

AMENDED IN ASSEMBLY APRIL 19, 2005

AMENDED IN ASSEMBLY APRIL 6, 2005

AMENDED IN ASSEMBLY MARCH 17, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 371

Introduced by Assembly Member Goldberg

February 11, 2005

An act to amend Section 5415 of the Health and Safety Code, and to amend Sections 13260, 13521, and 13523 of, and to add Sections 13552.1, 13552.5, 13555.5, and 13557 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 371, as amended, Goldberg. Water recycling.

(1) Existing law governing sanitation provides that it does not limit the authority of a city or county to adopt and enforce certain regulations relating to the use of recycled water.

This bill would provide, *instead*, that it does not limit the authority of a city or county to enforce regulations relating to the use of recycled water, as specified.

(2) The Porter-Cologne Water Quality Control Act requires certain entities required to file a waste discharge report with the State Water Resources Control Board to submit an annual fee according to a fee schedule established by the state board.

This bill would require the state board, for the purpose of establishing the amount of a fee that may be imposed upon any publicly owned treatment works, to structure the fee schedule to

provide incentives for water recycling to facilitate the state's goal of maximizing water recycling.

(3) The Water Recycling Law, which regulates water reclamation and reuse, requires each California regional water quality control board, after consulting with and receiving the recommendations of the State Department of Health Services and any party who has requested in writing to be consulted, and after any necessary hearing, to prescribe water reclamation requirements for water which is used or proposed to be used as reclaimed water if, in the judgment of the board, it is necessary to protect the public health, safety, or welfare. The law requires the requirements to be established in conformance with uniform statewide recycling criteria which the State Department of Health Services is required to establish for each type of use of recycled water if the use involves the protection of public health.

This bill would delete the conformance requirement and would instead require that, if the use of the recycled water is within a category for which the department has established uniform statewide recycling criteria and the water meets a specified definition, those criteria constitute the sole requirements for the protection of human health. The bill would provide that the provision that requires the State Department of Health Services to establish uniform statewide recycling criteria supersedes and preempts all local enactments and actions that conflict with those criteria or that impose any additional or more stringent requirements than those set forth in those criteria. The bill would substitute the terms "recycle" and "recycling" for the words "reclaim" and "reclamation."

The bill would authorize a fire incident commander to use recycled water to prevent the destruction of life, property, or the environment in a catastrophic fire. The bill would prohibit a recycled water producer, user, or firefighting agency using recycled water for those purposes from being required to file an engineering report before use of the recycled water, but would authorize the regional board to require subsequent notification of the use.

The bill would require the state board, on or before January 1, 2008, to prescribe general water recycling requirements applicable to nonpotable uses of recycled water, as prescribed. The bill would require general water recycling requirements to replace individual water recycling requirements and waste discharge requirements for nonpotable uses of recycled water. The bill would authorize the state board to establish a reasonable schedule of fees to reimburse the costs

it incurs in developing and implementing the general water recycling requirements.

The bill, on and after July 1, 2007, would require all pipe installed for nonpotable water uses as part of a state construction project to be purple pipe that is suitable for the conveyance of recycled water.

The bill would require the Department of Water Resources, on or before July 1, 2006, in consultation with the State Department of Health Services, to adopt and submit to the California Building Standards Commission a state version of Appendix J of the Uniform Plumbing Code to provide design standards to safely plumb buildings with both potable and recycled water systems. The bill would require the Department of Housing and Community Development to submit to the commission, on or before July 1, 2006, an amendment to that state version to remove the skull and crossbones symbol for recycled water.

(4) This bill would require that its provisions be known as the Water Recycling Act of 2005. The bill would make related legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. This act shall be known, and may be cited, as
2 the Water Recycling Act of 2005.

3 SEC. 2. The Legislature hereby finds and declares all of the
4 following:

5 (a) The Recycled Water Task Force was convened pursuant to
6 Section 13578 of the Water Code and evaluated the current
7 framework of state and local rules, regulations, ordinances, and
8 permits to identify the opportunities for, and obstacles or
9 disincentives to, increasing the safe use of recycled water.

