

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION 91-2

AMENDMENT OF ARTICLE 5 ("WATER QUALITY MONITORING AND RESPONSE PROGRAMS FOR WASTE MANAGEMENT UNITS") AND AMENDMENT OF SECTION 2601 ("TECHNICAL DEFINITIONS") OF ARTICLE 10 ("DEFINITIONS") OF CHAPTER 15 (PREVIOUSLY SUBCHAPTER 15) OF DIVISION 3 (PREVIOUSLY CHAPTER 3) OF TITLE 23 OF THE CALIFORNIA CODE OF REGULATIONS (CCR)

WHEREAS:

1. Discharges of waste to surface impoundments, waste piles, landfills, or land treatment facilities for treatment, storage, or disposal could affect the quality of waters of the State and are subject to regulation by the Regional Boards under the Porter Cologne Water Quality Control Act (Division 7, commencing with Section 1300 of the Water Code);
2. The Board is required to adopt regulations for the guidance of the Regional Boards, including monitoring standards (Subsection 13172[c] of the Water Code);
3. The Board adopted revised regulations governing discharges of waste to land, including water quality monitoring requirements by Resolution No. 84-72 on October 18, 1984;
4. Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 USC 6901-6921, "RCRA") authorizes federal minimum standards for facilities that treat, store, or dispose of hazardous waste;
5. The United States Environmental Protection Agency (USEPA) has promulgated regulations establishing the Hazardous Waste Management System to implement Subtitle C of RCRA (40 CFR 260-270, "HWMS"), including minimum standards for treatment, storage, and disposal facilities;
6. Since 1984, USEPA has revised the HWMS regulations substantially;
7. Subsection 13172(d) of the Water Code requires State Board regulations governing the discharge of hazardous waste to land to be consistent with the HWMS;
8. Under the California Hazardous Waste Control Law (Chapter 6.5, commencing with Section 25100, of Division 20 of the Health and Safety Code), the Department of Health Services (DHS) has concurrent authority with the Board to regulate discharges of hazardous waste at treatment, storage, and disposal facilities, and DHS is revising its regulations to achieve consistency with the most current federal regulations promulgated under Subtitle C of RCRA;

9. The proposed Article 5 regulations ("Water Quality Monitoring and Response Programs for Waste Management Units") and the proposed amendment of Section 2601 ("Technical Definitions") of Article 10 ("Definitions") of Chapter 15 (previously Subchapter 15) of Division 3 (previously Chapter 3) of Title 23 CCR are written to be consistent with the applicable ground water protection and monitoring requirements of the HWMS, in accordance with Section 13172(d) of the Water Code, and to include any more stringent requirements necessary to implement the Porter-Cologne Water Quality Control Act (Subsection 13172[d] of the Water Code);
10. The California Administrative Procedures Act requires administrative agencies to review existing regulations for compliance with six specified criteria including necessity, clarity, and consistency with other regulations;
11. The proposed amendments to Article 5 and to Section 2601 of Article 10 were described in separate Notices of Proposed Rulemaking published in the California Administrative Notice Register on June 23, 1989, and January 19, 1990, respectively;
12. Testimony about the proposed amendments to Article 5 was taken on August 7 and August 9, 1989, and on June 6, 1990, with 58 sets of oral and written comments received, and testimony about the proposed amendments to Section 2601 of Article 10 was taken on March 15 and June 6, 1990, with 20 sets of oral and written comments received;
13. Modifications were incorporated into the proposed regulations in response to the comments received;
14. The State Board adopted the proposed amendments to Articles 5 and 10 by Resolution No. 90-65 on June 21, 1990, and submitted the respective rulemaking files to the Office of Administrative Law (OAL) for review and approval on June 22, 1990;
15. OAL notified the State Board on July 23, 1990 that there were a number of deficiencies in the respective rulemaking packages for Articles 5 and 10;
16. Additional testimony about the proposed amendments to Articles 5 and 10 was received during two 15-day comment periods ending on September 27, and November 27, 1990;
17. Additional modifications were incorporated into the proposed regulations and into the rulemaking files in response to the comments received from the public and from OAL;
18. All modifications to Articles 5 and 10 have been clearly indicated, pursuant to both Section 44, Title 1 of the California Code of Regulations and California Government Code Section 11346.8(c), and are sufficiently related to the text made available to the public in the respective Notices of Proposed Rulemaking so that there was adequate notice that the modifications made could have been anticipated from the originally-proposed regulations and informative digest;

19. Amendment of any Article of the State Board's Chapter 15 regulations governing discharge of waste to land constitutes an action by a regulatory agency for the protection of the environment and is, therefore, exempt from the provision of the California Environmental Quality Act (California Public Resources Code Section 21000, et seq.);
20. The proposed regulations (as modified) implement, interpret, and make specific the provisions relating to water quality investigations in the Porter-Cologne Water Quality Control Act;
21. The proposed regulations, as modified, do not mandate a new program or an increased level of governmental service that would be reimbursable under Section 6 of Article XIII B of the Constitution of the State of California because Section 17516 of the Government Code (which was enacted to implement the constitutional provisions regarding reimbursement for state mandates) specifically excludes regulations implementing Division 7 of the Water Code (commencing with Section 13000) from the definition of "executive order", the category of state action that might otherwise entail reimbursement as a result of rules adopted by an administrative agency;
22. The proposed regulations, as modified, are necessary to provide assurances that discharges of waste to land are in compliance with applicable waste discharge requirements and containment standards, and to ensure that any leakage from waste management units will be detected before waste constituents and leachate have an adverse impact on the quality of waters of the State; and no alternative considered by the State Board would be more effective in carrying out this purpose or would be as effective and less burdensome to regulated dischargers;
23. The proposed regulations, as modified, require regulated dischargers, including small businesses (as defined in subdivision (e) of Section 11342 of the Government Code), to submit periodic technical and monitoring reports to the various Regional Boards; and
24. Application of these regulations to small businesses is necessary to protect the health, safety, and welfare of the people of the state because discharges to land by small businesses present the same threat to water quality as discharges of similar wastes by major industries or municipalities.

THEREFORE BE IT RESOLVED:

That the existing water quality monitoring regulations in Article 5 of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations ("Water Quality Monitoring for Classified Waste Management Units", 23 CCR, Sections 2550-2559), contained in Attachment I to this Resolution, be repealed;

That the proposed regulations governing water quality monitoring for waste discharges to land, contained in Attachment II to this Resolution, be adopted and codified as Article 5 of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations ("Water Quality Monitoring and Response Programs for Waste Management Units", 23 CCR, Sections 2550.0-2550.12);

That the existing definitions in Section 2601 of Article 10 of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations ("Technical Definitions", 23 CCR, Section 2601), contained in Attachment III to this Resolution, be revised in accordance with the definitions contained in Attachment IV to this Resolution;

That the Executive Director transmit the proposed amendments together with their respective revised final statement of reasons and all other revisions to the respective rulemaking files to OAL; and

That the Executive Director take appropriate steps to ensure rapid implementation of these regulations by the Regional Boards following approval by OAL: printing copies of the Articles 5 and 10 regulations, together with the updated informative digest and the final statement of reasons, for public distribution.

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 January 24, 1991.


Maureen Marché
Administrative Assistant to the Board