

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 91-102

ADOPTION OF REGULATIONS TO IMPLEMENT THE
BAY PROTECTION AND TOXIC CLEANUP PROGRAM ANNUAL FEES
(SECTION 2236, ARTICLE 6, CHAPTER 9, DIVISION 3, TITLE 23 OF
THE CALIFORNIA CODE OF REGULATIONS)

WHEREAS:

1. California Water Code Section 1058 authorizes the State Water Resources Control Board (State Board) to adopt regulations as necessary to implement provisions of the Water Code.
2. Chapter 1294 of the Statutes of 1990 added Section 13396.5 to the California Water Code which requires the State Board to establish fees to fund the Bay Protection and Toxic Cleanup Program responsibilities contained in Chapter 5.6 of the California Water Code (Sections 13390 et seq.) beginning in FY 1991-92 and continuing into FY 1993-94.
3. The total fees received annually pursuant to the fee schedule will be equal in amount to the scheduled reimbursement for this program contained in the State Board's annual budget not to exceed four million dollars (\$4,000,000).
4. The proposed regulations were noticed on April 5, 1991 by the Office of Administrative Law in the California Administrative Notice Register. Publication on this date opened the public comment period.
5. A public hearing was held on May 21, 1991 to receive public comments.
6. Several public comments have been received concerning the proposed regulations, and revisions have been made as appropriate. All comments have been addressed.

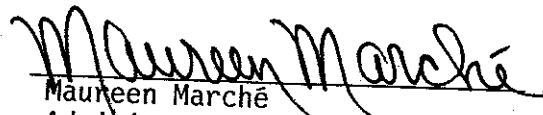
THEREFORE BE IT RESOLVED:

1. That the State Board adopt the proposed regulations (Attachment 1) to be codified at Section 2236, Article 6, Chapter 9, Division 3, Title 23 of the California Code of Regulations in accordance with Section 13396.5 of the Water Code.

2. That the Executive Director, or his designee, shall submit the regulations and the final 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 October 24, 1991.


Maureen Marché
Administrative Assistant to
the Board

TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 6,
SECTION 2236, CALIFORNIA CODE OF REGULATIONS

2236. Bay Protection and Toxic Cleanup Annual Fees

- (a) All point and nonpoint dischargers who discharge directly into enclosed bays, as defined in Water Code Section 13391.5(a), estuaries, as defined in Water Code Section 13391.5(b), or adjacent waters in the contiguous zone or the ocean, as defined in Section 502 of the Federal Clean Water Act (33 U.S.C. Sec. 1362), shall be subject to an annual fee pursuant to Section 13396.5 of the Water Code. This fee is in addition to the fees required in Title 23, Section 2200, California Code of Regulations.
- (b) Dischargers for whom National Pollutant Discharge Elimination System (NPDES) permits or waste discharge requirements have been prescribed except as noted in Subsection (c) below, who discharge into waters described in Subsection (a), shall be subject to an annual fee in accordance with the following schedule:

BAY PROTECTION AND TOXIC CLEANUP ANNUAL FEE SCHEDULE
NPDES PERMIT AND NON-CHAPTER 15 WASTE DISCHARGE REQUIREMENTS

<u>RATING</u>	<u>FEE</u>
<u>I-a</u>	<u>\$11,000</u>
<u>I-b</u>	<u>\$ 8,000</u>
<u>I-c</u>	<u>\$ 5,000</u>
<u>II-a</u>	<u>\$ 4,000</u>
<u>II-b</u>	<u>\$ 2,000</u>
<u>II-c</u>	<u>\$ 1,000</u>
<u>III-a</u>	<u>\$ 500</u>
<u>III-b</u>	<u>\$ 400</u>
<u>III-c</u>	<u>\$ 300</u>

- (1) Rating is based on the relative threat of the discharge to water quality and complexity, as defined in Title 23, Section 2200(a)(2), California Code of Regulations.
- (2) Discharges from public and private educational institutions resulting from the use of seawater to maintain marine organisms for educational and research purposes that are rated III-c, shall be subject to an annual fee of \$0.
- (c) The following categories of dischargers shall pay the amount of fee specified below. This schedule supersedes those set forth in (b) above if a discharger falls under both sections.
- (1) NPDES permits for an area-wide urban storm water system which discharges into waters described in Subsection (a) shall be subject to an annual fee based on the population served by the drainage system in accordance with the following schedule:

<u>Population</u>	<u>Fee</u>
<u>Less than 10,000</u>	<u>\$ 1,000</u>
<u>10,000 to 99,999</u>	<u>\$ 2,500</u>
<u>100,000 to 249,999</u>	<u>\$ 5,000</u>
<u>250,000 and greater</u>	<u>\$10,000</u>

Each county, incorporated city or entity which operates a municipal stormdrain system which is not part of an NPDES permit for an area-wide stormwater discharge shall pay a fee based on the population served by the drainage system in accordance with the schedule shown in this paragraph.

(2) Discharges from agricultural practices into waters described in Subsection (a) shall be subject to an annual fee based on the number of acres drained in accordance with the following schedule:

<u>Irrigated Acres</u>	<u>Fee</u>
<u>Less than 100</u>	<u>0</u>
<u>100 to 999</u>	<u>\$ 500</u>
<u>1,000 to 9,999</u>	<u>\$ 1,500</u>
<u>10,000 to 50,000</u>	<u>\$ 5,000</u>

Owners, operators, or representatives of more than 50,000 irrigated acres shall pay \$5,000 for the first 50,000 acres and \$0.10 for each additional acre.

A. Annual fees for discharges from agricultural practices may be paid by regional entities. Regional entities must meet the following requirements:

i. The regional entity shall be the same group created to comply with Chapter III, Section I, of the California Enclosed Bays and Estuaries Plan.

ii. The regional entity shall demonstrate legal, institutional and managerial capability to pay annual fees for member growers.

B. If regional entities have not been identified to the State Board the fees shall be assessed on individual agricultural discharges.

- (3) Each boat construction facility or repair facility or hull cleaning operation which discharges to waters described in Subsection (a) shall be subject to an annual fee of \$300.
- (4) Each operator of a boat marina or other recreational vessel launching or docking facility which discharges to waters described in Subsection (a) shall be subject to an annual fee based on number of vessel slips or moorings, in accordance with the following schedule:

<u>Slips/Moorings</u>	<u>Fee</u>
<u>Less than 300</u>	<u>\$ 0</u>
<u>300 to 499</u>	<u>\$ 300</u>
<u>500 to 999</u>	<u>\$ 500</u>
<u>1000 and greater</u>	<u>\$ 1,000</u>

- (5) Each harbor or port facility which discharges to waters described in Subsection (a) and which is used for commercial shipping purposes shall be subject to an annual fee of \$5,000.
- (6) Each dredging operation in waters described in Subsection (a) for which a Water Quality Certification (33 U.S.C. Section 1341) has been issued by the State Water Resources Control Board shall be subject to a fee based on the cubic yards of dredge material authorized in the Water Quality Certification, in accordance with the following schedule:

<u>Cubic Yards Authorized in Certification</u>	<u>Maintenance Dredging</u>	<u>New Dredging</u>	<u>Beach Replenishment</u>
<u>Less than 30,000</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>
<u>30,000 - 99,999</u>	<u>\$ 1,500</u>	<u>\$ 1,000</u>	<u>\$ 0</u>
<u>100,000 - 299,999</u>	<u>\$ 4,500</u>	<u>\$ 3,000</u>	<u>\$1,000</u>
<u>300,000 and greater</u>	<u>\$15,000</u>	<u>\$10,000</u>	<u>\$3,000</u>

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If the dredging quantity stated in the Water Quality Certification is less than the amount of the Section 404 (33 U.S.C. Section 1344) permit, and the permitted volume is greater than 300,000 cubic yards, the fee shall be based on the total permitted volume.

- (d) Point and nonpoint dischargers who discharge into a water body described in Subsection (a) which has been identified as a Water Quality Limited Segment in the current "Water Quality Assessment", prepared by the State Board pursuant to Section 303(d) of the Federal Clean Water Act (33 U.S.C. Sect. 1313) shall be subject to a surcharge of 100 percent of the annual fee specified in Subsections (b) or (c). In no case shall the annual fee for these discharges exceed the statutory maximum specified in Subdivision (d) of Section 13396.5 of the Water Code.
- (e) The State Board shall notify each discharger of the amount of the fee to be submitted, the basis upon which the fee was calculated, and the date upon which the fee is due.
- (f) Any person failing to pay the fee established under this Section, when so requested by the State Board, may be liable civilly in accordance with Subdivision (d) of Section 13261 of the Water Code.
- (g) In the event the amount collected under this Section exceeds the maximum allowed by Subdivision (b) of Section 13396.5 of the Water Code, an amount equal to the over collection will be credited against the next year's fees. The amount of the over collection

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will be prorated among dischargers who submitted the full amount of the fees by the date specified pursuant to Subsection (e) of this Section. The prorated amount shall be reduced from the next year's fee, based on the following equation:

$$\begin{array}{r}
 \text{Excess Collected} \times \frac{\text{Fee Paid}}{\text{Total of All Fees}} = \text{Reduction Amount} \\
 \text{Paid by Dischargers} \\
 \text{who Made Full and} \\
 \text{Timely Payments}
 \end{array}$$

- (h) Any new discharger identified as being subject to this section shall pay a fee based on the amount specified with the fee schedules in Subsections (b) or (c) prorated for the number of months remaining in the billing cycle.

- (i) The annual fees in Subsection (b) and (c) shall be reviewed by the State Board regularly, but in no case less than once every three years. The annual fees may be adjusted on the basis of monitoring information collected as a part of the Bay Protection and Toxic Cleanup Program and information from any other programs deemed appropriate.

NOTE: Authority cited: Section 1058, Water Code.

Reference: Sections 13396.5(a), 13396.5(b), 13396.5(d), 13396.5(e), Water Code.

