

STATE WATER RESOURCES CONTROL BOARD

PORTER COLOGNE  
WATER QUALITY  
CONTROL ACT

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WITH ADDITIONS AND AMENDMENTS EFFECTIVE JANUARY 1, 2000



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ERRATA

Section 14058 (f) should appear as below:

(f) All money repaid to the state pursuant to any contract executed under this chapter shall be deposited in the Water Recycling Subaccount, created by Section 78621, of the Clean Water and Water Recycling Account in the Safe, Clean, Reliable Water Supply Fund, for the purposes set forth in subdivision (b) of Section 78621.

Section (f) above will be amended as in section (f) below if the voters approve Proposition 13 in March 2000 (see Stats. 1999, ch. 725, sec.11)

(f) All money repaid to the state pursuant to any contract executed under this chapter shall be deposited in the Water Recycling Subaccount \* \* \* in the Clean Water and Water Recycling Account in the Safe \* \* \* Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund created by Section 79136, for the purposes set forth in \* \* \* Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.





# PORTER-COLOGNE WATER QUALITY CONTROL ACT

WITH ADDITIONS AND AMENDMENTS EFFECTIVE JANUARY 1, 2000

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## CALIFORNIA WATER CODE

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### DIVISION 7. WATER QUALITY

#### CHAPTER 1. POLICY

- 13000. Legislative findings

The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.

- 13001. Legislative intent

It is the intent of the Legislature that the state board and each regional board shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The state board and regional boards in exercising any power granted in this division shall conform to and implement the policies of this chapter and shall, at all times, coordinate their respective activities so as to achieve a unified and effective water quality control program in this state.

- 13002. Non-limiting clauses

No provision of this division or any ruling of the state board or a regional board is a limitation:

(a) On the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might degrade the quality of the waters of the state.

(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.

(c) On the power of the Attorney General, at the request of a regional board, the state board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(d) On the power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(e) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in the Civil Code

or for relief against any contamination or pollution.

## CHAPTER 1.5. SHORT TITLE

- 13020. Short title

This division shall be known and may be cited as the Porter-Cologne Water Quality Control Act.

## CHAPTER 2. DEFINITIONS

- 13050. Definitions

As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" includes any city, county, district, the state, and the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water

or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:

(1) Beneficial uses to be protected.

(2) Water quality objectives.

(3) A program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(l) (1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

(n) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.

(o) "Citizen or domiciliary" of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.

(p) (1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous substance" does not include any substance excluded from Section 311 (b)(2) of the Federal Water Pollution Control Act because it is within the scope of Section 311(a)(1) of that act.

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.

(D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q) (1) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as

defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(r) "Master recycling permit" means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.

- 13051. Injection well defined

As used in this division, "injection well" means any bored, drilled, or driven shaft, dug pit, or hole in the ground into which waste or fluid is discharged, and any associated subsurface appurtenances, and the depth of which is greater than the circumference of the shaft, pit, or hole.

## CHAPTER 3. STATE WATER QUALITY CONTROL

### *Article 1. State Water Resources Control Board*

- 13100. Organization

There is in the California Environmental Protection Agency the State Water Resources Control Board and the California regional water quality control boards. The organization, membership, and some of the duties of the state board are provided for in Article 3 (commencing with Section 174) of Chapter 2 of Division 1 of this code.

Article 2. Repealed

### *Article 3. State policy for water quality control*

- 13140. Policy adoption

The state board shall formulate and adopt state policy for water quality control. Such policy shall be adopted in accordance with the provisions of this article and shall be in conformity with the

(A) The discharge will not unreasonably affect beneficial uses.

(B) The discharge is consistent with applicable water quality control plans and state policy for water quality control.

(C) The use of recycled water is consistent with Chapter 7 (commencing with Section 13500).

(D) The discharge is consistent with all applicable requirements of Chapter 5.5 (commencing with Section 13370).

(E) The discharge is to the same general receiving water location as that to which the wastewater would be discharged if not reused.

(3) Any requirement imposed pursuant to Section 13263 or 13377 shall be adjusted to reflect a credit for waste present in the recycled water before reuse. The credit shall be limited to the difference between the amount of waste present in the nonrecycled water supply otherwise available to the industry and the amount of waste present in the recycled water.

(4) If the amount of waste in the discharge exceeds prescribed requirements because the amount of waste in the recycled water is in excess of that agreed to be furnished by the supplier to the discharger, no enforcement action shall be taken against the discharger unless both of the following statements apply:

(A) The supplier of the recycled water fails to correct the problem within 30 days after the cause of the problem is identified, or within any greater period of time agreed to by the appropriate regional board.

(B) The discharger continues to receive the recycled water from the supplier.

(f) This section shall not apply to industrial discharges into publicly owned treatment works.

- 13143. Review and revision

State policy for water quality control shall be periodically reviewed and may be revised.

- 13144. Interagency consultation

During the process of formulating or revising state policy for water quality control the state board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

- 13145. Consideration for the California Water Plan

The state board shall take into consideration the effect of its actions pursuant to this chapter on the California Water Plan as adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code, and on any other general or coordinated governmental plan looking toward the development, utilization, or conservation of the waters of the state.

- 13146. State agency compliance

State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.

- 13147. Policy adoption process

The state board shall not adopt state policy for water quality control unless a public hearing is first held respecting the adoption of such policy. At least 60 days in advance of such hearing the state board shall notify any affected regional boards, unless notice is waived by such boards, and shall give notice of such hearing by publication within the affected region pursuant to Section 6061 of the Government Code. The regional boards shall submit written recommendations to the state board at least 20 days in advance of the hearing.

#### *Article 4. Other powers and duties of the State Board*

- 13160. Federal Water Pollution Control Act

The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act and any other federal act, heretofore or hereafter enacted, and is (a) authorized to give any certificate or statement required by any federal agency pursuant to any such federal act that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state

policies set forth in Chapter 1 (commencing with Section 13000).

▪ 13141. California Water Plan

State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof. However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

▪ 13142. State policy for water quality control

State policy for water quality control shall consist of all or any of the following:

(a) Water quality principles and guidelines for long-range resource planning, including ground water and surface water management programs and control and use of recycled water.

(b) Water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities.

(c) Other principles and guidelines deemed essential by the state board for water quality control. The principles, guidelines, and objectives shall be consistent with the state goal of providing a decent home and suitable living environment for every Californian.

▪ 13142.5. Coastal marine environment

In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Wastewater discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

(1) Wetlands, estuaries, and other biologically sensitive sites.

(2) Areas important for water contact sports.

(3) Areas that produce shellfish for human consumption.

(4) Ocean areas subject to massive waste discharge. Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges. Toxic and hard-to-treat substances should be pretreated at the source if such substances would be incompatible with effective and economical treatment in municipal treatment plants.

(b) For each new or expanded coastal powerplant or other industrial installation using seawater for cooling, heating, or industrial processing, the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

(c) Where otherwise permitted, new warmed or cooled water discharges into coastal wetlands or into areas of special biological importance, including marine reserves and kelp beds, shall not significantly alter the overall ecological balance of the receiving area.

(d) Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development.

(e) (1) Adequately treated recycled water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the coastal zone, and consideration, in statewide programs of financial assistance for water pollution or water quality control, shall be given to providing optimum water recycling and use of recycled water.

(2) If recycled water is available for industrial use, any discharge to waters in the coastal zone, including the San Francisco Bay, after industrial use, may be authorized if all of the following conditions are met:

board will not reduce water quality below applicable standards, and (b) authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and acts amendatory thereto.

▪ 13160.1. Federal certificate fee

The state board may establish a reasonable fee schedule to cover the cost of giving any certificate which is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act and certificates requested pursuant to Section 169 of the Internal Revenue Code, as amended in 1969, with respect to water pollution control facilities.

▪ 13161. Research projects

The state board shall annually determine state needs for water quality research and recommend projects to be conducted.

▪ 13162. Research administration

The state board shall administer any statewide program of research in the technical phases of water quality control which may be delegated to it by law and may accept funds from the United States or any person to that end. The state board may conduct such a program independently, or by contract or in cooperation with any federal or state agency, including any political subdivision of the state, or any person or public or private organization.

▪ 13163. Coordination of investigations

(a) The state board shall coordinate water-quality-related investigations of state agencies, recognizing that other state agencies have primary statutory authority for such investigations, and shall consult with the concerned regional boards in implementing this section.

(b) The state board from time to time shall evaluate the need for water-quality-related investigations to effectively develop and implement statewide policy for water quality

control and shall transmit its recommendations for investigations to affected or concerned federal, state, and local agencies. The affected state agencies shall comply with the recommendations or shall advise the state board in writing why they do not comply with such recommendations.

(c) State agencies shall submit to the state board plans for and results of all investigations that relate to or have an effect upon water quality for review and comment.

▪ 13164. Regional water quality control plans

The state board shall formulate, adopt and revise general procedures for the formulation, adoption and implementation by regional boards of water quality control plans. During the process of formulating or revising such procedures, the state board shall consult with and evaluate the recommendations of any affected regional boards.

▪ 13165. Water quality factors

The state board may require any state or local agency to investigate and report on any technical factors involved in water quality control; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.

▪ 13166. Statewide water quality information program

The state board, with the assistance of the regional boards, shall prepare and implement a statewide water quality information storage and retrieval program. Such program shall be coordinated and integrated to the maximum extent practicable with data storage and retrieval programs of other agencies.

▪ 13167. Public information

The state board shall implement a public information program on matters involving water quality, and shall maintain an information file on water quality research and other pertinent matters.

▪ 13168. Regional Board budgets

The state board shall allocate to the regional boards from funds appropriated to the state board such part thereof as may be necessary for the administrative expenses of such boards. The regional boards shall submit annual budgets to the state board. Subject to the provisions of Chapter 3 (commencing with Section 13291) of Part 3, Division 3, Title 2 of the Government Code and any other laws giving the Department of Finance fiscal and budgetary control over state departments generally, the state board shall prepare an annual budget concerning its activities and the activities of the regional boards.

▪ 13169. Groundwater protection programs

(a) The state board is authorized to develop and implement a groundwater protection program as provided under the Safe Drinking Water Act, Section 300 and following of Title 42 of the United States Code, and any federal act that amends or supplements the Safe Drinking Water Act. The authority of the state board under this section includes, but is not limited to, the following:

(1) To apply for and accept state groundwater protection grants from the federal government.

(2) To take any additional action as may be necessary or appropriate to assure that the state's groundwater protection program complies with any federal regulations issued pursuant to the Safe Drinking Water Act or any federal act that amends or supplements the Safe Drinking Water Act.

(b) Nothing in this section is intended to expand the authority of the state board as authorized under the Porter-Cologne Water Quality Control Act (Div. 7 (commencing with Sec. 13000) Wat. C.).

▪ 13170. State Board plans

The state board may adopt water quality control plans in accordance with the provisions of Sections 13240 to 13244, inclusive, insofar as they are applicable, for waters for which water quality standards are required by the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. Such plans, when adopted, supersede any regional water

quality control plans for the same waters to the extent of any conflict.

▪ 13170.1. Management agency agreements

The state board shall consider all relevant management agency agreements, which are intended to protect a specific beneficial use of water, prior to adopting all water quality control plans pursuant to Section 13170.

▪ 13170.2. California Ocean Plan

(a) The state board shall formulate and adopt a water quality control plan for ocean waters of the state which shall be known as the California Ocean Plan.

(b) The plan shall be reviewed at least every three years to guarantee that the current standards are adequate and are not allowing degradation to indigenous marine species or posing a threat to human health.

(c) In formulating the plan, the state board shall develop bioassay protocols to evaluate the effect of municipal and industrial waste discharges on the marine environment.

(d) The state board shall adopt the bioassay protocols and complementary chemical testing methods and shall require their use in the monitoring of complex effluent ocean discharges. For purposes of this section, "complex effluent" means an effluent in which all chemical constituents are not known or monitored. The state board shall adopt bioassay protocols and complementary chemical testing methods for complex effluent ocean monitoring by January 1, 1990, and shall require their use in monitoring complex effluent ocean discharges by entities discharging 100 million gallons per day or more by January 1, 1991. The state board shall also adopt a schedule for requiring the use of these protocols for complex effluent ocean discharges of under 100 million gallons per day by January 1, 1992.

▪ 13170.5. Waste treatment management plans

Notwithstanding any provision of law, any plan provided in Section 13170, 13240, or 13245, and any approval thereof, and any certification or approval of an areawide waste treatment management plan prepared pursuant to Section 208 of the Federal Water Pollution Control Act

shall be subject to the provisions of Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

▪ 13171. Water Quality Coordinating Committee -

The state board may establish a Water Quality Coordinating Committee, consisting of at least one member of each of the nine regional boards, to assist the state board in carrying out its responsibilities in water quality control.

▪ 13172. Waste disposal sites: standards & regulations

To ensure adequate protection of water quality and statewide uniformity in the siting, operation, and closure of waste disposal sites, except for sewage treatment plants or those sites which primarily contain fertilizer or radioactive material, the state board shall do all of the following:

(a) Classify wastes according to the risk of impairment to water quality, taking into account toxicity, persistence, degradability, solubility, and other biological, chemical, and physical properties of the wastes.

(b) Classify the types of disposal sites according to the level of protection provided for water quality, taking into account the geology, hydrology, topography, climatology, and other factors relating to ability of the site to protect water quality.

(c) Adopt standards and regulations to implement Sections 13226 and 13227.

(d) Adopt standards and regulations for hazardous waste disposal sites which apply and ensure compliance with all applicable groundwater protection and monitoring requirements of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), any federal act, enacted before or after January 1, 1989, which amends or supplements the Resource Conservation and Recovery Act of 1976, any federal regulations adopted before or after January 1, 1989, pursuant to the Resource Conservation and Recovery Act of 1976, as amended, together with any more stringent requirements necessary to implement this division or Article 9.5

(commencing with Section 25208) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(e) Adopt policies, standards, and regulations for discharges of mining waste which apply, and ensure compliance with, all surface water and groundwater protection and monitoring requirements of this division, Article 9.5 (commencing with Section 25208) of Chapter 6.5 of Division 20 of the Health and Safety Code, and Subchapter IV (commencing with Section 6941) of Chapter 82 of Title 42 of the United States Code, which are applicable to discharges of mining waste. These policies, standards, and regulations shall include, but are not limited to, all of the following:

(1) A statewide policy for monitoring surface water and groundwater that may be affected by discharges of mining waste. The policy shall establish the principles the regional boards shall use in developing monitoring plans for discharges of mining waste, including the methods the regional boards shall use in determining the location, number, and type of monitoring sites.

(2) Regulations requiring that waste discharge requirements issued for discharges of mining waste by regional boards include monitoring requirements consistent with the statewide policy adopted pursuant to paragraph (1).

(3) Standards for reporting the results of surface water and groundwater monitoring to the regional board. The standards shall establish a reporting format that graphs monitoring data over an appropriate time period and compares the values found for each measured parameter against the standard for that parameter established in the waste discharge requirements.

▪ 13173. Designated waste

"Designated waste" means either of the following: (a) Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code.

(b) Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as



contained in the appropriate state water quality control plan.

▪ 13173.2. Designated waste policies

The state board, after consultation with the California Integrated Waste Management Board and the Department of Toxic Substances Control, may, as available resources permit, adopt policies with regard to designated wastes to include, but not be limited to, both of the following:

(a) Policies that provide for the means by which a regional board shall identify designated waste and the waters of the state that the waste may potentially impact.

(b) Policies for regional boards with regard to the granting of waivers to make inapplicable the designated waste classification.

▪ 13176. Certified laboratories

(a) The analysis of any material required by this division shall be performed by a laboratory accredited by the State Department of Health Services under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code.

(b) No person or public entity of the state shall contract with a laboratory for environmental analyses for which the department requires registration or accreditation pursuant to this chapter, unless the laboratory holds a valid certificate of registration or accreditation.

▪ 13177. California State Mussel Watch Program

(a) It is the intent of the Legislature that the state board continue to implement the California State Mussel Watch Program.

(b) The Legislature finds and declares that the California State Mussel Watch Program provides the following benefits to the people of the state:

(1) An effective method for monitoring the long-term effects of certain toxic substances in selected fresh, estuarine, and marine waters.

(2) An important element in the state board's comprehensive water quality monitoring strategy.

(3) Identification, on an annual basis of specific areas where concentrations of toxic substances are higher than normal.

(4) Valuable information to guide the state and regional boards and other public and private agencies in efforts to protect water quality.

(c) To the extent funding is appropriated for this purpose, the state board, in conjunction with the Department of Fish and Game, shall continue to implement the long-term coastal monitoring program known as the California State Mussel Watch Program. The program may consist of, but is not limited to, the following elements:

(1) Removal of mussels, clams, and other aquatic organisms from relatively clean coastal sites and placing them in sampling sites.

For purposes of this section, "sampling sites" means selected waters of concern to the state board and the Department of Fish and Game.

(2) After specified exposure periods at the sampling sites, removal of the aquatic organisms for analysis.

(3) Laboratory analysis of the removed aquatic organisms to determine the amounts of various toxic substances that may have accumulated in the bodies of the aquatic organisms.

(4) Making available both the short- and long-term results of the laboratory analysis to appropriate public and private agencies and the public.

▪ 13178. Source investigation protocols

(a) (1) On or before September 30, 2000, the state board, in conjunction with the State Department of Health Services and a panel of experts established by the state board, shall develop source investigation protocols for use in conducting source investigations of storm drains that produce exceedences of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code. The protocols shall be based upon the experiences drawn from previous source investigations performed by the state board, regional boards, or other agencies, and other available data. The protocols shall include methods for identifying the location and biological origins of sources of bacteriological contamination, and, at a minimum, shall require source investigations if bacteriological standards are exceeded in any three weeks of a four-week period, or, for areas where testing is done more than once a week, 75 percent of testing

days that produce an exceedence of those standards.

(2) The development of source investigation protocols pursuant to paragraph (1) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before March 31, 2001, the state board, in conjunction with the State Department of Health Services, shall report to the Legislature on the methods by which it intends to conduct source investigations of storm drains that produce exceedences of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code. Factors to be addressed in the report shall include the approximate number of public beaches expected to be affected by the exceedence of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code, as well as the costs expected for source investigation of the storm drains affecting those public beaches. The report shall include a timeline for completion of source investigations.

▪ 13181. Water quality monitoring

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Coastal waters" means waters within the area bounded by the mean high tide line to the three-mile state waters limit, from the Oregon to the Mexican borders.

