

AMENDED IN ASSEMBLY JANUARY 13, 2010

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 25

**Introduced by Assembly Member Members Gilmore and Logue
(Coauthor: Assembly Member Chesbro)**

December 1, 2008

An act to amend ~~Sections 13385 and 13385.1~~ *Section 13385* of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 25, as amended, Gilmore. ~~Mandatory—~~*Water discharges: mandatory* minimum civil penalties.

~~(1) Under~~

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act ~~(state act)~~. The ~~state~~ act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation or for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months. ~~A~~ *For these purposes, a “serious-waste discharge violation”* is defined to include a failure to file a certain discharge monitoring report for each complete period of 30 days following the deadline for submitting the report if certain conditions are met.

Civil liability may be imposed administratively by the state board or a regional board or those boards may request the Attorney General to petition the superior court to impose the liability.

~~This bill would prohibit the state board or a regional board from imposing a mandatory minimum penalty for a violation for which an action to impose liability is not requested or imposed by the state board or a regional board within one year of the date the state board or regional board receives notice of the violation. The bill would authorize the state board or a regional board to impose a mandatory minimum penalty for a serious violation involving the failure to file a certain discharge monitoring report for each complete 30-day period following the deadline for submitting the report only if the state board or regional board has provided notification to the violator of the ongoing violation. In the absence of notification, the failure to file that monitoring report would constitute a single violation.~~

~~(2) The~~

~~The state act~~ authorizes the state board or a regional board, in lieu of assessing all or a portion of the mandatory minimum penalties against a publicly owned treatment works (POTW) that serves a small community, to elect to require that POTW to spend an equivalent amount towards the completion of a compliance project. ~~The state act~~ defines a POTW that serves a small community to mean, in pertinent part, a POTW serving a community of 10,000 persons or fewer.

This bill would expand that definition to include a POTW serving a community of 20,000 persons or fewer. *The bill also would authorize the state board or a regional board, in lieu of assessing all or a portion of the mandatory minimum penalties against a public school district, as defined, to elect to require the public school district to spend an equivalent amount towards the completion of a compliance project meeting prescribed requirements.*

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 13385 of the Water Code is amended to
- 2 read:
- 3 13385. (a) A person who violates any of the following is liable
- 4 civilly in accordance with this section:
- 5 (1) Section 13375 or 13376.

1 (2) Any waste discharge requirements or dredged or fill material
2 permit issued pursuant to this chapter or any water quality
3 certification issued pursuant to Section 13160.

4 (3) Any requirements established pursuant to Section 13383.

5 (4) Any order or prohibition issued pursuant to Section 13243
6 or Article 1 (commencing with Section 13300) of Chapter 5, if the
7 activity subject to the order or prohibition is subject to regulation
8 under this chapter.

9 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
10 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1341),
11 as amended.

12 (6) Any requirement imposed in a pretreatment program
13 approved pursuant to waste discharge requirements issued under
14 Section 13377 or approved pursuant to a permit issued by the
15 administrator.

16 (b) (1) Civil liability may be imposed by the superior court in
17 an amount not to exceed the sum of both of the following:

18 (A) Twenty-five thousand dollars (\$25,000) for each day in
19 which the violation occurs.

20 (B) If there is a discharge, any portion of which is not
21 susceptible to cleanup or is not cleaned up, and the volume
22 discharged but not cleaned up exceeds 1,000 gallons, an additional
23 liability not to exceed twenty-five dollars (\$25) multiplied by the
24 number of gallons by which the volume discharged but not cleaned
25 up exceeds 1,000 gallons.

26 (2) The Attorney General, upon request of a regional board or
27 the state board, shall petition the superior court to impose the
28 liability.

29 (c) Civil liability may be imposed administratively by the state
30 board or a regional board pursuant to Article 2.5 (commencing
31 with Section 13323) of Chapter 5 in an amount not to exceed the
32 sum of both of the following:

33 (1) Ten thousand dollars (\$10,000) for each day in which the
34 violation occurs.

35 (2) If there is a discharge, any portion of which is not susceptible
36 to cleanup or is not cleaned up, and the volume discharged but not
37 cleaned up exceeds 1,000 gallons, an additional liability not to
38 exceed ten dollars (\$10) multiplied by the number of gallons by
39 which the volume discharged but not cleaned up exceeds 1,000
40 gallons.

