

State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Annual Waste Discharge Permit Fees

Amendments to Division 3 of Title 23 of the California Code of Regulations

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Proposed Emergency Action

Water Code section 13260(f) requires the State Water Board to adopt emergency regulations revising and establishing fees to be deposited in the Waste Discharge Permit Fund in the State Treasury. On September 16, 2025, the State Water Board will consider adopting emergency regulations to adjust to the fee schedule as noted below. These changes will revise Title 23, Division 3, Chapter 9, Article 1, Section 2200 of the California Code of Regulations.

Proposed Text of Emergency Regulations

The proposed text of the emergency regulations is attached. The State Water Board is not required to provide any additional public notice prior to adopting revisions to the proposed emergency regulations.

Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

The State Water Board has a mandatory legal duty to adopt emergency regulations revising the fees as necessary each fiscal year pursuant to Water Code section 13260(f). Water Code section 13260(f)(2) states that “[t]he 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 . . . shall remain in effect until revised by the State Water Board.”

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))
Water Code section 13260(f).

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))
Under Water Code section 13260(d)(1)(A), any person discharging waste, or proposing to discharge waste, that could affect the quality of the waters of the state must pay an annual fee in accordance with the fee schedule adopted by the State Water Board.

The proposed emergency regulations will revise the fee schedule for waste discharge permit holders for FY 2025-26 as follows:

Water Quality Certification (WQC)

- Change the annual fee language for Water Quality Certification Fill and Excavation projects to clarify that the annual fee is based on the fee schedule in effect at the time the invoice issued. This language is currently included in footnote 12, but due to repeated discharger inquiries, staff is proposing to include clearer language in the fee schedule table.
- Change the title for Water Quality Certification Discharge Categories (C) through (H) from “Special/Flat Fee” to “Activity-Specific Fee” as the categories and fees have evolved and the title is no longer descriptive of the section.

NPDES Stormwater

- Adjust the stormwater construction maximum fee to \$11,311, which sets the maximum disturbed acreage at 200 acres. The previous maximum fee of \$11,223, equal to 198 acres, was based on a percentage increase of the prior maximum fee rather than the maximum acreage, which is the intended measurement.
- 2200(b)(4)(C) – Adjust the fee for NPDES stormwater dischargers requesting programmatic General Permit coverage for multiple non-contiguous linear underground and overhead projects within a single Regional Water Board jurisdiction to match the maximum stormwater construction fee of \$11,311, as described above.

There is no comparable federal statute or regulation.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))
No other matters prescribed by statute or regulation are applicable to the State Water Board.

Local Mandate (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulations do not impose a mandate on local agencies or school districts because they do not mandate a new program or a higher level of service of an existing program. The fee schedule applies equally to public and private entities and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of Division 4 of the Government Code.

Estimate of Cost or Savings (Gov. Code, § 11346.5, subd. (a)(6))

Under the proposed emergency regulations for this fiscal year, most local and state agencies will pay the same fees as last year. The amended fee schedule will result in a total estimated increase to state agencies of approximately \$440. There is no cost to any local agency or school district for which reimbursement is required or other non-discretionary cost or savings imposed on local agencies. There is no cost or savings in federal funding to the state.

CALIFORNIA CODE OF REGULATIONS
TITLE 23. Division 3. Chapter 9. Waste Discharge Reports and Requirements
Article 1. Fees

Section 2200(a)

(4) The fees for discharges of dredge and fill material shall be as follows.⁹

Standard Fee:¹⁰

Discharge Category	Application Fee¹¹	Project Fee	Annual Fee¹²
(A) Fill and Excavation¹³ Discharges Discharge area expressed in acres rounded to two decimal places (0.01 acre)	\$4,212	Impact area in acres x \$37,544, minus application fee, up to a maximum of \$365,465. If this amount is \$0 or less, then no project fee is required.	<u>An annual fee will be assessed based on the fee schedule in effect at the time the invoice is issued until a Notice of Completion is submitted and approved. The annual fees for the current fiscal year are as follows:</u> \$3,540 for first five fiscal years following the effective date of the order, then \$563 beginning with the sixth fiscal year until the Notice of Completion is issued to discharger.

