

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY APRIL 12, 2011

AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 640

Introduced by Assembly Member Logue

February 16, 2011

An act to amend Section 13385 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 640, as amended, Logue. Water discharges: mandatory minimum civil penalties.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation, as defined, and for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months.

The state act authorizes the state board or a regional board, in lieu of assessing all or a portion of the mandatory minimum penalties against a publicly owned treatment works (POTW) that serves a small community, to elect to require that POTW to spend an equivalent amount toward the completion of a compliance project. The state act defines a POTW that serves a small community to mean, in pertinent part, a

POTW serving a community of 10,000 persons or fewer *or a rural county, as specified.*

This bill would expand that definition to include a POTW serving a community of 20,000 persons or fewer *or a rural county, as specified.* ~~The bill also would authorize the state board or a regional board to waive specified nonpayment penalties for a POTW that is subject to the compliance project provisions.~~

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. Section 13385 of the Water Code is amended to
2 read:

3 13385. (a) A person who violates any of the following ~~shall~~
4 be is liable civilly in accordance with this section:

5 (1) Section 13375 or 13376.

6 (2) A waste discharge requirement or dredged or fill material
7 permit issued pursuant to this chapter or any water quality
8 certification issued pursuant to Section 13160.

9 (3) A requirement established pursuant to Section 13383.

10 (4) An order or prohibition issued pursuant to Section 13243 or
11 Article 1 (commencing with Section 13300) of Chapter 5, if the
12 activity subject to the order or prohibition is subject to regulation
13 under this chapter.

14 (5) A requirement of Section 301, 302, 306, 307, 308, 318, 401,
15 or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312,
16 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

17 (6) A requirement imposed in a pretreatment program approved
18 pursuant to waste discharge requirements issued under Section
19 13377 or approved pursuant to a permit issued by the administrator.

20 (b) (1) Civil liability may be imposed by the superior court in
21 an amount not to exceed the sum of both of the following:

22 (A) Twenty-five thousand dollars (\$25,000) for each day in
23 which the violation occurs.

24 (B) ~~Where~~ If there is a discharge, any portion of which is not
25 susceptible to cleanup or is not cleaned up, and the volume
26 discharged but not cleaned up exceeds 1,000 gallons, an additional
27 liability not to exceed twenty-five dollars (\$25) multiplied by the

1 number of gallons by which the volume discharged but not cleaned
2 up exceeds 1,000 gallons.

3 (2) The Attorney General, upon request of a regional board or
4 the state board, shall petition the superior court to impose the
5 liability.

6 (c) Civil liability may be imposed administratively by the state
7 board or a regional board pursuant to Article 2.5 (commencing
8 with Section 13323) of Chapter 5 in an amount not to exceed the
9 sum of both of the following:

10 (1) Ten thousand dollars (\$10,000) for each day in which the
11 violation occurs.

12 (2) ~~Where~~ *If* there is a discharge, any portion of which is not
13 susceptible to cleanup or is not cleaned up, and the volume
14 discharged but not cleaned up exceeds 1,000 gallons, an additional
15 liability not to exceed ten dollars (\$10) multiplied by the number
16 of gallons by which the volume discharged but not cleaned up
17 exceeds 1,000 gallons.

18 (d) For purposes of subdivisions (b) and (c), “discharge”
19 includes any discharge to navigable waters of the United States,
20 any introduction of pollutants into a publicly owned treatment
21 works, or any use or disposal of sewage sludge.

22 (e) In determining the amount of any liability imposed under
23 this section, the regional board, the state board, or the superior
24 court, as the case may be, shall take into account the nature,
25 circumstances, extent, and gravity of the violation or violations,
26 whether the discharge is susceptible to cleanup or abatement, the
27 degree of toxicity of the discharge, and, with respect to the violator,
28 the ability to pay, the effect on its ability to continue its business,
29 any voluntary cleanup efforts undertaken, any prior history of
30 violations, the degree of culpability, economic benefit or savings,
31 if any, resulting from the violation, and other matters that justice
32 may require. At a minimum, liability shall be assessed at a level
33 that recovers the economic benefits, if any, derived from the acts
34 that constitute the violation.

35 (f) (1) Except as provided in paragraph (2), for the purposes of
36 this section, a single operational upset that leads to simultaneous
37 violations of more than one pollutant parameter shall be treated
38 as a single violation.

