

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE JUNE 2, 2010

AMENDED IN SENATE APRIL 26, 2010

SENATE BILL

No. 1284

Introduced by Senator Ducheny

February 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as amended, Ducheny. Water quality: mandatory minimum civil penalties.

(1) 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, as prescribed. For purposes of the mandatory minimum penalty, a serious waste discharge violation includes a failure to file a specified discharge monitoring report for each complete period of 30 days following the deadline for submitting the report. 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 provide that certain violations involving the failure to file a discharge monitoring report are not subject to those mandatory~~

~~minimum penalties if certain requirements are met.~~ The bill would provide that a failure to file a discharge monitoring report is not a serious waste discharge violation if the discharger submits a specified statement to the *state board or the regional board*. The bill, until January 1, ~~2016~~ *2014*, would require, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report.

(2) The state act includes within the exceptions to the imposition of those mandatory minimum penalties a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. The act prohibits, for the purposes of that exception, a time schedule order from exceeding 5 years in length, except as otherwise provided.

This bill, with a specified exception, would authorize a regional board, following a public hearing *and upon a showing that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation*, to extend the time schedule for an additional period not exceeding 5 years in length, under specified 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 13385 of the Water Code is amended to
2 read:
3 13385. (a) A person who violates any of the following shall
4 be liable civilly in accordance with this section:
5 (1) Section 13375 or 13376.
6 (2) A waste discharge requirement or dredged or fill material
7 permit issued pursuant to this chapter or any water quality
8 certification issued pursuant to Section 13160.
9 (3) A requirement established pursuant to Section 13383.
10 (4) An order or prohibition issued pursuant to Section 13243 or
11 Article 1 (commencing with Section 13300) of Chapter 5, if the
12 activity subject to the order or prohibition is subject to regulation
13 under this chapter.

1 (5) A requirement of Section 301, 302, 306, 307, 308, 318, 401,
2 or 405 of the Clean Water Act, as amended.

3 (6) A requirement imposed in a pretreatment program approved
4 pursuant to waste discharge requirements issued under Section
5 13377 or approved pursuant to a permit issued by the administrator.

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

8 (1) Twenty-five thousand dollars (\$25,000) for each day in
9 which the violation occurs.

10 (2) Where there is a discharge, any portion of which is not
11 susceptible to cleanup or is not cleaned up, and the volume
12 discharged but not cleaned up exceeds 1,000 gallons, an additional
13 liability not to exceed twenty-five dollars (\$25) multiplied by the
14 number of gallons by which the volume discharged but not cleaned
15 up exceeds 1,000 gallons.

16 The Attorney General, upon request of a regional board or the
17 state board, shall petition the superior court to impose the liability.

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

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

24 (2) Where there is a discharge, any portion of which is not
25 susceptible to cleanup or is not cleaned up, and the volume
26 discharged but not cleaned up exceeds 1,000 gallons, an additional
27 liability not to exceed ten dollars (\$10) multiplied by the number
28 of gallons by which the volume discharged but not cleaned up
29 exceeds 1,000 gallons.

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

34 (e) In determining the amount of any liability imposed under
35 this section, the regional board, the state board, or the superior
36 court, as the case may be, shall take into account the nature,
37 circumstances, extent, and gravity of the violation or violations,
38 whether the discharge is susceptible to cleanup or abatement, the
39 degree of toxicity of the discharge, and, with respect to the violator,
40 the ability to pay, the effect on its ability to continue its business,

1 any voluntary cleanup efforts undertaken, any prior history of
2 violations, the degree of culpability, economic benefit or savings,
3 if any, resulting from the violation, and other matters that justice
4 may require. At a minimum, liability shall be assessed at a level
5 that recovers the economic benefits, if any, derived from the acts
6 that constitute the violation.

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

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

18 (i) The discharger demonstrates all of the following:

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

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

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

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

29 (B) Subparagraph (A) only applies to violations that occur
30 during a period for which the regional board has determined that
31 violations are unavoidable, but in no case may that period exceed
32 30 days.

33 (g) Remedies under this section are in addition to, and do not
34 supersede or limit, any other remedies, civil or criminal, except
35 that no liability shall be recoverable under Section 13261, 13265,
36 13268, or 13350 for violations for which liability is recovered
37 under this section.

38 (h) (1) Notwithstanding any other provision of this division,
39 and except as provided in subdivisions (j), (k), and (l), a mandatory

1 minimum penalty of three thousand dollars (\$3,000) shall be
2 assessed for each serious violation.

