

CHAPTER 5. ENFORCEMENT AND IMPLEMENTATION [13300. - 13365.]

(Chapter 5 added by Stats. 1969, Ch. 482.)

Article 1. Administrative Enforcement and Remedies [13300. - 13308.]

(Heading of Article 1 amended by Stats. 2010, Ch. 288, Sec. 27.)

§ 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.

(Amended by Stats. 1971, Ch. 1288.)

§ 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 that 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.

(Amended by Stats. 2002, Ch. 420, Sec. 5. Effective January 1, 2003.)

§ 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.

(Added by Stats. 1970, Ch. 1464.)

§ 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.

(Amended by Stats. 1972, Ch. 813.)

§ 13304. *[Cleanup and abatement]*

(a) A 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. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of a 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 the 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 moneys 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 that, in its judgment, is required by the magnitude of the endeavor or the urgency for prompt action 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 shall not be subject to approval by the Department of General Services.

(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.

(4) The regional board may contract with a water agency to perform, under the direction of the regional board, investigations of existing or threatened groundwater pollution or nuisance. The agency's cost of performing the contracted services shall be reimbursed by the regional board from the first available funds obtained from cost recovery actions for the specific site. The authority of a regional board to contract with a water agency is limited to a water agency that draws groundwater from the affected aquifer, a metropolitan water district, or a local public agency responsible for water supply or water quality in a groundwater basin.

(5) (A) If the state board or regional board, either directly or by contracting for services, undertakes to perform an investigation, cleanup, abatement, or other remedial work, both of the following shall apply:

(i) The state board, regional board, or an employee of the state board or regional board shall not be held liable in a civil proceeding for trespass or any other act that is necessary to carry out an investigation, cleanup, abatement, or other remedial work.

(ii) The state board, regional board, or any authorized person shall not incur any obligation to undertake additional investigation, cleanup, abatement, or other remedial work, solely as a result of having conducted the work.

(B) The following applies for purposes of this paragraph:

(i) "Authorized person" means any of the following:

(I) An employee or independent contractor of the state board or regional board.

(II) A person from whom investigation, cleanup, abatement, or other remedial work is contracted by the state board or regional board.

(III) An employee or independent contractor of a person described in subclause (I) or (II).

(ii) "Investigation, cleanup, abatement, or other remedial work" includes investigation, cleanup, abatement, or other remedial work performed pursuant to this section or Section 13267, or corrective action performed pursuant to Section 25296.10 or 25299.36 of the Health and Safety Code.

(C) It is not the intent of this paragraph to do any of the following:

(i) Impair any cause of action by the state board or regional board against any person, including, but not limited to, a cause of action for breach of contract or indemnity.

(ii) Limit the state board's or regional board's authority over any person.

(iii) Limit any other applicable defenses to liability or create a cause of action.

(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 a 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, that 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. No 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. Moneys 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 efforts 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) Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state, and local drinking water standards, and shall have comparable quality to that pumped by the public water system or private well owner before the discharge of waste.

(g) (1) A public water supplier or private well owner receiving replacement water by reason of an order issued pursuant to subdivision (a), or a person or entity who is ordered to provide replacement water pursuant to subdivision (a), may request nonbinding mediation of all replacement water claims.

(2) If requested, the public water suppliers receiving the replacement water and the persons or entities ordered to provide the replacement water, within 30 days of the submittal of a water replacement plan, shall engage in at least one confidential settlement discussion before a mutually acceptable mediator.

(3) Any agreement between parties regarding replacement water claims resulting from participation in the nonbinding mediation process shall be consistent with the requirements of any cleanup and abatement order.

(4) A regional board or the state board is not required to participate in any nonbinding mediation requested pursuant to paragraph (1).

(5) The party or parties requesting the mediation shall pay for the costs of the mediation.

(h) As part of a cleanup and abatement order that requires the provision of replacement water, a regional board or the state board shall request a water replacement plan from the discharger in cases where replacement water is to

be provided for more than 30 days. The water replacement plan is subject to the approval of the regional board or the state board before its implementation.

(i) A “water replacement plan” means a plan pursuant to which the discharger will provide replacement water in accordance with a cleanup and abatement order.

(j) 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.

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

(l) The Legislature declares that the amendments made to subdivision (a) by Chapter 614 of the Statutes of 2003 do not constitute a change in, but are declaratory of, existing law.

(m) Paragraph (5) of subdivision (b) shall apply to a claim presented pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code on or after January 1, 2015, or, if no claim is presented pursuant to those provisions, to a cause of action in a civil complaint or writ petition filed on or after January 1, 2015.

(Amended by Stats. 2014, Ch. 739, Sec. 1. Effective January 1, 2015.)