39 (2) (A) For the purposes of subdivisions (h) and (i), a single
40 operational upset in a wastewater treatment unit that treats

1 wastewater using a biological treatment process shall be treated
2 as a single violation, even if the operational upset results in
3 violations of more than one effluent limitation and the violations
4 continue for a period of more than one day, if all of the following
5 apply:

6 (i) The discharger demonstrates all of the following:

7 (I) The upset was not caused by wastewater treatment operator
8 error and was not due to discharger negligence.

9 (II) But for the operational upset of the biological treatment
10 process, the violations would not have occurred nor would they
11 have continued for more than one day.

12 (III) The discharger carried out all reasonable and immediately
13 feasible actions to reduce noncompliance with the applicable
14 effluent limitations.

15 (ii) The discharger is implementing an approved pretreatment
16 program, if so required by federal or state law.

17 (B) Subparagraph (A) only applies to violations that occur
18 during a period for which the regional board has determined that
19 violations are unavoidable, but in no case may that period exceed
20 30 days.

21 (g) Remedies under this section are in addition to, and do not
22 supersede or limit, any other remedies, civil or criminal, except
23 that no liability shall be recoverable under Section 13261, 13265,
24 13268, or 13350 for violations for which liability is recovered
25 under this section.

26 (h) (1) Notwithstanding any other provision of this division,
27 and except as provided in subdivisions (j), (k), and (l), a mandatory
28 minimum penalty of three thousand dollars (\$3,000) shall be
29 assessed for each serious violation.

30 (2) For the purposes of this section, a “serious violation” means
31 any waste discharge that violates the effluent limitations contained
32 in the applicable waste discharge requirements for a Group II
33 pollutant, as specified in Appendix A to Section 123.45 of Title
34 40 of the Code of Federal Regulations, by 20 percent or more or
35 for a Group I pollutant, as specified in Appendix A to Section
36 123.45 of Title 40 of the Code of Federal Regulations, by 40
37 percent or more.

38 (i) (1) Notwithstanding any other provision of this division,
39 and except as provided in subdivisions (j), (k), and (l), a mandatory
40 minimum penalty of three thousand dollars (\$3,000) shall be

1 assessed for each violation ~~whenever~~ *if* the person does any of the
2 following four or more times in any period of six consecutive
3 months, except that the requirement to assess the mandatory
4 minimum penalty shall not be applicable to the first three
5 violations:

6 (A) Violates a waste discharge requirement effluent limitation.

7 (B) Fails to file a report pursuant to Section 13260.

8 (C) Files an incomplete report pursuant to Section 13260.

9 (D) Violates a toxicity effluent limitation contained in the
10 applicable waste discharge requirements where the waste discharge
11 requirements do not contain pollutant-specific effluent limitations
12 for toxic pollutants.

13 (2) For the purposes of this section, a “period of six consecutive
14 months” means the period commencing on the date that one of the
15 violations described in this subdivision occurs and ending 180
16 days after that date.

17 (j) Subdivisions (h) and (i) do not apply to any of the following:

18 (1) A violation caused by one or any combination of the
19 following:

20 (A) An act of war.

21 (B) An unanticipated, grave natural disaster or other natural
22 phenomenon of an exceptional, inevitable, and irresistible
23 character, the effects of which could not have been prevented or
24 avoided by the exercise of due care or foresight.

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

28 (D) (i) The operation of a new or reconstructed wastewater
29 treatment unit during a defined period of adjusting or testing, not
30 to exceed 90 days for a wastewater treatment unit that relies on a
31 biological treatment process and not to exceed 30 days for any
32 other wastewater treatment unit, if all of the following requirements
33 are met:

34 (I) The discharger has submitted to the regional board, at least
35 30 days in advance of the operation, an operations plan that
36 describes the actions the discharger will take during the period of
37 adjusting and testing, including steps to prevent violations and
38 identifies the shortest reasonable time required for the period of
39 adjusting and testing, not to exceed 90 days for a wastewater

1 treatment unit that relies on a biological treatment process and not
2 to exceed 30 days for any other wastewater treatment unit.

3 (II) The regional board has not objected in writing to the
4 operations plan.

5 (III) The discharger demonstrates that the violations resulted
6 from the operation of the new or reconstructed wastewater
7 treatment unit and that the violations could not have reasonably
8 been avoided.

9 (IV) The discharger demonstrates compliance with the
10 operations plan.

