

ASSEMBLY BILL

No. 50

Introduced by Assembly Member Migden
(Coauthor: Senator O'Connell)

December 7, 1998

An act to amend Section 13350 of, and to add Sections 13263.3, 13263.4, 13263.6, 13362, and 13385.5 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 50, as introduced, Migden. Water quality: waste discharge requirements.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards are among the principal agencies with primary regulatory authority over water quality.

This bill would authorize the state board and the regional boards to require an application for waste discharge requirements to include a prescribed pollution prevention plan and would require the state board to incorporate the plans as part of the waste discharge requirements prescribed for certain dischargers. The bill would require the state board, not later than January 1, 2001, to adopt regulations to establish specified standards for the issuance of waste discharge requirements.

The bill would, with regard to publicly owned treatment works (POTWs), prohibit the state board from prescribing waste discharge requirements for a POTW unless the state board determines that the POTW requires discharge

monitoring reports from its significant industrial users, as defined. The bill would authorize the state board to require those significant industrial users to submit discharge monitoring reports to the POTW up to once per month, if the state board makes a specified determination. The bill would require the state board to prescribe effluent limitations as part of the waste discharge requirements of a POTW for prescribed substances. The bill would authorize a POTW to require pollution prevention plans as part of the pretreatment requirements applicable to significant industrial users. The bill would authorize a POTW with an approved pretreatment program to conduct inspections and assess and collect civil penalties and civil administrative penalties, as specified.

The bill would require civil administrative penalties to be assessed at a level that recovers the economic benefits derived from the acts that constitute that violation. The bill would require a mandatory minimum penalty of \$3,000 be assessed for certain serious violations, as specified.

(2) Existing law requires the state board to submit a prescribed annual report to the Legislature, that is available to the public, that sets forth information relating to the civil liability that has been administratively imposed by a regional board during the preceding year.

This bill would require that report to be available to the public both in paper form and electronically over the Internet, and to include a list of specified water quality violations.

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. This act shall be known as the Clean
 2 Water Enforcement and Pollution Prevention Act of
 3 1999.

4 SEC. 2. The Legislature finds and declares all of the
 5 following:

6 (a) A significant number of persons for whom waste
 7 discharge requirements have been prescribed are in
 8 violation of those requirements.



1 (b) Current enforcement mechanisms of the State
2 Water Resources Control Board fail to achieve
3 compliance with waste discharge requirements in a
4 consistent and timely manner.

5 (c) Violations of waste discharge requirements often
6 continue for a considerable period of time, yielding
7 economic benefits for the violator and penalizing waste
8 dischargers who act lawfully.

9 (d) Swift and timely enforcement of waste discharge
10 requirements by the state board and the California
11 regional water quality control boards is necessary to
12 increase levels of compliance with those requirements.

13 SEC. 3. Section 13263.3 is added to the Water Code, to
14 read:

15 13263.3. (a) The Legislature finds and declares that
16 pollution prevention should be the first step in a
17 hierarchy for reducing pollution and managing wastes,
18 and to achieve environmental stewardship for society.
19 The Legislature also finds and declares that pollution
20 prevention is necessary to achieve the federal goal of zero
21 discharge of pollutants into navigable waters.

22 (b) For the purposes of this section, “pollution
23 prevention” includes all of the following:

24 (1) The use of materials, processes, or practices that
25 reduce or eliminate the generation of pollutants or
26 wastes.

27 (2) A reduction in the amount of any hazardous
28 substance, pollutant, or contaminant entering the waste
29 stream or otherwise released into the environment,
30 including fugitive emissions, prior to recycling,
31 treatment, or disposal.

32 (3) Changes in production processes that reduce,
33 avoid, or eliminate the use of toxic or hazardous
34 substances or generation of hazardous byproducts per
35 unit of product, thereby reducing risks to workers,
36 consumers, or the environment.

37 (c) (1) The state board and regional boards may
38 require an application for waste discharge requirements
39 for an industrial or municipal point source to include a



1 pollution prevention plan that includes all of the
2 following:

3 (A) A requirement that the discharger conduct an
4 audit that will include a list of all of the pollutants that the
5 facility generates, including those that it discharges into
6 navigable waterways or introduces into publicly owned
7 treatment works (POTWs), a description of the sources
8 of the pollutants, and a comprehensive review of the
9 processes used by the discharger that result in the
10 generation and discharge of the pollutants.

11 (B) An analysis of the methods that could be used to
12 prevent the generation of the pollutants, including the
13 application of innovative and alternative technologies
14 and any adverse environmental impacts resulting from
15 the use of those methods.