10 (b) Pursuant to Section 13578 of the Water Code, the task force
11 transmitted to the Legislature on July 3, 2003, a series of
12 recommendations that include, but are not limited to, the
13 following:

14 (1) The need for adherence to uniform statewide recycling
15 criteria established by the State Department of Health Services
16 under Section 13521 of the Water Code.

1 (2) The need to coordinate regulatory programs of the State
2 Water Resources Control Board and the regional water quality
3 control boards.

4 (3) The need to clarify the scope of local authority to enact
5 requirements with regard to the use of recycled water.

6 (4) The need to increase the use of recycled water for
7 firefighting and dual plumbing of buildings.

8 (c) It is the intent of the Legislature to implement the
9 recommendations from the Recycled Water Task Force by
10 enacting the Water Recycling Act of 2005, as a means to help the
11 state meet its goal of recycling 1,000,000 acre-feet of water per
12 year by 2010 in accordance with Section 13577 of the Water
13 Code.

14 SEC. 3. Section 5415 of the Health and Safety Code is
15 amended to read:

16 5415. No provision in this chapter is a limitation on any of
17 the following:

18 (a) The authority of a city or county to adopt and enforce
19 additional regulations not in conflict with this chapter imposing
20 additional conditions, restrictions, or limitations relating to the
21 disposal of sewage or other waste.

22 (b) The authority of any city or county to declare, prohibit, and
23 abate nuisances.

24 (c) The authority of a state agency in the enforcement or
25 administration of any provision of law which it is specifically
26 permitted or required to enforce or administer.

27 (d) The right of any person to maintain at any time any
28 appropriate action for relief against any private nuisance as
29 defined in the Civil Code or for relief against any contamination
30 or pollution.

31 (e) The authority of a city or county to enforce regulations
32 relating to the use of recycled water, in accordance with Chapter
33 7 (commencing with Section 13500) of Division 7 of the Water
34 Code.

35 SEC. 4. Section 13260 of the Water Code is amended to read:

36 13260. (a) All of the following persons shall file with the
37 appropriate regional board a report of the discharge, containing
38 the information which may be required by the regional board:

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

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

9 (3) Any person operating, or proposing to construct, an
10 injection well.

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

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

18 (d) (1) (A) Each person who is subject to subdivision (a) or
19 (c) shall submit an annual fee according to a fee schedule
20 established by the state board.

21 (B) The total amount of annual fees collected pursuant to this
22 section shall equal that amount necessary to recover costs
23 incurred in connection with the issuance, administration,
24 reviewing, monitoring, and enforcement of waste discharge
25 requirements and waivers of waste discharge requirements.

26 (C) Recoverable costs may include, but are not limited to,
27 costs incurred in reviewing waste discharge reports, prescribing
28 terms of waste discharge requirements and monitoring
29 requirements, enforcing and evaluating compliance with waste
30 discharge requirements and waiver requirements, conducting
31 surface water and groundwater monitoring and modeling,
32 analyzing laboratory samples, and reviewing documents prepared
33 for the purpose of regulating the discharge of waste, and
34 administrative costs incurred in connection with carrying out
35 these actions.

36 (D) In establishing the amount of a fee that may be imposed
37 on any confined animal feeding and holding operation pursuant
38 to this section, including, but not limited to, any dairy farm, the
39 state board shall consider all of the following factors:

40 (i) The size of the operation.