3 (2) For the purposes of this section, a “serious violation” means
4 any waste discharge that violates the effluent limitations contained
5 in the applicable waste discharge requirements for a Group II
6 pollutant, as specified in Appendix A to Section 123.45 of Title
7 40 of the Code of Federal Regulations, by 20 percent or more or
8 for a Group I pollutant, as specified in Appendix A to Section
9 123.45 of Title 40 of the Code of Federal Regulations, by 40
10 percent or more.

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

19 (A) Violates a waste discharge requirement effluent limitation.

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

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

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

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

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

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

33 (A) An act of war.

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

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

1 (D) (i) The operation of a new or reconstructed wastewater
2 treatment unit during a defined period of adjusting or testing, not
3 to exceed 90 days for a wastewater treatment unit that relies on a
4 biological treatment process and not to exceed 30 days for any
5 other wastewater treatment unit, if all of the following requirements
6 are met:

7 (I) The discharger has submitted to the regional board, at least
8 30 days in advance of the operation, an operations plan that
9 describes the actions the discharger will take during the period of
10 adjusting and testing, including steps to prevent violations and
11 identifies the shortest reasonable time required for the period of
12 adjusting and testing, not to exceed 90 days for a wastewater
13 treatment unit that relies on a biological treatment process and not
14 to exceed 30 days for any other wastewater treatment unit.

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

17 (III) The discharger demonstrates that the violations resulted
18 from the operation of the new or reconstructed wastewater
19 treatment unit and that the violations could not have reasonably
20 been avoided.

21 (IV) The discharger demonstrates compliance with the
22 operations plan.

23 (V) In the case of a reconstructed wastewater treatment unit,
24 the unit relies on a biological treatment process that is required to
25 be out of operation for at least 14 days in order to perform the
26 reconstruction, or the unit is required to be out of operation for at
27 least 14 days and, at the time of the reconstruction, the cost of
28 reconstructing the unit exceeds 50 percent of the cost of replacing
29 the wastewater treatment unit.

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

33 (2) (A) Except as provided in subparagraph (B), a violation of
34 an effluent limitation where the waste discharge is in compliance
35 with either a cease and desist order issued pursuant to Section
36 13301 or a time schedule order issued pursuant to Section 13300,
37 if all of the following requirements are met:

38 (i) The cease and desist order or time schedule order is issued
39 after January 1, 1995, but not later than July 1, 2000, specifies the
40 actions that the discharger is required to take in order to correct

1 the violations that would otherwise be subject to subdivisions (h)
2 and (i), and the date by which compliance is required to be achieved
3 and, if the final date by which compliance is required to be
4 achieved is later than one year from the effective date of the cease
5 and desist order or time schedule order, specifies the interim
6 requirements by which progress towards compliance will be
7 measured and the date by which the discharger will be in
8 compliance with each interim requirement.

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

13 (iii) The discharger demonstrates that it has carried out all
14 reasonable and immediately feasible actions to reduce
15 noncompliance with the waste discharge requirements applicable
16 to the waste discharge and the executive officer of the regional
17 board concurs with the demonstration.

18 (B) Subdivisions (h) and (i) shall become applicable to a waste
19 discharge on the date the waste discharge requirements applicable
20 to the waste discharge are revised and reissued pursuant to Section
21 13380, unless the regional board does all of the following on or
22 before that date:

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

26 (ii) Establishes in the modified cease and desist order or time
27 schedule order a date by which full compliance with the reissued
28 waste discharge requirements shall be achieved. For the purposes
29 of this subdivision, the regional board may not establish this date
30 later than five years from the date the waste discharge requirements
31 were required to be reviewed pursuant to Section 13380. If the
32 reissued waste discharge requirements do not add new effluent
33 limitations or do not include effluent limitations that are more
34 stringent than those in the original waste discharge requirements,
35 the date shall be the same as the final date for compliance in the
36 original cease and desist order or time schedule order or five years
37 from the date that the waste discharge requirements were required
38 to be reviewed pursuant to Section 13380, whichever is earlier.

39 (iii) Determines that the pollution prevention plan required by
40 clause (ii) of subparagraph (A) is in compliance with the

1 requirements of Section 13263.3 and that the discharger is
2 implementing the pollution prevention plan in a timely and proper
3 manner.

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

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

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

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

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

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

38 (iv) The discharger is a publicly owned treatment works located
39 in Orange County that is unable to meet effluent limitations for

1 biological oxygen demand, suspended solids, or both, because the
2 publicly owned treatment works meets all of the following criteria:

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

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

8 (III) Is in the process of upgrading its treatment facilities to
9 meet the secondary treatment standards required by Section
10 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
11 1311(b)(1)(B)).

