California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

BILL QUIRK
CHAIR

AGENDA

Tuesday, April 10, 2018
1:30 p.m. -- State Capitol, Room 444

HEARD IN SIGN-IN ORDER

1.	AB 2050	Caballero	Small System Water Authority Act of 2018.
2.	AB 2060	Eduardo Garcia	Water: grants: advanced payments.
3.	AB 2189	Santiago	Hazardous substances: lead: cleanup: Exide Technologies facility.
4.	AB 2370	Holden	Lead exposure: child day care facilities: family day care homes.
5.	AB 2422	Bloom	Pesticides: use of anticoagulants.
6.	AB 2606	Fong	Hazardous waste: facilities: permits: renewals.
7.	AB 2648	Friedman	Civil actions: limitations: real property.
8.	AB 2728	Chen	Replacement of corroded or lead-containing plumbing or service lines: loans.
9.	AB 2775	Kalra	Professional cosmetics: labeling requirements.
10.	AB 2803	Limón	Carpenter-Presley-Tanner Hazardous Substance Account Act.
~~11.~~	~~AB 2828~~	~~Friedman~~	~~Waste discharge requirements: produced water: oil and gas operations.~~
12.	AB 2832	Dahle	Recycling and reuse: lithium-ion batteries.
13.	AB 2892	Quirk	Pest control: mosquito abatement.
14.	AB 2998	Bloom	Juvenile products: flame retardant materials.
15.	AB 3009	Quirk	Hazardous materials: lead-based paint.(Tax Levy)
16.	AB 3014	Quirk	Brake friction materials: copper limits: high performance road and track capable vehicle exemption.
17.	AB 3138	Muratsuchi	Hazardous materials: management: civil liability.

PROPOSED CONSENT

18.	AB 2541	Salas	Safe Drinking Water State Revolving Fund: project financing: severely disadvantaged communities.
19.	AB 2928	Chen	Hazardous waste: used oil.

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2050 (Caballero) – As Amended March 19, 2018

SUBJECT: Small System Water Authority Act of 2018

SUMMARY: Creates the Small System Water Authority Act of 2018, which authorizes the creation of small system water authorities (Authority) that will have powers to absorb, improve, and competently operate noncompliant public water systems. Requires the State Water Resources Control Board (State Water Board) to send a notice to public water systems that are not in compliance with drinking water standards, and if the system does not return to compliance in a timely manner, the State Water Board shall first attempt to consolidate the public water system with an existing water system, and, if not, force the dissolution of the public water system and merge that system into a new Authority. Specifically, **this bill**:

1) Defines "Authority" as a small system water authority.

2) Provides that the area proposed to be served by a proposed Authority may consist of the service areas of one or more public agencies, private water companies, or mutual water companies that need not be contiguous.

3) Requires the State Water Board, no later than March 1, 2019, to provide written notice to cure (Notice) to all public agencies, private water companies, or mutual water companies that meet both of the following criteria:

   (a) Operate a public water system that has either less than 3,000 service connections or that serves less than 10,000 people and

   (b) Are not in compliance with applicable drinking water standards as of December 31, 2018.

4) Requires an entity receiving a Notice to respond to the State Water Board within 60 days of receiving the Notice as to whether the violations of drinking water standards are remedied and the basis for that conclusion.

5) Gives the entity receiving the Notice, that reports that it is still in violation of drinking water standards, 180 days to prepare and submit a plan (Plan) to the State Water Board to permanently remedy a violation of drinking water standards within a reasonable time that is not later than January 1, 2024.

6) Requires the State Water Board to review a Plan, and within 60 days of receipt of the Plan, to accept, accept with reasonable conditions, or reject the Plan.

7) Requires an entity where the State Water Board has accepted the Plan or accepted the Plan with conditions, to provide quarterly reports to the State Water Board on progress towards a permanent remedy for the violations of drinking water standards.

8) Requires the State Water Board, if it rejects the Plan, to cause the formation of an Authority by the applicable local agency formation commission (LAFCO), to serve the customers of the public water system that submitted the Plan.

