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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2019

Introduced by Assembly Member Kuehl
(Coauthors: Assembly Members Aroner, Lempert, and
Ortiz)
(Coauthors: Senators Alpert, Lee, Solis, and Watson)

February 18, 1998

An act to amend Section 13320 of, ~~and~~ to add Chapter 5.9 (commencing with Section 13399.25) to Division 7 of, *and to add and repeal Section 13260.2 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. *Existing law requires each person for whom waste discharge requirements have been prescribed to submit to the state board an annual fee in accordance with a prescribed schedule.*

This bill would require the state board, until December 31, 2003, to reduce the annual storm water fee to \$250 in the 1999 calendar year, and to \$50 thereafter, for prescribed facilities that are subject to a general industrial storm water permit and that, in the previous year, submitted to the regional board a “no exposure certification” and qualified for a sampling and analyses exemption as described in the general permit. The bill would require the state board to notify those facilities with regard to the adoption of new or modified storm water regulations affecting those facilities. The bill would authorize the state board to submit to the Legislature, on or before January 1, 2002, as part of the 5-year review of the general industrial storm water permit, a report evaluating the fee structure for facilities with “no exposure” certification or exemptions.

The bill would require the regional boards to undertake reasonable efforts to identify dischargers of storm water that have not obtained coverage under an appropriate storm water 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 storm water 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 specified exceptions, 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~~ *the* amount ~~that is not less than~~ of \$1,000, as specified. *The bill would, with a specified exception, require the regional boards, with regard to a person that fails to submit an annual report or construction certification, to impose civil liability administratively, in an amount that is not less than \$1,000.*

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.

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 declares all of the following:

3 ~~(a) Polluted storm water runoff, including discharges~~
4 ~~associated with industrial and construction activities, is~~
5 ~~the leading cause of contamination of the state's lakes,~~
6 ~~rivers, and coastal waters.~~

7 ~~(b) Noncompliance with existing state storm water~~
8 ~~permitting requirements under industrial and~~
9 ~~construction programs is widespread, and, in part,~~
10 ~~prevents the state from attaining its water quality~~
11 ~~objectives.~~

12 *(a) Unregulated storm water runoff is a leading cause*
13 *of contamination of the state's surface water and*
14 *groundwater.*

15 *(b) Noncompliance with existing federal and state*
16 *storm water regulations hinders the state's ability to*
17 *attain its water quality objectives.*

18 (c) It is necessary to establish a state storm water
19 enforcement scheme that ensures fair, predictable, and
20 consistent state enforcement of storm water
21 requirements by the State Water Resources Control
22 Board and the California regional water quality control
23 boards, while ensuring that useful information is available
24 to help protect the environment from the harmful effects
25 of polluted storm water.

26 SEC. 2. *Section 13260.2 is added to the Water Code, to*
27 *read:*

28 *13260.2. (a) The state board shall reduce the annual*
29 *storm water fee to two hundred fifty dollars (\$250) in the*
30 *1999 calendar year, and to fifty dollars (\$50) thereafter,*
31 *for facilities described in Code 20XX of the Standard*
32 *Industrial Classification (SIC) Manual published by the*
33 *United States Office of Management and Budget that are*
34 *subject to a general industrial storm water permit and*
35 *that, in the previous year, submitted to the regional board*
36 *a "no exposure certification" and qualified for a sampling*
37 *and analyses exemption as described in the general*
38 *permit.*



1 (b) *The state board shall notify the facilities described*
2 *in subdivision (a) with regard to the adoption of new or*
3 *modified storm water regulations affecting those*
4 *facilities.*

5 (c) *The state board may submit to the Legislature, on*
6 *or before January 1, 2002, as part of the five-year review*
7 *of the general industrial storm water permit, a report*
8 *evaluating the fee structure for facilities with “no*
9 *exposure” certification or exemptions.*

10 (d) *This section shall remain in effect only until*
11 *January 1, 2003, and as of that date is repealed, unless a*
12 *later enacted statute, which is enacted on or before*
13 *January 1, 2003, deletes or extends that date.*

14 SEC. 2.5. Section 13320 of the Water Code is amended
15 to read:

16 13320. (a) Within 30 days of any action or failure to
17 act by a regional board under subdivision (c) of Section
18 13225, Article 4 (commencing with Section 13260) of
19 Chapter 4, Chapter 5 (commencing with Section 13300),
20 Chapter 5.5 (commencing with Section 13370), Chapter
21 5.9 (commencing with Section 13399.25), or Chapter 7
22 (commencing with Section 13500), any aggrieved person
23 may petition the state board to review that action or
24 failure to act. In case of a failure to act, the 30-day period
25 shall commence upon the refusal of the regional board to
26 act, or 60 days after request has been made to the regional
27 board to act. The state board may, on its own motion, at
28 any time, review the regional board’s action or failure to
29 act and also any failure to act under Article 3
30 (commencing with Section 13240) of Chapter 4.

