

April 23, 1999

To: Board of Directors (Communications and Legislation Committee—Action)

From: General Manager _____

Submitted by: Debra Man, Chief _____
Planning and Resources Division

Subject: Express Support for Assembly Bill 703 (Lempert) - Limiting Exotic Species
Introductions in Ship Ballast Water Discharge.

RECOMMENDATION

It is recommended that the Board adopt a support position for AB 703 (Lempert) to limit the discharge of exotic species.

EXECUTIVE SUMMARY

AB 703 would require the State Water Resources Control Board and its regional boards to reduce or eliminate the discharge of exotic species in ballast water. Ballast water discharges from ships (vessels) into the Bay/Delta continue to introduce species from other parts of the world, i.e., “exotic species.” These exotic species can cause human health problems and can aggravate ecosystem conditions that lead to the listing or constrain the recovery of threatened or endangered fish species such as Delta smelt. State Water Project and Federal Central Valley Project Delta export curtailments to protect listed species during 1993 and 1994 amounted to over one million acre-feet each year.

DETAILED REPORT

The State Water Resources Control Board and the Regional Water Quality Control Board serve as the primary agencies for regulating water quality as authorized by the Porter-Cologne Water Quality Control Act. Porter-Cologne requires discharges of waste potentially affecting the quality of State waters to submit a report of such discharges to the appropriate regional board. Regional boards are required to limit waste discharge requirements in accordance with the protection of water quality standards. AB 703 would add definitions and requirements to the Act to specifically address exotic organisms in ballast water discharge from vessels. Specifically, this bill would:

1. Require the State Water Resources Control Board (State Board) to make available forms for reporting ballast water discharges by March 1, 2000 and by April 1, 2000 requiring vessels entering State waters to submit a ballast water report. The failure to submit a fully completed report would be a crime.
2. Require a permit for vessels discharging waters taken from outside of the Pacific Coast Region into waters of the State or waters that may impact the State, between April 1, 2000

and December 31, 2004, in conjunction with submitting a ballast water report and a ballast water discharge request. The failure to comply with these provisions would be a crime.

3. Requires, with certain exceptions, vessels to exchange ballast water in open ocean waters or approved alternatives.
4. Prohibit, on or after January 1, 2003, discharges of ballast water containing live exotic organisms into the State's waters, except by special permit. The special permit could be issued if measures were in progress to eliminate the discharge of live exotic organisms by December 31, 2004. Failure to comply with this provision would be subject to civil and criminal penalties.
5. Require the State Board to collect fees and penalties from vessels and to deposit proceeds in a fund dedicated to provisions relating to ballast water discharge.
6. Require the State Board to sample and monitor ballast water in vessels and to investigate the transport and release of non-indigenous species by vessels.
7. Allow any person to bring an action for civil penalties.

Related regulatory issues include the potentially divergent regulations being developed by the U.S. Coast Guard, potential delays in permit issuance while vessels are in route, and litigation should the legislation remain lacking. Also, members of Congress petitioned the U.S. EPA administrator in February 1999, to consider revising the Clean Water Act regulations to repeal the exemption of ballast water discharges from the National Pollution Discharge Elimination System permit requirements. Finally, last year the San Francisco Bay Regional Water Quality Control Board listed exotic species discharged in ballast water as a priority pollutant causing impairment of San Francisco Bay.

Vessels with ballast water enter the Bay/Delta from the harbors of Asia, South America and elsewhere around the world. These vessels dock in various Bay/Delta ports including the Ports of Stockton and Sacramento, which are upstream of the State Water Project (SWP) and the Federal Central Valley Project (CVP) export pumps. Organisms from the industrial ports of Pittsburg, Antioch, and areas seaward can find their way to the export pumps. This is especially important when considering the human health aspects and the screen clogging aspects of exotic species. The Chinese mitten crab clogged the screens and temporally stopped SWP and CVP salvage operations last fall. Should the zebra mussel arrive, it could cause serious capacity problems at the fish screens in front of the export pumps, as it has in a growing area in the eastern and mid-western portions of the USA.

The human health aspects are apparent when considering that ballast water comes from a variety of harbors throughout the world, and includes bacteria, viruses and other microorganisms from those areas. As a recent example, the strain of cholera that caused the 1991 epidemic in South America may have come from Asia. During the epidemic, the cholera bacterium was discovered in the oysters and fish of Mobile Bay, Alabama. Shortly thereafter, the South American epidemic strain was found in samples of ballast water of 5 of 19 ships in Gulf of Mexico ports that were from Latin America.

RMS:bvf

Attachment 8-4A

**The following 20 pages are attachments to
Board Letter Item 8-4**

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 703

Introduced by Assembly Member Lempert
(Coauthors: Assembly Members Aroner and Corbett)
(Coauthor: Senator Alpert)

February 24, 1999

An act to amend Sections 13050, 13360, 13385, and 13387 of, and to add Sections 13275, 13275.1, ~~13275.2, and 13387.5~~ and 13275.2 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 703, as amended, Lempert. Ballast water discharges.

