

AMENDED IN ASSEMBLY AUGUST 25, 2005

AMENDED IN ASSEMBLY JUNE 8, 2005

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE APRIL 14, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 646

Introduced by Senator Kuehl

(Coauthors: Assembly Members Koretz, Lieber, Oropeza, and Pavley)

February 22, 2005

An act to amend Sections 13269, 13301, and 13304 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 646, as amended, Kuehl. Water discharge requirements: waivers.

Existing law, the Porter-Cologne Water Quality Control Act, authorizes the State Water Resources Control Board and a California regional water quality control board to waive certain waste discharge requirements as to a specific discharge or type of discharge if the state board or the regional board makes a specified determination. The act authorizes the state board or a regional board to include as a condition of the waiver the payment of an annual fee.

This bill would require ~~that~~ the conditions of a waiver *to* include submission to the regional board of an appropriate notice of intent to obtain coverage of *a* waiver; ~~including that includes~~ specified information. The bill would ~~also require that the monitoring results required to be made available to the public under existing law be made available in sufficient detail so that members of the public may assess~~

~~the adequacy and effectiveness of the waiver conditions in protecting the quality of state waters information collected pursuant to the waiver program to be provided to the state board and the appropriate regional board and to be made available to the public, as specified.~~

The bill would require the state board or a regional board to include the payment of an annual fee as a condition of a waiver, and would require the annual fee to be adequate to pay for the cost of the waiver program. The bill would require any money generated by the imposition of the fees to be expended, upon appropriation by the Legislature, for the issuance, administration, reviewing, monitoring, or enforcement of waivers of waste discharge requirements or waste discharge reports.

The bill would make provisions applicable to cease and desist orders, punitive actions, or cleanup and abatement orders in connection with violations of discharge requirements, board orders, or prohibitions also applicable to violations of discharge waiver conditions.

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. Section 13269 of the Water Code is amended to
2 read:

3 13269. (a) (1) (A) Subject to subparagraph (B), and after any
4 necessary state board or regional board meeting, the provisions
5 of subdivisions (a) and (c) of Section 13260, subdivision (a) of
6 Section 13263, or subdivision (a) of Section 13264 may be
7 waived by the state board or a regional board as to a specific
8 discharge or type of discharge. The state board or a regional
9 board shall give notice of any necessary meeting by publication
10 pursuant to Section 11125 of the Government Code.

11 (B) The state board or a regional board shall make an
12 affirmative finding that issuing the waiver is consistent with any
13 applicable state or regional water quality control plan and is in
14 the public interest.

15 (2) A waiver may not exceed five years in duration, but may
16 be renewed by the state board or a regional board. The waiver
17 shall be conditional and may be terminated at any time by the
18 state board or a regional board. The conditions of the waiver

1 shall include, but need not be limited to, submission to the
2 regional board of an appropriate notice of intent to obtain
3 coverage of a waiver, which shall include the names and
4 addresses of responsible parties and the location of the operation,
5 and performance of individual, group, or watershed-based
6 monitoring, except as provided in paragraph (3). Monitoring
7 requirements shall be designed to support the development and
8 implementation of the waiver program, including, but not limited
9 to, verifying the adequacy and effectiveness of the waiver's
10 conditions in protecting—the water quality. In establishing
11 monitoring requirements, the regional board may consider the
12 volume, duration, frequency, and constituents of the discharge;
13 the extent and type of existing monitoring activities, including,
14 but not limited to, existing watershed-based, compliance, and
15 effectiveness monitoring efforts; the size of the project area; and
16 other relevant factors. ~~Monitoring results shall be made available
17 to the public in sufficient detail so that members of the public
18 may assess the adequacy and effectiveness of the waiver
19 conditions in protecting the quality of state waters. All
20 monitoring information collected pursuant to this section shall be
21 provided to the state board and the appropriate regional board.
22 Those boards shall make those results available to the public by,
23 among other means, posting the information on the Internet Web
24 site of those respective boards, to the maximum extent
25 practicable, given available funding for that purpose. Any waiver
26 for an onsite sewage treatment system that is consistent with and
27 adopted pursuant to Chapter 4.5 (commencing with Section
28 13290) shall be deemed to comply with the requirements of this
29 subdivision regarding the provision of an appropriate notice of
30 intent. The submission of a notice of intent to obtain coverage of
31 a waiver may be coordinated by an authorized local agency or
32 organization comprised of those persons or entities who are
33 subject to, or applying for, a waiver if the state board or the
34 appropriate regional board recognizes, through a formal, written
35 authorization, that local agency or organization for that purpose.
36 The notice of intent shall be transmitted directly from that
37 authorized local agency or organization to the state board or the
38 appropriate regional board pursuant to a procedure and
39 timeframe approved by the state board or the appropriate
40 regional board.~~

1 (3) The state board or a regional board may waive the
2 monitoring requirements described in this subdivision for
3 discharges that it determines do not pose a significant threat to
4 water quality.