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Attachment 2

September 9, 1991

STAFF REPORT
BY THE
DIVISION OF WATER QUALITY
STATE WATER RESOURCES CONTROL BOARD

BAY PROTECTION AND TOXIC CLEANUP ANNUAL FEES
RESPONSES TO COMMENTS RECEIVED

INTRODUCTION

On May 21, 1991, the State Water Resources Control Board (State Board) held a public hearing to solicit comments on proposed regulations to implement the Bay Protection and Toxic Cleanup Annual Fee Program (BPTCP) (Water Code Section 13396.5). The regulations are being developed pursuant to the provisions of the Administrative Procedures Act (Government Code Sections 11340-11356).

Government Code Section 11346.7(b) requires that the State Board respond to each comment received during the rulemaking proceeding. The purpose of this staff report is to present summaries of the comments received and responses to each comment.

BACKGROUND

California's bays and estuaries serve as crucial habitat to both marine and freshwater aquatic resources. Some of these water bodies, such as San Francisco Bay, also receive considerable volumes of waste discharge and act as transportation corridors for a large percentage of goods entering and leaving the State. The highly sensitive biological nature of these waters coupled with the potentially high degree of exposure to pollutants has created special concern for the quality and vitality of these water bodies.

The goals of the BPTCP are to control toxic pollutants which threaten the protection or propagation of fish, shellfish, or wildlife and to prevent the threat to the public from exposure to contaminated aquatic organisms or wildlife found in bays and estuaries. To achieve these goals the State Board must administer a comprehensive program which identifies and characterizes toxic hot spots; plan for the cleanup, remediation, or mitigation of polluted sites; and amend water quality control plans and policies to incorporate strategies which prevent the creation of new hot spots or the further pollution of existing hot spots.

The Program is assigned five major responsibilities identified in the Water Code:

- A. Develop sediment quality objectives.
- B. Identify toxic hot spots in bays and estuaries.
- C. Develop remediation and prevention plans to manage identified hot spots.
- D. Construct a consolidated database to be used as the foundation for future program activities.
- E. Review and revise the Water Quality Control Policy for Enclosed Bays and Estuaries of California and incorporate the revised policy into a water quality control plan for enclosed bays and estuaries (the California Enclosed Bays and Estuaries Plan).

Milestones established in the Water Code are:

- A. Submission of a workplan to the Legislature before July 1, 1991. The workplan describes the activities which will be undertaken to develop sediment quality objectives;
- B. Development of consolidated databases by January 1, 1992;
- C. Adoption of criteria for assessment and ranking of toxic hot spots by July 1, 1992;
- D. Submission to the Legislature of a report on progress towards implementing the BPTCP and the adequacy of fees implementing the Program by July 1, 1993;
- E. Submission of Regional Board Toxic Hot Spot Cleanup Plans to the State Board by July 1, 1993; and
- F. Submission of a consolidated Statewide Toxic Hot Spot Cleanup Plan to the Legislature by January 1, 1994.

To provide continued funding for the BPTCP, legislation signed in 1990 (Chapter 1294; SB 1845 Torres) added Section 13396.5 to the Water Code. This section requires that the State Board establish fees beginning in FY 1991-92 and continuing into 1994 to fund the bay protection responsibilities contained in Chapter 5.6 of the Water Code. The program was funded in FY 1989-90 and FY 1990-91 by \$5 million from the Hazardous Waste Control Account.

The specific purpose of creating Title 23, Division 3, Chapter 9, Article 6, Section 2236 of the California Code of Regulations is to implement an annual fee system which will assess fees to all point and nonpoint dischargers who discharge directly into bays, estuaries, or the ocean. The intent is to create a fee system that will: (1) generate sufficient revenue, (2) equitably apportion the costs of the program among point and nonpoint dischargers to the water bodies affected by the program, and (3) minimize administrative fee-costs.

RULEMAKING PROCESS COMPLETED TO DATE

The following activities have occurred as part of the rulemaking process for the BPTCP Annual Fee System:

<u>Activity</u>	<u>Date</u>
Submittal of draft regulations, Initial Statement of Reasons and Fiscal Impact Statement to Office of Administrative Law	March 26, 1991
Public Notice of draft regulations	April 5, 1991
Public Hearing*	May 21, 1991
Close of Comment Period	May 28, 1991

REVISED PROPOSED REGULATIONS AND DRAFT FINAL STATEMENT OF REASONS

The revisions to the proposed regulations (Attachment A) are a result of the State Board staff's response to comments. The draft Final Statement of Reasons (Attachment B) provides the justification for each section of the regulations. At the completion of the rulemaking process all comments and responses will be added to the Final Statement of Reasons.

LIST OF COMMENTERS

Individuals, organizations, and other interested parties who submitted written comments on the proposed regulations (State Board, 1991c) before the close of the comment period or who presented testimony at the public hearing are listed below. Each commenter is referred to by number when referenced in the comment summaries.

- Herman B. Zelles, Chairman
Dredging Committee
Paradise Cay Homeowner's Association
P.O. Box 652
Tiburon, CA 94920
- Walter J. McInnis
Souza, Coats, McInnis & Mehlhaff
1011 Parker Avenue
P.O. Box 1129
Tracy, CA 95376
- Herb Lobell, President
Mendocino City Community
Services District
P.O. Box 1029
Mendocino, CA 95460
- W. C. Garvie, Harbormaster
San Rafael Yacht Harbor
557 Francisco Blvd.
P.O. Box 3477
San Rafael, CA 94902
- Mayor Phil Sansone
City of Newport Beach
City Hall
3300 Newport Blvd.
P.O. Box 338
Newport Beach, CA 92659-1768
- William S. Arbuckle, President
Humboldt Marine Services
#1 Yard Road
P.O. Box 338
Fields Landing, CA 95537

*Mr. John Caffrey, State Board Member, served as Hearing Officer.

7. Gary D. Milliman
City Administrator
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437
8. C. B. Shannep
Dana Point Shipyard
34671 Puerto Place
Dana Point, CA 92629
9. J. J. Meehan, Chairman
Santa Cruz Port District
Commission
135 5th Avenue
Santa Cruz, CA 95062
10. Richard W. Parsons
General Manager
Ventura Port District
1603 Anchors Way Drive
Ventura, CA 93001
11. Dennis L. Johnston
Plant Manager
Fairhaven Power Company
P.O. Box 280
Eureka, CA 95501
12. Nancy Flemming
Mayor
City of Eureka
531 K Street
Eureka, CA 95501
13. Don Hadley, President Pro Tem
Chairman, Executive Board
Harbormasters and Port Captains
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14. Dennis G. Hunter
President, Board of Commissioners
Humboldt Bay Harbor, Recreation
and Conservation District
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15. Merlin L. Fagan, Jr.
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Head, Monitoring Section
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17. Anna Sparks, Chairman
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18. Jerry L. Thomas
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Central Coast Regional Water
Quality Control board
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21. Duane L. Georgeson
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22. Roger B. James, Chairman
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Santa Clara Valley Nonpoint
Source Pollution Control Program
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23. Richard Filipowicz
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MLHD Board of Commissioners
Moss Landing Harbor District
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Moss Landing, CA 95039
24. Roger B. James
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Santa Clara Valley Water District
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25. Senator Milton Marks
California State Senate
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5035 Capitol Mall
Sacramento, CA 95814
26. M. K. Veloz
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41. Paul Siri
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42. David A. Jones
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43. Roy Hobbs, Chairman
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44. Edward Karapetian
Manager of Environmental and
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45. William J. Thomas
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46. Dana M. Austin
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47. Gary D. Milliman
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416 N. Franklin Street
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48. Barry Keene
Senator, 2nd District
California State Senate
313 State Capitol
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49. J. W. Bitoff
Rear Admiral
Department of the Navy
Naval Base San Francisco
50. Charles V. Weir
General Manager
East Bay Dischargers Authority
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51. Benjamin D. Kor
Executive Officer
California Regional Water Quality
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COMMENTERS PRESENTING TESTIMONY AT THE HEARING

52. Jack Alderson, California Association of Harbor Masters
53. Dennis Hunter, Humboldt Bay Harbor District
54. Bob Berger, East Bay Municipal Utility District
55. David Whitridge, South Delta Water Agency
56. Craig Winter, Harbor Master, Moss Landing
57. Roger Briggs, Central Coast Regional Board
58. Randal Friedman, U.S. Navy
59. John Hannum, North Coast Regional Board
60. Tim Treichel, Georgia Pacific
61. Steve Petrin, Timber Association
62. Terry Young, Environmental Defense Fund

63. Robert Mott, Paradise Homeowners Association
64. Steve Ritchie, San Francisco Bay Regional Board
65. Robert Collacott, Orange Environmental Management Agency
66. John Torrens, Pacific Gas and Electric Company
67. Don Guluzzy, San Mateo Harbor District
68. Ellen Johnck, Bay Planning Coalition
69. Les Shorter, Western Dock Enterprise
70. Paul Siri, Bodega Marine Laboratory, University of California
71. Billy Martin, North Delta Water Agency

COMMENTS RECEIVED AND STATE BOARD STAFF RESPONSES

This section was completed after the State Board hearing held on May 21, 1991. All relevant comments raised during the comment period were addressed. Those comments not pertinent to the rulemaking process are listed in a separate section. Copies of the full text of the written comments and the hearing transcript are available for review.

The comments and responses are organized by major issue.

COMMENTS RELATED TO DREDGING

Comment: The fees for dredging should be based on actual quantity of material dredged at time of dredging (1, 4, 19, 25, 69).

Response: After consideration of this comment, no changes were made to the proposed regulations. Basing the fee on actual instead of permitted yards would result in a dredging fee which would be due after the dredging work instead of in advance. This would result in a fee due date different from all other categories of dischargers in the fee program who must pay in advance. Information on actual cubic yards dredged each day is not readily available to the Regional Boards or the State Board. This information would have to be obtained from either the Army Corps of Engineers or the dredging operators. Billing and collection of fees for dredging activities would be unnecessarily complicated by the requirement that delayed information be obtained, verified and entered into the fee system database.