§ 13304.1. [Groundwater cleanup systems; consultation]

(a) A groundwater cleanup system that commences operation on or after January 1, 2002, and that is required to obtain a discharge permit from the regional board pursuant to the regional board’s jurisdiction, and that discharges treated groundwater to surface water or groundwater, shall treat the groundwater to standards approved by the regional board, consistent with this division and taking into account the beneficial uses of the receiving water and the location of the discharge and the method by which the discharge takes place.

(b) In making its determination of the applicable water quality standards to be achieved by the operator of a groundwater cleanup system that commences operation on or after January 1, 2002, that draws groundwater from an aquifer that is currently being used, or has been used at any time since 1979 as a source of drinking water supply by the owner or operator of a public water system, and that discharges treated groundwater to surface water or groundwater from which a public water system draws drinking water, the regional board shall consult with the affected groundwater management entity, if any, affected public water systems, and the state board to ensure that the discharge, spreading, or injection of the treated groundwater will not adversely affect the beneficial uses of any groundwater basin or surface water body that is or may be used by a public water system for the provision of drinking water.

(Amended by Stats. 2015, Ch. 673, Sec. 28. Effective January 1, 2016.)

§ 13304.2. [Human health or ecological risk assessment]

(a) For purposes of this section, “brownfield site” means a real estate parcel or improvements located on the parcel, or both that parcel and the improvements, that is abandoned, idled, or underused, due to environmental contamination and that is proposed to be redeveloped.

(b) The state board or a regional board may require a person conducting cleanup, abatement, or other remedial action pursuant to Section 13304 for a brownfield site to assess the potential human health or ecological risks caused or created by the discharge, using human health and environmental screening levels or a site-specific assessment of risks.

(c) In conducting a site-specific assessment of human health or ecological risks, the discharger shall address all of the following factors to the extent relevant based on site-specific conditions:

(1) An evaluation of risks posed by acutely toxic hazardous substances.

(2) An evaluation of risks posed by carcinogenic or other hazardous substances that may cause chronic disease.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, or other subpopulations that are identifiable as being at greater risk than the general population of adverse health effects due to exposure to hazardous substances.

(5) Consideration of exposure level and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, or soil.

(6) The development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land uses at the site.

(7) The development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and that may cause exposure due to accumulation of these volatile organic compounds in the indoor air of those structures.

(d) The state board or a regional board may document its decision to require a site-specific assessment of human health or ecological risks in a letter issued to the discharger pursuant to Section 13267, through amendment of the

cleanup and abatement order issued pursuant to Section 13304, or through other written means that the board deems appropriate.

(e) (1) Except as provided in paragraph (2), this section applies only to an order issued by the state board or a regional board issued pursuant to Section 13304 on or after January 1, 2008.

(2) The state board or a regional board may require a site-specific assessment of human health or ecological risks at a brownfield site that is subject to an order issued before January 1, 2008, only if the state board or a regional board makes a determination that site-specific circumstances demonstrate the need for that assessment. A site-specific assessment pursuant to this paragraph shall be done in accordance with the authority granted to the state board or a regional board pursuant to this division, as it read on December 31, 2007.

(Added by Stats. 2007, Ch. 597, Sec. 2. Effective January 1, 2008.)

§ 13305. [Nonoperating location]

(a) Upon determining that a condition of pollution or nuisance exists that 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 that is required to be abated by correction of the condition, or a condition that 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 condition of pollution or nuisance exists to abate the condition or 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, 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” mean 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.

(Amended by Stats. 2005, Ch. 22, Sec. 210. Effective January 1, 2006.)

§ 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.

(Added by Stats. 1976, Ch. 1165.)

§ 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.

(Amended by Stats. 1993, Ch. 523, Sec. 2. Effective January 1, 1994.)

§ 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.

(c) In addition to the requirements of subdivision (a), if the state board or the regional board finds that the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health, safety, or the environment, then the state board and the regional boards may not issue a closure letter, or make a determination that no further action is required, with respect to a site that is subject to a cleanup or abatement order pursuant to Section 13304 and that is not an underground storage tank site, unless a land use restriction is recorded or required to be recorded pursuant to Section 1471 of the Civil Code.

(Amended by Stats. 2003, Ch. 62, Sec. 313. Effective January 1, 2004.)

§ 13307.5. [Notice and public participation for specified cleanup proposals]

(a) The regional board shall take all of the following actions when reviewing or approving a cleanup proposal from a primary or active responsible discharger with respect to a site issued a cleanup and abatement order pursuant to Section 13304:

(1) Provide to all of the following, notification, in a factsheet format or another appropriate format, in English and any other languages commonly spoken in the area, as appropriate, of the proposed decision to approve the

cleanup proposal for the site, including a contact list of appropriate regional board staff:

(A) An affected or potentially affected property owner, resident, or occupant in the area of the site.

