
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 891
Author: Hertzberg
Version: 3/9/2022
Urgency: No
Consultant: Gabrielle Meindl

Hearing Date: 4/27/2022
Fiscal: Yes

SUBJECT: Business licenses: stormwater discharge compliance

DIGEST: Makes several changes to the Stormwater Quality Improvement Act (the Act), which requires businesses to demonstrate enrollment with stormwater discharge permits when applying for, or renewing, a business license with a city or county.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2021-22 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees as a typical timeline would allow.

In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Judiciary Committee.

ANALYSIS:

Existing law,

- 1) The federal Clean Water Act (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.
 - a) The National Pollutant Discharge Elimination System (NPDES) permit program 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.
 - a) 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).
 - b) Requires various industries to comply with the IGP and the NPDES permit program and requires businesses to demonstrate enrollment by providing either (1) the stormwater permit number, known as the Waste Discharger Identification number (WDID), issued by the State Water Board, (2) the WDID application number, issued by the State Water Board, (3) the "notice of nonapplicability identification number" (NONA) issued by the State Water Board, or (4) the "no exposure" certification number (NEC) issued by the State Water Board. (BPC §§16000.3(a), 16100.3(a))
 - i) A business can file for a NONA if it takes other measures to control its stormwater discharge, including retaining all stormwater onsite or treating and discharging stormwater as processed wastewater. The business can file for a NEC if it does not expose industrial waste to stormwater discharge.
 - ii) Requires the city or county, before issuing or renewing the business license, to determine whether any of the primary Standard Industrial Classification (SIC) Codes are applicable to an IGP and if applicable, requires the city or county to confirm that the WDID, WDID application number, NONA, or NEC corresponds to the

requesting business. (BPC §§16000.3(b), 16100.3(b))

- iii) Requires the city or county to transfer compliance information to the State Water Board. (BPC §§16000.3(c), 16100.3(c))
- c) Requires a person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, to file with the appropriate regional board a report of the discharge and to submit an annual fee established by the State Water Board, as specified. Such fees are deposited in the Waste Discharge Permit Fund and are available, upon appropriation, to carry out Porter-Cologne. (WAT §§13260(a), (d))
 - i) Requires fees collected from stormwater dischargers that are subject to a IGP or a construction stormwater permit under NDPES be separately accounted for and requires that not less than 50% of that money be available to the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region. Also requires that regional boards that receive money pursuant to these provisions spend not less than 50% solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. (WAT §§13260(d)(2)(B))

This bill:

- 1) Extends the Act's requirement for businesses to demonstrate enrollment with stormwater discharge permits to not just business licenses, but also equivalent instruments or permits.
- 2) Provides that a business license, equivalent instrument, or permit issued for the sole purpose of raising revenue must also comply with the Act.
- 3) Requires the compliance information transferred by the city or county to the State Water Board are subject to public inspection.
- 4) Prohibits a city or county from developing its own processes for determining whether a business is appropriately covered by an IGP.
- 5) Requires each regional board that receives money from the Waste Discharge Permit Fund for fees collected from a NONA identification number or NEC identification number issued for a facility on or after January 1, 2020, to spend

at least 50% of that money on stormwater inspections to determine whether a NONA or NEC was appropriately issued for the facility.

- 6) Requires, on or before June 1, 2023, the State Water Board to require all recipients of a NONA identification number or an NEC identification number on or after January 1, 2020, to upload all pertinent information used to seek a NONA or NEC to the State Water Board's Stormwater Multiple Application and Report Tracking System database.
- 7) Makes other technical and nonsubstantive changes.

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 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) *Industrial Stormwater Discharges.* The Statewide General Permit for Stormwater Discharges Associated with Industrial Activities, commonly referred to as the Industrial General Permit (IGP), implements the federally required stormwater regulations in the state for stormwater associated with industrial activities discharging to waters of the US. The IGP requires industry owners to implement the best technology available to reduce pollutants in their stormwater discharges and to develop and monitor a stormwater pollution prevention plan in accordance with the IGP.

Categories of industrial activities (facilities) whose discharges are regulated by an IGP include, among others, landfills that receive or have received industrial waste; facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, and automobile junkyards; facilities with vehicle maintenance shops and equipment cleaning operations; and certain facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage sludge.

- 4) *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.

- 5) *Stormwater Quality Improvement Act*. In an effort to increase industry compliance with stormwater discharge permits, the Legislature enacted the Act, which required businesses to demonstrate enrollment with stormwater discharge permits when applying for, or renewing, a business license with a city or county (SB 205, Hertzberg, 2019). Under the Act, a business in an industry regulated by the NPDES permit program must demonstrate enrollment with the IGP when it applies for its initial business license or renews its existing business license. A business can comply with this requirement by providing specified information to the city or county when it applies for its license.