Comment: The fees should be based on performance standards rather than prescriptive standards (3).

Response: After consideration of this comment, no changes were made to the proposed regulations. The proposed regulations do not contain "standards". Government Code Section 11342.01 defines performance and prescriptive standards as follows:

"(a) 'Performance standard' means a regulation that describes an objective with the criteria stated for achieving the objective.

"(b) 'Prescriptive standard' means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measures, or other quantifiable means."

The proposed regulations do not contain objectives or require compliance with a performance standard. Therefore, the proposed regulations do not contain performance or prescriptive standards.

Comment: Dredging does not impose a threat to the environment and, therefore, it is inappropriate to assess fees on dredging (9, 32, 40, 46, 67, 68, 69).

Response: After consideration of this comment, no changes were made to the proposed regulations. The environmental threats and impairment caused by dredging activities are well documented. In its 1985 publication "Dredging Coastal Ports: an Assessment of the Issues", a committee of the National Research Council stated the following:

"Dredging and disposal activities directly disrupt bottom-dwelling communities; remove sediments from the bottom that may have collected toxic and other hazardous materials from upstream runoff and discharges; and transfer these sediments to other areas, with the possible consequence of mobilizing and dispersing the associated contaminants. These represent the potential physical and biological effects of greatest concern." (Page 117)

Comment: Regulations should distinguish between maintenance versus new dredging (10,25).

Response: After review of this comment the proposed regulations have been revised to distinguish between new and maintenance dredging. The highest fees are proposed for maintenance dredging. The fee levels for new dredging are higher than the fee for beach replenishment activities. The rationale and definition of these terms is contained in the Rationale Section of the Final Statement of Reasons.

Comment: The fee structure should contain provisions for small and infrequent dredging projects (1, 4, 52), and should give fair and representative treatment to infrequent and non-commercial maintenance dredging (1). Adjust the fee schedule to make provisions for small dredging operations that are restricted in the amount of material that can be dredged in a given year by the physical limitations of their equipment (4).

Response: After review of these comments we revised the proposed regulations to define small dredging activities as de minimis dischargers subject to a fee \$0.

Comment: Fees should not be charged for dredging of sandy material suitable for and utilized for beach replenishment and nourishment (10, 23). Maintenance dredging operations should be exempt from any fee to support the program (46, 67, 68, 69). Port dredging operations should be exempted from the fee schedule (32). The dredging fee schedule is inadequate (23, 25, 46, 63, 68). Fees paid by dredgers should be based on threat to water quality (Title 23, Section 2200, California Code of Regulations (CCR)) (19).

Response: After review of these comments, changes were made in the proposed regulations. It is inappropriate to exempt maintenance dredging and beach replenishment activities from the fee system because these activities may have substantial effects on beneficial uses. Since beach replenishment activities pose a lesser threat to water quality

than maintenance and new dredging activities, the dredging fees have been revised to reflect this; and all dredging activities including less than 30,000 cubic yards have been assigned a fee of \$0.

If all of the various types of maintenance dredging are compared, port dredging has a high potential to impact water quality because of the type of operations conducted. Pollutants may enter surficial sediments causing elevated levels of contaminants such as grease, oil, trace metals, and organics which are resuspended by dredging and disposal of dredged sediments. It is, therefore, appropriate to assess fees on all locations in coastal waters where dredging occurs. The actual threat to water quality caused by dredging cannot be quantified specifically with existing data. One of the objectives of the BPTCP will be to develop the information which will be the basis for such a determination (e.g., sediment quality objectives).

Comment: Define "discharge of waste" and "dredging operations" (46).

Response: The word "waste" has been deleted since it is not contained in the authorizing legislation and was not needed to clarify this subsection. "Dredging operation" is used in the same sense as the Clean Water Act defines dredging discharge (33 U.S.C. Section 1344).

COMMENTS RELATED TO THREAT TO WATER QUALITY

Comment: The proposed regulations lump discharges into categories with no distinction as to the toxicity threat of the individual discharge (2, 12, 15, 32, 33, 36, 37, 41, 44, 46, 47, 48, 51, 52, 54, 64, 67). Fees should be based on the monitoring records of the Regional Boards including effluent quality and quantity, history of discharge violations, and the potential for bioaccumulation of pollutants in the receiving waters (3, 7, 12, 20, 43, 46, 50, 55). Regulations should take into account quality versus quantity of discharge (11, 14, 25, 39, 44, 53, 63, 71). The State Board needs to have a provision for future revision of the fee system based on relative threat to water quality if a discharger is contributing more (or less) to the toxicity problem than others (2, 33, 36, 55, 62). The threat and complexity ranking does not reflect the quality of the discharge (31, 37, 57, 60). Fees should be proportional to discharger contribution. The proposed regulations must make provision for apportionment of fees to reflect relative contribution of discharge (31, 47, 60). Fees for individual agricultural dischargers should eventually be weighed according to the quality and/or toxicity of drainage discharges, rather than acreage (36, 55). Adjust fees according to the potential for ecological damage posed by each discharge. This would result in the fees being weighed to penalize heavy polluters and reward those who pollute less (36, 63).

Response: After consideration of these comments, the proposed regulations were modified to include a statement that the State Board will review the regulations as new information is generated. Data are presently unavailable to base the fees on a quantitative assessment of discharge and quality of discharge. Existing monitoring information is of little use for this purpose because it is not directly comparable, and varies temporally and spatially.

As a result of the BPTCP, data for sediment quality assessment and the identification of toxic hot spots will be generated. A few of the factors which would need to be considered include toxicity test species, chemical concentrations, community measures of effects, pollutant loads, pollutant sources type, salinity, sediment size, etc. This information will be very helpful in determining the quality of the receiving environment. Additionally, it is anticipated that data for the identification and remediation of contaminated sites will become available. The information generated from the collection and analysis of surveillance data will better enable the State Board to evaluate the threat and complexity of a discharge. In anticipation of this new information, the State Board should reevaluate the fee schedules regularly.

Comment: The State Board should charge one overall fee to fund all programs that are commensurate with all the services provided to the discharger by the State and Regional Boards (20, 28, 57).

Response: Although consolidating fees may offer advantages, current law does not empower the State Board to do so. Water Code Section 13396.5 mandates that the State Board promulgate an annual fee schedule which shall finance the Bay Protection and Toxic Hot Spots Program activities; such fees may not support other regulatory programs. Consequently, the commenters' recommendation exceeds the scope of this rulemaking. The California Legislature, not the State Board, must act to consolidate fees or to change the funding mechanisms for the State Board's programs.

Comment: The fee schedule should distinguish between bay/estuary discharges and ocean discharges since the relative environmental impact is generally less with ocean discharges (31, 37, 60).

Response: After consideration of this comment, no changes were made to the proposed regulations. The legislation states that fees shall be assessed on dischargers to bays, estuaries, or the ocean. The Regional Boards have determined each discharger's threat to water quality and complexity. These ratings can be compared directly with one another.

Comment: The State Board should instruct Regional Boards to reclassify their dischargers for the purposes of this program with a statewide perspective in mind or develop a sample procedure for ranking dischargers that would be consistent along the entire coast (37, 65).

Response: After consideration of the comment, no changes were made to the proposed regulations. The fee system will result in additional data that may eventually be used to restructure the various categories. However, the Regional Boards have provided their best estimates of threat to water quality of the various dischargers.

Comment: Dewatering operations should be exempt from fees as they do not present any significant relative threat to water quality (Water Code Section 13396.5(d)) (38).

Response: After consideration of the comment, no changes were made to the proposed regulations. All activities that are permitted by the Regional Boards are assigned a rating based on the threat and complexity of the discharge. If an activity receives a low (e.g. III-c) rating, it is considered to be of relatively low threat. Consequently, if a dewatering operation receives a high rating (e.g., I-a), it is perceived to be of greater threat by the Regional Board and will therefore be subject to a higher fee. There is no basis for exempting dewatering operations.

If a Regional Board issues a Waste Discharge Requirement (WDR) for this type of operation then it must pose some threat to water quality.

Comment: The fee schedule classifications (threat to water quality and complexity) should be consistent between similar businesses within the State (43).

Response: After consideration of this comment, no changes were made to the proposed regulations. Depending on the nature of the discharge and the quality of the receiving water, similar businesses do not necessarily have similar threat and complexity ratings and, therefore, are subject to fees based on individual characteristics. The Regional Boards have made a determination of threat and complexity on each discharge that has a WDR or NPDES permit.

Comment: Threat and complexity ratings were not intended for use in assessing fees (61).

Response: After consideration of this comment, no changes were made to the proposed regulations. The threat and complexity ratings have been used in the past to assess fees for the WDR/NPDES annual fee process (Title 23, Section 2200, California Code of Regulations). As such, it was inappropriate to create a second set of perhaps conflicting criteria for the purposes of assessing fees. The creation of the BPTCP fee system was achievable in the time available only with the use of the existing rating system that was familiar to dischargers and already used to rank dischargers.

COMMENTS RELATED TO FISCAL IMPACTS

Comment: The fiscal impact statement should address fiscal impacts on local agencies which hold or have multiple NPDES permits (42, 44).

Response: The Fiscal Impact Statement was prepared in accordance with the Administrative Procedures Act (Government Code Sections 11340-11356) and the State Administrative Manual. Information on the total fee to be paid by individual local agencies was not tabulated at the time the cost information was compiled for the Fiscal Impact Statement since only information on aggregate costs to local agencies as a group is required for preparing the Fiscal Impact Statement.

Comment: The fees would provide salaries for additional employees which will be a duplication of effort (i.e., U.S. Environmental Protection Agency (EPA)). Funds generated would not be at the disposal of the businesses targeted (6).

Response: The fee program is not a duplication of any other program, and monies generated will be used exclusively to fund the BPTCP activities. The fees do not duplicate any EPA program. It is correct that the fees are not at the disposal of the targeted businesses. The Legislature has directed the State and Regional Boards to implement the BPTCP (Sections 13390 through 13396.5 of the Water Code). The law provides no local assistance funds.