5 (4) (A) The state board or a regional board shall include as a
6 condition of a waiver the payment of an annual fee established by
7 the state board in accordance with subdivision (f) of Section
8 13260. The annual fee shall be adequate to pay for the cost of the
9 waiver program.

10 (B) Funds generated by the payment of the fee shall be
11 deposited in the Waste Discharge Permit Fund for expenditure,
12 upon appropriation by the Legislature, by the state board or
13 appropriate regional board for the purpose of issuing,
14 administering, reviewing, monitoring, or enforcing waivers of
15 waste discharge requirements or waste discharge reports
16 approved pursuant to this section. The total amount of annual
17 fees collected pursuant to this section shall not exceed the costs
18 of those activities necessary to establish and implement waivers
19 of waste discharge requirements pursuant to this section.

20 (C) In establishing the amount of a fee that may be imposed on
21 irrigated agriculture operations pursuant to this section, the state
22 board shall consider relevant factors, including, but not limited
23 to, all of the following:

24 (i) The size of the operations.

25 (ii) Any compliance costs borne by the operations pursuant to
26 state and federal water quality regulations.

27 (iii) Any costs associated with water quality monitoring
28 performed or funded by the operations.

29 (iv) Participation in a watershed management program
30 approved by the applicable regional board.

31 (D) In establishing the amount of a fee that may be imposed
32 on silviculture operations pursuant to this section, the state board
33 shall consider relevant factors, including, but not limited to, all of
34 the following:

35 (i) The size of the operations.

36 (ii) Any compliance costs borne by the operations pursuant to
37 state and federal water quality regulations.

38 (iii) Any costs associated with water quality monitoring
39 performed or funded by the operations.

1 (iv) The average annual number of timber harvest plans
2 proposed by the operations.

3 (5) The state board or a regional board shall give notice of the
4 adoption of a waiver by publication within the affected county or
5 counties as set forth in Section 6061 of the Government Code.

6 (b) (1) A waiver in effect on January 1, 2000, shall remain
7 valid until January 1, 2003, unless the regional board terminates
8 that waiver prior to that date. All waivers that were valid on
9 January 1, 2000, and granted an extension until January 1, 2003,
10 and not otherwise terminated, may be renewed by a regional
11 board in five-year increments.

12 (2) Notwithstanding paragraph (1), a waiver for an onsite
13 sewage treatment system that is in effect on January 1, 2002,
14 shall remain valid until June 30, 2004, unless the regional board
15 terminates the waiver prior to that date. Any waiver for onsite
16 sewage treatment systems adopted or renewed after June 30,
17 2004, shall be consistent with the applicable regulations or
18 standards for onsite sewage treatment systems adopted or
19 retained in accordance with Section 13291.

20 (c) Upon notification of the appropriate regional board of the
21 discharge or proposed discharge, except as provided in
22 subdivision (d), the provisions of subdivisions (a) and (c) of
23 Section 13260, subdivision (a) of Section 13263, and subdivision
24 (a) of Section 13264 do not apply to a discharge resulting from
25 any of the following emergency activities:

26 (1) Immediate emergency work necessary to protect life or
27 property or immediate emergency repairs to public service
28 facilities necessary to maintain service as a result of a disaster in
29 a disaster-stricken area in which a state of emergency has been
30 proclaimed by the Governor pursuant to Chapter 7 (commencing
31 with Section 8550) of Division 1 of Title 2 of the Government
32 Code.

33 (2) Emergency projects undertaken, carried out, or approved
34 by a public agency to maintain, repair, or restore an existing
35 highway, as defined in Section 360 of the Vehicle Code, except
36 for a highway designated as an official state scenic highway
37 pursuant to Section 262 of the Streets and Highways Code,
38 within the existing right-of-way of the highway, damaged as a
39 result of fire, flood, storm, earthquake, land subsidence, gradual
40 earth movement, or landslide within one year of the damage.

1 This paragraph does not exempt from this section any project
2 undertaken, carried out, or approved by a public agency to
3 expand or widen a highway damaged by fire, flood, storm,
4 earthquake, land subsidence, gradual earth movement, or
5 landslide.

6 (d) Subdivision (c) is not a limitation of the authority of a
7 regional board under subdivision (a) to determine that any
8 provision of this division shall not be waived or to establish
9 conditions of a waiver. Subdivision (c) shall not apply to the
10 extent that it is inconsistent with any waiver or other order or
11 prohibition issued under this division.

