

**ASSEMBLY BILL**

**No. 246**

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**Introduced by Assembly Member Wieckowski**

February 3, 2011

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An act to amend Sections 13223, 13350, 13361, 13385, and 13386 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 246, as introduced, Wieckowski. Water quality: enforcement.

(1) The Porter-Cologne Water Quality Act authorizes each California regional water quality control board to delegate certain powers to its executive officer. That authorization, except as specified, excludes the delegation to its executive officer of the power of application to the Attorney General for judicial enforcement.

This bill would delete that exclusion, and, instead, specifically authorize a regional board, commencing January 1, 2012, to delegate to its executive officer the authority to apply for judicial enforcement to the Attorney General, a district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county.

(2) The act requires every civil action brought under its provisions to be brought by the Attorney General in the name of the people, upon request of the State Water Resources Control Board or a regional board, authorizes those actions to be joined or consolidated, and provides in prescribed circumstances for petition to a court for relief.

This bill, with specified exceptions, would additionally authorize a district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county, to bring civil actions

under the act, and would make conforming changes to those petition provisions.

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 13223 of the Water Code is amended to  
2 read:

3 13223. (a) Each regional board may delegate any of its powers  
4 and duties vested in it by this division to its executive officer  
5 ~~excepting only officer, except~~ the following: ~~(1) the promulgation~~  
6 ~~of any regulation; (2) the issuance, modification, or revocation of~~  
7 ~~any water quality control plan, water quality objectives, or waste~~  
8 ~~discharge requirement; (3) the issuance, modification, or~~  
9 ~~revocation of any cease and desist order; (4) the holding of any~~  
10 ~~hearing on water quality control plans; and (5) the application to~~  
11 ~~the Attorney General for judicial enforcement but excluding cases~~  
12 ~~of specific delegation in a cease and desist order and excluding~~  
13 ~~the cases described in subdivision (c) of Section 13002 and~~  
14 ~~Sections 13304 and 13340.~~

15 (1) *The promulgation of any regulation.*

16 (2) *The issuance, modification, or revocation of any water*  
17 *quality control plan, water quality objectives, or waste discharge*  
18 *requirement.*

19 (3) *The issuance, modification, or revocation of any cease and*  
20 *desist order.*

21 (4) *The holding of any hearing on water quality control plans.*

22 (b) ~~Whenever any~~ A reference is made in this division to any  
23 action that may be taken by a regional board, ~~such reference~~ board  
24 includes ~~such an~~ action by its executive officer pursuant to powers  
25 and duties delegated to ~~him~~ *the executive officer* by the regional  
26 board.

27 (c) *Commencing January 1, 2012, a regional board may also*  
28 *delegate to its executive officer the authority to apply for judicial*  
29 *enforcement to the Attorney General, a district attorney, a city*  
30 *attorney of a city with a population that exceeds 750,000, or a city*  
31 *attorney for a city and county.*

32 SEC. 2. Section 13350 of the Water Code is amended to read:

1 13350. (a) A person who (1) violates a cease and desist order  
2 or cleanup and abatement order hereafter issued, reissued, or  
3 amended by a regional board or the state board, or (2) in violation  
4 of a waste discharge requirement, waiver condition, certification,  
5 or other order or prohibition issued, reissued, or amended by a  
6 regional board or the state board, discharges waste, or causes or  
7 permits waste to be deposited where it is discharged, into the waters  
8 of the state, or (3) causes or permits any oil or any residuary  
9 product of petroleum to be deposited in or on any of the waters of  
10 the state, except in accordance with waste discharge requirements  
11 or other actions or provisions of this division, shall be liable civilly,  
12 and remedies may be proposed, in accordance with subdivision  
13 (d) or (e).

14 (b) (1) A person who, without regard to intent or negligence,  
15 causes or permits a hazardous substance to be discharged in or on  
16 any of the waters of the state, except in accordance with waste  
17 discharge requirements or other provisions of this division, shall  
18 be strictly liable civilly in accordance with subdivision (d) or (e).

