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SB-891 Business licenses: stormwater discharge compliance. (2021-2022)

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Date Published: 09/29/2022 09:00 PM

Senate Bill No. 891

CHAPTER 678

An act to amend Sections 16000.3 and 16100.3 of the Business and Professions Code, and to amend Sections 13260 and 13383.10 of the Water Code, relating to business.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 891, Hertzberg. Business licenses: stormwater discharge compliance.

(1) Existing law requires, when applying to a city or a county for an initial business license or business license renewal, a person who conducts a business operation that is a regulated industry, as defined, to demonstrate enrollment with the National Pollutant Discharge Elimination System (NPDES) permit program by providing specified information, under penalty of perjury, on the application, including, among other things, the Standard Industrial Classification Code for the business, and an applicable identification number, as specified. Existing law applies these provisions to all applications for initial business licenses and business license renewals submitted on and after January 1, 2020.

This bill would expand the application of these provisions to instruments or permits equivalent to business licenses and to the renewals of those equivalent instruments or permits. By expanding the crime of perjury and by expanding the duties of cities and counties relative to those equivalent instruments or permits, the bill would impose a state-mandated local program.

Existing law, the California Public Records Act, requires all records to be open to inspection and provides that every person has a right to inspect any public record, except public records exempt from disclosure by express provisions of law.

This bill would require the city or county to make the applicable identification number available to the public upon request, as provided.

(2) Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with responsibility for the coordination and control of water quality in the state. The act, with certain exceptions, requires a waste discharger to file certain information with the appropriate regional board. Existing law, the Storm Water Enforcement Act of 1998, dischargers exempt from NPDES permitting requirements, as defined, are required to obtain "notice of nonapplicability" (NONA) identification numbers or "no exposure certification" (NEC) identification numbers, as issued by the State Water Resources Control Board, to signify that stormwater discharge requirements do not apply to their facilities or that the federal government has certified the stormwater they discharge has not been exposed to industrial materials.

Existing law requires the State Water Resources Control Board and the California regional water quality control boards to regulate water quality throughout the state, including by collecting reports of stormwater discharge activities from dischargers. Existing law, the Cross-Media Electronic Reporting Rule issued by the United States Environmental Protection Agency (EPA), facilitates e-

reporting for information systems that receive reports and other documents electronically for EPA-authorized programs, including receiving information of discharge compliance from dischargers. Existing law authorizes the State Water Resources Control Board to implement these provisions, including by creating a database of compliance reports from dischargers, such as the Stormwater Multiple Application and Report Tracking System.

This bill would require, on or before June 1, 2023, the state board to require all recipients of a NONA identification number or NEC identification number issued for a facility by the state board on or after January 1, 2020, to upload all pertinent information used to seek a NONA or NEC to the state board's Stormwater Multiple Application and Report Tracking System database.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 16000.3 of the Business and Professions Code is amended to read:

16000.3. (a) When applying to a city for an initial business license, equivalent instrument, or permit, or renewal thereof, a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code, shall demonstrate enrollment with the National Pollutant Discharge Elimination System (NPDES) permit program by providing all of the following information, under penalty of perjury, on the initial business license, equivalent instrument, or permit, or renewal thereof, application:

(1) The name and location of facilities operated by the person who conducts that business.

(2) All primary Standard Industrial Classification Codes, as defined in Section 25244.14 of the Health and Safety Code, for the business.

(3) Any of the following for each facility operated by the person of that business:

(A) The stormwater permit number, known as the Waste Discharger Identification number (WDID), issued for the facility by the State Water Resources Control Board.

(B) The WDID application number issued for the facility by the State Water Resources Control Board.

(C) The "notice of nonapplicability" (NONA) identification number issued for the facility by the State Water Resources Control Board.

(D) The "no exposure certification" (NEC) identification number issued for the facility by the State Water Resources Control Board.

(b) Prior to the issuance or renewal of the business license, equivalent instrument, or permit, the city shall determine whether any of the primary Standard Industrial Classification Codes are applicable to a General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities, as referenced in Section 13383.5 of the Water Code, and if applicable, the city shall confirm that the WDID, WDID application number, NONA, or NEC corresponds to the business requesting the initial business license or business license renewal. To determine whether any of the primary Standard Industrial Classification Codes are applicable to a General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities, as referenced in Section 13383.5 of the Water Code, the city may use information provided by the State Water Resources Control Board, including information posted pursuant to Section 13383.10 of the Water Code for these purposes. To confirm the WDID, WDID application number, NONA, or NEC, the city shall only need to keep record of the applicable documentation.

(c) The city shall transfer compliance information received in subdivision (a) to the State Water Resources Control Board as requested by the board. The city shall make the identification number provided in the applicable documentation available to the public upon request in a manner consistent with the procedures of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(d) For business license, equivalent instrument, or permit renewals, a city may develop a provisional license procedure that provides businesses three months to comply with the requirements of this section.

(e) "City" includes a charter city and a charter city and county.

(f) This section shall apply to applications for initial business licenses, equivalent instruments, or permits, and renewals thereof, submitted on and after January 1, 2020.

(g) This section shall not apply to a city that does not issue or renew, or have an application process for issuing or renewing, business licenses, equivalent instruments, or permits that include a business license.

(h) This section shall not be construed to impose any additional liability on a city under the National Pollutant Discharge Elimination System permit program for nonenrollment under a General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities by a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code.