9) Requires the State Water Board, no later than April 1, 2019, to provide written notice to each county, city, or water district located within a county where an entity receiving a Notice is located stating that the State Water Board may consider the formation of an Authority within that county and inviting other public water suppliers to consider consolidating with the Authority that may be formed. Requires an agency wishing to consolidate into a proposed Authority to provide a written statement opting into an Authority on or before July 1, 2019. Authorizes an agency, after July 1, 2019, wishing to join an Authority to do so by means of a petition to the LAFCO.

10) Requires the State Water Board, no later than 30 days after the rejection of a Plan by an entity that received a Notice, to notify a LAFCO of a county where the public water system that submitted the Plan is located, and, if appropriate given the governance of the public water system, the Public Utilities Commission or the Department of Business Oversight, that it has determined that the public water system shall be consolidated into an Authority.

11) Requires the State Water Board, no later than 60 days after rejecting the Plan to notify the entity that submitted the Plan, that the Plan was rejected and that it will be consolidated into an Authority and appoint an independent administrator (Administrator) who shall be responsible for preparing a plan for service and interim administration and management of the Authority.

12) Requires the applicable LAFCO, no later than 180 days after the Administrator submits an application for formation and proposed plan for service, to initiate proceedings to form an Authority to provide safe drinking water to the public water system's customers.

13) Prohibits a LAFCO from forming an Authority unless the Authority consists of at least five public water systems that may include public water systems from county services areas, other public water systems that have been meeting drinking water standards, and public water systems identified by the State Water Board that chronically serve contaminated water in the county in which the proposed Authority will be formed.

14) Requires an Administrator, no later than 60 days after the State Water Board has informed the entity that it will be consolidated, and after consultation with the executive officer of the LAFCO, to submit to the State Water Board a conceptual formation plan.

15) Requires the State Water Board, in appointing an Administrator, to consult with the executive officers of a LAFCO for a county in which the Authority will be formed to ensure that there are sufficient water purveyors in a proposed Authority to provide economies of scale in the operation of the proposed Authority and to ensure that the proposed Authority will be responsive to local ratepayers' concerns.

16) Requires the State Water Board to bear the cost of the Administrator and be responsible for all compensation of and reasonable expenses incurred by the Administrator for the duration of the period that the Administrator serves the Authority.

17) Requires the Public Utilities Commission, no later than 240 days after the State Water Board informs an entity that their Plan was rejected and they will be consolidated into an Authority, to order the dissolution of the public water system that is being consolidated and the transfer of all assets of the water corporation to the Authority formed by LAFCO.

18) Requires the Department of Business Oversight, no later than 240 days after the State Water Board informs an entity that their Plan was rejected and they will be consolidated into an Authority, to order the dissolution of the public water system that is being consolidated and the transfer of all assets of the mutual water company to the Authority formed by LAFCO.

19) Provides compensation for the owner or shareholder of a water corporation or a mutual water company that is consolidated into an Authority.

20) Requires the Administrator, within 180 days after the State Water Board notified the entity that it was being consolidated, to submit an application for formation and proposed plan for service to the LAFCO for review and potential approval.

21) Requires a LAFCO to hold a public hearing on the proposed plan for service no later than 180 days after the Administrator submits the proposed plan to the LAFCO.

22) Requires the Authority, if the LAFCO approves the Plan and the formation of the Authority, to take the appropriate actions to comply with the Plan.

23) Exempts the formation of an Authority and the dissolution of a public water system from the requirements of the California Environmental Quality Act.

24) Requires the State Treasurer, no later than January 1, 2022, and in consultation with the State Water Board, the Association of California Water Agencies, the California Association of LAFCO's, the California Municipal Utilities Association, and the California State Association of Counties, to contract with an independent consultant to review the start-up operations of the Authorities and the management of the Authorities by the Administrators. Requires the consultant to prepare a report for the Legislature regarding fiscal and operational health of the Authorities that includes recommendations regarding the need for supplemental state funding, if any, and the potential sources of that funding.

25) Provides criteria and requirements for the establishment of the Authority including a Board, elections of the Board, officers and employees of the Authority, and the powers, duties, and financial provisions of the Authority.