12 (e) The regional boards and the state board shall require
13 compliance with the conditions pursuant to which waivers are
14 granted under this section.

15 (f) Prior to renewing any waiver for a specific type of
16 discharge established under this section, the state board or a
17 regional board shall review the terms of the waiver policy at a
18 public hearing. At the hearing, the state board or a regional board
19 shall determine whether the discharge for which the waiver
20 policy was established should be subject to general or individual
21 waste discharge requirements.

22 SEC. 2 Section 13301 of the Water Code is amended to read:

23 13301. When a regional board finds that a discharge of waste
24 is taking place, or threatening to take place, in violation of
25 requirements, discharge prohibitions, or waiver conditions
26 prescribed by the regional board or the state board, the board
27 may issue an order to cease and desist and direct that those
28 persons not complying with the requirements or discharge
29 prohibitions (a) comply forthwith, (b) comply in accordance with
30 a time schedule set by the board, or (c) in the event of a
31 threatened violation, take appropriate remedial or preventive
32 action. In the event of an existing or threatened violation of waste
33 discharge requirements in the operation of a community sewer
34 system, cease and desist orders may restrict or prohibit the
35 volume, type, or concentration of waste that might be added to
36 that system by dischargers who did not discharge into the system
37 prior to the issuance of the cease and desist order. Cease and
38 desist orders may be issued directly by a board, after notice and
39 hearing.

40 SEC. 3. Section 13304 of the Water Code is amended to read:

1 13304. (a) Any person who has discharged or discharges
2 waste into the waters of this state in violation of any waste
3 discharge requirement, other order or prohibition, or waiver
4 condition issued by a regional board or the state board, or who
5 has caused or permitted, causes or permits, or threatens to cause
6 or permit any waste to be discharged or deposited where it is, or
7 probably will be, discharged into the waters of the state and
8 creates, or threatens to create, a condition of pollution or
9 nuisance, shall upon order of the regional board, clean up the
10 waste or abate the effects of the waste, or, in the case of
11 threatened pollution or nuisance, take other necessary remedial
12 action, including, but not limited to, overseeing cleanup and
13 abatement efforts. A cleanup and abatement order issued by the
14 state board or a regional board may require the provision of, or
15 payment for, uninterrupted replacement water service, which
16 may include wellhead treatment, to each affected public water
17 supplier or private well owner. Upon failure of any person to
18 comply with the cleanup or abatement order, the Attorney
19 General, at the request of the board, shall petition the superior
20 court for that county for the issuance of an injunction requiring
21 the person to comply with the order. In the suit, the court shall
22 have jurisdiction to grant a prohibitory or mandatory injunction,
23 either preliminary or permanent, as the facts may warrant.

24 (b) (1) The regional board may expend available money to
25 perform any cleanup, abatement, or remedial work required
26 under the circumstances set forth in subdivision (a), including,
27 but not limited to, supervision of cleanup and abatement
28 activities that, in its judgment, is required by the magnitude of
29 the endeavor or the urgency for prompt action to prevent
30 substantial pollution, nuisance, or injury to any waters of the
31 state. The action may be taken in default of, or in addition to,
32 remedial work by the waste discharger or other persons, and
33 regardless of whether injunctive relief is being sought.

34 (2) The regional board may perform the work itself, or with
35 the cooperation of any other governmental agency, and may use
36 rented tools or equipment, either with operators furnished or
37 unfurnished. Notwithstanding any other provisions of law, the
38 regional board may enter into oral contracts for the work, and the
39 contracts, whether written or oral, may include provisions for
40 equipment rental and in addition the furnishing of labor and

1 materials necessary to accomplish the work. The contracts are
2 not subject to approval by the Department of General Services.

3 (3) The regional board shall be permitted reasonable access to
4 the affected property as necessary to perform any cleanup,
5 abatement, or other remedial work. The access shall be obtained
6 with the consent of the owner or possessor of the property or, if
7 the consent is withheld, with a warrant duly issued pursuant to
8 the procedure described in Title 13 (commencing with Section
9 1822.50) of Part 3 of the Code of Civil Procedure. However, in
10 the event of an emergency affecting public health or safety, the
11 regional board may enter the property without consent or the
12 issuance of a warrant.

13 (4) The regional board may contract with a water agency to
14 perform, under the direction of the regional board, investigations
15 of existing or threatened groundwater pollution or nuisance. The
16 agency's cost of performing the contracted services shall be
17 reimbursed by the regional board from the first available funds
18 obtained from cost recovery actions for the specific site. The
19 authority of a regional board to contract with a water agency is
20 limited to a water agency that draws groundwater from the
21 affected aquifer, a metropolitan water district, or a local public
22 agency responsible for water supply or water quality in a
23 groundwater basin.

