 2299.01 Purpose and Applicability

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.9 of the California Code of Regulations is to establish policies and procedures ~~the Executive Officer staff~~ of the California State Lands Commission shall undertake in assessing and commencing administrative enforcement actions pursuant to California Public Resources Code section 71216.
- (b) This article shall govern the enforcement and procedures related to violations of any of the provisions of Division 36 of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles ~~4.5, 4.6, 4.7, and 4.8~~ of the California Code of Regulations.
- (c) The provisions of this article apply to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the ~~coastal~~ waters of the state after operating outside of the ~~coastal~~ waters of the state as well those vessels operating exclusively within the pacific coast region, except those vessels described in section 71202 of the Public Resources Code.

Authority Cited: Sections 71201 and 71201.7, Public Resources Code.

Reference: Section 71201, Public Resources Code.

Section 2299.02 Definitions

- (a) "CCR" means the California Code of Regulations.
- ~~(b)(a)~~ "Cited Party" means the master, owner, operator, agent, or person in charge of a vessel that has violated a provision or provisions of the California Marine Invasive Species Act (codified as ~~Cal. California Pub. Public Resources Code~~ § 71200 et seq.) or title 2, California Code of Regulations, Articles ~~4.5, 4.6, 4.7, and 4.8.~~
- ~~(c)(b)~~ "~~Coastal waters~~" means ~~estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep and rivers, lakes, or other water bodies navigably connected to the ocean.~~
- ~~(d)(e)(b)~~ "Commission" means the California State Lands Commission.
- ~~(e)(d)(c)~~ "Exchange" means to replace the water in a ballast tank using, ~~and strictly complying with,~~ either of the methods described in Division 36, Chapter 1, of the California Public Resources Code section 71200, subdivision (h).
- ~~(f)(e)(d)~~ "Executive Officer" means the Executive Officer of the California State Lands Commission.
- ~~(g)(f)(e)~~ "~~Incorrect Incomplete~~ exchange" means an exchange that is not performed ~~in full compliance with~~ using either of the methods described in ~~Division 36, Chapter 1 of the California~~ Public Resources Code section 71200, subdivision (h).
- ~~(h)(e)(f)~~ "Land" means the material of the earth, whether soil, rock, or other substances that sit landward of, or at an elevation higher than the ocean's mean high-tide line. Land includes rock outcroppings or islands located offshore.
- (g) "Waters of the state" has the same meaning as "waters of the state" in Public Resources Code section 71200.
- (i) "PRC" means Public Resources Code.

Authority Cited: Sections 71201 and 71201.7, Public Resources Code.

Reference: Sections 71200 and 71216, Public Resources Code.

Section 2299.03 Classification of Violations

A violation of any provision within Division 36, Chapter 2 (comprising sections 71203 through 71207), of the Public Resources Code-PRC or Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the CCR-California Code of Regulations shall be considered within one of three classes:

- (a) Class 1 (management violations): Class 1 violations shall be issued to a cited party when a vessel fails to comply with applicable ballast water or biofouling management requirements. ~~discharges ballast water in the coastal waters of the state without first complying with the appropriate ballast management practices identified in section 71204.3 of the PRC or 2 CCR, section 2284.~~
 - (1) Class 1 violations will be considered to be:
 - (A) Minor:
 - (1) if a vessel subject to section 71204.3, subdivision (c) of the Public Resources Code-PRC, prior to discharging ballast water into the ~~coastal~~ waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 200 nautical miles and equal to or greater than 180 nautical miles from land; or
 - (2) if a vessel subject to ~~2-California Code of Regulations, title 2, CCR~~ section 2284, prior to discharging ballast water into the ~~coastal~~ waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 50 nautical miles and equal to or greater than 45 nautical miles from land.
 - (B) Moderate:
 - (1) if a vessel subject to section 71204.3, subdivision (c) of the ~~PRC~~ Public Resources Code, prior to discharging ballast water into the ~~coastal~~ waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 180 nautical miles and equal to or greater than 100 nautical miles from land;
 - (2) if a vessel subject to ~~2-California Code of Regulations, title 2, CCR~~ section 2284, prior to discharging ballast water into the ~~coastal~~ waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 45 nautical miles and equal to or greater than 25 nautical miles from land; or

- (3) ~~if any additional Class 1 Minor violations are committed on a subsequent voyage committed within twelve (12) months of a preceding Class 1 Minor violation shall be considered a Class 1 Moderate violation.~~