11 (V) In the case of a reconstructed wastewater treatment unit,
12 the unit relies on a biological treatment process that is required to
13 be out of operation for at least 14 days in order to perform the
14 reconstruction, or the unit is required to be out of operation for at
15 least 14 days and, at the time of the reconstruction, the cost of
16 reconstructing the unit exceeds 50 percent of the cost of replacing
17 the wastewater treatment unit.

18 (ii) For the purposes of this section, “wastewater treatment unit”
19 means a component of a wastewater treatment plant that performs
20 a designated treatment function.

21 (2) (A) Except as provided in subparagraph (B), a violation of
22 an effluent limitation where the waste discharge is in compliance
23 with either a cease and desist order issued pursuant to Section
24 13301 or a time schedule order issued pursuant to Section 13300,
25 if all of the following requirements are met:

26 (i) The cease and desist order or time schedule order is issued
27 after January 1, 1995, but not later than July 1, 2000, specifies the
28 actions that the discharger is required to take in order to correct
29 the violations that would otherwise be subject to subdivisions (h)
30 and (i), and the date by which compliance is required to be achieved
31 and, if the final date by which compliance is required to be
32 achieved is later than one year from the effective date of the cease
33 and desist order or time schedule order, specifies the interim
34 requirements by which progress ~~towards~~ toward compliance will
35 be measured and the date by which the discharger will be in
36 compliance with each interim requirement.

37 (ii) The discharger has prepared and is implementing in a timely
38 and proper manner, or is required by the regional board to prepare
39 and implement, a pollution prevention plan that meets the
40 requirements of Section 13263.3.

1 (iii) The discharger demonstrates that it has carried out all
2 reasonable and immediately feasible actions to reduce
3 noncompliance with the waste discharge requirements applicable
4 to the waste discharge and the executive officer of the regional
5 board concurs with the demonstration.

6 (B) Subdivisions (h) and (i) shall become applicable to a waste
7 discharge on the date the waste discharge requirements applicable
8 to the waste discharge are revised and reissued pursuant to Section
9 13380, unless the regional board does all of the following on or
10 before that date:

11 (i) Modifies the requirements of the cease and desist order or
12 time schedule order as may be necessary to make it fully consistent
13 with the reissued waste discharge requirements.

14 (ii) Establishes in the modified cease and desist order or time
15 schedule order a date by which full compliance with the reissued
16 waste discharge requirements shall be achieved. For the purposes
17 of this subdivision, the regional board may not establish this date
18 later than five years from the date the waste discharge requirements
19 were required to be reviewed pursuant to Section 13380. If the
20 reissued waste discharge requirements do not add new effluent
21 limitations or do not include effluent limitations that are more
22 stringent than those in the original waste discharge requirements,
23 the date shall be the same as the final date for compliance in the
24 original cease and desist order or time schedule order or five years
25 from the date that the waste discharge requirements were required
26 to be reviewed pursuant to Section 13380, whichever is earlier.

27 (iii) Determines that the pollution prevention plan required by
28 clause (ii) of subparagraph (A) is in compliance with the
29 requirements of Section 13263.3 and that the discharger is
30 implementing the pollution prevention plan in a timely and proper
31 manner.

32 (3) A violation of an effluent limitation where the waste
33 discharge is in compliance with either a cease and desist order
34 issued pursuant to Section 13301 or a time schedule order issued
35 pursuant to Section 13300 or 13308, if all of the following
36 requirements are met:

37 (A) The cease and desist order or time schedule order is issued
38 on or after July 1, 2000, and specifies the actions that the discharger
39 is required to take in order to correct the violations that would
40 otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the *federal* Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the *federal* Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) (i) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent

1 limitation that is as short as possible, taking into account the
2 technological, operational, and economic factors that affect the
3 design, development, and implementation of the control measures
4 that are necessary to comply with the effluent limitation. Except
5 as provided in clause (ii), for the purposes of this subdivision, the
6 time schedule shall not exceed five years in length.

7 (ii) (I) For purposes of the upgrade described in subclause (III)
8 of clause (iv) of subparagraph (B), the time schedule shall not
9 exceed 10 years in length.

10 (II) Following a public hearing, and upon a showing that the
11 discharger is making diligent progress toward bringing the waste
12 discharge into compliance with the effluent limitation, the regional
13 board may extend the time schedule for an additional period not
14 exceeding five years in length, if the discharger demonstrates that
15 the additional time is necessary to comply with the effluent
16 limitation. This subclause does not apply to a time schedule
17 described in subclause (I).