⁹ Fees shall be based on the sum of temporary and permanent impact amounts to be authorized by the order. Impacts include both the excavation and fill area and the dredging area. If water quality certification is issued in conjunction with dredge or fill WDRs or issued for a discharge regulated under preexisting WDRs for the same project, the project will be assessed a single fee derived from this dredge and fill fee schedule. Discharges requiring certification and regulated under a federal permit or license other than a US Army Corp of Engineers Clean Water Act Section 404 permit or a Federal Energy Regulatory Commission License shall be assessed a fee determined from Section 2200(a).

¹⁰ Fees shall be based on the sum of project impacts. Projects that include both category (A) and category (B) discharges shall be subject to the category (A) application and project fees. A single annual fee shall be assessed based on the higher of the applicable annual fee categories.

¹¹ Dischargers shall pay a one-time application fee and the project fee, if a project fee is required, for each project at the time that the application or report of waste discharge is submitted. Application and project fees shall be determined according to the fee schedule in effect on the date of application submittal.

¹² Consistent with Section 2200.2, the sum of the application fee and the project fee shall serve as the first annual fee. If the submittal of this first annual fee does not coincide with the current fiscal year billing cycle, then the next, and only the next, fiscal year billing shall be adjusted to account for the payment of the application fee. The annual fee for category (B) dredging discharges will be calculated using the annual dredge volume authorized in the applicable Order. Annual fee invoices are based on the fee schedule in effect for the fiscal year in which the invoice is issued.

¹³ "Excavation" refers to removing sediment or soil in shallow waters or under no-flow conditions, typically for purposes other than navigation. Examples include, but are not limited to, trenching for utility lines; other earthwork preliminary to discharge; removing sediment to increase channel capacity; and other flood control and drainage maintenance activities (e.g., debris removal, vegetation management and removal, detention basin maintenance and erosion control of slopes along open channels and other drainage facilities).

Discharge Category	Application Fee ¹¹	Project Fee	Annual Fee ¹²
(B) Dredging¹⁴ Discharges (except Category C activities see (C) below) Dredge volume expressed in cubic yards.	\$4,212	N/A	Annual dredge volume in cubic yards x \$0.921, up to a project maximum of \$365,465. The minimum annual fee is \$4,212.

Special/Flat Activity-Specific Fee:¹⁵

Discharge Category	Application Fee	Annual Fee
(C) Sand Mining, In-Stream Gravel Mining and Beach Nourishment Discharges Aggregate extraction in surface waters where source material is free of pollutants and the dredging operation will not violate any basin plan provisions and beach nourishment projects.	\$4,212	\$1,405
(D) Ecological Restoration and Enhancement Projects The project meets the definition of an "Ecological Restoration and Enhancement Project" set forth in the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State, adopted by the State Water Board on April 2, 2019. ¹⁶	\$1,123	\$563

¹⁴ "Dredging" refers to removing sediment or aquatic vegetation, typically in deeper water for navigation purposes. For fee purposes, this fee category includes aggregate extraction within stream channels, where the substrate is composed of coarse sediment (e.g., gravel) and is replenished by normal winter flows (e.g., point bars).

¹⁵ To qualify for an **special/flat activity-specific** fee category, the whole of a project must meet the fee category description (i.e., all project discharges are limited to those defined by the fee category).

¹⁶ Ecological Restoration and Enhancement Project means the project is voluntarily undertaken for the purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses, including potential beneficial uses of water. Such projects are undertaken:

1) in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the real property interest owner or the entity conducting the habitat restoration or enhancement work and:

a. a federal or state resource agency, including, but not limited to, the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board, California Coastal Conservancy or the Delta Conservancy;

<p>(E) Low Impact Discharges</p> <p>Projects may be classified as low impact discharges if the project meets all of the following criteria:</p> <ol style="list-style-type: none"> 1. The discharge size is less than all of the following: (a) for fill, 0.1 acre, and 300 linear feet, and (b) for dredging, 25 cubic yards. 2. The discharger demonstrates that: (a) all practicable measures will be taken to avoid impacts; (b) where unavoidable temporary impacts take place, waters and vegetation will be restored to pre-project conditions as quickly as practicable; and (c) where unavoidable permanent impacts take place, there will be no net loss of wetland, riparian area, or headwater functions, including onsite habitat, habitat connectivity, floodwater retention, and pollutant removal. 3. The discharge will not do any of the following: (a) directly or indirectly destabilize a bed of a receiving water; (b) contribute to significant cumulative effects; (c) cause pollution, contamination, or nuisance; (d) adversely affect candidate, threatened, or endangered species; (e) degrade water quality or beneficial uses; (f) be toxic; or (g) include “hazardous” or “designated” material. 	\$4,212	\$563
<p>(F) Emergency Projects Authorized by a Water Board General Order</p>	\$4,212	\$563

-
- b. a local agency with the primary function of managing land or water for wetland habitat purposes; or

- c. a non-governmental conservation organization; or

2) by a state or federal agency that is statutorily tasked with natural resource management.

