

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 891 (Hertzberg) – As Amended June 21, 2022

SENATE VOTE: 27-2

SUBJECT: Business licenses: stormwater discharge compliance.

SUMMARY: Specifies that existing business license requirements to demonstrate enrollment with the National Pollutant Discharge Elimination System (NPDES) permit program apply not only to business licenses, but also to equivalent instruments or permits. Specifically, **this bill:**

- 1) Specifies that, in addition to applying for a business license, when applying to a city or county for an equivalent instrument, or permit, or renewal thereof, a person who conducts a business operation that is a regulated industry, as defined, shall demonstrate enrollment with the NPDES permit program by providing specified information, under penalty of perjury.
- 2) Provides that, in addition to the issuance of a business license, prior to the issuance of an equivalent instrument or permit, the city or county shall make specified determinations related to stormwater discharge requirements.
- 3) Specifies that a city or 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.
- 4) Provides that, for purposes of this bill and related existing law, a business license, equivalent instrument, or permit includes a business license, equivalent instrument, or permit issued solely for the purpose of raising revenue.
- 5) Specifies that each Regional Water Quality Control Board that receives money from the Waste Discharge Permit Fund for fees collected from a nonapplicability (NONA) identification number or no exposure certification (NEC) number issued for a facility by the State Water Resources Control Board (State Water Board) on or after January 1, 2020, shall spend 50% or more of that money on stormwater inspections to determine whether a NONA or NEC was appropriately issued for the facility.
- 6) Provides that on or before June 1, 2023, the State Water Board shall require all recipients of a NONA identification number or NEC identification number issued for a facility by the State Water Board on or after January 1, 2020, to upload all pertinent information used to seek a NONA or NEC to the State Water Board's Stormwater Multiple Application and Report Tracking System Database.
- 7) Makes numerous technical and conforming changes to existing law.
- 8) Specifies that no reimbursement is required by this bill 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 bill or because costs that may be incurred by a local agency or schools district will be incurred because the bill creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, or changes the definition of a crime.

EXISTING LAW:

- 1) Allows local governments to require businesses operating in their jurisdictions to obtain a license and impose related licensing fees.
- 2) Makes the State Water Board responsible for implementing the Federal Clean Water Act, and the nine Regional Water Quality Control Boards are responsible for implementing state laws on water quality.
- 3) Provides the State Water Board the responsibility to implement the permit requirement of the Federal Clean Water Act by enrolling businesses in the General Permit for Stormwater Discharges Associated with Industrial Activities Excluding Construction Activities, which is known as the Industrial General Permit (IGP).
- 4) Requires various industries to comply with the IGP. To demonstrate enrollment with the IGP, a qualifying business has to receive one of the following from the State Water Board: (a) a stormwater permit, (b) a NONA identification number, or (c) a NEC identification number. A business can file for a NONA identification number if it takes other measures to control its stormwater discharge, including retaining all stormwater onsite or treating and discharging stormwater as processed wastewater. The business can file for a NEC number if it does not expose industrial waste to stormwater discharge.
- 5) Requires a specified business operation to demonstrate enrollment with the NPDES permit program by providing the following information on an initial business license application or business license renewal application:
 - a) The name and location of facilities operated by the person of that business.
 - b) All primary Standard Industrial Classification (SIC) Codes, which show that the business is in an industry subject to this permit.
 - c) Any of the following for each facility operated by the person of that business:
 - i) The stormwater permit number, known as the Waste Discharger Identification number (WDID), issued for the facility by the State Water Board.
 - ii) The WDID application number issued for the facility by the State Water Board.
 - iii) The NONA identification number issued for the facility by the State Water Board.
 - iv) The NEC identification number issued for the facility by the State Water Board.
- 6) Requires, once the business has submitted the above information described in 5) above to the city or county issuing the license, that city or county to determine whether any of the primary SIC codes apply to that business, and confirm that information provided corresponds to the business requesting the license before it can issue or renew the license.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8 negligible state costs.

COMMENTS:

- 1) **Bill Summary.** Existing law requires certain businesses to demonstrate enrollment with stormwater discharge permits when applying for, or renewing, a business license with a city or county, and places requirements on cities and counties that issue or renew business licenses. This bill specifies that these requirements apply not only to business licenses, but also to equivalent instruments or permits. This bill clarifies that these requirements do not apply to a city or 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. This bill specifies that a city or 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.

Additionally, this bill requires each regional water board that receives fee revenue collected from a NONA or NEC identification number on or after January 1, 2020, to spend 50% or more of that money on stormwater inspections to determine whether the NONA or NEC was appropriately issued for the facility. Lastly, the bill provides that, on or before June 1, 2023, the State Water Board must require all recipients of a NONA or NEC identification number issued by the State Water Board on or after January 1, 2020, to upload all pertinent information used to seek the number to the State Water Board's Stormwater Multiple Application and Report Tracking System database.

The California Coastkeeper Alliance is the sponsor of this bill.

- 2) **Author's Statement.** "The Federal Clean Water Act prohibits entities from discharging any pollutant from a point source into U.S. waters, unless they obtain a stormwater discharge permit. Despite enactment of the Federal Clean Water Act fifty years ago, 95% of all California waterways still remain impaired. Water runoff from industrial facilities can carry pollutants and hazardous contaminants that degrade water quality, harm our wildlife, and pose public health risks to Californians.

"There is an unknown, but potentially significant number, of industrial facilities that are subject to stormwater permitting regulations, but do not actually obtain a stormwater permit as required under existing federal and state law. SB 891 restores the intent of SB 205 (Hertzberg, 2019) and closes a loophole in the law by requiring industrial facilities to demonstrate compliance with existing stormwater regulations when applying for or renewing a permit similar to a business license. This measure also enhances reporting by industrial facilities to the State Water Resources Control Board, so the state can monitor compliance with existing stormwater regulations."

