

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2335

Introduced by Assembly Member Beth Gaines

February 18, 2016

An act to ~~amend Section 13260 of~~ *add and repeal Section 13172.6* of the Water Code, relating to ~~water quality~~: *dredging*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2335, as amended, Beth Gaines. ~~Waste discharge reports. Suction dredge mining: permits: report.~~

Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Wildlife. Existing law requires the department to issue a permit if the department determines that the use does not cause any significant effects to fish and wildlife and would authorize the department to adjust the specified fee to an amount sufficient to cover all reasonable costs of the department in regulating suction dredging activities. Existing law authorizes the State Water Resources Control Board or a California regional water quality control board to adopt waste discharge requirements or a waiver of waste discharge requirements that address certain water quality impacts, specify conditions or areas where the discharge of waste or other adverse impacts on beneficial uses of the waters of the state from the use of vacuum or suction dredge equipment is prohibited, or prohibit particular use of, or methods of using, vacuum or suction dredge equipment, or any portion thereof, for the extraction of minerals, that the state board or a regional board determines

generally cause or contribute to an exceedance of applicable water quality objectives or unreasonably impact beneficial uses.

This bill would require the state board and the department to report to the Legislature, on or before June 1, 2017, on the status of the suction dredge permitting program.

~~Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with responsibility for the coordination and control of water quality in the state. The act, with certain exceptions, requires a waste discharger to file certain information with the appropriate regional board and to pay an annual fee.~~

~~This bill would make nonsubstantive changes to these provisions.~~

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

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

1 SECTION 1. Section 13172.6 is added to the Water Code, to
2 read:
3 13172.6. (a) On or before June 1, 2017, the state board and
4 the Department of Fish and Wildlife shall report to the Legislature
5 on the status of the suction dredge permitting program established
6 by Chapter 680 of the Statutes of 2015 and include at least all of
7 the following information:
8 (1) The number or amount of permits issued statewide.
9 (2) The cost of permits and associated fees.
10 (3) The requirements and process for an individual to proceed
11 with obtaining waste discharge requirements or a waiver of waste
12 discharge requirements pursuant to Section 13172.5 and a permit
13 pursuant to Section 5653 of the Fish and Game Code.
14 (4) A discussion of the public workshops conducted pursuant
15 to subdivision (c) of Section 13172.5.
16 (b) (1) A report to be submitted pursuant to subdivision (a)
17 shall be submitted in compliance with Section 9795 of the
18 Government Code.
19 (2) Pursuant to Section 10231.5 of the Government Code, this
20 section is repealed on June 1, 2021.
21 ~~SECTION 1. Section 13260 of the Water Code is amended to~~
22 ~~read:~~

1 ~~13260. (a) Each of the following persons shall file with the~~
2 ~~appropriate regional board a report of the discharge, containing~~
3 ~~the information that may be required by the regional board:~~

4 ~~(1) A person discharging waste, or proposing to discharge waste,~~
5 ~~within any region that could affect the quality of the waters of the~~
6 ~~state, other than into a community sewer system.~~

7 ~~(2) A person who is a citizen, domiciliary, or political agency~~
8 ~~or entity of this state discharging waste, or proposing to discharge~~
9 ~~waste, outside the boundaries of the state in a manner that could~~
10 ~~affect the quality of the waters of the state within any region.~~

11 ~~(3) A person operating, or proposing to construct, an injection~~
12 ~~well.~~

13 ~~(b) A report of waste discharge is not required to be filed~~
14 ~~pursuant to subdivision (a) if the requirement is waived pursuant~~
15 ~~to Section 13269.~~

16 ~~(c) Each person subject to subdivision (a) shall file with the~~
17 ~~appropriate regional board a report of waste discharge relative to~~
18 ~~any material change or proposed change in the character, location,~~
19 ~~or volume of the discharge.~~

20 ~~(d) (1) (A) Each person who is subject to subdivision (a) or~~
21 ~~(c) shall submit an annual fee according to a fee schedule~~
22 ~~established by the state board.~~

23 ~~(B) The total amount of annual fees collected pursuant to this~~
24 ~~section shall equal that amount necessary to recover costs incurred~~
25 ~~in connection with the issuance, administration, reviewing,~~
26 ~~monitoring, and enforcement of waste discharge requirements and~~
27 ~~waivers of waste discharge requirements.~~