(1) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with regulatory authority relating to water quality. The act, with a certain exception, requires a person discharging, or proposing to discharge, waste that could affect the quality of the waters of the state to submit a report of that discharge to the appropriate regional board. The act requires the regional boards to prescribe waste discharge requirements that implement relevant water quality control plans.

This bill would require the board, on or before March 1, 2000, to make available to the public a ballast water report

form and a ballast water discharge request form, as specified. The bill would require, on and after April 1, 2000, the master of a vessel that enters the waters of the state, upon entering those waters, to submit, under penalty of perjury, to the board a fully completed ballast water report form, thereby imposing a state-mandated local program by creating a new crime. The bill would prohibit, between April 1, 2000, and December 31, 2004, a vessel from discharging ballast water that was initially loaded from coastal waters outside the Pacific Coast Region into the waters of the state, or into waters that may impact the waters of the state, without a permit issued by the board. The bill would require the master of a vessel, prior to the issuance of the permit, to provide to the board a fully completed ballast water report form and a ballast water discharge request form, and other specified statements, signed under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime. The bill would require the board to include in the permit a requirement that the master of the vessel, with a certain exception, carry out an adequate exchange of ballast water in open ocean waters or use an alternative environmentally sound method of ballast water treatment that has been approved by the board.

~~The bill would prohibit, on and after January 1, 2003, a vessel from discharging ballast water that contains live exotic ballast water organisms into the waters of the state or into waters that may impact the waters of the state, except as authorized by a special permit. The bill would make statements of legislative intent regarding the achievement of a zero discharge of viable exotic ballast water organisms into the waters of the state or waters that may impact the waters of the state.~~ The bill would provide that any person discharging ballast water in violation of specified provisions is subject to civil and criminal penalties, and is guilty of a misdemeanor, as prescribed, thereby imposing a state-mandated local program by creating a new crime.

The bill would require the board, on or before April 1, 2000, to set and collect fees from vessels and other entities, as prescribed. The bill would require the fees and penalties to be deposited in the Exotic Species Control Fund, which the bill would create. The bill would require the money in the fund,



upon appropriation by the Legislature, to be used to carry out specified provisions relating to the discharge of ballast water.

The bill would require the board to sample and monitor ballast water in vessels discharging ballast water into the waters of the state and to conduct research relating to the transport and release of nonindigenous species by vessels and related matters. The bill would require the board to develop and implement a program, to be undertaken by specified marine facilities, in coordination with the regional boards, to monitor and report with regard to compliance with requirements relating to the discharge of ballast water. The bill would prescribe related matters and define terms.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13050 of the Water Code is
2 amended to read:

3 13050. As used in this division:

4 (a) "State board" means the State Water Resources
5 Control Board.

6 (b) "Regional board" means any California regional
7 water quality control board for a region as specified in
8 Section 13200.

9 (c) "Person" includes any city, county, district, the
10 state, and the United States, to the extent authorized by
11 federal law.

12 (d) "Waste" includes sewage and any and all other
13 waste substances, liquid, solid, gaseous, or radioactive,
14 associated with human habitation, or of human or animal
15 origin, or from any producing, manufacturing, shipping,
16 or processing operation, including waste placed within



1 containers of whatever nature prior to, and for purposes
2 of, disposal.

3 (e) “Waters of the state” means any surface water or
4 groundwater, including saline waters, within the
5 boundaries of the state.

6 (f) “Beneficial uses” of the waters of the state that may
7 be protected against quality degradation include, but are
8 not limited to, domestic, municipal, agricultural and
9 industrial supply; power generation; recreation; aesthetic
10 enjoyment; navigation; and preservation and
11 enhancement of fish, wildlife, and other aquatic resources
12 or preserves.

13 (g) “Quality of the water” refers to chemical, physical,
14 biological, bacteriological, radiological, and other
15 properties and characteristics of water which affect its
16 use.

17 (h) “Water quality objectives” means the limits or
18 levels of water quality constituents or characteristics
19 which are established for the reasonable protection of
20 beneficial uses of water or the prevention of nuisance
21 within a specific area.

22 (i) “Water quality control” means the regulation of
23 any activity or factor which may affect the quality of the
24 waters of the state and includes the prevention and
25 correction of water pollution and nuisance.

26 (j) “Water quality control plan” consists of a
27 designation or establishment for the waters within a
28 specified area of all of the following:

29 (1) Beneficial uses to be protected.

30 (2) Water quality objectives.

31 (3) A program of implementation needed for
32 achieving water quality objectives.

33 (k) “Contamination” means an impairment of the
34 quality of the waters of the state by waste to a degree
35 which creates a hazard to the public health through
36 poisoning or through the spread of disease.

37 “Contamination” includes any equivalent effect resulting
38 from the disposal of waste, whether or not waters of the
39 state are affected.