(B) An appropriate governmental entity, including a local governmental entity with jurisdiction over the site.

(2) Provide timely access to written material, including reports and plans, addenda, and other supporting documentation, including materials listed as references, at the regional board's office and at a local repository in the area of the site, and, to the maximum extent possible, by posting on the Internet and acting in accordance with subdivision (a) of Section 13196.

(3) Provide no less than 30 days for an interested person to review and comment on the cleanup proposal regarding the site. The regional board shall consider any comments received before taking final action on a cleanup proposal regarding the site.

(4) Conduct a public meeting in the area of the site during the public comment period pursuant to paragraph (3), if any of the following conditions applies:

(A) A public meeting is requested by an affected or potentially affected property owner, resident, or occupant, in the area of the site.

(B) The level of expressed public interest warrants the conduct of a public meeting.

(C) A public meeting is specifically mandated by statute.

(D) The regional board determines that the existing site contamination poses a significant public health threat.

(b) In undertaking the requirements of this section, a regional board shall, to the extent possible, coordinate and integrate the public participation activities described in this section with those undertaken by the host jurisdiction and other public entities associated with development, investigation, or the response action at the site, in order to avoid unnecessary duplication and to integrate the public participation efforts of local government.

(c) For purposes of this section, "site" has the same meaning as defined in Section 25395.79.2 of the Health and Safety Code.

(Added by Stats. 2006, Ch. 562, Sec. 3. Effective January 1, 2007.)

§ 13307.6. [Optional public participation]

(a) In addition to the requirements of Section 13307.5, the regional board may develop and use any of the following procedures to disseminate information and assist the regional board in gathering community input regarding a site, if the regional board determines there is expressed community interest in the site, or the existing site contamination poses a significant public health threat:

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- (1) An annual factsheet.
 - (2) Internet posting or electronic distribution of an electronic copy of a document or report.
 - (3) An electronic comment or electronic feedback form.
 - (4) Formation and facilitation of an advisory group.
 - (5) An additional public meeting or workshop.
 - (6) Extension of a public comment period.
 - (7) Preparation of a public participation plan.
 - (8) Creation of a mailing list for notifying an interested party of a major regional board decision and the regional board's proposed or planned activity regarding the site.

(b) For purposes of this section, "site" has the same meaning as defined in Section 25395.79.2 of the Health and Safety Code.

(Added by Stats. 2006, Ch. 562, Sec. 4. Effective January 1, 2007.)

§ 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.

(Added by Stats. 1994, Ch. 45, Sec. 3. Effective January 1, 1995.)

Article 2. Administrative Review by the State Board [13320. - 13321.]

(Heading of Article 2 amended by Stats. 2010, Ch. 288, Sec. 29.)

§ 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), an 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.

(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 be taken by the regional board, refer the matter to another state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any 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 that 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 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. The board may order any stay to be in effect from the effective date of the waste discharge requirements.

(Amended by Stats. 2010, Ch. 288, Sec. 30. Effective January 1, 2011.)

§ 13321. [Stay of action]

(a) In the case of a review by the state board under Section 13320, the state board, upon notice and hearing, if a hearing is requested, 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 that petition.

(c) If the superior court grants a stay pursuant to a petition for review of a decision of the state board denying a request for a stay with respect to waste discharge requirements, the stay may be made effective as of the effective date of the waste discharge requirements.

(Amended by Stats. 2003, Ch. 683, Sec. 3. Effective January 1, 2004.)

Article 2.5. Administrative Civil Liability [13323. - 13328.]

(Article 2.5 added by Stats. 1984, Ch. 1541, Sec. 4.)

§ 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 certified mail or in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, and shall inform the party so served that a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing.

(c) In proceedings under this article for imposition of administrative civil liability by the state board, the executive director of the state board shall issue the complaint and any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served.

(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 or 13330. Copies of these orders shall be served by certified mail or in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of,

Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure upon the party served with the complaint and shall be provided to other persons who appeared at the hearing and requested a copy.

(e) Information relating to hearing waivers and the imposition of administrative civil liability, as proposed to be imposed and as finally imposed, under this section shall be made available to the public by means of the Internet.

(Amended by Stats. 2006, Ch. 293, Sec. 4. Effective January 1, 2007.)

§ 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.

(Added by Stats. 1984, Ch. 1541, Sec. 4.)

§ 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 benefit or savings, if any, resulting from the violation, and other matters as justice may require.

(Amended by Stats. 2001, Ch. 869, Sec. 4.5. Effective January 1, 2002.)

