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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 1879  
**Author:** Mathis  
**Version:** 4/21/2022  
**Urgency:** No  
**Consultant:** Gabrielle Meindl

**Hearing Date:** 6/29/2022  
**Fiscal:** Yes

**SUBJECT:** California regional water quality control boards: unfounded or frivolous complaints

**DIGEST:** Authorizes a Regional Water Quality Control Board (Regional Water Board) to develop a plan or policy to address unfounded or frivolous complaints.

**ANALYSIS:**

Existing law:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code §1251 et seq.)
- 2) Defines "frivolous" as totally and completely without merit or for the sole purpose of harassing an opposing party. (Code of Civil Procedure § 128.5)
- 3) Defines "unfounded" as that the investigation clearly established that the allegation is not true. (Penal Code § 832.5)
- 4) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Resources Control Board (State Water Board). (Water Code (WC) § 13000 et seq.)
- 5) Delegates to the Regional Water Boards the ability to adopt water quality standards within their region of jurisdiction. (WC § 13240)
- 6) Authorizes a Regional Water Board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement, to investigate the quality of any waters of the state within its region. (WC § 13267)

This bill:

- 1) Authorizes a Regional Water Board to develop a plan or policy to address unfounded or frivolous complaints.
- 2) Defines "frivolous" as the same as defined in Section 128.5 of the Code of Civil Procedure.
- 3) Defines "unfounded" as the same as defined in Section 832.5 of the Penal Code.

### **Background**

- 1) *Federal Clean Water Act (CWA)*. The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the US EPA has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.
- 2) *Regional Water Boards*. There are nine regional water quality control boards statewide. Each Regional Water Board makes water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and taking appropriate enforcement actions.
- 3) *State Water Board enforcement priorities*. The State Water Board's Water Quality Enforcement Policy recommends that the Office of Enforcement propose enforcement priorities and vet them with the Regional Water Board enforcement teams. Some of the enforcement priorities may become statewide enforcement initiatives. The Enforcement Policy also recommends that, on an annual basis, enforcement staff for each Regional Water Board seek input at a regularly noticed public meeting of the Regional Water Board and consider identifying general enforcement priorities based on input from members of the public and Regional Water Board members. According to the policy, enforcement priorities for the State Water Board include:

- a) Prioritize for enforcement water quality violations that impact or threaten drinking water sources, with the highest priority for enforcement and compliance assistance being given to disadvantaged communities or communities with financial hardship;
  - b) Enforce storm water discharge violations with the highest adverse water quality impacts, followed by violations that threaten the integrity of the regulatory program;
  - c) Support irrigated lands regulatory programs with formal enforcement actions aimed at obtaining substantial enrollment and compliance with current regulatory requirements; and,
  - d) Improve enrollment in and compliance with the Cannabis General Order and Small Irrigation Use Registration through formal enforcement (in coordination with other state and local public agencies) for violations associated with illegal cannabis cultivation sites.
- 4) *State Water Board enforcement.* The State Water Board and Regional Water Boards enforce the pollution control and cleanup requirements that are established for discharges and contaminated sites. Where violations of regulatory requirements are detected, enforcement actions of varying types and levels of stringency are taken. For the most serious violations, penalties are often imposed. The State Water Board also collaborates with federal, state, and local law enforcement, as well as other environmental agencies, to address violations. In all cases, the principal goal of enforcement is to encourage compliance with requirements so that water quality is protected. According to the State Water Board during Fiscal Year 2019-2020 there were approximately 3,820 enforcement actions, with approximately \$12 million in penalties assessed.
- 5) *Potential water quality violations.* The author of the bill is concerned about a particular facility in his district that was the subject of an enforcement action by the Regional Water Board. Since that enforcement action was resolved there appears to be a resident who lives near the facility that continues to lodge complaints to the Regional Water Board.

## Comments

- 1) *Purpose of Bill.* According to the author, "AB 1879 would grant California Regional Water Quality Control Boards the authority and discretion to choose not to investigate a complaint if the board determines it is unwarranted, or has been made fraudulently. In providing the regional water quality control boards with the necessary discretion and authority, this measure will save local

businesses and the regional water board time, money and resources which could be better utilized on addressing legitimate problems and improve the state's already scare water supply and usage. AB 1879 balances the need to identify and correct genuine violations, whilst still addressing those individuals or groups which falsely and maliciously file multiple unwarranted, unnecessarily time consuming, and wasteful complaints."

- 2) *Need for the bill is unclear.* The Regional Water Boards receive hundreds of complaints and reports of spills each month from CalEPA's complaint system, Regional Water Board hotlines, the Office of Emergency Services, and direct contacts with staff. Complaints can vary widely from observations of water pollution to complaints that are outside the jurisdiction of the Regional Water Boards such as complaints about another agency's work and complaints involving disputes between property owners. Complaints submitted through CalEPA's complaint system is the most common way that the Regional Water Boards receive complaints.

The Regional Water Boards have discretion to determine when to conduct an investigation based on a complaint and use a triage system to prioritize complaints for further action. Additionally, the Regional Water Boards are not obligated to investigate every complaint and do not have the resources to do so. Further, the Regional Water Boards already have the authority to update their enforcement policies as needed. As Regional Water Boards already have the authority and discretion to investigate or not investigate complaints and have the authority to develop a plan/policy envisioned by this bill, it is not clear why this bill is needed.

- 3) *Needed Amendment.* The current definitions in the bill for "frivolous" and "unfounded" are from the Penal and Civil Procedures Code. These standards are based in case law and ill-suited as a standard that protects water quality. By imposing these definitions on how a Regional Water Board exercises its discretion, it could have the opposite effect of requiring them to investigate a complaint they otherwise would not have. Simply put, there are a number of reasons why a Regional Water Board might not investigate a complaint that would not meet the "frivolous" or "unfounded" standard imposed by the definitions in the bill.

***The Committee may wish to delete the definitions of "frivolous" and "unfounded" from the bill.***

- 4) *Committee amendments. Staff recommends the committee adopt the bolded amendment contained in comment 3 above.*

**Related/Prior Legislation**

AB 377 (Robert Rivas, 2021) would have required, by January 1, 2025, the State Water Board and the Regional Water Boards to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. Would have required, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state. This bill was not heard in the Assembly Appropriations Committee and subsequently died on file.

**SOURCE:** Author

**SUPPORT:**

None received

**OPPOSITION:**

San Francisco Baykeeper

**ARGUMENTS IN SUPPORT:** None received

**ARGUMENTS IN OPPOSITION:** According to the San Francisco Bay Keeper, “AB1879 is unnecessary because the Regional Boards already have the authority and discretion to investigate or not investigate complaints. The State Water Resources Control Board contributed to the appropriations committee’s analysis, stating “regional water boards already have the authority to develop such a plan or policy; therefore, it is not clear why this bill is needed at this time.” Baykeeper concurs. Second, AB1879 is bad public policy as the intent is to silence members of the public who live near polluting facilities.”

**-- END --**