(d) For purposes of subdivisions (b) and (c), “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation if the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

1 (1) A violation caused by one or any combination of the
2 following:

3 (A) An act of war.

4 (B) An unanticipated, grave natural disaster or other natural
5 phenomenon of an exceptional, inevitable, and irresistible
6 character, the effects of which could not have been prevented or
7 avoided by the exercise of due care or foresight.

8 (C) An intentional act of a third party, the effects of which could
9 not have been prevented or avoided by the exercise of due care or
10 foresight.

11 (D) (i) The operation of a new or reconstructed wastewater
12 treatment unit during a defined period of adjusting or testing, not
13 to exceed 90 days for a wastewater treatment unit that relies on a
14 biological treatment process and not to exceed 30 days for any
15 other wastewater treatment unit, if all of the following requirements
16 are met:

17 (I) The discharger has submitted to the regional board, at least
18 30 days in advance of the operation, an operations plan that
19 describes the actions the discharger will take during the period of
20 adjusting and testing, including steps to prevent violations and
21 identifies the shortest reasonable time required for the period of
22 adjusting and testing, not to exceed 90 days for a wastewater
23 treatment unit that relies on a biological treatment process and not
24 to exceed 30 days for any other wastewater treatment unit.

25 (II) The regional board has not objected in writing to the
26 operations plan.

27 (III) The discharger demonstrates that the violations resulted
28 from the operation of the new or reconstructed wastewater
29 treatment unit and that the violations could not have reasonably
30 been avoided.

31 (IV) The discharger demonstrates compliance with the
32 operations plan.

33 (V) In the case of a reconstructed wastewater treatment unit,
34 the unit relies on a biological treatment process that is required to
35 be out of operation for at least 14 days in order to perform the
36 reconstruction, or the unit is required to be out of operation for at
37 least 14 days and, at the time of the reconstruction, the cost of
38 reconstructing the unit exceeds 50 percent of the cost of replacing
39 the wastewater treatment unit.

1 (ii) For the purposes of this section, “wastewater treatment unit”
2 means a component of a wastewater treatment plant that performs
3 a designated treatment function.

4 (2) (A) Except as provided in subparagraph (B), a violation of
5 an effluent limitation where the waste discharge is in compliance
6 with either a cease and desist order issued pursuant to Section
7 13301 or a time schedule order issued pursuant to Section 13300,
8 if all of the following requirements are met:

9 (i) The cease and desist order or time schedule order is issued
10 after January 1, 1995, but not later than July 1, 2000, specifies the
11 actions that the discharger is required to take in order to correct
12 the violations that would otherwise be subject to subdivisions (h)
13 and (i), and the date by which compliance is required to be achieved
14 and, if the final date by which compliance is required to be
15 achieved is later than one year from the effective date of the cease
16 and desist order or time schedule order, specifies the interim
17 requirements by which progress towards compliance will be
18 measured and the date by which the discharger will be in
19 compliance with each interim requirement.

20 (ii) The discharger has prepared and is implementing in a timely
21 and proper manner, or is required by the regional board to prepare
22 and implement, a pollution prevention plan that meets the
23 requirements of Section 13263.3.

24 (iii) The discharger demonstrates that it has carried out all
25 reasonable and immediately feasible actions to reduce
26 noncompliance with the waste discharge requirements applicable
27 to the waste discharge and the executive officer of the regional
28 board concurs with the demonstration.

29 (B) Subdivisions (h) and (i) shall become applicable to a waste
30 discharge on the date the waste discharge requirements applicable
31 to the waste discharge are revised and reissued pursuant to Section
32 13380, unless the regional board does all of the following on or
33 before that date:

34 (i) Modifies the requirements of the cease and desist order or
35 time schedule order as may be necessary to make it fully consistent
36 with the reissued waste discharge requirements.