These projects do not include the conversion of a stream or natural wetland to uplands or stream channelization. It is recognized that Ecological Restoration and Enhancement Projects may require ongoing maintenance or management to maximize fish, wildlife, habitat, or other ecological benefits, or filling gullied stream channels and similar rehabilitative activities to re-establish stream and meadow hydrology. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during rehabilitation activities are not considered a conversion to another aquatic habitat type. These projects also do not include actions required under a Water Board Order for mitigation, actions to service required mitigation, or actions undertaken for the primary purpose of land development.

<p>(G) Amended Orders¹⁷ Amendments of WDRs or water quality certifications previously issued. (1) All category (D) Ecological Restoration and Enhancement Projects, regardless of amendment type. (2) Administrative amendments including, but not limited to, ownership changes, typographic edits, or time extensions that do not result in a temporal loss of resource function. Amendments in this category require no technical analysis or additional compensatory mitigation. (3) Amendment results in changes(s) in impact character, location, or volume of the discharge; or a time extension that results in a temporal loss of resource function, according to the following criteria:</p> <ul style="list-style-type: none"> • Amendment increases the active certification's impact quantity by less than 50 percent, and • Amendment does not require a change to the mitigated aquatic resource type. <p>(4) Amendment requires a supplemental CEQA analysis, or Amendment results in a change(s) in impact character, location, or volume of the discharge, or a time extension that results in a temporal loss of resource function, according to the following criteria:</p> <ul style="list-style-type: none"> • Amendment increases the active certification's impact quantity by more than 50 percent, or • Amendment requires a change to the mitigated aquatic resource type. 	<p>(1) No fee required</p> <p>(2) No fee required</p> <p>(3) Additional standard fee assessed per increased amount of discharge(s). The minimum fee is \$4,212.</p> <p>(4) New standard fee assessed per new project discharge total. The minimum fee is \$4,212.</p>	<p>Annual fee applicable per discharge category</p>
<p>(H) Wildfire Mitigation by Electrical Corporations, Electrical Utilities, and Electrical Cooperatives Dredge or fill activities conducted by electrical corporations, electrical utilities, and electrical cooperatives pursuant to a wildfire mitigation plan prepared in accordance with Public Utilities Code, section 8386(b) or section 8387(b)(1). This annual fee covers all dredge or fill activities conducted by the electrical corporations, electrical utilities, and electrical cooperatives pursuant to a wildfire mitigation plan, and is in lieu of the project-specific dredge or fill fees in section 2200(a)(3)(A)-(G) for dredge or fill activities conducted pursuant to a wildfire mitigation plan.</p>	<p>N/A</p>	<p>\$40.00 per mile of overhead electrical lines identified as high risk or high threat in the wildfire mitigation plan.</p>

¹⁷ Dischargers that have met the project fee cap will be assessed the minimum fee for each amendment of previously-issued WDR or water quality certification.

Section 2200(b):

(4)(A) Storm water discharges associated with construction activities that are regulated by a general NPDES storm water permit other than those covered under (b)(4)(B)-(D), including those issued by a regional board, shall pay an annual fee of \$511 plus \$54 per acre (rounded to the nearest whole acre and dollar amount), to a maximum fee of ~~\$11,223~~\$11,311, based on the total acreage to be disturbed during the life of the project as listed on the NOI. An amount equal to the fee prescribed shall be submitted with the discharger's NOI to be regulated under the general NPDES permit and will serve as the first annual fee. If the total acreage to be disturbed is increased by a Change of Information (COI) submitted to the Water Boards, the per acre fee for the additional acreage shall be submitted with the COI. For the purposes of this section, an NOI is considered to be a report of waste discharge.

(C) Stormwater dischargers requesting programmatic General Permit coverage for multiple non-contiguous linear underground and overhead projects within a single Regional Water Board jurisdiction, shall pay an annual fee of ~~\$11,223~~\$11,311 per NOI. An amount equal to the fee prescribed shall be submitted with the discharger's NOI to be regulated under the general NPDES permit and will serve as the first annual fee. For the purposes of this section, an NOI is considered to be a report of waste discharge.