

## **CHAPTER 5.6. BAY PROTECTION AND TOXIC CLEANUP [13390. - 13396.9.]**

*(Chapter 5.6 added by Stats. 1989, Ch. 269, Sec. 50.)*

### **§ 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.

*(Added by Stats. 1989, Ch. 269, Sec. 50. Effective August 3, 1989.)*

### **§ 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. *(Amended by Stats. 1989, Ch. 1032, Sec. 30. Effective September 29, 1989.)*

### **§ 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 (h) of Section 25281 of the Health and Safety Code.

*(Amended by Stats. 2002, Ch. 999, Sec. 66. Effective January 1, 2003.)*

### **§ 13392. [Toxic hot spots]**

The state board and the regional boards, in consultation with the State Department of Public Health and the Department of Fish and Wildlife, 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 that 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.

*(Amended by Stats. 2015, Ch. 673, Sec. 30. Effective January 1, 2016.)*

### **§ 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 database that 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 Public Health and the Department of Fish and Wildlife, 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 database, as well as the results of new monitoring and surveillance data.

*(Amended by Stats. 2015, Ch. 673, Sec. 31. Effective January 1, 2016.)*

**§ 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.

*(Amended by Stats. 1989, Ch. 1032, Sec. 33. Effective September 29, 1989.)*

**§ 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.

*(Amended by Stats. 1993, Ch. 1157, Sec. 3. Effective January 1, 1994.)*

**§ 13393.5. [Ranking of toxic hot spots]**

On or before January 30, 1994, the state board, in consultation with the State Department of Public Health and the Department of Fish and Wildlife, 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.

*(Amended by Stats. 2015, Ch. 673, Sec. 32. Effective January 1, 2016.)*

**§ 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.

---

*(Amended by Stats. 1993, Ch. 1157, Sec. 5. Effective January 1, 1994.)*

**§ 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.

*(Added by Stats. 1989, Ch. 269, Sec. 50. Effective August 3, 1989.)*

**§ 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.

*(Added by Stats. 1993, Ch. 1157, Sec. 6. Effective January 1, 1994.)*

**§ 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.

*(Added by Stats. 1989, Ch. 269, Sec. 50. Effective August 3, 1989.)*

#### **§ 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 Office of Environmental Health Hazard Assessment, or with other state or local agencies, subject to the approval of the Office of Environmental Health Hazard Assessment. The costs incurred for work conducted by other state agencies pursuant to this chapter shall be reimbursed according to the terms of an interagency agreement between the state board and the agency.

*(Amended by Stats. 2014, Ch. 544, Sec. 13. Effective January 1, 2015.)*

#### **§ 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.

*(Amended by Stats. 1989, Ch. 1032, Sec. 36. Effective September 29, 1989.)*

**§ 13396.6. [Habitat for water-dependent 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.

*(Added by Stats. 1993, Ch. 203, Sec. 1. Effective January 1, 1994.)*

**§ 13396.7. [Recreational water quality standards]**

(a) The state board, in consultation with the State Department of Public Health, 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 Public Health use the results of the study undertaken pursuant to subdivision (a) to establish recreational water quality standards.

*(Amended by Stats. 2010, Ch. 288, Sec. 36. Effective January 1, 2011.)*

**§ 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, 2005, 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.

(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.

*(Amended by Stats. 2012, Ch. 728, Sec. 183. Effective January 1, 2013.)*