18 (iii) If the time schedule exceeds one year from the effective
19 date of the order, the schedule shall include interim requirements
20 and the dates for their achievement. The interim requirements shall
21 include both of the following:

22 (I) Effluent limitations for the pollutant or pollutants of concern.

23 (II) Actions and milestones leading to compliance with the
24 effluent limitation.

25 (D) The discharger has prepared and is implementing in a timely
26 and proper manner, or is required by the regional board to prepare
27 and implement, a pollution prevention plan pursuant to Section
28 13263.3.

29 (k) (1) In lieu of assessing all or a portion of the mandatory
30 minimum penalties pursuant to subdivisions (h) and (i) against a
31 publicly owned treatment works serving a small community, the
32 state board or the regional board may elect to require the publicly
33 owned treatment works to spend an equivalent amount ~~towards~~
34 *toward* the completion of a compliance project proposed by the
35 publicly owned treatment works, if the state board or the regional
36 board finds all of the following:

37 (A) The compliance project is designed to correct the violations
38 within five years.

1 (B) The compliance project is in accordance with the
2 enforcement policy of the state board, excluding any provision in
3 the policy that is inconsistent with this section.

4 (C) The publicly owned treatment works has prepared a
5 financing plan to complete the compliance project.

6 (2) For the purposes of this subdivision, “a publicly owned
7 treatment works serving a small community” means a publicly
8 owned treatment works serving a population of ~~10,000~~ 20,000
9 persons or fewer or a rural county, with a financial hardship as
10 determined by the state board after considering such factors as
11 median income of the residents, rate of unemployment, or low
12 population density in the service area of the publicly owned
13 treatment works.

14 (I) (1) In lieu of assessing penalties pursuant to subdivision (h)
15 or (i), the state board or the regional board, with the concurrence
16 of the discharger, may direct a portion of the penalty amount to
17 be expended on a supplemental environmental project in
18 accordance with the enforcement policy of the state board. If the
19 penalty amount exceeds fifteen thousand dollars (\$15,000), the
20 portion of the penalty amount that may be directed to be expended
21 on a supplemental environmental project may not exceed fifteen
22 thousand dollars (\$15,000) plus 50 percent of the penalty amount
23 that exceeds fifteen thousand dollars (\$15,000).

24 (2) For the purposes of this section, a “supplemental
25 environmental project” means an environmentally beneficial project
26 that a person agrees to undertake, with the approval of the regional
27 board, that would not be undertaken in the absence of an
28 enforcement action under this section.

29 (3) This subdivision applies to the imposition of penalties
30 pursuant to subdivision (h) or (i) on or after January 1, 2003,
31 without regard to the date on which the violation occurs.

32 (m) The Attorney General, upon request of a regional board or
33 the state board, shall petition the appropriate court to collect any
34 liability or penalty imposed pursuant to this section. Any person
35 who fails to pay on a timely basis any liability or penalty imposed
36 under this section shall be required to pay, in addition to that
37 liability or penalty, interest, attorney’s fees, costs for collection
38 proceedings, and a quarterly nonpayment penalty for each quarter
39 during which the failure to pay persists. The nonpayment penalty
40 shall be in an amount equal to 20 percent of the aggregate amount

1 of the person's penalty and nonpayment penalties that are unpaid
2 as of the beginning of the quarter.

3 (n) (1) Subject to paragraph (2), funds collected pursuant to
4 this section shall be deposited in the State Water Pollution Cleanup
5 and Abatement Account.

6 (2) (A) Notwithstanding any other provision of law, moneys
7 collected for a violation of a water quality certification in
8 accordance with paragraph (2) of subdivision (a) or for a violation
9 of Section 401 of the federal Clean Water Act (33 U.S.C. Sec.
10 1341) in accordance with paragraph (5) of subdivision (a) shall be
11 deposited in the Waste Discharge Permit Fund and separately
12 accounted for in that fund.

13 (B) The funds described in subparagraph (A) shall be expended
14 by the state board, upon appropriation by the Legislature, to assist
15 regional boards, and other public agencies with authority to clean
16 up waste or abate the effects of the waste, in cleaning up or abating
17 the effects of the waste on waters of the state or for the purposes
18 authorized in Section 13443.

