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Environmental Protection

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Environmental Protection

Environmental Protection; water quality enforcement

Water Code §§13323, 13324, 13325, 13326, 13327, 13351 (new);
§§13261, 13265, 13268, 13350, 13385, 13387 (amended).
SB 2131 (McCorquodale); 1984 STAT. Ch 1541

Existing law provides criminal and civil penalties for water quality violations.¹ Chapter 1541 supplements civil penalty provisions² and establishes procedures whereby a regional board³ administratively can determine civil liability for violation of water quality laws.⁴

Increased Penalties

Under existing law, anyone⁵ who fails to report a discharge or a proposed discharge of waste,⁶ discharges new waste, or materially changes an existing discharge after filing a report⁷ is guilty of a misdemeanor.⁸ In addition, failure to furnish technical or monitoring program reports⁹ or falsifying any information therein constitutes a misdemeanor.¹⁰ Chapter 1541 establishes that civil liability for these violations may be imposed by a regional board in a sum not to exceed \$1,000¹¹ or by the superior court in a sum not to exceed \$5,000¹²

1. CAL. WATER CODE §§13261 (reporting a discharge), 13265 (discharging waste), 13268 (furnishing technical or monitoring reports). *See generally Review of Selected 1980 California Legislation*, 12 PAC. L.J. 459-61, 472-73 (1981) (water quality requirements and penalties).

2. *See* CAL. WATER CODE §§13261 (incorporating 1980 Cal. Stat. c. 807, §1, at 2535 (amending CAL. WATER CODE §13261)) (reporting a discharge), 13265 (incorporating 1980 Cal. Stat. c. 807, §2, at 2536 (amending CAL. WATER CODE §13265)) (discharging waste), 13268 (incorporating 1980 Cal. Stat. c. 807, §3, at 2536 (amending CAL. WATER CODE §13268)) (furnishing technical or monitoring reports).

3. CAL. WATER CODE §13050(b) (definition of regional board).

4. *Id.* §§13323-13327.

5. The term "anyone" includes a citizen, domiciliary, or political agency of California. *See id.* §13260(a).

6. *Id.* §13050(d) (definition of waste).

7. *Id.* §13260(a) (definition of report).

8. *Id.* §13261(a). The regional board must request a report before liability may be imposed. *Id.* §§13264, 13265(a). The regional board must notify the violator of the violation in writing before liability may be imposed. Each day the violation continues constitutes a separate offense. *Id.* §13265(a).

9. The regional board determines the content of these reports. *Id.* §13267(b) (authority to request technical or monitoring reports).

10. *Id.* §13268(a).

11. *Id.* §§13261(b)(1), 13265(b)(1), 13268(b)(1).

12. *Id.* §§13261(b)(2), 13265(b)(2).

for each day during which the violation occurs.¹³

Existing law provides that anyone who discharges hazardous waste¹⁴ in violation of the restrictions relating to new discharges or causes a material change in an existing discharge is guilty of a misdemeanor.¹⁵ In addition, anyone who discharges or purposes to discharge hazardous waste is guilty of a misdemeanor if he (1) knowingly furnishes a false report of the discharge, or (2) willfully withholds material information¹⁶ despite actual knowledge of the requirement to furnish the information.¹⁷ Additionally, anyone who discharges hazardous waste is guilty of a misdemeanor if he also (1) knowingly fails or refuses to furnish technical or monitoring program reports, or (2) knowingly falsifies any information therein.¹⁸ With the enactment of Chapter 1541, civil liability may be imposed by a regional board in a sum not to exceed \$5,000¹⁹ or by the superior court in a sum not to exceed \$25,000²⁰ for each day during which the provision is violated.²¹

Existing law imposes civil liability on anyone who (1) intentionally or negligently violates a cease and desist order of a regional board or the State Board of Water Resources²² (hereinafter referred to as the State Board) violates waste discharge requirements, violates other orders or prohibitions issued by a regional board or the State Board, (2) intentionally or negligently causes waste to be discharged into waters of California where the discharge creates a condition of pollution²³ or nuisance,²⁴ or (3) unlawfully causes or permits any oil or petroleum product to be deposited in or on any California waters.²⁵ In addition,

13. *See id.* §§13261(a), 13265(a), 13268(a).

