
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Annual Waste Discharge Permit Fees

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

Required Notice of Proposed Emergency Action

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

The State Water Resources Control Board (State Water Board) sent out to interested parties via electronic mail on November 24, 2021 the proposed changes to Title 23, Division 3, Chapter 9, Article 1, Section 2200, subdivision (b)(10) of the California Code of Regulations. This notification satisfies the notification requirements of Government Code section 11346.1(a)(2).

Proposed Emergency Action

Water Code section 13260(f) requires the State Water Board to adopt emergency regulations revising and establishing fees to be deposited in the Waste Discharge Permit Fund in the State Treasury. Water Code section 13260(f)(1) requires the State Water Board to adjust the fee schedule each fiscal year to conform to the revenue levels set forth in the annual Budget Act. At its September 22, 2021 meeting, the State Water Board adopted emergency regulations that adjusted waste discharge permit fees to conform to the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2021-22. However, due to an inadvertent error, the version of the fee regulations presented to the State Water Board for adoption did not include the fee increase for most of the NPDES wastewater program. This action is to correct the error by revising California Code of Regulations, title 23, section 2200, subdivision (b)(10) to include the intended fee increase of 11.9 percent.

Proposed Text of Emergency Regulations

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

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

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

The State Water Board has a mandatory legal duty to adopt emergency regulations revising the fees as necessary each fiscal year pursuant to Water Code section 13260(f). Water Code section 13260(f)(2) states that “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations... shall remain in effect until revised by the State Water Board.”

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code section 13260(f).

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

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

The proposed emergency regulations will correct the inadvertent error in the fee regulations adopted by the State Water Board on September 22, 2021 by increasing the FY 2021-22 fees for NPDES Wastewater permit holders subject to California Code of Regulations, title 23, section 2200, subdivision (b)(10) by the intended 11.9 percent.

There is no comparable federal statute or regulation.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

No other matters are prescribed by statute or regulation applicable to the State Water Board.

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

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

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

Under the proposed emergency regulations for this fiscal year, most local and state agencies will pay increased fees over last year. The amended fee schedule will result in a total estimated increase to state agencies of approximately \$22,188. There is no cost to any local agency or school district for which reimbursement is required or other nondiscretionary cost of savings imposed on local agencies. There is no cost or savings in federal funding to the state.

December 1, 2021
Date


Jeanine Townsend
Clerk to the Board

FY 2021-22 Fee Schedules

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

Section 2200. Annual Fee Schedules.

Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 of the Water Code shall submit, to the state board, an annual fee in accordance with the following schedules. The fee shall be submitted for each waste discharge requirement order issued to that person.¹

...

¹ Federal facilities will generally not be invoiced for the portion of the annual fee that is attributable to the state board's ambient water monitoring programs. See *Massachusetts v. United States* (1978) 435 U.S. 444.

FY 2021-22 Fee Schedules

(b) The annual fees for persons issued NPDES permits shall be based on the following schedules, plus any applicable surcharge(s).

...

(10) All other general NPDES permits and de minimis discharges²⁸ that are regulated by an individual or general NPDES permit, including those issued by a regional board, shall pay a fee as follows:

Category 1 – Discharges that require treatment systems to meet priority toxic pollutant limits and that could impair beneficial uses if limits are violated:

~~\$16,193~~18,120

Category 2 – Discharges that require treatment systems to meet non-priority pollutant limits, but are not expected to impair beneficial uses if limits are violated. Examples of non-priority pollutants include, but are not limited to, nutrients, inorganic compounds, pH, and temperature: ~~\$9,786~~10,951

Category 3 – Discharges that require minimal or no treatment systems to meet limits and pose no significant threat to water quality: ~~\$2,811~~3,146

Category 4 – Discharges that require minimal or no treatment systems to meet limits and are authorized by the Regional Water Board to augment ambient streamflow conditions to support aquatic organisms during times of low streamflows where conditions threaten survival of aquatic organisms: \$250

²⁸ De minimis discharge activities include, but are not limited to, the following: aquaculture activities (as defined in Chapter 40, Section 122.25(b) of the Code of Federal Regulations) defined as managed water areas that use discharges of pollutants into that designated area for maintenance or reproduction of harvestable freshwater, estuarine, or marine plants or animals including fish hatcheries; geothermal facilities that utilize, extract, or produce energy from geothermal fluids for heating, generating power, or other beneficial uses, and discharge geothermal fluids to surface waters; aquatic pesticide applications; evaporative condensate; swimming and landscape pool drainage; discharges from fire hydrant testing or flushing; discharges resulting from construction dewatering; discharges associated with supply well installation, development, test pumping, and purging; discharges resulting from the maintenance of uncontaminated water supply wells, pipelines, tanks, etc.; discharges resulting from hydrostatic testing of water supply vessels, pipelines, tanks, etc.; discharges resulting from the disinfection of water supply pipelines, tanks, reservoirs, etc.; discharges from water supply systems resulting from system failures, pressure releases, etc.; discharges of non-contact cooling water, not including steam/electric power plants; discharges resulting from diverted stream flows; water treatment plant discharges; and other similar types of wastes that have low pollutant concentrations and are not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters yet technically must be regulated under an NPDES permit.