§ 13328. [Judgment to collect]

After the time for judicial review under Section 13330 has expired, the state board may apply to the clerk of the appropriate court in the county in which the civil liability or penalty was imposed, for a judgment to collect the civil liability or 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.

(Amended by Stats. 2002, Ch. 420, Sec. 8. Effective January 1, 2003.)

Article 3. Judicial Review and Enforcement [13330. - 13331.]

(Article 3 added by Stats. 1969, Ch. 482.)

§ 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. An aggrieved party must file a petition for reconsideration with the state board to exhaust that party's administrative remedies only if the initial decision or order is issued under authority delegated to an officer or employee of the state board and the state board by regulation has authorized a petition for reconsideration.

(b) A party aggrieved by a final decision or order of a regional board subject to review under Section 13320 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) The time for filing an action or proceeding subject to Section 21167 of the Public Resources Code for a person who seeks review of the regional board's decision or order under Section 13320, or who seeks reconsideration under a state board regulation authorizing a petition for reconsideration, shall commence upon the state board's completion of that review or reconsideration.

(d) 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.

(e) 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.

(f) A 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.

(g) For purposes of this section, a decision or order includes a final action in an adjudicative proceeding and an action subject to Section 11352 of the Government Code, but does not include an action subject to Section 11353 of the Government Code or the adoption, amendment, or repeal of a regulation under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2010, Ch. 288, Sec. 31. Effective January 1, 2011.)

§ 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.

(Amended by Stats. 1996, Ch. 659, Sec. 25. Effective January 1, 1997.)

Article 4. Summary Judicial Abatement [13340. - 13340.]

(Article 4 added by Stats. 1969, Ch. 482.)

§ 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.

(Added by Stats. 1969, Ch. 482.)

Article 5. Civil Monetary Remedies [13350. - 13351.]

(Article 5 added by Stats. 1969, Ch. 482.)

§ 13350. [Civil liability; amount; recovery]

[For a similar section that will become operative on July 1, 2017, see below]

(a) A person who (1) violates a 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 a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, 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 actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b) (1) A person who, without regard to intent or negligence, causes or permits a hazardous substance to be discharged 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 strictly liable civilly in accordance with subdivision (d) or (e).

(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 an 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) A person shall not be liable 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. However, 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 that causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability 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.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover the sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make the request only after a hearing, with due notice of the hearing given to all affected persons. In determining the amount to be imposed, assessed, or recovered, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) A person who incurs any liability established under this section shall be entitled to contribution for that liability from a 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.

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

(k) Notwithstanding any other law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be available for expenditure, upon appropriation by the Legislature, for the following purposes:

(1) To the state board to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443, or to assist in implementing Chapter 7.3 (commencing with Section 13560).

(2) Up to five hundred thousand dollars (\$500,000) per fiscal year, to assist the Department of Fish and Wildlife to address the impacts of marijuana cultivation on the natural resources of the state.

(l) This section shall remain in effect only until July 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2017, deletes or extends that date.

(Amended by Stats. 2014, Ch. 35, Sec. 185. Effective June 20, 2014. Repealed as of January 1, 2017, by its own provisions. See later operative version added by Stats. 2014, Ch. 35.)

§ 13350. [Civil liability; amount; recovery]

[Currently operative section is above; this section does not become operative until July 1, 2017]

(a) A person who (1) violates a 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 a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, 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 actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b) (1) A person who, without regard to intent or negligence, causes or permits a hazardous substance to be discharged 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 strictly liable civilly in accordance with subdivision (d) or (e).

(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 an 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) A person shall not be liable 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. However, 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 that causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability 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.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover the sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make the request only after a hearing, with due notice of the hearing given to all affected persons. In determining the amount to be imposed, assessed, or recovered, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing

with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) A person who incurs any liability established under this section shall be entitled to contribution for that liability from a 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.

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

(k) Notwithstanding any other law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443, or to assist in implementing Chapter 7.3 (commencing with Section 13560).

(l) This section shall become operative on July 1, 2017.

(Repealed (in Sec. 185) and added by Stats. 2014, Ch. 35, Sec. 186. Effective June 20, 2014. Section operative January 1, 2017, by its own provisions.)

§ 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, 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 benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

(Amended by Stats. 2001, Ch. 869, Sec. 6. Effective January 1, 2002.)

Article 6. General Provisions Relating to Enforcement and Review [13360. - 13362.]

(Article 6 added by Stats. 1969, Ch. 482.)

§ 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.

(Amended by Stats. 1986, Ch. 1013, Sec. 9. Effective September 23, 1986.)

§ 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.