- 3) **Business Licenses.** Existing statutes dating back to 1901 have empowered both counties and cities to license businesses for the purpose of regulation. The California Constitution allows a city or county to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws," known as police powers. It is from this fundamental power that local governments derive their authority to regulate

behaviors, business operations, and land uses. Local agencies also use this “police power” to abate nuisances and protect public health, safety, and welfare.

As an extension of the police power, state law allows local governments to require businesses operating in their jurisdictions to obtain a license and impose related licensing fees. Local governments license businesses for lots of reasons: to identify individuals operating businesses in their jurisdictions, to ensure compliance with other local laws, to facilitate contact in case a problem arises, and to raise money to support public services that support those businesses.

Business license application and renewal processes vary throughout the state. Some cities use an “over-the-counter” ministerial process when issuing business licenses. While most cities and counties require businesses to operate under a business license, some cities and counties do not issue business licenses at all, including the counties of Sonoma, Orange, Santa Clara, and San Diego. Some cities, like San Diego, issue business tax certificates rather than business licenses. In these jurisdictions, once businesses pay an annual tax for the benefit of operating in the city, the city issues the certificate.

- 4) **Stormwater Discharge Permits.** The Federal Clean Water Act generally prohibits businesses or local agencies from polluting into U.S. waters unless they comply with a NPDES permit. These permits limit pollutant discharge into waterways and require permittees to ensure that any discharge into waterways does not adversely impact water quality or the environment. At the state level, the State Water Board is responsible for implementing the Federal Clean Water Act, and the nine Regional Water Quality Control Boards carry out state laws on water quality. The State Water Board implements the permit requirement of the Federal Clean Water Act by enrolling businesses in the IGP.

Various industries must demonstrate enrollment with the IGP, including auto dismantlers and advanced metal manufacturers, because their industrial activities can have significant impacts on the environment due to the need to use and transport hazardous pollutants. If not properly handled, these pollutants can end up in waterways. To demonstrate enrollment with the IGP, a qualifying business has to receive one of the following from the State Water Board: (1) a stormwater permit, (2) a NONA identification number, or (3) a NEC identification number. A business can file for a NONA number if it takes other measures to control its stormwater discharge, including retaining all stormwater onsite or treating and discharging stormwater as processed wastewater. The business can file for a NEC number if it does not expose industrial waste to stormwater discharge. The regional water boards collect fees to ensure compliance with these requirements.

- 5) **SB 205 of 2019.** In an effort to improve water quality, SB 205 (Hertzberg), Chapter 470, Statutes of 2019, required certain businesses to demonstrate enrollment in the NPDES program when applying for, or renewing, a business license with a city or county. Once the business submits specified information, the city or county must determine whether any of the primary SIC codes provided by the business are potentially regulated by the NPDES IGP. The city or county only needs to keep record of applicable documents to confirm the information submitted, and must submit compliance information to the State Water Board when requested.

SB 205 also required the city or county to submit compliance information to the State Water Board as requested, and specified that its requirements do not apply to a city or county that does not have a business license application process. Lastly, SB 205 specified that its requirements must not be construed as imposing any additional liability on a city or county under the NPDES permit program for nonenrollment by a person who conducts a specified business operation.

- 6) **Arguments in Support.** According to the California Coastkeeper Alliance and a coalition of similar groups, “The Federal Clean Water Act prohibits entities from discharging any pollutant from a point source into U.S. waters, unless they obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES program regulates point source operations by limiting discharges and requiring various monitoring and reporting requirements to ensure that discharges do not adversely affect water quality, the environment, and public health.

“Industrial activities often risk exposure to rainfall or snowmelt runoff, which result in hazardous contaminants polluting nearby water sources such as rivers, lakes, and oceans. For this reason, industrial facilities—such as manufacturers, hazardous waste management, and oil and gas facilities—are required to obtain an Industrial General Permit (IGP) to comply with the federal NPDES permit. The IGP regulates industrial stormwater discharges and authorized non-stormwater discharges from industrial facilities in California. However, fifty years after the enactment of the Federal Clean Water Act, 95% of all California waterways still remain polluted.

“There is an unknown but potentially significant number of industrial facilities which, despite existing state and federal law requiring compliance, have not obtained an IGP. To address issues with non-compliance among industrial facilities, the Legislature passed SB 205 (Hertzberg, 2019) which requires applicable industrial facilities to demonstrate coverage under the IGP when applying for a business license or license renewal.

“Despite the law’s enactment in 2020, several municipalities are still not verifying enrollment in IGP when approving or renewing an industrial facility’s business license because they issue ‘business certificates’ instead of “business licenses,” as specified in SB 205 (Hertzberg). Additionally, business licenses are still awarded to facilities that should be covered by an IGP, but are not enrolled, without providing proof of exemption from existing stormwater regulations. SB 891 closes a loophole in current law by clarifying its intent and requiring an industrial facility to demonstrate compliance with existing stormwater regulations when applying for or renewing a permit *similar* to a business license.”

- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill was double-referred to the Environmental Safety and Toxic Materials Committee, where it passed on a 8-1 vote on June 14, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance [SPONSOR]
7th Generation Advisors
Coachella Valley Waterkeeper
Coastal Environmental Rights Foundation
ECO San Diego
Environmental Center of San Diego
Environmental Defense Center
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper
Monterey Coastkeeper
Orange County Coastkeeper
Otter Project
Planning and Conservation League
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
South Yuba River Citizens League
Yuba River Waterkeeper

Opposition

None on file

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