- 1 (ii) Whether the operation has been issued a permit to operate
2 pursuant to Section 1342 of Title 33 of the United States Code.
- 3 (iii) Any applicable waste discharge requirement or
4 conditional waiver of a waste discharge requirement.
- 5 (iv) The type and amount of discharge from the operation.
- 6 (v) The pricing mechanism of the commodity produced.
- 7 (vi) Any compliance costs borne by the operation pursuant to
8 state and federal water quality regulations.
- 9 (vii) Whether the operation participates in a quality assurance
10 program certified by a regional water quality control board, the
11 state board, or a federal water quality control agency.
- 12 (E) For the purpose of establishing the amount of a fee that
13 may be imposed upon any publicly owned treatment works
14 pursuant to this section, the state board shall structure the fee
15 schedule to provide incentives for water recycling to facilitate the
16 state's goal of maximizing water recycling.
- 17 (2) (A) Subject to subparagraph (B), any fees collected
18 pursuant to this section shall be deposited in the Waste Discharge
19 Permit Fund, which is hereby created. The money in the fund is
20 available for expenditure by the state board, upon appropriation
21 by the Legislature, solely for the purposes of carrying out this
22 division.
- 23 (B) (i) Notwithstanding subparagraph (A), the fees collected
24 pursuant to this section from stormwater dischargers that are
25 subject to a general industrial or construction stormwater permit
26 under the national pollutant discharge elimination system
27 (NPDES) shall be separately accounted for in the Waste
28 Discharge Permit Fund.
- 29 (ii) Not less than 50 percent of the money in the Waste
30 Discharge Permit Fund that is separately accounted for pursuant
31 to clause (i) is available, upon appropriation by the Legislature,
32 for expenditure by the regional board with jurisdiction over the
33 permitted industry or construction site that generated the fee to
34 carry out stormwater programs in the region.
- 35 (iii) Each regional board that receives money pursuant to
36 clause (ii) shall spend not less than 50 percent of that money
37 solely on stormwater inspection and regulatory compliance issues
38 associated with industrial and construction stormwater programs.
- 39 (3) Any person who would be required to pay the annual fee
40 prescribed by paragraph (1) for waste discharge requirements

1 applicable to discharges of solid waste, as defined in Section
2 40191 of the Public Resources Code, at a waste management unit
3 that is also regulated under Division 30 (commencing with
4 Section 40000) of the Public Resources Code, shall be entitled to
5 a waiver of the annual fee for the discharge of solid waste at the
6 waste management unit imposed by paragraph (1) upon
7 verification by the state board of payment of the fee imposed by
8 Section 48000 of the Public Resources Code, and provided that
9 the fee established pursuant to Section 48000 of the Public
10 Resources Code generates revenues sufficient to fund the
11 programs specified in Section 48004 of the Public Resources
12 Code and the amount appropriated by the Legislature for those
13 purposes is not reduced.

14 (e) Each person *who* discharges waste in a manner regulated
15 by this section shall pay an annual fee to the state board. The
16 state board shall establish, by regulation, a timetable for the
17 payment of the annual fee. If the state board or a regional board
18 determines that the discharge will not affect, or have the potential
19 to affect, the quality of the waters of the state, all or part of the
20 annual fee shall be refunded.

21 (f) (1) The state board shall adopt, by emergency regulations,
22 a schedule of fees authorized under subdivision (d). The total
23 revenue collected each year through annual fees shall be set at an
24 amount equal to the revenue levels set forth in the Budget Act for
25 this activity. The state board shall automatically adjust the annual
26 fees each fiscal year to conform with the revenue levels set forth
27 in the Budget Act for this activity. If the state board determines
28 that the revenue collected during the preceding year was greater
29 than, or less than, the revenue levels set forth in the Budget Act,
30 the state board may further adjust the annual fees to compensate
31 for the ~~over~~ *overcollection* and undercollection of revenue.

32 (2) The emergency regulations adopted pursuant to this
33 subdivision, any amendment thereto, or subsequent adjustments
34 to the annual fees, shall be adopted by the state board in
35 accordance with Chapter 3.5 (commencing with Section 11340)
36 of Part 1 of Division 3 of Title 2 of the Government Code. The
37 adoption of these regulations is an emergency and shall be
38 considered by the Office of Administrative Law as necessary for
39 the immediate preservation of the public peace, health, safety,
40 and general welfare. Notwithstanding Chapter 3.5 (commencing

1 with Section 11340) of Part 1 of Division 3 of Title 2 of the
2 Government Code, any emergency regulations adopted by the
3 state board, or adjustments to the annual fees made by the state
4 board pursuant to this section, shall not be subject to review by
5 the Office of Administrative Law and shall remain in effect until
6 revised by the state board.