(C) Major (I):

- (1) if a vessel subject to section 71204.3, subdivision (c) of the Public Resources Code-PRC, prior to discharging ballast water into the ~~coastal~~ waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 100 nautical miles from land;
- (2) if a vessel subject to ~~2~~California Code of Regulations, title 2, CCR section 2284, prior to discharging ballast water into the ~~coastal~~ waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 25 nautical miles from land; ~~or~~
- (3) if a vessel subject to section 71204.3 of the Public Resources Code, discharges ballast water into the ~~coastal~~ waters of the state after conducting an incomplete exchange;
- (4) if a vessel violates California Code of Regulations, title 2, section 2293, subdivision (a);
- (5) if a vessel violates California Code of Regulations, title 2, section 2295, subdivisions (a), (b), or (c);
- (6) if a vessel fails to notify the Commission, as soon as practicable, that the vessel's ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code, and discharges ballast water into the ~~coastal~~ waters of the state or fails to employ an alternative identified by the Commission in consultation with the United States Coast Guard pursuant to section 71205.3, subdivision (b)(3) of the Public Resources Code; or
- ~~(3)~~(7) if any additional Class 1 Moderate violations are committed on a subsequent voyage committed within twelve (12) months of a preceding Class 1 Moderate violation shall be considered a Class 1 Major (I) violation.

(D) Major (II):

- (1) if a vessel, subject to section 71204.3, subdivision (c) of the Public Resources Code PRC or 2 California Code of Regulations, title 2, CCR section 2284, prior to discharging ballast water into the coastal waters of the state, fails to perform a any ballast water exchange during its voyage;
 - (2) if a vessel subject to California Code of Regulations, title 2, section 2298.6 fails to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.6, subdivision (b);
 - (3) if a vessel subject to California Code of Regulations, title 2, section 2298.6 fails to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.6, subdivision (c);
 - (4) if a vessel subject to California Code of Regulations, title 2, section 2298.7 fails to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.7, subdivision (c);
 - (5) if a person knowingly and with intent to deceive the Commission falsifies any ballast water or biofouling records, reporting forms, or information; or
 - (6) if a vessel restricts the Commission's access to any sampling ports for compliance assessment sample collection, as required in California Code of Regulations, title 2, section 2294, subdivision (a).
- (b) Class 2 (recordkeeping violations): Class 2 violations shall be issued to a cited party when a vessel fails to properly maintain on board the vessel, as required:
- (1) a ballast water management plan pursuant to section 71204, subdivisions (h) ~~and (i)~~ of the Public Resources Code PRC;
 - (2) a ballast water log pursuant to section 71205, subdivision (d) of the Public Resources Code PRC; ~~or~~
 - (3) any other information that is required to be carried or maintained on board a vessel pursuant to sections 71204 and 71205 of the Public Resources Code PRC;

- (4) documentation of ballast water treatment system functionality monitoring as required under California Code of Regulations, title 2, section 2297;
 - (5) a biofouling management plan pursuant to California Code of Regulations, title 2, section 2298.3; or
 - (6) documentation of biofouling management as required under California Code of Regulations, title 2, section 2298.7, subdivision (d).
- (c) Class 3 (reporting violations): Class 3 violations shall be issued when a cited party fails to submit the following information to the Commission, as required:
- (1) the ballast water reporting information required by section 71205, subdivision (c) of the Public Resources Code-PRC;
 - ~~(2) the “Ballast Water Treatment Supplemental Reporting Form” as required by 2 CCR section 2297.1, subdivision (b);~~
 - ~~(3) the “Hull Husbandry Reporting Form” as required by 2 CCR section 2298;~~
 - ~~(4) the “Ballast Water Treatment Technology Annual Reporting Form” as required by 2 CCR section 2297.1, subdivision (a); or~~
 - (2) the “Marine Invasive Species Program Annual Vessel Reporting Form (SLC 600.12)” as required by California Code of Regulations, title 2, section 2298.5;
 - ~~(5)(3) any other forms required pursuant to section 71205 of the Public Resources Code-PRC; or~~
 - (4) notification, as soon as practicable, that the vessel's ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code.

Authority Cited: Sections 71203, 71204, 71204.3, 71205, 71205.3, 71206 and 71201.7, Public Resources Code.

Reference: Sections 71207 and 71216, Public Resources Code.

