

Mandatory Minimum Penalties

Summary

Background

The State Water Resources Board and its nine regional water boards are charged with protecting the waters of the state and improving water quality. Any business, government agency or person discharging pollutants, effluents or any other sort of contaminant to waters of the state must secure a waste discharge permit specifying the type and amount of discharge allowed (wastewater, chemical, sediment, etc). Many permits contain requirements for filing reports like monitoring or inspection reports and have provisions for mandatory recordkeeping. The boards have the authority to impose fines on any person, business or agency violating permit limits. State water law provides that an automatic fine is imposed for violations even when the “failure to file” a report is inadvertent due to there being no reportable discharges or where discharges do not exceed numeric levels. In the past, fines were based on the severity of the violation. Paperwork violations were considered lesser in nature than those that resulted in exceeding a permit discharge level.

Over the years due to environmental concerns, many more laws were passed requiring additional permits requiring even more monitoring and inspections as well as new recordkeeping provisions (such as stormwater runoff). The increased number of permits led to a backlog at the water boards. Not all permits were reviewed nor were notices sent out in a timely fashion to permit holders notifying them of omissions or violations. Now permit holders are being assessed the original fine plus penalties compounded over time because of the backlog.

Current Federal/State Policy

Current state law classifies a “failure to file” as a “serious violation.” The classification subjects those responsible to a mandatory minimum fine of \$3,000 for each serious violation per day. A serious violation is defined as “a failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.”

The purpose of the legislation was to ensure better reporting by including polluters that hide violations of the Clean Water Act from state authorities on the list of violations that face mandatory minimum fines.

Impact on Business, Employers, Economy

There are a number of businesses, water districts, wastewater treatment facilities, cities and counties being assessed extremely high penalties for not filing certain reports. Every month the reports aren’t filed, the penalty compounds. These are primarily paperwork violations regarding reports and recordkeeping. For instance:

- A business might not file a report to indicate that it had no discharge for a month and when it did file a report for a discharge in the following month, the business was assessed the base \$3,000 penalty and an additional penalty for not filing for the month where no discharge occurred.
- In the cases of small businesses, some of them assumed that the lab report filed was the required report and incurred the mandatory fine and subsequent penalty escalations until notified by the regional board of their error.
- Another example is a small city that filed for a permit to dig a well but was unable to complete the job for 18 months after the permit was issued. The city had no discharges for that period and hence did not file a report. A regional water board imposed a penalty of \$330,000. When cities and counties are forced to pay those kinds of fines and penalties, companies doing business with them suffer.

These extreme penalties are pushing some businesses to the edge of bankruptcy. Local governments have no choice but to pass the penalties along to their businesses and residents, further depressing the economy.

Anticipated Actions

Several stakeholders, including the California Chamber of Commerce, are planning to

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introduce legislation to minimize the circumstances for imposing automatic fines (\$3,000 per month and compounded over subsequent quarters) for inadvertently failing to file quarterly discharge reports for periods where no reportable discharges occur or where discharges occur that do not exceed numeric effluent limitations.

CalChamber Position The CalChamber supports reasonable regulations designed to promote clean water. The regulations should be scientifically sound and cost effective. Fines and penalties should be scaled to reflect the severity of the violations.

Reasons for Position

- Punitive penalties should be imposed only for serious violations, paperwork errors excluded.
- Businesses should not be penalized for government's backlogged workload.
- Alternative remedies for minor violations should be reinstated.

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