

AMENDED IN SENATE JUNE 24, 1998
AMENDED IN ASSEMBLY MAY 22, 1998
AMENDED IN ASSEMBLY MARCH 30, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2019

**Introduced by Assembly Members Kuehl, Aroner, Lempert,
and Ortiz**

(Coauthors: Senators Alpert, Lee, Solis, and Watson)

February 18, 1998

An act to add Chapter 5.9 (commencing with Section 13399.25) to Division 7 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2019, as amended, Kuehl. Storm water discharge.

Under existing law, point source discharges of pollutants, including storm water discharges, to surface waters require a waste discharge permit under the national pollutant discharge elimination system (NPDES). Under existing law, the State Water Resources Control Board and the California regional water quality control boards generally prescribe waste discharge requirements in connection with the discharge of waste that could affect the quality of the waters of the state.

This bill would require *the regional boards to undertake reasonable efforts to identify dischargers of stormwater that have not obtained coverage under an appropriate NPDES permit. The bill would require any person that discharges,*

proposes to discharge, or is suspected by a regional board or the state board of discharging storm water associated with industrial activity that has not obtained coverage under an appropriate NPDES permit, to submit to the regional board within 30 days from the date on which a notice is sent by the regional board, a notice of nonapplicability that specifies the basis for not needing to obtain coverage or a specified notice of intent to obtain coverage.

The bill would require the regional boards to conduct a review of prescribed annual reports and construction certifications submitted in accordance with applicable law and to identify the dischargers that have failed to submit that annual report or construction certification required by the regional board. The bill would require the regional boards to notify those dischargers with regard to their noncompliance and the penalties therefor, as prescribed.

The bill would, with a specified exception, require the regional boards, with regard to a discharger of storm water associated with industrial activity that fails to submit the required notice of intent to obtain coverage, to impose a civil liability administratively in an amount that is not less than \$5,000 per year of noncompliance, as prescribed. The bill would, with a specified exception, require the regional boards, with regard to a person that fails to submit the required notice of nonapplicability, annual report, or construction certification, to impose civil liability administratively in an amount that is not less than \$1,000, as specified.

The bill would require that the money generated from the imposition of liability, as described, and the recovery of costs pursuant to the bill's provisions to be deposited, and separately accounted for, in the Waste Discharge Permit Fund. The money in the fund would be available, upon appropriation by the Legislature, to the regional boards from which the revenues were generated for the purpose of carrying out storm water programs.

The bill would require the state board, on or before May 1, 2000, and on each May 1 thereafter, to prepare and submit a report to the Legislature summarizing the enforcement actions undertaken in the previous calendar year with regard to storm water discharge and the results of those actions. The



bill would require appropriate state agencies, as requested by the executive director of the state board, to provide the state board with certain information relating to facilities that are subject to the storm water program.

The bill would require the state board, on or before February 1, 2000, and on each February 1 thereafter, to prepare, and make available to the public, a prescribed report. The bill would make legislative findings and declarations. —the regional boards, or the state board on behalf of the regional boards, on or before February 1 of each year, to prepare, and make available to the public, a report that identifies any discharger that is subject to permitting requirements for storm water that has not filed a notice of intent to comply with general permit requirements prescribed in accordance with the federal Clean Water Act or applied for individual waste discharge requirements. The bill would require the staff of each regional board, on or before March 1 of each year, to notify each discharger described in that report with regard to its noncompliance and the penalties therefor. The bill would require the executive officer of each regional board to send a second notice to that discharger, as prescribed. The bill would require the regional board, on or before May 1 of the year in which that second notice is sent, to impose prescribed penalties on the discharger in the event of continuing noncompliance.

