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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 2106  
**Author:** Robert Rivas and Cristina Garcia  
**Version:** 6/8/2022 **Hearing Date:** 6/29/2022  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Genevieve M. Wong

**SUBJECT:** Water quality: permits

**DIGEST:** Require the State Water Resources Control Board (State Water Board) to modernize its stormwater data collection systems and to establish a statewide commercial, industrial, and institutional NPDES order.

**ANALYSIS:**

Existing law:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. The federal CWA makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained, and establishes a structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)
  - a) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program which regulates point source discharges of pollutants into US waters. An NPDES permit sets specific discharge limits for point sources discharging pollutants into US waters and establishes monitoring and reporting requirements as well as special conditions. Point sources are discrete conveyances such as pipes or man-made ditches. (Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.).
  - b) States are authorized to implement and enforce the NPDES permit program as long as the state's provisions are as stringent as the federal requirements. In California, the State Water Resources Control Board (State Water Board) is the delegate agency responsible for the NPDES permit program.

(22 U.S.C. Sec. 1251 et seq.)

- 2) The Porter-Cologne Water Quality Control Act (Porter-Cologne), establishes the State Water Board and regional water quality control boards (regional boards) to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. (Water Code (Wat. C.) § 13000 et seq.)
- 3) Requires the State Water Board to develop minimum standard monitoring requirements for municipalities subject to a stormwater permit and industries that are subject to the General Permit for Stormwater Discharges Associated with Industrial Activities Excluding Construction Activities, which is known as the Industrial General Permit (IGP).
- 4) Requires the State Water Board to develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs and permits. (Wat. C. § 13383.9)

This bill:

- 1) Requires the State Water Board, by December 31, 2024, to modernize its stormwater data collection systems through all of the following:
  - a) Reducing costs associated with permittee data upload and reporting requirements by using modern technology.
  - b) Improving efficient State Water Board enforcement.
  - c) Including system level tracking and accounting of how best management practices reduce pollutant loading to receiving waters.
  - d) Modernizing the stormwater data collection systems to be geographic information system-based to evaluate progress towards stormwater program compliance.
- 2) Requires the State Water Board to establish a statewide commercial, industrial, and institutional (CII) NPDES order and to publish a draft order of the statewide order for public comment on or before December 31, 2025, but not before the reissuance of the Statewide General Permit for Stormwater Discharges Associated with Industrial Activities, as specified.
  - a) Prohibits regulated stormwater permittees from being subject to more than one stormwater NPDES order for the same facility. Requires all effluent limitations applicable to stormwater discharges associated with industrial

activities to be incorporated into the statewide CII order.

- 3) Requires, on or before January 31, 2024, the State Water Board to initiate a series of board hearings to evaluate the California stormwater program and the state's progress towards attainment of beneficial uses and compliance with water quality standards as they pertain to permits issued pursuant to the federal CWA.
- 4) Requires the report to include recommendations to ensure permitting of stormwater discharges protects and supports attainment of beneficial uses and results in water quality objectives. For purposes of developing these recommendations, limits the State Water Board's evaluation to the following:
  - a) Strategies to ensure stormwater permit requirements are simple and objective, focusing on improving water quality, and determine permittee compliance.
  - b) Mechanisms to ensure stormwater programs address environmental justice and racial inequities within the state's water quality policies and permits to ensure disadvantaged and tribal communities are not disproportionately impacted by poorly managed stormwater.
  - c) Source control measures the state could implement including the potential for a statewide program, as specified.
  - d) Strategies to reduce the compliance costs created by unnecessary permit requirements that do not result in improved water quality or are not necessary to demonstrate permit compliance.
  - e) Policies to regulate or incentivize the one-water concept, as defined by the bill.
  - f) A dedicated source of stormwater funding and increasing supplemental funding opportunities for local stormwater programs.
  - g) The use of spatially based stormwater information management systems to manage, visualize, and report program compliance data.
  - h) Opportunities to better identify and enroll nonfilers into the applicable stormwater NPDES order.
  - i) Solutions to identify sources of unknown water quality impairments.