19 (2) For purposes of this subdivision, the term “discharge”  
20 includes only those discharges for which Section 13260 directs  
21 that a report of waste discharge shall be filed with the regional  
22 board.

23 (3) For purposes of this subdivision, the term “discharge” does  
24 not include an emission excluded from the applicability of Section  
25 311 of the *federal* Clean Water Act (33 U.S.C. Sec. 1321) pursuant  
26 to Environmental Protection Agency regulations interpreting  
27 Section 311(a)(2) of the *federal* Clean Water Act (33 U.S.C. Sec.  
28 1321(a)(2)).

29 (c) A person shall not be liable under subdivision (b) if the  
30 discharge is caused solely by any one or combination of the  
31 following:

32 (1) An act of war.

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

37 (3) Negligence on the part of the state, the United States, or any  
38 department or agency thereof. However, this paragraph shall not  
39 be interpreted to provide the state, the United States, or any

1 department or agency thereof a defense to liability for any  
2 discharge caused by its own negligence.

3 (4) An intentional act of a third party, the effects of which could  
4 not have been prevented or avoided by the exercise of due care or  
5 foresight.

6 (5) Any other circumstance or event that causes the discharge  
7 despite the exercise of every reasonable precaution to prevent or  
8 mitigate the discharge.

9 (d) The court may impose civil liability either on a daily basis  
10 or on a per gallon basis, but not on both.

11 (1) The civil liability on a daily basis shall not exceed fifteen  
12 thousand dollars (\$15,000) for each day the violation occurs.

13 (2) The civil liability on a per gallon basis shall not exceed  
14 twenty dollars (\$20) for each gallon of waste discharged.

15 (e) The state board or a regional board may impose civil liability  
16 administratively pursuant to Article 2.5 (commencing with Section  
17 13323) of Chapter 5 either on a daily basis or on a per gallon basis,  
18 but not on both.

19 (1) The civil liability on a daily basis shall not exceed five  
20 thousand dollars (\$5,000) for each day the violation occurs.

21 (A) When there is a discharge, and a cleanup and abatement  
22 order is issued, except as provided in subdivision (f), the civil  
23 liability shall not be less than five hundred dollars (\$500) for each  
24 day in which the discharge occurs and for each day the cleanup  
25 and abatement order is violated.

26 (B) When there is no discharge, but an order issued by the  
27 regional board is violated, except as provided in subdivision (f),  
28 the civil liability shall not be less than one hundred dollars (\$100)  
29 for each day in which the violation occurs.

30 (2) The civil liability on a per gallon basis shall not exceed ten  
31 dollars (\$10) for each gallon of waste discharged.

32 (f) A regional board shall not administratively impose civil  
33 liability in accordance with paragraph (1) of subdivision (e) in an  
34 amount less than the minimum amount specified, unless the  
35 regional board makes express findings setting forth the reasons  
36 for its action based upon the specific factors required to be  
37 considered pursuant to Section 13327.

38 (g) (1) The Attorney General, upon request of a regional board  
39 or the state board, shall petition the superior court to impose, assess,  
40 and recover the sums. Except in the case of a violation of a cease

1 ~~and desist order, a regional board or the state board shall make the~~  
2 ~~request only after a hearing, with due notice of the hearing given~~  
3 ~~to all affected persons: those sums.~~ In determining the amount to  
4 be imposed, assessed, or recovered, ~~the amount,~~ the court shall be  
5 subject to Section 13351.

6 *(2) A district attorney, a city attorney of a city with a population*  
7 *that exceeds 750,000, or a city attorney for a city and county, upon*  
8 *request of the state board or a regional board, may petition the*  
9 *superior court to impose, assess, and recover those sums. In*  
10 *determining that amount, the court shall be subject to Section*  
11 *13351.*

12 (h) Article 3 (commencing with Section 13330) and Article 6  
13 (commencing with Section 13360) apply to proceedings to impose,  
14 assess, and recover an amount pursuant to this article.

15 (i) A person who incurs any liability established under this  
16 section shall be entitled to contribution for that liability from a  
17 third party, in an action in the superior court and upon proof that  
18 the discharge was caused in whole or in part by an act or omission  
19 of the third party, to the extent that the discharge is caused by the  
20 act or omission of the third party, in accordance with the principles  
21 of comparative fault.

