
CHAPTER 5.9. THE STORM WATER ENFORCEMENT ACT OF 1998 [13399.25. - 13399.43.]

(Chapter 5.9 added by Stats. 1998, Ch. 998, Sec. 3.)

§ 13399.25. [Chapter defined]

This chapter supplements, and does not supplant, other laws relating to the discharge of storm water.

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.
(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.
(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 13399.37. [Deposit of funds]

(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.

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)

§ 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.).

(Added by Stats. 1998, Ch. 998, Sec. 3. Effective January 1, 1999.)