37 (ii) Establishes in the modified cease and desist order or time
38 schedule order a date by which full compliance with the reissued
39 waste discharge requirements shall be achieved. For the purposes
40 of this subdivision, the regional board may not establish this date

1 later than five years from the date the waste discharge requirements
2 were required to be reviewed pursuant to Section 13380. If the
3 reissued waste discharge requirements do not add new effluent
4 limitations or do not include effluent limitations that are more
5 stringent than those in the original waste discharge requirements,
6 the date shall be the same as the final date for compliance in the
7 original cease and desist order or time schedule order or five years
8 from the date that the waste discharge requirements were required
9 to be reviewed pursuant to Section 13380, whichever is earlier.

10 (iii) Determines that the pollution prevention plan required by
11 clause (ii) of subparagraph (A) is in compliance with the
12 requirements of Section 13263.3 and that the discharger is
13 implementing the pollution prevention plan in a timely and proper
14 manner.

15 (3) A violation of an effluent limitation where the waste
16 discharge is in compliance with either a cease and desist order
17 issued pursuant to Section 13301 or a time schedule order issued
18 pursuant to Section 13300 or 13308, if all of the following
19 requirements are met:

20 (A) The cease and desist order or time schedule order is issued
21 on or after July 1, 2000, and specifies the actions that the discharger
22 is required to take in order to correct the violations that would
23 otherwise be subject to subdivisions (h) and (i).

24 (B) The regional board finds that, for one of the following
25 reasons, the discharger is not able to consistently comply with one
26 or more of the effluent limitations established in the waste
27 discharge requirements applicable to the waste discharge:

28 (i) The effluent limitation is a new, more stringent, or modified
29 regulatory requirement that has become applicable to the waste
30 discharge after the effective date of the waste discharge
31 requirements and after July 1, 2000, new or modified control
32 measures are necessary in order to comply with the effluent
33 limitation, and the new or modified control measures cannot be
34 designed, installed, and put into operation within 30 calendar days.

35 (ii) New methods for detecting or measuring a pollutant in the
36 waste discharge demonstrate that new or modified control measures
37 are necessary in order to comply with the effluent limitation and
38 the new or modified control measures cannot be designed, installed,
39 and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the *federal* Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the *federal* Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length, except that the time schedule may not exceed 10 years in length for the upgrade described in subclause (III) of clause (iv) of subparagraph (B). If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare

1 and implement, a pollution prevention plan pursuant to Section
2 13263.3.

3 ~~(4) A violation for which an action to impose liability is not~~
4 ~~requested pursuant to subdivision (b) by the state board or a~~
5 ~~regional board, or not imposed pursuant to subdivision (c), within~~
6 ~~one year of the date the state board or regional board receives~~
7 ~~notice of the violation.~~

8 (k) (1) (A) In lieu of assessing all or a portion of the mandatory
9 minimum penalties pursuant to subdivisions (h) and (i) against a
10 publicly owned treatment works serving a small community, the
11 state board or the regional board may elect to require the publicly
12 owned treatment works to spend an equivalent amount towards
13 the completion of a compliance project proposed by the publicly
14 owned treatment works, if the state board or the regional board
15 finds all of the following:

16 (A)

17 (i) The compliance project is designed to correct the violations
18 within five years.

19 (B)

20 (ii) The compliance project is in accordance with the
21 enforcement policy of the state board, excluding any provision in
22 the policy that is inconsistent with this section.

23 (C)

24 (iii) The publicly owned treatment works has prepared a
25 financing plan to complete the compliance project.

26 (2)

27 (B) For the purposes of this ~~subdivision~~ *paragraph*, “a publicly
28 owned treatment works serving a small community” means a
29 publicly owned treatment works serving a population of 20,000
30 persons or fewer or a rural county, with a financial hardship as
31 determined by the state board after considering such factors as
32 median income of the residents, rate of unemployment, or low
33 population density in the service area of the publicly owned
34 treatment works.