14. CAL. HEALTH & SAFETY CODE §25117 (definition of hazardous waste).

15. CAL. WATER CODE §13264 (restrictions on a new or existing discharge). Liability will not be imposed if the discharger is not negligent and immediately files a report of the discharge with the regional board, or if the regional board determines that the violation was insubstantial. *Id.* §13265(c).

16. The regional board determines whether the information is material. *See id.* §13260(a).

17. *Id.* §13261(c). Prior law provided liability for these violations to be imposed in a sum not to exceed \$25,000 for each day during which the violation occurred. 1980 Cal. Stat. c. 807, §1, at 2535 (amending CAL. WATER CODE §13261) (reporting a discharge), 1980 Cal. Stat. c. 807, §2, at 2536 (amending CAL. WATER CODE §13265) (discharging waste).

18. CAL. WATER CODE §13268(c). Prior law permitted civil liability to be imposed in a sum not to exceed \$5,000 for each day during which the provision was violated. 1980 Cal. Stat. c. 807, §3, at 2536 (amending CAL. WATER CODE §13268).

19. CAL. WATER CODE §§13261(d)(1), 13265(d)(1), 13268(d)(1).

20. *Id.* §§13261(d)(2), 13265(d)(2), 13268(d)(2).

21. *See id.* §§13261(c), 13265(c), 13268(c). Civil liability under these sections is inapplicable to the provisions enacted to implement 33 U.S.C. sections 1251-1376, the Federal Water Pollution Control Act, as to navigable waters. *Id.*

22. CAL. WATER CODE §13050(a) (definition of State Board).

23. *Id.* §13050(l) (definition of pollution).

24. *Id.* §13050(m) (definition of nuisance).

25. *Id.* §13350(a).

anyone who unlawfully causes or permits any hazardous substance²⁶ to be discharged in or on any California waters creating a condition of pollution or nuisance is strictly liable in a civil action, regardless of intent or negligence, unless the discharge is caused solely by one or more specified circumstances.²⁷ Under prior law, civil liability could be imposed in a sum not to exceed \$6,000.²⁸ Chapter 1541 provides, however, that a regional board or the superior court may impose civil liability for these violations depending on whether a discharge occurs and a cleanup and abatement order²⁹ is or is not issued,³⁰ or no discharge occurs but an order issued by the regional board has been violated.³¹ Chapter 1541 provides that the superior court must consider the nature, circumstances, extent, and gravity of the violation, and other matters as justice may require when determining the amount of liability to impose.³²

Under existing law, anyone who discharges pollutants or dredged or fill material, except when the discharge is authorized, is civilly liable.³³ Prior law provided a maximum fine of \$10,000.³⁴ Chapter 1541 provides for various amounts of liability depending upon the circumstances of the violation.³⁵ If a discharge occurs and a cleanup and abatement order is issued, liability will not exceed \$15,000 for

26. *Id.* §13050(p) (definition of hazardous substance).

27. *See id.* §13350(b) (limitations on the term “discharge” as used in *id.* §13350(b)). The following circumstances will relieve the discharger of liability under section 13350(b) of the Water Code: (1) an act of war, (2) an unanticipated grave natural disaster, (3) the negligence of state or federal government, (4) the intentional act of a third party, or (5) any circumstance or event that occurs despite the exercise of every reasonable precaution to prevent or mitigate the discharge. *Id.* §13350(c)(1)-(5).

28. *See* 1980 Cal. Stat. c. 877, §3, at 2536 (amending CAL. WATER CODE §13350).

29. *See* CAL. WATER CODE §13304(a) (reasons for issuing a cleanup and abatement order).

30. When a discharge occurs and a cleanup and abatement order is issued, administrative civil liability will not exceed \$5,000 for each day in which the discharge occurs and for each day the cleanup and abatement order is violated. *Id.* §13350(d)(1). Civil liability imposed by the superior court will not exceed \$15,000 for each day during which the discharge occurs and for each day the cleanup and abatement order is violated. *Id.* §13350(d)(2). When a discharge occurs and a cleanup and abatement order is not issued, administrative civil liability will not exceed \$10 for each gallon of waste discharged. *Id.* §13350(e)(1). Civil liability imposed by the superior court will not exceed \$20 for each gallon of waste discharged. *Id.* §13350(e)(2).