(2) "Coastal watersheds" means the watersheds of tributary waters that drain to the ocean and significantly influence coastal water quality.

(b) (1) To the extent that funds are available for that purpose, the state board shall prepare and complete on or before January 1, 2000, an inventory of existing water quality monitoring activities within state coastal watersheds, bays, estuaries, and coastal waters.

The information generated by preparing the inventory shall be made available as a report, and as an Internet-based index, that is available to the general public. A summary of the results shall be made available to the Legislature. The inventory

shall include, but not be limited to, descriptions of all of the following:

(A) The sources of monitoring data, including federal, state, and local governments, the private sector, citizen groups, and nonprofit organizations.

(B) The monitoring methods being used by these sources.

(C) The location of the monitoring sites.

(D) Existing efforts to investigate the discharge of nonvolatile organic pollutants, including trace metals and nontarget organic chemicals, through storm drains into Santa Monica Bay, San Francisco Bay, Humboldt Bay, and San Diego Bay.

(2) Notwithstanding any other provision of law, the state board shall carry out paragraph (1) by contracting with institutions with expertise in coastal water quality monitoring, which may include the Southern California Coastal Water Research Project and the San Francisco Estuary Institute, to undertake the inventory.

(c) (1) To the extent that funds are available for that purpose, the state board, not later than January 1, 2001, shall prepare and submit to the Legislature a report that proposes the implementation of a comprehensive program to monitor the quality of state coastal watersheds, bays, estuaries, and coastal waters and their marine resources for pollutants, including, but not limited to, bacteria and viruses, petroleum hydrocarbons, heavy metals, and pesticides, as defined in Section 12753 of the Food and Agricultural Code. The proposed program shall utilize information available through the sources identified in paragraph (1) of subdivision (b), as appropriate, and shall avoid the duplication of existing and ongoing monitoring efforts to the extent feasible. The proposed program shall include, but not be limited to, all of the following:

(A) To the extent possible, a determination regarding the extent to which existing water quality objectives, sediment quality guidelines, tissue contaminant burden guidelines, and health standards are being met. Where information is not available to make this determination, the report shall identify methods for determining this information.

(B) To the extent possible, a determination regarding the sources of pollution in areas where objectives, standards, and guidelines are not being

met. Where information is not available to make this determination, the report shall identify methods for determining this information.

(C) Methods for determining the degree of improvement or degradation in coastal water quality over time with respect to these objectives, guidelines, and standards.

(D) To the extent possible, estimates of the total discharges of pollutants into state coastal watersheds, bays, estuaries, and coastal waters from all sources.

(E) Standard protocols for sampling and data collection methods, to maximize the usefulness of the data resulting from the program.

(F) Recommendations for a standard format for reporting monitoring results to maximize access to and use of the data.

(G) The estimated costs of implementing the program and the proposed schedule of implementation.

(H) A description of the method by which the state board shall provide biennial reporting to the public on water quality within the state's coastal watersheds, bays, estuaries, and coastal waters, and recommended actions that should be undertaken to maintain and improve water quality in those areas.

(I) A description of the method by which the state board shall develop a system for monitoring mass contaminant discharges, including, but not limited to, heavy metals, PCBs, PAHs, and pesticides from storm water at the point of discharge. The system shall provide for the appropriate frequency of monitoring for each specific contaminant. The system shall be designed to identify the relative contribution of contaminants in storm water to the overall anthropogenic discharges into near coastal waters. To the extent possible, the system shall be designed to determine the effectiveness of best management practices in reducing the discharges of contaminants to near coastal waters.

(2) The state board shall consult with the San Francisco Estuary Institute and the Southern California Coastal Water Research Project to prepare the report. Notwithstanding any other provision of law, the state board may carry out paragraph (1) by contracting with institutions with expertise in coastal water quality monitoring, including, but not limited to, the Southern California Coastal Water Research Project and the

San Francisco Estuary Institute, to prepare the report. The state board or its contractors shall convene workshops, symposia, and other professional and scientific meetings for the purpose of developing a consensus on the part of regulatory agencies and dischargers with regard to the appropriate methods to be used to monitor water quality on a statewide basis.

(d) The state board shall not use more than 5 percent of the funds allocated to implement subdivisions (b) and (c) for the administrative costs of the contracts permitted under those provisions.

▪ 13191. Evaluation of program structure

(a) The state board shall convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)), and applicable federal regulations and monitoring and assessment programs. The advisory group or groups shall be comprised of persons concerned with the requirements of Section 303(d) of the Clean Water Act. The state board shall provide public notice on its website of any meetings of the advisory group or groups and, upon the request of any party shall mail notice of the time and location of any meeting of the group or groups. The board shall also ensure that the advisory group or groups meet in a manner that facilitates the effective participation of the public and the stakeholder participants.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before November 30, 2000, and annually thereafter until November 30, 2002, the state board shall report to the Legislature on the structure and effectiveness of its water quality program as it relates to Section 303(d) of the Clean Water Act. The report may include the information required to be submitted by the board to the United States Environmental Protection Agency pursuant to Section 305(b) of the Clean Water Act, and any information required to be submitted to the Legislature pursuant to the Supplemental Report of the Budget Act of 1999. In formulating its report, the state board shall consider any recommendations of the advisory group or groups.

- 13192. Surface water quality monitoring report

(a) Notwithstanding Section 7550.5 of the Government Code, the state board, on or before November 30, 2000, shall assess and report to the Legislature on the State Water Resources Control Board's and regional water control board's current surface water quality monitoring programs for the purpose of designing a proposal for a comprehensive surface water quality monitoring program for the state. The report shall include a proposal for the program, including steps and costs associated with developing the full program, cost of implementation of the program after development, and appropriate funding mechanisms, including any fee structure. The board may include in the report information required to be submitted to the United States Environmental Protection Agency pursuant to Section 305(b) of the Clean Water Act, information required to be submitted pursuant to paragraph (1) of subdivision (c) of Section 13181, and any information required to be submitted to the Legislature pursuant to the Supplemental Report of the Budget Act of 1999.

(b) In considering and designing the proposal, the state board shall address factors that include, but need not be limited to, all of the following:

(1) Physical, chemical, biological, and other parameters about which the program shall collect and evaluate data and other information and the reasonable means to ensure that the data is accurate in determining ambient water quality.

(2) The use of models and other forms of information not directly measuring water quality.

(3) Reasonable quality assurance and quality control protocols sufficient to allow sound management while allowing and encouraging, where appropriate, data collection by entities including citizens and other stakeholders, such as dischargers.

(4) A strategy to expeditiously develop information about waters concerning which the state presently possesses little or no information.

(5) A strategy for assuring that data collected as part of monitoring programs, and any associated quality assurance elements associated with the data collection, be made readily available to the public.

(6) A strategy for assessing and characterizing discharges from nonpoint sources of pollution and natural background sources.

(7) A strategy to prioritize and allocate resources in order to effectively meet water quality monitoring goals.

(c) Nothing in this section affects the authority of the regional water quality control boards.

## CHAPTER 4. REGIONAL WATER QUALITY CONTROL

### *Article 1. Organization and membership of regional boards*

- 13200. Regional board boundaries

The state is divided, for the purpose of this division, into nine regions:

(a) North Coast region, which comprises all basins including Lower Klamath Lake and Lost River Basins draining into the Pacific Ocean from the California-Oregon state line southerly to the southerly boundary of the watershed of Estero de San Antonio and Stemple Creek in Marin and Sonoma Counties.

(b) San Francisco Bay region, which comprises San Francisco Bay, Suisun Bay, from Sacramento River and San Joaquin River westerly from a line which passes between Collinsville and Montezuma Island and follows thence the boundary common to Sacramento and Solano Counties and that common to Sacramento and Contra Costa Counties to the westerly boundary of the watershed of Markley Canyon in Contra Costa County, all basins draining into the bays and rivers westerly from this line, and all basins draining into the Pacific Ocean between the southerly boundary of the north coastal region and the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties.

(c) Central Coast region, which comprises all basins, including Carrizo Plain in San Luis Obispo and Kern Counties, draining into the Pacific Ocean from the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties to the southeasterly

boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek.

(d) Los Angeles region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages.

(e) Santa Ana region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary of the Los Angeles region and a line which follows the drainage divide between Muddy and Moro Canyons from the ocean to the summit of San Joaquin Hills; thence along the divide between lands draining into Newport Bay and into Laguna Canyon to Niguel Road; thence along Niguel Road and Los Aliso Avenue to the divide between Newport Bay and Aliso Creek drainages; thence along that divide and the southeasterly boundary of the Santa Ana River drainage to the divide between Baldwin Lake and Mojave Desert drainages; thence along that divide to the divide between Pacific Ocean and Mojave Desert drainages.

(f) San Diego region, which comprises all basins draining into the Pacific Ocean between the southern boundary of the Santa Ana region and the California-Mexico boundary.

(g) Central Valley region, which comprises all basins including Goose Lake Basin draining into the Sacramento and San Joaquin Rivers to the easterly boundary of the San Francisco Bay region near Collinsville. The Central Valley region shall have section offices in the Sacramento Valley and the San Joaquin Valley.

(h) Lahontan region, which comprises all basins east of the Santa Ana, Los Angeles and Central Valley regions from the California-Oregon boundary to the southerly boundary located in Los Angeles and San Bernardino Counties of the watersheds draining into Antelope Valley, Mojave River Basin and Dry Lake Basin near Ivanpah.

(i) Colorado River Basin region, which comprises all basins east of the Santa Ana and San Diego regions draining into the Colorado River, Salton Sea and local sinks from the southerly boundary of the Lahontan region to the

California-Mexico boundary. The regions defined and described in this section shall be as precisely delineated on official maps of the department and include all of the areas within the boundaries of the state. For purposes of this section the boundaries of the state extend three nautical miles into the Pacific Ocean from the line of mean lower low water marking the seaward limits of inland waters and three nautical miles from the line of mean lower low water on the mainland and each offshore island.

Nothing in this section shall limit the power conferred by this chapter to regulate the disposal of waste into ocean waters beyond the boundaries of the state.

▪ 13201. Regional board members

(a) There is a regional board for each of the regions described in Section 13200. Each board shall consist of the following nine members appointed by the Governor, each of whom shall represent and act on behalf of all the people and shall reside or have a principal place of business within the region:

(1) One person associated with water supply, conservation, and production.

(2) One person associated with irrigated agriculture.

(3) One person associated with industrial water use.

(4) One person associated with municipal government.

(5) One person associated with county government.

(6) One person from a responsible nongovernmental organization associated with recreation, fish, or wildlife.

(7) Three persons not specifically associated with any of the foregoing categories, two of whom shall have special competence in areas related to water quality problems.

(b) All persons appointed to a regional board shall be subject to Senate confirmation, but shall not be required to appear before any committee of the Senate for purposes of such confirmation unless specifically requested to appear by the Senate Committee on Rules.

(c) Insofar as practicable, appointments shall be made in such manner as to result in

representation on the board from all parts of the region.

(d) Notwithstanding subdivision (a), if appointments cannot be made of persons associated with county government because of the requirements of Section 13388, those appointments may be made of persons not specifically associated with any category.

▪ 13202. Terms

Each member of a regional board shall be appointed for a term of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

▪ 13203. Official designations

The official designation of each regional board shall be: California Regional Water Quality Control Board, (region name).

▪ 13204. Regional board meetings

Each regional board shall hold at least six regular meetings each calendar year and such additional special meetings or hearings as shall be called by the chairman or any two members of the regional board.

▪ 13205. Member compensation

Each member of a regional board shall receive one hundred dollars (\$100) for each day during which that member is engaged in the performance of official duties, except that no member shall be entitled to receive the one hundred dollars (\$100) compensation if the member otherwise receives compensation from other sources for performing those duties. The total compensation received by members of each regional board shall not exceed, in any one fiscal year, the sum of thirteen thousand five hundred dollars (\$13,500). A member may decline compensation. In addition to the compensation, each member shall be reimbursed for necessary traveling and other expenses incurred in the performance of official duties.

▪ 13206. Eligibility of public officers

Public officers associated with any area of government, including planning or water, and whether elected or appointed, may be appointed to, and may serve contemporaneously as members of, a regional board.

▪ 13207. Conflict of interest

(a) No member of a regional board shall participate in any board action pursuant to Article 4 (commencing with Section 13260) of Chapter 4, or Article 1 (commencing with Section 13300) of Chapter 5, of this division which involves himself or any waste discharger with which he is connected as a director, officer or employee, or in which he has a direct personal financial interest within the meaning of Section 1120 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board or the state board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon request of any person or on his own initiative the Attorney General may file a complaint in the superior court for the county in which the regional board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

▪ 13208. Executive officer conflict of interest

(a) No regional board executive officer may make, participate in making, or use his or her official position to influence, any decision of the regional board, or made on behalf of the regional board, affecting any person or entity subject to waste discharge requirements under this division if the regional board executive officer has received, during the previous two years, 10 percent or more of his or her income from that person or entity.

(b) "Income," for purposes of this section, has the same meaning as in Section 82030 of the Government Code.

*Article 2. General provisions relating to powers and duties of regional boards*

▪ 13220. Organization

Each regional board shall do all of the following:

(a) Establish an office.

(b) Select one of its members as chairman at the first regular meeting held each year.

(c) Appoint as its confidential employee, exempt from civil service under Section 4 of Article VII of the California Constitution, and fix the salary of, an executive officer who shall meet technical qualifications as defined by the State Water Resources Control Board. The executive officer shall serve at the pleasure of the regional board.

(d) Employ any other assistants which may be determined necessary to assist the executive officer.

▪ 13221. Oaths and subpoenas

Members of the regional board shall be empowered to administer oaths and issue subpoenas for the attendance and giving of testimony by witnesses and for the production of evidence in any proceeding before the board in any part of the region. The provisions of Chapter 3 (commencing with Section 1075) of Part I of Division 2 of this code shall apply to regional boards within their own regions, where they shall have the same power as the state board within the state.

▪ 13222. Regulations

Pursuant to such guidelines as the state board may establish, each regional board shall adopt regulations to carry out its powers and duties under this division.

▪ 13223. Delegation

(a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the issuance, modification, or revocation of

any water quality control plan, water quality objectives, or waste discharge requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340.

(b) Whenever any reference is made in this division to any action that may be taken by a regional board, such reference includes such action by its executive officer pursuant to powers and duties delegated to him by the regional board.

▪ 13224. Policy statements

Each regional board may issue policy statements relating to any water quality matter within its jurisdiction.

▪ 13225. Responsibilities

Each regional board, with respect to its region, shall:

(a) Obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance.

(b) Encourage and assist in self-policing waste disposal programs, and upon application of any person, advise the applicant of the condition to be maintained in any disposal area or receiving waters into which the waste is being discharged.

(c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom.

(d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws.

(e) Recommend to the state board projects which the regional board considers eligible for any financial assistance which may be available through the state board.

(f) Report to the state board and appropriate local health officer any case of suspected contamination in its region.

(g) File with the state board, at its request, copies of the record of any official action.

(h) Take into consideration the effect of its actions pursuant to this chapter on the California Water Plan adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code and on any other general or coordinated governmental plan looking toward the development, utilization or conservation of the water resources of the state.

(i) Encourage regional planning and action for water quality control.

▪ 13226. Waste disposal sites

Consistent with classifications adopted by the state board pursuant to Section 13172, each regional board shall review and classify any proposed or currently operating waste disposal site, except any sewage treatment plant or any site which primarily contains fertilizer or radioactive material, within its region.

▪ 13227. Facility closure and postclosure plans

(a) Each regional board, with respect to its region, shall review the facility closure and postclosure plans submitted pursuant to Section 25246 of the Health and Safety Code, to ensure that water quality is adequately protected during closure and the post-closure maintenance period.

(b) The regional board shall approve the facility closure and postclosure plans if it finds that the plans comply with applicable state and federal laws and regulations relating to water quality protection and monitoring.

(c) The regional board may condition its approval of the plans in accordance with the requirements of this section.

▪ 13228. Designation of board

(a) Concerning any matter that may be submitted to a regional board by a person or entity that is subject to regulation by more than one regional board, the person or entity may submit the matter to one of those regional boards if both of the following requirements are met:

(1) The person or entity submits a written request to all affected regional boards that one regional board be designated to regulate the matter.

(2) All affected regional boards agree in writing to the designation. Unless the board of any affected regional board denies the request, the executive officer of a regional board may grant a request submitted pursuant to paragraph (1) on behalf of that board.

(b) Notwithstanding subdivision (a), any regional board that is affected by a matter for which a designation is made in accordance with subdivision (a) may take enforcement action with regard to that matter.

*Article 3. Regional water quality control plans*

▪ 13240. Regional water quality control plans

Each regional board shall formulate and adopt water quality control plans for all areas within the region. Such plans shall conform to the policies set forth in Chapter 1 (commencing with Section 13000) of this division and any state policy for water quality control. During the process of formulating such plans the regional boards shall consult with and consider the recommendations of affected state and local agencies. Such plans shall be periodically reviewed and may be revised.

▪ 13241. Water quality objectives

Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

(a) Past, present, and probable future beneficial uses of water.

(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

(d) Economic considerations.



(e) The need for developing housing within the region.

(f) The need to develop and use recycled water.

▪ 13242. Implementation

The program of implementation for achieving water quality objectives shall include, but not be limited to:

(a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.

(b) A time schedule for the actions to be taken.

(c) A description of surveillance to be undertaken to determine compliance with objectives.

▪ 13243. Discharge of waste

A regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.

▪ 13244. Hearing requirements

The regional boards shall not adopt any water quality control plan unless a public hearing is first held, after the giving of notice of such hearing by publication in the affected county or counties pursuant to Section 6061 of the Government Code. When the plan proposes to prohibit discharges of waste pursuant to Section 13243, similar notice shall be given by publication pursuant to Section 6061.3 of the Government Code.

▪ 13245. Approval by the state board

A water quality control plan, or a revision thereof adopted by a regional board, shall not become effective unless and until it is approved by the state board. The state board may approve such plan, or return it to the regional board for further consideration and resubmission to the state board. Upon resubmission the state board may either approve or, after a public hearing in the affected region, revise and approve such plan.

▪ 13245.5. Approval of guidelines

Guidelines adopted by a regional board shall not become effective unless and until approved by the state board.

