

**Introduced by Senator Correa
(Coauthor: Senator Wyland)**

(Coauthors: Assembly Members Hagman, Harkey, Mansoor, and
Wagner)

February 22, 2013

An act to amend Section 13304 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 658, as introduced, Correa. Water quality: cleanup and abatement orders.

The Porter-Cologne Water Quality Control Act requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or an order or prohibition issued by a California regional water quality control board or the State Water Resources Control Board to clean up the waste or to abate the effects of the waste. The act authorizes a regional water quality control board to expend available money to perform any cleanup, abatement, or remedial work required under those circumstances, and provides for the recovery of costs associated with cleanup, abatement, and remedial actions.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 13304 of the Water Code is amended to
2 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (2) If so requested, the public water suppliers receiving the
40 replacement water and the persons or entities ordered to provide

1 the replacement water, within 30 days of the submittal of a water
2 replacement plan, shall engage in at least one confidential
3 settlement discussion before a mutually acceptable mediator.

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

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

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

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

19 (i) ~~A~~ *For purposes of this section, “water replacement plan”*
20 means a plan pursuant to which the discharger will provide
21 replacement water in accordance with a cleanup and abatement
22 order.

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

26 (k) ~~Nothing in this section limits~~ *This section does not limit* the
27 authority of any state agency under any other law or regulation to
28 enforce or administer any cleanup or abatement activity.

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