31 (b) The evidence before the state board shall consist
32 of the record before the regional board, and any other
33 relevant evidence which, in the judgment of the state
34 board, should be considered to effectuate and implement
35 the policies of this division.

36 (c) The state board may find that the action of the
37 regional board, or the failure of the regional board to act,
38 was appropriate and proper. Upon finding that the action
39 of the regional board, or the failure of the regional board
40 to act, was inappropriate or improper, the state board



1 may direct that the appropriate action be taken by the
2 regional board, refer the matter to any other state agency
3 having jurisdiction, take the appropriate action itself, or
4 take any combination of those actions. In taking any such
5 action, the state board is vested with all the powers of the
6 regional boards under this division.

7 (d) If a waste discharge in one region affects the
8 waters in another region and there is any disagreement
9 between the regional boards involved as to the
10 requirements which should be established, either
11 regional board may submit the disagreement to the state
12 board which shall determine the applicable
13 requirements.

14 (e) If a petition for state board review of a regional
15 board action on waste discharge requirements issued for
16 a solid waste landfill includes a request for a stay of the
17 waste discharge requirements, the state board shall act on
18 the requested stay portion of the petition within 60 days
19 of accepting the petition.

20 SEC. 3. Chapter 5.9 (commencing with Section
21 13399.25) is added to Division 7 of the Water Code, to
22 read:

23

24 CHAPTER 5.9. THE STORM WATER ENFORCEMENT ACT OF
25 1998

26

27 13399.25. This chapter supplements, and does not
28 supplant, other laws relating to the discharge of storm
29 water.

30 13399.27. On or before February 1, 2000, and on each
31 February 1 thereafter, the state board, after any
32 necessary investigation, shall prepare, and make
33 available to the public, a report that includes both of the
34 following:

35 (a) A list of those persons that were notified of their
36 duty to comply with applicable general storm water
37 NPDES permits pursuant to Section 13399.30 and a
38 description of the responses received to those
39 notifications, including the filing of notices of intent to
40 obtain coverage or notices of nonapplicability, returned



1 mail and no response, appeals of filing or permitting
2 requirements pursuant to this chapter, site inspections,
3 enforcement actions taken, and penalties assessed
4 therefor.

5 (b) A list of those dischargers identified pursuant to
6 Section 13399.31 that, during the previous calendar year,
7 failed to submit an annual report or construction
8 certification required by a regional board, and any
9 penalties assessed therefor.

10 13399.30 (a) (1) Each year the regional boards shall
11 undertake reasonable efforts to identify dischargers of
12 storm water that have not obtained coverage under an
13 appropriate storm water NPDES permit.

14 (2) Any person, including a person subject to waste
15 discharge requirements under Section 1342(p) of Title 33
16 of the United States Code, that discharges, proposes to
17 discharge, or is suspected by a regional board or the state
18 board of discharging storm water associated with
19 industrial activity that has not obtained coverage under
20 an appropriate storm water NPDES permit, shall submit
21 to the regional board, within 30 days from the date on
22 which a notice is sent by the regional board, the
23 appropriate notice of intent to obtain coverage or a notice
24 of nonapplicability that specifies the basis for not needing
25 to obtain coverage under an NPDES permit.

26 (b) If a person to which a notice is sent pursuant to
27 subdivision (a) fails to submit the appropriate notice of
28 intent to obtain coverage or the required notice of
29 nonapplicability to the regional board within 30 days from
30 the date on which that notice is sent, the executive officer
31 of the regional board shall send a second notice to that
32 discharger.

33 (c) (1) If a person to which a notice is sent pursuant
34 to subdivision (b) fails to submit the required notice of
35 nonapplicability to the regional board within 60 days from
36 the date on which the notice pursuant to subdivision (a)
37 was sent, the regional board shall impose the penalties
38 described in subdivision (b) of Section 13399.33.

39 (2) If a person to which a notice is sent pursuant to
40 subdivision (b) fails to submit the required notice of



1 intent to obtain coverage to the regional board within 60
2 days from the date on which the notice pursuant to
3 subdivision (a) was sent, the regional board shall impose
4 the penalties described in subdivision (a) of Section
5 13399.33.

6 13399.31. (a) Each year the regional board shall
7 conduct a review of the annual reports and construction
8 certifications submitted in accordance with the
9 requirements of an applicable NPDES permit and
10 Section 1342(p) of Title 33 of the United States Code and
11 shall identify the dischargers that have failed to submit
12 that annual report or construction certification required
13 by the regional board.