22 (j) Remedies under this section are in addition to, and do not  
23 supersede or limit, any and all other remedies, civil or criminal,  
24 except that no liability shall be recoverable under subdivision (b)  
25 for any discharge for which liability is recovered under Section  
26 13385.

27 (k) Notwithstanding any other law, all funds generated by the  
28 imposition of liabilities pursuant to this section shall be deposited  
29 into the Waste Discharge Permit Fund. These moneys shall be  
30 separately accounted for, and shall be expended by the state board,  
31 upon appropriation by the Legislature, to assist regional boards,  
32 and other public agencies with authority to clean up waste or abate  
33 the effects of the waste, in cleaning up or abating the effects of the  
34 waste on waters of the state, or for the purposes authorized in  
35 Section 13443, or to assist in implementing Chapter 7.3  
36 (commencing with Section 13560).

37 SEC. 3. Section 13361 of the Water Code is amended to read:

38 13361. (a) *(1) Every civil action brought at the request of a*  
39 *regional board or the state board to enforce Section 13350 or*  
40 *Chapter 5.5 (commencing with Section 13370) shall be brought*

1 *by the Attorney General, a district attorney, a city attorney of a*  
2 *city with a population that exceeds 750,000, or a city attorney for*  
3 *a city and county, in the name of the people of the State of*  
4 *California and those actions relating to the same discharge may*  
5 *be joined or consolidated.*

6 (2) Every civil action brought ~~under the provisions of this~~  
7 ~~division~~ at the request of a regional board or the state board to  
8 *enforce provisions of this division, other than Section 13350 or*  
9 *Chapter 5.5 (commencing with Section 13370), shall be brought*  
10 *by the Attorney General in the name of the people of the State of*  
11 *California and any such those actions relating to the same discharge*  
12 *may be joined or consolidated.*

13 (b) Any civil action brought pursuant to this division shall be  
14 brought in a county in which the discharge is made, or proposed  
15 to be made. However, any action by or against a city, city and  
16 county, county, or other public agency shall, upon motion of either  
17 party, be transferred to a county or city and county not a party to  
18 the action or to a county or city and county other than that in which  
19 the city or public agency is located.

20 (c) In any civil action brought pursuant to this division in which  
21 a temporary restraining order, preliminary injunction, or permanent  
22 injunction is sought, it shall not be necessary to allege or prove at  
23 any stage of the proceeding that irreparable damage will occur  
24 should the temporary restraining order, preliminary injunction, or  
25 permanent injunction not be issued, or that the remedy at law is  
26 inadequate, and the temporary restraining order, preliminary  
27 injunction, or permanent injunction shall issue without ~~such those~~  
28 *allegations and without such that proof.*

29 SEC. 4. Section 13385 of the Water Code is amended to read:  
30 13385. (a) A person who violates any of the following shall  
31 be liable civilly in accordance with this section:

32 (1) Section 13375 or 13376.

33 (2) A waste discharge requirement or dredged or fill material  
34 permit issued pursuant to this chapter or any water quality  
35 certification issued pursuant to Section 13160.

36 (3) A requirement established pursuant to Section 13383.

37 (4) An order or prohibition issued pursuant to Section 13243 or  
38 Article 1 (commencing with Section 13300) of Chapter 5, if the  
39 activity subject to the order or prohibition is subject to regulation  
40 under this chapter.

1 (5) A requirement of Section 301, 302, 306, 307, 308, 318, 401,  
2 or 405 of the *federal* Clean Water Act (33 U.S.C. Sec. 1311, 1312,  
3 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

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

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

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

11 (2) Where there is a discharge, any portion of which is not  
12 susceptible to cleanup or is not cleaned up, and the volume  
13 discharged but not cleaned up exceeds 1,000 gallons, an additional  
14 liability not to exceed twenty-five dollars (\$25) multiplied by the  
15 number of gallons by which the volume discharged but not cleaned  
16 up exceeds 1,000 gallons. *Upon request of a regional board or*  
17 *the state board, the Attorney General shall petition the superior*  
18 *court to impose the liability. Upon request of the state board or a*  
19 *regional board, a district attorney, a city attorney of a city with a*  
20 *population that exceeds 750,000, or a city attorney for a city and*  
21 *county, may petition the superior court to impose the liability.*