35 (2) *In lieu of assessing all or a portion of the mandatory*
36 *minimum penalties pursuant to subdivisions (h) and (i) against a*
37 *public school district, as defined in Section 80 of the Education*
38 *Code, for violations at school facilities, the state board or the*
39 *regional board may elect to require the public school district to*
40 *spend an equivalent amount towards the completion of a*

1 *compliance project proposed by the public school district, if the*
2 *state board or the regional board finds all of the following:*

3 *(A) The compliance project is designed to correct the violations*
4 *within five years.*

5 *(B) The compliance project is in accordance with the*
6 *enforcement policy of the state board, excluding any provision in*
7 *the policy that is inconsistent with this section.*

8 *(C) The public school district has prepared a financing plan to*
9 *complete the compliance project.*

10 *(l) (1) In lieu of assessing penalties pursuant to subdivision (h)*
11 *or (i), the state board or the regional board, with the concurrence*
12 *of the discharger, may direct a portion of the penalty amount to*
13 *be expended on a supplemental environmental project in*
14 *accordance with the enforcement policy of the state board. If the*
15 *penalty amount exceeds fifteen thousand dollars (\$15,000), the*
16 *portion of the penalty amount that may be directed to be expended*
17 *on a supplemental environmental project may not exceed fifteen*
18 *thousand dollars (\$15,000) plus 50 percent of the penalty amount*
19 *that exceeds fifteen thousand dollars (\$15,000).*

20 *(2) For the purposes of this section, a “supplemental*
21 *environmental project” means an environmentally beneficial project*
22 *that a person agrees to undertake, with the approval of the regional*
23 *board, that would not be undertaken in the absence of an*
24 *enforcement action under this section.*

25 *(3) This subdivision applies to the imposition of penalties*
26 *pursuant to subdivision (h) or (i) on or after January 1, 2003,*
27 *without regard to the date on which the violation occurs.*

28 *(m) The Attorney General, upon request of a regional board or*
29 *the state board, shall petition the appropriate court to collect any*
30 *liability or penalty imposed pursuant to this section. Any person*
31 *who fails to pay on a timely basis any liability or penalty imposed*
32 *under this section shall be required to pay, in addition to that*
33 *liability or penalty, interest, attorney’s fees, costs for collection*
34 *proceedings, and a quarterly nonpayment penalty for each quarter*
35 *during which the failure to pay persists. The nonpayment penalty*
36 *shall be in an amount equal to 20 percent of the aggregate amount*
37 *of the person’s penalty and nonpayment penalties that are unpaid*
38 *as of the beginning of the quarter.*

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i), and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

~~SEC. 2. Section 13385.1 of the Water Code is amended to read:~~

~~13385.1. (a) (1) For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.~~

1 ~~(2) Paragraph (1) applies only to violations that occur on or~~
2 ~~after January 1, 2004.~~

3 ~~(3) Notwithstanding paragraph (1), the violation described in~~
4 ~~that paragraph shall constitute a single violation unless the state~~
5 ~~board or a regional board has provided written notice to the violator~~
6 ~~with regard to the violation. Upon notification, each period of 30~~
7 ~~days following the notification shall constitute a separate serious~~
8 ~~violation in accordance with paragraph (1).~~

9 ~~(b) (1) Notwithstanding any other provision of law, moneys~~
10 ~~collected pursuant to this section for a failure to timely file a report,~~
11 ~~as described in subdivision (a), shall be deposited in the State~~
12 ~~Water Pollution Cleanup and Abatement Account.~~

13 ~~(2) Notwithstanding Section 13340 of the Government Code,~~
14 ~~the funds described in paragraph (1) are continuously appropriated,~~
15 ~~without regard to fiscal years, to the state board for expenditure~~
16 ~~by the state board to assist regional boards, and other public~~
17 ~~agencies with authority to clean up waste or abate the effects of~~
18 ~~the waste, in responding to significant water pollution problems.~~

19 ~~(c) For the purposes of this section, paragraph (2) of subdivision~~
20 ~~(f) of Section 13385, and subdivisions (h), (i), and (j) of Section~~
21 ~~13385 only, “effluent limitation” means a numeric restriction or~~
22 ~~a numerically expressed narrative restriction, on the quantity,~~
23 ~~discharge rate, concentration, or toxicity units of a pollutant or~~
24 ~~pollutants that may be discharged from an authorized location. An~~
25 ~~effluent limitation may be final or interim, and may be expressed~~
26 ~~as a prohibition. An effluent limitation, for those purposes, does~~
27 ~~not include a receiving water limitation, a compliance schedule,~~
28 ~~or a best management practice.~~