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

17 (c) If a discharger to which a notice is sent pursuant to
18 subdivision (b) fails to submit the annual report or
19 construction certification required by the regional board
20 to the regional board within 30 days from the date on
21 which that notice is sent, the executive officer of the
22 regional board shall send a second notice to that
23 discharger.

24 (d) If a discharger to which a notice is sent pursuant
25 to subdivision (c) fails to submit the annual report or
26 construction certification required by the regional board
27 to the regional board within 60 days from the date on
28 which the notice is sent pursuant to subdivision (b), the
29 regional board shall impose the penalties described in
30 subdivision ~~(b)~~ (c) of Section 13399.33.

31 13399.33. Except as provided in Section 13399.35, the
32 regional board shall do all of the following with regard to
33 a discharger that is subject to the requirements
34 prescribed in accordance with Section 1342(p) of Title 33
35 of the United States Code:

36 (a) (1) With regard to a discharger of storm water
37 associated with industrial activity that fails to submit the
38 required notice of intent to obtain coverage in
39 accordance with Section 13399.30, impose civil liability
40 administratively in an amount that is not less than five



1 thousand dollars (\$5,000) per year of noncompliance or
2 fraction thereof, unless the regional board makes express
3 findings setting forth the reasons for its failure to do so,
4 based on the specific factors required to be considered
5 pursuant to paragraph (2).

6 (2) In determining the amount of the penalty imposed
7 under this section, the regional board shall consider the
8 nature, circumstances, extent, and gravity of the
9 violation, and, with respect to the violator, the ability to
10 pay, any prior history of violations, the degree of
11 culpability, economic benefits or savings resulting from
12 the violation, and other matters as justice may require.
13 These considerations shall be balanced against the need
14 for the regulatory costs of environmental protection to be
15 borne equally by dischargers throughout the state, and
16 the need for predictability of enforcement when making
17 business decisions.

18 (b) With regard to a person that fails to submit the
19 required notice of nonapplicability in accordance with
20 Section 13399.30, ~~or an annual report or construction~~
21 ~~certification in accordance with Section 13399.31~~, impose
22 civil liability administratively in ~~an amount that is not less~~
23 ~~than the amount of~~ one thousand dollars (\$1,000).

24 (c) *With regard to a person that fails to submit an*
25 *annual report or construction certification in accordance*
26 *with Section 13399.31, impose civil liability*
27 *administratively in an amount that is not less than one*
28 *thousand dollars (\$1,000).*

29 (d) Recover from the persons described in ~~subdivision~~
30 ~~(a) or (b)~~ subdivisions (a), (b), and (c) the costs incurred
31 by the regional board with regard to those persons.

32 (e) *It is an affirmative defense to the penalties*
33 *imposed under this section for a person described in*
34 *subdivision (a) or (b) to prove that he or she did not, in*
35 *fact, receive the notices required under Section 13399.30*
36 *or 13399.31.*

37 13399.35. (a) The regional board may allow a person
38 to reduce the penalties described in subdivisions ~~(a) and~~
39 ~~(b)~~ (a), (b), and (c) of Section 13399.33 by up to 50
40 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 person agrees to undertake, with
6 the approval of the regional board, which would not be
7 undertaken in the absence of an enforcement action
8 under Section 13399.33.

9 13399.37. (a) The money generated from the
10 imposition of liability and cost recovery pursuant to
11 Section 13399.33 shall be deposited, and separately
12 accounted for, in the Waste Discharge Permit Fund.

13 (b) The money described in subdivision (a) shall be
14 available, upon appropriation by the Legislature, to the
15 regional boards from which the revenues were generated
16 for the purpose of carrying out storm water programs
17 under this division.

18 13399.39. On or before May 1, 2000, and on each May
19 1 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.

27 13399.41. Notwithstanding any other provision of law,
28 appropriate state agencies, as requested by the executive
29 director of the state board, shall provide the state board
30 with the names, addresses, and standard industrial
31 classifications or types of business facilities that are
32 subject to storm water programs under this division. The
33 information obtained pursuant to this section shall be
34 used by the state board solely to regulate the discharge of
35 storm water associated with industrial activity under this
36 division. The state shall reimburse state agencies for all
37 reasonable expenses incurred in connection with
38 complying with this section.

39 13399.43. For the purposes of this chapter, “NPDES
40 permit” means a permit issued under the national



1 pollutant discharge elimination system program in
2 accordance with the Clean Water Act (33 U.S.C.A. Sec.
3 1251 et seq.).

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