1 (l) (1) "Pollution" means an alteration of the quality
2 of the waters of the state by waste to a degree which
3 unreasonably affects either of the following:

4 (A) The waters for beneficial uses.

5 (B) Facilities which serve these beneficial uses.

6 (2) "Pollution" may include "contamination."

7 (m) "Nuisance" means anything which meets all of
8 the following requirements:

9 (1) Is injurious to health, or is indecent or offensive to
10 the senses, or an obstruction to the free use of property,
11 so as to interfere with the comfortable enjoyment of life
12 or property.

13 (2) Affects at the same time an entire community or
14 neighborhood, or any considerable number of persons,
15 although the extent of the annoyance or damage inflicted
16 upon individuals may be unequal.

17 (3) Occurs during, or as a result of, the treatment or
18 disposal of wastes.

19 (n) "Recycled water" means water which, as a result
20 of treatment of waste, is suitable for a direct beneficial use
21 or a controlled use that would not otherwise occur and is
22 therefor considered a valuable resource.

23 (o) "Citizen or domiciliary" of the state includes a
24 foreign corporation having substantial business contacts
25 in the state or which is subject to service of process in this
26 state.

27 (p) (1) "Hazardous substance" means either of the
28 following:

29 (A) For discharge to surface waters, any substance
30 determined to be a hazardous substance pursuant to
31 Section 311(b)(2) of the Federal Water Pollution Control
32 Act (33 U.S.C. Sec. 1321(b)(2)).

33 (B) For discharge to groundwater, any substance
34 listed as a hazardous waste or hazardous material
35 pursuant to Section 25140 of the Health and Safety Code,
36 without regard to whether the substance is intended to be
37 used, reused, or discarded, except that "hazardous
38 substance" does not include any substance excluded from
39 Section 311(b)(2) of the Federal Water Pollution Control
40 Act (33 U.S.C. Sec. 1321(b)(2)) because it is within the



1 scope of Section 311(a)(1) of that act (33 U.S.C. Sec.
2 1321(a)(1)).

3 (2) “Hazardous substance” does not include any of the
4 following:

5 (A) Nontoxic, nonflammable, and noncorrosive
6 stormwater runoff drained from underground vaults,
7 chambers, or manholes into gutters or storm sewers.

8 (B) Any pesticide which is applied for agricultural
9 purposes or is applied in accordance with a cooperative
10 agreement authorized by Section 116180 of the Health
11 and Safety Code, and is not discharged accidentally or for
12 purposes of disposal, the application of which is in
13 compliance with all applicable state and federal laws and
14 regulations.

15 (C) Any discharge to surface water of a quantity less
16 than a reportable quantity as determined by regulations
17 issued pursuant to Section 311(b)(4) of the Federal
18 Water Pollution Control Act (33 U.S.C. Sec. 1321(b)(4)).

19 (D) Any discharge to land which results, or probably
20 will result, in a discharge to groundwater if the amount
21 of the discharge to land is less than a reportable quantity,
22 as determined by regulations adopted pursuant to
23 Section 13271, for substances listed as hazardous pursuant
24 to Section 25140 of the Health and Safety Code. No
25 discharge shall be deemed a discharge of a reportable
26 quantity until regulations set a reportable quantity for the
27 substance discharged.

28 (q) (1) “Mining waste” means all solid, semisolid, and
29 liquid waste materials from the extraction, beneficiation,
30 and processing of ores and minerals. Mining waste
31 includes, but is not limited to, soil, waste rock, and
32 overburden, as defined in Section 2732 of the Public
33 Resources Code, and tailings, slag, and other processed
34 waste materials, including cementitious materials that
35 are managed at the cement manufacturing facility where
36 the materials were generated.

37 (2) For the purposes of this subdivision, “cementitious
38 material” means cement, cement kiln dust, clinker, and
39 clinker dust.



1 (r) “Master recycling permit” means a permit issued
2 to a supplier or a distributor, or both, of recycled water,
3 that includes waste discharge requirements prescribed
4 pursuant to Section 13263 and water recycling
5 requirements prescribed pursuant to Section 13523.1.

6 (s) “Coastal waters” includes estuarine and ocean
7 waters within 200 miles of land or less than 2,000 meters
8 deep, and rivers, lakes, or other water bodies navigably
9 connected to the ocean.

10 (t) “Open ocean waters” means ocean waters that are
11 more than 200 miles from land and at least 2,000 meters
12 deep.

13 (u) The “Pacific Coast Region” includes all coastal
14 waters on the Pacific Coast of North America east of
15 154°W longitude and north of 25°N latitude, exclusive of
16 the Gulf of California.

17 (v) “Ballast water” means any water and associated
18 sediments used to manipulate the trim, stability, or
19 displacement of a vessel.

20 (w) (1) An “exotic ballast water organism” is any
21 organism loaded into a vessel’s ballast water system from
22 coastal waters other than the waters of the Pacific Coast
23 Region.