31. *See id.* §§13350(a),(b). When no discharge occurs, administrative civil liability will not exceed \$1,000 for each day during which the violation occurs. *Id.* §13350(f)(1). Civil liability imposed by the superior court will not exceed \$10,000 for each day during which the violation occurs. *Id.* §13350(f)(2).

32. *Id.* §13351. The Court also must consider whether the discharge is susceptible to cleanup or abatement and whether the violator has (1) the ability to pay the fine, (2) the ability to continue in business, (3) undertaken voluntary cleanup, (4) prior history of violations and the culpability of the violator. *Id.*

33. *See id.* §13385(a). Violation of this section precludes liability under section 13350 of the Water Code. *Id.* §13350(j).

34. 1978 Cal. Stat. c. 746, §9, at 2345 (amending CAL. WATER CODE §13385).

35. *See* CAL. WATER CODE §13385(a)(1)-(3).

each day during which the violation occurs.³⁶ If a discharge occurs, but a cleanup and abatement order is not issued, the amount of liability will not exceed \$20 for each gallon of waste discharged.³⁷ Finally, if no discharge occurs but an order of the regional board is violated, the amount of liability will not exceed \$10,000 for each day during which the violation occurs.³⁸

Existing law provides that a willful or negligent unauthorized discharge of pollutants or dredged or fill material is punishable by a fine, imprisonment, or both for each day during which the violation occurs.³⁹ Prior law set the fine at no more than \$25,000 and no less than \$2,500, imprisonment for no more than one year, or both.⁴⁰ Chapter 1541 increases the minimum fine to \$5,000, while the maximum fine and the imprisonment term remain the same.⁴¹ Additionally, prior law set a maximum fine of \$10,000 for knowingly falsifying any monitoring device.⁴² With the enactment of Chapter 1541, the maximum fine is increased to \$25,000.⁴³

Administrative Civil Liability

Chapter 1541 establishes that administrative civil liability may be initiated by any executive officer of a regional board by issuing a complaint.⁴⁴ The complaint must allege the act or failure to act that constitutes a violation of law, the provision of law authorizing imposition of civil liability, and the proposed liability.⁴⁵ In addition, Chapter 1541 requires that the complaint inform the party served that a hearing will be conducted before a panel of the regional board⁴⁶ who will report their decision to the regional board.⁴⁷ After an independent review,⁴⁸ the regional board may adopt, with or without

36. *Id.* §13385(a)(1).

37. *Id.* §13385(a)(2).

38. *Id.* §13385(a)(3).

39. *Id.* §13387(a).

40. 1978 Cal. Stat. c. 746, §11, at 2345 (amending CAL. WATER CODE §13387).

41. CAL. WATER CODE §13387(a).

42. 1978 Cal. Stat. c. 746, §11, at 2346 (amending CAL. WATER CODE §13387).

43. CAL. WATER CODE §13387(b).

44. *Id.* §13323(a).

45. *Id.* Service of the complaint must be by personal service or certified mail. *Id.* §13323(b).

46. The hearing must be conducted within sixty days after service of the complaint and must be conducted by three or more members of the regional board or by the entire regional board. *Id.* §13323(b).

47. *See id.* §13323(c). The hearing may be waived by the complainant, in which case no hearing will be conducted by the regional board. *Id.* §13323(b).

48. In addition to a review of the record presented by the panel, the regional board also must consider additional evidence as may be necessary and could not reasonably have been offered before the hearing panel. *Id.* §13323(c).

revision, the decision of the panel.⁴⁹

Chapter 1541 provides that any aggrieved party may petition the State Board for review of the order of the regional board, or the State Board may grant review itself.⁵⁰ If review is granted, the State Board may affirm, modify, or set aside, in whole or in part, the order of the regional board.⁵¹ Chapter 1541 allows any party aggrieved by an order of the State Board or any party denied review by the State Board to obtain review in the superior court by filing a writ of mandate in the court.⁵² Finally, Chapter 1541 provides that no one can be subject to both administrative civil liability imposed by a regional board or the State Board and civil liability imposed by the superior court for the same act or failure to act.⁵³

49. *See id.* The orders of the regional board become effective immediately upon issuance. Copies of the orders must be served personally, or by registered mail to the complainant and to other persons who appeared at the hearing and requested a copy. *Id.* §13323(d).

