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

LEGISLATIVE COUNSEL’S DIGEST


(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. The bill would authorize a district attorney or a city attorney to pursue judicial enforcement only after approval by the Attorney General of an application for judicial enforcement.

(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, upon approval by the Attorney General, to bring civil actions under the act, and would make conforming changes to those petition provisions.

State-mandated local program: no.

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

SECTION 1. Section 13223 of the Water Code is amended to read:

13223. (a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer, except the following:
(1) The promulgation of any regulation.
(2) The issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement.
(3) The issuance, modification, or revocation of any cease and desist order.
(4) The holding of any hearing on water quality control plans.

(b) A reference made in this division to any action that may be taken by a regional board includes an action by its executive officer pursuant to powers and duties delegated to the executive officer by the regional board.

(c) (1) Commencing January 1, 2012, a regional board may also 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) Judicial enforcement may be pursued by 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, only after the Attorney General approves an application by the regional board for judicial enforcement. Approval by the Attorney General shall be deemed granted, unless the Attorney General issues a written denial within 30 days after the Attorney General is notified, in writing, of the application for judicial enforcement.

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

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

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

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

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

(1) An act of war.

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

(3) Negligence on the part of the state, the United States, or any department or agency thereof. However, this paragraph shall not be interpreted to provide the state, the United States, or any
department or agency thereof a defense to liability for any
discharge caused by its own negligence.
(4) An intentional act of a third party, the effects of which could
not have been prevented or avoided by the exercise of due care or
foresight.
(5) Any other circumstance or event that causes the discharge
despite the exercise of every reasonable precaution to prevent or
mitigate the discharge.
(d) The court may impose civil liability either on a daily basis
or on a per gallon basis, but not on both.
(1) The civil liability on a daily basis shall not exceed fifteen
thousand dollars ($15,000) for each day the violation occurs.
(2) The civil liability on a per gallon basis shall not exceed
twenty dollars ($20) for each gallon of waste discharged.
(e) The state board or a regional board may impose civil liability
administratively pursuant to Article 2.5 (commencing with Section
13323) of Chapter 5 either on a daily basis or on a per gallon basis,
but not on both.
(1) The civil liability on a daily basis shall not exceed five
thousand dollars ($5,000) for each day the violation occurs.
(A) When there is a discharge, and a cleanup and abatement
order is issued, except as provided in subdivision (f), the civil
liability shall not be less than five hundred dollars ($500) for each
day in which the discharge occurs and for each day the cleanup
and abatement order is violated.
(B) When there is no discharge, but an order issued by the
regional board is violated, except as provided in subdivision (f),
the civil liability shall not be less than one hundred dollars ($100)
for each day in which the violation occurs.
(2) The civil liability on a per gallon basis shall not exceed ten
dollars ($10) for each gallon of waste discharged.
(f) A regional board shall not administratively impose civil
liability in accordance with paragraph (1) of subdivision (e) in an
amount less than the minimum amount specified, unless the
regional board makes express findings setting forth the reasons
for its action based upon the specific factors required to be
considered pursuant to Section 13327.
(g) (1) The Attorney General, upon request of a regional board
or the state board, shall petition the superior court to impose, assess,
and recover those sums. In determining the amount, the court shall
be subject to Section 13351.

(2) (A) 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, upon request of the state board or a regional board, may
petition the superior court to impose, assess, and recover those
sums. In determining that amount, the court shall be subject to
Section 13351.

(B) A petition may be brought pursuant to this paragraph only
after the Attorney General approves a request by the state board
or a regional board to rely on offices other than the Attorney
General. Approval by the Attorney General shall be deemed
granted, unless the Attorney General issues a written denial within
30 days after the Attorney General is notified, in writing, of the
request.

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

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

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

(k) Notwithstanding any other law, all funds generated by the
imposition of liabilities pursuant to this section shall be deposited
into the Waste Discharge Permit Fund. These moneys shall be
separately accounted for, and 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, or to assist in implementing Chapter 7.3
(commencing with Section 13560).
SEC. 3. Section 13361 of the Water Code is amended to read:

13361. (a) (1) (A) Every civil action brought at the request of a regional board or the state board to enforce Section 13350 or Chapter 5.5 (commencing with Section 13370) shall be brought by 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, in the name of the people of the State of California and those actions relating to the same discharge may be joined or consolidated.

(B) An action may be brought by 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, only after the Attorney General approves a request by the state board or a regional board to rely on offices other than the Attorney General. Approval by the Attorney General shall be deemed granted, unless the Attorney General issues a written denial within 30 days after the Attorney General is notified, in writing, of the request.