24 (2) For the purposes of this subdivision, a vessel’s
25 ballast water system includes each segregated ballast
26 water tank and each nonsegregated tank used to hold
27 ballast water, and the pipes, pumps, sea chests, and other
28 vessel components used to move ballast water into or out
29 of these tanks.

30 (x) “Vessel” means any vessel equipped with one or
31 more ballast water tanks.

32 SEC. 2. Section 13275 is added to the Water Code, to
33 read:

34 13275. (a) (1) On and after April 1, 2000, the master
35 of any vessel that enters the waters of the state shall
36 submit to the board, upon entering those waters, a fully
37 completed ballast water report form, signed under
38 penalty of perjury, as described in subdivision (d).



1 (2) The master of a vessel may provide the board with
2 the information described in paragraph (1) by facsimile
3 transmission, or other means approved by the board.

4 (b) On and after April 1, 2000, no ballast water may be
5 discharged into the waters of the state, or into waters that
6 may impact the waters of the state, without a permit
7 issued by the board in accordance with this section, and
8 except as otherwise provided, this division.

9 (c) (1) Before a permit may be issued for the
10 discharge of ballast water, the master of the vessel shall
11 provide the board with all of the following:

12 (A) A fully completed ballast water report form as
13 described in subdivision (d).

14 (B) A fully completed ballast water discharge request
15 form as described in subdivision (e).

16 (C) A statement, signed by the master of the vessel
17 and submitted under penalty of perjury, that the
18 information provided in the ballast water report and the
19 ballast water discharge request is complete and accurate.

20 (D) An agreement to cooperate fully with any ballast
21 water sampling or monitoring requested by the board,
22 signed by the master of the vessel and submitted under
23 penalty of perjury.

24 (2) The master of a vessel may provide the board with
25 the information described in paragraph (1) by facsimile
26 transmission, or by other means approved by the board.

27 (3) Permits issued under this section shall be valid only
28 for the tanks, volumes, dates, and locations specified in
29 the vessel's ballast water discharge request.

30 (4) The board may revoke any permit for discharge of
31 ballast water if one or more of the waste discharge
32 requirements are not being met.

33 (5) (A) Section 13269 does not apply to ballast water
34 discharges.

35 (B) Notwithstanding subdivision (a) of Section 13264,
36 no person shall discharge ballast water prior to the filing
37 of a permit issued by the board in accordance with this
38 section, and, except as otherwise provided, this division.

39 (C) Notwithstanding subdivision (a) of Section 13265,
40 any person discharging ballast water in violation of



1 Section 13264 or this section is guilty of a misdemeanor
2 and may be liable civilly in accordance with subdivision
3 (b) of Section 13265. Each day of discharge shall
4 constitute a separate offense.

5 (6) The board may delegate to the regional boards the
6 authority to issue and enforce the waste discharge
7 requirements for discharges governed under this section.

8 (d) On or before March 1, 2000, the board shall make
9 available to the public a ballast water report form. The
10 form shall include a request for information relating to at
11 least all of the following information with regard to each
12 segregated ballast tank and each nonsegregated tank
13 being used to carry ballast water:

14 (1) The capacity of the tank.

15 (2) The volume and salinity of ballast water initially
16 loaded and the location at which it was loaded, including
17 the latitude and longitude.

18 (3) If an exchange of ballast water in open ocean
19 waters was conducted prior to entering the waters of the
20 state, the method of exchange (empty-and-refill or
21 flow-through), the volume of water discharged, the
22 volume and salinity of water loaded, and the location at
23 which the loading and exchange took place, including the
24 latitude and longitude.

25 (4) If the ballast water, prior to the discharge of that
26 water, has been or will be subjected to an alternative
27 ballast water treatment method to remove or kill the
28 exotic ballast water organisms in that water, a description
29 of the treatment process that is adequate to allow an
30 assessment of the effectiveness of the process.

31 (e) On or before March 1, 2000, the board shall make
32 available to the public a ballast water discharge request
33 form. The form shall include a request for the following
34 information with regard to each tank from which the
35 vessel proposes to discharge ballast water:

36 (1) The volume of water that the applicant requests to
37 discharge.

38 (2) The dates and locations at which the applicant
39 requests to perform the discharge, including the latitude
40 and longitude.



1 (f) Between April 1, 2000, and December 31, 2004, no
2 ballast water that was initially loaded from coastal waters
3 outside the Pacific Coast Region may be discharged into
4 the waters of the state, or into waters that may impact the
5 waters of the state, without a permit issued by the board.
6 Subject to subdivision (g), the permit shall include a
7 requirement that the master of the vessel do either of the
8 following:

9 (1) Carry out an adequate exchange of ballast water in
10 open ocean waters. For the purposes of this section, an
11 adequate exchange is one that replaces at least 95 percent
12 of the original volume of water in the tank with open
13 ocean water.