19 (o) The state board shall continuously report and update
20 information on its Internet Web site, but at a minimum, annually
21 on or before January 1, regarding its enforcement activities. The
22 information shall include all of the following:

23 (1) A compilation of the number of violations of waste discharge
24 requirements in the previous calendar year, including stormwater
25 enforcement violations.

26 (2) A record of the formal and informal compliance and
27 enforcement actions taken for each violation, including stormwater
28 enforcement actions.

29 (3) An analysis of the effectiveness of current enforcement
30 policies, including mandatory minimum penalties.

31 (p) The amendments made to subdivisions (f), (h), (i), and (j)
32 during the second year of the 2001–02 Regular Session apply only
33 to violations that occur on or after January 1, 2003.

34 ~~SECTION 1. Section 13385 of the Water Code is amended to~~
35 ~~read:~~

36 ~~13385. (a) A person who violates any of the following is liable~~
37 ~~civily in accordance with this section:~~

38 ~~(1) Section 13375 or 13376.~~

~~(2) A waste discharge requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.~~

~~(3) A requirement established pursuant to Section 13383.~~

~~(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.~~

~~(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.~~

~~(6) A requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.~~

~~(b) (1) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:~~

~~(A) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.~~

~~(B) If there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.~~

~~(2) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.~~

~~(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:~~

~~(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.~~

~~(2) If there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.~~

1 ~~(d) For purposes of subdivisions (b) and (c), “discharge”~~
2 ~~includes any discharge to navigable waters of the United States,~~
3 ~~any introduction of pollutants into a publicly owned treatment~~
4 ~~works, or any use or disposal of sewage sludge.~~

5 ~~(e) In determining the amount of any liability imposed under~~
6 ~~this section, the regional board, the state board, or the superior~~
7 ~~court, as the case may be, shall take into account the nature,~~
8 ~~circumstances, extent, and gravity of the violation or violations,~~
9 ~~whether the discharge is susceptible to cleanup or abatement, the~~
10 ~~degree of toxicity of the discharge, and, with respect to the violator,~~
11 ~~the ability to pay, the effect on its ability to continue its business,~~
12 ~~any voluntary cleanup efforts undertaken, any prior history of~~
13 ~~violations, the degree of culpability, economic benefit or savings,~~
14 ~~if any, resulting from the violation, and other matters that justice~~
15 ~~may require. At a minimum, liability shall be assessed at a level~~
16 ~~that recovers the economic benefits, if any, derived from the acts~~
17 ~~that constitute the violation.~~

18 ~~(f) (1) Except as provided in paragraph (2), for the purposes of~~
19 ~~this section, a single operational upset that leads to simultaneous~~
20 ~~violations of more than one pollutant parameter shall be treated~~
21 ~~as a single violation.~~

22 ~~(2) (A) For the purposes of subdivisions (h) and (i), a single~~
23 ~~operational upset in a wastewater treatment unit that treats~~
24 ~~wastewater using a biological treatment process shall be treated~~
25 ~~as a single violation, even if the operational upset results in~~
26 ~~violations of more than one effluent limitation and the violations~~
27 ~~continue for a period of more than one day, if all of the following~~
28 ~~apply:~~

- 29 ~~(i) The discharger demonstrates all of the following:~~
30 ~~(I) The upset was not caused by wastewater treatment operator~~
31 ~~error and was not due to discharger negligence.~~
32 ~~(II) But for the operational upset of the biological treatment~~
33 ~~process, the violations would not have occurred nor would they~~
34 ~~have continued for more than one day.~~
35 ~~(III) The discharger carried out all reasonable and immediately~~
36 ~~feasible actions to reduce noncompliance with the applicable~~
37 ~~effluent limitations.~~
38 ~~(ii) The discharger is implementing an approved pretreatment~~
39 ~~program, if so required by federal or state law.~~

~~(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.~~

~~(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.~~

~~(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.~~

~~(2) For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.~~

~~(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation if the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:~~

~~(A) Violates a waste discharge requirement effluent limitation.~~

~~(B) Fails to file a report pursuant to Section 13260.~~

~~(C) Files an incomplete report pursuant to Section 13260.~~

~~(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.~~

~~(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.~~

~~(j) Subdivisions (h) and (i) do not apply to any of the following:~~

1 ~~(1) A violation caused by one or any combination of the~~
2 ~~following:~~

3 ~~(A) An act of war.~~

4 ~~(B) An unanticipated, grave natural disaster or other natural~~
5 ~~phenomenon of an exceptional, inevitable, and irresistible~~
6 ~~character, the effects of which could not have been prevented or~~
7 ~~avoided by the exercise of due care or foresight.~~