(Amended by Stats. 1970, Ch. 918.)

§ 13362. [Inspections]

[This version remains in the code, but has been superseded by a later enacted version; see below.]

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.

(Added by Stats. 1999, Ch. 92, Sec. 5. Effective January 1, 2000. See the prevailing Section 13362 added by Stats. 1999, Ch. 92, with the same substantive provisions.)

§ 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.

(Added by Stats. 1999, Ch. 93, Sec. 5. Effective January 1, 2000.)

**Article 7. Hazardous Substance Removal and Remedial Action Charges
[13365. - 13365.]**

(Article 7 added by Stats. 1996, Ch. 607, Sec. 1.)

§ 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 (h) 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 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. *(Amended by Stats. 2002, Ch. 999, Sec. 65. Effective January 1, 2003.)*

CHAPTER 5.2. PREPRODUCTION PLASTIC DEBRIS PROGRAM [13367. - 13367.]

(Chapter 5.2 added by Stats. 2007, Ch. 735, Sec. 2.)

§ 13367. [Program for control of preproduction plastics; minimum BMPs to control discharge]

(a) For purposes of this chapter, “preproduction plastic” includes plastic resin pellets and powdered coloring for plastics.

(b) (1) The state board and the regional boards shall implement a program to control discharges of preproduction plastic from point and nonpoint sources. The state board shall determine the appropriate regulatory methods to address the discharges from these point and nonpoint sources.

(2) The state board, when developing this program, shall consult with any regional board with plastic manufacturing, handling, and transportation facilities located within the regional board’s jurisdiction that has already voluntarily implemented a program to control discharges of preproduction plastic.

(c) The program control measures shall, at a minimum, include waste discharge, monitoring, and reporting requirements that target plastic manufacturing, handling, and transportation facilities.

(d) The program shall, at a minimum, require plastic manufacturing, handling, and transportation facilities to implement best management practices to control discharges of preproduction plastics. A facility that handles

preproduction plastic shall comply with either subdivision (e) or the criteria established pursuant to subdivision (f).

(e) At a minimum, the state board shall require the following best management practices in all permits issued under the national pollutant discharge elimination system (NPDES) program that regulate plastic manufacturing, handling, or transportation facilities:

(1) Appropriate containment systems shall be installed at all onsite storm drain discharge locations that are down-gradient of areas where preproduction plastic is present or transferred. A facility shall install a containment system that is defined as a device or series of devices that traps all particles retained by a one millimeter mesh screen and has a design treatment capacity of not less than the peak flowrate resulting from a one-year, one-hour storm in each of the down-gradient drainage areas. When the installation of a containment system is not appropriate because one or more of a facility's down-gradient drainage areas is not discharged through a stormwater conveyance system, or when the regional board determines that a one millimeter or similar mesh screen is not appropriate at one or more down-gradient discharge locations, the regulated facility shall identify and propose for approval by the regional board technically feasible alternative storm drain control measures that are designed to achieve the same performance as a one millimeter mesh screen.

(2) At all points of preproduction plastic transfer, measures shall be taken to prevent discharge, including, but not limited to, sealed containers durable enough so as not to rupture under typical loading and unloading activities.

(3) At all points of preproduction plastic storage, preproduction plastic shall be stored in sealed containers that are durable enough so as not to rupture under typical loading and unloading activities.

(4) At all points of storage and transfer of preproduction plastic, capture devices shall be in place under all transfer valves and devices used in loading, unloading, or other transfer of preproduction plastic.

(5) A facility shall make available to its employees a vacuum or vacuum type system, for quick cleanup of fugitive preproduction plastic.

(f) The state board shall include criteria for submitting a no exposure certification pursuant to Section 122.26(g) of Title 40 of the Code of Federal Regulations in all NPDES permits regulating plastic manufacturing, handling, or transportation facilities. Facilities that satisfy the no exposure certification criteria are conditionally exempt from the permitting requirements pursuant to Section 122.26 of Title 40 of the Code of Federal Regulations. The no exposure certification shall be required every five years or more frequently as determined by the state board or a regional board.

(g) The state board and the regional boards shall implement this chapter by January 1, 2009.

(h) Nothing in this chapter limits the authority of the state board or the regional boards to establish requirements in addition to the best management practices for the elimination of discharges of preproduction plastic.

(Added by Stats. 2007, Ch. 735, Sec. 2. Effective January 1, 2008.)

CHAPTER 5.4. NONPOINT SOURCE POLLUTION CONTROL PROGRAM [13369. - 13369.]

(Chapter 5.4 added by Stats. 1999, Ch. 560, Sec. 1.)

§ 13369. [Implementation of the nonpoint source management plan]

(a) 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.