14 (2) Use an alternative environmentally sound method
15 of ballast water treatment that has been approved by the
16 board, and that is at least as effective in removing or
17 killing the exotic ballast water organisms in the initially
18 loaded ballast water as the exchange described in
19 paragraph (1), if that method is feasibly available.

20 (g) Notwithstanding subdivision (f), the master of a
21 vessel is not required by this section to conduct a ballast
22 water exchange if the master decides that the exchange
23 would threaten the safety or stability of the vessel, its
24 crew, or its passengers because of adverse weather, vessel
25 architecture design, equipment failure, or any other
26 extraordinary condition. If the exchange is not made for
27 reasons of safety, and no feasible, environmentally sound
28 alternative treatment method is available, the master
29 shall provide to the board, before entering state waters,
30 a signed statement, submitted under penalty of perjury,
31 describing the conditions which made a ballast water
32 exchange unsafe and why environmentally sound
33 treatment alternatives were not feasibly available.

34 ~~(h) On and after January 1, 2003, no vessel may~~
35 ~~discharge ballast water that contains live exotic ballast~~
36 ~~water organisms into the waters of the state, or into~~
37 ~~waters that may impact the waters of the state, except as~~
38 ~~authorized in subdivision (i).~~

39 *(h) It is the intent of the Legislature to establish a*
40 *process for ensuring that the state achieve a zero*



1 discharge of viable exotic ballast water organisms into the
2 waters of the state, or into waters that may impact waters
3 of the state, by a date certain, with specified and limited
4 exceptions.

5 (i) (1) A vessel, a shipping company (on behalf of the
6 vessels that the company owns or controls) or a terminal
7 or port (on behalf of the vessels utilizing the facilities of
8 the terminal or port) may apply for a special permit for
9 the discharge of ballast water containing live exotic
10 ballast water organisms.

11 ~~(2) The special permit shall be issued for a period that~~
12 ~~commences on or after January 1, 2003, and ends on or~~
13 ~~before December 31, 2004.~~

14 (2) *It is the intent of the Legislature that the regulated*
15 *entity be allowed to apply for a special permit exempting*
16 *the permitholder from any zero discharge requirements*
17 *established pursuant to this section. The availability of*
18 *this special permit exemption shall be limited to a*
19 *timeframe that is prescribed by this section.*

20 (3) The special permit shall include a requirement
21 that the master of any vessel discharging ballast water
22 under the permit comply, subject to subdivision (g), with
23 paragraph (1) or paragraph (2) of subdivision (f).

24 (4) The special permit may be issued only if both of the
25 following requirements are met:

26 (A) The applicant has commenced the construction of
27 facilities or the installation of equipment for treating or
28 managing ballast water that will result, in the judgment
29 of the board, in the elimination of discharges containing
30 live exotic ballast water organisms from all vessels to
31 which the permit applies.

32 (B) The applicant has provided the board with a
33 schedule for completion and implementation of those
34 facilities or that equipment ~~on or before December 31,~~
35 ~~2004~~ _____.

36 (j) (1) The board shall sample and monitor the ballast
37 water in vessels discharging ballast water into waters of
38 the state in order to assess the accuracy of information
39 provided in ballast water report forms, the effectiveness
40 of ballast water management and treatment methods,



1 and the risk of releasing exotic ballast water organisms
2 into the waters of the state.

3 (2) The frequency and methods of sampling and
4 analysis shall be adequate to perform these tasks, but at
5 a minimum shall include sampling the ballast water of at
6 least 10 percent of the vessels discharging ballast water
7 that was initially loaded from coastal waters outside the
8 Pacific Coast Region.

9 (3) The board may arrange by contracts, grants, or
10 cooperative agreements to have agencies, academic
11 institutes, or nonprofit research organizations conduct
12 the necessary sampling and analysis.

13 (k) (1) The board shall conduct any research that it
14 determines is necessary to carry out this section.

15 (2) The research may relate to the transport and
16 release of nonindigenous species by vessels, the methods
17 of sampling and monitoring of the nonindigenous species
18 transported or released by vessels, the rate or risk of
19 release or establishment of nonindigenous species in the
20 waters of the state and resulting impacts, and the means
21 by which to reduce or eliminate such a release or
22 establishment.

23 (3) The board may arrange by contracts, grants, or
24 cooperative agreements to have agencies, academic
25 institutes, or nonprofit research organizations conduct
26 the necessary research.

27 SEC. 3. Section 13275.1 is added to the Water Code, to
28 read:

29 13275.1. Not later than January 1, 2001, the board shall
30 develop and implement a program, to be undertaken by
31 terminals, ports, docking facilities, and other marine
32 facilities, in coordination with the regional boards, to
33 monitor and report with regard to compliance with this
34 division.