EXISTING LAW:

1) Vests the State Water Board with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Public Health and its predecessor to enforce the State Drinking Water Act (SDWA). (Health and Safety Code (HSC) § 116271)

2) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275)

3) Requires the State Water Board, in administering SDWA programs to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities, and prioritize funding for construction projects that involve the physical restructuring of two or more community water

systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system. (HSC § 116326)

4) Authorizes the State Water Board, where a public water system or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, to order consolidation with a receiving water system. Provides that the consolidation may be physical or operational. (HSC § 116682 (a))

5) Limits the liability of a consolidated water system, wholesaler, or any other agency in the chain of distribution that delivers water to a consolidated water system, as specified. (HSC § 116684)

6) Declares to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "The State Water Board, as of November 2017, has identified 329 water systems statewide that chronically serve contaminated drinking water or cannot provide reliable water service due to unsound infrastructure or because they lack the local financial, managerial, and technical resources to do so. The vast majority of these systems are small, rural systems that typically serve less than 10,000 people. A sustainable solution is necessary to address this drastic health and safety crisis.
>
> To date, laws have been passed that address various elements of the water accessibility issue including voluntary and forced consolidations, supplying resources and technical support, and limiting the development of new unsustainable water systems. While these efforts have created a portfolio of options to address this critical issue of water accessibility in California, immediate and lasting changes to the underlying governance structure of chronically noncompliant small systems is still needed to protect public health and safety.
>
> AB 2050 proposes to merge noncompliant water systems into a larger and more robust public water system that can take advantage of improved economies of scale, streamlined managerial functions, and enhanced financial capacity."

California's drinking water program: Senate Bill 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the Drinking Water Program from the Department of Public Health (DPH) to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water within the State Water Board, and made other statutory changes to create efficiencies and adoption and administration of the Drinking Water Program.

The State Water Board directly enforces the federal Safe Drinking Water Act (SDWA) for all large water systems (those with 200 or more service connections). For small water systems (those with less than 200 connections), local health departments can be delegated to have

regulatory authority as the local primacy agency.

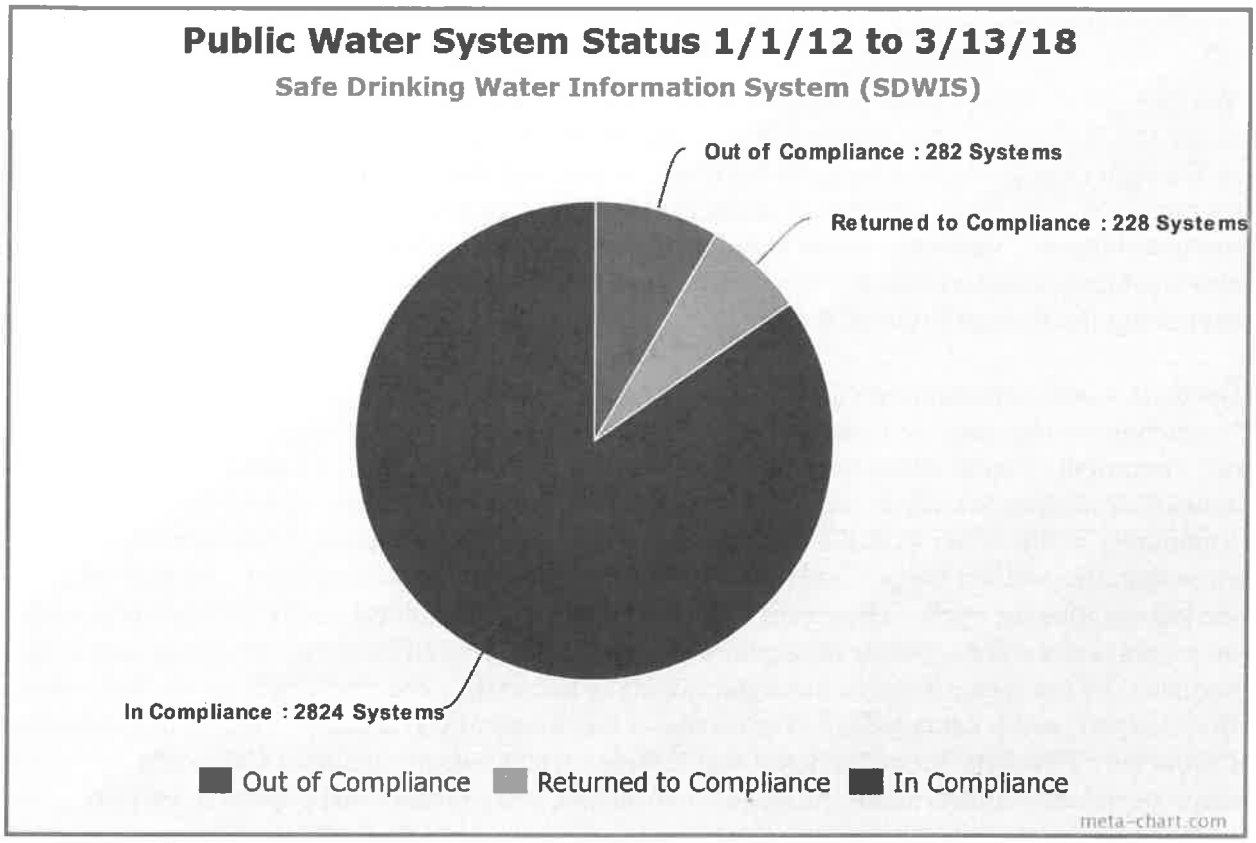
Human right to water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Eng, Chapter 524, Statutes of 2012). Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