16 (C) A detailed description of the tasks and time
17 schedules required to investigate and implement various
18 elements of pollution prevention techniques.

19 (D) A statement of the discharger's pollution
20 prevention goals and strategies, including priorities for
21 short-term and long-term action.

22 (E) A description of the discharger's intended
23 pollution prevention activities for the immediate future.

24 (F) A description of the discharger's existing pollution
25 prevention methods.

26 (G) A statement that the discharger's existing and
27 planned pollution prevention strategies do not constitute
28 cross-media pollution transfers, and information that
29 supports that statement.

30 (H) Toxic chemical release data for those dischargers
31 subject to Section 313 of the Emergency Planning and
32 Community Right to Know Act of 1986 (42 U.S.C. Sec.
33 11023).

34 (I) Proof of compliance with the Hazardous Waste
35 Source Reduction and Management Review Act of 1989
36 (Article 11.9 (commencing with Section 25244.12) of
37 Chapter 6.5 of Division 20 of the Health and Safety Code).

38 (J) A cost analysis using full-cost accounting and
39 standard measures of profitability. The analysis shall
40 include a discussion of all of the following:



1 (i) The reduction in operating costs caused by using
2 less raw materials and conserving energy.

3 (ii) The savings from the reduced need for pollution
4 control and treatment equipment and monitoring.

5 (iii) The savings from reduced exposures to hazardous
6 wastes and chemicals among the work force and
7 community.

8 (iv) The reduced costs for compliance with waste
9 transportation, storage, and disposal regulations.

10 (v) Improved public image from taking positive steps
11 toward the community's waste problems.

12 (vi) Revenues from the recovery and sale of reusable
13 wastes.

14 (vii) Reduced liabilities through the elimination of
15 wastes.

16 (viii) Avoided costs of actions required for potential
17 accidental releases or cleanup of contaminated sites.

18 (ix) Additional operating and capital costs resulting
19 from changes in industrial processes, plant operations,
20 and modification of equipment.

21 (2) The state board may establish a schedule of actions
22 identified in the pollution prevention plans for the
23 discharger.

24 (3) (A) The state board shall incorporate the
25 pollution prevention plans as a part of the waste discharge
26 requirements prescribed for all dischargers that have
27 violated waste discharge requirement effluent
28 limitations more than three times in any 180-day period.

29 (B) A regional board shall base a decision whether to
30 incorporate a component of a pollution prevention plan
31 as part of waste discharge requirements prescribed for a
32 discharger only on information available to the public.

33 (4) The state board and regional boards shall make the
34 pollution prevention plans available for public review,
35 except to the extent that information is classified as
36 confidential because it is a trade secret. Trade secret
37 information shall be set forth in an appendix that is not
38 available to the public.

39 (5) Any costs incurred by the state board resulting
40 from actions required by this section shall be paid for



1 from revenue generated by the fees imposed by Section
2 13260.

3 (6) If a discharger is subject to the Hazardous Waste
4 Source Reduction and Management Review Act of 1989
5 (Article 11.9 (commencing with Section 25244.12) of
6 Chapter 6.5 of Division 20 of the Health and Safety Code)
7 and has completed a source reduction plan that is in
8 compliance with that act, that plan shall be deemed a
9 pollution prevention plan for the purposes of complying
10 with this section.

11 SEC. 4. Section 13263.4 is added to the Water Code, to
12 read:

13 13263.4. Not later than January 1, 2001, the state board
14 shall adopt regulations to establish standards for the
15 issuance of waste discharge requirements under this
16 division that include both of the following:

17 (a) Specific, numerical limits for one or more
18 pollutants in the wastewater discharge.

19 (b) A requirement that requires waste dischargers to
20 monitor the discharge to generate information sufficient
21 to determine compliance with applicable waste
22 discharge requirement effluent limitations.

23 SEC. 5. Section 13263.6 is added to the Water Code, to
24 read:

25 13263.6. (a) The state board shall not prescribe waste
26 discharge requirements for a publicly owned treatment
27 works (POTW) unless the state board determines that
28 the POTW requires discharge monitoring reports from its
29 significant industrial users, as defined in Section 403.3 of
30 Title 40 of the Code of Federal Regulations. The state
31 board may require those significant industrial users to
32 submit discharge monitoring reports to the POTW up to
33 once per month, if the state board determines that the
34 loading and toxicity of waste discharged by the significant
35 industrial users could pose substantial risks to the
36 environment or a discharger has violated waste discharge
37 requirement effluent limitations more than three times
38 in any 180-day period.



1 (b) A POTW may require pollution prevention plans
2 as described in Section 13263.3 as part of the pretreatment
3 requirements applicable to significant industrial users.