The bill would require the regional boards, not later than 30 days from the date on which any required report or certification relating to storm water discharge is due, to conduct a review of the reports or certifications submitted and to identify the dischargers that have failed to submit that report or certification. The bill would require the staff of the each regional board, not later than 30 days from the date of the completion of a review, to notify each discharger that is identified in the review with regard to its noncompliance and the penalties therefor. The bill would require the executive officer of each regional board to send a second notice to that discharger, as prescribed. The bill would require the regional board to impose prescribed penalties on, and recover specified costs from, the discharger, if the discharger fails to



~~submit the required report or certification within 30 days from the date on which that second notice is sent.~~

~~The bill would require that the money generated from the imposition of penalties, and the recovery of costs, pursuant to the bill's provisions to be deposited in the Storm Water Discharge Subaccount, which the bill would create in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund. The money in the subaccount would be available, upon appropriation by the Legislature, to the regional boards for the purposes of carrying out storm water pollution prevention programs.~~

~~The bill would require the state board, on or before April 1, 2000, and each April 1 thereafter, to prepare and submit a report to the Legislature summarizing the enforcement actions undertaken in the previous calendar year with regard to storm water discharge and the results of those actions. The bill would make legislative findings and declarations.~~

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.~~ The Legislature hereby finds and
2 ~~SECTION 1.~~ *The Legislature hereby finds and*
3 ~~declares all of the following:~~
4 ~~(a) Polluted storm water runoff, including discharges~~
5 ~~associated with industrial and construction activities, is~~
6 ~~the leading cause of contamination of the state's lakes,~~
7 ~~rivers, and coastal waters.~~
8 ~~(b) Noncompliance with existing state storm water~~
9 ~~permitting requirements under industrial and~~
10 ~~construction programs is widespread, and, in part,~~
11 ~~prevents the state from attaining its water quality~~
12 ~~objectives.~~
13 ~~(c) It is necessary to establish a state storm water~~
14 ~~enforcement scheme that ensures fair, predictable, and~~
15 ~~consistent state enforcement of storm water~~
16 ~~requirements by the State Water Resources Control~~
17 ~~Board and the California regional water quality control~~
18 ~~boards, while ensuring that useful information is available~~



1 to help protect the environment from the harmful effects
2 of polluted storm water.

3 SEC. 2. Chapter 5.9 (commencing with Section
4 13399.25) is added to Division 7 of the Water Code, to
5 read:

6
7 CHAPTER 5.9. THE STORM WATER ENFORCEMENT ACT OF
8 1998
9

10 13399.25. This chapter supplements, and does not
11 supplant, other laws relating to the discharge of storm
12 water.

13 13399.27. On or before February 1, 2000, and on each
14 February 1 thereafter, the state board, after any
15 necessary investigation, shall prepare, and make
16 available to the public, a report that includes both of the
17 following:

18 (a) A list of those persons that were notified pursuant
19 to Section 13399.30 and a description of the responses
20 received to those notifications, including the filing of
21 notices of intent to obtain coverage or notices of
22 nonapplicability, returned mail and no response, site
23 inspections, enforcement actions taken, and penalties
24 assessed therefor.

25 (b) A list of those dischargers identified pursuant to
26 Section 13399.31 that, during the previous calendar year,
27 failed to submit an annual report or construction
28 certification required by a regional board, and any
29 penalties assessed therefor.

30 13399.30 (a) (1) Each year the regional boards shall
31 undertake reasonable efforts to identify dischargers of
32 stormwater that have not obtained coverage under an
33 appropriate NPDES permit.

34 (2) Any person, including a person subject to waste
35 discharge requirements under Section 1342(p) of Title 33
36 of the United States Code, that discharges, proposes to
37 discharge, or is suspected by a regional board or the state
38 board of discharging storm water associated with
39 industrial activity that has not obtained coverage under
40 an appropriate NPDES permit, shall submit to the

1 regional board, within 30 days from the date on which a
2 notice is sent by the regional board, the appropriate
3 notice of intent to obtain coverage or a notice of
4 nonapplicability that specifies the basis for not needing to
5 obtain coverage under an NPDES permit.

6 (b) If a person to which a notice is sent pursuant to
7 subdivision (a) fails to submit the appropriate notice of
8 intent to obtain coverage or the required notice of
9 nonapplicability to the regional board within 30 days from
10 the date on which that notice is sent, the executive officer
11 of the regional board shall send a second notice to that
12 discharger.