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

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

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

30 (2) Where there is a discharge, any portion of which is not  
31 susceptible to cleanup or is not cleaned up, and the volume  
32 discharged but not cleaned up exceeds 1,000 gallons, an additional  
33 liability not to exceed ten dollars (\$10) multiplied by the number  
34 of gallons by which the volume discharged but not cleaned up  
35 exceeds 1,000 gallons.

36 (d) For purposes of subdivisions (b) and (c), “discharge”  
37 includes any discharge to navigable waters of the United States,  
38 any introduction of pollutants into a publicly owned treatment  
39 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 whenever 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) A violation caused by one or any combination of the following:

(A) An act of war.

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

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

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

14 (I) The discharger has submitted to the regional board, at least  
15 30 days in advance of the operation, an operations plan that  
16 describes the actions the discharger will take during the period of  
17 adjusting and testing, including steps to prevent violations and  
18 identifies the shortest reasonable time required for the period of  
19 adjusting and testing, not to exceed 90 days for a wastewater  
20 treatment unit that relies on a biological treatment process and not  
21 to exceed 30 days for any other wastewater treatment unit.

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

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

28 (IV) The discharger demonstrates compliance with the  
29 operations plan.

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

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

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

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

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

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

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

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

34 (ii) Establishes in the modified cease and desist order or time  
35 schedule order a date by which full compliance with the reissued  
36 waste discharge requirements shall be achieved. For the purposes  
37 of this subdivision, the regional board may not establish this date  
38 later than five years from the date the waste discharge requirements  
39 were required to be reviewed pursuant to Section 13380. If the  
40 reissued waste discharge requirements do not add new effluent

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

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

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

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

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

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

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

37 (iii) Unanticipated changes in the quality of the municipal or  
38 industrial water supply available to the discharger are the cause  
39 of unavoidable changes in the composition of the waste discharge,  
40 the changes in the composition of the waste discharge are the cause

1 of the inability to comply with the effluent limitation, no alternative  
2 water supply is reasonably available to the discharger, and new or  
3 modified measures to control the composition of the waste  
4 discharge cannot be designed, installed, and put into operation  
5 within 30 calendar days.

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

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

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

15 (III) Is in the process of upgrading its treatment facilities to  
16 meet the secondary treatment standards required by Section  
17 301(b)(1)(B) of the *federal* Clean Water Act (33 U.S.C. Sec.  
18 1311(b)(1)(B)).

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

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

30 (II) Following a public hearing, and upon a showing that the  
31 discharger is making diligent progress toward bringing the waste  
32 discharge into compliance with the effluent limitation, the regional  
33 board may extend the time schedule for an additional period not  
34 exceeding five years in length, if the discharger demonstrates that  
35 the additional time is necessary to comply with the effluent  
36 limitation. This subclause does not apply to a time schedule  
37 described in subclause (I).

38 (iii) If the time schedule exceeds one year from the effective  
39 date of the order, the schedule shall include interim requirements

1 and the dates for their achievement. The interim requirements shall  
2 include both of the following:

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

4 (II) Actions and milestones leading to compliance with the  
5 effluent limitation.

6 (D) The discharger has prepared and is implementing in a timely  
7 and proper manner, or is required by the regional board to prepare  
8 and implement, a pollution prevention plan pursuant to Section  
9 13263.3.

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

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

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

25 (2) For the purposes of this subdivision, “a publicly owned  
26 treatment works serving a small community” means a publicly  
27 owned treatment works serving a population of 10,000 persons or  
28 fewer or a rural county, with a financial hardship as determined  
29 by the state board after considering such factors as median income  
30 of the residents, rate of unemployment, or low population density  
31 in the service area of the publicly owned treatment works.