Comment: The proposed regulations would increase the cost of doing business (and ultimately the fee will be passed on to the public) (6, 26, 29).

Response: This is a true statement. The Legislature determined it is appropriate for the affected dischargers as a cost of doing business to be subject to these fees.

Comment: The cumulative impact of all environmental fees and expenses is too much of a financial burden (8, 11, 13, 14, 18, 26, 28, 29, 48, 68).

Response: After consideration of this comment, it was determined that this issue cannot be addressed as part of the Rulemaking Process to implement Water Code Section 13396.5.

Comment: The proposed fees constitute hidden taxes (9, 14, 40, 49, 51, 52, 53). The proposed fees constitute impermissible State taxes against the Federal government.

Response: The fees do not constitute impermissible taxes. The test in distinguishing permissible regulatory fees from impermissible taxes is whether the charges: (a) are in connection with regulatory activities, (b) do not exceed the reasonable cost of providing services necessary to the activity for which the fees are charged, and (c) are not levied for unrelated revenue purposes. Pennell v. City of San Jose, 42 Cal. App 3d 656, 659, 166 CalRptr. 647, 678. With respect to the Federal facilities, the appropriate test is set forth, in Massachusetts v. United States (1978), 435 U.W. 444, 466-677, 98 S.Ct. 1153, 1167:

1. Is the charge non-discriminatory?
2. Is the charge a fair approximation of the value of the benefits received?
3. Is the charge excessive in relation to the cost to the government of the benefits conferred? Is it structured to produce revenue?

In response to both comments, the subject fees are reasonable service charges because the revenue from the fees are used to directly support the activities needed to administer the BPTCP. The proposed fee schedule qualifies as a reasonable service charge for the following reasons:

1. Nondiscriminatory application. As proposed, the schedule of annual fees does not discriminate between dischargers who are similarly situated. In particular, discharges associated with Federal facilities or activities are subject to the same fees assessed non-Federal government entities.

2. Fair approximation of the benefits received. Facilities which are regulated by NPDES permits or WDRs are given the privilege of discharging wastes which could affect the quality of the waters of the State. As a condition of this privilege, all regulated dischargers are subject to direct regulation by the State and Regional Boards. The California Legislature has deemed that dischargers should support the programs of the State and Regional Boards by paying annual fees to support the BPTCP.

The fees are based on the relative threat to water quality and the complexity of the discharge as defined in Title 23, Section 2200, CCR. The funds which are received will be deposited in the BPTCP Fund. This fund will be used exclusively to fund activities within the BPTC Program of the State and Regional Boards. The fund will not be used for any other purpose. Activities which are authorized to be funded by the annual fees include the development of sediment quality objectives, regional monitoring, and development of toxic hot spot cleanup plans.

3. Charges do not exceed the total cost to government to supply the benefit. The annual fees will recover the resources expended in the State and Regional Boards' BPTCP. Fees assessed pursuant to the proposed regulations will recover approximately 100 percent of the total cost of the BPTCP. The fees do not exceed the total cost to the State to provide the benefits and are not excessive to the costs of the State and Regional Boards. Additional federal grants have also been solicited to support program activities.

Comment: Federal agencies are not required to pay these fees because Federal immunity to State fees has not been waived as to Agency dredging activities (49).

Response: Generally, Federal agencies are required to pay all state-imposed reasonable service charges in connection with the discharge of pollutants, pursuant to 33 U.S.C. Section 1323(a) (also referred to as Section 313(a)). This provision is regarded as waiving Federal immunity for all Federal dischargers. Accordingly, the State Board consistently regards the waiver of immunity as applying to all Federal facilities subject to NPDES and WDRs, including the Army Corps of Engineers (Corps) discharges of waste.

The Corps (40) asserts that Section 313(a) does not apply to its dredging activities. Instead, according to the Corps, Section 404(t) of the Clean Water Act (33 U.S.C. Section 1344(t)) is the specific, exclusive waiver of Federal immunity applicable to dredge material discharges, and since it does not explicitly authorize payment of such fees, the Corps need not pay them. Section 404(t) reads as follows:

"Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including activity of any Federal

agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation."

Section 404(t) must be read in conjunction with Section 313(a). Section 313(a) unequivocally applies to all Federal agencies. It does not exempt any Federal agency. Furthermore, Section 404(t) cannot reasonably be construed as exempting the Corps or any other Federal agency from the requirements of Section 313(a). The Corps cites no authority to the contrary. Absent such authority, it must be concluded that the Corps' discharges--like all other federal waste discharges--are subject to reasonable State fees.

Comment: Many State agencies charge fees for particular types of operations that are duplicative. These duplicative fees should be eliminated (9, 44).

Response: After consideration of this comment, no changes were made to the proposed regulations because there is no duplication of the BPTCP fee system with any other fee (including NPDES/WDR annual fees).

Comment: The fees are too high and penalize the discharger (11).

Response: After consideration of the comment, no changes were made to the proposed regulations. The fees were structured to be as fair as possible. While the law allowed collection of up to \$30,000 per discharger (i.e., permitted discharge), the maximum proposed fee in most cases is \$22,000 (the only exception is maintenance dredging operations of 300,000 cubic yards or greater discharging to Water Quality Limited Segments (Section 303(d))).

Comment: A dischargers' ability to pay should be considered by the State Board (12, 13, 14, 20, 25, 48, 51, 52).

Response: After consideration of the comment, no changes were made to the proposed regulations. A discharger's potential ability to pay is extremely difficult to quantify and inappropriate as a qualification for paying a fee. The legislation is based on the premise that each discharger that could affect the quality of coastal waters should pay an appropriate fee as a condition of discharge, regardless of ability to pay. The proposed regulation does likewise.

Comment: Some dischargers object to fees being charged under more than one category in the proposed regulations (12, 50, 51, 67, 68).

Response: After consideration of this comment, no changes were made to the proposed regulations. We do not believe that there is any duplication or inappropriate multiplication of fees. Dischargers who are in multiple categories are assessed fees for each of their separate discharges into bays, estuaries, or the ocean.

- Comment: The proposed fees appear to be a mechanism to generate income and not to prevent environmental threats (13, 26).
- Response: The proposed regulations are intended to generate revenue to support the BPTCP activities. As part of the program, the State Board will develop strategies to prevent the creation of toxic hot spots.
- Comment: A disproportionate share of program funding appears to be going to program administration instead of characterizing and cleanup of toxic hot spots (20, 57).
- Response: After consideration of this comment, no changes were made to the proposed fee system. Overall program administration accounts for a small percentage of the program activities. The remainder of the funds are to be used for the development of sediment quality objectives, implementation of regional monitoring programs and planning for the remediation of toxic hot spots.
- Comment: Payment of the proposed fees will ultimately affect housing costs (23).
- Response: After consideration of this comment, no changes were made to the proposed regulations. Housing costs will not be directly affected.
- Comment: Small businesses and small agencies should be exempt from the proposed regulations (26, 53, 63, 67).
- Response: After consideration of this comment, no changes were made to the proposed regulations. While many small businesses and small agencies will not be exempted from the proposed fee system, every effort was made to lessen the burden and assess relatively low fees on small business. Regulations implementing Division 7 of the Water Code do not create a responsible mandate and as such local agencies are subject to them. De minimus dischargers will pay no fee.
- Comment: It would not be in the best interest of the BPTCP to develop a fee structure which is seen as punitive (34).
- Response: State Board staff believes that the fee system is not punitive, but rather the proposed fees are a legislatively-mandated program to generate funds for the BPTCP to be paid by dischargers. Additionally, the fee structure was created to be as equitable as possible for dischargers within the constraints of Water Code Section 13396.5.
- Comment: State agencies should not charge other State agencies fees (51).
- Response: After consideration of these comments, changes were made to the proposed regulations. The aggregate fiscal impact on State agencies by this fee proposal is minimal (less than \$50,000 per year). If a State agency has a permitted discharge, it should pay a fee under this program. However, we have added a provision that exempts research and educational facilities with relatively low threat to

water quality because those facilities will provide services to the State Board to implement the BPTCP.

Comment: The State Board should establish a broader-based fee system that spreads the cost to all people in the State who affect water quality (57).

Response: After consideration of the comment, no changes were made to the proposed regulations. The fees are structured using the requirements set forth in Section 13396.5 of the Water Code. This proposed alternative is beyond the scope of the Water Code and would constitute a tax.

Comment: The State Board should establish or have a separate list of super-large dischargers that would pay \$30,000 (64).

Response: After consideration of this comment, no changes were made to the proposed regulations. Size alone should not be the determining factor in establishing fees to support the BPTCP. Consideration should also be given to effluent quality and receiving water quality. When establishing a discharger's "threat to water quality", Regional Boards take into account discharge volume, effluent quality and receiving water quality.

COMMENTS RELATED TO POLLUTANT SOURCES

Comment: The intent of the legislation (SB 1845) is to have the fee system applicable to point and nonpoint dischargers as well as direct and indirect dischargers (54).

Response: After consideration of this comment, no changes were made to the proposed regulations. The legislation states that the fee system is applicable to point and nonpoint dischargers, it does not specifically refer to direct or indirect dischargers.

COMMENTS RELATED TO SECTION 303(d) SURCHARGE

Comment: The Section 303(d) (33 U.S.C. §1313) surcharge should be based on the discharger's contribution and location with respect to the water quality problem(s) (42, 46, 54).

Response: After consideration of this comment, no changes were made to the proposed regulations. While we acknowledge the situation described, any additional contribution of pollutants could add to the existing water quality problems. Any additional environmental stress could drastically affect the water body condition.