35 SEC. 4. Section 13275.2 is added to the Water Code, to
36 read:

37 13275.2. (a) The Exotic Species Control Fund is
38 hereby created. The fund shall be administered by the
39 board. The money in the fund, upon appropriation by the
40 Legislature, shall be used to carry out Section 13275.



1 (b) On or before April 1, 2000, the board shall set and
2 collect fees in accordance with Section 13260 from vessels,
3 shipping companies, terminals, and ports, as appropriate,
4 to carry out Section 13275. The total fees assessed shall be
5 equivalent to the costs incurred by the board and the
6 regional boards to carry out their duties under Section
7 13275. The fees imposed pursuant to this section shall be
8 deposited into the Exotic Species Control Fund.

9 (c) Notwithstanding subdivision (i) of Section 13385,
10 subdivision (h) of Section 13387, or any other provision of
11 law, all penalties and all payments collected for violations
12 of Section 13275 or waste discharge requirements issued
13 for discharges governed under Section 13275 shall be
14 deposited into the Exotic Species Control Fund.

15 SEC. 5. Section 13360 of the Water Code is amended
16 to read:

17 13360. (a) No waste discharge requirement or other
18 order of a regional board or the state board or decree of
19 a court issued under this division shall specify the design,
20 location, type of construction, or particular manner in
21 which compliance may be had with that requirement,
22 order, or decree, and the person so ordered shall be
23 permitted to comply with the order in any lawful manner.
24 However, the restrictions of this section shall not apply to
25 waste discharge requirements or orders or decrees with
26 respect to any of the following:

27 (1) Discharge of solid waste to disposal sites other than
28 evaporation ponds from which there is no drainage or
29 seepage which requires the installation of riprap, the
30 construction of walls and dikes, the installation of surface
31 and underground drainage facilities to prevent runoff
32 from entering the disposal area or leakage to
33 underground or surface waters, or other reasonable
34 requirements to achieve the above or similar purposes.

35 (2) Discharges of waste or fluid to an injection well,
36 except any well that is regulated by the Division of Oil
37 and Gas in the Department of Conservation pursuant to
38 Division 3 (commencing with Section 3000) of the Public
39 Resources Code and Subpart F of Part 147 of Title 40 of
40 the Code of Federal Regulations and is in compliance



1 with that division and Subpart A (commencing with
2 Section 146.1) of Subchapter D of Chapter 1 of Title 40 of
3 the Code of Federal Regulations.

4 (3) Discharge of ballast water initially loaded from
5 coastal waters outside the Pacific Coast Region into the
6 waters of the state, or into waters that may impact the
7 waters of the state.

8 (b) If the court, in an action for an injunction brought
9 under this division, finds that the enforcement of an
10 injunction restraining the discharger from discharging
11 waste would be impracticable, the court may issue any
12 order reasonable under the circumstances requiring
13 specific measures to be undertaken by the discharger to
14 comply with the discharge requirements, order, or
15 decree.

16 SEC. 6. Section 13385 of the Water Code is amended
17 to read:

18 13385. (a) Any person who violates any of the
19 following shall be liable civilly in accordance with
20 subdivisions (b), (c), (d), (e), and (f):

21 (1) Sections 13275, 13375, or 13376.

22 (2) Any waste discharge requirements or dredged and
23 fill material permit.

24 (3) Any requirements established pursuant to Section
25 13383.

26 (4) Any order or prohibition issued pursuant to
27 Section 13243 or Article 1 (commencing with Section
28 13300) of Chapter 5, if the activity subject to the order or
29 prohibition is subject to regulation under this chapter.

30 (5) Any requirements of Section 301, 302, 306, 307, 308,
31 318, or 405 of the Federal Water Pollution Control Act, as
32 amended.

33 (6) Any requirement imposed in a pretreatment
34 program approved pursuant to waste discharge
35 requirements issued under Section 13377 or approved
36 pursuant to a permit issued by the administrator.

37 (b) Civil liability may be imposed by the superior
38 court in an amount not to exceed the sum of both of the
39 following:



1 (1) Twenty-five thousand dollars (\$25,000) for each
2 day in which the violation occurs.

3 (2) Where there is a discharge, any portion of which is
4 not susceptible to cleanup or is not cleaned up, and the
5 volume discharged but not cleaned up exceeds 1,000
6 gallons, an additional liability not to exceed twenty-five
7 dollars (\$25) times the number of gallons by which the
8 volume discharged but not cleaned up exceeds 1,000
9 gallons.

10 The Attorney General, upon request of a regional
11 board or the state board, shall petition the superior court
12 to impose the liability.

13 (c) Civil liability may be imposed administratively by
14 the state board or a regional board pursuant to Article 2.5
15 (commencing with Section 13323) of Chapter 5 in an
16 amount not to exceed the sum of both of the following:

17 (1) Ten thousand dollars (\$10,000) for each day in
18 which the violation occurs.