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

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

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

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

(1) Section 13375 or 13376.

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

(3) A requirement established pursuant to Section 13383.

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


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

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

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

(2) (A) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Upon request of a regional board or the state board, the Attorney General shall petition the superior court to impose the liability. Upon request of the state board or a regional board, 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, may petition the superior court to impose the liability. A petition may be brought pursuant to this subparagraph only after the Attorney General approves a request by the state board or a regional board to rely on offices other than the Attorney General. Approval by the Attorney General shall be deemed granted, unless the Attorney General issues a written denial within 30 days after the Attorney General is notified, in writing, of the request.
(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

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

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 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 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.
(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
(D) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:
(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.
(II) The regional board has not objected in writing to the operations plan.
(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit.
treatment unit and that the violations could not have reasonably been avoided.

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

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

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

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

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

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

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.
(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

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

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

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

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

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

   (B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:
(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, 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) (i) 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. Except
as provided in clause (ii), for the purposes of this subdivision, the
time schedule shall not exceed five years in length.
(ii) (I) For purposes of the upgrade described in subclause (III)
of clause (iv) of subparagraph (B), the time schedule shall not
exceed 10 years in length.
(II) 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, the regional
board may extend the time schedule for an additional period not
exceeding five years in length, if the discharger demonstrates that
the additional time is necessary to comply with the effluent
limitation. This subclause does not apply to a time schedule
described in subclause (I).
(iii) 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
and implement, a pollution prevention plan pursuant to Section
13263.3.
(k) (1) In lieu of assessing all or a portion of the mandatory
minimum penalties pursuant to subdivisions (h) and (i) against a
publicly owned treatment works serving a small community, the
state board or the regional board may elect to require the publicly
owned treatment works to spend an equivalent amount towards
the completion of a compliance project proposed by the publicly
owned treatment works, if the state board or the regional board
finds all of the following:
(A) The compliance project is designed to correct the violations
within five years.
(B) The compliance project is in accordance with the
enforcement policy of the state board, excluding any provision in
the policy that is inconsistent with this section.
(C) The publicly owned treatment works has prepared a
financing plan to complete the compliance project.
(2) For the purposes of this subdivision, “a publicly owned
treatment works serving a small community” means a publicly
owned treatment works serving a population of 10,000 persons or
fewer or a rural county, with a financial hardship as determined
by the state board after considering such factors as median income
of the residents, rate of unemployment, or low population density
in the service area of the publicly owned treatment works.

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

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

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

(m) (1) Upon request of a regional board or the state board, the
Attorney General shall petition the appropriate court to collect any
liability or penalty imposed pursuant to this section. Upon
(2) Upon request of the state board or a regional board, 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, may petition the
appropriate court to collect any liability or penalty pursuant to this
section. A petition may be brought pursuant to this paragraph only
after the Attorney General approves a request by the state board
or a regional board to rely on offices other than the Attorney
General. Approval by the Attorney General shall be deemed
granted, unless the Attorney General issues a written denial within
30 days after the Attorney General is notified, in writing, of the
request. Any
(3) Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney’s fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person’s penalty and nonpayment penalties that are unpaid 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. 5. Section 13386 of the Water Code is amended to read:
13386. (a) (1) Upon any threatened or continuing violation
of any of the requirements listed in paragraphs (1) to (6), inclusive,
of subdivision (a) of Section 13385, or upon the failure of any
discharger into a public treatment system to comply with any cost
or charge adopted by any public agency under Section 204(b) of
the federal Clean Water Act (33 U.S.C. Sec. 1284(b)), as amended,
the Attorney General, upon the request of the state board or
regional board, shall petition the appropriate court for the issuance
of a preliminary or permanent injunction, or both, as appropriate,
restraining that person or persons from committing or continuing
the violation.

(2) Upon request of the state board or a regional board, 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, may petition the
appropriate court for the issuance of a preliminary or permanent
injunction, or both, as appropriate, restraining that person or
persons from committing or continuing the violation specified in
paragraph (1). A petition may be brought pursuant to this
paragraph only after the Attorney General approves a request by
the state board or a regional board to rely on offices other than
the Attorney General. Approval by the Attorney General shall be
deemed granted, unless the Attorney General issues a written
denial within 30 days after the Attorney General is notified, in
writing, of the request.

(b) The court shall issue an order directing defendants to appear
before the court at a time and place certain and show cause why
the injunction should not be issued. The court may grant
prohibitory or mandatory relief as may be warranted.