

State Water Resources Control Board

Resolution No. 89 - 20

ADOPTION OF AMENDMENTS TO REGULATIONS PREVIOUSLY ADOPTED  
AS RESOLUTION NO. 88-68 CREATING CALIFORNIA  
CODE OF REGULATIONS, TITLE 23, CHAPTER 3, SUBCHAPTER 9.2  
REPORTABLE QUANTITIES AND REPORTING REQUIREMENTS

WHEREAS:

1. The California Water Code (CWC), commencing with CWC Section 13000, provides for the protection of the quality of the waters of the State.
2. The CWC provides the authority for the California Regional Water Quality Control Boards (Regional Boards) to take action against any person responsible for discharge of a hazardous substance which creates a condition of nuisance or pollution, unless the discharge is in accordance with Waste Discharge Requirements.
3. CWC Section 13271 requires the State Water Resources Control Board (State Board) to adopt reportable quantities for hazardous wastes or hazardous materials listed pursuant to Section 25140 of the Health and Safety Code. These reportable quantities are to be established in consultation with the Department of Health Services (DHS). In the absence of reportable quantities developed by the State Board and DHS, CWC Section 13271 provides that the reportable quantities for hazardous substances developed by the U.S. Environmental Protection Agency (EPA) for the purpose of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) shall be in effect.
4. Subdivision (b) of CWC Section 13350 establishes civil monetary remedies for discharges of "hazardous substances" that create conditions of pollution or nuisance, regardless of intent or negligence. However, CWC Section 13050(p)(2) states that no discharge to land or ground water shall be considered a discharge of hazardous substances until reportable quantities are established by regulation pursuant to CWC Section 13271.
5. CWC Section 13271 of the Porter-Cologne Act requires that the State Board adopt reportable quantities for sewage that will apply to publicly or privately owned wastewater treatment plants, as defined by CWC Section 13625.
6. CWC Section 13271(g) allows Regional Water Quality Control Boards to set different limits for reporting in waste discharge requirements if local needs and conditions are appropriate.
7. A notice of proposed rulemaking was published in the California Administrative Notice Register on December 18, 1987.
8. A public hearing was held on February 3, 1988 to receive testimony relative to the proposed regulations.
9. A final regulation was adopted by the State Board on June 16, 1988.

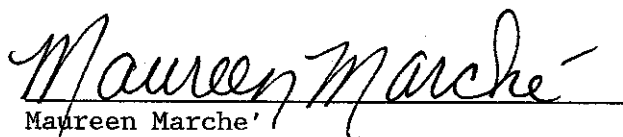
10. A final rulemaking file was submitted to the Office of Administrative Law (OAL) on December 9, 1988.
11. OAL has reviewed the final rulemaking file and has rejected the file due to problems with clarity and with the incorporation by reference of future changes to the CERCLA list of reportable quantities for hazardous substances.
12. The final regulation and rulemaking file have been corrected to address the problems which OAL identified.

THEREFORE BE IT RESOLVED:

1. That the State Water Resources Control Board revise previously adopted final regulations that establish reportable quantities for sewage and that incorporate by reference the reportable quantities for hazardous substances developed by the EPA pursuant to CERCLA.
2. The adopted regulations will be codified in a new Subchapter 9.2 of Chapter 3 of Title 23 of the California Code of Regulations.
3. The Executive Director or his designee is directed to submit the corrected rulemaking file to the Office of Administrative Law to complete the State Board's rulemaking process.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 16, 1989.

  
Maureen Marche'  
Administrative Assistant to the Board