50. *See id.* §13324(a). All petitions for review must be filed within thirty days from issuance of the decision of the regional board panel except that the State Board may grant review on its own initiative after the expiration of thirty days. *Id.*

51. *Id.* §13324(b). The record before the State Board must consist of any relevant evidence including the record that was before the regional board. *Id.* *See also id.* §13327 (delineating relevant evidence). The orders of the State Board become effective and final immediately upon issuance, and copies of the orders must be served personally or by registered mail on the complainant and any other persons who appeared at the hearing and requested a copy. *Id.* §13324(d).

52. *Id.* §13325. All petitions for writ of mandate must be made within thirty days from the issuance of a decision or denial of review by the State Board except that the State Board may grant review on its own initiative after the expiration of thirty days. *Id.*

53. *Id.* §13326.

Environmental Protection; oil and gas geothermal energy operations—civil penalties

Public Resources Code §§3236.5, 3754.5 (amended).
AB 3560 (Wyman); 1984 STAT. Ch 530

Under prior law, the civil penalty for violations of statutory provisions regulating the drilling, operation, maintenance, and abandonment of oil¹ and gas² wells,³ was a maximum of \$500 for

1. CAL. PUB. RES. CODE §3006 (definition of oil).

2. *Id.* §3007 (definition of gas).

3. *Id.* §3008 (definition of well).

each violation.⁴ In addition, a \$500 civil penalty existed for a violation of geothermal energy well⁵ regulations.⁶ Prior law declared that these civil penalties were in lieu of any other civil penalty.⁷ Chapter 530 increases the amount of the civil penalty to a maximum of \$5,000 and provides that the civil penalty is in addition to any other penalty provided by law.⁸

Prior law required that an action to impose a civil penalty for a violation of oil, gas, or geothermal energy well regulations be brought by the Attorney General upon the request of the State Oil and Gas Supervisor.⁹ Under Chapter 530, the Oil and Gas Supervisor, upon determining that a violation has been committed by the person charged, may directly order the civil penalty imposed.¹⁰ Furthermore, Chapter 530 specifies guidelines for determining the amount of the penalty to be imposed¹¹ and establishes procedures for appealing an order imposing a civil penalty.¹² Finally, acts of God and acts of vandalism¹³ beyond the reasonable control of the operator¹⁴ are not considered a violation under Chapter 530.¹⁵

4. 1982 Cal. Stat. c. 611, §1, at 2595 (enacting CAL. PUB. RES. CODE §3236.5).

5. CAL. PUB. RES. CODE §3703 (definition of geothermal energy well).

6. 1982 Cal. Stat. c. 611, §2, at 2595 (enacting CAL. PUB. RES. CODE §3754.5).

7. *Id.* See also *id.* §1, at 2595.

8. CAL. PUB. RES. CODE §§3236.5(a), 3754.5(a).

9. 1982 Cal. Stat. c. 611, §§1,2, at 2595 (enacting CAL. PUB. RES. CODE §§3236.5, 3754.5).

10. CAL. PUB. RES. CODE §§3236.5(a), 3754.5(a). A penalty will not be imposed before the person charged has received notice and has had an opportunity to be heard. *Id.*

11. When establishing the amount of civil liability, the supervisor must consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, and (3) the number of prior violations by the same violator. *Id.*

12. *Id.* §§3236.5(b), 3754.5(b). With regard to violations of oil and gas regulations, an order of the supervisor imposing a civil penalty is reviewable pursuant to CAL. PUB. RES. CODE §§3350-3359. Violations of geothermal energy regulations are reviewable pursuant to CAL. PUB. RES. CODE §§3762-3771. In both cases, when the order of the supervisor has become final or has been upheld following exhaustion of the applicable review procedures, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. *Id.*

13. CAL. PENAL CODE §594 (definition of vandalism).

14. CAL. PUB. RES. CODE §3009 (definition of operator).

15. *Id.* §§3236.5(a), 3754.5(a).