7 (g) The state board shall adopt regulations setting forth
8 reasonable time limits within which the regional board shall
9 determine the adequacy of a report of waste discharge submitted
10 under this section.

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

13 (i) The regulations adopted by the state board pursuant to
14 subdivision (f) shall include a provision that annual fees shall not
15 be imposed on those who pay fees under the national pollutant
16 discharge elimination system until the time when those fees are
17 again due, at which time the fees shall become due on an annual
18 basis.

19 (j) Any person operating or proposing to construct an oil, gas,
20 or geothermal injection well subject to paragraph (3) of
21 subdivision (a), shall not be required to pay a fee pursuant to
22 subdivision (d), if the injection well is regulated by the Division
23 of Oil and Gas of the Department of Conservation, in lieu of the
24 appropriate California regional water quality control board,
25 pursuant to the memorandum of understanding, entered into
26 between the state board and the Department of Conservation on
27 May 19, 1988. This subdivision shall remain operative until the
28 memorandum of understanding is revoked by the state board or
29 the Department of Conservation.

30 (k) In addition to the report required by subdivision (a), before
31 any person discharges mining waste, the person shall first submit
32 both of the following to the regional board:

33 (1) A report on the physical and chemical characteristics of the
34 waste that could affect its potential to cause pollution or
35 contamination. The report shall include the results of all tests
36 required by regulations adopted by the board, any test adopted by
37 the Department of Toxic Substances Control pursuant to Section
38 25141 of the Health and Safety Code for extractable, persistent,
39 and bioaccumulative toxic substances in a waste or other
40 material, and any other tests that the state board or regional board

1 may require, including, but not limited to, tests needed to
2 determine the acid-generating potential of the mining waste or
3 the extent to which hazardous substances may persist in the
4 waste after disposal.

5 (2) A report that evaluates the potential of the discharge of the
6 mining waste to produce, over the long term, acid mine drainage,
7 the discharge or leaching of heavy metals, or the release of other
8 hazardous substances.

9 (l) Except upon the written request of the regional board, a
10 report of waste discharge need not be filed pursuant to
11 subdivision (a) or (c) by a user of recycled water that is being
12 supplied by a supplier or distributor of recycled water for whom
13 a master recycling permit has been issued pursuant to Section
14 13523.1.

15 SEC. 5. Section 13521 of the Water Code is amended to read:

16 13521. (a) The State Department of Health Services shall
17 establish uniform statewide recycling criteria for each varying
18 type of use of recycled water if the use involves the protection of
19 public health.

20 (b) This section supersedes and preempts all enactments,
21 including charter provisions and amendments thereto, and other
22 local actions of cities and counties, including charter cities and
23 charter counties, and other local public agencies for which either
24 of the following applies:

25 (1) The enactment or action conflicts with the uniform
26 statewide recycling criteria established pursuant to subdivision
27 (a).

28 (2) The enactment or action imposes additional or more
29 stringent requirements than those set forth in the uniform
30 statewide recycling criteria established pursuant to subdivision
31 (a).

32 SEC. 6. Section 13523 of the Water Code is amended to read:

33 13523. (a) Each regional board, after consulting with and
34 receiving the recommendations of the State Department of
35 Health Services and any party who has requested in writing to be
36 consulted, and after any necessary hearing, shall, if in the
37 judgment of the board, it is necessary to protect the public health,
38 safety, or welfare, prescribe water recycling requirements for
39 water which is used or proposed to be used as recycled water.