## **Background**

- 1) *Protecting Water Quality in California*. Porter-Cologne, enacted in 1969, established the State Water Board, along with nine regional boards, and gave those agencies primary responsibility for the coordination and control of water quality. The State Water Board establishes statewide policy. The regional boards formulate and adopt water quality control plans and issue permits

governing the discharge of waste.

Porter-Cologne requires any person discharging, or proposing to discharge, waste that could affect the quality of state waters to file a report with the appropriate regional board. The regional board then prescribes requirements as to the nature of the discharge, implementing any applicable water quality control plans.

CWA, enacted in 1972, established the NPDES permit system. CWA is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. CWA prohibits pollutant discharges unless they comply with: (1) a permit; (2) established effluent limitations or standards; or (3) established national standards of performance. CWA allows any state to adopt and enforce its own water quality standards and limitations, so long as those standards and limitations are not less stringent than those in effect under CWA.

- 2) *Regulation of stormwater discharge.* Stormwater is defined by the US EPA as the runoff generated when precipitation from rain and snowmelt flows over land of impervious surfaces such as paved streets, parking lots, and building rooftops, without percolating into the ground. Water runoff from cities, highways, industrial facilities, and construction sites can carry pollutants, such as oil, pesticides, herbicides, sediment, trash, bacteria, and metals, that harm water quality and impair the beneficial uses of California waters. The State Water Board and US EPA regulate the runoff and treatment of stormwater in industrial, municipal, and residential areas of California. In most cases, stormwater flows directly to water bodies through sewer systems, contributing to a major source of pollution to rivers, lakes, and the ocean. Most stormwater discharges are considered point sources and require coverage by an NPDES permit.

The State Water Board and regional boards are responsible for regulating stormwater discharges under CWA and the NPDES permit program. The NPDES stormwater program regulates some stormwater discharges from three potential sources: municipal separate storm sewer systems (MS4s), construction activities, and industrial activities. The Industrial General Permit (IGP) regulates industrial storm water discharges and authorized non-stormwater discharges from industrial facilities in California. The IGP is called a general permit because many industrial facilities are covered by the same permit, but comply with its requirements at their individual industrial facilities.

Dischargers whose projects disturb one or more acres of soil or whose projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer (QSD).

The Municipal Storm Water Program regulates storm water discharges from MS4s throughout California. US EPA defines an MS4 as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a state (40 CFR 122.26(b)(8)).

The State Water Board also manages an online database, the Stormwater Multiple Application and Report Tracking System (SMARTS), that allows permittees to electronically submit permit compliance data, and allows the public to view reports and information on water quality control efforts with stormwater.

- 3) *Why Is Stormwater Pollution A Problem?* Stormwater pollution is a major environmental and public health issue. It leads to unsanitary living environments, unhealthy surface waters, such as lakes, creeks and rivers, unhealthy ocean and beach conditions, and street and neighborhood flooding during the rainy season. It's created when trash, cigarette butts, animal waste, pesticides, motor oil, and other contaminants left on the ground are washed or thrown directly into storm drains. This toxic soup mixes with millions of gallons of rainwater and flows untreated into local creeks, rivers, and the ocean - polluting our waterways, as well as degrading neighborhoods and other natural resources. However, stormwater can also act as a resource and recharge groundwater when properly managed.
- 4) *Federal court case on stormwater pollution and regulation.* In *Los Angeles Waterkeeper v. Pruitt* (320 F.Supp.3d 1115), various environmental organizations brought a suit against the Environmental Protection Agency (EPA) for EPA's failure to engage in NPDES Permitting process with regard to unpermitted stormwater discharges from privately-owned CII sources that were contributing to violations of water quality standards in the Dominguez Channel and Los Angeles/Long Beach Inner Harbor watershed, and the Los Cerritos

Channel and Alamitos Bay watershed. In the Central District, United States District Court opinion, the court stated “once EPA determined ‘there are sufficient data available to demonstrate that stormwater discharges are continuing to the water quality impairments in the [Watersheds], the statute *required* EPA to engage in the permitting process or prohibit the discharge. . . . But EPA left the stormwater discharges at issue unregulated in violation of the Clean Water Act’ ” (emphasis included) (Id. at pp. 1123). The court went on to state that “the [CWA] unambiguously requires EPA to engage in the permitting process where it has determined that stormwater discharges contribute to a water quality violation.” (Id).