(i) For purposes of this section, a business license, equivalent instrument, or permit includes a business license, equivalent instrument, or permit issued solely for the purpose of raising revenue.

SEC. 2. Section 16100.3 of the Business and Professions Code is amended to read:

16100.3. (a) When applying to a county for an initial business license, equivalent instrument, or permit, or business renewal thereof, a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code, shall demonstrate enrollment with the National Pollutant Discharge Elimination System (NPDES) permit program by providing all of the following information, under penalty of perjury, on the initial business license, equivalent instrument, or permit, or renewal thereof, application:

(1) The name and location of facilities operated by the person who conducts that business.

(2) All primary Standard Industrial Classification Codes, as defined in Section 25244.14 of the Health and Safety Code, for the business.

(3) Any of the following for each facility operated by the person of that business:

(A) The stormwater permit number, known as the Waste Discharger Identification number (WDID), issued for the facility by the State Water Resources Control Board.

(B) The WDID application number issued for the facility by the State Water Resources Control Board.

(C) The "notice of nonapplicability" (NONA) identification number issued for the facility by the State Water Resources Control Board.

(D) The "no exposure certification" (NEC) identification number issued for the facility by the State Water Resources Control Board.

(b) Prior to the issuance or renewal of the business license, equivalent instrument, or permit, the county shall determine whether any of the primary Standard Industrial Classification Codes are applicable to a General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities, as referenced in Section 13383.5 of the Water Code, and if applicable, the county shall confirm that the WDID, WDID application number, NONA, or NEC corresponds to the business requesting the initial business license or business license renewal. To determine whether any of the primary Standard Industrial Classification Codes are applicable to a General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities, as referenced in Section 13383.5 of the Water Code, the county may use information provided by the State Water Resources Control Board, including information posted pursuant to Section 13383.10 of the Water Code for these purposes. To confirm the WDID, WDID application number, NONA, or NEC, the county shall only need to keep record of the applicable documentation.

(c) The county shall transfer compliance information received in subdivision (a) to the State Water Resources Control Board as requested by the board. The county shall make the identification number provided in the applicable documentation available to the public upon request in a manner consistent with the procedures of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(d) For business license, equivalent instrument, or permit renewals, a county may develop a provisional license procedure that provides businesses three months to comply with the requirements of this section.

(e) "County" includes a charter county and a charter city and county.

(f) This section shall apply to applications for initial business licenses, equivalent instruments, or permits, and renewals thereof, submitted on and after January 1, 2020.

(g) This section shall not apply to a county that does not issue or renew, or have an application process for issuing or renewing, business licenses, equivalent instruments, or permits that include a business license.

(h) This section shall not be construed to impose any additional liability on a county under the National Pollutant Discharge Elimination System permit program for nonenrollment under a General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities by a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code.

(i) For purposes of this section, a business license, equivalent instrument, or permit includes a business license, equivalent instrument, or permit issued solely for the purpose of raising revenue.

SEC. 3. Section 13260 of the Water Code is amended to read:

13260. (a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) A person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Each person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) (A) Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs may include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, adopting, reviewing, and revising water quality control plans and state policies for water quality control, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out these actions.

(D) In establishing the amount of a fee that may be imposed on a confined animal feeding and holding operation pursuant to this section, including, but not limited to, a dairy farm, the state board shall consider all of the following factors:

(i) The size of the operation.

(ii) Whether the operation has been issued a permit to operate pursuant to Section 1342 of Title 33 of the United States Code.

(iii) Any applicable waste discharge requirement or conditional waiver of a waste discharge requirement.

(iv) The type and amount of discharge from the operation.

(v) The pricing mechanism of the commodity produced.

(vi) Any compliance costs borne by the operation pursuant to state and federal water quality regulations.

(vii) Whether the operation participates in a quality assurance program certified by a regional water quality control board, the state board, or a federal water quality control agency.

(2) (A) Subject to subparagraph (B), the fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, solely for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

(3) A person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each person that discharges waste in a manner regulated by this section shall pay an annual fee to the state board. The state board shall establish, by regulation, a timetable for the payment of the annual fee. If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.

(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivision (d). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the national pollutant discharge elimination system until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) A person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a) shall not be required to pay a fee pursuant to subdivision (d) if the injection well is regulated by the Geologic Energy Management Division of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(k) In addition to the report required by subdivision (a), before a person discharges mining waste, the person shall first submit both of the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by

the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(l) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

SEC. 4. Section 13383.10 of the Water Code is amended to read:

13383.10. (a) On or before April 1, 2020, the state board shall post on its internet website, for the purpose of the determinations made by the city pursuant to Section 16000.3 of the Business and Professions Code and a county pursuant to Section 16100.3 of the Business and Professions Code, a list of all Standard Industrial Classification codes applicable to a General Permit for Stormwater Discharges Associated with Industrial Activities Excluding Construction Activities, as referenced in Section 13383.5 and known as the Industrial General Permit. The state board shall update that list on its internet website within 90 days of any final updates by the United States Department of Labor or the United States Environmental Protection Agency.

(b) On or before June 1, 2023, the state board shall require all recipients of a nonapplicability (NONA) identification number or no exposure certification (NEC) identification number issued for a facility by the state board on or after January 1, 2020, to upload all pertinent information used to seek a NONA or NEC to the state board's Stormwater Multiple Application and Report Tracking System database.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.