▪ 13246. Time for approval

The state board shall act upon any water quality control plan within 60 days after the regional board has submitted such plan to the state board, or 90 days after resubmission of such plan.

▪ 13247. Compliance with plans

State offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

#### *Article 4. Waste discharge requirements*

▪ 13260. Reports; fees; exemptions

(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a

report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars (\$10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from storm water dischargers that are subject to a general industrial or construction storm water permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out storm water programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on storm water inspection and regulatory compliance issues associated with industrial and construction storm water programs.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, and who is or will be subject to the fee imposed pursuant to Section 46801 of the Public Resources Code in the same fiscal year, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the

waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject

to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars (\$2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(l) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The

report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(m) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

▪ 13260.2. No exposure fee structure

(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.

▪ 13261. Civil liability

(a) Any person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of such requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor.

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount

which shall not exceed twenty-five thousand dollars (\$25,000).

▪ 13262. Injunctive relief

The Attorney General, at the request of the regional board, shall petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with Section 13260 to comply therewith.

▪ 13263. Requirements for discharge

(a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.

(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.

(d) The regional board may prescribe requirements although no discharge report has been filed.

(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.

(f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.

(g) No discharge of waste into the waters of the state, whether or not the discharge is made

pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

(h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.

(i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:

(1) The discharges are produced by the same or similar operations.

(2) The discharges involve the same or similar types of waste.

(3) The discharges require the same or similar treatment standards.

(4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.

(j) The state board, after any necessary hearing, may prescribe waste discharge requirements in accordance with this section.

▪ 13263.1. Mining waste

Before a regional board issues or revises waste discharge requirements pursuant to Section 13263 for any discharge of mining waste, the regional board shall first determine that the proposed mining waste discharge is consistent with a waste management strategy that prevents the pollution or contamination of the waters of the state, particularly after closure of any waste management unit for mining waste.

▪ 13263.2. Groundwater treatment facilities

The owner or operator of a facility that treats groundwater which qualifies as a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code is exempt from the requirement to obtain a hazardous waste facility permit pursuant to Section 25201 of the Health and Safety Code for the treatment of groundwater if all of the following conditions are met:

(a) The facility treats groundwater which is extracted for the purposes of complying with one or more of the following:

(1) Waste discharge requirements prescribed pursuant to Section 13263.

(2) A cleanup or abatement order issued pursuant to Section 13304.

(3) A written authorization issued by a regional board or local agency designated pursuant to Section 25283 of the Health and Safety Code.

(4) An order or approved remedial action plan issued pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(b) The facility meets, at a minimum, all of the following operating standards:

(1) The treatment does not require a hazardous waste facilities permit pursuant to the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901 et seq.).

(2) The facility operator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(3) The facility operator prepares and maintains a written inspection schedule and log of inspections conducted.

(4) The records specified in paragraphs (2) and (3) are maintained by the owner or operator of the facility for a period of three years.

(5) The owner or operator maintains adequate records to demonstrate that it is in compliance with all of the pretreatment standards and with all of the applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(6) (A) Upon terminating the operation of any treatment process or unit exempted pursuant to this section, the owner or operator that conducted the treatment removes or decontaminates all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the

environment after the treatment process ceases operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is exempted pursuant to this section shall provide written notification to the regional board or local agency upon completion of all activities required by this subdivision.

(7) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted by the Department of Toxic Substances Control pursuant to that chapter.

(c) The groundwater is treated at the site where it is extracted in compliance with one or more of paragraphs (1), (2), (3), and (4) of subdivision (a).

(d) All other regulatory requirements applicable to the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code are met by the owner or operator.

(e) The treatment of the contaminated groundwater is not performed under corrective action required by Section 25200.10 of the Health and Safety Code.

▪ 13263.3. Legislative findings: definitions

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

(b)(1) For the purposes of this section, "pollution prevention" means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes any of the following:

(A) "Input change," which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(B) "Operational improvement," which means improved site management so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(C) "Production process change," which means a change in a process, method, or technique that is used to produce a product or a desired result, including the return of materials or their components for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(D) "Product reformulation," which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of problem pollutants discharged in wastewater.

(2) For the purposes of this section, "pollution prevention" does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the state board, the regional board, or POTW.

(c) For the purposes of this section, "discharger" means any entity required to obtain a national pollutant discharge elimination system (NPDES) permit pursuant to the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), or any entity subject to the pretreatment program as defined in Part 403 (commencing with Section 403.1) of Subchapter N of Chapter 1 of Part 403 of Title 40 of the Code of Federal Regulations.

(d)(1) The state board, a regional board, or a POTW may require a discharger subject to its jurisdiction to complete and implement a pollution prevention plan if any of the following apply:

(A) A discharger is determined by the state board to be a chronic violator, and the state board, a regional board, or the POTW determines that pollution prevention could assist in achieving compliance.

(B) The discharger significantly contributes, or has the potential to significantly contribute, to the creation of a toxic hot spot as defined in Section 13391.5.

(C) The state board, a regional board, or a POTW determines pollution prevention is necessary to achieve a water quality objective.

(2) A pollution prevention plan required of a discharger other than a POTW pursuant to paragraph (1) shall include all of the following:

(A) An analysis of one or more of the pollutants, as directed by the state board, a regional board, or a POTW, that the facility discharges into water or introduces into POTWs, a description of the sources of the pollutants, and a comprehensive review of the processes used by the discharger that result in the generation and discharge of the pollutants.

(B) An analysis of the potential for pollution prevention to reduce the generation of the pollutants, including the application of innovative and alternative technologies and any adverse environmental impacts resulting from the use of those methods.

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

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

(E) A description of the discharger's existing pollution prevention methods.

(F) A statement that the discharger's existing and planned pollution prevention strategies do not constitute cross media pollution transfers unless clear environmental benefits of such an approach are identified to the satisfaction of the state board, the regional board, or the POTW, and information that supports that statement.

(G) Proof of compliance with the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5 of Division 20 of the Health and Safety Code) if the discharger is also subject to that act.

(H) An analysis, to the extent feasible, of the relative costs and benefits of the possible pollution prevention activities.

(I) A specification of, and rationale for, the technically feasible and economically practicable pollution prevention measures selected by the discharger for implementation.

(3) The state board or a regional board may require a POTW to complete and implement a pollution prevention plan that includes all of the following:

(A) An estimate of all of the sources of a pollutant contributing, or potentially contributing, to the loading of that pollutant in the treatment plant influent.

(B) An analysis of the methods that could be used to prevent the discharge of the pollutants into the POTW, including application of local limits to industrial or commercial dischargers regarding pollution prevention techniques, public education and outreach, or other innovative and alternative approaches to reduce discharges of the pollutant to the POTW. The analysis also shall identify sources, or potential sources, not within the ability or authority of the POTW to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.

(C) An estimate of load reductions that may be attained through the methods identified in subparagraph (B).

(D) A plan for monitoring the results of the pollution prevention program.

(E) A description of the tasks, cost, and time required to investigate and implement various elements in the pollution prevention plan.

(F) A statement of the POTW's pollution prevention goals and strategies, including priorities for short-term and long-term action, and a description of the POTW's intended pollution prevention activities for the immediate future.

(G) A description of the POTW's existing pollution prevention programs.

(H) An analysis, to the extent feasible, of any adverse environmental impacts, including cross media impacts or substitute chemicals, that may result from the implementation of the pollution prevention program.

(I) An analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

(e) The state board, a regional board, or a POTW may require a discharger subject to this section to comply with the pollution prevention plan developed by the discharger after providing an opportunity for comment at a public proceeding with regard to that plan.

(f) The state board, regional boards, and POTWs shall make the pollution prevention plans available for public review, except to the extent that information is classified as confidential

because it is a trade secret. Trade secret information shall be set forth in an appendix that is not available to the public.

(g) The state board or regional board may assess civil penalties pursuant to Section 13385 against a discharger for failure to complete a pollution prevention plan required by the state board or a regional board, for submitting a plan that does not comply with the act, or for not implementing a plan, unless the POTW has assessed penalties for the same action.

(h) A POTW may assess civil penalties and civil administrative penalties pursuant to Sections 54740, 54740.5, and 54740.6 of the Government Code against a discharger for failure to complete a pollution prevention plan when required by the POTW, for submitting a plan that does not comply with the act, or for not implementing a plan, unless the state board or a regional board has assessed penalties for the same action.

(i) A discharger may change its pollution prevention plan, including withdrawing from a pollution prevention measure required by the state board, a regional board, or a POTW, if the discharger determines that the measure will have a negative impact on product quality, the safe operation of the facility, or the environmental aspects of the facility's operation, or the discharger determines that the measure is economically impracticable or technologically infeasible. Where practicable and feasible, the discharger shall replace the withdrawn measure with a measure that will likely achieve similar pollution prevention objectives. A measure may be withdrawn pursuant to this subdivision only with the approval of the executive officer of the state board or the regional board, or the POTW.

(j) The state board shall adopt a sample format to be used by dischargers for completing the plan required by this section. The sample format shall address all of the factors the discharger is required to include in the plan. The board may include any other factors determined by the board to be necessary to carry out this section. The adoption of the sample format pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The state board, a regional board, or POTW may not include a pollution prevention

plan in any waste discharge requirements or other permit issued by that agency.

(l) This section prevails over Section 13263.3, as added to the Water Code by Assembly Bill 1104 of the 1999-2000 Regular Session.

▪ 13263.5. Requirements for injection wells

(a) When the regional board issues waste discharge requirements pursuant to Section 13263, or revises waste discharge requirements pursuant to subdivision (g) of Section 25159.17 of the Health and Safety Code, for any injection well into which hazardous waste is discharged, the waste discharge requirements shall be based upon the information contained in the hydrogeological assessment report prepared pursuant to Section 25159.18 of the Health and Safety Code and shall include conditions in the waste discharge requirements to ensure that the waters of the state are not polluted or threatened with pollution.

(b) If the state board applies to the federal Environmental Protection Agency to administer the Underground Injection Control Program pursuant to Part 145 (commencing with Section 145.1) of Subchapter D of Chapter 1 of Title 40 of the Code of Federal Regulations, that application shall not include a request to administer the Underground Injection Control Program for any oil, gas, or geothermal injection wells supervised or regulated by the Division of Oil and Gas pursuant to Section 3106 or 3714 of the Public Resources Code.

▪ 13263.6. Effluent limitations

(a) The regional board shall prescribe effluent limitations as part of the waste discharge requirements of a POTW for all substances that the most recent toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sec. 11023) indicate as discharged into the POTW, for which the state board or the regional board has established numeric water quality objectives, and has determined that the discharge is or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to, an excursion above any numeric water quality objective.



(b) This section prevails over Section 13263.6, as added to the Water Code by Assembly Bill 1104 of the 1999-2000 Regular Session.

▪ 13264. Prerequisites to discharge

(a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.

(2) The expiration of 120 days after compliance with Section 13260 if any of the following applies:

(A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.

(C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the Public Resources Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.

(D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

(3) The regional board's waiver pursuant to Section 13269.

(b) The Attorney General, at the request of a regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting any person who is violating or threatening to violate this section from doing any of the following, whichever is applicable:

(1) Discharging the waste or fluid.

(2) Making any material change in the discharge.

(3) Constructing the injection well.

▪ 13265. Civil penalties

(a) Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Articles 5 (commencing with Section 13350) and 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (d). That liability shall not be imposed if the discharger is not negligent and immediately files a report of the discharge with the board, or if the regional board determines that the violation of Section 13264 was insubstantial.

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Articles 5

(commencing with Section 13350) and 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

▪ 13266. Notice of filings

Pursuant to such regulations as the regional board may prescribe, each city, county, or city and county shall notify the regional board of the filing of a tentative subdivision map, or of any application for a building permit which may involve the discharge of waste, other than discharges into a community sewer system and discharges from dwellings involving five-family units or less.

▪ 13267. Investigations; inspections

(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.

(2) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or

enforcement proceedings involving the person furnishing the report.

(c) In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.

(d) The state board or a regional board may require any person, including a person subject to a waste discharge requirement under Section 13263, who is discharging, or who proposes to discharge, wastes or fluid into an injection well, to furnish the state board or regional board with a complete report on the condition and operation of the facility or injection well, or any other information that may be reasonably required to determine whether the injection well could affect the quality of the waters of the state.

▪ 13268. Civil liability

(a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount

which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, knowingly failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or knowingly falsifying any information provided therein, is guilty of a misdemeanor and may be civilly liable in accordance with subdivision (d).

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370). (d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

▪ 13269. Waiver

(a) On and after January 1, 2000, the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by a regional board as to a specific discharge or a specific type of discharge if the waiver is not against the public interest. Waivers for specific types of discharges may not exceed five years in duration, but may be renewed by a regional board. The waiver shall be conditional and may be terminated at any time by the board.

(b) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.

(c) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 shall not apply to discharge resulting from any of the following emergency activities:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(d) Subdivision (c) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (c) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.

(e) The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.

(f) Prior to renewing any waiver for a specific type of discharge established under this section, the regional boards shall review the terms of the waiver policy at a public hearing. At the hearing, a regional board shall determine whether the discharge for which the waiver policy was

established should be subject to general or individual waste discharge requirements.

▪ 13270. Public agency exemptions

Where a public agency as defined in subdivision (b) of Section 13400 leases land for waste disposal purposes to any other public agency, including the State of California, or to any public utility regulated by the Public Utilities Commission, the provisions of Sections 13260, 13263, and 13264 shall not require the lessor public agency to file any waste discharge report for the subject waste disposal, and the regional board and the state board shall not prescribe waste discharge requirements for the lessor public agency as to such land provided that the lease from the lessor public agency shall not contain restrictions which would unreasonably limit the ability of the lessee to comply with waste discharge requirements appurtenant to the leased property.

▪ 13271. Notification requirement

(a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board and the local health officer and administrator of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to paragraph (2), the local health officer and administrator of environmental health shall immediately determine whether notification of the

public is required to safeguard public health and safety. If so, the local health officer and administrator of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable

quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, "sewage" means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

▪ 13272. Oil or petroleum discharge

(a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state oil spill contingency plan adopted pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of

the Government Code. This section shall not apply to spills of oil into marine waters as defined in subdivision (f) of Section 8670.3 of the Government Code.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each day of failure to notify, or imprisonment of not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state. This subdivision shall not apply to any person who is fined by the federal government for a failure to report a discharge of oil.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) Immediate notification to the appropriate regional board of the discharge, in accordance with reporting requirements set under Section 13267 or 13383, shall constitute compliance with the requirements of subdivision (a).

(f) The reportable quantity for oil or petroleum products shall be one barrel (42 gallons) or more, by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted.

▪ 13272.1. List of discharges of MTBE

Each regional board shall publish and distribute on a quarterly basis to all public water system operators within the region of the regional board, a list of discharges of MTBE that occurred during the quarter and a list of locations where MTBE was detected in the groundwater within the region of the regional board.

▪ 13273. Solid waste disposal sites

(a) The state board shall, on or before January 1, 1986, rank all solid waste disposal sites, as defined in Section 66714.1 of the Government Code, based upon the threat which they may pose to water quality. On or before July 1, 1987, the operators of the first 150 solid waste disposal sites ranked on the list shall submit a solid waste water quality assessment test to the appropriate regional board for its examination pursuant to subdivision (d). On or before July 1 of each succeeding year, the operators of the next 150 solid waste disposal sites ranked on the list shall submit a solid waste water quality assessment test to the appropriate regional board for its examination pursuant to subdivision (d).

(b) Before a solid waste water quality assessment test report may be submitted to the regional board, a registered geologist, registered pursuant to Section 7850 of the Business and Professions Code, a certified engineering geologist, certified pursuant to Section 7842 of the Business and Professions Code, or a civil engineer registered pursuant to Section 6762 of the Business and Professions Code, who has at least five years' experience in groundwater hydrology, shall certify that the report contains all of the following information and any other information which the state board may, by regulation, require:

(1) An analysis of the surface and groundwater on, under, and within one mile of the solid waste disposal site to provide a reliable indication whether there is any leakage of hazardous waste.

(2) A chemical characterization of the soil-pore liquid in those areas which are likely to be affected if the solid waste disposal site is leaking, as compared to geologically similar areas near the solid waste disposal site which have not been affected by leakage or waste discharge.

(c) If the regional board determines that the information specified in paragraph (1) or (2) is not needed because other information demonstrates that hazardous wastes are migrating into the water, the regional board may waive the requirement to submit this information specified in paragraphs (1) and (2) of subdivision (b). The regional board shall also notify the State Department of Health Services, and shall take appropriate remedial

action pursuant to Chapter 5 (commencing with Section 13300).

(d) The regional board shall examine the report submitted pursuant to subdivision (b) and determine whether the number, location, and design of the wells and the soiling testing could detect any leachate buildup, leachate migration, or hazardous waste migration. If the regional board determines that the monitoring program could detect the leachate and hazardous waste, the regional board shall take the action specified in subdivision (e). If the regional board determines that the monitoring program was inadequate, the regional board shall require the solid waste disposal site to correct the monitoring program and resubmit the solid waste assessment test based upon the results from the corrected monitoring program.

(e) The regional board shall examine the approved solid waste assessment test report and determine whether any hazardous waste migrated into the water. If the regional board determines that hazardous waste has migrated into the water, it shall notify the State Department of Health Services and the California Waste Management Board and shall take appropriate remedial action pursuant to Chapter 5 (commencing with Section 13300).

(f) When a regional board revises the waste discharge requirements for a solid waste disposal site, the regional board shall consider the information provided in the solid waste assessment test report and any other relevant site-specific engineering data provided by the site operator for that solid waste disposal site as part of a report of waste discharge.

▪ 13273.1. Solid waste assessment

(a) Except as provided in subdivision (b), an operator of a solid waste disposal site may submit a solid waste assessment questionnaire to the appropriate regional board at least 24 months prior to the site's solid waste water quality assessment test due date as established pursuant to Section 13273. The regional board shall require the operator to submit any additional information, as needed, or require onsite verification of the solid waste assessment questionnaire data in order to render a decision pursuant to subdivision (c).

(b) Any solid waste disposal site which is larger than 50,000 cubic yards or is known or suspected to contain hazardous substances, other than household hazardous wastes, shall be prohibited from submitting a solid waste assessment questionnaire under this section.