COMMENTS RELATED TO AGRICULTURE

Comment: Amend present proposal to allow Delta agriculture dischargers to band together (form umbrella entities to pay fees as a group) (2, 36, 55). Regional entities should be required to demonstrate adequate legal authority to charge fees from its members and be accountable for the collective discharge (36, 55, 71). The proposed fee structure for agricultural nonpoint source discharges is weighted to favor the

creation of larger, regional entities for purposes of paying discharge fees. This incentive is consistent with the requirement in the recently-adopted Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries that agricultural dischargers identify or form drainage entities as part of the implementation plan for meeting water quality standards (36, 62). Clarification is needed in the proposed regulations as to whether the fees would be paid by a landowner/farmer or by the water agencies (45).

Response: After consideration of this comment, the proposed regulations were modified to give agricultural dischargers the option of forming regional entities to pay the BPTCP fees. The proposal was modified to include two requirements the regional entity must meet. The requirements are: (1) the entity shall be the same entity required by California Enclosed Bays and Estuaries Plan, Chapter III, Section I (State Board Resolution 91-33; Water Code Section 13391), and (2) the entity shall demonstrate legal, managerial and institutional ability to pay the fee.

Comment: An alternative course for agricultural dischargers should be developed under a small business impact statement by using provisions of Inland Surface Waters Plan (15).

Response: After consideration of this comment, no changes were made to the proposed regulations. The program for regulating discharges from agricultural practices is contained in both the Inland Surface Waters Plan and the California Enclosed Bays and Estuaries Plan. Neither plan contains any provision to collect fees to support the BPTCP. Therefore, using these plans' provisions as a basis for fee collection is inappropriate.

Comment: Agricultural dischargers should be exempt because relative threat to water quality cannot be defined for these dischargers (15).

Response: After consideration of this comment, no changes were made to the proposed regulations. Dischargers of agricultural waste contribute metals and organic chemicals to enclosed bays, estuaries, and coastal waters. It is reasonable to assume that discharges from agricultural land are proportional to the area drained. Information on site-specific discharges of pollutants is generally unavailable.

Comment: The word "waste" must be deleted from the proposed Sections 2236(a) and 2236(c)(2) since agricultural drainage is not a "waste" (45, 55).

Response: After consideration of this comment, the proposed regulations were revised to remove "waste" from the identified sections. However, Section 13050(d) of the Porter-Cologne Water Quality Control Act defines "waste". It has been determined by the California Attorney General that drainage from agricultural operations is a "waste". (27 Ops. Cal. Atty. Gen. 192) The reference to "waste" was deleted from Sections 2236(a) and 2236(c)(2) because it is necessary to clarify the meaning of Water Code Section 13396.5.

Comment: Non-irrigated agricultural land should be exempted from the fee system (57).

Response: After consideration of this comment, the regulations were modified to apply to only irrigated acres drained. No drainage and, therefore, no discharge is expected from non-irrigated land other than stormwater runoff.

COMMENTS RELATED TO MARINAS AND BOAT YARDS

Comment: Underwater hull-cleaning operations should be charged a fee (8).

Response: After consideration of this comment, the regulations were modified to add hull-cleaning operations. We agree that underwater hull-cleaning operations have the potential to cause water quality problems.

Comment: Marine service stations are not included in the fee schedule (8).

Response: After consideration of this comment, no changes were made to the proposed regulations. The commenter is correct, marine service stations are not included in the fee proposal. The fee assessed on marinas covers this source of pollution.

COMMENTS RELATED TO STORMWATER DISCHARGES

Comment: Clarify Section 2236(c)(1) so that entities which are participants in an area-wide program are not required to pay individual fees in addition to the area-wide fee (22).

Response: After consideration of this comment, changes were made in the proposed regulations. Section 2236(c)(1) was modified to make clear that if an area-wide stormwater permit has been issued, only one fee is required.

Comment: Section 2236(c) could be misinterpreted as excluding municipal owners of municipal stormwater systems from having any fee obligations (42).

Response: After consideration of this comment, no changes were made to the proposed regulations. "Municipal owners of municipal storm water systems" are included in the fee system. Section 2236(c)(1) of the proposed regulations include the fee schedule for municipalities which operate stormwater permits.

Comment: Add municipal combined sewer overflow systems in the municipal storm drain system category (42).

Response: After consideration of this comment, no changes were made to the proposed regulations. Operators of combined sewer overflow systems discharge both treated sewage and stormwater from an outfall. For the purposes of the BPTCP fee program, this type of discharger will pay a fee under Section 2236(b) of the proposed regulations for the sewage NPDES treatment plant discharge and, if permitted separately, will pay a fee under Section 2236(c)(1) for the stormwater portion of the discharge.

COMMENTS RELATED TO FEE APPLICABILITY

Comment: The proposed fees appear to apply only to "direct" discharges (20, 25, 27, 30, 53, 54, 55, 57). Upstream dischargers into major tributaries should ultimately be included in the structure (62).

Response: After consideration of this comment, no changes were made to the proposed regulations. The commenters are correct: the proposed fee program applies only to direct discharges into bays, estuaries, or the ocean. Water Code Section 13396.5 states that the fee will be applicable to "all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent water in the contiguous zone or the ocean" The law does not refer to water bodies other than those specifically listed. The State Board has added the word "directly" to interpret and clarify the law.

Comment: Boundary distinctions within categories are unclear (20).

Response: The Regional Boards will determine which facilities discharge directly into each water body covered by the program. A determination will be made for each facility on a case-by-case basis.

Comment: The commenter supports the proposed regulations applying to dischargers who discharge directly into enclosed bays, estuaries or the ocean (45).

Response: No response is necessary.

GENERAL COMMENTS

Comment: Agrees with concept of annual fees to support the BPTCP (4, 5, 16, 23, 36, 62).

Response: No response is necessary.

Comment: Annual fees should not be charged, or at least only a minimum fee should be charged, to dischargers that already have programs to control, manage, and clean up toxic and other pollutants from their affected waters (5, 49, 58, 68).

Response: The businesses and local agencies that have toxic cleanup programs in place are to be commended. However, the Legislature has established (Water Code Section 13396.5) that the fees should be assessed on all point and nonpoint dischargers. This has been interpreted to mean all point and nonpoint dischargers regardless of the treatment or cleanup measures already implemented.

Comment: Population information provided by the North Coast Regional Board for the City of Fort Bragg is incorrect and needs to be corrected since it is a criteria used to determine stormwater fees (7).

Response: This inaccuracy has been corrected.

Comment: The proposed fees were perceived as a disincentive for pollution control (12, 25, 48, 51, 52).

Response: After consideration of this comment, no changes were made to the proposed regulations. State Board staff does not believe that the fees act as a disincentive to pollution control. On the contrary, the fees will be used to fund a program that will increase our knowledge of toxic hot spots, develop sediment quality objectives, and plan for the remediation of toxic hot spots.

Comment: The proposed regulations lack a mechanism whereby a fee payer is allowed an administrative or judicial appeal process to object to a proposed fee (14).

Response: After consideration of this comment, no changes were made to the proposed regulations. Water Code Section 13396.5 does not provide for an appeal mechanism. A discharger will have an opportunity to contest the fee in an enforcement proceeding brought by the State or Regional Board pursuant to Water Code Section 13261.

Comment: Procedures should be instituted to pursue all unpaid billings (16).

Response: After consideration of this comment, no changes were made to the proposed regulations. Section 2236(f) of the proposed regulation provides that enforcement is available through the Administrative Civil Liabilities complaint process. The State Board has developed a fee billing system which will track the status of billings and payments and report on those who have not paid their fee. It is anticipated that procedures will be developed to pursue unpaid billings similar to those used for the WDR/NPDES annual fees. Nonpayment of fees creates a crime which will be prosecuted to the full extent of the law.

Comment: Public notification of the proposed regulations may have been inadequate (20, 57).

Response: The State Board followed the rulemaking process (Government Code Section 11340-11356) and notified over 5200 interested parties of the proposal at least 45 days in advance of the May 21, 1991 hearing. Additionally, any future State Board meetings will receive notice as required by the rulemaking process.

Comment: Specify that funds collected within a Regional Board's jurisdiction shall be spent on programs which directly benefit that region (22, 36).

Response: After consideration of this comment, no changes were made to the proposed regulations. The program has both statewide and regional mandates, therefore, it is inappropriate to spend all funds collected as suggested.

Comment: The ranking is inconsistent with the objective of creating an incentive to reduce threatening discharges (31, 66).

Response: This comment pertains to the threat to water quality and complexity ranking assigned by the applicable Regional Water Quality Control Board. Since the comment is not directed at the proposed regulations

or the rulemaking procedures followed, no changes were made to the proposed regulations.

Comment: The commenters support the concept of identifying and abating toxic hot spots in the major bays and estuaries of California, but are concerned that the goal of the program will not be achieved due to inadequate funding (33, 34).

Response: The comment is well taken and the BPTCP will have to establish priority ranking of the activities to be undertaken. The State Board is limited by Water Code Section 13396.5 to collecting only \$4,000,000 per year.

Comment: If regulations are revised in the future to assess fees based on pollutant loading, suggest that a retroactive credit for overpayment be made (36, 62).

Response: After consideration of this comment, no changes were made to the proposed regulations. A retroactive credit for past overpayment is not feasible since it would result in refunding money which would have been expended in a prior year. This would mean refunding money from the current fee billing cycle which could greatly reduce the revenue available to operate the BPTCP.

Comment: Point source dischargers account for less pollutant loading than nonpoint, but pay a greater percent of the fees based on the proposed fee structure (37, 54).

Response: This statement is true in some locations of the State. The Water Code (Section 13396.5) imposes a \$30,000 cap on the amount the State Board can charge dischargers. Based on the number of stormwater, agriculture, and small businesses it was impossible to generate the \$4 million necessary to fund the program. Point source dischargers were by far the largest group of dischargers and, therefore, pay the largest fee total.

Comment: The draft regulations should be clarified so only one fee is charged per permittee, irrespective of the number of parties on the discharge permit. If a permit includes other parties in addition to a facility operator, the regulations should clarify that only a single fee will be assessed for the permit and it will be paid by the facility operator. If there are multiple operations, the single fee should be split (38, 54, 66).