13 (c) (1) If a person to which a notice is sent pursuant
14 to subdivision (b) fails to submit the required notice of
15 nonapplicability to the regional board within 60 days from
16 the date on which the notice pursuant to subdivision (a)
17 was sent, the regional board shall impose the penalties
18 described in subdivision (b) of Section 13399.33.

19 (2) If a person to which a notice is sent pursuant to
20 subdivision (b) fails to submit the required notice of
21 intent to obtain coverage to the regional board within 60
22 days from the date on which the notice pursuant to
23 subdivision (a) was sent, the regional board shall impose
24 the penalties described in subdivision (a) of Section
25 13399.33.

26 13399.31. (a) Each year the regional board shall
27 conduct a review of the annual reports and construction
28 certifications submitted in accordance with the
29 requirements of an applicable NPDES permit and
30 Section 1342(p) of Title 33 of the United States Code and
31 shall identify the dischargers that have failed to submit
32 that annual report or construction certification required
33 by the regional board.

34 (b) The regional board shall notify each discharger
35 that is identified pursuant to subdivision (a) with regard
36 to its noncompliance and the penalties therefor.

37 (c) If a discharger to which a notice is sent pursuant to
38 subdivision (b) fails to submit the annual report or
39 construction certification required by the regional board
40 to the regional board within 30 days from the date on



1 which that notice is sent, the executive officer of the
2 regional board shall send a second notice to that
3 discharger.

4 (d) If a discharger to which a notice is sent pursuant
5 to subdivision (c) fails to submit the annual report or
6 construction certification required by the regional board
7 to the regional board within 60 days from the date on
8 which the notice is sent pursuant to subdivision (b), the
9 regional board shall impose the penalties described in
10 subdivision (b) of Section 13399.33.

11 13399.33. Except as provided in Section 13399.35, the
12 regional board shall do all of the following with regard to
13 a discharger that is subject to the requirements
14 prescribed in accordance with Section 1342(p) of Title 33
15 of the United States Code:

16 (a) (1) With regard to a discharger of storm water
17 associated with industrial activity that fails to submit the
18 required notice of intent to obtain coverage in
19 accordance with Section 13399.30, impose civil liability
20 administratively in an amount that is not less than five
21 thousand dollars (\$5,000) per year of noncompliance or
22 fraction thereof, unless the regional board makes express
23 findings setting forth the reasons for its failure to do so,
24 based on the specific factors required to be considered
25 pursuant to paragraph (2).

26 (2) In determining the amount of the penalty imposed
27 under this section, the regional board shall consider the
28 nature, circumstances, extent, and gravity of the
29 violation, and, with respect to the violator, the ability to
30 pay, any prior history of violations, the degree of
31 culpability, economic benefits or savings resulting from
32 the violation, and other matters as justice may require.
33 These considerations shall be balanced against the need
34 for the regulatory costs of environmental protection to be
35 borne equally by dischargers throughout the state, and
36 the need for predictability of enforcement when making
37 business decisions.

38 (b) With regard to a person that fails to submit the
39 required notice of nonapplicability in accordance with
40 Section 13399.30, or an annual report or construction



1 certification in accordance with Section 13399.31, impose
2 civil liability administratively in an amount that is not less
3 than one thousand dollars (\$1,000).

4 (c) Recover from the persons described in subdivision
5 (a) or (b) the costs incurred by the regional board with
6 regard to that discharger.

7 13399.35. (a) The regional board may allow a
8 discharger to reduce the penalties described in
9 subdivisions (a) and (b) of Section 13399.33 by up to 50
10 percent by undertaking a supplemental environmental
11 project in accordance with the enforcement policy of the
12 state board and any applicable guidance document.

13 (b) For the purposes of this section, a “supplemental
14 environmental project” means an environmentally
15 beneficial project that a discharger agrees to undertake,
16 with the approval of the regional board, which would not
17 be undertaken in the absence of an enforcement action
18 under Section 13399.33.