32 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)  
33 or (i), the state board or the regional board, with the concurrence  
34 of the discharger, may direct a portion of the penalty amount to  
35 be expended on a supplemental environmental project in  
36 accordance with the enforcement policy of the state board. If the  
37 penalty amount exceeds fifteen thousand dollars (\$15,000), the  
38 portion of the penalty amount that may be directed to be expended  
39 on a supplemental environmental project may not exceed fifteen

1 thousand dollars (\$15,000) plus 50 percent of the penalty amount  
2 that exceeds fifteen thousand dollars (\$15,000).

3 (2) For the purposes of this section, a “supplemental  
4 environmental project” means an environmentally beneficial project  
5 that a person agrees to undertake, with the approval of the regional  
6 board, that would not be undertaken in the absence of an  
7 enforcement action under this section.

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

11 ~~(m) The Attorney General, upon~~ Upon request of a regional  
12 board or the state board, ~~the Attorney General~~ shall petition the  
13 appropriate court to collect any liability or penalty imposed  
14 pursuant to this section. *Upon request of the state board or a*  
15 *regional board, a district attorney, a city attorney of a city with a*  
16 *population that exceeds 750,000, or a city attorney for a city and*  
17 *county, may petition the appropriate court to collect any liability*  
18 *or penalty pursuant to this section.* Any person who fails to pay  
19 on a timely basis any liability or penalty imposed under this section  
20 shall be required to pay, in addition to that liability or penalty,  
21 interest, attorney’s fees, costs for collection proceedings, and a  
22 quarterly nonpayment penalty for each quarter during which the  
23 failure to pay persists. The nonpayment penalty shall be in an  
24 amount equal to 20 percent of the aggregate amount of the person’s  
25 penalty and nonpayment penalties that are unpaid as of the  
26 beginning of the quarter.

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

30 (2) (A) Notwithstanding any other provision of law, moneys  
31 collected for a violation of a water quality certification in  
32 accordance with paragraph (2) of subdivision (a) or for a violation  
33 of Section 401 of the *federal* Clean Water Act (33 U.S.C. Sec.  
34 1341) in accordance with paragraph (5) of subdivision (a) shall be  
35 deposited in the Waste Discharge Permit Fund and separately  
36 accounted for in that fund.

37 (B) The funds described in subparagraph (A) shall be expended  
38 by the state board, upon appropriation by the Legislature, to assist  
39 regional boards, and other public agencies with authority to clean  
40 up waste or abate the effects of the waste, in cleaning up or abating

1 the effects of the waste on waters of the state or for the purposes  
2 authorized in Section 13443.

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

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

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

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

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

18 SEC. 5. Section 13386 of the Water Code is amended to read:

19 13386. (a) (1) Upon any threatened or continuing violation  
20 of any of the requirements listed in paragraphs (1) to (6), inclusive,  
21 of subdivision (a) of Section 13385, or upon the failure of any  
22 discharger into a public treatment system to comply with any cost  
23 or charge adopted by any public agency under Section 204(b) of  
24 the ~~Federal~~ *federal Clean Water Pollution Control Act, Act (33*  
25 *U.S.C. Sec. 1284(b))*, as amended, the Attorney General, upon the  
26 request of the state board or regional ~~board~~ *board*, shall petition  
27 the appropriate court for the issuance of a preliminary or permanent  
28 injunction, or both, as appropriate, restraining that person or  
29 persons from committing or continuing the violation. ~~Subdivision~~  
30 ~~(b) of Section 13331 shall be applicable to proceedings under this~~  
31 ~~section.~~

32 (2) *Upon request of the state board or a regional board, a*  
33 *district attorney, a city attorney of a city with a population that*  
34 *exceeds 750,000, or a city attorney for a city and county, may*  
35 *petition the appropriate court for the issuance of a preliminary or*  
36 *permanent injunction, or both, as appropriate, restraining that*  
37 *person or persons from committing or continuing the violation*  
38 *specified in paragraph (1).*

39 (b) *The court shall issue an order directing defendants to appear*  
40 *before the court at a time and place certain and show cause why*

- 1 *the injunction should not be issued. The court may grant*
- 2 *prohibitory or mandatory relief as may be warranted.*

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