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## State Water Resources Control Board

**REVISED ON SEPTEMBER 14, 2023\*  
(REVISIONS SHOWN IN RED FONT)**

### NOTICE OF PROPOSED EMERGENCY RULEMAKING

#### Annual Waste Discharge Permit Fees

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

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##### Required Notice of Proposed Emergency Action

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

##### Proposed Emergency Action

Water Code section 13260(f) requires the State Water Board to adopt emergency regulations revising and establishing fees to be deposited in the Waste Discharge Permit Fund in the State Treasury. 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. On September 19, 2023, the State Water Board will consider adopting emergency regulations that adjust waste discharge permit fees to conform to the revenue levels set forth in the Budget Act for Fiscal Year (FY)

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**\* The version of the proposed revisions to the water quality fee regulations that was published on September 11, 2023, inadvertently omitted the proposed revisions to section 2200.7 (cannabis cultivation) and inadvertently included a duplicate of the proposed revisions to section 2200, subdivision (c), (confined animal facilities) in its place. The duplicate of the proposed revisions to section 2200, subdivision (c) is deleted and replaced with the proposed revisions to section 2200.7, as shown below. In addition, the statement relating to cannabis cultivation on page 3, below, that “applicable surcharges will remain unchanged for FY 2023-24” was inadvertently included in the September 11, 2023 version of this notice. It has been deleted, as shown below.**

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

2023-24. These changes will revise Title 23, Division 3, Chapter 9, Article 1, Sections 2200, 2200.1, 2200.6 and 2200.7 of the California Code of Regulations.

**Proposed Text of Emergency Regulations**

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

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

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

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

Water Code section 13260(f).

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

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

The proposed emergency regulations will revise the fees for waste discharge permit holders for FY 2023-24 as follows:

**Waste Discharge Requirement (WDR)**

Increase fees by an average of 8.5 percent to all fee categories. All applicable surcharges will remain unchanged for FY 2023-24.

- **Pretreatment Surcharge** – Add language to section 2200(a) and (b)(8) of the fee schedule regarding the existing surcharge of \$10,000 for public wastewater treatment facilities with approved pretreatment programs by clarifying the surcharge shall only be applied once per approved pretreatment program.

**Land Disposal – Tipping and No Tipping**

No fee increase is being proposed as the program is projected to generate sufficient revenue.

**Water Quality Certification (WQC)**

Increase fees an average of 9.2 percent to all fee categories except Category (H) as it is generating sufficient revenue to support program expenditures. All applicable surcharges will remain unchanged for FY 2023-24.

### **NPDES Stormwater**

No overall program fee increase is being proposed as the program is projected to generate sufficient revenue, however, staff is proposing the following change to the NPDES Stormwater Industrial program fee schedule that may result in a fee change to some dischargers:

- **Industrial Tiered Fee Schedule** – Change the methodology from a flat fee to a tiered structure based on the total number of acres of industrial activities and materials exposed to storm water as follows:

<b>Acres</b>	<b>Annual Fee</b>
>0 to <1	\$1,651
1 to <5	\$1,673
5 or more	\$1,818

- **Change of Information (COI)** – Add clarifying language to the NPDES Stormwater Construction fee schedule, section 2200(b)(4)(A), specifying the per acre fee shall be submitted with a COI for any increase in acreage.

### **NPDES Wastewater**

Increase fees by an average of 9.2 percent to all fee categories. All applicable surcharges will remain unchanged for FY 2023-24.

### **Confined Animal Facilities (CAF)**

Increase fees by an average of 6.2 percent to all fee categories. All applicable surcharges will remain unchanged for FY 2023-24.

### **Agricultural (Ag) Lands**

Increase fees by an average of 5.8 percent to all fee categories.

### **Cannabis Cultivation**

Increase fees by an average of 5.0 percent to all fee categories. **All applicable surcharges will remain unchanged for FY 2023-24.**

### **Invoicing Schedule Language**

Add language to section 2200.1 to allow the Water Boards to generate invoices based on the prior year's fee schedule prior to the State Water Board's adoption of the annual fee schedule for the current year as appropriate to maintain an adequate operating balance in the Waste Discharge Permit Fund, in which case the State Water Board shall incorporate any subsequent adjustments to those fees for the current year by issuing credit or debit memoranda for the subsequent year or by issuing refunds or

supplemental invoices. The State Water Board may also generate semiannual invoices, with the first semiannual invoice set at an amount equal to one half of the prior year's fee schedule and the second semiannual invoice set at an amount equal to the remainder of the current year's annual fee schedule. This alternative invoicing process is not necessary for FY 2023-24, but may be required in future years to ensure the WDPF is sufficiently funded prior to the receipt of revenue from invoices issued after the current year's fee schedule is adopted, which historically occurs in September with the first program's invoices being issued in late October or early November.

There is no comparable federal statute or regulation.

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

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

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

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

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

Under the proposed emergency regulations for this fiscal year, most local and state agencies will pay increased fees over last year. The amended fee schedule will result in a total estimated increase to state agencies of approximately \$196,290. 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.