28 ~~(C) Recoverable costs may include, but are not limited to, costs~~
29 ~~incurred in reviewing waste discharge reports, prescribing terms~~
30 ~~of waste discharge requirements and monitoring requirements,~~
31 ~~enforcing and evaluating compliance with waste discharge~~
32 ~~requirements and waiver requirements, conducting surface water~~
33 ~~and groundwater monitoring and modeling, analyzing laboratory~~
34 ~~samples, adopting, reviewing, and revising water quality control~~
35 ~~plans and state policies for water quality control, and reviewing~~
36 ~~documents prepared for the purpose of regulating the discharge of~~
37 ~~waste, and administrative costs incurred in connection with~~
38 ~~carrying out these actions.~~

39 ~~(D) In establishing the amount of a fee that may be imposed on~~
40 ~~a confined animal feeding and holding operation pursuant to this~~

1 section, including, but not limited to, a dairy farm, the state board
2 shall consider all of the following factors:

- 3 (i) The size of the operation.
- 4 (ii) Whether the operation has been issued a permit to operate
5 pursuant to Section 1342 of Title 33 of the United States Code.
- 6 (iii) Any applicable waste discharge requirement or conditional
7 waiver of a waste discharge requirement.
- 8 (iv) The type and amount of discharge from the operation.
- 9 (v) The pricing mechanism of the commodity produced.
- 10 (vi) Any compliance costs borne by the operation pursuant to
11 state and federal water quality regulations.
- 12 (vii) Whether the operation participates in a quality assurance
13 program certified by a regional water quality control board, the
14 state board, or a federal water quality control agency.

15 (2) (A) Subject to subparagraph (B), the fees collected pursuant
16 to this section shall be deposited in the Waste Discharge Permit
17 Fund, which is hereby created. The money in the fund is available
18 for expenditure by the state board, upon appropriation by the
19 Legislature, solely for the purposes of carrying out this division.

20 (B) (i) Notwithstanding subparagraph (A), the fees collected
21 pursuant to this section from stormwater dischargers that are
22 subject to a general industrial or construction stormwater permit
23 under the national pollutant discharge elimination system (NPDES)
24 shall be separately accounted for in the Waste Discharge Permit
25 Fund.

26 (ii) Not less than 50 percent of the money in the Waste
27 Discharge Permit Fund that is separately accounted for pursuant
28 to clause (i) is available, upon appropriation by the Legislature,
29 for expenditure by the regional board with jurisdiction over the
30 permitted industry or construction site that generated the fee to
31 carry out stormwater programs in the region.

32 (iii) Each regional board that receives money pursuant to clause
33 (ii) shall spend not less than 50 percent of that money solely on
34 stormwater inspection and regulatory compliance issues associated
35 with industrial and construction stormwater programs.

36 (3) A person who would be required to pay the annual fee
37 prescribed by paragraph (1) for waste discharge requirements
38 applicable to discharges of solid waste, as defined in Section 40191
39 of the Public Resources Code, at a waste management unit that is
40 also regulated under Division 30 (commencing with Section 40000)

1 of the Public Resources Code, shall be entitled to a waiver of the
2 annual fee for the discharge of solid waste at the waste management
3 unit imposed by paragraph (1) upon verification by the state board
4 of payment of the fee imposed by Section 48000 of the Public
5 Resources Code, and provided that the fee established pursuant to
6 Section 48000 of the Public Resources Code generates revenues
7 sufficient to fund the programs specified in Section 48004 of the
8 Public Resources Code and the amount appropriated by the
9 Legislature for those purposes is not reduced.

10 (e) Each person that discharges waste in a manner regulated by
11 this section shall pay an annual fee to the state board. The state
12 board shall establish, by regulation, a timetable for the payment
13 of the annual fee. If the state board or a regional board determines
14 that the discharge will not affect, or have the potential to affect,
15 the quality of the waters of the state, all or part of the annual fee
16 shall be refunded.