1 (b) The requirements may be placed upon the person recycling
2 water, the user, or both. If the use of the recycled water is within
3 a category for which the State Department of Health Services has
4 established uniform statewide recycling criteria pursuant to
5 Section 13521 and the water meets the definition set forth in
6 subdivision (c) of Section 13529.2, those criteria shall constitute
7 the sole requirements for the protection of human health. Upon a
8 written recommendation by the State Department of Health
9 Services, a regional board may require monitoring for
10 notification levels, as defined in Section 116455 of the Health
11 and Safety Code. The regional board may require the submission
12 of a preconstruction report for the purpose of determining
13 compliance with the uniform statewide recycling criteria. The
14 requirements for a category of use of recycled water not
15 addressed by the uniform statewide recycling criteria shall be
16 considered on a case-by-case basis.

17 SEC. 7. Section 13552.1 is added to the Water Code, to read:

18 13552.1. (a) A fire incident commander may use recycled
19 water to prevent the destruction of life, property, or the
20 environment in a catastrophic fire.

21 (b) The recycled water producer, user, or firefighting agency
22 using water as described in subdivision (a) shall not be required
23 to file an engineering report before use of the recycled water, but
24 the regional board may require subsequent notification of the use.

25 (c) As used in this section:

26 (1) "Catastrophic fire" means a condition exists, in the opinion
27 of the fire incident commander, that may result in severe harm to
28 life, property, or the environment if recycled water as authorized
29 pursuant to this section is not used.

30 (2) "Recycled water" means recycled water as defined in
31 subdivision (n) of Section 13050, that has been determined by the
32 State Department of Health Services to be appropriate for use in
33 structural and nonstructural firefighting.

34 SEC. 8. Section 13552.5 is added to the Water Code, to read:

35 13552.5. (a) On or before January 1, 2008, the state board
36 shall prescribe general water recycling requirements applicable to
37 nonpotable uses of recycled water. General water recycling
38 requirements shall replace individual water recycling
39 requirements and waste discharge requirements for nonpotable

1 uses of recycled water, and their prescription shall be considered
2 to be a ministerial action.

3 (b) The general water recycling requirements shall implement
4 the uniform statewide recycling criteria adopted by the State
5 Department of Health Services pursuant to Section 13521 and
6 shall address all of the following:

7 (1) Incidental runoff of recycled water from irrigation sites
8 and impoundments.

9 (2) Permitting of off-pipeline uses, including, but not limited
10 to, emergency firefighting and dust suppression.

11 (3) Application of the state's antidegradation policy to
12 nonpotable uses of recycled water.

13 (c) The state board may establish a reasonable schedule of fees
14 to reimburse the costs it incurs in developing and implementing
15 the general water recycling requirements.

16 SEC. 9. Section 13555.5 is added to the Water Code, to read:

17 13555.5. Commencing July 1, 2007, all pipe installed for
18 nonpotable water uses, including landscape irrigation, as part of
19 a state construction project shall be purple pipe that is suitable for
20 the conveyance of recycled water. For the purposes of this
21 section, "purple pipe" means _____.

22 SEC. 10. Section 13557 is added to the Water Code, to read:

23 13557. (a) On or before July 1, 2006, the department, in
24 consultation with the State Department of Health Services, shall
25 adopt and submit to the California Building Standards
26 Commission a state version of Appendix J of the Uniform
27 Plumbing Code adopted by the International Association of
28 Plumbing and Mechanical Officials to provide design standards
29 to safely plumb buildings with both potable and recycled water
30 systems.

31 (b) The department may adopt revisions to the state version as
32 it determines to be necessary to further the state's goal of
33 maximizing water recycling.

34 (c) On or before July 1, 2006, the Department of Housing and
35 Community Development shall submit to the California Building
36 Standards Commission an amendment to the state plumbing code
37 adopted pursuant to subdivision (a) to remove the skull and
38 crossbones symbol for recycled water.

1 *SEC. 11. Nothing in this act requires a city that is a public*
2 *water supplier to use recycled water or limits its authority to*
3 *determine where to use recycled water.*

O