



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

FAQ Sheet and Status Update AB 377

This document has been prepared to educate CASQA members on AB 377 and to keep members informed on CASQA's efforts to oppose this legislation.

This document was last updated on February 18, 2021.

AB 377 Basic Facts

Introduced by: Assembly Member Robert Rivas (D-Hollister)
 Co-Author: Senate Majority Leader Bob Hertzberg (D-Van Nuys)
 Bill Text: [Click here](#)

CASQA's Position

Oppose

Bill Summary (as Provided in AB 377)

Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards regulate water quality and prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Existing law requires each regional board to formulate and adopt water quality control plans for all areas within the region, as provided.

This bill would require all California surface waters to be fishable, swimmable, and drinkable by January 1, 2050, as prescribed. The bill would prohibit the state board and regional boards from authorizing an NPDES discharge, waste discharge requirement, or waiver of a waste discharge requirement that causes or contributes to an exceedance of a water quality standard, or from authorizing a best management practice permit term to authorize a discharge that causes or contributes to an exceedance of a water quality standard in receiving waters. The bill would prohibit, on or after January 1, 2030, a regional water quality control plan from including a schedule for implementation for achieving a water quality standard that was adopted as of January 1, 2021, and would prohibit a regional water quality control plan from including a schedule for implementation of a water quality standard that is adopted after January 1, 2021, unless specified conditions are met. The bill would prohibit an NPDES permit, waste discharge requirement, or waiver of a waste discharge requirement from being renewed, reissued, or modified to contain effluent limitations or conditions that are less stringent than those in the previous permit, requirement, or waiver.

(2) Existing law authorizes the imposition of civil penalties for violations of certain waste discharge requirements and requires that penalties imposed pursuant to these provisions be deposited into the Waste Discharge Permit Fund, to be expended by the state board, upon appropriation by the Legislature, for specified purposes related to water quality. For violations of certain other waste discharge requirements, including the violation of a waste discharge

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requirement effluent limitation, existing law imposes specified civil penalties, the proceeds of which are deposited into the continuously appropriated State Water Pollution Cleanup and Abatement Account, which is established in the State Water Quality Control Fund.

This bill would require, by January 1, 2030, the state board and regional boards to develop an Impaired Waterways Enforcement Program to enforce all remaining water quality standard violations that are causing or contributing to an exceedance of a water quality standard. To ensure any water segments impaired by ongoing pollutants are brought into attainment with water quality standards, the bill would require the state board and regional boards, by January 1, 2040, to evaluate the state's remaining impaired waters using a specified report. The bill would require, by January 1, 2040, the state board and regional boards to report to the Legislature a plan to bring the final impaired water segments into attainment by January 1, 2050. The bill would create the Waterway Attainment Account in the Waste Discharge Permit Fund and would make moneys in the Waterway Attainment Account available for the state board to expend, upon appropriation by the Legislature, to bring remaining impaired water segments into attainment in accordance with the plan. The bill would create in the Waterway Attainment Account the Waterway Attainment Penalty Subaccount, composed of penalties obtained pursuant to the Impaired Waterways Enforcement Program, and would make moneys in the subaccount available for the state board to expend, upon appropriation by the Legislature, for purposes of the program. The bill would require, by January 1, 2040, and subject to a future legislative act, 50% of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to be annually transferred to the Waterway Attainment Account. The bill would require the state board, upon appropriation by the Legislature, to expend 5% of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to fund a specified state board program.

CASQA's Analysis / Key Aspects of AB 377

- Prohibits the State and Regional Boards from adopting NPDES permits with compliance schedules or deemed compliance terms
- Requires end of pipe monitoring, comprehensive antidegradation analysis, and establishes a state law anti-backsliding provision
- Limits the amount of time that can be included in Schedules of Implementation in Water Quality Control Plans and limits use of time schedule orders (TSOs) to no longer than until 2030 (significant impact to TMDL compliance schedules; both existing and any TMDL to be adopted)
- Requires development of an Impaired Waterways Enforcement Program to enforce all water quality standards violations
- See also [CASQA's NewsFlash 2020-02](#)

Rationale for Opposition

AB 377 does not offer solutions that will lead to the protection of beneficial uses

CASQA shares the goal to improve water quality. In fact, CASQA has established a [Vision for Sustainable Stormwater Management](#) to achieve the following:

California sustainably manages stormwater as an essential component of the state's water resources that supports human and ecological needs, protects water quality, and enhances and restores our waterways.