Once the business submits the information, the city or county must determine whether any of the primary SIC codes apply to that business, and confirm that the information provided corresponds to the business requesting the license. The city or county only needs to keep record of applicable documents to confirm the information submitted, and must submit compliance information to the State Water Board when requested, which the board uploads to its SMARTS database. The Act provides that the requirement does not apply to a city or county that does not have a business license application process, and must not be construed to impose any additional liability on a city or county.

According to the California Coastkeeper Alliance, since the Act's enactment around 2,000 additional industrial facilities in Los Angeles County can now demonstrate enrollment with the IGP, which still leaves roughly 4,000 industrial facilities that potentially cannot. The Alliance reports that several municipalities are still not verifying enrollment in the IGP when approving or renewing business licenses. In some cases, cities and counties are awarding business licenses to facilities that should be covered by the IGP, but are not complying the Act's requirements. In other cases, the Alliance reports that local agencies are not complying with the Act because they issue "business certificates" or "business tax certificates" instead. Finally, when local agencies submit information to the State Water Board, the Alliance reports that local agencies do not provide that information to the public due to the California Public Records Act (CPRA).

Comments

- 1) *Purpose of Bill*. According to the author, "The Federal Clean Water Act prohibits entities from discharging any pollutant from a point source into U.S. waters, unless they obtain a stormwater discharge permit. Despite enactment of the Federal Clean Water Act fifty years ago, 95% of all California waterways still remain impaired. Water runoff from industrial facilities can carry

pollutants and hazardous contaminants that degrade water quality, harm our wildlife, and pose public health risks to Californians.

“There is an unknown, but potentially significant number, of industrial facilities that are subject to stormwater permitting regulations, but do not actually obtain a stormwater permit as required under existing federal and state law. SB 891 closes a loophole in current law that requires an industrial facility to demonstrate compliance with existing stormwater regulations when applying for or renewing a permit similar to a business license, and restores the intent of SB 205 (Hertzberg, 2019). This measure also enhances reporting by industrial facilities to the State Water Resources Control Board so the state can monitor compliance with existing stormwater regulations.”

- 2) *Verifying NONAs and NECs.* According to the author, despite the enactment of SB 205, several municipalities are still not verifying enrollment in IGP when approving or renewing an industrial facility’s business license because they issue “business certificates” instead of “business licenses,” as specified in law. To address this issue, SB 891 would require an industrial facility to demonstrate compliance with existing stormwater regulations when applying for or renewing a permit *similar* to a business license.

Additionally, licenses are still awarded to facilities that should be covered by an IGP, but are enrolled, without providing proof of exemption from existing stormwater regulations, according to the author. This bill would also require all recipients of a NONA identification number (those that take other measure to control its stormwater discharge) or NEC identification number (those that do not expose industrial waste to stormwater discharge) that was issued on or after January 1, 2020, to upload all pertinent information used to seek the NONA or NEC to SMARTS. This will, according to the author, help verify whether a NONA or NEC was properly issued. Both proposed changes to the Act could result in greater compliance with stormwater regulations.

- 3) *Senate Judiciary Committee comments.* The following comment was provided by the staff of the Committee on Judiciary. SB 891 was referred to the Committee on Judiciary. The referral was subsequently rescinded because of the limitations placed on committee hearings due to ongoing health and safety risks from the COVID-19 virus.

This bill touches upon various issues within the jurisdiction of the Senate Judiciary Committee, including, access to public records. The bill requires that records created when a city or county transfers compliance information to the State Water Board be subject to the California Public Records Act (CPRA).

The CPRA provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. It is unclear how these records would not already be subject to CPRA's provisions as public records. As such, the Legislature may wish to consider whether the CPRA provisions in this bill are necessary.

Related/Prior Legislation

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 SWRCB 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.

DOUBLE REFERRAL:

This measure was heard in Senate Governance and Finance Committee on March 31, 2022, and passed out of committee with a vote of 5-0.

SOURCE: California Coastkeeper Alliance

SUPPORT:

7th Generation Advisors
California Coastkeeper Alliance
Coachella Valley Waterkeeper
Coastal Environmental Rights Foundation
Environmental Center of San Diego
Environmental Defense Center
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper

Monterey Coastkeeper
Orange County Coastkeeper
Planning and Conservation League
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Yuba River Waterkeeper

OPPOSITION:

None received

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