Response: After consideration of these comments, no changes were made to the draft regulations. The intent of the proposed regulations is to assess one fee for each permit, or waste discharge requirement regardless of the number of permittees included in the permit. This is true for either an area-wide permit or a permit for a facility which a Regional Board has named parties in addition to a facility operator. Allocation of the fee among the participants in the permit is not addressed in the proposed regulations and is left to the discretion of the parties. If a company or agency is responsible for more than one category of discharge, we interpret the law to apply a fee to each permitted discharge or facility under each category.

Comment: The term "permit" should be clarified in Section 2236(c)(6) (40).

Response: After review of this comment, changes were made to the proposed regulations. The proposed regulations were changed to clarify that the quantity of dredging is the quantity authorized in the Water Quality Certification (33 U.S.C. Section 1341 [CWA Section 401]) issued by the State or Regional Board. For dredging activities greater than 300,000 cubic yards, the permit is defined as the Clean Water Act Section 404 permit (U.S.C. Section 1433).

Comment: The subparagraphs listed in draft Section 2236 appear to jump from subparagraph (c) to subparagraph (e) (40).

Response: The proposed regulations have been revised to correct this error.

Comment: The State Board may not have the authority to impose fees on discharges into the territorial seas. It appears that the Legislature only intended to impose fees on those ocean dischargers who could adversely impact water quality in enclosed bays and estuaries, not all coastal dischargers (42).

Response: After consideration of this comment, no changes were made to the proposed regulations. Water Code Section 13396.5 refers to Section 502 of the federal Clean Water Act to define "any adjacent water in the contiguous zone or the ocean." The Federal Clean Water Act states "The term 'contiguous zone' means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone." Article 24 states "The contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured." (emphasis added.)

Section 502 of the Clean Water Act defines territorial sea as "the belt of the sea measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open seas and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles."

Article 3 of the Convention states "Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low water line along the coast as marked on large-scale charts by the coastal State." (emphasis added.)

Based on the information contained in the Clean Water Act and the Convention, the contiguous zone includes the territorial seas.

Comment: Annual progress and expenditure reports should be prepared and submitted to the Legislature and noticed as available to the public (44).

Response: After consideration of this comment, no changes were made to the proposed regulations. The purpose of the proposed regulations is to implement, interpret, and make specific Section 13396.5 of the Water Code. This Section requires the preparation and distribution of a progress and expenditure report, as required in the budget process.

Chapter 5.6 of the Water Code specifies various products to be prepared and due dates for submittal to the Legislature. Section 13394.5 requires an annual expenditure plan to be prepared. These documents will be available to the public upon request.

Comment: The commenter recommends that Section 2236(g) of the regulation be amended as follows (45):

"(g) any person failing to pay the fee established under this Section when so requested by the State Board may be liable civilly in accordance with Subdivision (d) of Section 13261 of the Water Code."

Response: The proposed regulations were revised to incorporate the suggested change. This change will clarify the State Board's intent. We anticipate that additional dischargers will be identified after the fee system is implemented and bills are issued. Some of these will be dischargers which should have paid a fee initially. We do not intend to bill "in arrears", for any period prior to the time the discharger is identified as being subject to the fee program.

Comment: Many commenters were opposed to proposed schedule of fees/fee system in concept (3, 6, 9, 12, 13, 14, 17, 18, 29, 48, 53).

Response: After consideration of this comment, no changes were made to the proposed regulations. The State Board is implementing the requirements of Water Code Section 13396.5. The State Board has strived to minimize impacts on all types of dischargers.

Comment: Some organizations are performing exactly the same activities as this program and should not pay a fee (58, 68).

Response: After consideration of this comment, no change was made to the proposed regulations. To our knowledge, no program in Federal or State government duplicates the BPTCP. Notwithstanding any program overlaps, all discharges to coastal waters are required by the Water Code (Section 13396.5) to pay the annual fee.

Comment: Once-through cooling water poses a very low relative threat since nothing is added but a small amount of heat (66).

Response: This comment relates to the specific threat to water quality and complexity rating which the Regional Boards have assigned. This comment has been referred to the appropriate Regional Board for appropriate action, as this comment did not address specific language of the proposed regulations.

COMMENTS RELATED TO ALTERNATIVES THE PROPOSED REGULATIONS

Comment: Use a flow multiplication factor in the assessment of fees. Some dischargers, based on the nature of their discharge, should have the opportunity to apply for an exemption (35, 57).

Response: After consideration of the comment, no changes were made to the proposed regulations. The law (Section 13396.5) states that all point and nonpoint dischargers who discharge into enclosed bays,

estuaries, or the ocean shall pay a fee. Several commenters have requested exemptions for their individual discharge or for their class of dischargers, such as marinas or maintenance dredging. Most of these have been denied.

State Board staff has proposed an exemption for educational institutions rated III-c which use marine water to maintain living organisms for educational and research purposes. These dischargers pose a de minimus impact on beneficial uses.

This group represents a very limited number of dischargers and will not affect the amount of revenue generated by the fee program. Other than this group, we do not believe an exemption process is appropriate or justified under the proposed regulations. There is no basis for determining which dischargers or groups of dischargers would receive exemptions.

Comment: The proposal does not adequately reward those dischargers who adopt effective pollution control techniques (36).

Response: After consideration of this comment, no changes were made to the proposed regulations. To incorporate this change, the State Board would need to specify parameters, or possibly performance standards, in the proposed regulations which would be the basis for determining effective pollution control or pollution reduction techniques and the amount of credit received. While State Board staff believes the idea is valid, the type of data necessary to develop the required standards does not exist at this time. Considering the law which authorizes the fee system will become inoperative in January 1994, State Board staff does not believe there will be sufficient time to develop the data and revise the regulations to incorporate this type of pollution reduction incentive program.

COMMENTS NOT RELATED TO THE PROPOSED REGULATIONS

The following comments were received concerning the BPTCP. Because these comments are not directed to either the proposed regulations or the rulemaking procedures followed, they have been referred to the appropriate State Board Unit for action. No changes were made to the proposed regulations.

Comment: Recommend that the program focus first on the most severe problems. This might be done by using the 1990 Water Quality Assessment as the basis for implementation (33).

Comment: Would like input into the BPTCP program so that a duplication of effort does not occur with research studies they are conducting (34).

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REFERENCES

- National Research Council. 1985. Dredging Coastal Ports: An Assessment of the Issues. National Academy Press, Washington, D.C. pp. 217.
- State Board. 1991a. California Enclosed Bays and Estuaries Plan (Water Quality Control Plan for the Enclosed Bays and Estuaries of California). State Board Resolution No. 91-33. (Report No. 91-12).
- State Board. 1991b. California Inland Surface Waters Plan (Water Quality Control Plan for the Inland Surface Water of California). State Board Resolution No. 91-33 (Report No. 91-13).
- State Water Resources Control Board. 1991c. Proposed Regulations, Initial Statement of Reasons, and Fiscal Impact Statement for the BPTCP Annual Fees. Dated March 25, 1991.

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TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 6,
SECTION 2236, CALIFORNIA CODE OF REGULATIONS

REVISED LANGUAGE SHOWN AS DOUBLE UNDERLINED AND ~~STRIKE OUT~~.

2236. Bay Protection and Toxic Cleanup Annual Fees

- (a) All point and nonpoint dischargers who discharge ~~waste~~ directly into enclosed bays, as defined in Water Code Section 13391.5(a), estuaries, as defined in Water Code Section 13391.5(b), or adjacent waters in the contiguous zone or the ocean, as defined in Section 502 of the Federal Clean Water Act (33 U.S.C. Sec. 1362), shall be subject to an annual fee pursuant to Section 13396.5 of the Water Code. This fee is in addition to the fees required in Title 23, Section 2200, California Code of Regulations.

- (b) Dischargers for whom National Pollution Discharge Elimination System (NPDES) permits or waste discharge requirements have been prescribed except as noted in Subsection (c) below, who discharge into waters described in Subsection (a), shall be subject to an annual fee in accordance with the following schedule:

BAY PROTECTION AND TOXIC CLEANUP ANNUAL FEE SCHEDULE
NPDES PERMIT AND NON-CHAPTER 15 WASTE DISCHARGE REQUIREMENTS

<u>RATING</u>	<u>FEE</u>
<u>I-a</u>	<u>\$11,000</u>
<u>I-b</u>	<u>\$ 8,000</u>
<u>I-c</u>	<u>\$ 5,000</u>
<u>II-a</u>	<u>\$ 4,000</u>
<u>II-b</u>	<u>\$ 2,000</u>
<u>II-c</u>	<u>\$ 1,000</u>
<u>III-a</u>	<u>\$ 500</u>
<u>III-b</u>	<u>\$ 400</u>
<u>III-c</u>	<u>\$ 300</u>

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- (1) Rating is based on the relative threat of the discharge to water quality and complexity, as defined in Title 23, Section 2200(a)(1)(2), California Code of Regulations.
 - (2) Discharges from public and private educational institutions resulting from the use of seawater to maintain marine organisms for educational and research purposes that are rated III-c, shall be subject to an annual fee of \$0.
- (c) The following categories of dischargers shall pay the amount of fee specified below based on the threat to water quality. This schedule supersedes those set forth in (b) above if a discharger falls under both sections.

- (1) Each county, incorporated city, or entity which operates a municipal storm drain system or NPDES permits for an area-wide urban storm water discharge system which discharges into waters described in Subsection (a) shall be subject to an annual fee based on the population served by the drainage system in accordance with the following schedule:

<u>Population</u>	<u>Fee</u>
<u>Less than 10,000 citizens</u>	<u>\$ 1,000</u>
<u>10,000 to 99,999</u>	<u>\$ 2,500</u>
<u>100,000 to 249,999</u>	<u>\$ 5,000</u>
<u>250,000 and greater</u>	<u>\$10,000</u>

Each county, incorporated city or entity which operates a municipal stormdrain system which is not part of an NPDES permit for an area-wide stormwater discharge shall pay a

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fee based on the population served by the drainage system in accordance with the schedule shown in this paragraph.