Currently, the Los Angeles Regional Water Board and the US EPA are considering regulatory requirements for stormwater runoff from certain CII facilities in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed to reduce pollutant levels in stormwater runoff that flows from these facilities.

## Comments

- 1) *Purpose of Bill.* According to the author, “AB 2106 will modernize California’s stormwater program by making several key changes to improve water quality while also reducing the compliance burden on permittees.

“First, AB 2106 will require the State Water Board to conduct a holistic review of the state’s stormwater program aimed at improving environmental outcomes while lowering compliance costs. This process will incorporate feedback from all interested stakeholders and put the state back on track to restore our waterways.

“Second, AB 2106 will improve the State Water Board’s data collection systems. The status quo puts the onus on permittees to collect large amounts of data, which can be expensive and time-consuming. But because the Water Board’s existing data collection systems are so outdated, a large amount of that data can’t ultimately be used. AB 2106 will create a simplified, streamlined data collection system that will reduce costs but improve results.

“Finally, AB 2106 will require the State Water Board to issue a new order regulating stormwater from facilities with large parking lots, rooftops, or other paved surfaces that are not currently regulated. A federal court ordered the Los Angeles region to address the toxic metals, oil, and grease coming off these parking lots in 2018, but the problem persists, leaving municipalities unfairly responsible for addressing pollution that they did not cause. Regulation of

stormwater from all sources will ensure that costs of compliance are distributed evenly across permittees and achieve better results for the environment.

“Together, these changes will ensure reductions in water pollution in California’s most disadvantaged communities while simplifying the stormwater permitting process and reducing compliance costs on many permittees.”

- 2) *Expanding stormwater management.* Currently, the State Water Board regulates stormwater discharge of MS4s, construction activities, and industrial activities under a NPDES permit. AB 2106 requires the State Water Board to establish a statewide CII NPDES order for CII facilities.

Stakeholders point to the potential for overlap between industrial activities that are currently covered by a GPI permit and the industrial activities that would be covered by the CII permit. This will likely be resolved by the State Water Board through the regulatory process, which includes stakeholder participation. Additionally, the bill explicitly prohibits stormwater permittees from being regulated by more than one permit for the same facility.

Opponents of the bill have also expressed concern that creating a new NPDES permit for CII facilities for stormwater discharge could lead to a broadly applied regulatory permit, including almost every non-residential property.

***The committee may wish to amend the bill to limit the statewide CII NPDES order to facilities that are significant contributors to pollutants in federal protected surface water.***

- 3) *Citizen lawsuits.* The CWA, to supplant state and federal enforcement, gives citizens the ability to bring a lawsuit against illegal pollution discharges (33 U.S.C. §1365). If a permittee does not comply with the CWA, or with the regulatory agency’s enforcement actions, then any person or entity that either is, or might be adversely affected by any violation, has the right to file a citizen suit against the violator.

To give permittees various options of compliance, the State Water Board amended the IGP to include new compliance options incentivizing stormwater captures. According to the IGP factsheet, facility operators may choose the on-site compliance option or the regional compliance option. Facility operators meeting the implementation requirements of one of the proposed compliance options is considered to be in compliance. These multiple pathways to compliance helps provide a “safe harbor” for permittees from citizen

enforcement.

*The committee may wish to amend the bill to require a similar safe harbor in the statewide CII NPDES order. Specifically, require the statewide CII NPDES order includes multiple options to achieve compliance with water quality standards, including, but not limited to compliance options incentivizing on-site or regional stormwater capture and reuse.*

- 4) Committee amendments. *Staff recommends the committee adopt the bolded amendments contained in comments 2 and 3.*

### **Related/Prior Legislation**

AB 377 (R. Rivas, 2021) would have required, by January 1, 2025, the State Water Board and the Regional Water Boards to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. Would have required, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state. This bill was not heard in the Assembly Appropriations Committee.

