

**Assembly Bill No. 2019**

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Passed the Assembly August 28, 1998

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*Chief Clerk of the Assembly*

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Passed the Senate August 27, 1998

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1998, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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CHAPTER \_\_\_\_

An act to amend Section 13320 of, 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, 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, to impose civil liability administratively in the amount 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.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

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

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

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



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

13260.2. (a) The state board shall reduce the annual storm water fee to two hundred fifty dollars (\$250) in the 1999 calendar year, and to fifty dollars (\$50) thereafter, for facilities described in Code 20XX of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget 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.

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

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

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

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

13320. (a) Within 30 days of any action or failure to act by a regional board under subdivision (c) of Section 13225, Article 4 (commencing with Section 13260) of Chapter 4, Chapter 5 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370), Chapter 5.9 (commencing with Section 13399.25), or Chapter 7 (commencing with Section 13500), any aggrieved person may petition the state board to review that action or failure to act. In case of a failure to act, the 30-day period shall commence upon the refusal of the regional board to act, or 60 days after request has been made to the regional board to act. The state board may, on its own motion, at



any time, review the regional board's action or failure to act and also any failure to act under Article 3 (commencing with Section 13240) of Chapter 4.

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

(c) The state board may find that the action of the regional board, or the failure of the regional board to act, was appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to any other state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any such action, the state board is vested with all the powers of the regional boards under this division.

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

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

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



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, 2000, and on each February 1 thereafter, the state board, after any necessary investigation, shall prepare, and make available to the public, a report that includes both of the following:

(a) A list of those persons that were notified of their duty to comply with applicable general storm water NPDES permits pursuant to Section 13399.30 and a description of the responses received to those notifications, including the filing of notices of intent to obtain coverage or notices of nonapplicability, returned mail and no response, appeals of filing or permitting requirements pursuant to this chapter, site inspections, enforcement actions taken, and penalties assessed therefor.

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

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

(2) Any person, including a person subject to waste discharge requirements under Section 1342(p) of Title 33 of the United States Code, 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, shall submit to the regional board, within 30 days from the date on which a notice is sent by the regional board, the appropriate notice of intent to obtain coverage or a notice



of nonapplicability that specifies the basis for not needing to obtain coverage under an NPDES permit.

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

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

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

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

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

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



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

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

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

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

(b) With regard to a person that fails to submit the required notice of nonapplicability in accordance with Section 13399.30, impose civil liability administratively in the amount of one thousand dollars (\$1,000).

(c) With regard to a person that fails to submit an annual report or construction certification in accordance



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

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

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

13399.35. (a) The regional board may allow a person to reduce the penalties described in subdivisions (a), (b), and (c) of Section 13399.33 by up to 50 percent by undertaking a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document.

(b) 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, which would not be undertaken in the absence of an enforcement action under Section 13399.33.

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

(b) The money described in subdivision (a) shall 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 under this division.

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



requirements relating to the discharge of storm water in this state.

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

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



Approved \_\_\_\_\_, 1998

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*Governor*