12 (C) (i) The regional board establishes a time schedule for
13 bringing the waste discharge into compliance with the effluent
14 limitation that is as short as possible, taking into account the
15 technological, operational, and economic factors that affect the
16 design, development, and implementation of the control measures
17 that are necessary to comply with the effluent limitation. Except
18 as provided in clause (ii), for the purposes of this subdivision, the
19 time schedule shall not exceed five years in length.

20 (ii) (I) For purposes of the upgrade described in subclause (III)
21 of clause (iv) of subparagraph (B), the time schedule shall not
22 exceed 10 years in length.

23 (II) Following a public hearing, *and upon a showing that the*
24 *discharger is making diligent progress toward bringing the waste*
25 *discharge into compliance with the effluent limitation*, the regional
26 board may extend the time schedule for an additional period not
27 exceeding five years in length, if the discharger demonstrates that
28 the additional time is necessary to comply with the effluent
29 limitation. This subclause does not apply to a time schedule
30 described in subclause (I).

31 (iii) If the time schedule exceeds one year from the effective
32 date of the order, the schedule shall include interim requirements
33 and the dates for their achievement. The interim requirements shall
34 include both of the following:

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

36 (II) Actions and milestones leading to compliance with the
37 effluent limitation.

38 (D) The discharger has prepared and is implementing in a timely
39 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 (k) (1) In lieu of assessing all or a portion of the mandatory
4 minimum penalties pursuant to subdivisions (h) and (i) against a
5 publicly owned treatment works serving a small community, the
6 state board or the regional board may elect to require the publicly
7 owned treatment works to spend an equivalent amount towards
8 the completion of a compliance project proposed by the publicly
9 owned treatment works, if the state board or the regional board
10 finds all of the following:

11 (A) The compliance project is designed to correct the violations
12 within five years.

13 (B) The compliance project is in accordance with the
14 enforcement policy of the state board, excluding any provision in
15 the policy that is inconsistent with this section.

16 (C) The publicly owned treatment works has prepared a
17 financing plan to complete the compliance project.

18 (2) For the purposes of this subdivision, “a publicly owned
19 treatment works serving a small community” means a publicly
20 owned treatment works serving a population of 10,000 persons or
21 fewer or a rural county, with a financial hardship as determined
22 by the state board after considering such factors as median income
23 of the residents, rate of unemployment, or low population density
24 in the service area of the publicly owned treatment works.

25 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)
26 or (i), the state board or the regional board, with the concurrence
27 of the discharger, may direct a portion of the penalty amount to
28 be expended on a supplemental environmental project in
29 accordance with the enforcement policy of the state board. If the
30 penalty amount exceeds fifteen thousand dollars (\$15,000), the
31 portion of the penalty amount that may be directed to be expended
32 on a supplemental environmental project may not exceed fifteen
33 thousand dollars (\$15,000) plus 50 percent of the penalty amount
34 that exceeds fifteen thousand dollars (\$15,000).

35 (2) For the purposes of this section, a “supplemental
36 environmental project” means an environmentally beneficial project
37 that a person agrees to undertake, with the approval of the regional
38 board, that would not be undertaken in the absence of an
39 enforcement action under this section.

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

4 (m) The Attorney General, upon request of a regional board or
5 the state board, shall petition the appropriate court to collect any
6 liability or penalty imposed pursuant to this section. Any person
7 who fails to pay on a timely basis any liability or penalty imposed
8 under this section shall be required to pay, in addition to that
9 liability or penalty, interest, attorney's fees, costs for collection
10 proceedings, and a quarterly nonpayment penalty for each quarter
11 during which the failure to pay persists. The nonpayment penalty
12 shall be in an amount equal to 20 percent of the aggregate amount
13 of the person's penalty and nonpayment penalties that are unpaid
14 as of the beginning of the quarter.

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

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

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

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

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

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

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

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

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

7 13385.1. (a) (1) For the purposes of subdivision (h) of Section
 8 13385, a “serious violation” also means a failure to file a discharge
 9 monitoring report required pursuant to Section 13383 for each
 10 complete period of 30 days following the deadline for submitting
 11 the report, if the report is designed to ensure compliance with
 12 limitations contained in waste discharge requirements that contain
 13 effluent limitations. This paragraph applies only to violations that
 14 occur on or after January 1, 2004.