SB 205 (Hertzberg, Chapter 470, Statutes of 2019) requires businesses to demonstrate enrollment with stormwater discharge permits when applying for, or renewing, a business license with a city or county.

SB 2538 (Rubio, 2018) would have required State Water Board to establish financial capability assessment guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions. SB 2538 was vetoed by the Governor.

SB 541 (Allen, Chapter 811, Statutes of 2017) requires the State Water Board, in consultation with the regional water quality control boards, and the Division of the State Architect within the Department of General Services, to recommend best design and use practices for stormwater and dry weather runoff capture practices that can be applied to new, reconstructed, or altered public schools, including school grounds.

**SOURCE:** California Coastkeeper Alliance

**SUPPORT:**



7th Generation Advisors  
Association of California Water Agencies (ACWA)  
California Coastkeeper Alliance  
California Council for Environmental & Economic Balance (CCEEB)  
California Environmental Voters (formerly Clcv)  
Climate Action Campaign  
Coachella Valley Waterkeeper  
Coast Action Group  
Coastal Environmental Rights Foundation  
Environmental Center of San Diego  
Friends of The River  
Greenbelt Alliance  
Heal the Bay  
Humboldt Baykeeper  
Inland Empire Waterkeeper  
Laane (Los Angeles Alliance for A New Economy)  
Los Angeles Waterkeeper  
Mono Lake Committee  
Monterey Coastkeeper  
North Bay Jobs With Justice  
Orange County Coastkeeper  
Ourwaterla Coalition  
Preserve Rural Sonoma County  
San Diego Coastkeeper  
Santa Barbara Channelkeeper  
Santa Clara Valley Water District  
Save the Bay  
Sierra Club California  
Social Eco Education  
Sonoma County Conservation Action  
Sonoma Ecology Center  
Surfrider Foundation  
The Otter Project  
Waterkeeper Alliance  
Western Sonoma County Rural Alliance  
Yuba River Waterkeeper

**OPPOSITION:**

Building Owners and Managers Association of California  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce

California Grocers Association  
California Stormwater Quality Association  
Carlsbad Chamber of Commerce  
Chico Chamber of Commerce  
Gilroy Chamber of Commerce  
Greater Coachella Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Imperial Valley Regional Chamber of Commerce  
LA Canada Flintridge Chamber of Commerce  
Livermore Valley Chamber of Commerce  
Lodi Chamber of Commerce  
Los Angeles County Business Federation (BIZFED)  
Los Angeles County Sanitation Districts  
Los Gatos Chamber of Commerce  
Modesto Chamber of Commerce  
Naiop California  
Oceanside Chamber of Commerce  
Palos Verdes Peninsula Chamber of Commerce  
Rebuild SoCal Partnership  
Santa Clarita Valley Chamber of Commerce  
Santee Chamber of Commerce  
Torrance Area Chamber of Commerce  
Tulare Chamber of Commerce  
Western Plant Health Association

**ARGUMENTS IN SUPPORT:** According to the Santa Clara Valley Water District, “Currently, California’s stormwater program does not regulate discharge from commercial, industrial, and institutional sources, even though the effluent from these large commercial and industrial facilities largely contribute to stormwater pollution. Establishing a statewide order would bring greater enforcement and regulation of pollution, would further contribute to the sustainable management and use of stormwater, would promote source control, and would help to identify sources of dedicated and supplemental stormwater funding.”

**ARGUMENTS IN OPPOSITION:** According to the California Stormwater Quality Association, “Permittees are significantly concerned about the annual and continued increase of permit fees resulting from bills such as AB 2106. This concern is particularly relevant to the proposed establishment of a statewide Construction, Industrial, and Institutional (CII Permit) and the additional costs that will be needed by the State Water Board to implement and enforce a new, significant, statewide program. We respectfully request that if the legislature opts to create mandates for the State Water Board via bills such as AB 2106, that the

legislature appropriates funding for those mandates.”

**-- END --**