Drinking water contamination in disadvantaged communities: The State Water Board report, "*Communities that Rely on Contaminated Groundwater*," released in January 2013, reported that 682 community public water systems in California, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water. It also found that 265 community public water systems that rely on contaminated groundwater, which serve a little more than two million people, had received at least one drinking water quality violation within the last compliance cycle. The report points out that an additional two million Californians rely on groundwater from a private domestic well or a smaller groundwater-reliant system that is not regulated by the state, of which the water quality is uncertain. The findings from the State Water Board report, and a January 2012, University of California at Davis study, "*Addressing Nitrate in California's Drinking Water*," suggest that drinking water contamination in California disproportionally affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source.

The recent drought has further compromised the state's drinking water supplies. Since many rural households rely on shallow, domestic wells or small, poorly funded community water supply systems, they have been hardest hit. According to the Public Policy Institute of California, as of early July 2015, more than 2,000 domestic wells were reported to be dry, mostly in the Central Valley and the Sierras. Emergency water supply needs have also been identified for more than 100 small water community water systems around the state.

Providing safe drinking water to disadvantaged communities: According to the State Water Board, for common sources of drinking water contamination, such as arsenic and nitrates, expensive systems must be installed and operated to treat the water to meet drinking water standards. In many cases, technological advances have not yet been sufficient to make such treatment systems affordable, especially to small, disadvantaged communities. In addition, many small, disadvantaged communities do not have the technical, managerial, or financial capability to operate what are sometimes complex drinking water systems.

Below is a snapshot of the public water systems out of compliance with SDWA requirements for the first three months of 2018.



As shown above, about 9% of all systems are failing to meet the SDWA standards.

New tools for addressing drinking water system failures: SB 88 (Budget Committee, Chapter 27 Statutes of 2015) authorizes the State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with or receive service from public water systems with safe, reliable, and adequate drinking water. SB 552 (Wolk, Chapter 773, Statutes of 2016) gave the State Water Board another tool to address the systemic issues affecting public water systems serving small, disadvantaged communities. SB 552 authorizes the State Water Board to identify public water systems that are consistently unable to provide an adequate and affordable supply of safe drinking water and, once funding is available, to then contract with a competent administrator to provide managerial and technical expertise to that system.

How does consolidation of a public water system work? Consolidating public water systems and extending service from existing public water systems to communities and areas, which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidating or extending service from a public water system to a community otherwise served by unreliable systems or unregulated private wells advances the goal of a reliable, accessible supply of safe drinking water for all California residents.