8 ~~(C) An intentional act of a third party, the effects of which could~~
9 ~~not have been prevented or avoided by the exercise of due care or~~
10 ~~foresight.~~

11 ~~(D) (i) The operation of a new or reconstructed wastewater~~
12 ~~treatment unit during a defined period of adjusting or testing, not~~
13 ~~to exceed 90 days for a wastewater treatment unit that relies on a~~
14 ~~biological treatment process and not to exceed 30 days for any~~
15 ~~other wastewater treatment unit, if all of the following requirements~~
16 ~~are met:~~

17 ~~(I) The discharger has submitted to the regional board, at least~~
18 ~~30 days in advance of the operation, an operations plan that~~
19 ~~describes the actions the discharger will take during the period of~~
20 ~~adjusting and testing, including steps to prevent violations and~~
21 ~~identifies the shortest reasonable time required for the period of~~
22 ~~adjusting and testing, not to exceed 90 days for a wastewater~~
23 ~~treatment unit that relies on a biological treatment process and not~~
24 ~~to exceed 30 days for any other wastewater treatment unit.~~

25 ~~(II) The regional board has not objected in writing to the~~
26 ~~operations plan.~~

27 ~~(III) The discharger demonstrates that the violations resulted~~
28 ~~from the operation of the new or reconstructed wastewater~~
29 ~~treatment unit and that the violations could not have reasonably~~
30 ~~been avoided.~~

31 ~~(IV) The discharger demonstrates compliance with the~~
32 ~~operations plan.~~

33 ~~(V) In the case of a reconstructed wastewater treatment unit,~~
34 ~~the unit relies on a biological treatment process that is required to~~
35 ~~be out of operation for at least 14 days in order to perform the~~
36 ~~reconstruction, or the unit is required to be out of operation for at~~
37 ~~least 14 days and, at the time of the reconstruction, the cost of~~
38 ~~reconstructing the unit exceeds 50 percent of the cost of replacing~~
39 ~~the wastewater treatment unit.~~

1 (ii) ~~For the purposes of this section, “wastewater treatment unit”~~
2 ~~means a component of a wastewater treatment plant that performs~~
3 ~~a designated treatment function.~~

4 (2) (A) ~~Except as provided in subparagraph (B), a violation of~~
5 ~~an effluent limitation where the waste discharge is in compliance~~
6 ~~with either a cease and desist order issued pursuant to Section~~
7 ~~13301 or a time schedule order issued pursuant to Section 13300,~~
8 ~~if all of the following requirements are met:~~

9 (i) ~~The cease and desist order or time schedule order is issued~~
10 ~~after January 1, 1995, but not later than July 1, 2000, specifies the~~
11 ~~actions that the discharger is required to take in order to correct~~
12 ~~the violations that would otherwise be subject to subdivisions (h)~~
13 ~~and (i), and the date by which compliance is required to be achieved~~
14 ~~and, if the final date by which compliance is required to be~~
15 ~~achieved is later than one year from the effective date of the cease~~
16 ~~and desist order or time schedule order, specifies the interim~~
17 ~~requirements by which progress toward compliance will be~~
18 ~~measured and the date by which the discharger will be in~~
19 ~~compliance with each interim requirement.~~

20 (ii) ~~The discharger has prepared and is implementing in a timely~~
21 ~~and proper manner, or is required by the regional board to prepare~~
22 ~~and implement, a pollution prevention plan that meets the~~
23 ~~requirements of Section 13263.3.~~

24 (iii) ~~The discharger demonstrates that it has carried out all~~
25 ~~reasonable and immediately feasible actions to reduce~~
26 ~~noncompliance with the waste discharge requirements applicable~~
27 ~~to the waste discharge and the executive officer of the regional~~
28 ~~board concurs with the demonstration.~~

29 (B) ~~Subdivisions (h) and (i) shall become applicable to a waste~~
30 ~~discharge on the date the waste discharge requirements applicable~~
31 ~~to the waste discharge are revised and reissued pursuant to Section~~
32 ~~13380, unless the regional board does all of the following on or~~
33 ~~before that date:~~

34 (i) ~~Modifies the requirements of the cease and desist order or~~
35 ~~time schedule order as may be necessary to make it fully consistent~~
36 ~~with the reissued waste discharge requirements.~~