(b) (1) The program shall include all of the following components:

(A) Nonregulatory implementation of best management practices.

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

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

(2) 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.

(Amended by Stats. 2012, Ch. 728, Sec. 182. Effective January 1, 2013.)

CHAPTER 5.5. COMPLIANCE WITH THE PROVISIONS OF THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED IN 1972 [13370. - 13389.]

(Chapter 5.5 added by Stats. 1972, Ch. 1256.)

§ 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.
(Amended by Stats. 1987, Ch. 1189, Sec. 1.)

§ 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.

(Added by Stats. 1984, Ch. 1542, Sec. 1.)

§ 13372. [Consistency]

(a) This chapter shall be construed to ensure 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 apply 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 apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

(b) The provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance of dredged or fill material permits by the state board or a regional board 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 or fill material. (Amended by Stats. 2003, Ch. 683, Sec. 5. Effective January 1, 2004.)

§ 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.

(Amended by Stats. 1987, Ch. 1189, Sec. 4.)

§ 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.

(Added by Stats. 1972, Ch. 1256.)

§ 13375. [Discharges prohibited]

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

(Added by Stats. 1972, Ch. 1256.)

§ 13376. [Reports of discharges]

A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes 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. Unless required by the state board or a regional board, a report need not 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. A person who proposes to discharge pollutants or dredged or fill material or 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. A 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. This prohibition does not apply to discharges or operations if a state or federal permit is not required under the Federal Water Pollution Control Act, as amended.

(Amended by Stats. 2010, Ch. 288, Sec. 32. Effective January 1, 2011.)

§ 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.

(Amended by Stats. 1978, Ch. 746.)

§ 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.

(Amended by Stats. 1978, Ch. 746.)

§ 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.

(Amended by Stats. 1978, Ch. 746.)

§ 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.

(Amended by Stats. 1978, Ch. 746.)

§ 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.

(Amended by Stats. 1984, Ch. 1461, Sec. 1.)

§ 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.

(Added by Stats. 1978, Ch. 618.)

§ 13383. [Monitoring requirements]

(a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, 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.

(Amended by Stats. 2003, Ch. 683, Sec. 6. Effective January 1, 2004.)

§ 13383.5. [Storm water discharge monitoring requirements]

(a) As used in this section, “regulated municipalities and industries” means the municipalities and industries required to obtain a storm water permit under Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) and implementing regulations.

(b) This section only applies to regulated municipalities that were subject to a storm water permit on or before December 31, 2001, and to regulated industries that are subject to the General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities.

(c) Before January 1, 2003, the state board shall develop minimum monitoring requirements for each regulated municipality and minimum

standard monitoring requirements for regulated industries. This program shall include, but is not limited to, all of the following:

- (1) Standardized methods for collection of storm water samples.
- (2) Standardized methods for analysis of storm water samples.
- (3) A requirement that every sample analysis under this program be completed by a state certified laboratory or by the regulated municipality or industry in the field in accordance with the quality assurance and quality control protocols established pursuant to this section.
- (4) A standardized reporting format.
- (5) Standard sampling and analysis programs for quality assurance and quality control.
- (6) Minimum detection limits.
- (7) Annual reporting requirements for regulated municipalities and industries.
- (8) For the purposes of determining constituents to be sampled for, sampling intervals, and sampling frequencies, to be included in a municipal storm water permit monitoring program, the regional board shall consider the following information, as the regional board determines to be applicable:
 - (A) Discharge characterization monitoring data.
 - (B) Water quality data collected through the permit monitoring program.
 - (C) Applicable water quality data collected, analyzed, and reported by federal, state, and local agencies, and other public and private entities.
 - (D) Any applicable listing under Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313).
 - (E) Applicable water quality objectives and criteria established in accordance with the regional board basin plans, statewide plans, and federal regulations.
 - (F) Reports and studies regarding source contribution of pollutants in runoff not based on direct water quality measurements.

(d) The requirements prescribed pursuant to this section shall be included in all storm water permits for regulated municipalities and industries that are reissued following development of the requirements described in subdivision (c). Those permits shall include these provisions on or before July 1, 2008. In a year in which the Legislature appropriates sufficient funds for that purpose, the state board shall make available to the public via the Internet a summary of the results obtained from storm water monitoring conducted in accordance with this section.

(Added by Stats. 2001, Ch. 492, Sec. 1. Effective January 1, 2002.)

§ 13383.6. [School educational materials required by municipal stormwater permits]

On and after January 1, 2007, if a regional board or the state board issues a municipal stormwater permit pursuant to Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) that includes a requirement to provide elementary and secondary public schools with educational materials on stormwater pollution, the permittee may satisfy the requirement, upon approval by the regional board or state board, by contributing an equivalent amount of funds to the Environmental Education Account established pursuant to subdivision (a) of Section 71305 of the Public Resources Code.