19 (2) Where there is a discharge, any portion of which is
20 not susceptible to cleanup or is not cleaned up, and the
21 volume discharged but not cleaned up exceeds 1,000
22 gallons, an additional liability not to exceed ten dollars
23 (\$10) times the number of gallons by which the volume
24 discharged but not cleaned up exceeds 1,000 gallons.

25 (d) For purposes of subdivisions (b) and (c), the term
26 “discharge” includes any discharge to navigable waters of
27 the United States, any introduction of pollutants into a
28 publicly owned treatment works, or any use or disposal of
29 sewage sludge.

30 (e) In determining the amount of any liability
31 imposed under this section, the regional board, the state
32 board, or the superior court, as the case may be, shall take
33 into account the nature, circumstances, extent, and
34 gravity of the violation, and, with respect to the violator,
35 the ability to pay, any prior history of violations, the
36 degree of culpability, economic benefit or savings, if any,
37 resulting from the violation, and other matters that
38 justice may require.

39 (f) For purposes of this section, a single operational
40 upset which leads to simultaneous violations of more than



1 one pollutant parameter shall be treated as a single
2 violation.

3 (g) Remedies under this section are in addition to, and
4 do not supersede or limit, any other remedies, civil or
5 criminal, except that no liability shall be recoverable
6 under Section 13261, 13265, 13268, or 13350 for violations
7 for which liability is recovered under this section.

8 (h) The Attorney General, upon request of a regional
9 board or the state board, shall petition the appropriate
10 court to collect any liability imposed pursuant to this
11 section. Any person who fails to pay on a timely basis any
12 liability imposed under this section shall be required to
13 pay, in addition to that liability plus interest, attorneys'
14 fees and costs for collection proceedings and a quarterly
15 nonpayment penalty for each quarter during which the
16 failure to pay persists. The nonpayment penalty shall be
17 in an amount equal to 20 percent of the aggregate amount
18 of the person's liability and nonpayment penalties which
19 are unpaid as of the beginning of the quarter.

20 (i) (1) Funds collected pursuant to this section shall
21 be deposited in the State Water Pollution Cleanup and
22 Abatement Account.

23 (2) Notwithstanding paragraph (1), funds collected
24 pursuant to this section for violations of Section 13275
25 shall be deposited in the Exotic Species Control Fund in
26 accordance with Section 13275.2.

27 SEC. 7. Section 13387 of the Water Code is amended
28 to read:

29 13387. (a) Any person who intentionally or
30 negligently does any of the following is subject to criminal
31 penalties as provided in subdivisions (b), (c), and (d):

32 (1) Violates Sections 13275, 13375, or 13376.

33 (2) Violates any waste discharge requirements or
34 dredged or fill material permit.

35 (3) Violates any order or prohibition issued pursuant
36 to Section 13243 or 13301, if the activity subject to the
37 order or prohibition is subject to regulation under this
38 chapter.



1 (4) Violates any requirement of Section 301, 302, 306,
2 307, 308, 318, or 405 of the Federal Water Pollution
3 Control Act, as amended.

4 (5) Introduces into a sewer system or into a publicly
5 owned treatment works any pollutant or hazardous
6 substances which the person knew or reasonably should
7 have known could cause personal injury or property
8 damage.

9 (6) Introduces any pollutant or hazardous substance
10 into a sewer system or into a publicly owned treatment
11 works, except in accordance with any applicable
12 pretreatment requirements, which pollutant or
13 hazardous substance causes the treatment works to
14 violate waste discharge requirements.

15 (b) Any person who negligently commits any of the
16 violations set forth in subdivision (a) shall, upon
17 conviction, be punished by a fine of not less than five
18 thousand dollars (\$5,000), nor more than twenty-five
19 thousand dollars (\$25,000), for each day in which the
20 violation occurs, or by imprisonment for not more than
21 one year in the county jail, or both. If a conviction of a
22 person is for a violation committed after a first conviction
23 of the person under this subdivision, subdivision (c), or
24 subdivision (d), punishment shall be by a fine of not more
25 than fifty thousand dollars (\$50,000) for each day in which
26 the violation occurs, or by imprisonment of not more than
27 two years, or by both.

28 (c) Any person who knowingly commits any of the
29 violations set forth in subdivision (a) shall, upon
30 conviction, be punished by a fine of not less than five
31 thousand dollars (\$5,000), nor more than fifty thousand
32 dollars (\$50,000), for each day in which the violation
33 occurs, or by imprisonment for not more than three years,
34 or by both. If a conviction of a person is for a violation
35 committed after a first conviction of the person under this
36 subdivision or subdivision (d), punishment shall be by a
37 fine of not more than one hundred thousand dollars
38 (\$100,000) for each day in which the violation occurs, or
39 by imprisonment of not more than six years, or by both.