(c) The regional board shall complete a thorough analysis of each solid waste assessment questionnaire submitted pursuant to this section by a date 18 months prior to the solid waste assessment test due date. Based upon this analysis, the regional board shall determine whether or not the site has discharged hazardous substances which will impact the beneficial uses of water. If the regional board determines that the site has not so discharged hazardous substances, the regional board shall notify the operator that the operator is not required to prepare a solid waste water quality assessment test pursuant to Section 13273.

(d) If the regional board does not make the determination specified in subdivision (c), the operator shall submit all, or a portion of, a solid waste water quality assessment test. The regional board shall notify the operator of this determination and indicate if all, or what portion of, a solid waste water quality assessment test shall be required. The operator shall submit the solid waste water quality assessment test, or a portion thereof, by the date established pursuant to Section 13273.

(e) The state board shall develop a solid waste assessment questionnaire and guidelines for submittal no later than three months after the effective date of this statute adding this section. The questionnaire shall contain, but not be limited to, a characterization of the wastes, size of the site, age of the site, and other appropriate factors.

(f) Those operators of solid waste disposal sites listed by the state board pursuant to Section 13273 in Rank 3 and seeking an exemption under this section shall submit their solid waste assessment questionnaire no later than July 1, 1988. If the regional board does not make the determination specified in subdivision (c), the regional board shall require the operator to submit all, or a portion of, a solid waste water quality assessment test by July 1, 1990.

▪ 13273.2. Reevaluation of site

Notwithstanding subdivision (b) of Section 13273.1, a regional board may reevaluate the status of any solid waste disposal site ranked pursuant to Section 13273, including those sites exempted pursuant to Section 13273.1, and may require the operator to submit or revise a solid waste water quality assessment test after July 1, 1989. The regional board shall give written notification to the operator that a solid waste assessment test is required and the due date. This section shall not require submittal of a solid waste water quality assessment test by a date earlier than established in accordance with Section 13273.

▪ 13273.3. Operator defined

As used in Sections 13273, 13273.1, and 13273.2, "operator" means a person who operates or manages, or who has operated or managed, the solid waste disposal site. If the operator of the solid waste disposal site no longer exists, or is unable, as determined by the regional board, to comply with the requirements of Section 13273, 13273.1, or 13273.2, "operator" means any person who owns or who has owned the solid waste disposal site.

▪ 13273.5. Kings County exception

Notwithstanding Section 13273, a small city which operates a Class III solid waste disposal site is not required to submit a solid waste water quality assessment test report pursuant to Section 13273 if the city has a population of less than 20,000 persons, the solid waste disposal site receives less than 20,000 tons of waste per year, the water table of the highest aquifer under the disposal site is 250 or more feet below the base of the disposal site and the water in the highest aquifer is not potable, and the site receives less than an average of 12 inches of rainfall per year.

This section applies only if the disposal site is operational and has been granted all required permits as of January 1, 1991, if the site is located in Kings County, and if the city has completed an initial solid waste water quality assessment test and a solid waste air quality assessment test which establish that no significant air or water contamination has occurred, and, in that event, the city shall be exempted from conducting

further assessment tests for seven years, or any longer time specified by the regional board, after the date of the initial assessment tests.

▪ 13274. General waste discharge requirements

(a) (1) The state board or a regional board, upon receipt of applications for waste discharge requirements for discharges of dewatered, treated, or chemically fixed sewage sludge and other biological solids, shall prescribe general waste discharge requirements for that sludge and those other solids. General waste discharge requirements shall replace individual waste discharge requirements for sewage sludge and other biological solids, and their prescription shall be considered to be a ministerial action.

(2) The general waste discharge requirements shall set minimum standards for agronomic applications of sewage sludge and other biological solids and the use of that sludge and those other solids as a soil amendment or fertilizer in agriculture, forestry, and surface mining reclamation, and may permit the transportation of that sludge and those other solids and the use of that sludge and those other solids at more than one site. The requirements shall include provisions to mitigate significant environmental impacts, potential soil erosion, odors, the degradation of surface water quality or fish or wildlife habitat, the accidental release of hazardous substances, and any potential hazard to the public health or safety.

(b) The state board or a regional board, in prescribing general waste discharge requirements pursuant to this section, shall comply with Division 13 (commencing with Section 21000) of the Public Resources Code and guidelines adopted pursuant to that division, and shall consult with the State Air Resources Board, the Department of Food and Agriculture, and the California Integrated Waste Management Board.

(c) The state board or a regional board may charge a reasonable fee to cover the costs incurred by the board in the administration of the application process relating to the general waste discharge requirements prescribed pursuant to this section.

(d) Notwithstanding any other provision of law, except as specified in subdivisions (f) to (i), inclusive, general waste discharge requirements

prescribed by a regional board pursuant to this section supersede regulations adopted by any other state agency to regulate sewage sludge and other biological solids applied directly to agricultural lands at agronomic rates.

(e) The state board or a regional board shall review general waste discharge requirements for possible amendment upon the request of any state agency, including, but not limited to, the Department of Food and Agriculture and the State Department of Health Services, if the board determines that the request is based on new information.

(f) Nothing in this section is intended to affect the jurisdiction of the California Integrated Waste Management Board to regulate the handling of sewage sludge or other biological solids for composting, deposit in a landfill, or other use.

(g) Nothing in this section is intended to affect the jurisdiction of the State Air Resources Board or an air pollution control district or air quality management district to regulate the handling of sewage sludge or other biological solids for incineration.

(h) Nothing in this section is intended to affect the jurisdiction of the Department of Food and Agriculture in enforcing Sections 14591 and 14631 of the Food and Agricultural Code and any regulations adopted pursuant to those sections, regarding the handling of sewage sludge and other biological solids sold or used as fertilizer or as a soil amendment.

(i) Nothing in this section restricts the authority of a local government agency to regulate the application of sewage sludge and other biological solids to land within the jurisdiction of that agency, including, but not limited to, the planning authority of the Delta Protection Commission, the resource management plan of which is required to be implemented by local government general plans.

**For another section of the same number, added by Stats. 1997 ch. 814 Sec. 13, see below**

▪ 13274. Rights of public water systems

(a) Notwithstanding any other provision of law, any public water system regulated by the State Department of Health Services shall have the



same legal rights and remedies against a responsible party, when the water supply used by that public water system is contaminated, as those of a private land owner whose groundwater has been contaminated.

(b) For purposes of this section, "responsible party" has the same meaning as defined in Section 25323.5 of the Health and Safety Code.

### *Article 5. Individual disposal systems*

#### ▪ 13280. Prohibition of disposal systems

A determination that discharge of waste from existing or new individual disposal systems or from community collection and disposal systems which utilize subsurface disposal should not be permitted shall be supported by substantial evidence in the record that discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state.

#### ▪ 13281. Determination basis

(a) In making a determination pursuant to Section 13280, except as specified in subdivision (b), the regional board shall consider all relevant evidence related to the discharge, including, but not limited to, those factors set forth in Section 13241, information provided pursuant to Section 117435 of the Health and Safety Code, possible adverse impacts if the discharge is permitted, failure rates of any existing individual disposal systems whether due to inadequate design, construction, maintenance, or unsuitable hydrogeologic conditions, evidence of any existing, prior, or potential contamination, existing and planned land use, dwelling density, historical population growth, and any other criteria as may be established pursuant to guidelines, regulations, or policies adopted by the state board.

(b) (1) To the extent that resources are available for that purpose, the regional board shall prohibit the discharge of waste from existing or new individual disposal systems on parcels of less than one-half acre that overlie the Mission Creek

Aquifer or the Desert Hot Springs Aquifer in Riverside County, if a sewer system is available.

(2) For parcels of one-half acre or greater that overlie the aquifers described in paragraph (1), the maximum number of equivalent dwelling units with individual disposal systems shall be two per acre. For the purpose of this paragraph, the term "equivalent dwelling unit" means a single family dwelling as defined in Section 221.0 of the 1997 edition of the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(3) For the purposes of this subdivision, a sewer system is available if a sewer system, or a building connected to a sewer system, is within 200 feet of the existing or proposed dwelling unit, in accordance with Section 713.4 of the 1997 edition of the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(4) To the extent that resources are available for the purposes of this subdivision, the regional board shall achieve compliance with this subdivision on or before January 1, 2004.

#### ▪ 13282. Allowing disposal

(a) If it appears that adequate protection of water quality, protection of beneficial uses of water, and prevention of nuisance, pollution, and contamination can be attained by appropriate design, location, sizing, spacing, construction, and maintenance of individual disposal systems in lieu of elimination of discharges from systems, and if an authorized public agency provides satisfactory assurance to the regional board that the systems will be appropriately designed, located, sized, spaced, constructed, and maintained, the discharges shall be permitted so long as the systems are adequately designed, located, sized, spaced, constructed, and maintained.

(b) An authorized public agency shall notify the regional board if the systems are not adequately designed, located, sized, spaced, constructed, and maintained.

(c) For purposes of this section, "authorized public agency" means a public agency authorized by a water quality control board and having authority to ensure that systems are adequately designed, located, sized, spaced, constructed, and maintained.

▪ 13283. Alternatives to disposal

In reviewing any determination that discharge of waste from existing or new individual disposal systems should not be permitted, the state board shall include a preliminary review of possible alternatives necessary to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination, including, but not limited to, community collection and waste disposal systems which utilize subsurface disposal, and possible combinations of individual disposal systems, community collection and disposal systems which utilize subsurface disposal, and conventional treatment systems.

▪ 13284. Guidelines

The state board may adopt guidelines, regulations, or policies necessary to implement the provisions of this article.

▪ 13285. MTBE discharges to drinking water

(a) Any discharge from a storage tank, pipeline, or other container of methyl tertiary-butyl ether (MTBE), or of any pollutant that contains MTBE, that poses a threat to drinking water, or to groundwater or surface water that may reasonably be used for drinking water, or to coastal waters shall be cleaned up to a level consistent with subdivision (b) of Section 25299.37 of the Health and Safety Code.

(b) (1) No public water system, or its customers, shall be responsible for remediation or treatment costs associated with MTBE, or a product that contains MTBE, provided, however, that the public water system shall be permitted as necessary to incur MTBE remediation and treatment costs and to include those costs in its customer rates and charges, necessary to comply with drinking water standards or directives of the State Department of Health Services or other lawful authority. Any public water system that incurs MTBE remediation or treatment costs may seek recovery of those costs from parties responsible for the MTBE contamination, or from other available alternative sources of funds.

(2) If the public water system has included the costs of MTBE treatment and remediation in its customer rates and charges, and subsequently

recovers all or a portion of its MTBE treatment and remediation costs from responsible parties or other available alternative sources of funds, it shall make an adjustment to its schedule of rates and charges to reflect the amount of funding received from responsible parties or other available alternative sources of funds for MTBE treatment or remediation.

(3) Paragraph (1) shall not prevent the imposition of liability on any person for the discharge of MTBE if that liability is due to the conduct or status of that person independently of whether the person happens to be a customer of the public water system.

## CHAPTER 5. ENFORCEMENT AND IMPLEMENTATION

### *Article 1. Administrative enforcement and remedies by regional boards*

▪ 13300. Time schedules

Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

▪ 13301. Cease and desist order

When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of

waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302.

- 13301.1. Assistance with order

The regional board shall render to persons against whom a cease and desist order is issued pursuant to Section 13301 all possible assistance in making available current information on successful and economical water quality control programs, as such information is developed by the state board pursuant to Section 13167, and information and assistance in applying for federal and state funds necessary to comply with the cease and desist order.

- 13302. Hearing

(a) Hearings for consideration of issuance of a cease and desist order may be conducted by hearing panels designated by the regional board, each panel to consist of three or more members of the board as it may specify. A member of the board may serve on more than one panel.

(b) Due notice of the hearing shall be given to all affected persons. After the hearing, the panel shall report its proposed decision and order to the regional board and shall supply a copy to all parties who appeared at the hearing and requested a copy. Members of the panel are not disqualified from sitting as members of the board in deciding the matter. The board, after making such independent review of the record and taking such additional evidence as may be necessary, may adopt, with or without revision, the proposed decision and order of the panel.

- 13303. Effective date

Cease and desist orders of the board shall become effective and final upon issuance thereof. Copies shall be served forthwith by personal service or by registered mail upon the person being charged with the violation of the

requirements and upon other affected persons who appeared at the hearing and requested a copy.

- 13304. Cleanup and abatement

(a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(b) (1) The regional board may expend available money to perform any cleanup, abatement, or remedial work required under the circumstances set forth in subdivision (a), including, but not limited to, supervision of cleanup and abatement activities which, in its judgment, is required by the magnitude of endeavor or urgency of prompt action needed to prevent substantial pollution, nuisance, or injury to any waters of the state. The action may be taken in default of, or in addition to, remedial work by the waste discharger or other persons, and regardless of whether injunctive relief is being sought.

(2) The regional board may perform the work itself, or with the cooperation of any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the regional board may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for

equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts are exempt from approval by the Department of General Services pursuant to Section 14780 of the Government Code.

(3) The regional board shall be permitted reasonable access to the affected property as necessary to perform any cleanup, abatement, or other remedial work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.

(c) (1) If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

(2) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged.

Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the state board, on behalf of the regional board, for a money judgment. Money recovered by a judgment in favor of the state board shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(d) If, despite reasonable effort by the regional board to identify the person responsible for the discharge of waste or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work is required to be performed, the regional board is not required to issue an order under this section.

(e) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(f) This section does not impose any new liability for acts occurring before January 1, 1981, if the acts were not in violation of existing laws or regulations at the time they occurred.

(g) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

▪ 13305. Nonoperating location

(a) Upon determining that a condition of pollution or nuisance exists which has resulted from a nonoperating industrial or business location within its region, a regional board may cause notice of the condition to be posted upon the property in question. The notice shall state that the condition constitutes either a condition of pollution or nuisance which is required to be abated by correction of the condition, or it will be corrected by the city, county, other public agency, or regional board at the property owner's expense. The notice shall further state that all property owners having any objections to the proposed correction of the condition may attend a

hearing to be held by the regional board at a time not less than 10 days from the posting of the notice.

(b) Notice of the hearing prescribed in this section shall be given in the county where the property is located pursuant to Section 6061 of the Government Code.

(c) In addition to posting and publication, notice as required in this section shall be mailed to the property owners as their names and addresses appear from the last equalized assessment roll.

(d) At the time stated in the notices, the regional board shall hear and consider all objections or protests, if any, to the proposed correction of the condition, and may continue the hearing from time to time.

(e) (1) After final action is taken by the regional board on the disposition of any protests or objections, or if no protests or objections are received, the regional board shall request the city, county, or other public agency in which the conditions of pollution or the nuisance exists to abate those conditions or the nuisance.

(2) If the city, county, or other public agency does not abate the condition within a reasonable time, the regional board shall cause the condition to be abated. The regional board may proceed by force account, contract or other agreement or any other method deemed most expedient by the regional board, and shall apply to the state board for the necessary funds.

(3) The regional board shall be permitted reasonable access to the affected property as necessary to perform any cleanup, abatement, or other remedial work. Access shall be obtained with the consent of the owner or possessor of the property, or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.

(f) The owner of the property on which the condition exists, or is created, is liable for all reasonable costs incurred by the regional board or any city, county, or public agency in abating the condition. The amount of the cost for abating the condition upon the property in question constitutes a lien upon the property so posted

upon the recordation of a notice of lien, which identifies the property on which the condition was abated and the amount the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property so posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice unless sooner released or otherwise discharged. The lien may be foreclosed by an action brought by the city, county, other public agency, or state board, on behalf of the regional board, for a money judgment. Money recovered by a judgment in favor of the state board shall be returned to the State Water Pollution Cleanup and Abatement Account.

(g) The city, county, other public agency, or state board on behalf of a regional board, may, at any time, release all, or any portion, of the property subject to a lien imposed pursuant to subdivision (f) from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount owed is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount owed. A certificate by the state board, city, county, or other public agency to the effect that any property has been released from the lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

(h) As used in this section, the words "nonoperating" or "not in operation" means the business is not conducting routine operations usually associated with that kind of business.

(i) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

▪ 13306. Majority requirement

A majority vote of the entire membership of a regional board shall be required to adopt, rescind, or modify any enforcement action authorized by Section 13301.

13307. Supervision of abatement

(a) The state board and the Department of Toxic Substances Control shall concurrently establish policies and procedures consistent with this division that the state board's representatives and the representatives of regional boards shall follow in overseeing and supervising the activities of persons who are carrying out the investigation of, and cleaning up or abating the effects of, a discharge of a hazardous substance which creates, or threatens to create, a condition of contamination, pollution, or nuisance. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 25355.7 of the Health and Safety Code and shall include, but are not limited to, all of the following:

(1) The procedures the state board and the regional boards will follow in making decisions as to when a person may be required to undertake an investigation to determine if an unauthorized hazardous substance discharge has occurred.

(2) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination or pollution at a site.

(3) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination or pollution and cleaning up or abating the effects of contamination or pollution.

(4) Policies for determining reasonable schedules for investigation and cleanup, abatement, or other remedial action at a site. The policies shall recognize the dangers to public health and the waters of the state posed by an unauthorized discharge and the need to mitigate those dangers while at the same time taking into account, to the extent possible, the resources, both financial and technical, available to the person responsible for the discharge.

(b) The state board and the Department of Toxic Substances Control shall jointly review the policies and procedures that were established pursuant to this section and Section 25355.7 of the Health and Safety Code prior to the enactment of this subdivision and shall concurrently revise those policies and procedures as necessary to make them as consistent as possible. Where they cannot be made consistent because of the differing requirements of this chapter and Chapter

6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, the state board and the Department of Toxic Substances Control shall, by July 1, 1994, jointly develop, and send to the Legislature, recommendations for revising this chapter and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code in order to make consistent the hazardous substance release cleanup policies and procedures followed by the state board, the Department of Toxic Substances Control, and the regional boards.

13307.1. Notification of owners

(a) The state board and the regional boards shall not consider cleanup or site closure proposals from the primary or active responsible discharger, issue a closure letter, or make a determination that no further action is required with respect to a site subject to a cleanup or abatement order pursuant to Section 13304, unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the state board or regional board.

(b) The state board and regional boards shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

13308. Violation of order; penalty

(a) If the regional board determines there is a threatened or continuing violation of any cleanup or abatement order, cease and desist order, or any order issued under Section 13267 or 13383, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule.