37 (ii) ~~Establishes in the modified cease and desist order or time~~
38 ~~schedule order a date by which full compliance with the reissued~~
39 ~~waste discharge requirements shall be achieved. For the purposes~~
40 ~~of this subdivision, the regional board may not establish this date~~

1 later than five years from the date the waste discharge requirements
2 were required to be reviewed pursuant to Section 13380. If the
3 reissued waste discharge requirements do not add new effluent
4 limitations or do not include effluent limitations that are more
5 stringent than those in the original waste discharge requirements,
6 the date shall be the same as the final date for compliance in the
7 original cease and desist order or time schedule order or five years
8 from the date that the waste discharge requirements were required
9 to be reviewed pursuant to Section 13380, whichever is earlier.

10 (iii) Determines that the pollution prevention plan required by
11 clause (ii) of subparagraph (A) is in compliance with the
12 requirements of Section 13263.3 and that the discharger is
13 implementing the pollution prevention plan in a timely and proper
14 manner.

15 (3) A violation of an effluent limitation where the waste
16 discharge is in compliance with either a cease and desist order
17 issued pursuant to Section 13301 or a time schedule order issued
18 pursuant to Section 13300 or 13308, if all of the following
19 requirements are met:

20 (A) The cease and desist order or time schedule order is issued
21 on or after July 1, 2000, and specifies the actions that the discharger
22 is required to take in order to correct the violations that would
23 otherwise be subject to subdivisions (h) and (i):

24 (B) The regional board finds that, for one of the following
25 reasons, the discharger is not able to consistently comply with one
26 or more of the effluent limitations established in the waste
27 discharge requirements applicable to the waste discharge:

28 (i) The effluent limitation is a new, more stringent, or modified
29 regulatory requirement that has become applicable to the waste
30 discharge after the effective date of the waste discharge
31 requirements and after July 1, 2000, new or modified control
32 measures are necessary in order to comply with the effluent
33 limitation, and the new or modified control measures cannot be
34 designed, installed, and put into operation within 30 calendar days.

35 (ii) New methods for detecting or measuring a pollutant in the
36 waste discharge demonstrate that new or modified control measures
37 are necessary in order to comply with the effluent limitation and
38 the new or modified control measures cannot be designed, installed,
39 and put into operation within 30 calendar days.

~~(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge; the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.~~

~~(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:~~

~~(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the federal Clean Water Act (33 U.S.C. Sec. 1311(h)).~~

~~(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.~~

~~(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the federal Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).~~

~~(C) (i) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. Except as provided in clause (ii), for the purposes of this subdivision, the time schedule shall not exceed five years in length.~~

~~(ii) (I) For purposes of the upgrade described in subclause (III) of clause (iv) of subparagraph (B), the time schedule shall not exceed 10 years in length.~~

~~(II) Following a public hearing, and upon a showing that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the regional board may extend the time schedule for an additional period not exceeding five years in length, if the discharger demonstrates that the additional time is necessary to comply with the effluent~~

1 ~~limitation. This subclause does not apply to a time schedule~~
2 ~~described in subclause (I):~~

3 ~~(iii) If the time schedule exceeds one year from the effective~~
4 ~~date of the order, the schedule shall include interim requirements~~
5 ~~and the dates for their achievement. The interim requirements shall~~
6 ~~include both of the following:~~

7 ~~(I) Effluent limitations for the pollutant or pollutants of concern.~~

8 ~~(II) Actions and milestones leading to compliance with the~~
9 ~~effluent limitation.~~

10 ~~(D) The discharger has prepared and is implementing in a timely~~
11 ~~and proper manner, or is required by the regional board to prepare~~
12 ~~and implement, a pollution prevention plan pursuant to Section~~
13 ~~13263.3.~~

14 ~~(k) (1) In lieu of assessing all or a portion of the mandatory~~
15 ~~minimum penalties pursuant to subdivisions (h) and (i) against a~~
16 ~~publicly owned treatment works serving a small community, the~~
17 ~~state board or the regional board may elect to require the publicly~~
18 ~~owned treatment works to spend an equivalent amount toward the~~
19 ~~completion of a compliance project proposed by the publicly owned~~
20 ~~treatment works, if the state board or the regional board finds all~~
21 ~~of the following:~~

22 ~~(A) The compliance project designed to correct the violations~~
23 ~~within five years.~~

24 ~~(B) The compliance project is in accordance with the~~
25 ~~enforcement policy of the state board, excluding any provision in~~
26 ~~the policy that is inconsistent with this section.~~