Section 2299.04 Penalties

The cited party shall be assessed a penalty for each violation issued pursuant to this article. The penalty structure for each class of violation, as described in section 2299.03 of this Division, shall be as follows:

(a) Class 1 violations

- (1) Class 1 violations are subject to penalties in the amount listed in the following table:

Minor	Not to exceed \$5,000 per violation
Moderate	Not to exceed \$10,000 per violation
Major (I)	Not to exceed \$20,000 per violation
Major (II)	Not to exceed \$27,500 per violation

- (2) Every ballast tank involved in a ballast discharge violating this Division shall be deemed a separate Class 1 violation.
- (3) Violations of California Code of Regulations, title 2, section 2298.6 or 2298.7 shall be subject to penalties only after completion of the 60-day grace period described in California Code of Regulations, title 2, sections 2298.3, subdivision (c) and 2298.4, subdivision (c).

(b) Class 2 violations

- (1) Ballast water recordkeeping

~~(1)~~(A) Upon the first occurrence of a Class 2 violation of section 71204 or 71205 of the Public Resources Code or California Code of Regulations, title 2, section 2297 by a vessel, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.

~~(2)~~(B) Subsequent occurrences by a vessel of the same type of Class 2 violation within a period of 2 (two) years after the letter of noncompliance issuance date shall be subject to a penalty of not to exceed \$10,000 per violation.

- (2) Biofouling recordkeeping

- (A) Any Class 2 violation of California Code of Regulations, title 2, section 2298.3 by a vessel after the expiration of the 60-day grace period shall be subject to a penalty not to exceed \$20,000 per violation.
 - (B) A violation of California Code of Regulations, title 2, section 2298.7, subdivision (d) by a vessel after the expiration of the 60-day grace period shall be subject to a penalty not to exceed \$10,000 per violation.
- (c) Class 3 violations
- (1) Upon the first occurrence of a Class 3 violation, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.
 - (2) Subsequent occurrences of the same type of Class 3 violation within a period of 2 (two) years after the letter of noncompliance issuance date shall be assessed a penalty of ~~\$1,000~~\$2,000 per violation. Every thirty (30) day period that a required form or forms remain unsubmitted after the letter of noncompliance issuance date ~~original period for submission identified in section 2299.03(c) of this Division~~ shall be deemed a separate violation.

Authority Cited: Sections 71201.7, and 71216, Public Resources Code.
 Reference: Sections 71207 and 71216, Public Resources Code.

Section 2299.05 Preliminary Actions

- (a) Prior to pursuing any enforcement action under the provisions of this article, the following preliminary procedures shall be followed.
 - (1) ~~The Executive Officer~~ Commission staff shall provide a written notice of a violation to the cited party containing the following:
 - (A) a description of the violation;
 - (B) a statement that enforcement proceedings may be initiated; and
 - (C) notification that the cited party may, within ~~ten (10)~~thirty (30) ~~working calendar~~ days after receipt of the notice, submit a request in writing to ~~the Executive Officer~~ Commission staff for a preliminary meeting.

- (2) If the cited party requests a preliminary meeting with ~~the Executive Officer~~ Commission staff, that meeting shall be held prior to any further enforcement actions and may include any discussions relating to the violations in question, including, but not limited to, whether a violation had in fact occurred, what evidence exists for the violation, and what classification should apply for each violation.
 - (3) If the cited party so requests and agrees to pay for all costs, the preliminary meeting shall be recorded and a transcript shall be prepared.
 - (4) The preliminary meeting ~~shall be scheduled at the Executive Officer's discretion, but~~ shall in no event be scheduled more than ~~thirty (30)~~ forty-five (45) calendar days after the request for the meeting is received by ~~the Executive Officer~~ Commission staff.
 - ~~(5) Within ten (10) working days after the preliminary meeting, the Executive Officer shall provide written notice to the cited party of the decision as to whether enforcement action is to proceed.~~
- (b) If, after the procedures within subdivision (a) are followed, the Executive Officer finds that the cited party has committed a violation of any provision referred to in this article, the Executive Officer may take any or all of the following actions:
- (1) initiate proceedings pursuant to section 71216 of the Public Resources Code and the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code ~~PRC~~ against the cited party to administratively impose civil penalties;
 - (2) take whatever legal action is necessary and appropriate to obtain an order from the court enjoining the violation;
 - (3) notify the appropriate federal agency of any violation which may also constitute a violation of federal law or regulation; or
 - (4) refer the violation to the local district attorney for prosecution pursuant to section 71217 of the Public Resources Code ~~PRC~~.
- (c) It is unnecessary for the Executive Officer to comply with the procedures of this section when issuing an order for a vessel to depart the waters of the state pursuant to section 71207, subdivision (d) of the Public Resources Code ~~PRC~~.