Public water systems experiencing chronic water quality failures or unreliable supplies are first provided technical assistance to analyze the problem and recommend a course of action. Enforcement may also be necessary to achieve compliance with SDWA requirements. Lacking progress, the State Water Board may initiate discussions with the system and

neighboring/adjacent public water systems regarding consolidation. Consolidation may involve the actual physical consolidation of the participating water systems (physical consolidation), just the management of the participating water system (managerial consolidation), or both. If voluntary consolidation cannot be negotiated in a reasonable time period, the State Water Board may commence proceedings for direct mandatory consolidation or a mandatory extension of service. In this case, consolidation letters will be sent to the consistently failing water system (subsumed system) and to the receiving system notifying them that they have six months to develop a plan for voluntarily consolidation. If the two systems have not developed a plan for consolidation within six months of the letters being issued, the State Water Board may then order the two systems to consolidate.

The State Water Board will provide funding as necessary and appropriate from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), the Drinking Water State Revolving Fund (DWSRF), and monies made available from the emergency drought relief package, for consolidation or extension of service, including infrastructure improvements. SB 88 added a provision to the law limiting the liability of water systems, wholesalers, or any other agencies that deliver water to consolidated water systems. This liability relief is available regardless of whether the consolidation occurs through the mandatory consolidation process or through a voluntary act. These new liability relief provisions will protect water systems involved in consolidations and remove a barrier that previously limited voluntary consolidations.

Consolidation in California to date: The State Water Board currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations. Under the State Water Board's authority, there have been two mandatory consolidations completed, and there have been more than 100 voluntary consolidations in that time period. And within those, the State Water Board has had varying levels of participation. Some (about 40) were consolidations the State Water Board helped to fund, some to which the State Water Board provided guidance, and others for which the State Water Board just issued a permit.

Progress on providing clean drinking water: Ensuring that all Californians have access to clean, affordable drinking water is a goal the state has been vigorously pursing, especially in the last several years. Legislatively the state has enacted laws to give the State Water Board the authority to force failing water systems to consolidate, either physically, or managerially, as well as improving the permitting of new public water system in order to avoid the proliferation of new unsustainable water systems. While the State Water Board has been pursing voluntary and forced consolidation, the ability to provide funding for this effort has fallen short. One major piece that has eluded the Legislature is an ongoing funding stream to provide clean drinking water for small, disadvantaged communities and ultimately set them on a path of sustainability. AB 2050 seeks to provide the State Water Board with another tool to address chronically failing public water systems. This bill sets up a series of new local water systems that essentially take over five failing systems within a county. If there are fewer than five failing systems in a county that the State Water Board has identified has failing, it is unclear exactly what would be the remedy, other than using existing consolidation authority. Additionally, AB 2050 does not address how these new water agencies will be funded, other than by the same ratepayers that were providing funding to the failing water system. The approach in the bill, does provide the State Water Board with an additional tool to address the issue of chronically failing water systems. This tool may be useful as the State Water Board evaluates failing water systems and pursues consolidation when necessary. The Legislature should continue the dialogue towards

finding adequate funding to ensure that all Californians have access to clean, safe, affordable drinking water.

Double referral: Should this bill be approved by this Committee, it will be heard next in the Assembly Local Government Committee.

Related legislation:

1) SB 623 (Monning, 2017). Creates the Safe and Affordable Drinking Water Fund, administered by the State Water Board, to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. This bill is pending action in the Assembly Rules Committee.

2) SB 778 (Hertzberg, 2017). Would have required the State Water Board to report on public water system consolidations to date, and their success or failure. This bill was held in Assembly Appropriations.

2) SB 552 (Wolk, Chapter 773, Statutes of 2016). Authorizes the State Water Board to contract with an administrator to provide administrative and managerial services to a designated public water system to assist with the provision of an adequate and affordable supply of safe drinking water.

3) SB 1263 (Wieckowski, Chapter 843, Statutes of 2016). Requires a person submitting an application for a permit for a proposed new public water system to first submit a preliminary technical report to the State Water Board. Authorizes the State Water Board to deny a permit for a new public water system if it determines that it is reasonably foreseeable that the proposed new public water system will be unable to provide affordable, safe drinking water.

4) SB 88 (Budget Committee, Chapter 27 Statutes of 2015). Authorizes the State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with or receive service from public water systems with safe, reliable, and adequate drinking water.