19 13399.37. (a) The money generated from the
20 imposition of liability and cost recovery pursuant to
21 Section 13399.33 shall be deposited, and separately
22 accounted for, in the Waste Discharge Permit Fund.

23 (b) The money described in subdivision (a) shall be
24 available, upon appropriation by the Legislature, to the
25 regional boards from which the revenues were generated
26 for the purpose of carrying out storm water programs
27 under this division.

28 13399.39. On or before May 1, 2000, and on each May
29 1 thereafter, the state board shall prepare and submit a
30 report to the Legislature summarizing the enforcement
31 actions undertaken in the previous calendar year under
32 this division with regard to storm water discharge and the
33 results of those actions. The report shall include an
34 assessment with regard to the extent of compliance with
35 requirements relating to the discharge of storm water in
36 this state.

37 13399.41. Notwithstanding any other provision of law,
38 appropriate state agencies, as requested by the executive
39 director of the state board, shall provide the state board
40 with the names, addresses, and standard industrial



1 *classifications or types of business facilities that are*
2 *subject to storm water programs under this division. The*
3 *information obtained pursuant to this section shall be*
4 *used by the state board solely to regulate the discharge of*
5 *storm water associated with industrial activity under this*
6 *division. The state shall reimburse state agencies for all*
7 *reasonable expenses incurred in connection with*
8 *complying with this section.*

9 13399.43. For the purposes of this chapter, “NPDES
10 permit” means a permit issued under the national
11 pollutant discharge elimination system program in
12 accordance with the Clean Water Act (33 U.S.C.A. Sec.
13 1251 et seq.).

14 ~~declares all of the following:~~

15 ~~(a) Polluted storm water runoff is the leading cause of~~
16 ~~contamination of the state’s lakes, rivers, and coastal~~
17 ~~waters.~~

18 ~~(b) Noncompliance with existing state storm water~~
19 ~~permitting requirements under industrial, construction,~~
20 ~~and municipal programs is widespread, and prevents the~~
21 ~~state from attaining its water quality objectives.~~

22 ~~(c) There is inconsistent and unpredictable~~
23 ~~enforcement of existing state storm water requirements,~~
24 ~~including requirements relating to permits, the~~
25 ~~submission of annual reports, and polluted storm water~~
26 ~~monitoring.~~

27 ~~(d) It is necessary to establish a state storm water~~
28 ~~enforcement scheme that ensures fair, predictable, and~~
29 ~~consistent state enforcement of storm water~~
30 ~~requirements by the State Water Resources Control~~
31 ~~Board and the California regional water quality control~~
32 ~~boards, while ensuring that information is available to~~
33 ~~help protect the environment from the harmful effects of~~
34 ~~polluted storm water.~~

35 ~~SEC. 2. Chapter 5.9 (commencing with Section~~
36 ~~13399.25) is added to Division 7, to read:~~

37



CHAPTER 5.9. THE STORM WATER ENFORCEMENT ACT OF 1998

13399.25. This chapter supplements, and does not supplant, other laws relating to the discharge of storm water.

13399.27. On or before February 1 of each year, the regional boards, or the state board on behalf of the regional boards, shall prepare, and make available to the public, a report that identifies any discharger that is subject to permitting requirements for storm water that fails to do either of the following:

(a) Pursuant to Section 13260, file, with the appropriate fee, a notice of intent to comply with statewide or regional general permit requirements prescribed in accordance with Section 1342(p) of Title 33 of the United States Code.

(b) Apply for individual waste discharge requirements.

13399.29. (a) On or before March 1 of each year, the staff of the regional board shall notify each discharger described in the report prepared pursuant to Section 13399.27 with regard to its noncompliance and the penalties therefor.

(b) If a discharger to which a notice is sent pursuant to subdivision (a) fails to undertake action pursuant to subdivision (a) or (b) of Section 13399.27 on or before April 1 of the year in which the notice is sent, the executive officer of the regional board shall send a second notice to that discharger.

(c) If a discharger to which a notice is sent pursuant to subdivision (b) fails to undertake action pursuant to subdivision (a) or (b) of Section 13399.27 on or before May 1 of the year in which the notice is sent, the regional board shall impose penalties in accordance with Section 13399.33.

