



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-2

March 26, 1997

To: Board of Directors (Water Planning and Resources Committee--Action)
(Committee on Legislation--Action)

From: General Manager *J. Woodruff*

Submitted by: Debra C. Man *Debra C. Man*
Chief of Planning and Resources

Subject: Senate Bill 661 (O'Connell - Carpinteria)
Water Quality and Pollution Cleanup

RECOMMENDATION(S)

It is recommended that the Board adopt a position supporting SB 661.

EXECUTIVE SUMMARY

SB 661 introduced by Senator Jack O'Connell (Carpinteria) addresses the issue of water quality and groundwater cleanup. As written, the bill would require the State Water Resources Control Board (SWRCB) to adopt policies consistent with the bill and repeal policies and procedures that would be inconsistent with the bill. Essentially the bill would not allow the SWRCB to adopt a policy which would leave contamination in place for an indefinite period of time without cleanup action. The bill would appear to impact the SWRCB's recent adoption of a "containment zone" policy which allows contamination that is too difficult, expensive, or time consuming to clean up to remain in place as long as the pollution is contained in a specific area.

DETAILED REPORT

SB 661 would amend Water Code § 13307 to add language stating that any policy or procedure adopted by the SWRCB would not be consistent with this section if the following both occur:

(1) that policy or procedure permits a Regional Water Quality Control Board (Regional Board) or the SWRCB to allow contamination to remain in place for an indefinite period of time even if the contamination is contained and monitored; and

(2) such contamination is not in compliance with the adopted water quality objectives of the local Regional Board or the contamination would affect or threatened the beneficial use of water.

As written the bill would certainly appear to impact the SWRCB's recently adopted "containment zone" policy, which was actually an amendment to SWRCB Water Policy 92-49. The containment zone policy was adopted last October by the SWRCB but only recently cleared by the Office of Administrative Law this past January. Consequently the policy is so new it is unclear still what sites will be eligible.

Essentially, the containment zone policy will permit a Regional Board to allow responsible parties to cease cleanup efforts where they can demonstrate that further cleanup is technically or economically unfeasible or too time consuming, and that the contamination they caused is contained and will not migrate. The containment zone policy was the subject of a Board letter last year. Metropolitan opposed adoption of the policy and submitted comments and testimony on the policy to the SWRCB. Eventually the SWRCB accepted a number of comments from Metropolitan that we believe added groundwater quality safeguards to the containment zone policy. However, the SWRCB is already in the process of reviewing the adopted policy and parties have been lobbying for removal of many of the protections that were added to the policy. The strong language in SB 661 would offer far greater protection to water quality than the current containment zone policy or any potential revised version of the policy.

Introduced by Senator O'Connell

February 25, 1997

An act to amend Section 13307 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 661, as introduced, O'Connell. Water quality.

Existing law requires the State Water Resources Control Board to adopt state policy for water quality control. Existing law requires the state board and the Department of Toxic Substances Control to establish policies and procedures, consistent with Division 7 (commencing with Section 13000) of the Water Code, for overseeing the activities of persons who are cleaning up or abating the effects of a discharge of a hazardous substance that creates, or threatens to create, a condition of contamination, pollution, or nuisance.

This bill would declare that a policy or procedure adopted pursuant to these provisions is not consistent with Division 7 of the Water Code if the policy or procedure permits the state board or a California regional water quality control board to allow a condition of contamination, pollution, or nuisance to continue in effect for an indeterminate period of time, as specified, and the condition, pollution, or nuisance is not in compliance with water quality objectives or affects the beneficial uses of the waters of the state.

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

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

1 SECTION 1. Section 13307 of the Water Code is
2 amended to read:

3 13307. (a) The state board and the Department of
4 Toxic Substances Control shall concurrently establish
5 policies and procedures consistent with this division that
6 the state board's representatives and the representatives
7 of regional boards shall follow in overseeing and
8 supervising the activities of persons who are carrying out
9 the investigation of, and cleaning up or abating the effects
10 of, a discharge of a hazardous substance which creates, or
11 threatens to create, a condition of contamination,
12 pollution, or nuisance. The policies and procedures shall
13 be consistent with the policies and procedures established
14 pursuant to Section 25355.7 of the Health and Safety Code
15 and shall include, but are not limited to, all of the
16 following:

17 (1) The procedures the state board and the regional
18 boards will follow in making decisions as to when a person
19 may be required to undertake an investigation to
20 determine if an unauthorized hazardous substance
21 discharge has occurred.

22 (2) Policies for carrying out a phased, step-by-step
23 investigation to determine the nature and extent of
24 possible soil and groundwater contamination or pollution
25 at a site.

26 (3) Procedures for identifying and utilizing the most
27 cost-effective methods for detecting contamination or
28 pollution and cleaning up or abating the effects of
29 contamination or pollution.

30 (4) Policies for determining reasonable schedules for
31 investigation and cleanup, abatement, or other remedial
32 action at a site. The policies shall recognize the dangers
33 to public health and the waters of the state posed by an
34 unauthorized discharge and the need to mitigate those
35 dangers while at the same time taking into account, to the
36 extent possible, the resources, both financial and
37 technical, available to the person responsible for the
38 discharge.

1 (b) The state board and the Department of Toxic
2 Substances Control shall jointly review the policies and
3 procedures that were established pursuant to this section
4 and Section 25355.7 of the Health and Safety Code prior
5 to the enactment of this subdivision and shall
6 concurrently revise those policies and procedures as
7 necessary to make them as consistent as possible. Where
8 they cannot be made consistent because of the differing
9 requirements of this chapter and Chapter 6.8
10 (commencing with Section 25300) of Division 20 of the
11 Health and Safety Code, the state board and the
12 Department of Toxic Substances Control shall, by July 1,
13 1994, jointly develop, and send to the Legislature,
14 recommendations for revising this chapter and Chapter
15 6.8 (commencing with Section 25300) of Division 20 of the
16 Health and Safety Code in order to make consistent the
17 hazardous substance release cleanup policies and
18 procedures followed by the state board, the Department
19 of Toxic Substances Control, and the regional boards.

20 (c) A policy or procedure adopted pursuant to this
21 section or Article 3 (commencing with Section 13140) of
22 Chapter 5 is not consistent with this division if both of the
23 following apply:

24 (1) The policy or procedure permits the state board or
25 a regional board to allow a condition of contamination,
26 pollution, or nuisance to continue in effect for an
27 indeterminate period of time, even if the condition of
28 contamination, pollution, or nuisance is being monitored
29 and contained.

30 (2) The condition of contamination, pollution, or
31 nuisance is not in compliance with the water quality
32 objectives adopted in the applicable regional water
33 quality control plan or affects the beneficial uses of the
34 waters of the state.