4 (c) The state board shall prescribe effluent limitations
5 as part of the waste discharge requirements of a POTW
6 for all substances that the most recent toxic chemical
7 release data reported to the state emergency response
8 commission pursuant to Section 313 of the Emergency
9 Planning and Community Right to Know Act of 1986 (42
10 U.S.C. Sec. 11023) indicate are discharged into the POTW
11 and for which the regional board has established water
12 quality objectives.

13 SEC. 6. Section 13350 of the Water Code is amended
14 to read:

15 13350. (a) Any person who (1) intentionally or
16 negligently violates any cease and desist order or cleanup
17 and abatement order hereafter issued, reissued, or
18 amended by a regional board or the state board, or (2) in
19 violation of any waste discharge requirement or other
20 order or prohibition issued, reissued, or amended by a
21 regional board or the state board, intentionally or
22 negligently discharges waste, or causes or permits waste
23 to be deposited where it is discharged, into the waters of
24 the state and creates a condition of pollution or nuisance,
25 or (3) causes or permits any oil or any residuary product
26 of petroleum to be deposited in or on any of the waters
27 of the state, except in accordance with waste discharge
28 requirements or other provisions of this division, may be
29 liable civilly in accordance with subdivision (d), (e), or
30 (f).

31 (b) Any person who, without regard to intent or
32 negligence, causes or permits any hazardous substance to
33 be discharged in or on any of the waters of the state where
34 it creates a condition of pollution or nuisance, except in
35 accordance with waste discharge requirements or other
36 provisions of this division, shall be strictly liable civilly in
37 accordance with subdivision (d), (e), or (f).

38 For purposes of this subdivision, the term "discharge"
39 includes only those discharges for which Section 13260



1 directs that a report of waste discharge shall be filed with
2 the regional board.

3 For purposes of this subdivision, the term “discharge”
4 does not include any emission ~~excluded from the~~
5 ~~applicability of~~ *not subject to* Section 311 of the Clean
6 Water Act (33 U.S.C. Section 1251 et seq.) pursuant to
7 Environmental Protection Agency regulations
8 interpreting Section 311(a)(2) of the Clean Water Act.

9 (c) There shall be no liability under subdivision (b) if
10 the discharge is caused solely by any one or combination
11 of the following:

12 (1) An act of war.

13 (2) An unanticipated grave natural disaster or other
14 natural phenomenon of an exceptional, inevitable, and
15 irresistible character, the effects of which could not have
16 been prevented or avoided by the exercise of due care or
17 foresight.

18 (3) Negligence on the part of the state, the United
19 States, or any department or agency thereof; provided,
20 that this paragraph shall not be interpreted to provide the
21 state, the United States, or any department or agency
22 thereof a defense to liability for any discharge caused by
23 its own negligence.

24 (4) An intentional act of a third party, the effects of
25 which could not have been prevented or avoided by the
26 exercise of due care or foresight.

27 (5) Any other circumstance or event which causes the
28 discharge despite the exercise of every reasonable
29 precaution to prevent or mitigate the discharge.

30 (d) When there is a discharge, and a cleanup and
31 abatement order is issued pursuant to Section 13304,
32 liability shall be imposed as follows:

33 (1) Civil liability may be administratively imposed by
34 a regional board pursuant to Article 2.5 (commencing
35 with Section 13323) for a violation of this section in an
36 amount which shall not exceed five thousand dollars
37 (\$5,000), but shall not be less than five hundred dollars
38 (\$500), for each day in which the discharge occurs and for
39 each day the cleanup and abatement order is violated.



1 (2) Civil liability may be imposed by the superior court
2 in accordance with this article and Article 6
3 (commencing with Section 13360) for a violation of this
4 section in an amount which shall not exceed fifteen
5 thousand dollars (\$15,000) for each day in which the
6 discharge occurs and for each day the cleanup and
7 abatement order is violated.

8 (e) When there is a discharge, and a cleanup and
9 abatement order is not issued pursuant to Section 13304,
10 liability shall be imposed as follows:

11 (1) Civil liability may be administratively imposed by
12 a regional board in accordance with Article 2.5
13 (commencing with Section 13323) for a violation of this
14 section in an amount which shall not exceed ten dollars
15 (\$10) for each gallon of waste discharged.

16 (2) Civil liability may be imposed by the superior court
17 in accordance with this article and Article 6
18 (commencing with Section 13360) for a violation of this
19 section in an amount which shall not exceed twenty
20 dollars (\$20) for each gallon of waste discharged.