17 (f) (1) The state board shall adopt, by emergency regulations,
18 a schedule of fees authorized under subdivision (d). The total
19 revenue collected each year through annual fees shall be set at an
20 amount equal to the revenue levels set forth in the Budget Act for
21 this activity. The state board shall automatically adjust the annual
22 fees each fiscal year to conform with the revenue levels set forth
23 in the Budget Act for this activity. If the state board determines
24 that the revenue collected during the preceding year was greater
25 than, or less than, the revenue levels set forth in the Budget Act,
26 the state board may further adjust the annual fees to compensate
27 for the over and under collection of revenue.

28 (2) The emergency regulations adopted pursuant to this
29 subdivision, any amendment thereto, or subsequent adjustments
30 to the annual fees, shall be adopted by the state board in accordance
31 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
32 Division 3 of Title 2 of the Government Code. The adoption of
33 these regulations is an emergency and shall be considered by the
34 Office of Administrative Law as necessary for the immediate
35 preservation of the public peace, health, safety, and general welfare.
36 Notwithstanding Chapter 3.5 (commencing with Section 11340)
37 of Part 1 of Division 3 of Title 2 of the Government Code, any
38 emergency regulations adopted by the state board, or adjustments
39 to the annual fees made by the state board pursuant to this section,

1 shall not be subject to review by the Office of Administrative Law
2 and shall remain in effect until revised by the state board.

3 ~~(g) The state board shall adopt regulations setting forth~~
4 ~~reasonable time limits within which the regional board shall~~
5 ~~determine the adequacy of a report of waste discharge submitted~~
6 ~~under this section.~~

7 ~~(h) Each report submitted under this section shall be sworn to,~~
8 ~~or submitted under penalty of perjury.~~

9 ~~(i) The regulations adopted by the state board pursuant to~~
10 ~~subdivision (f) shall include a provision that annual fees shall not~~
11 ~~be imposed on those who pay fees under the national pollutant~~
12 ~~discharge elimination system until the time when those fees are~~
13 ~~again due, at which time the fees shall become due on an annual~~
14 ~~basis.~~

15 ~~(j) A person operating or proposing to construct an oil, gas, or~~
16 ~~geothermal injection well subject to paragraph (3) of subdivision~~
17 ~~(a) shall not be required to pay a fee pursuant to subdivision (d) if~~
18 ~~the injection well is regulated by the Division of Oil, Gas, and~~
19 ~~Geothermal Resources of the Department of Conservation, in lieu~~
20 ~~of the appropriate California regional water quality control board,~~
21 ~~pursuant to the memorandum of understanding, entered into~~
22 ~~between the state board and the Department of Conservation on~~
23 ~~May 19, 1988. This subdivision shall remain operative until the~~
24 ~~memorandum of understanding is revoked by the state board or~~
25 ~~the Department of Conservation.~~

26 ~~(k) In addition to the report required by subdivision (a), before~~
27 ~~a person discharges mining waste, the person shall first submit~~
28 ~~both of the following to the regional board:~~

29 ~~(1) A report on the physical and chemical characteristics of the~~
30 ~~waste that could affect its potential to cause pollution or~~
31 ~~contamination. The report shall include the results of all tests~~
32 ~~required by regulations adopted by the board, any test adopted by~~
33 ~~the Department of Toxic Substances Control pursuant to Section~~
34 ~~25141 of the Health and Safety Code for extractable, persistent,~~
35 ~~and bioaccumulative toxic substances in a waste or other material,~~
36 ~~and any other tests that the state board or regional board may~~
37 ~~require, including, but not limited to, tests needed to determine~~
38 ~~the acid-generating potential of the mining waste or the extent to~~
39 ~~which hazardous substances may persist in the waste after disposal.~~

1 ~~(2) A report that evaluates the potential of the discharge of the~~
2 ~~mining waste to produce, over the long term, acid mine drainage,~~
3 ~~the discharge or leaching of heavy metals, or the release of other~~
4 ~~hazardous substances.~~

5 ~~(l) Except upon a written request of the regional board, a report~~
6 ~~of waste discharge need not be filed pursuant to subdivision (a) or~~
7 ~~(c) by a user of recycled water that is being supplied by a supplier~~
8 ~~or distributor of recycled water for whom a master recycling permit~~
9 ~~has been issued pursuant to Section 13523.1.~~