- (2) Dischargers of waste from agricultural practices into waters described in Subsection (a) shall be subject to an annual fee based on the number of irrigated acres drained in accordance with the following schedule:

<u>Irrigated Acres</u>	<u>Fee</u>
<u>Less than 100 acres</u>	<u>0</u>
<u>100 to 999 acres</u>	<u>\$ 500</u>
<u>1,000 to 9,999 acres</u>	<u>\$ 1,500</u>
<u>10,000 acres and greater to 50,000</u>	<u>\$ 5,000</u>

Owners, operators, or representatives of more than 50,000 irrigated acres shall pay \$5,000 for the first 50,000 acres and \$0.10 for each additional acre.

- A. Annual fees for discharges from agricultural practices may be paid by regional entities. Regional entities must meet the following requirements:

- i. The regional entity shall be the same group created to comply with Chapter III, Section I, of the California Enclosed Bays and Estuaries Plan.
- ii. The regional entity shall demonstrate legal, institutional and managerial capability to pay annual fees for member growers.

B. If regional entities have not been identified to the State Board the fees shall be assessed on individual agricultural discharges.

(3) Each boat construction facility or repair facility or hull cleaning operation which discharges is located on or adjacent to waters described in Subsection (a) shall be subject to an annual fee of \$300.

(4) Each operator of a boat marina or other recreational vessel launching or docking facility which discharges to waters described in Subsection (a) with a capacity of 200 or more vessels shall be subject to an annual fee based on number of vessel slips or moorings, in accordance with the following schedule:

<u>Slips/Moorings</u>	<u>Fee</u>
<u>Less than 300 slips/moorings</u>	<u>\$ 0</u>
<u>300 to 499</u>	<u>\$ 300</u>
<u>500 to 999</u>	<u>\$ 500</u>
<u>1000 and greater</u>	<u>\$ 1,000</u>

(5) Each harbor or port which is facility which discharges to waters described in Subsection (a) and which is used for commercial shipping purposes shall be subject to an annual fee of \$5,000.

(6) Each dredging operation in waters described in Subsection (a) for which a Water Quality Certification (33 U.S.C. Section 1341) has been issued by the State Water Resources Control Board bays, estuaries, or the ocean shall be

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subject to a fee based on the cubic yards of dredge material authorized in the Water Quality Certification permit, in accordance with the following schedule:

<u>Less than 1,000 cubic yards</u>	<u>\$11110</u>
<u>1,000 to 10,000</u>	<u>\$ 1,000</u>
<u>10,001 to 30,000</u>	<u>\$ 5,000</u>
<u>30,001 and greater</u>	<u>\$10,000</u>

<u>Cubic Yards Authorized in Certification</u>	<u>Maintenance Dredging</u>	<u>New Dredging</u>	<u>Beach Replenishment</u>
<u>Less than 30,000</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>
<u>30,000 - 99,999</u>	<u>\$ 1,500</u>	<u>\$ 1,000</u>	<u>\$ 0</u>
<u>100,000 - 299,999</u>	<u>\$ 4,500</u>	<u>\$ 3,000</u>	<u>\$1,000</u>
<u>300,000 and greater</u>	<u>\$15,000</u>	<u>\$10,000</u>	<u>\$3,000</u>

If the dredging quantity stated in the Water Quality Certification is less than the amount of the Section 404 (33 U.S.C. Section 1344) permit, and the permitted volume is greater than 300,000 cubic yards, the fee shall be based on the total permitted volume.

- (d) Point and nonpoint dischargers who discharge into a water body identified described in Subsection (a) which has been identified as a Water Quality Limited Segment in the current "Water Quality Assessment", prepared by the State Board pursuant to Section 303(d) of the Federal Clean Water Act (33 U.S.C. Sect. 1313) shall be subject to a surcharge of 100 percent of the annual fee specified in Subsections (b) or (c). In no case shall the annual fee for these discharger's exceed the statutory maximum specified in Subdivision (d) of Section 13396.5 of the Water Code.
- (e) The State Board shall notify each discharger of the amount of the fee to be submitted, the basis upon which the fee was calculated, and the date upon which the fee is due.

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- (f) Any person failing to pay the fee established under this Section, when so requested by the State Board, may be liable civilly in accordance with Subdivision (d) of Section 13261 of the Water Code.
- (g) In the event the amount collected under this Section exceeds the maximum allowed by Subdivision (b) of Section 13396.5 of the Water Code, an amount equal to the over collection will be credited against the next year's fees. ~~This deduction~~ The amount of the over collection will be prorated ~~to~~ among dischargers who submitted the full amount of the fees by the date specified pursuant to Subsection (e) of this Section. The ~~deduction to~~ prorated amount shall be reduced from the next year's fee, ~~shall be~~ based on the following equation:
- $$\text{Excess Collected} \times \frac{\text{Fee Paid}}{\frac{\text{Total of All Fees Paid by Dischargers who Made Full and Timely Payments}}{\text{Total of All Fees Paid by Dischargers who Made Full and Timely Payments}}} = \text{Reduction Amount}$$
- (h) Any new discharger identified as being subject to this section shall pay a fee based on the amount specified with the fee schedules in Subsections (b) or (c) prorated for the number of months remaining in the billing cycle.
- (i) The annual fees in Subsection (b) and (c) shall be reviewed by the State Board regularly, but in no case less than once every three years. The annual fees may be adjusted on the basis of monitoring

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information collected as a part of the Bay Protection and Toxic
Cleanup Program and information from any other programs deemed
appropriate.

NOTE: Authority cited: Section 1058, Water Code.

Reference: Sections 13396.5(a), 13396.5(b), 13396.5(d), 13396.5(e), Water Code.

DRAFT
FINAL STATEMENT OF REASONSTITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 6,
SECTION 2236, CALIFORNIA CODE OF REGULATIONS

BAY PROTECTION AND TOXIC CLEANUP ANNUAL FEES

Problem

The State Board established the Bay Protection and Toxic Cleanup Program (BPTCP) in response to legislation enacted in 1989 (Chapter 269; SB 475 Torres) which added Chapter 5.6, Sections 13390 through 13396, to the California Water Code. The Water Code requires the State Water Resources Control Board (State Board) and Regional Water Quality Control Boards (Regional Boards) to do the following to attain the goals of the BPTCP:

1. Develop and maintain a program to identify toxic hot spots, plan for their cleanup or mitigation, and amend water quality control plans and policies to abate toxic hot spots;
2. Formulate and adopt a water quality control plan for enclosed bays and estuaries;
3. Review and, if necessary, revise waste discharge requirements to conform to the plan;
4. Develop a database of toxic hot spots;
5. Develop an ongoing monitoring and surveillance program;
6. Develop sediment quality objectives;
7. Develop criteria for the assessment and priority ranking of toxic hot spots; and
8. Submit to the Legislature, as part of the annual budget process, an annual expenditure plan for the implementation of the BPTCP.

To provide continued funding for the BPTCP, legislation signed in 1990 (Chapter 1294; SB 1845 Torres) added Section 13396.5 to the Water Code. This section requires the State Board to establish fees beginning in FY 1991-92 and continuing into 1994 to fund the bay protection responsibilities contained in Chapter 5.6 of the Water Code. The program was funded in FY 1989-90 and FY 1990-91 by \$5 million from the Hazardous Waste Control Account.

Purpose

The specific purpose of creating Title 23, Division 3, Chapter 9, Article 6, Section 2236 of the California Code of Regulations is to implement an annual fee system which will assess fees to all point and nonpoint dischargers who discharge directly into bays, estuaries, or the ocean. The intent is to create a fee system that will equitably split the costs of the program among point and nonpoint dischargers to the waterbodies affected by the program.

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Draft Final Statement of Reasons

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Rationale

Section 13396.5 of the California Water Code requires the State Board to establish fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, and the ocean to be collected annually. The Legislature also required the State Board to establish a fee schedule to be set at an amount sufficient to fund the responsibilities and duties noted above, not to exceed \$4 million per year.

The State Board has prepared a proposed fee schedule that it believes equitably distributes the cost of the Bay Protection and Toxic Cleanup Program among the point and nonpoint dischargers who could directly impact enclosed bays, estuaries, and the ocean. It is proposed that approximately \$5 million be billed in order to receive \$4 million in revenue. A 25 percent rate of nonpayment is anticipated.

Section 502(14) of the Federal Clean Water Act (33 U.S.C. Section 1362(14)) defines "point source" to mean "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, weir, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture." The main nonpoint dischargers that will be assessed a fee are discharges from agricultural practices.

Section 2236(a)

This section describes the applicable waterbodies affected by the proposed regulations. This is necessary to state clearly which waterbodies (and therefore associated dischargers) are covered by the fee system. This section specifically excludes the term rivers which flow into bays, estuaries, or the ocean. When read in context with the entire text of Section 13390 through 13396, this section of the regulations helps clarify which dischargers will pay fees. The fees shall apply only to dischargers which discharge directly into the subject water body with no intervening conveyance system. This Section also states that the fees required under Section 2236 are in addition to the fees required by Title 23, Section 2200, California Code of Regulations.

Section 2236(b)

This section is the proposed fee schedule for most dischargers for whom National Pollutant Discharge Elimination System (NPDES) permits or Waste Discharge Requirements (WDR) have been prescribed. Some categories of fee payers, such as storm drain operators and boat yards, include dischargers both with and without an NPDES permit or WDR. Because of this fact, the regulations need to delineate clearly under which subsection a discharger will pay a fee. To accomplish this, Section 2236(b) stipulates that a discharger with an NPDES permit or WDR pays a fee under that section unless the discharger falls within one of the categories described in Section 2236(c).

The proposed fee schedule in Section 2236(b) is based on the discharge threat to water quality and complexity. The threat to water quality and complexity are determined by the Regional Boards in conformance with definitions contained in

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Title 23, Section 2200, California Code of Regulations. The definitions take into account the volume, the total flow, or the receiving water potentially affected by the discharge, as directed by Section 13260 of the Water Code.