15 ~~(2) For the purposes of paragraph (1), a discharge monitoring~~
 16 ~~report required pursuant to Section 13383 is not designed to ensure~~
 17 ~~compliance with effluent limitations contained in waste discharge~~
 18 ~~requirements if no discharges occur during the applicable reporting~~
 19 ~~period.~~

20 ~~(3)~~

21 (2) (A) Notwithstanding paragraph (1), a failure to file a
 22 discharge monitoring report is not a serious violation for purposes
 23 of subdivision (h) of Section 13385 *at any time prior to the date*
 24 *a discharge monitoring report is required to be filed or within 30*
 25 *days after receiving written notice from the state board or a*
 26 *regional board of the need to file a discharge monitoring report,*
 27 if the discharger submits a written statement to the state board or
 28 the regional board that includes both of the following:

29 (i) A statement that there were no discharges to waters of the
 30 United States *reportable under the applicable waste discharge*
 31 *requirements* during the relevant monitoring period.

32 (ii) The reason or reasons the required report was not submitted
 33 to the regional board by the deadline for filing that report.

34 (B) *Upon the request of the state board or regional board, the*
 35 *discharger may be required to support the statement with*
 36 *additional explanation or evidence.*

37 ~~(B)~~

38 (C) If, in a statement submitted pursuant to subparagraph (A),
 39 the discharger willfully states as true any material fact that he or
 40 she knows to be false, that person shall be subject to a civil penalty

1 not exceeding ten thousand dollars (\$10,000). Any public
2 prosecutor may bring an action for a civil penalty under this
3 subparagraph in the name of the people of the State of California,
4 and the penalty imposed shall be enforced as a civil judgment.

5 (C)

6 (D) Notwithstanding subparagraph (A), the failure to file a
7 discharge monitoring report is subject to penalties in accordance
8 with subdivisions (c) and (e) of Section 13385.

9 (b) (1) Notwithstanding paragraph (1) of subdivision (a), a
10 mandatory minimum penalty shall *continue to apply and shall be*
11 *assessed pursuant to subdivision (h) of Section 13385, but only*
12 *for each required report that is not timely filed, and shall not be*
13 *separately assessed for each 30-day period following the deadline*
14 *for submitting the report, if both of the following conditions are*
15 *met:*

16 (A) The discharger did not *on any occasion* previously receive,
17 from the state board or a regional board, ~~a notice of an enforcement~~
18 ~~action imposing a mandatory minimum penalty pursuant to~~
19 ~~subdivision (h) of Section 13385 for a failure to file a discharge~~
20 ~~monitoring report in connection with the same waste discharge~~
21 ~~requirements: a complaint to impose liability pursuant to~~
22 ~~subdivision (b) or (c) of Section 13385 arising from a failure to~~
23 ~~timely file a discharge monitoring report, a notice of violation for~~
24 ~~failure to timely file a discharge monitoring report, or a notice of~~
25 ~~the obligation to file a discharge monitoring report required~~
26 ~~pursuant to Section 13383, in connection with its corresponding~~
27 ~~waste discharge requirements.~~

28 (B) The discharges during the period or periods covered by the
29 report do not violate effluent limitations, *as defined in subdivision*
30 *(d), contained in waste discharge requirements that include numeric*
31 ~~waste discharge requirements.~~

32 (2) Paragraph (1) shall only apply to a discharger who does
33 both of the following:

34 (A) Files a discharge monitoring report that had not previously
35 been timely filed within 90 days after the discharger receives
36 written notice, including notice transmitted by electronic mail,
37 from the state board or regional board concerning the failure to
38 timely file the report.

39 (B) Pays all penalties assessed by the state board or regional
40 board in accordance with paragraph (1) within 60 days after the

1 *discharger receives written notice, including notice transmitted*
2 *by electronic mail, from the state board or regional board setting*
3 *forth the amount of the penalties.*

4 ~~(2)~~

5 (3) Notwithstanding paragraph (1), the failure to file a discharge
6 monitoring report is subject to penalties in accordance with
7 subdivisions (c) and (e) of Section 13385.

8 ~~(3)~~

9 (4) This subdivision shall become inoperative on January 1,
10 ~~2016~~ 2014.

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

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

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

31 (e) The amendments made to this section by Senate Bill 1284
32 of the 2009–10 Regular Session of the Legislature shall apply to
33 violations for which ~~penalties have not been imposed pursuant to~~
34 ~~Section 13385 before the effective date of those amendments, an~~
35 *administrative civil liability complaint or a judicial complaint has*
36 *not been filed before July 1, 2010*, without regard to the date on
37 which the violations occurred.

O