(b) The amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance, and may not include any amount intended to punish or redress previous violations. The amount of the penalty may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(c) Any person who fails to achieve compliance in accordance with the schedule

established in an order issued pursuant to subdivision (a) shall be liable civilly in an amount not to exceed the amount prescribed by the order. The regional board may impose the penalty administratively in accordance with Article 2.5 (commencing with Section 13323). If the regional board imposes the penalty in an amount less than the amount prescribed in the order issued pursuant to subdivision (a), the regional board shall make express findings setting forth the reasons for its action based on the specific factors required to be considered pursuant to Section 13327.

(d) The state board may exercise the powers of a regional board under this section if the violation or threatened violation involves requirements prescribed by an order issued by the state board.

(e) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(f) Civil liability may be imposed pursuant to this section only if civil liability is not imposed pursuant to Section 13261, 13265, 13268, 13350, or 13385.

### *Article 2. Administrative enforcement and remedies by the state board*

- 13320. Review by state board of regional board action

(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 betaken 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.

- 13321. Stay of action

(a) In the case of a review by the state board under Section 13320, the state board, upon notice and a hearing, may stay in whole or in part the effect of the decision and order of a regional board or of the state board.

(b) If a petition is filed with the superior court to review a decision of the state board, any stay in effect at the time of the filing the petition shall remain in effect by operation of law for a period of 20 days from the date of the filing of such petition.

*Article 2.5. Administrative civil liability*

▪ 13323. Imposition of civil liability

(a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served. The hearing shall be before a panel of the regional board, consisting of three or more members of the regional board as it may specify, or before the regional board. The person who has been issued a complaint may waive the right to a hearing, in which case the regional board shall not conduct a hearing.

(c) After any hearing, the panel shall report its proposed decision and order to the regional board and shall, at the time it reports its decision to the regional board, supply a copy to the party served with the complaint, the party issuing the complaint, and any other person requesting a copy. Members of the panel may sit as members of the board in deciding the matter. The regional board, after making an independent review of the record and taking such additional evidence as may be necessary and could not reasonably have been offered before the hearing panel, may adopt, with or without revision, the proposed decision and order of the panel.

(d) Orders imposing administrative civil liability shall become effective and final upon issuance thereof, and are not subject to review by any court or agency except as provided by Sections 13320 and 13330. Payment shall be made not later than 30 days from the date on which the order is issued. The time for payment is extended during the period in which a person who is subject to an order seeks review under Section 13320. Copies of these orders shall be served by personal service or by registered mail upon the party served with the complaint and

upon other persons who appeared at the hearing and requested a copy.

▪ 13326. Limitation to civil liability

No person shall be subject to both civil liability imposed under this article and civil liability imposed by the superior court under Articles 5 (commencing with Section 13350) and 6 (commencing with Section 13360) for the same act or failure to act.

▪ 13327. Amount of liability

In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and \* \* \* other matters as justice may require.

▪ 13328. Judgement to collect

After the time for judicial review under Section 13325 has expired, the state board may apply to the clerk of the appropriate court in the county in which the civil penalty was imposed, for a judgment to collect the penalty. The application, which shall include a certified copy of the state board or regional board action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.



### *Article 3. Judicial review and enforcement*

#### ▪ 13330. Petition for judicial review

(a) Not later than 30 days from the date of service of a copy of a decision or order issued by the state board under this division, other than a decision or order issued pursuant to Article 7 (commencing with Section 13550) of Chapter 7, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof.

(b) Any party aggrieved by a final decision or order of a regional board for which the state board denies review may obtain review of the decision or order of the regional board in the superior court by filing in the court a petition for writ of mandate not later than 30 days from the date on which the state board denies review.

(c) If no aggrieved party petitions for writ of mandate within the time provided by this section, a decision or order of the state board or a regional board shall not be subject to review by any court.

(d) Except as otherwise provided herein, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a decision or order of the state board issued under Section 13320, or a decision or order of a regional board for which the state board denies review under Section 13320, other than a decision or order issued under Section 13323.

(e) Any party aggrieved by a decision or order issued by the state board under Article 7 (commencing with Section 13550) of Chapter 7 may petition for reconsideration or judicial review in accordance with Chapter 4 (commencing with Section 1120) of Part 1 of Division 2.

#### ▪ 13331. Injunction

(a) Upon the failure of any person or persons to comply with any cease and desist order issued by a regional board or the state board, the Attorney General, upon request of the board, shall petition the superior court for the issuance of a

preliminary or permanent injunction, or both, as may be appropriate, restraining such person or persons from continuing the discharge in violation of the cease and desist order.

(b) The court shall issue an order directing defendants to appear before the court at a time and place certain and show cause why the injunction should not be issued. The court may grant such prohibitory or mandatory relief as may be warranted.

#### ▪ 13331.2. Applicability of amendments

The provisions of Assembly Bill 3036 of the 1995-96 Regular Session, which, among other things, amended provisions of this chapter, do not apply to any proceeding for the judicial review of a decision or order of the state board that is pending on December 31, 1996, and the applicable law in effect on that date shall continue to apply to that proceeding.

### *Article 4. Summary judicial abatement*

#### ▪ 13340. Injunctive relief for emergencies

Whenever a regional board finds that a discharge of waste within its region is taking place or threatening to take place which does or will cause a condition of pollution or nuisance, constituting an emergency requiring immediate action to protect the public health, welfare, or safety, the Attorney General, upon request of the board, shall petition the superior court to enjoin such discharge. The court shall have jurisdiction to grant such prohibitory or mandatory injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, and permanent injunction.

### *Article 5. Civil monetary remedies*

#### ▪ 13350. Civil liability; amount; recovery

(a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition,

certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, and creates a condition of pollution or nuisance, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be liable civilly in accordance with subdivision (d), (e), or (f).

(b)(1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state where it creates a condition of pollution or nuisance, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d), (e), or (f).

(2) For purposes of this subdivision, the term "discharge" includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term "discharge" does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C.\* \* \* Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

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

(1) An act of war.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) A regional board shall not administratively impose civil liability in accordance with subdivision (d), (e), or (f) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based on the specific factors required to be considered pursuant to Section 13327.

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

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

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

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

(l) The state board shall submit an annual report to the Legislature which shall be available to the public, list all instances in which civil

liability has been administratively imposed by a regional board in accordance with subdivision (d), (e), or (f) during the preceding year, and set forth the express findings made by the regional board pursuant to subdivision (g), and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance.

- 13351. Determining the amount of civil liability

In determining the amount of civil liability to be imposed pursuant to this chapter, the superior court shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

#### *Article 6. General provisions relating to enforcement and review*

- 13360. Manner of compliance

(a) No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner. However, the restrictions of this section shall not apply to waste discharge requirements or orders or decrees with respect to any of the following:

(1) Discharge of solid waste to disposal sites other than evaporation ponds from which there is no drainage or seepage which requires the installation of riprap, the construction of walls and dikes, the installation of surface and underground drainage facilities to prevent runoff from entering the disposal area or leakage to underground or surface waters, or other reasonable requirements to achieve the above or similar purposes.

(2) Discharges of waste or fluid to an injection well, except any well which is regulated by the Division of Oil and Gas in the Department of Conservation pursuant to Division 3 (commencing with Section 3000) of the Public Resources Code and Subpart F of Part 147 of Title 40 of the Code of Federal Regulations and is in compliance with that division and Subpart A (commencing with Section 146.1) of Subchapter D of Chapter 1 of Title 40 of the Code of Federal Regulations.

(b) If the court, in an action for an injunction brought under this division, finds that the enforcement of an injunction restraining the discharger from discharging waste would be impracticable, the court may issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order, or decree.

▪ 13361. Civil action; venue; procedures

(a) Every civil action brought under the provisions of this division at the request of a regional board or the state board shall be brought by the Attorney General in the name of the people of the State of California and any such actions relating to the same discharge may be joined or consolidated.

(b) Any civil action brought pursuant to this division shall be brought in a county in which the discharge is made, or proposed to be made. However, any action by or against a city, city and county, county, or other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city or public agency is located.

(c) In any civil action brought pursuant to this division in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

▪ 13362. Inspections

(a) A publicly owned treatment works (POTW) with an approved pretreatment program may conduct inspections in accordance with the provisions of Sections 403.8(f)(1)(v) and 403.8(f)(2)(v) of Title 40 of the Code of Federal Regulations and assess and collect civil penalties and civil administrative penalties in accordance with Sections 54740, 54740.5, and 54740.6 of the Government Code, with regard to all dischargers of industrial waste to the POTW.

(b) This section prevails over Section 13362, as added to the Water Code by Assembly Bill 1104 of the 1999-2000 Regular Session.

*Article 7. Hazardous substance removal and remedial action charges*

▪ 13365. Definitions; billing; cost recovery; requirements

(a) (1) For purposes of this article, unless the context otherwise requires, "agency" means the state board or a regional board.

(2) The terms used in this article shall have the same meaning as the definitions specified in the statutory authority under which the agency takes any action subject to this article, except that, notwithstanding Section 25317 of the Health and Safety Code, for purposes of this article, "hazardous substance" includes a hazardous substance specified in subdivision (g) of Section 25281 of the Health and Safety Code.

(b) On or before July 1, 1997, the agency shall adopt a billing system for the agency's cost recovery of investigation, analysis, planning, implementation, oversight, or other activity related to the removal or remedial or corrective action of a release of a hazardous substance that includes both of the following:

(1) Billing rates and overhead rates by employee job classification.

(2) Standardized description of work tasks.

(c) Notwithstanding any other provision of law, after July 1, 1997, any charge imposed upon a responsible party by the agency, to compensate the agency for some, or all, of its costs incurred in connection with the agency's investigation, analysis, planning, implementation, oversight, or other activity related to a removal or remedial

action or a corrective action to a release of a hazardous substance, shall not be assessed or collected unless all of the following requirements are met:

(1) Except as provided in subdivision (f), prior to commencing the work or service for which the charge is assessed, and at least annually thereafter if the work or service is continuing, the agency shall provide all of the following information to the responsible party:

(A) A detailed estimate of the work to be performed or services to be provided, including a statement of the expected outcome of that work, based upon data available to the agency at the time.

(B) The billing rates for all individuals and classes of employees expected to engage in the work or service.

(C) An estimate of all expected charges to be billed to the responsible party by the agency, including, but not limited to, any overhead assessments that the agency may be authorized to levy.

(2) (A) Invoices shall be issued not less than semiannually with appropriate incentives for prompt payment.

(B) Invoices shall be mailed to the correct person or persons for the responsible party or parties.

(C) Invoices shall provide a daily detail of work performed and time spent by each employee and contractor employee using the billing and overhead rates and the standardized description of work tasks adopted pursuant to subdivision (b).

(D) Invoices shall include the source and amount of all other charges.

(E) Invoices shall be supplemented with statements of any changes in rates and a justification for any such changes.

(F) Invoices shall be reviewed for accuracy and appropriateness.

(3) Upon request and within a reasonable time, not to exceed 30 working days from the date of receipt of a request, the agency shall provide the responsible party with copies of time records and other materials supporting the invoice described in paragraph (2). No fees or charges may be assessed for the preparation and delivery of those copies pursuant to this section.

(4) The agency shall identify a party who is responsible for resolving disputes regarding the

charges subject to this section and who is not responsible for, or performing, the work or service for which the charges are assessed.

(d) The agency may adjust the scope of the work or service, type of studies, or other tasks to be performed, based upon analyses necessary to accommodate new information regarding the extent of contamination of the site, and only after providing written notice of the change to the responsible party containing the information specified in paragraph (1) of subdivision (c).

(e) The agency may increase billing rates not more than once each calendar year, to the extent authorized by law. Any increase in billing rates or other charges, including, but not limited to, overhead charges, shall operate prospectively only, and shall take effect not sooner than 10 days from the date that written notice has been provided to the responsible party.

(f) (1) Paragraph (1) of subdivision (c) shall not apply when a situation exists that requires prompt action to protect human health or safety or the environment.

(2) Paragraph (1) of subdivision (c) does not apply with respect to those responsible parties who are not identified until after the beginning of a removal or remedial action or corrective action to a release of a hazardous substance.

#### CHAPTER 5.4. NONPOINT SOURCE POLLUTION CONTROL PROGRAM

##### ▪ 13369. Implementation of the nonpoint source management plan.

(a) (1) On or before February 1, 2001, the state board, in consultation with the regional boards, the California Coastal Commission, and other appropriate state agencies and advisory groups, as necessary, shall prepare a detailed program for the purpose of implementing the state's nonpoint source management plan.

The board shall address all applicable provisions of the Clean Water Act, including Section 319 (33 U.S.C. Sec. 1329), as well as Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), and this division in the preparation of this detailed implementation program.

(2) (A) The program shall include all of the following components:

(i) Nonregulatory implementation of best management practices.

(ii) Regulatory-based incentives for best management practices.

(iii) The adoption and enforcement of waste discharge requirements that will require the implementation of best management practices.

(B) In connection with its duties under this subdivision to prepare and implement the state's nonpoint source management plan, the state board shall develop, on or before February 1, 2001, guidance to be used by the state board and the regional boards for the purpose of describing the process by which the state board and the regional boards will enforce the state's nonpoint source management plan, pursuant to this division.

(C) The adoption of the guidance developed pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notwithstanding Section 7550.5 of the Government Code, and in consultation with the California Coastal Commission and other appropriate agencies, as necessary, the state board, on or before August 1 of each year, shall submit to the Legislature, and make available to the public, both of the following:

(1) Copies of all state and regional board reports that contain information related to nonpoint source pollution and that the state or regional boards were required to prepare in the previous fiscal year pursuant to Sections 303, 305(b), and 319 of the Clean Water Act (33 U.S.C. Secs. 1313, 1315(b), and 1329), Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), related regulations, and this division.

(2) A summary of information related to nonpoint source pollution that is set forth in the reports described pursuant to paragraph (1) including, but not limited to, summaries of both of the following:

(A) Information that is related to nonpoint source pollution and that is required to be included in reports prepared pursuant to Section 305(b) of the Clean Water Act (33 U.S.C. 1315(b)).

(B) Information that is required to be in reports prepared pursuant to Section 319(h)(11) of the Clean Water Act (33 U.S.C. Sec. 1329(h)(11)).

## CHAPTER 5.5. COMPLIANCE WITH THE PROVISIONS OF THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED IN 1972

### 13370. Legislative intent

The Legislature finds and declares as follows:

(a) The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.

(b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.

(c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program.

### 13370.5. Legislative findings

(a) The Legislature finds and declares that, since the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, and applicable federal regulations (40 C.F.R. 403 et seq.) provide for a pretreatment program to regulate the discharge of pollutants into publicly owned treatment works and provide that states with approved national pollutant discharge elimination system (NPDES) permit programs shall apply for approval of a state pretreatment program, it is in the interest of the people of the state to enact this section in order to avoid direct regulation by the federal government of publicly owned treatment works already subject to regulation under state law pursuant to this division.

(b) The state board shall develop a state pretreatment program and shall, not later than September 1, 1985, apply to the Environmental Protection Agency for approval of the pretreatment program in accordance with federal requirements.

▪ 13372. Consistency

This chapter shall be construed to assure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. To the extent other provisions of this division are consistent with the provisions of this chapter and with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, those provisions shall be applicable to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter shall apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. The provisions of this chapter relating to the discharge of dredged and fill material shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged and fill material.

▪ 13373. Definitions

The terms "navigable waters," "administrator," "pollutants," "biological monitoring," "discharge" and "point sources" as used in this chapter shall have the same meaning as in the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

▪ 13374. Waste discharge requirements defined

The term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act, as amended.

▪ 13375. Discharges prohibited

The discharge of any radiological, chemical, or biological warfare agent into the waters of the state is hereby prohibited.

▪ 13376. Reports of discharges

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report need be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended. Any person proposing to discharge pollutants or dredged or fill material or proposing to operate a publicly owned treatment works or other treatment works treating domestic sewage shall file a report at least 180 days in advance of the date on which it is desired to commence the discharge of pollutants or dredged or fill material or the operation of the treatment works. Any person who owns or operates a publicly owned treatment works or other treatment works treating domestic sewage, which treatment works commenced operation before January 1, 1988, and does not discharge to navigable waters of the United States, shall file a report within 45 days of a written request by a regional board or the state board, or within 45 days after the state has an approved permit program for the use and disposal of sewage sludge, whichever occurs earlier. The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited, except that no waste discharge requirements or permit is required under this chapter if no state or federal permit is required under the Federal Water Pollution Control Act, as amended.

- 13377. Requirements and permits

Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

- 13378. Notice and hearing

Waste discharge requirements and dredged or fill material permits shall be adopted only after notice and any necessary hearing. Such requirements or permits shall be adopted for a fixed term not to exceed five years for any proposed discharge, existing discharge, or any material change therein.

- 13380. Review of requirements

Any waste discharge requirements or dredged or fill material permits adopted under this chapter shall be reviewed at least every five years and, if appropriate, revised.

- 13381. Termination or modification of requirements

Waste discharge requirements or dredged or fill material permits may be terminated or modified for cause, including, but not limited to, all of the following:

- (a) Violation of any condition contained in the requirements or permits.

- (b) Obtaining the requirements by misrepresentation, or failure to disclose fully all relevant facts.

- (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

- 13382. Wells

Waste discharge requirements shall be adopted to control the disposal of pollutants into

wells or in areas where pollutants may enter into a well from the surrounding groundwater.

- 13382.5. Managed aquaculture

Waste discharge requirements shall be adopted to permit the discharge of a specific pollutant or pollutants in a controlled manner from a point source to a defined managed aquaculture project if such discharge meets all applicable requirements of the Federal Water Pollution Control Act and acts amendatory thereof and supplementary thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans.

- 13383. Monitoring requirements

- (a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13377 or by subdivisions (b) and (c) of this section, for any person who discharges pollutants or dredged or fill material to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes of sewage sludge.

- (b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

- (c) The state board or a regional board may inspect the facilities of any person subject to this section pursuant to the procedure set forth in subdivision (c) of Section 13267.

- 13384. Hearings

The state board or the regional boards shall ensure that the public, and that any other state, the waters of which may be affected by any discharge of pollutants or dredged or fill material to navigable waters within this state, shall receive notice of each application for requirements or report of waste discharge or application for a



dredged or fill material permit or report of dredged or fill material discharge and are provided an opportunity for public hearing before adoption of such requirements or permit.

▪ 13385. Civil liability

(a) Any person who violates any of the following shall be liable civilly in accordance with \*\*\* this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged and fill material permit.