27 ~~(C) The publicly owned treatment works has prepared a~~
28 ~~financing plan to complete the compliance project.~~

29 ~~(2) For the purposes of this subdivision, "a publicly owned~~
30 ~~treatment works serving a small community" means a publicly~~
31 ~~owned treatment works serving a population of 20,000 persons or~~
32 ~~fewer or a rural county, with a financial hardship as determined~~
33 ~~by the state board after considering such factors as median income~~
34 ~~of the residents, rate of unemployment, or low population density~~
35 ~~in the service area of the publicly owned treatment works.~~

36 ~~(l) (1) In lieu of assessing penalties pursuant to subdivision (h)~~
37 ~~or (i), the state board or the regional board, with the concurrence~~
38 ~~of the discharger, may direct a portion of the penalty amount to~~
39 ~~be expended on a supplemental environmental project in~~
40 ~~accordance with the enforcement policy of the state board. If the~~

1 penalty amount exceeds fifteen thousand dollars (\$15,000), the
2 portion of the penalty amount that may be directed to be expended
3 on a supplemental environmental project may not exceed fifteen
4 thousand dollars (\$15,000) plus 50 percent of the penalty amount
5 that exceeds fifteen thousand dollars (\$15,000).

6 (2) For the purposes of this section, a “supplemental
7 environmental project” means an environmentally beneficial project
8 that a person agrees to undertake, with the approval of the regional
9 board, that would not be undertaken in the absence of an
10 enforcement action under this section.

11 (3) This subdivision applies to the imposition of penalties
12 pursuant to subdivision (h) or (i) on or after January 1, 2003,
13 without regard to the date on which the violation occurs.

14 (m) (1) The Attorney General, upon request of a regional board
15 or the state board, shall petition the appropriate court to collect
16 any liability or penalty imposed pursuant to this section. Except
17 as provided in paragraph (2), a person who fails to pay on a timely
18 basis any liability or penalty imposed under this section shall be
19 required to pay, in addition to that liability or penalty, interest,
20 attorney’s fees, costs for collection proceedings, and a quarterly
21 nonpayment penalty for each quarter during which the failure to
22 pay persists. The nonpayment penalty shall be in an amount equal
23 to 20 percent of the aggregate amount of the person’s penalty and
24 nonpayment penalties that are unpaid as of the beginning of the
25 quarter.

26 (2) A regional board or the state board may elect to waive the
27 nonpayment penalties pursuant to paragraph (1) for a publicly
28 owned treatment works that is subject to subdivision (k).

29 (n) (1) Subject to paragraph (2), funds collected pursuant to
30 this section shall be deposited in the State Water Pollution Cleanup
31 and Abatement Account.

32 (2) (A) Notwithstanding any other provision of law, moneys
33 collected for a violation of a water quality certification in
34 accordance with paragraph (2) of subdivision (a) or for a violation
35 of Section 401 of the federal Clean Water Act (33 U.S.C. Sec.
36 1341) in accordance with paragraph (5) of subdivision (a) shall be
37 deposited in the Waste Discharge Permit Fund and separately
38 accounted for in that fund.

39 (B) The funds described in subparagraph (A) shall be expended
40 by the state board, upon appropriation by the Legislature, to assist

1 regional boards, and other public agencies with authority to clean
2 up waste or abate the effects of the waste, in cleaning up or abating
3 the effects of the waste on waters of the state or for the purposes
4 authorized in Section 13443.

5 ~~(o) The state board shall continuously report and update~~
6 ~~information on its Internet Web site, but at a minimum, annually~~
7 ~~on or before January 1, regarding its enforcement activities. The~~
8 ~~information shall include all of the following:~~

9 ~~(1) A compilation of the number of violations of waste discharge~~
10 ~~requirements in the previous calendar year, including stormwater~~
11 ~~enforcement violations.~~

12 ~~(2) A record of the formal and informal compliance and~~
13 ~~enforcement actions taken for each violation, including stormwater~~
14 ~~enforcement actions.~~

15 ~~(3) An analysis of the effectiveness of current enforcement~~
16 ~~policies, including mandatory minimum penalties.~~

17 ~~(p) The amendments made to subdivisions (f), (h), (i), and (j)~~
18 ~~during the second year of the 2001-02 Regular Session apply only~~
19 ~~to violations that occur on or after January 1, 2003.~~