

State Water Resources Control Board**REVISED**
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 to OAL, the 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. This document provides the required notice.

Proposed Emergency Action

Water Code section 13260(f) requires the State Water Resources Control Board (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, 2011, the State Water Board adopted Resolution 2011-0042, which adjusted waste discharge permit fees to conform to the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2011-12.

Proposed Text of Emergency Regulations

The proposed text of the emergency regulations is attached.

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 the Water Code 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, the emergency regulations shall remain in effect until revised by the State Water Board.

Moreover, the State Water Board finds that the amendments to the regulations must be adopted immediately in order to allow for the timely collection of fees consistent with the Budget Act.

Without fee revenue in the amounts established by the Budget Act, much of the water quality program would have to be shut down. Continued administration of the water quality program is essential to the economy and environment of the State of California. Adoption of the regulations is necessary for the immediate preservation of the public health and welfare. The State Water Board is unable to address the situation through nonemergency regulations because, as discussed above, it has a mandatory legal duty to adopt the fee schedules by emergency regulation.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))
Water Code section 13160(f).

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))
Under the Water Code and existing regulations, any person filing a report of waste discharge that could affect the quality of the waters of the state must pay an annual fee to the State Water Board.

The emergency regulations will adjust the fee schedule to increase fees for most waste discharger permit holders

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 an estimated increase to state agencies of about \$312,000. 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. ~~Under the proposed emergency regulations for this fiscal year, local and state agencies will not pay an increased fee. The amended fee schedule will result in no increases to state agencies. 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.~~

October 4, 2011

Date



Jeanine Townsend
Clerk to the Board