24 (c) (1) If the waste is cleaned up or the effects of the waste are
25 abated, or, in the case of threatened pollution or nuisance, other
26 necessary remedial action is taken by any governmental agency,
27 the person or persons who discharged the waste, discharges the
28 waste, or threatened to cause or permit the discharge of the waste
29 within the meaning of subdivision (a), are liable to that
30 governmental agency to the extent of the reasonable costs
31 actually incurred in cleaning up the waste, abating the effects of
32 the waste, supervising cleanup or abatement activities, or taking
33 other remedial action. The amount of the costs is recoverable in a
34 civil action by, and paid to, the governmental agency and the
35 state board to the extent of the latter's contribution to the cleanup
36 costs from the State Water Pollution Cleanup and Abatement
37 Account or other available funds.

38 (2) The amount of the costs constitutes a lien on the affected
39 property upon service of a copy of the notice of lien on the owner
40 and upon the recordation of a notice of lien, that identifies the

1 property on which the condition was abated, the amount of the
2 lien, and the owner of record of the property, in the office of the
3 county recorder of the county in which the property is located.
4 Upon recordation, the lien has the same force, effect, and priority
5 as a judgment lien, except that it attaches only to the property
6 posted and described in the notice of lien, and shall continue for
7 10 years from the time of the recording of the notice, unless
8 sooner released or otherwise discharged. Not later than 45 days
9 after receiving a notice of lien, the owner may petition the court
10 for an order releasing the property from the lien or reducing the
11 amount of the lien. In this court action, the governmental agency
12 that incurred the cleanup costs shall establish that the costs were
13 reasonable and necessary. The lien may be foreclosed by an
14 action brought by the state board on behalf of the regional board
15 for a money judgment. Money recovered by a judgment in favor
16 of the state board shall be deposited in the State Water Pollution
17 Cleanup and Abatement Account.

18 (d) If, despite reasonable effort by the regional board to
19 identify the person responsible for the discharge of waste or the
20 condition of pollution or nuisance, the person is not identified at
21 the time cleanup, abatement, or remedial work is required to be
22 performed, the regional board is not required to issue an order
23 under this section.

24 (e) “Threaten,” for purposes of this section, means a condition
25 creating a substantial probability of harm, when the probability
26 and potential extent of harm make it reasonably necessary to take
27 immediate action to prevent, reduce, or mitigate damages to
28 persons, property, or natural resources.

29 (f) Replacement water provided pursuant to subdivision (a)
30 shall meet all applicable federal, state, and local drinking water
31 standards, and shall have comparable quality to that pumped by
32 the public water system or private well owner prior to the
33 discharge of waste.

34 (g) (1) Any public water supplier or private well owner
35 receiving replacement water by reason of an order issued
36 pursuant to subdivision (a), or any person or entity who is
37 ordered to provide replacement water pursuant to subdivision (a),
38 may request nonbinding mediation of all replacement water
39 claims.

1 (2) If so requested, the public water suppliers receiving the
2 replacement water and the persons or entities ordered to provide
3 the replacement water, within 30 days of the submittal of a water
4 replacement plan, shall engage in at least one confidential
5 settlement discussion before a mutually acceptable mediator.

6 (3) Any agreement between parties regarding replacement
7 water claims resulting from participation in the nonbinding
8 mediation process shall be consistent with the requirements of
9 any cleanup and abatement order.

10 (4) A regional board or the state board is not required to
11 participate in any nonbinding mediation requested pursuant to
12 paragraph (1).

13 (5) The party or parties requesting the mediation shall pay for
14 the costs of the mediation.

15 (h) As part of any cleanup and abatement order that requires
16 the provision of replacement water, a regional board or the state
17 board shall request a water replacement plan from the discharger
18 in cases where replacement water is to be provided for more than
19 30 days. The water replacement plan is subject to the approval of
20 the regional board or the state board prior to its implementation.

21 (i) A “water replacement plan” means a plan pursuant to
22 which the discharger will provide replacement water in
23 accordance with a cleanup and abatement order.

24 (j) This section does not impose any new liability for acts
25 occurring before January 1, 1981, if the acts were not in violation
26 of existing laws or regulations at the time they occurred.

27 (k) Nothing in this section limits the authority of any state
28 agency under any other law or regulation to enforce or administer
29 any cleanup or abatement activity.

30 (l) The Legislature declares that the amendments made to
31 subdivision (a) of this section by Senate Bill 1004 of the 2003-04
32 Regular Session do not constitute a change in, but are declaratory
33 of, existing law.