1 (d) (1) Any person who knowingly commits any of
2 the violations set forth in subdivision (a), and who knows
3 at the time that the person thereby places another person
4 in imminent danger of death or serious bodily injury,
5 shall, upon conviction, be subject to a fine of not more
6 than two hundred fifty thousand dollars (\$250,000) or
7 imprisonment of not more than 15 years, or both. A
8 person which is an organization shall, upon conviction
9 under this subdivision, be subject to a fine of not more
10 than one million dollars (\$1,000,000). If a conviction of a
11 person is for a violation committed after a first conviction
12 of the person under this subdivision, the maximum
13 punishment shall be a fine of not more than five hundred
14 thousand dollars (\$500,000) or imprisonment of not more
15 than 30 years, or both. A person which is an organization
16 shall, upon conviction for a violation committed after a
17 first conviction of the person under this subdivision, be
18 subject to a fine of not more than two million dollars
19 (\$2,000,000). Any fines imposed pursuant to this
20 subdivision shall be in addition to any fines imposed
21 pursuant to subdivision (c).

22 (2) In determining whether a defendant who is an
23 individual knew that the defendant's conduct placed
24 another person in imminent danger of death or serious
25 bodily injury, the defendant is responsible only for actual
26 awareness or actual belief that the defendant possessed,
27 and knowledge possessed by a person other than the
28 defendant, but not by the defendant personally, cannot
29 be attributed to the defendant.

30 (e) Any person who knowingly makes any false
31 statement, representation, or certification in any record,
32 report, plan, notice to comply, or other document filed
33 with a regional board or the state board, or who
34 knowingly falsifies, tampers with, or renders inaccurate
35 any monitoring device or method required under this
36 division shall be punished by a fine of not more than
37 twenty-five thousand dollars (\$25,000), or by
38 imprisonment for not more than two years, or by both. If
39 a conviction of a person is for a violation committed after
40 a first conviction of the person under this subdivision,



1 punishment shall be by a fine of not more than
2 twenty-five thousand dollars (\$25,000) per day of
3 violation, or by imprisonment of not more than four years,
4 or by both.

5 (f) For purposes of this section, a single operational
6 upset which leads to simultaneous violations of more than
7 one pollutant parameter shall be treated as a single
8 violation.

9 (g) For purposes of this section, “organization,”
10 “serious bodily injury,” “person,” and “hazardous
11 substance” shall have the same meaning as in Section
12 309(c) of the Federal Water Pollution Control Act, as
13 amended.

14 (h) (1) Funds collected pursuant to this section shall
15 be deposited in the State Water Pollution Cleanup and
16 Abatement Account.

17 (2) Notwithstanding paragraph (1), funds collected
18 pursuant to this section for violations of Section 13275
19 shall be deposited in the Exotic Species Control Fund in
20 accordance with Section 13275.2.

21 ~~SEC. 8. Section 13387.5 is added to the Water Code, to~~
22 ~~read:~~

23 ~~13387.5. (a) Subject to subdivision (b), any person~~
24 ~~may bring an action for civil penalties, declaratory relief,~~
25 ~~or equitable relief against any person who has allegedly~~
26 ~~violated Section 13275 or waste discharge requirements~~
27 ~~issued for discharges governed under Section 13275 or~~
28 ~~any cleanup and abatement order issued under Section~~
29 ~~13304 enforcing those requirements, or who is allegedly~~
30 ~~liable under Section 13350, 13385, or 13387 for violating~~
31 ~~these requirements, if an action has not already been~~
32 ~~brought by the state board or a regional board to judicially~~
33 ~~enforce or impose sanctions under Section 13350, 13385,~~
34 ~~or 13387. The civil penalties and relief sought under this~~
35 ~~section shall be limited to the remedies, relief, or~~
36 ~~penalties authorized under Section 13350, 13385, or 13387.~~

37 ~~(b) No action may be commenced until written notice~~
38 ~~of the alleged violations has been received by the regional~~
39 ~~board and state board and either paragraph (1) or (2)~~
40 ~~applies. The notice shall be provided to the state board~~



1 and the appropriate regional board by the most
2 expeditious means available, including facsimile
3 transmission and overnight delivery.

4 (1) Five days have elapsed since that notice was
5 received and the regional board and the state board have
6 failed to seek administrative or judicial remedies or relief
7 under Section 13350, 13385, or 13387.

8 (2) The regional board or state board has notified the
9 party filing the notice that the regional board and the
10 state board will not seek administrative or judicial
11 remedies, relief, or penalties under Section 13350, 13385,
12 or 13387.

13 (c) The regional board or the state board may
14 intervene in any action brought under this section as a
15 matter of right.

16 (d) The board may adopt regulations to implement
17 this section.

18 ~~SEC. 9.—~~

19 *SEC. 8.* No reimbursement is required by this act
20 pursuant to Section 6 of Article XIII B of the California
21 Constitution because the only costs that may be incurred
22 by a local agency or school district will be incurred
23 because this act creates a new crime or infraction,
24 eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition
27 of a crime within the meaning of Section 6 of Article
28 XIII B of the California Constitution.