(3) Any requirements established pursuant to Section 13383.

(4) Any 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) Any requirements of Section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, as amended.

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

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

(2) Where 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.

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) Where 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.

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

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account 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 benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) For purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(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, a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for the first serious violation in any six-month period, except that in lieu of assessing that penalty the state board or the regional board may elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document, or to develop a pollution prevention plan.

(2) For the purpose of this section, a serious violation means any waste discharge that exceeds

the effluent limitations 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.

(3) 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, that would not be undertaken in the absence of an enforcement action under Section 13385.

(i) Notwithstanding any other provision of this division, a minimum mandatory penalty of three thousand dollars (\$3,000) shall be assessed for each violation, not counting the first violation described in paragraph (1) of subdivision (h) for the purposes of paragraph (1) of this subdivision and not counting the first three violations described in paragraph (2), if either of the following applies:

(1) The person commits two or more serious violations in any six-month period.

(2) The person does any of the following four or more times in any six-month period:

(A) Exceeds 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) Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(j) Mandatory penalties shall not be assessed under this section if the violations are caused by one or any combination of the following:

(1) An act of war.

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

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

(k) The Attorney General, upon request of a regional board or the state board, shall petition the

appropriate court to collect any penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any penalty imposed under this section shall be required to pay, in addition to that penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(l) Funds collected pursuant to this subdivision shall be \* \* \* deposited in the State Water Pollution Cleanup and Abatement Account.

(m)(1) Notwithstanding Section 7550.5 of the Government Code, the state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the formal and informal compliance and enforcement actions taken for each violation.

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

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1, 2001, and annually thereafter.

▪ 13386. Injunction

Upon any threatened or continuing violation of any of the requirements listed in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 13385, or upon the failure of any discharger into a public treatment system to comply with any cost or charge adopted by any public agency under Section 204(b) of the Federal Water Pollution Control Act, as amended, the Attorney General, upon the request of the state board or regional board shall petition the appropriate court for the

issuance of a preliminary or permanent injunction, or both, as appropriate, restraining that person or persons from committing or continuing the violation. Subdivision (b) of Section 13331 shall be applicable to proceedings under this section.

▪ 13387. Criminal penalties

(a) Any person who intentionally or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances which the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which pollutant or hazardous substance causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than twenty-five thousand dollars (\$25,000), for each day in which the violation occurs, or by imprisonment for not more than one year in the county jail, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars (\$50,000) for each day in which the violation occurs, or by imprisonment of not more than two years, or by both.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall,

upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000), for each day in which the violation occurs, or by imprisonment for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars (\$100,000) for each day in which the violation occurs, or by imprisonment of not more than six years, or by both.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars (\$250,000) or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars (\$1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the maximum punishment shall be a fine of not more than five hundred thousand dollars (\$500,000) or imprisonment of not more than 30 years, or both. A person which is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars (\$2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers

with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment of not more than four years, or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Federal Water Pollution Control Act, as amended.

(h) Funds collected pursuant to this section shall be paid to the State Water Pollution Cleanup and Abatement Account.

▪ 13388. Member eligibility

Notwithstanding any other provision of this division or Section 175, no person shall be a member of the state board or a regional board if he receives or has received during the previous two years a significant portion of his income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements pursuant to this chapter. This section shall become operative on March 1, 1973.

▪ 13389. CEQA exemption

Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto.

## CHAPTER 5.6. BAY PROTECTION AND TOXIC CLEANUP

▪ 13390. Legislative intent

It is the intent of the Legislature that the state board and the regional boards establish programs that provide maximum protection for existing and future beneficial uses of bay and estuarine waters, and that these programs include a plan for remedial action at toxic hot spots. It is also the intent of the Legislature that these programs further compliance with federal law pertaining to the identification of waters where the protection and propagation of shellfish, fish, and wildlife are threatened by toxic pollutants and contribute to the development of effective strategies to control these pollutants. It is also the intent of the Legislature that these programs be structured and maintained in a manner which allows the state board and the regional boards to make maximum use of any federal funds which may be available for any of the purposes specified in this chapter.

▪ 13391. California Enclosed Bays and Estuaries Plan

(a) The state board shall formulate and adopt a water quality control plan for enclosed bays and estuaries, which shall be known as the California Enclosed Bays and Estuaries Plan, in accordance with the procedures established by this division for adopting water quality control plans.

(b) As part of its formulation and adoption of the California Enclosed Bays and Estuaries Plan, the state board shall review and update the Water Quality Control Policy for Enclosed Bays and Estuaries of California, as adopted in 1974 pursuant to Article 3 (commencing with Section 13140) of Chapter 3, and incorporate the results of that review and update in the California Enclosed Bays and Estuaries Plan.

(c) State and regional offices, departments, boards and agencies shall fully implement the California Enclosed Bays and Estuaries Plan. Pending adoption of the California Enclosed Bays and Estuaries Plan by the state board, state and regional offices, departments, boards and agencies shall fully implement the Water Quality Control Policy for Enclosed Bays and Estuaries of California.

(d) Each regional board shall review and, if necessary, revise waste discharge requirements that are inconsistent with those policies and principles.

▪ 13391.5. Definitions

The definitions in this section govern the construction of this chapter.

(a) "Enclosed bays" means indentations along the coast which enclose an area of oceanic water within distinct headlands or harbor works. "Enclosed bays" include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. "Enclosed bays" include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. For the purposes of identifying, characterizing, and ranking toxic hot spots pursuant to this chapter, Monterey Bay and Santa Monica Bay shall also be considered to be enclosed bays.

(b) "Estuaries" means waters, including coastal lagoons, located at the mouths of streams which serve as mixing zones for fresh and ocean waters. Coastal lagoons and mouths of streams which are temporarily separated from the ocean by sandbars shall be considered as estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and sea water. Estuarine waters include, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay Rivers.

(c) "Health risk assessment" means an analysis which evaluates and quantifies the potential human exposure to a pollutant that bioaccumulates or may bioaccumulate in edible fish, shellfish, or wildlife. "Health risk assessment" includes an analysis of both individual and population wide health risks associated with anticipated levels of human exposure, including

potential synergistic effects of toxic pollutants and impacts on sensitive populations.

(d) "Sediment quality objective" means that level of a constituent in sediment which is established with an adequate margin of safety, for the reasonable protection of the beneficial uses of water or the prevention of nuisances.

(e) "Toxic hot spots" means locations in enclosed bays, estuaries, or any adjacent waters in the "contiguous zone" or the "ocean," as defined in Section 502 of the Clean Water Act (33 U.S.C. Sec. 1362), the pollution or contamination of which affects the interests of the state, and where hazardous substances have accumulated in the water or sediment to levels which (1) may pose a substantial present or potential hazard to aquatic life, wildlife, fisheries, or human health, or (2) may adversely affect the beneficial uses of the bay, estuary, or ocean waters as defined in water quality control plans, or (3) exceeds adopted water quality or sediment quality objectives.

(f) "Hazardous substances" has the same meaning as defined in subdivision (f) of Section 25281 of the Health and Safety Code.

▪ 13392. Toxic hot spots

The state board and the regional boards, in consultation with the State Department of Health Services and the Department of Fish and Game, shall develop and maintain a comprehensive program to (1) identify and characterize toxic hot spots, as defined in Section 13391.5, (2) plan for the cleanup or other appropriate remedial or mitigating actions at the sites, and (3) amend water quality control plans and policies to incorporate strategies to prevent the creation of new toxic hot spots and the further pollution of existing hot spots. As part of this program, the state board and regional boards shall, to the extent feasible, identify specific discharges or waste management practices which contribute to the creation of toxic hot spots, and shall develop appropriate prevention strategies, including, but not limited to, adoption of more stringent waste discharge requirements, onshore remedial actions, adoption of regulations to control source pollutants, and development of new programs to reduce urban and agricultural runoff.

▪ 13392.5. Monitoring and surveillance

(a) Each regional board that has regulatory authority for one or more enclosed bays or estuaries shall, on or before January 30, 1994, develop for each enclosed bay or estuary, a consolidated data base which identifies and describes all known and potential toxic hot spots. Each regional board shall, in consultation with the state board, also develop an ongoing monitoring and surveillance program that includes, but is not limited to, the following components:

(1) Establishment of a monitoring and surveillance task force that includes representation from agencies, including, but not limited to, the State Department of Health Services and the Department of Fish and Game, that routinely monitor water quality, sediment, and aquatic life.

(2) Suggested guidelines to promote standardized analytical methodologies and consistency in data reporting.

(3) Identification of additional monitoring and analyses that are needed to develop a complete toxic hot spot assessment for each enclosed bay and estuary.

(b) Each regional board shall make available to state and local agencies and the public all information contained in the consolidated data base, as well as the results of new monitoring and surveillance data.

▪ 13392.6. Sediment quality objectives workplan

(a) On or before July 1, 1991, the state board shall adopt and submit to the Legislature a workplan for the adoption of sediment quality objectives for toxic pollutants that have been identified in known or suspected toxic hot spots and for toxic pollutants that have been identified by the state board or a regional board as a pollutant of concern. The workplan shall include priorities and a schedule for development and adoption of sediment quality objectives, identification of additional resource needs, and identification of staff or funding needs. The state board is not prohibited from adopting sediment quality objectives in the workplan for a constituent for which the workplan identifies additional research needs.

(b) In preparing the workplan pursuant to subdivision (a), the state board shall conduct

public hearings and workshops and shall consult with persons associated with municipal discharges, industrial discharges, other public agencies, research scientists, commercial and sport fishing interests, marine interests, organizations for the protection of natural resources and the environment, and the general public.

▪ 13393. Adoption of objectives

(a) The state board shall adopt sediment quality objectives pursuant to the workplan submitted pursuant to Section 13392.6.

(b) The state board shall adopt the sediment quality objectives pursuant to the procedures established by this division for adopting or amending water quality control plans. The sediment quality objectives shall be based on scientific information, including, but not limited to, chemical monitoring, bioassays, or established modeling procedures, and shall provide adequate protection for the most sensitive aquatic organisms. The state board shall base the sediment quality objectives on a health risk assessment if there is a potential for exposure of humans to pollutants through the food chain to edible fish, shellfish, or wildlife.

(c) (1) Notwithstanding subdivision (a), in adopting sediment quality objectives pursuant to this section, the state board shall consider the federal sediment criteria for toxic pollutants that are being prepared, or that have been adopted, by the Environmental Protection Agency pursuant to Section 1314 of Title 33 of the United States Code.

(2) If federal sediment criteria have been adopted, the state board shall review the federal sediment criteria and determine if the criteria meet the requirements of this section. If the state board determines that a federal sediment criterion meets the requirements of this section, the state board shall adopt the criterion as a sediment quality objective pursuant to this section. If the state board determines that a federal sediment criterion fails to meet the requirements of this section, the state board shall adopt a sediment quality objective that meets the requirements of this section.

▪ 13393.5. Ranking of toxic hot spots

On or before January 30, 1994, the state board, in consultation with the State Department of Health Services and the Department of Fish and Game, shall adopt general criteria for the assessment and priority ranking of toxic hot spots. The criteria shall take into account the pertinent factors relating to public health and environmental quality, including, but not limited to, potential hazards to public health, toxic hazards to fish, shellfish, and wildlife, and the extent to which the deferral of a remedial action will result, or is likely to result, in a significant increase in environmental damage, health risks, or cleanup costs.

▪ 13394. Cleanup plan

On or before January 1, 1998, each regional board shall complete and submit to the state board a toxic hot spots cleanup plan. On or before June 30, 1999, the state board shall submit to the Legislature a consolidated statewide toxic hot spots cleanup plan. The cleanup plan submitted by each regional board and the state board shall include, but not be limited to, the following information:

(a) A priority ranking of all hot spots, including the state board's recommendations for remedial action at each toxic hot spot site.

(b) A description of each hot spot site including a characterization of the pollutants present at the site.

(c) An estimate of the total costs to implement the plan.

(d) An assessment of the most likely source or sources of pollutants.

(e) An estimate of the costs that may be recoverable from parties responsible for the discharge of pollutants that have accumulated in sediment.

(f) A preliminary assessment of the actions required to remedy or restore a toxic hot spot.

(g) A two-year expenditure schedule identifying state funds needed to implement the plan.

(h) A summary of actions that have been initiated by the regional board to reduce the accumulation of pollutants at existing hot spot sites and to prevent the creation of new hot spots.

(i) The plan submitted by the state board shall include findings and recommendations concerning the need for establishment of a toxic hot spots cleanup program.

▪ 13394.5. Expenditure plan

The state board, as part of the annual budget process, shall prepare and submit to the Legislature a recommended annual expenditure plan for the implementation of this chapter.

▪ 13394.6. Advisory committee

(a) The state board shall establish an advisory committee to assist in the implementation of this chapter. The members of the advisory committee shall be appointed by the state board to represent all of the following interests:

(1) Trade associations whose members are businesses that use the bay, estuaries, and coastal waters of the state as a resource in their business activities.

(2) Dischargers required to pay fees pursuant to Section 13396.5.

(3) Environmental, public interest, public health, and wildlife conservation organizations.

(b) The members of the advisory committee shall select a member as the chairperson of the committee. The chairperson shall convene meetings of the committee every three months in any calendar year. The members of the advisory committee shall serve without compensation.

(c) The advisory committee shall have access to all information and documents, except for internal communications, that are prepared to implement this chapter and may provide the state board with its views on how that information should be interpreted and used.

▪ 13395. Reevaluation of discharge requirements

Each regional board shall, within 120 days from the ranking of a toxic hot spot, initiate a reevaluation of waste discharge requirements for dischargers who, based on the determination of the regional board, have discharged all or part of the pollutants which have caused the toxic hot spot. These reevaluations shall be for the purpose of ensuring compliance with water quality control plans and water quality control plan amendments.

These reevaluations shall be initiated according to the priority ranking established pursuant to subdivision (a) of Section 13394 and shall be scheduled so that, for each region, the first reevaluation shall be initiated within 120 days from, and the last shall be initiated within one year from, the ranking of the toxic hot spots. The regional board shall, consistent with the policies and principles set forth in Section 13391, revise waste discharge requirements to ensure compliance with water quality control plans and water quality control plan amendments adopted pursuant to Article 3 (commencing with Section 13240) of Chapter 4, including requirements to prevent the creation of new toxic hot spots and the maintenance or further pollution of existing toxic hot spots. The regional board may determine it is not necessary to revise a waste discharge requirement only if it finds that the toxic hot spot resulted from practices no longer being conducted by the discharger or permitted under the existing waste discharge requirement, or that the discharger's contribution to the creation or maintenance of the toxic hot spot is not significant.

▪ 13395.5. Evaluation agreements

The state board may enter into contracts and other agreements for the purpose of evaluating or demonstrating methods for the removal, treatment, or stabilization of contaminated bottom sediment. For the purpose of preparing health risk assessments pursuant to Section 13393, the state board shall enter into contracts or agreements with the State Department of Health Services, or with other state or local agencies, subject to the approval of the State Department of Health Services. The costs incurred for work conducted by other state agencies, including, but not limited to, the State Department of Health Services and the Department of Fish and Game, pursuant to this chapter shall be reimbursed according to the terms of an interagency agreement between the state board and the agency.

▪ 13396. Dredging certification

No person shall dredge or otherwise disturb a toxic hot spot site that has been identified and ranked by a regional board without first obtaining

certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) or waste discharge requirements. The state board and any regional board to which the state board has delegated authority to issue certification shall not waive certification for any discharge resulting from the dredging or disturbance unless waste discharge requirements have been issued. If the state board or a regional board does not issue waste discharge requirements or a certification within the period provided for certification under Section 401 of the Clean Water Act. The certification shall be deemed denied without prejudice. On or after January 1, 1993, the state and regional boards shall not grant approval for a dredging project that involves the removal or disturbance of sediment which contains pollutants at or above the sediment quality objectives established pursuant to Section 13393 unless the board determines all of the following:

(a) The polluted sediment will be removed in a manner that prevents or minimizes water quality degradation.

(b) Polluted dredge spoils will not be deposited in a location that may cause significant adverse effects to aquatic life, fish, shellfish, or wildlife or may harm the beneficial uses of the receiving waters, or does not create maximum benefit to the people of the state.

(c) The project or activity will not cause significant adverse impacts upon a federal sanctuary, recreational area, or other waters of significant national importance.

▪ 13396.6. Habitat for water-dependant wildlife

No fees may be imposed pursuant to Section 13396.5 on dischargers who discharge into enclosed bays, estuaries, or adjacent waters in the contiguous zone or the ocean from lands managed solely to provide habitat for waterfowl and other water-dependent wildlife.

▪ 13396.7. Recreational water quality standards

(a) The state board, in consultation with the State Department of Health Services, shall contract with an independent contractor to conduct a study to determine the adverse health effects of urban runoff on swimmers at urban beaches. The contract shall include a provision that requires the study to be conducted as



prescribed in the study proposal approved by the Santa Monica Bay Restoration Project. The study shall be paid for by using available resources or state funds appropriated in the annual Budget Act.

(b) It is the intent of the Legislature that the state board and the State Department of Health Services use the results of the study undertaken pursuant to subdivision (a) to establish recreational water quality standards.

▪ 13396.9. Los Angeles Basin Contaminated Sediments Task Force

(a) The California Coastal Commission and the Los Angeles Regional Water Quality Control Board shall establish and participate in the multiagency Los Angeles Basin Contaminated Sediments Task Force, in cooperation with all interested parties, including, but not limited to, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the Port of Long Beach, and the Port of Los Angeles.

(b) (1) On or before January 1, 2003, the California Coastal Commission shall, based upon the recommendations of the task force, develop a long-term management plan for the dredging and disposal of contaminated sediments in the coastal waters adjacent to the County of Los Angeles. The plan shall include identifiable goals for the purpose of minimizing impacts to water quality, fish, and wildlife through the management of sediments. The plan shall include measures to identify environmentally preferable, practicable disposal alternatives, promote multiuse disposal facilities and beneficial reuse, and support efforts for watershed management to control contaminants at their source.

(2) The California Coastal Commission and the Los Angeles Regional Water Quality Control Board shall seek to enter into an agreement with the United States Environmental Protection Agency and the United States Army Corps of Engineers for those federal agencies to participate in the preparation of the long-term management plan, and, on or before January 1, 1999, shall prepare and submit to the Legislature a report indicating the status of that agreement.

