

ASSEMBLY BILL

No. 2938

Introduced by Assembly Member Simitian

February 25, 2002

An act to amend Section 13260 of the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2938, as introduced, Simitian. Waste discharge requirements: fees.

Existing law, the Porter-Cologne Water Quality Control Act, requires each person for whom waste discharge requirements have been prescribed to submit an annual fee, not to exceed \$10,000, according to a fee schedule established by the State Water Resources Control Board.

This bill would prohibit the state board from imposing an annual fee that exceeds \$25,000 and would authorize the state board to adjust those fees, not more than annually, to reflect cost of living increases or decreases.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13260 of the Water Code is amended to
2 read:

1 13260. (a) All of the following persons shall file with the
2 appropriate regional board a report of the discharge, containing the
3 information which may be required by the regional board:

4 (1) Any person discharging waste, or proposing to discharge
5 waste, within any region that could affect the quality of the waters
6 of the state, other than into a community sewer system.

7 (2) Any person who is a citizen, domiciliary, or political agency
8 or entity of this state discharging waste, or proposing to discharge
9 waste, outside the boundaries of the state in a manner that could
10 affect the quality of the waters of the state within any region.

11 (3) Any person operating, or proposing to construct, an
12 injection well.

13 (b) No report of waste discharge need be filed pursuant to
14 subdivision (a) if the requirement is waived pursuant to Section
15 13269.

16 (c) Every person subject to subdivision (a) shall file with the
17 appropriate regional board a report of waste discharge relative to
18 any material change or proposed change in the character, location,
19 or volume of the discharge.

20 (d) (1) Each person for whom waste discharge requirements
21 have been prescribed pursuant to Section 13263 shall submit an
22 annual fee not to exceed ~~ten thousand dollars (\$10,000)~~ *twenty-five*
23 *thousand dollars (\$25,000)* according to a reasonable fee schedule
24 established by the state board. Fees shall be calculated on the basis
25 of total flow, volume, number of animals, or area involved.

26 (2) (A) Subject to subparagraph (B), any fees collected
27 pursuant to this section shall be deposited in the Waste Discharge
28 Permit Fund which is hereby created. The money in the fund is
29 available for expenditure by the state board, upon appropriation by
30 the Legislature, for the purposes of carrying out this division.

31 (B) (i) Notwithstanding subparagraph (A), the fees collected
32 pursuant to this section from storm water dischargers that are
33 subject to a general industrial or construction storm water permit
34 under the national pollutant discharge elimination system
35 (NPDES) shall be separately accounted for in the Waste Discharge
36 Permit Fund.

37 (ii) Not less than 50 percent of the money in the Waste
38 Discharge Permit Fund that is separately accounted for pursuant
39 to clause (i) is available, upon appropriation by the Legislature, for
40 expenditure by the regional board with jurisdiction over the



1 permitted industry or construction site that generated the fee to
2 carry out storm water programs in the region.

3 (iii) Each regional board that receives money pursuant to
4 clause (ii) shall spend not less than 50 percent of that money solely
5 on storm water inspection and regulatory compliance issues
6 associated with industrial and construction storm water programs.

7 (3) Any person who would be required to pay the annual fee
8 prescribed by paragraph (1) for waste discharge requirements
9 applicable to discharges of solid waste, as defined in Section
10 40191 of the Public Resources Code, at a waste management unit
11 that is also regulated under Division 30 (commencing with Section
12 40000) of the Public Resources Code, and who is or will be subject
13 to the fee imposed pursuant to Section 46801 of the Public
14 Resources Code in the same fiscal year, shall be entitled to a waiver
15 of the annual fee for the discharge of solid waste at the waste
16 management unit imposed by paragraph (1) upon verification by
17 the state board of payment of the fee imposed by Section 48000 of
18 the Public Resources Code, and provided that the fee established
19 pursuant to Section 48000 of the Public Resources Code generates
20 revenues sufficient to fund the programs specified in Section
21 48004 of the Public Resources Code and the amount appropriated
22 by the Legislature for those purposes is not reduced.

23 (4) *The state board shall adjust, not more than annually, the*
24 *annual fees established pursuant to paragraph (1) to reflect*
25 *increases or decreases in the cost of living as measured by the*
26 *Consumer Price Index prepared by the Department of Industrial*
27 *Relations or a successor agency.*

28 (e) Each report of waste discharge for a new discharge
29 submitted under this section shall be accompanied by a fee equal
30 in amount to the annual fee for the discharge. If waste discharge
31 requirements are issued, the fee shall serve as the first annual fee.
32 If waste discharge requirements are waived pursuant to Section
33 13269, all or part of the fee shall be refunded.