Authority Cited: Sections 71201.7, 71207, and 71216, Public Resources Code.
Reference: Section 71207, 71216 and 71217, Public Resources Code.

Section 2299.06 ~~Hearing Procedures~~ Imposition of penalties

- (a) Civil penalties shall be administratively imposed for violations of the provisions of Division 36, Chapter 2 (commencing with section 71203) of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the California Code of Regulations.
- (b) ~~Except as otherwise specified in this article, the~~ The process to impose civil penalties shall be conducted in accordance with the Administrative Procedure Act, as provided under Chapter 5 located within Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and section 71216 of the Public Resources Code PRC. The Executive Officer and the cited party may agree to settle the violation before, during, or after the commencement of proceedings to impose civil penalties.
- (c) A civil penalty shall be determined by Commission staff based upon the following factors:
 - (1) the nature, circumstances, extent, and gravity of the violation, taking into account the harm to the environment and ecology;
 - (2) the cited party's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment; and
 - (3) the cited party's ability to pay the proposed civil penalty.
- (d) Nothing in this Article shall limit the ability of the Executive Officer and a cited party from entering into a settlement agreement to resolve any assessed violations before, during, or after the commencement of proceedings to impose civil penalties.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.
Reference: Section 71216, Public Resources Code.

Section 2299.07 Complaint

- (a) After following the preliminary actions described in section 2299.05 of this article, the Executive Officer may commence proceedings to impose civil penalties by issuing and serving a complaint to the cited party.

- (b) The complaint must contain all of the following:
- (1) a brief statement of the violation alleged, including the acts or failures to act that constitute a basis for liability;
 - (2) the amount of the civil liability;
 - (3) a statement that the cited party has the right to request a formal hearing, ~~upon request~~, at which they may be represented by counsel; and
 - (4) a statement that the cited party's right to a hearing will be deemed waived if the cited party fails to file a notice of defense with the Executive Officer within thirty (30) days from the date the complaint was served on the cited party, or their agent for service. A notice of defense is deemed to be filed within the 30-day period if it is postmarked within the 30-day period.
- (c) A copy of the complaint shall be served upon the cited party either personally or by registered mail. Complaints served by registered mail shall be deemed served as of the postmark date.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference: Section 71216 Public Resources Code.

Section 2299.08 Notice of Defense

- (a) The cited party may, no later than thirty (30) days after service of the complaint, submit file a notice of defense ~~to the Executive Officer~~ at the principal office address identified in section 1901 of this Division.
- (b) The notice of defense shall be in the form and include the content described in section 11506 of the Government Code.
- (c) If, within the notice of defense, the cited party requests a hearing on the merits, such a hearing shall commence within thirty (30) days after the Executive Officer receives the notice of defense. The Executive Officer and the cited party may stipulate to commence the hearing date later than thirty (30) days.
- (d) If the Executive Officer does not receive a notice of defense within thirty (30) days after service of the complaint, the Executive Officer shall issue an order setting liability in the amount of the complaint.

- (1) If the Executive Officer and cited party have reached a settlement of the violation, the Executive Officer shall issue an order setting liability in the amount of the settlement.
- (2) An order setting liability shall not be subject to review by a court or agency.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference: Section 71216, Public Resources Code; Section 11506, Government Code.

Section 2299.09 Hearing

- (a) The process to initiate formal proceedings and conduct a A-hearing shall be conducted by an independent hearing officer in accordance with section 71216 of the Public Resources Code and the Administrative Procedure Act, as provided under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code ~~procedures specified in Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of the Government Code, except as otherwise specified in this section.~~ In making a determination, the hearing officer shall take the following into consideration:
 - (1) the nature, circumstances, extent, and gravity of the violation, taking into account the harm to the environment and ecology;
 - (2) the cited party's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment; and
 - (3) the cited party's ability to pay the proposed civil penalty.
- (b) At the Executive Officer's discretion, the venue for the hearing shall be in either Sacramento County or Los Angeles County, unless the Executive Officer and the cited party stipulate to an alternate location.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference: Section 71216, Public Resources Code.