(c) The California Coastal Commission and the Los Angeles Regional Water Quality Control Board, in cooperation with the task force, shall conduct not less than one annual public workshop

to review the status of the plan and to promote public participation.

## CHAPTER 5.7. ABANDONED MINE DRAINAGE REMEDIATION

▪ 13397. Legislative findings

(a) The Legislature finds and declares all of the following:

(1) Thousands of abandoned mines have been identified in this state. Waste, including acid rock drainage from abandoned mines, has a devastating effect on aquatic life and has degraded some major water bodies in the state. Abandoned mines are the overwhelming source of copper loading to the Sacramento River and the San Francisco Bay/Sacramento-San Joaquin Delta. In some instances, waste from abandoned mines can cause public health and safety problems.

(2) The formation of acid rock drainage is a process that can continue for centuries after the abandonment of a mine and is difficult to control. The complete elimination of acid rock drainage is not possible at this time.

(3) Unless action is taken either by public agencies or private parties, who are not responsible for creating the waste, abandoned mines will continue to discharge waste indefinitely. The cleanup of this waste for the protection of the public and the waterways of the state should be facilitated by limiting the financial responsibility for that cleanup.

(4) Public agencies and private parties, who are not otherwise legally responsible for the abandoned mined land, are reluctant to remediate abandoned mined lands unless they are assured that they will be held responsible for completing only the remedial work that they undertake. The public agencies and private parties may be willing to implement partial remediation but they do not have sufficient resources to pay the cost of meeting all applicable regulatory standards.

(b) The Legislature further finds and declares that it is the policy of the state to establish a program that permits public agencies and cooperating private parties to reduce the threat to water quality caused by abandoned mined lands without becoming responsible for completely remediating abandoned mine waste to a point that meets water quality objectives and related

regulatory requirements. This program should provide a streamlined process for the purpose of approving an abandoned mine remediation plan in lieu of certain state permits and requirements. The implementation of this program will foster projects to improve water quality while ensuring that the taxpayers are not unfairly burdened.

▪ 13397.5. Definitions

Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Abandoned mine waste" means the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property on, or discharging from, abandoned mined lands, directly resulting from, or displaced by, surface mining operations.

(b) "Abandoned mined lands" has the same meaning as "abandoned surface mined area," as defined in clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) of Section 2796 of the Public Resources Code.

(c) "Acid rock drainage" means acid waste discharge that results from the oxidation of metal sulfide in minerals associated with mined lands.

(d) "Mined lands" has the same meaning as set forth in Section 2729 of the Public Resources Code.

(e) "Oversight agency" means either the state board or a regional board. If the remediating agency is a regional board, the state board shall be the oversight agency. If the remediating agency is the state board, the oversight agency shall be the Site Designation Committee established pursuant to Section 25261 of the Health and Safety Code. The committee shall have the powers and functions specified in Chapter 6.65 (commencing with Section 25260) of Division 20 of the Health and Safety Code, except that neither the chairperson of the state board, nor any designee, shall participate in the actions of the committee relating to the state board as a remediating agency.

(f) "Remediating agency" or "agency" means any public agency, or any private individual or entity acting under a cooperative agreement with a public agency, that prepares and submits a remediation plan in accordance with this chapter. "Remediating agency" includes, but is not limited to, a public agency that holds title to abandoned

mined lands for the purpose of remediating those lands or that is engaging in remediation activities incidental to the ownership of the lands for other than mining purposes. "Remediating agency" does not include any person or entity that is not a public agency, that, before implementing an approved remediation plan, had a direct financial interest in, or participated in, any mining operation, including exploration, associated with the abandoned mined lands being remediated.

(g) "Remediation plan" means a plan to improve the quality of the waters of the state that have been directly and adversely impacted by abandoned mine waste.

▪ 13398. Remediating agency responsibilities

(a) Notwithstanding any other provision of law, a remediating agency that has implemented an approved remediation plan, or a public agency that is effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be the owner or operator of the abandoned mined lands, or any structure, improvement, waste management unit, or facility on the abandoned mined lands, and shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge, or the results of any discharge, of abandoned mine waste on or from any abandoned mined lands, including discharges which have been affected by the activities of the remediating agency or the public agency effecting reclamation of a mine site.

(b) Except as provided in paragraph (c), Chapter 5.5 (commencing with Section 13370), and Section 13398.9, the responsibilities of a remediating agency are limited to the following:

(1) Submitting a remediation plan to the oversight agency for approval in accordance with Section 13398.3. A remediation plan may be submitted in connection with a remediation project that was commenced or completed prior to January 1, 1996.

(2) Implementing a remediation plan that has been approved by the oversight agency.

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit, improvement, or other facility constructed, improved, or placed on the abandoned mined lands.

(4) Periodically monitoring and reporting as required by the oversight agency.

(5) (A) Determining if the remediation plan implemented by the remediating agency has been effective to provide a substantial improvement in water quality affected by abandoned mine waste.

(B) If the remediating agency determines that the remediation plan implemented by the agency is not effective, the remediating agency shall promptly report that determination to the oversight agency. If the remediating agency or the oversight agency determines that the remediation plan implemented by the remediating agency is not effective, the remediating agency shall submit a modified remediation plan to the oversight agency which includes a proposal to improve the plan to make it effective, or a proposal to cease remedial activities on the abandoned mined lands and return those lands, including the water quality on those lands, to a condition that approximates the quality that existed prior to commencing remedial activities. The remediating agency shall implement the modified remediation plan as approved by the oversight agency.

(6) Notwithstanding any other provision of law, except as provided in Chapter 5.5 (commencing with Section 13370), if the remediating agency implements or has implemented the approved remediation plan and any modifications to the plan approved by the oversight agency, the remediating agency, with regard to any discharge of abandoned mine waste that is the subject of the plan, shall not be required to achieve water quality objectives or to comply with other requirements of this division or other laws that are administered by the state board or the regional boards, and shall not be subject to any enforcement actions pursuant to state law based on actions taken to implement the approved remediation plan, except for violations involving gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the remediating agency.

(c) The responsibilities of a remediating agency that engages in surface mining operations, as defined in Section 2735 of the Public Resources

Code, in conjunction with the remediation or reclamation of abandoned mine waste or that performs reclamation of a surface mining operation pursuant to Section 2773.1 or 2796 of the Public Resources Code, include performing the applicable requirements of Section 2207 of the Public Resources Code and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code). The State Mining and Geology Board may grant an exemption from the requirements of Section 2207 of the Public Resources Code or from the Surface Mining and Reclamation Act of 1975 to a remediating agency and its contractors solely for the purpose of removing abandoned mine waste in connection with the implementation of an approved remediation plan.

#### 13398.3. Remediation plan

The remediation plan to be submitted by a remediating agency to the oversight agency shall include all of the following:

(a) Identification of the remediating agency, and a certification that the remediating agency is a remediating agency as defined in this chapter.

(b) Identification of the abandoned mined lands that are the subject of the plan.

(c) Identification of the waters of the state, if any, that are affected by the abandoned mined lands.

(d) A description of the physical conditions at the abandoned mined lands that are causing or have caused adverse water quality impacts.

(e) A description of the practices, including system design and construction plans, and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse water quality impacts and a schedule for implementing those practices. If the plan is prepared for an existing remediation project, the remediation plan shall include a description of practices that have been implemented and the practices that are proposed to improve the existing project, if any.

(f) An analysis demonstrating that the implementation of the practices described in the plan have caused, or are expected to cause, a substantial improvement in water quality for the identified waters.

(g) A description of monitoring or other assessment activities to be undertaken to evaluate the success of the implemented practices during and after implementation, including an assessment of baseline conditions.

(h) A budget and identified funding to pay for the implementation of the plan.

(i) Remediation goals and objectives.

(j) Contingency plans.

(k) A description of the remediating agency's legal right to enter and conduct remedial activities.

(l) The signature of an authorized representative of the remediating agency.

(m) Identification of the pollutants to be addressed by the plan.

▪ 13398.5. Oversight agency responsibilities

The oversight agency shall do all of the following:

(a) Comply with the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) in connection with the review of any remediation plan.

(b) Provide an opportunity for public review of, and comment with regard to, the remediation plan.

(c) Disapprove, approve, or modify and approve a remediation plan at a public meeting.

▪ 13398.7. Approval of remediation plans

(a) The oversight agency may approve the remediation plan if the oversight agency finds that there is substantial evidence in the record that the plan will substantially improve water quality affected by abandoned mine waste.

(b) The oversight agency may approve a remediation plan for a project that the remediating agency implemented prior to January 1, 1996, if that oversight agency finds that there is substantial evidence in the record that the project has substantially improved water quality adversely impacted by mining activities on the abandoned mined lands undertaken before the project was implemented.

(c) The remediating agency is not required to include in the remediation plan a plan to achieve water quality objectives, with regard to any discharge of abandoned mine waste that is the subject of the plan, to comply with other

requirements of this division, except for Chapter 5.5 (commencing with Section 13370), or to comply with any other law that is administered by the state board or the regional boards, with regard to that discharge.

(d) The oversight agency may approve a modification of an approved remediation plan to permit additional time for completing the remediation project or to otherwise modify the plan, after an opportunity for public comment.

(e) If the oversight agency determines that a remediating agency is not implementing the approved remediation plan in substantial compliance with its terms, that oversight agency shall notify the remediating agency of its determination, including the specific causes for that determination.

(f) If the oversight agency determines that the specific causes for the determination are not adequately addressed pursuant to subdivision (e), or if a compliance plan is not submitted to, and approved by, the oversight agency within 180 days from the date of the notification pursuant to subdivision (e), the oversight agency may determine that the remediating agency is in violation of this chapter. A remediating agency that is in violation of this chapter is not protected by the limitations on responsibility for remediation of abandoned mined lands provided by this chapter and may be subject to any enforcement action authorized by law.

▪ 13398.9. Remediating agency liability; Penn Mine

(a) This chapter has no effect on the tort liability of a remediating agency for personal injury or wrongful death.

(b) This chapter has no effect on the liability of a remediating agency based upon activities other than those undertaken in connection with the implementation of an approved remediation plan.

(c) This chapter has no effect on the liability of a remediating agency if that agency, following implementation of an approved remediation plan, benefits from, or participates in, any mining operation, including exploration, associated with the abandoned mined lands subject to the approved remediation plan.

(d) For the purposes of this chapter, the remediation plan for the Penn Mine property located in Calaveras County shall, if a memorandum of understanding is entered into by the state and other appropriate parties, include the terms and conditions set forth in that memorandum of understanding.

## CHAPTER 5.8. MINOR VIOLATIONS

### ▪ 13399. Legislative findings

(a) The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, safety, or welfare or the environment are taken into account.

(b) It is the intent of the Legislature in enacting this chapter to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the regional boards, and the regulated community while maintaining protection of human health and safety and the environment.

(c) This chapter applies solely to the actions of the state board and the regional boards in administering this division and has no application to the administrative enforcement actions of other public agencies.

(d) The state board and each regional board shall implement this chapter by determining the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division that the state board or the regional board finds are minor violations in accordance with subdivisions (e) and (f). The state board shall implement this chapter through adoption of regulations or state policy for water quality control pursuant to Article 3 (commencing with Section 13140) of Chapter 3.

(e) In determining the types of violations that are minor violations, the state board or regional board shall consider all of the following factors:

- (1) The magnitude of the violation.
- (2) The scope of the violation.
- (3) The severity of the violation.

(4) The degree to which a violation puts human health, safety, or welfare or the environment into jeopardy.

(5) The degree to which a violation could contribute to the failure to accomplish an important goal or program objective as established by this division.

(6) The degree to which a violation may make it difficult to determine if the violator is in compliance with other requirements of this division.

(f) For purposes of this chapter, a minor violation of this division shall not include any of the following:

(1) Any knowing, willful, or intentional violation of this division.

(2) Any violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.

(3) Any violation that is a chronic violation or that is committed by a recalcitrant violator.

(g) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (f), the state board or regional board shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.

### ▪ 13399.1. Notice to comply

For purposes of this chapter, "notice to comply" means a written method of alleging a minor violation that is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection by an authorized representative of the state board or regional board. If testing is required by the state board or regional board to determine compliance, and the testing cannot be conducted during the course of the inspection, the representative of the state board or regional board shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the representative of the state board or regional board determines that the issuance of a notice to comply is warranted, the representative shall immediately notify the facility owner or operator in writing.

(b) A copy of the notice to comply is presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written. If offsite testing is required pursuant to subdivision (a), a copy of the notice to comply may be mailed to the owner or operator of the facility.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the requirement cited by the representative of the state board or regional board may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 13399.2 with regard to the possible reinspection of the facility.

▪ 13399.2. Issuance of notice

(a) An authorized representative of the state board or regional board, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site at which the minor violation is alleged to have occurred if the authorized representative finds that a notice to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply, and return it to the representative of the state board or regional board, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this division pursuant to subdivision (a) of Section 13268, Section 13385, or subdivision (e) of Section 13387.

(c) A single notice to comply shall be issued for all minor violations cited during the same inspection and the notice to comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.

(d) A notice to comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report, but the person shall not be subject to any further action by the representative of the state board or regional board.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the representative of the state board or regional board shall cite a minor violation. The representative of the state board or regional board shall not take any other enforcement action specified in this division against a person who has received a notice to comply if the person is in compliance with this section.

(f) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations cited in the notice to comply, the person shall give written notice of appeal to the state board or regional board.

(g) Notwithstanding any other provision of this section, if a person fails to comply with a notice to comply within the prescribed period, or if the state board or regional board determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the state board or regional board may take any needed enforcement action authorized by this division.

(h) A notice to comply issued to a person pursuant to this section shall contain a statement that the inspected facility may be subject to reinspection at any time. Nothing in this section shall be construed as preventing the reinspection of a facility to ensure compliance or to ensure that minor violations cited in a notice to comply have been corrected.

(i) Nothing in this section shall be construed as preventing the state board or regional board, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(j) Nothing in this section restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding

otherwise authorized by law. Furthermore, nothing in this section prevents the state board or regional board, or a representative of the state board or regional board, from cooperating with, or participating in, such a proceeding.

(k) Notwithstanding any other provision of this section, if the state board or regional board determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this division is warranted or required by federal law, in addition to issuance of a notice to comply, the state board or regional board shall assess a civil penalty in accordance with this division, if the state board or regional board makes written findings that set forth the basis for the determination of the state board or regional board.

- 13399.3. Report to the Legislature

(a) On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the regional boards to implement this chapter and the results of that implementation. Each regional board shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 13399 have been achieved. (b) This chapter shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

## CHAPTER 5.9. THE STORM WATER ENFORCEMENT ACT OF 1998

- 13399.25. Chapter defined

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

- 13399.27. Reports

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. Identification of dischargers

(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. Notice of noncompliance

(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. Penalties

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. Reduction of penalties

(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. Waste Discharge Permit Fund

(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. Report to the Legislature

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. Agency cooperation

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. Definition

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.).

## CHAPTER 6. STATE FINANCIAL ASSISTANCE

### *Article 1. State Water Quality Control Fund*

▪ 13400. Definitions

As used in this chapter, unless otherwise apparent from the context:

(a) "Fund" means the State Water Quality Control Fund.

(b) "Public agency" means any city, county, city and county, district, or other political subdivision of the state.

(c) "Facilities" means: (1) facilities for the collection, treatment, or export of waste when necessary to prevent water pollution, (2) facilities to recycle wastewater and to convey recycled water, (3) facilities or devices to conserve water, or (4) any combination of the foregoing.

▪ 13401. The State Water Quality Control Fund

(a) The State Water Quality Control Fund is continued in existence. The following moneys in the fund are appropriated, without regard to fiscal years, for expenditure by the state board in making loans to public agencies in accordance with this chapter:

(1) The balance of the original moneys deposited in the fund.

(2) Any money repaid to the fund.

(3) Any remaining balance of the money in the fund deposited therein after the specific appropriations for loans to the South Tahoe Public Utility District, the North Tahoe Public Utility District, the Tahoe City Public Utility District, the Truckee Sanitary District, and to any other governmental entity in the areas served by such districts have been made.

(b) Notwithstanding subdivision (a), upon the order of the state board, the money in the State

Water Quality Control Fund shall be transferred to the State Water Pollution Control Revolving Fund.

## *Article 2. Loans to local agencies*

### ▪ 13410. Construction loans

Applications for construction loans under this chapter shall include:

(a) A description of the proposed facilities.

(b) A statement of facts showing the necessity for the proposed facilities and showing that funds of the public agency are not available for financing such facilities and that the sale of revenue or general obligation bonds through private financial institutions is impossible or would impose an unreasonable burden on the public agency.

(c) A proposed plan for repaying the loan.

(d) Other information as required by the state board.

### ▪ 13411. Conditions

Upon a determination by the state board, after consultation with the State Department of Health, that (a) the facilities proposed by an applicant are necessary to the health or welfare of the inhabitants of the state, (b) that the proposed facilities meet the needs of the applicant, (c) that funds of the public agency are not available for financing such facilities and that the sale of revenue or general obligation bonds through private financial institutions is impossible or would impose an unreasonable burden on the public agency, (d) that the proposed plan for repayment is feasible, (e) in the case of facilities proposed under Section 13400(c)(1) that such facilities are necessary to prevent water pollution, (f) in the case of facilities proposed under Section 13400(c)(2) that such facilities will produce recycled water and that the public agency has adopted a feasible program for use thereof, and (g) in the case of facilities proposed under Section 13400(c)(3) that such facilities are a cost effective means of conserving water, the state board, subject to approval by the Director of Finance, may loan to the applicant such sum as it determines is not otherwise available to the public agency to construct the proposed facilities.

### 13412. Repayment

No loan shall be made to a public agency unless it executes an agreement with the state board under which it agrees to repay the amount of the loan, with interest, within 25 years at 50 percent of the average interest rate paid by the state on general obligation bonds sold in the calendar year immediately preceding the year in which the loan agreement is executed.

### ▪ 13413. Special consideration

It is the policy of this state that, in making construction loans under this article, the state board should give special consideration to facilities proposed to be constructed by public agencies in areas in which further construction of buildings has been halted by order of the State Department of Health or a local health department, or both, or notice has been given that such an order is being considered; provided, however, that the public agencies designated in this section shall otherwise comply with and meet all requirements of other provisions of this chapter.

### ▪ 13414. Payments

All money received in repayment of loans under this chapter shall be paid to the State Treasurer and credited to the fund.