5) AB 685 (Eng, Chapter 524, Statutes of 2012). Declares that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and that relevant state agencies, including the Department of Water Resources, the State Water Board, and the State Department of Public Health shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
California Municipal Utilities Association
California Special Districts Association
Calleguas Municipal Water District
City of Riverside
City of Sacramento

Eastern Municipal Water District
Inland Empire Utilities Agency
Irvine Ranch Water District
Las Virgenes Municipal Water District
Mesa Water District
Metropolitan Water District of Southern California
Northern California Water Association
Orange County Water District

Opposition

Howard Jarvis Taxpayers Association

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2060 (Eduardo Garcia) – As Introduced February 6, 2018

SUBJECT: Water: grants: advanced payments

SUMMARY: Requires advanced payment, as specified, of grants disbursed through the Integrated Regional Water Management plan program, the State Water Pollution Control Revolving Fund Small Community Grant Fund, and the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). Specifically, **this bill**:

Under the Integrated Regional Water Management Planning Act:

1) Requires the Department of Water Resources (DWR), within 60 days of receiving the required project information for a grant for projects included and implemented in an Integrated Regional Water Management (IRWM) plan, to provide advanced payment of $500,000 or 50 percent of the grant award, whichever is less, for projects in which the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

2) Deletes the statutory requirement that in order for a project included and implemented in an IRWM plan to receive an advanced payment of 50 percent of the grant award, the grant award for the project must be less than $1 million.

3) Deletes the January 1, 2025, sunset on the requirement for advanced payment of grants disbursed through the IRWM plan program.

Under the State Water Pollution Control Revolving Fund Small Community Grant Fund (Small Community Grant Fund) law:

4) Requires the State Water Resources Control Board (State Water Board), within 60 days of awarding a grant from the Small Community Grant Fund, to provide advanced payment of $500,000 or 50 percent of the grant award, whichever is less, for projects in which the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

5) Requires the advanced funds to be handled as follows:

   a) The recipient shall place the funds in a noninterest-bearing account until expended;

   b) The funds shall be spent within six months of the date of receipt, unless the State Water Board waives this requirement;

   c) The recipient shall, on a quarterly basis, provide an accountability report to the State Water Board regarding the expenditure and use of any advanced grant funds that provides, at a minimum, the following information:

      i) An itemization as to how the advanced payment funds have been expended;

ii) A project itemization as to how any remaining advanced payment funds provided will be expended over six months or the otherwise specified period; and,

iii) Whether the funds are placed in a noninterest-bearing account, and if so, the date that occurred and the dates of withdrawals of funds from that account, if applicable.

6) Requires that if funds are not expended, the unused portion of the grant be returned to the State Water Board within 60 days after project completion or the end of the grant performance period, whichever is earlier; and,

7) Authorizes the State Water Board to adopt additional requirements for the recipient regarding the use of the advanced payment to ensure that the funds are used properly.

Under Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) funding law:

8) Requires the State Water Board, within 60 days of awarding a grant from specified Proposition 1 funds for public water system infrastructure improvements and related actions taken to meet safe drinking water standards or ensure affordable drinking water, or both, to provide advanced payment of $500,000 or 25 percent of the grant award, whichever is less.

9) Requires the advanced funds to be handled as follows:

a) The recipient shall place the funds in a noninterest-bearing account until expended;

b) The funds shall be spent within six months of the date of receipt, unless the State Water Board waives this requirement;

c) The recipient shall, on a quarterly basis, provide an accountability report to the State Water Board regarding the expenditure and use of any advanced grant funds that provides, at a minimum, the following information:

i) An itemization as to how the advanced payment funds have been expended;

ii) A project itemization as to how any remaining advanced payment funds provided will be expended over six months or the otherwise specified period; and,

iii) Whether the funds are placed in a noninterest-bearing account, and if so, the date that occurred and the dates of withdrawals of funds from that account, if applicable.

10) Requires that if funds are not expended, the unused portion of the grant be returned to the State Water Board within 60 days after project completion or the end of the grant performance period, whichever is earlier; and,

11) Authorizes the State Water Board to adopt additional requirements for the recipient regarding the use of the advanced payment to ensure that the funds are used properly.