21 (f) When there is no discharge, but an order issued by
22 the regional board is violated, liability shall be imposed as
23 follows:

24 (1) Civil liability may be administratively imposed by
25 a regional board in accordance with Article 2.5
26 (commencing with Section 13323) for a violation of this
27 section in an amount which shall not exceed one thousand
28 dollars (\$1,000), but shall not be less than one hundred
29 dollars (\$100), for each day in which the violation occurs.

30 (2) Civil liability may be imposed by the superior court
31 in accordance with this article and Article 6
32 (commencing with Section 13360) for a violation of this
33 section in an amount which shall not exceed ten thousand
34 dollars (\$10,000) for each day in which the violation
35 occurs.

36 (g) A regional board shall not administratively impose
37 civil liability in accordance with subdivision (d), (e), or
38 (f) in an amount less than the minimum amount
39 specified, unless the regional board makes express
40 findings setting forth the reasons for its action based on



1 the specific factors required to be considered pursuant to
2 Section 13327.

3 (h) The Attorney General, upon request of a regional
4 board or the state board, shall petition the superior court
5 to impose, assess, and recover such sums. Except in the
6 case of a violation of a cease and desist order, a regional
7 board or the state board shall make such request only
8 after a hearing, with due notice of the hearing given to all
9 affected persons. In determining such amount, the court
10 shall take into consideration all relevant circumstances,
11 including, but not limited to, the extent of harm caused
12 by the violation, the nature and persistence of the
13 violation, the length of time over which the violation
14 occurs, and corrective action, if any, taken by the
15 discharger.

16 (i) ~~The provisions of Article 3 (commencing with~~
17 Section 13330) and Article 6 (commencing with Section
18 13360) ~~of this chapter~~ shall apply to proceedings to
19 impose, assess, and recover an amount pursuant to this
20 article.

21 (j) Any person who pays any liability established
22 under this section shall be entitled to contribution for
23 such liability from any third party, in an action in the
24 superior court and upon proof that the discharge was
25 caused in whole or in part by an act or omission of the
26 third party, to the extent that the discharge is caused by
27 the act or omission of the third party, in accordance with
28 the principles of comparative fault.

29 (k) Remedies under this section are in addition to, and
30 do not supersede or limit, any and all other remedies, civil
31 or criminal; provided that no liability shall be recoverable
32 under subdivision (b) for any discharge for which liability
33 is recovered under Section 13385.

34 (l) The state board shall submit an annual report to the
35 Legislature ~~which~~ *that* shall be available to the public *in*
36 *paper form and electronically over the Internet*, list all
37 *violations of this division and all instances in which civil*
38 liability has been administratively imposed by a regional
39 board in accordance with subdivision (d), (e), or (f)
40 during the preceding year, and set forth the express



1 findings made by the regional board pursuant to
2 subdivision (g), and indicate the maximum amount of
3 liability ~~which~~ *that* could have been imposed and the
4 amount actually imposed in each instance.

5 SEC. 7. Section 13362 is added to the Water Code, to
6 read:

7 13362. A publicly owned treatment works (POTW)
8 with an approved pretreatment program may conduct
9 inspections under Section 13267, and assess and collect
10 civil penalties and civil administrative penalties in
11 accordance with this division, with regard to all
12 dischargers subject to waste discharge requirements.

13 SEC. 8. Section 13385.5 is added to the Water Code, to
14 read:

15 13385.5. (a) Civil administrative penalties shall be
16 assessed under this division at a level that recovers, at a
17 minimum, the economic benefits derived from the acts
18 that constitute the violation.

19 (b) (1) Notwithstanding any other provision of this
20 division, a mandatory minimum penalty of three
21 thousand dollars (\$3,000) shall be assessed for the first
22 serious violation in any 180-day period, to be applied, at
23 the discretion of the state board, to mitigation of the
24 subject waste discharge, or to development of a pollution
25 prevention plan.

26 (2) For the purposes of this section, a serious violation
27 means any exceedence of the waste discharge
28 requirement effluent limitations for a hazardous
29 pollutant by 20 percent or more or for a pollutant other
30 than a hazardous pollutant by 40 percent or more.

31 (c) Notwithstanding any other provision of this
32 division, a minimum mandatory penalty of three
33 thousand dollars (\$3,000) shall be assessed per day if
34 either of the following applies:

35 (1) The person commits two or more serious violations
36 in any 180-day period.

37 (2) The person does any of the following four or more
38 times in any 180-day period:

39 (A) Exceeds a waste discharge requirement effluent
40 limitation.

- 1 (B) Fails to file a report pursuant to Section 13260.
- 2 (C) Files an incomplete report pursuant to Section
- 3 13260.

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