This section also contains a subsection that sets a \$0 fee for public and private educational institutions that use seawater for educational and research purposes.

Section 2236(c)

This section specifies the amount of fee which will be paid by certain types of dischargers. Dischargers from storm drains, agricultural practices, dredging activities, boat yards, marinas and ports have a high potential for creating toxic hot spots. These types of dischargers will pay a fee relative to their estimated threat to water quality whether or not they have a NPDES permit or WDRs.

Factors such as type of waste generated, facility type, effect of discharge on sediment and water quality were considered as the amount of the fees were developed. In addition to these factors, volume, estimated flow and/or size of facility were also used to develop the fee tiers.

Section 2236(c)(1)

This section specifies the amount of fee which will be charged to operators of area-wide urban storm water systems. The amount of the fee is based on the population served by the drainage system thereby reducing the impact of the fee on smaller local government agencies. This type of discharge consists of flows from urban streets and industrial sites into drains. Runoff can contain toxic metals, pesticides residues and other organic substances and is typically not subject to any type of treatment before being discharged into a bay, estuary, or the ocean. The population values used to establish the fee levels are based on the population categories for issuance of stormwater NPDES permits under the Clean Water Act (33 U.S.C. Section 1342(p)). Small communities that are not covered by an area-wide storm water permit will pay a substantially smaller fee. If these cities enter into an area-wide permit within their county, then the overall fee may be less.

Section 2236(c)(2)

This section specifies the amount of fee which will be paid by discharges from agricultural practices. This type of discharge is a nonpoint discharge and is assessed fees pursuant to Section 13396.5 of the California Water Code. When agricultural land is drained, discharge waste from agricultural practices can contribute metals and organic chemicals to enclosed bays and estuaries. The fee level is based on the irrigated acreage drained directly into waterbodies identified in Subsection (a). The fees will be assessed to the party responsible for the agricultural drainage (e.g., individual growers or regional entities).

Regional entities must meet the requirements as set forth in the proposed regulations. These stipulations are: (1) that the regional entity shall be the same group created to comply with Chapter III, Section I, of the California Enclosed Bays and Estuaries Plan, (2) that the regional entity shall demonstrate the capability to pay annual fees for member growers.

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The formation of regional entities should not duplicate any organization that already exists or is planned for regulation for agricultural discharges. Therefore, any regional entities formed should be the same drainage entity required by the provisions of the California Enclosed Bays and Estuaries Plan. This requirement would avoid duplication of already required activities.

Agricultural dischargers are allowed to form larger regional entities but are required to pay \$0.10 for each acre greater than 50,000 acres.

The size of the regional entity is encouraged to be to 50,000 acres for the purposes of the proposed fee schedule because 50,000 acres is approximately the size of the largest reclamation district and would, therefore, be a reasonable size for the purposes of billing and management.

Section 2236(c)(3)

This section specifies the amount of fee which will be paid by boat construction or repair facilities or underwater hull-cleaning operations. Boat yards affect sediment and water quality from heavy metals associated with hull painting operations as well as from runoff and aerial deposition.

Section 2236(c)(4)

This section specifies the amount of fee which will be paid by operators of boat marina facilities. This type of operation could affect water quality through the leaching of copper and other metals from hull paint. Additional pollutants come from contamination associated with boat pump outs.

Section 2236(c)(5)

This section specifies the amount of fee which will be paid by harbors and ports that accommodate commercial shipping. Pollution sources from this type of activity are caused by heavy metals from hull paint leaching and runoff from facilities under the jurisdiction of the commercial harbor.

Section 2236(c)(6)

This section specifies the amount of fee which will be paid by dredging operations. This activity could impact water quality through deposition and resuspension of polluted bottom sediments. The potential effects of dredging or disposal of dredged material on marine waters and sediments can be short-term or long-term. Dredging operations introduce quantities of sediment into the water column adjacent to the dredging operation. This activity can directly alter concentrations of some trace elements in the vicinity of the dredge. In addition to these short-term effects, dredging operations may modify local circulation and sediment transport following changes in channel depth and cross-sectional area. Consequently, toxic hot spots in enclosed bays and estuaries could be affected directly by the dredging activity or indirectly by changing sediment transport characteristics (pollutants in sediments may be distributed to other parts of the waterbody as a result of new circulation patterns).

Dredging will affect benthic organisms resident in a disposal area. Beyond the obvious mortality due to physical burial, the environmental effects of dredged material disposal cannot be clearly assessed. Therefore, concerns about the

environmental fate of moderate or high concentrations of toxic chemicals contained in dredge material exist.

The fee schedule for dredging distinguishes between three categories of dredging that have different degrees of impact on sediment and water quality: maintenance dredging, new dredging and beach replenishment. Maintenance dredging is defined as: dredging that involves the removal of materials as necessary to keep navigational facilities at the originally constructed depths and widths. New dredging is defined as: dredging that normally involves creating new navigational facilities or the improvement of those that exist by underwater excavation (e.g., deepening channels below original design depth). Beach replenishment is defined as dredging of coarse sediment that is not polluted that may have a beneficial use (e.g., creation or maintenance of beaches).

Maintenance dredging projects disturb recently deposited, surficial sediments that frequently have elevated levels of contaminants in these sediments (oil and grease, metals, and synthetic organic compounds). These elevated concentrations lead to concern about effects associated with mobilization, dispersal and biological uptake of the pollutants from resuspension by dredging activities and from disposal of dredged sediments. Deeper sediments are rarely disturbed by maintenance dredging.

New dredging displaces deeper sediments. If these sediments have not been dredged before or have not been influenced by anthropogenic activities in the past, then the chemical composition will most likely differ slightly from background concentrations in the drainage basin. Therefore, disposal of new dredged materials would likely mobilize and disperse less pollutants than maintenance dredging.

Beneficial uses may exist for the dredging of sandy material that is suitable for and utilized for beach replenishment. Beach replenishment activities generally involve the movement of coarse clean sediments for use in maintaining beaches and keeping harbor mouths open. These dredging activities would most likely result in little, if any, dispersal of pollutants than either maintenance or new dredging.

The dredging levels used to establish the fee levels are order of magnitude estimates of the size of dredging projects. Most projects fall into the 30,000 cubic yard to 100,000 cubic yard range. A fee of \$0 is proposed for certifications less than 30,000 cubic yards and for beach replenishment between 30,000 and 100,000 cubic yards.

Section 2236(d)

This section imposes a surcharge of 100 percent of the annual fee specified for point and nonpoint dischargers. This surcharge will be paid by fee payers who discharge into a waterbody which has been identified under Section 303(d) of the Federal Clean Water Act (U.S.C. Section 1313(d)). These waterbodies are identified in the "1990 Water Quality Assessment (WQA)", prepared by the State Board on an annual basis. Waterbodies identified under Section 303(d) represent Water Quality Limited Segments (40 Code of Federal Regulations Part 130.2(j)) where numeric or narrative water quality objectives are not being maintained and/or where beneficial uses are not fully protected after application of Best Available Treatment/Best Control Technology. Designation of a waterbody as a Water Quality Limited Segment means that the waterbody is suffering from

significant degradation caused by various point and nonpoint sources. The purpose of the surcharge is to create incentives for dischargers to improve the discharge thereby improving the quality of the receiving waterbody.

Section 2236(e)

This section requires the State Board to notify dischargers who are subject to BPTCP fees of the amount of the fee to be submitted, the date upon which the fee is due and the basis upon which the fee was determined.

Section 2236(f)

This section provides that the Regional Board may take enforcement action against a discharger who fails to submit a fee, as required by Section 13396.5 of the Water Code.

Section 2236(g)

This section specifies how refunds will be made in the event the amount of fees collected by the State Board exceeds the \$4 million allowed by Section 13396.5(d) of the Water Code. Credits will be made only to dischargers who submit the full amount of the fee by the due date specified by the State Board. The refund will be based on the percentage of the fee paid by the discharger in relation to the total amount of the fees collected for the billing year. The amount of any credit will be shown as a credit on the next billing.

Section 2236(h)

This section deals with the issuance of a new NPDES permit or WDR to a discharger who must pay a fee which does not coincide with the billing cycle of the BPTCP annual fee program. These dischargers will pay a prorated amount for the number of months remaining in the billing cycle.

Section 2236(i)

This section specifies that the annual fees in Subsection (b) and (c) shall be reviewed by the State Board at least once every three years. Based on monitoring information collected as part of the Bay Protection and Toxic Cleanup Program, the fees may be subject to review and modification.

Technical, Theoretical and/or Empirical Study, Report or Documents

California Department of Public Works. 1930. Financial and General Data Pertaining to Irrigation, Reclamation and Other Public Districts in California. Sacramento, California. Bulletin No. 37, 255 pp.

California Department of Water Resources. 1978. General Comparison of Water District Acts. Bulletin 155-77. Sacramento, California. 346 pp.

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State Water Resources Control Board. 1990. 1990 Water Quality Assessment. State Board Resolution No. 90-33. Adopted April 4, 1990. Sacramento, California.

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State Board. 1991. California Inland Surface Waters Plan (Water Quality Control Plan for the Inland Surface Water of California). State Board Resolution No. 91-33 (Report No. 91-13).

Williams-Kuebelbeck & Associates, Inc. 1986. Inventory of California Boating Facilities. Prepared for the California Department of Boating and Waterways. Sacramento, California. 82 pp.

Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact on Affected Private Persons or Small Businesses

The State Board has determined that there are no alternatives which would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulation.

The requirement for fees to be collected from point and nonpoint dischargers will affect small businesses. However, the State Board has reduced the impact on small business by creating exemptions from the fees for dischargers of agricultural waste that are responsible for drainage from less than 100 acres, for marinas or other recreational facilities with fewer than 300 boat slips or moorings, and for dredging activities less than 30,000 cubic yards. The regulations also exempt private research and educational institutions from paying the fees.