EXISTING LAW:

Under the Integrated Regional Water Management Planning Act:

1) Defines "integrated regional water management plan" as a comprehensive plan for a defined geographic area, the specific development, content, and adoption of which shall satisfy requirements developed pursuant to statute. (Water Code (WC) § 10534)

2) Authorizes a regional water management group to prepare and adopt an integrated regional water management plan in accordance with specified requirements. (WC § 10540(a))

3) Provides that an IRWM plan shall be eligible for funding pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), and for any funding authorized on or after January 1, 2009, that is allocated specifically for implementation of integrated regional water management. (WC § 10546)

4) Requires the regional water management group to, within 90 days of notice that a grant for projects included and implemented in an IRWM plan has been awarded, provide DWR with a list of projects to be funded by the grant funds in cases where the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community. (WC § 10551(a))

5) Requires, within 60 days of receiving the project information above, DWR to provide advanced payment of 50 percent of the grant award for those projects that satisfy both of the following criteria: the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community; and, the grant award for the project is less than $1 million. (WC § 10551 (b))

6) Requires the project proponent to handle the advanced funds as prescribed. (WC § 10551(c))

7) Repeals the advanced payment requirements as of January 1, 2025. (WC § 10552)

Under the Small Community Grant Fund law:

8) Creates the Small Community Grant Fund in the State Treasury. (WC § 13477.6(a))

9) Specifies monies that may be deposited into the Small Community Grant Fund. (WC § 13477.6)

10) Provides that moneys in the Small Community Grant Fund, upon appropriation by the Legislature to the State Water Board, may be expended for grants for wastewater projects, as described, that serve small communities, as defined, and requires the State Water Board to prioritize projects that serve severely disadvantaged communities. (WC § 13477.6 (d)(1) and (2))

Under Proposition 1 funding law:

11) Provides that from Proposition 1, $260 million shall be available for the Small Community Grant Fund for grants for wastewater treatment projects. Requires that priority be given to projects that serve disadvantaged communities, and severely disadvantaged communities, and to projects that address public health hazards. (WC § 79723)

12) Provides that from Proposition 1, $260 million shall be available for grants and loans for public water system infrastructure improvements and related actions to meet safe drinking

water standards to ensure affordable drinking water, or both. In relation to the $260 million allocation:

a) Requires that priority be given to projects that provide treatment for contamination or access to an alternate drinking water source or sources for small community water systems or state small water systems in disadvantaged communities whose drinking water source is impaired by chemical and nitrate contaminants and other health hazards identified by the state board.

b) Provides that eligible recipients serve disadvantaged communities and are public water systems or public agencies.

c) Requires that priority be given to projects that provide shared solutions for multiple communities, at least one of which is a disadvantaged community that lacks safe, affordable drinking water, and is served by a small community water system, state small water system, or a private well.

d) Limits construction grants to $5 million per project, except that the State Water Board may set a limit of not more than $20 million for projects that provide regional benefits or are shared among multiple entities, at least one of which shall be a small disadvantaged community.

e) Prohibits more than 25 percent of a grant from being awarded in advance of actual expenditures. (WC § 79724 (a)(1))

Under general State Water Quality Control law:

13) Requires the State Water Board to take the following actions for the purpose of allocating funds on behalf of a wastewater collection, treatment, or disposal project, if the recipient of financial assistance is a small, disadvantaged community:

a) Allocate to the recipient up to 25 percent of the financial assistance amount, not exceeding $1 million in advance of actual expenditures, if the State Water Board determines that an advance is needed for the project to proceed in an efficient manner; and,

b) Establish a payment process pursuant to which the recipient of financial assistance receives funds within 30 days of the date on which the State Water Board receives a project payment request unless the State Water Board, within that 30-day period, determines that the project payment would not be in accordance with the terms of the program guidelines. (WC § 13193.9)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author's office,

> "This bill will allow certain water funding agencies to advance up to $500,000 or 50 percent of project costs (whichever is less, depending on agency) to water and wastewater projects that serve Disadvantaged Communities (DACs) for all projects.