13399.31. (a) Not later than 30 days from the date on which any report or certification required by waste discharge requirements adopted pursuant to Section 1342(p) of Title 33 of the United States Code is due, the



1 ~~staff of the regional board shall conduct a review of the~~
2 ~~reports or certifications submitted and identify the~~
3 ~~dischargers that have failed to submit that report or~~
4 ~~certification.~~

5 ~~(b) Not later than 30 days from the date of the~~
6 ~~completion of a review required by subdivision (a), the~~
7 ~~staff of the regional board shall notify each discharger that~~
8 ~~is identified pursuant to subdivision (a) with regard to its~~
9 ~~noncompliance and the penalties therefor.~~

10 ~~(c) If a discharger to which a notice is sent pursuant to~~
11 ~~subdivision (b) fails to submit the required report or~~
12 ~~certification to the regional board within 30 days from the~~
13 ~~date on which that notice is sent, the executive officer of~~
14 ~~the regional board shall send a second notice to that~~
15 ~~discharger.~~

16 ~~(d) If a discharger to which a notice is sent pursuant~~
17 ~~to subdivision (c) fails to submit the required report or~~
18 ~~certification to the regional board within 30 days from the~~
19 ~~date on which that notice is sent, the regional board shall~~
20 ~~impose the penalties described in Section 13399.33.~~

21 ~~13399.33. Except as provided in Section 13399.35, the~~
22 ~~regional board shall do all of the following with regard to~~
23 ~~a discharger that is subject to the requirements~~
24 ~~prescribed in accordance with Section 1342(p) of Title 33~~
25 ~~of the United States Code.~~

26 ~~(a) Assess a civil administrative penalty of five~~
27 ~~hundred dollars (\$500) per day for each day the~~
28 ~~discharger remains in violation of permitting~~
29 ~~requirements described in Section 13399.27.~~

30 ~~(b) Assess a civil administrative penalty of two~~
31 ~~hundred fifty dollars (\$250) per day for each day the~~
32 ~~discharger remains in violation of reporting or~~
33 ~~certification requirements described in Section 13399.31.~~

34 ~~(c) Recover from the discharger the costs incurred by~~
35 ~~the regional board with regard to that discharger.~~

36 ~~13399.35. (a) The regional board may allow a~~
37 ~~discharger to reduce the penalties described in~~
38 ~~subdivisions (a) and (b) of Section 13399.33 by up to 50~~
39 ~~percent by undertaking a supplemental environmental~~



1 ~~project in accordance with the enforcement policy of the~~
2 ~~state board and any applicable guidance document.~~

3 ~~(b) For the purposes of this section, a “supplemental~~
4 ~~environmental project” means an environmentally~~
5 ~~beneficial project that a discharger agrees to undertake,~~
6 ~~with the approval of the regional board, for the purpose~~
7 ~~of complying with this division.~~

8 ~~13399.37. (a) The money generated from the~~
9 ~~imposition of penalties and cost recovery pursuant to~~
10 ~~Section 13399.33 shall be deposited into the Storm Water~~
11 ~~Discharge Subaccount, which is hereby created in the~~
12 ~~State Water Pollution Cleanup and Abatement Account~~
13 ~~in the State Water Quality Control Fund.~~

14 ~~(b) The money in the subaccount shall be available,~~
15 ~~upon appropriation by the Legislature, to the regional~~
16 ~~boards for the purpose of carrying out storm water~~
17 ~~pollution prevention programs.~~

18 ~~13399.39. On or before April 1, 2000, and each April 1~~
19 ~~thereafter, the state board shall prepare and submit a~~
20 ~~report to the Legislature summarizing the enforcement~~
21 ~~actions undertaken in the previous calendar year under~~
22 ~~this division with regard to storm water discharge and the~~
23 ~~results of those actions. The report shall include an~~
24 ~~assessment with regard to the extent of compliance with~~
25 ~~requirements relating to the discharge of storm water in~~
26 ~~this state.~~