(Added by Stats. 2005, Ch. 581, Sec. 7. Effective January 1, 2006.)

§ 13383.7. [Guidance on quantifiable effectiveness of municipal storm water programs]

(a) No later than July 1, 2009, and after holding public workshops and soliciting public comments, the state board shall develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs undertaken, and permits issued, in accordance with Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) and this division.

(b) For the purpose of implementing subdivision (a), the state board shall promote the use of quantifiable measures for evaluating the effectiveness of municipal stormwater management programs and provide for the evaluation of, at a minimum, all of the following:

(1) Compliance with stormwater permitting requirements, including all of the following:

- (A) Inspection programs.
- (B) Construction controls.
- (C) Elimination of unlawful discharges.
- (D) Public education programs.
- (E) New development and redevelopment requirements.

(2) Reduction of pollutant loads from pollution sources.

(3) Reduction of pollutants or stream erosion due to stormwater discharge.

(4) Improvements in the quality of receiving water in accordance with water quality standards.

(c) The state board and the regional boards shall refer to the guidance document developed pursuant to subdivision (a) when establishing requirements in municipal stormwater programs and permits.

(Added by Stats. 2007, Ch. 610, Sec. 6. Effective January 1, 2008.)

§ 13383.8. [Stormwater management task force]

(a) The state board shall appoint a stormwater management task force comprised of public agencies, representatives of the regulated community, and nonprofit organizations with expertise in water quality and stormwater

management. The task force shall provide advice to the state board on its stormwater management program that may include, but is not limited to, program priorities, funding criteria, project selection, and interagency coordination of state programs that address stormwater management.

(b) The state board shall submit a report, including, but not limited to, stormwater and other polluted runoff control information, to the Ocean Protection Council no later than January 1, 2009, on the way in which the state board is implementing the priority goals and objectives of the council's strategic plan.

(Added by Stats. 2007, Ch. 610, Sec. 7. Effective January 1, 2008.)

§ 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.

(Amended by Stats. 1978, Ch. 746.)

§ 13385. [Civil liability]

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

(1) Section 13375 or 13376.

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

(3) A requirement established pursuant to Section 13383.

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

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

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

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

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

(B) 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.

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

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

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

(2) 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), "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 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 its ability to continue its business, any voluntary cleanup efforts undertaken, 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) (1) Except as provided in paragraph (2), for the 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.

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

(i) The discharger demonstrates all of the following:

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

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

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

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

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

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

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

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

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

(A) Violates a waste discharge requirement effluent limitation.

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

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

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

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

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

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

(A) An act of war.

(B) 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.

(C) 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.

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

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

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

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

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

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

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

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

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance

is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

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

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

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

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

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

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

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

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in

order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

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

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

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

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

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

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

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

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

(C) (i) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. Except as

provided in clause (ii), for the purposes of this subdivision, the time schedule shall not exceed five years in length.

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

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

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

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

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

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

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

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

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

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

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

(I) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may

direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) 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 this section.

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

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney’s 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.

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

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

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

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

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

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

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

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

(Amended by Stats. 2011, Ch. 296, Sec. 314. Effective January 1, 2012.)

§ 13385.1. [Definitions of “serious violation” and “effluent limitation”]

(a) (1) For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004.

(2) (A) Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

(i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.

(ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

(B) Upon the request of the state board or regional board, the discharger may be required to support the statement with additional explanation or evidence.

(C) If, in a statement submitted pursuant to subparagraph (A), the discharger willfully states as true any material fact that he or she knows to be false, that person shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). Any public prosecutor may bring an action for a civil penalty under this subparagraph in the name of the people of the State of California, and the penalty imposed shall be enforced as a civil judgment.

(D) Notwithstanding subparagraph (A), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(b) (1) Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:

(A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements.

(B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements.

(2) Paragraph (1) shall only apply to a discharger who does both of the following:

(A) Files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.

(B) Pays all penalties assessed by the state board or regional board in accordance with paragraph (1) within 30 days after an order is issued to pay these penalties pursuant to Section 13385.

(3) Notwithstanding paragraph (1), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(4) This subdivision shall become inoperative on January 1, 2014.

(c) (1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) Notwithstanding Section 13340 of the Government Code, the funds described in paragraph (1) are continuously appropriated, without regard to fiscal years, to the state board for expenditure by the state board to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.