However, this bill does not offer any concrete actions that will help to achieve this shared goal. Rather, it proposes to simply reduce the amount of time for implementation and to increase penalties and enforcement. Neither less time nor more enforcement will result in actions that will improve water quality. This approach presumes that the tools

needed to achieve the desired outcome are available. This approach does not consider or advance the real solutions and actions that are necessary to protect beneficial uses.

The solutions that need support are identified in CASQA's Vision for Sustainable Stormwater Management

As clearly detailed in [CASQA's Vision for Sustainable Stormwater Management](#), there are very real and actionable solutions that must be implemented to protect water quality. These are the actions that need to be supported by the public and by elected officials:

- Provide Dedicated Funding to Stormwater Programs
- Increase Supplemental Funding (e.g., grants)
- Maximize Stormwater Capture
- Minimize Pollution through True Source Control
- Maximize Effectiveness of Best Management Practices (BMPs)

From a legislative perspective, **the most critical solution is funding**. Funding is needed to implement all of these solutions, both at the local level and the statewide level.

Unlike all other water resources, the vast majority of stormwater programs in California lack a dedicated funding source. Even those stormwater programs that have some level of dedicated funding cannot implement their programs based on that funding alone. Therefore, all stormwater programs rely to a significant extent on the General Fund. In the best of times, municipalities face significant challenges in meeting the needs of the community and stormwater programs must compete for that funding with police, fire, libraries, social services, etc.

COVID-19 has devastated local economies, creating unprecedented shortfalls in the General Fund. Municipalities will struggle more than ever to secure funding for stormwater programs and will face the reality of budget cuts to staff as well as programs. COVID-19 has not changed how stormwater programs are funded, but it highlights the very real need to move past the General Fund and establish dedicated funding, on par with other water resources.

Similar to the investments that have been invested in the drinking water and wastewater sectors, billions of dollars of state investment (and federal investment) are required to attain our shared goals of the protection of beneficial uses and sustainable stormwater management.

See [Principle #4](#) in CASQA's Vision for more actions on funding for stormwater programs.

Other Considerations

- AB 377 removes regulatory discretion from the State and Regional Water Boards and essentially establishes permit requirements through legislation
- AB 377 would need to be considered in terms of exceeding requirements under the Clean Water Act and would likely subject the State to significant unfunded mandate claims
- AB 377 establishes infeasible requirements, would result in significant fines for local municipalities, all while not advancing concrete solutions to improve water quality
- Permits should be based on implementing solutions to achieve desired outcomes (see [CASQA's Vision, Principle 2, Action 2.1](#)). Simply providing less time and fining municipalities will not advance the protection of beneficial uses.
- The California Legislature should work with CASQA and its member organizations to advance the solutions detailed in [CASQA's Vision for Sustainable Stormwater Management](#), especially funding to implement actions related to stormwater capture and use, true source control, and BMP effectiveness. Dedicated funding sources should also be prioritized.

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CASQA's Efforts to Oppose AB 377

The Board of Directors has authorized Executive Director Karen Cowan to lobby in opposition to AB 377. Meetings have been scheduled with California Coastkeeper, Assembly Member Rivas' office, Senator Hertzberg's office, and with the Committee on Environmental Safety and Toxic Materials. CASQA is also coordinating with other organizations.

How to Stay Informed

A Town Hall has been scheduled for March 3, 2021, from 9:30am – 10:30am. This Town Hall is open to all CASQA members and will be an opportunity to hear the most recent information (e.g., results of pending meetings) and for CASQA members to engage in discussion with Executive Director Cowan.

Additional updates will be provided during the regularly scheduled monthly Policy and Permitting Subcommittee meetings.