34 (f) (1) On or before January 1, 1990, the state board shall
35 adopt, by emergency regulations, a schedule of fees authorized
36 under subdivisions (d) and (j). The total revenue collected each
37 year through annual and filing fees shall be set at an amount equal
38 to the revenue levels set forth in the Budget Act for this activity.
39 The state board shall automatically adjust the annual and filing
40 fees each fiscal year to conform with the revenue levels set forth



1 in the Budget Act for this activity. If the state board determines that
2 the revenue collected during the preceding year was greater than,
3 or less than, the revenue levels set forth in the Budget Act, the state
4 board may further adjust the annual filing fees to compensate for
5 the over and under collection of revenue.

6 (2) The emergency regulations adopted pursuant to this
7 subdivision *or any amendments to those regulations*, or
8 subsequent adjustments to the annual fees, shall be adopted by the
9 state board in accordance with Chapter 3.5 (commencing with
10 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
11 Code. The adoption of these regulations is an emergency and shall
12 be considered by the Office of Administrative Law as necessary
13 for the immediate preservation of the public peace, health, safety,
14 and general welfare. Notwithstanding Chapter 3.5 (commencing
15 with Section 11340) of Part 1 of Division 3 of Title 2 of the
16 Government Code, any emergency regulations adopted by the
17 state board, or adjustments to the annual fees made by the state
18 board pursuant to this section, shall not be subject to review by the
19 Office of Administrative Law and shall remain in effect until
20 revised by the state board.

21 (g) The state board shall adopt regulations setting forth
22 reasonable time limits within which the regional board shall
23 determine the adequacy of a report of waste discharge submitted
24 under this section.

25 (h) Each report submitted under this section shall be sworn to,
26 or submitted under penalty of perjury.

27 (i) The regulations adopted by the state board pursuant to
28 subdivision (f) shall include a provision that annual fees shall not
29 be imposed on those who pay fees under the National Pollutant
30 Discharge Elimination System until the time when those fees are
31 again due, at which time the fees shall become due on an annual
32 basis.

33 (j) Facilities for confined animal feeding or holding operations,
34 including dairy farms, which have been issued waste discharge
35 requirements or exempted from waste discharge requirements
36 prior to January 1, 1989, are exempt from subdivision (d). If the
37 facility is required to file a report under subdivision (c) after
38 January 1, 1989, the report shall be accompanied by a filing fee,
39 to be established by the state board in accordance with subdivision



1 (f), not to exceed two thousand dollars (\$2,000), and the facility
2 shall be exempt from any annual fee.

3 (k) Any person operating or proposing to construct an oil, gas,
4 or geothermal injection well subject to paragraph (3) of
5 subdivision (a), shall not be required to pay a fee pursuant to
6 subdivision (d), if the injection well is regulated by the Division
7 of Oil and Gas of the Department of Conservation, in lieu of the
8 appropriate California regional water quality control board,
9 pursuant to the memorandum of understanding, entered into
10 between the state board and the Department of Conservation on
11 May 19, 1988. This subdivision shall remain operative until the
12 memorandum of understanding is revoked by the state board or the
13 Department of Conservation.

14 (l) In addition to the report required by subdivision (a), before
15 any person discharges mining waste, the person shall first submit
16 the following to the regional board:

17 (1) A report on the physical and chemical characteristics of the
18 waste that could affect its potential to cause pollution or
19 contamination. The report shall include the results of all tests
20 required by regulations adopted by the board, any test adopted by
21 the Department of Toxic Substances Control pursuant to Section
22 25141 of the Health and Safety Code for extractable, persistent,
23 and bioaccumulative toxic substances in a waste or other material,
24 and any other tests that the state board or regional board may
25 require, including, but not limited to, tests needed to determine the
26 acid-generating potential of the mining waste or the extent to
27 which hazardous substances may persist in the waste after
28 disposal.

29 (2) A report that evaluates the potential of the discharge of the
30 mining waste to produce, over the long term, acid mine drainage,
31 the discharge or leaching of heavy metals, or the release of other
32 hazardous substances.

33 (m) Except upon the written request of the regional board, a
34 report of waste discharge need not be filed pursuant to subdivision
35 (a) or (c) by a user of recycled water that is being supplied by a
36 supplier or distributor of recycled water for whom a master
37 recycling permit has been issued pursuant to Section 13523.1.

38 SEC. 2. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety



1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 In order to support the state's critical water quality programs, as
4 soon as possible, thereby protecting the public health and
5 promoting a healthy environment and economy, it is necessary that
6 this act take effect immediately.

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