(d) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, “effluent limitation” means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

(e) The amendments made to this section by Senate Bill 1284 of the 2009–10 Regular Session of the Legislature shall apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred. *(Amended by Stats. 2010, Ch. 645, Sec. 2. Effective January 1, 2011.)*

§ 13385.2. [Compliance project funding demonstration]

(a) Prior to the state board or regional board making its findings pursuant to subdivision (k) of Section 13385, the publicly owned treatment works shall demonstrate to the satisfaction of the state board or regional board that the financing plan prepared pursuant to subparagraph (C) of paragraph (1) of subdivision (k) of that section is designed to generate sufficient funding to complete the compliance project within the time period specified pursuant to subparagraph (A) of paragraph (1) of subdivision (k) of that section.

(b) This section shall only become operative if Senate Bill 1733 of the 2005–06 Regular Session is enacted and becomes operative. *(Added by Stats. 2006, Ch. 725, Sec. 1. Effective September 29, 2006. Note: Condition in subd. (b) was satisfied by enactment of Stats. 2006, Ch. 404.)*

§ 13385.3. [Operative date for 2006/2007 amendments to 13385(k)]

(a) The amendments made to subdivision (k) of Section 13385 of the Water Code by Senate Bill 1733 of the 2005–06 Regular Session shall become operative on July 1, 2007.

(b) This section shall only become operative if Senate Bill 1733 of the 2005–06 Regular Session is enacted and becomes operative. *(Added by Stats. 2006, Ch. 725, Sec. 2. Effective September 29, 2006. Note: Condition in subd. (b) was satisfied by enactment of Stats. 2006, Ch. 404.)*

§ 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.

(Amended by Stats. 1996, Ch. 659, Sec. 27. Effective January 1, 1997.)

§ 13387. [Criminal penalties]

(a) Any person who knowingly 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 issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(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, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances that 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 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, by imprisonment for not more than one year in a county jail, or by both that fine and imprisonment. 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, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or by both that fine and imprisonment.

(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, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and

imprisonment. 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, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years, or by both that fine and imprisonment.

(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 punished by a fine of not more than two hundred fifty thousand dollars (\$250,000), imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 5, 10, or 15 years, or by both that fine and imprisonment. A person that 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 punishment shall be by a fine of not more than five hundred thousand dollars (\$500,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 10, 20, or 30 years, or by both that fine and imprisonment. A person that 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), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or by both that fine and imprisonment. 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, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by both that fine and imprisonment.

(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 Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

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

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

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

(Amended by Stats. 2011, Ch. 15, Sec. 616. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

§ 13388. [Member eligibility]

(a) Notwithstanding any other provision of this division or Section 175, and except as provided in subdivision (b), a person shall not be a member of the state board or a regional board if that person receives, or has received during the previous two years, a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements pursuant to this chapter.

(b) (1) A person shall not be disqualified from being a member of a regional board because that person receives, or has received during the previous two years, a significant portion of his or her income directly or indirectly from a person subject to waste discharge requirements, or an applicant for waste discharge requirements, that are issued pursuant to this chapter by the state board or regional board other than the regional board of which that person is a member.

(2) Paragraph (1) shall be implemented only if the United States Environmental Protection Agency either determines that no program approval is necessary for that implementation, or approves of a change in California’s National Pollutant Discharge Elimination System program, to allow the state to administer the National Pollutant Discharge Elimination System permit program consistent with paragraph (1).

(Amended by Stats. 2012, Ch. 39, Sec. 121. Effective June 27, 2012.)

§ 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.

(Added by Stats. 1972, Ch. 1256.)

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.)

CHAPTER 5.7. DRAINAGE FROM ABANDONED MINES [13397. - 13398.9.]

(Chapter 5.7 added by Stats. 1995, Ch. 878, Sec. 1.)

§ 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.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 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 that are 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, owns or has owned a property interest, other than a security interest, in the abandoned mined lands being remediated, or is or has been legally responsible for, or 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.

(Amended by Stats. 2000, Ch. 727, Sec. 5. Effective January 1, 2001.)

§ 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.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 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 (b) 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.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 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.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 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.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

§ 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.

(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)

CHAPTER 5.8. MINOR VIOLATIONS [13399. - 13399.3.]

(Chapter 5.8 added by Stats. 1996, Ch. 775, Sec. 4.)

§ 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.

(Added by Stats. 1996, Ch. 775, Sec. 4. Effective January 1, 1997.)

§ 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.

(Added by Stats. 1996, Ch. 775, Sec. 4. Effective January 1, 1997.)

§ 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.

(Added by Stats. 1996, Ch. 775, Sec. 4. Effective January 1, 1997.)

§ 13399.3. [Report to the Legislature]

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.

(Amended by Stats. 2000, Ch. 727, Sec. 6. Effective January 1, 2001.)

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.)