### ▪ 13415. Studies and investigations

(a) Loans may be made by the state board to public agencies to pay not more than one-half of the cost of studies and investigations made by such public agencies in connection with waste water reclamation.

(b) Not more than a total of two hundred thousand dollars (\$200,00) shall be loaned pursuant to this section in any fiscal year, and not more than fifty thousand dollars (\$50,000) shall be loaned to any public agency in any fiscal year pursuant to this section. In the event that less than two million dollars (\$2,000,000) is available in any fiscal year for loans under this article, then not more than 10 percent of the available amount shall be available for loans for studies and investigations pursuant to this section.

(c) Applications for such loans shall be made in such form, and shall contain such information, as may be required by the state board.

(d) Such loans shall be repaid within a period not to exceed 10 years, with interest at a rate established in the manner provided in Section 13412.

▪ 13416. Election requirement

Before a public agency may enter into a contract with the state board for a construction loan under this chapter, the public agency shall hold an election on the proposition of whether or not the public agency shall enter into the proposed contract and more than 50 percent of the votes cast at such election must be in favor of such proposition.

▪ 13417. Election procedure

The election shall be held in accordance with the following provisions:

(a) The procedure for holding an election on the incurring of bonded indebtedness by such public agency shall be utilized for an election of the proposed contract as nearly as the same may be applicable. Where the law applicable to such agency does not contain such bond election procedure, the procedure set forth in the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) Part 1, Division 2, Title 5 of the Government Code), as it may now or hereafter be amended, shall be utilized as nearly as the same may be applicable.

(b) No particular form of ballot is required.

(c) The notice of the election shall include a statement of the time and place of the election, the purpose of the election, the general purpose of the contract, and the maximum amount of money to be borrowed from the state under the contract.

(d) The ballots for the election shall contain a brief statement of the general purpose of the contract substantially as stated in the notice of the election, shall state the maximum amount of money to be borrowed from the state under the contract, and shall contain the words "Execution of contract --Yes" and "Execution of contract--No."

(e) The election shall be held in the entire public agency except where the public agency proposes to contract with the state board on behalf of a specified portion, or of specified portions of the public agency, in which case the

election shall be held in such portion or portions of the public agency only.

▪ 13418. Tahoe moratorium

Notwithstanding any provision of this chapter or any other provision of law, including, but not limited to, the provisions of Chapter 47 and 137 of the Statutes of 1966, First Extraordinary Session, Chapter 1679 of the Statutes of 1967, Chapter 1356 of the Statutes of 1969, and Chapter 920 of the Statutes of 1970, or the provisions of any existing loan contract entered into pursuant to this chapter or any other such provision of law, there shall be a two-year moratorium following the effective date of this section on that portion of the principal and interest payments otherwise required in repayment of funds heretofore loaned to the North Tahoe Public Utility District, the Tahoe City Public Utility District, the South Tahoe Public Utility District, the Truckee Sanitary District, the Squaw Valley County Water District, and the Alpine Springs County Water District pursuant to this chapter or any act of the Legislature authorizing a state loan for the purpose of permitting any such agency to construct necessary sewage and storm drainage facilities to prevent and control water pollution in the area served by such agency, equal in percentage, as determined by the Department of Finance, to the percentage of property tax revenues lost to the agency by reason of the adoption of Article XIII A of the California Constitution, unless moneys are otherwise available for such repayment from state allocations or the sale of bonds authorized on or before July 1, 1978, but unissued. The provisions of this section do not apply to any sums which are required to be repaid immediately or in accordance with an accelerated time schedule pursuant to a duly entered stipulated judgment between the State of California and the Tahoe City Public Utility District. Interest on loans shall accrue during the moratorium period and be repaid by the recipients of the loans, in addition to the normal principal and interest payments.

*Article 2.5. Guarantees for local agency bonds*

▪ 13425. Applications

Applications for guarantees for local agency bonds under this chapter shall include:

(a) A description of the proposed facilities.

(b) A financing plan for the proposed facilities, including the amount of debt and maximum term to maturity of the proposed local agency bond issue and identification of sources of revenue that will be dedicated to payment of principal and interest on the bonds.

(c) Other information as required by the state board.

The state board may provide that the application may be combined with applications for any other source of funds administered by the state board.

▪ 13426. Determinations

The state board, subject to approval by the Director of Finance, may agree to provide a guarantee pursuant to this article for all or a specified part of the proposed local agency bond issue upon making, after consultation with the State Department of Health Services, all of the following determinations:

(a) The facilities proposed by an applicant are necessary to the health or welfare of the inhabitants of the state and are consistent with water quality control plans adopted by regional boards.

(b) The proposed facilities meet the needs of the applicant.

(c) The proposed bond issue and plan repayment are sound and feasible.

(d) In the case of facilities proposed under paragraph (2) of subdivision (c) of Section 13400, the facilities will produce recycled water and the applicant has adopted a feasible program for the use of the facilities. The state board may adopt criteria for ranking and setting priorities among applicants for those guarantees.

▪ 13427. Required agreement

No guarantee shall be extended to any applicant unless it executes an agreement with the

state board under which the applicant agrees to the following provisions:

(a) To proceed expeditiously with, and complete, the proposed project.

(b) To commence operation of the project on completion, and to properly operate and maintain the work in accordance with applicable provisions of law.

(c) To issue bonds and to levy fines, charges, assessments, or taxes to pay the principal of, and interest on, the bonds as described in the application.

(d) To diligently and expeditiously collect those levies, including timely exercise of available legal remedies in the event of delinquency or default.

(e) To act in accordance with such other provisions as the state board may require.

▪ 13428. Continuous appropriation

Notwithstanding Section 13340 of the Government Code, the money in the Clean Water Bond Guarantee Fund, which is hereby created, is continuously appropriated to the state board without regard to fiscal years for the purposes of this chapter.

▪ 13429. Investment

Money in the Clean Water Bond Guarantee Fund not needed for making payments on guaranteed bonds pursuant to this chapter shall be invested pursuant to law. All proceeds of the investment shall be deposited in that fund to the extent permitted by federal law.

▪ 13430. Limitation

The state board's authorization to guarantee bonds under this article shall be limited to bonds with a total principal amount of not more than 10 times the amount in the Clean Water Bond Guarantee Fund at the time the state board determines to extend each guarantee pursuant to Section 13426.

▪ 13431. Limitation on amount available

Under no circumstances shall the amount paid out as a result of bond guarantees extended pursuant to this article exceed the amount in the

Clean Water Bond Guarantee Fund. This article does not express or imply any commitment by the state board or any other agency of the state to pay any money or levy any charge or tax or otherwise exercise its faith and credit on behalf of any local agency or bondholder beyond the funds in the Clean Water Bond Guarantee Fund.

- 13432. Fee

The state board may charge an annual fee not to exceed one-tenth of 1 percent of the principal amount of each bond issue that it guarantees for guarantee coverage. The state board may charge a lesser amount. The proceeds of any fee shall be paid into the Clean Water Bond Guarantee Fund.

- 13433. Rules and procedures

The state board shall, by regulation, prescribe rules and procedures for all of the following:

(a) To pay money from the Clean Water Bond Guarantee Fund to an insured local agency or bondholder in the event that the amount in the local agency's bond reserve fund falls below a minimum amount, or in the event of failure by the local agency to pay the principal of, or interest on, an insured bond issue on time, as the state board may require.

(b) To require, by court action if necessary, a local agency to raise sewer service charges, levy additional assessments, collect charges or assessments, or foreclose or otherwise sell property as needed to prevent a reduction in the local agency's bond reserve fund, or to prevent default, or to collect funds to repay to the fund any payments made pursuant to subdivision (a).

### *Article 3. State Water Pollution Cleanup and Abatement Account*

- 13440. The account

There is in the State Water Quality Control Fund the State Water Pollution Cleanup and Abatement Account (hereinafter called the "account"), to be administered by the state board.

- 13441. Fund sources

There is to be paid into the account all moneys from the following sources:

(a) All moneys appropriated by the Legislature for the account.

(b) All moneys contributed to the account by any person and accepted by the state board.

(c) One-half of all moneys collected by way of criminal penalty and all moneys collected civilly under any proceeding brought pursuant to any provision of this division.

(d) All moneys collected by the state board for the account under Section 13304.

The first unencumbered five hundred thousand dollars (\$500,000) paid into the account in any given fiscal year is available without regard to fiscal years, for expenditure by the state board in accordance with the provisions of this article. The next unencumbered five hundred thousand dollars (\$500,000), or any portion thereof, deposited in any given fiscal year, is available for expenditure by the state board for the purposes of this article, subject to the provisions set forth in Section 28 of the Budget Act of 1984 (Chapter 258 of the Statutes of 1984). The next unencumbered one million dollars (\$1,000,000) deposited in the account in any given fiscal year is available for expenditure by the state board for the purposes of Section 13443. The remaining unencumbered funds deposited in the account in any given fiscal year is available without regard to fiscal years to the state board for expenditure for the purposes set forth in Section 13442.

- 13441.5. Transfers

The State Treasurer, when requested by the state board and approved by the Director of Finance, shall transfer moneys in the nature of a loan from the State Water Quality Control Fund to the account created pursuant to Section 13440, which shall be repayable from the account to such fund; provided, that the moneys transferred from the fund to the account shall not exceed the sum of twenty-five thousand dollars (\$25,000) at any one time.

- 13442. Grants to public agencies

Upon application by a public agency with authority to clean up a waste or abate the effects

thereof, the state board may order moneys to be paid from the account to the agency to assist it in cleaning up the waste or abating its effects on waters of the state. The agency shall not become liable to the state board for repayment of such moneys, but this shall not be any defense to an action brought pursuant to subdivision (b) of Section 13304 for the recovery of moneys paid hereunder.

- 13443. Grants to regional boards

Upon application by a regional board that is attempting to remedy a significant unforeseen water pollution problem, posing an actual or potential public health threat, and for which the regional board does not have adequate resources budgeted, the state board may order moneys to be paid from the account to the regional board to assist it in responding to the problem.

## CHAPTER 6.1. WATER CONSERVATION AND WATER QUALITY BOND LAW OF 1986

- 13450. Citation

This chapter shall be known and may be cited as the Water Conservation and Water Quality Bond Law of 1986.

- 13451. Legislative findings

The Legislature finds and declares all of the following:

(a) An abundant supply of clean water is essential to the public health, safety, and welfare.

(b) An abundant supply of clean water fosters the beauty of California's environment, the expansion of industry and agriculture, maintains fish and wildlife, and supports recreation.

(c) The state's growing population has increasing needs for clean water supplies and adequate treatment facilities.

(d) It is of paramount importance that the water resources of the state be protected from pollution and conserved, and that the groundwater basins of the state be recharged whenever possible to ensure continued economic, community, and social growth.

(e) The chief cause of water pollution is the discharge of inadequately treated waste into the waters of the state.

(f) Local agencies have the primary responsibility for the construction, operation, and maintenance of facilities to cleanse our waters, to conserve water, and recharge groundwater basins.

(g) Rising costs of construction have pushed the costs of constructing treatment facilities and facilities to conserve water and recharge groundwater basins beyond the ability of local agencies to pay.

(h) Because water knows no political boundaries, it is desirable for the state to contribute to the construction of these facilities in order to meet its obligations to protect and promote the health, safety, and welfare of its people and the environment.

(i) Voluntary, cost-effective capital outlay water conservation programs can help meet growing demand for clean and abundant water supplies.

(j) Recharge of groundwater basins is an effective way to maximize availability of scarce water supplies throughout the state.

(k) California's abundant streams, rivers, bays, estuaries, and groundwater are threatened with pollution from agricultural drainage water which could threaten public health and fish and wildlife resources and impede economic and social growth if left unchecked. Proper containment structures and treatment facilities could provide for the handling of agricultural drainage water in an environmentally sensitive manner.

(l) (1) It is the intent of this chapter to provide funds for the construction of cost-effective containment structures and treatment facilities for the treatment, storage and disposal of agricultural drainage water.

(2) It is the further intent of this chapter to provide funds for voluntary, cost-effective capital outlay water conservation programs and groundwater recharge facilities cooperatively carried out by local agencies and the department.

- 13452. Definitions

As used in this chapter, and for purposes of this chapter, as used in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of

Title 2 of the Government Code), the following words have the following meanings:

(a) "Board" means the State Water Resources Control Board.

(b) "Committee" means the Water Conservation and Water Quality Finance Committee created by Section 13454.

(c) "Department" means the Department of Water Resources.

(d) "Drainage water management units" mean land and facilities for the treatment, storage, or disposal of agricultural drainage water which, if discharged untreated, would pollute or threaten to pollute the waters of the state.

(1) Drainage water management units may include any of the following:

(A) A surface impoundment which is a natural topographic depression, artificial excavation, or diked area formed primarily of earthen materials, which is designed to hold an accumulation of drainage water, including, but not limited to, holding, storage, settling, and aeration pits, evaporation ponds, percolation ponds, other ponds, and lagoons. Surface impoundment does not include a landfill, a land farm, a pile, an emergency containment dike, tank, or injection well.

(B) Conveyance facilities to the treatment or storage site, including devices for flow regulation.

(C) Facilities or works to treat agricultural drainage water to remove or substantially reduce the level of constituents which pollute or threaten to pollute the waters of the state, including, but not limited to, processes utilizing ion exchange, desalting technologies like reverse osmosis, and biological treatment.

(D) An injection well.

(2) Any or all of the drain water management units, including the land under the unit, may consist of separable features, or an appropriate share of multipurpose features, of a larger system, or both.

(e) "Fund" means the 1986 Water Conservation and Water Quality Bond Fund.

(f) "Groundwater recharge facilities" mean land and facilities for artificial groundwater recharge through methods which include, but are not limited to, (1) percolation using basins, pits, ditches and furrows, modified streambed, flooding, and well injection or (2) in-lieu recharge. "Groundwater recharge facilities" also mean

capital outlay expenditures to expand, renovate, or restructure land and facilities already in use for the purpose of groundwater recharge.

Groundwater recharge facilities may include any of the following:

(1) Instream facilities for regulation of water levels, but not regulation of streamflow by storage to accomplish diversion from the waterway.

(2) Agency-owned facilities for extraction.

(3) Conveyance facilities to the recharge site, including devices for flow regulation and measurement of recharge waters.

Any part or all of the project facilities, including the land under the facilities, may consist of the separable features, or an appropriate share of multipurpose features, of a larger system, or both.

(g) "In-lieu recharge" means accomplishing increased storage of groundwater by providing interruptible surface water to a user who relies on groundwater as a primary supply, to accomplish groundwater storage through the direct use of that surface water in lieu of pumping groundwater. In-lieu recharge would be used rather than continuing pumping while artificially recharging with the interruptible surface waters. However, bond proceeds shall not be used to purchase surface water for use in lieu of pumping groundwater.

(h) "Local agency" or "agency" means any city, county, district, joint powers authority, or other political subdivision of the state involved with water management.

(i) "Project" means all of the following:

(1) Groundwater recharge facilities.

(2) Voluntary, cost-effective capital outlay water conservation programs.

(3) Drainage water management units.

(j) "Voluntary, cost-effective capital outlay water conservation programs" mean those feasible capital outlay measures to improve the efficiency of water use through benefits which exceed their costs. The programs include, but are not limited to, lining or piping of ditches; improvements in water distribution system controls such as automated canal control, construction of small reservoirs within distribution systems which conserve water that has already been captured for use, and related physical improvements; tailwater pumpback recovery systems; major improvements or replacements of distribution systems to reduce

leakage; and capital changes in on-farm irrigation systems which improve irrigation efficiency such as sprinkler or subsurface drip. In each case, the department shall determine that there is a net savings of water as a result of each proposed project and that the project is cost effective.

▪ 13453. The 1986 Bond Fund

There is hereby created the 1986 Water Conservation and Water Quality Bond Fund in the State Treasury. There shall be established in the fund a Water Conservation and Groundwater Recharge Account for the purpose of implementing Section 13458, and an Agricultural Drainage Water Account for the purpose of implementing Section 13459.

▪ 13454. Finance Committee

(a) There is a Water Conservation and Water Quality Finance Committee consisting of the Governor or the Governor's designated representative, the Controller, the Treasurer, the Director of Finance, the Director of the Department of Water Resources, and the Executive Director of the State Water Resources Control Board.

(b) The Water Conservation and Water Quality Finance Committee is the "committee" as that term is used in the State General Obligation Bond Law.

▪ 13455. Debts and liabilities

(a) The committee may create a debt or debts, liability or liabilities, of the State of California in the aggregate amount of one hundred fifty million dollars (\$150,000,000), in the manner provided in this chapter. The debt or debts, liability or liabilities, shall be created for the purpose of providing the fund to be used for the object and work specified in this section and in Sections 13458 and 13459.

(b) The department may enter into contracts and may adopt rules and regulations necessary to carry out the purposes of Section 13458.

(c) The department may expend not more than 21/2 percent of the total amount of the bonds authorized to be issued under this chapter for the administration of Section 13458.

(d) The board may enter into contracts and may adopt rules and regulations necessary to carry out the purposes of Section 13459.

(e) The board may expend not more than 21/2 percent of the total amount of the bonds authorized to be issued under this chapter for the administration of Section 13459.

(f) The department or the board may expend funds necessary to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

▪ 13456. Payment obligations

All bonds which have been duly sold and delivered constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is pledged for the punctual payment of both principal and interest.

There shall be collected annually in the same manner, and at the same time as other state revenue is collected, the amount, in addition to the ordinary revenues of the state, required to pay the principal of, and interest on, the bonds. It is the duty of all officers charged by law with any duty in regard to the collection of that revenue to perform each and every act which is necessary to collect this additional amount.

All money deposited in the fund which has been derived from premium and accrued interest on bonds sold is available for transfer to the General Fund as a credit to expenditures for bond interest.

▪ 13457. State General Obligation Bond Law

The State General Obligation Bond Law is adopted for the purpose of the issuance, sale, and repayment of, and other matters with respect to, the bonds authorized by this chapter. The provisions of that law are included in this chapter as though set out in full in this chapter, except that, notwithstanding any provision in the State General Obligation Bond Law, the bonds authorized under this chapter shall bear the rates of interest, or maximum rates, fixed from time to time by the Treasurer with the approval of the committee. The maximum maturity of the bonds shall not exceed 50 years from the date of the bonds or from the date of each respective series.