Currently, state law (SB 208 Lara) allows water and wastewater projects that serve DACs and receive IRWM funding to request advances of up to 50 percent of project costs if the project costs are less than $1 million. Projects that top $1 million, even by one dollar, may not receive advances. In addition, there are long delays, often 90 days or more, in processing reimbursement requests once projects have expensed all of the advanced funds. This creates a cash flow burden on DACs, including penalties and additional project costs from contractors working on the projects, and can require the sponsor to find interim funding sources.

Because SB 208 only applied to IRWM projects, the numerous small DACs now participating in the Prop 1 program at State Water Resources Control Board (SWRCB) are in the same position. Many of the projects in the program will be larger than $1 million. It will be impossible for these small communities to pay design and construction costs while enduring lengthy waits [for] the state to reimburse expenses."

Integrated regional water management (IRWM) plan grant funding: IRWM is a collaborative effort to manage all aspects of water resources in a region. IRWM crosses jurisdictional, watershed, and political boundaries; involves multiple agencies, stakeholders, individuals, and groups; and, attempts to address the issues and differing perspectives of all the entities involved through mutually beneficial solutions. DWR manages the IRWM Grant Program that funds planning, implementation, and disadvantaged community involvement. The IRWM Grant Program's intent is to promote and practice integrated regional water management to ensure sustainable water uses, reliable water supplies, better water quality, environmental stewardship, efficient urban development, protection of agriculture, and a strong economy.

The IRWM Grant Program has been funded by several sources, including Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (all Proposition 50 grant funds have been awarded); Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (all Proposition 84 grant funds have been awarded); and, Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014. Proposition 1 authorized $510 million in IRWM funding. DWR reports that about $420 million remains of the Proposition 1 IRWM allocation.

Currently, WC § 10551 (b) requires DWR, under the IRWM grant program, to, within 60 days of receiving a list of projects to be funded by the IRWM grant funds, provide advanced payment of 50 percent of the grant award for those projects in which the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community; and, the grant award for the project is less than $1 million. DWR reports that under these provisions, 37 projects have requested advanced payment. DWR contends that there has not been any issues or problems with the advanced payment process; however, some advanced payment recipients could not spend the funds as fast as required by law. In these cases, DWR works directly with the recipients to allow more time.

This bill would instead require DWR, within 60 days of receiving the required project information for a grant for projects included and implemented in an IRWM plan, to provide advanced payment of $500,000 or 50 percent of the grant award, whichever is less, for projects in which the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

Small Community Grant Fund / wastewater project funding: The Small Community Grant Fund authorizes the State Water Board to finance wastewater treatment projects, and other water quality projects, in small communities that might not otherwise be able to afford a loan or similar financing. The Small Community Grant Fund includes funds available through the Clean Water State Revolving Fund (CWSRF) Program's Small Community Grant Fund allocation, general obligation bond funds available as a result of Proposition 1, and any available residual general obligation bond funds. Through the CWSRF, the State Water Board has an annual Small Community Grant Fund appropriation of $8 million dollars, which is administered consistent with the CWSRF Intended Use Plan and CWSRF Policy. In addition, Proposition 1 allocates $260 million to the Small Community Grant Fund. The State Water Board reports that as of March 8, 2018, there is an unappropriated balance of $19.6 million of Proposition 1 Small Community Grant Fund funds for wastewater projects.

General State Water Quality Control law (WC § 13193.9) requires the State Water Board, if it determines that an advance is needed for a wastewater project serving a small, disadvantaged community to proceed in an efficient manner, to allocate to the recipient up to 25 percent of the financial assistance amount, not exceeding $1 million, in advance of actual expenditures. This section of the Water Code also requires the State Water Board to establish a payment process in which the recipient of financial assistance for a wastewater project serving a small, disadvantaged community receives funds within 30 days of the date on which the State Water Board receives a project payment request.

The State Water Board contends that it routinely expedites payments to small, disadvantaged communities by ensuring that the recipient receives the funds within 30 days of submitting its invoice for the project. The State Water Board does not appear to routinely use advanced funding, as advanced payment could increase the incident of fraud and create new administrative complexity.

This bill would require the State Water Board, within 60 days of awarding a grant from the Small Community Grant Fund for wastewater projects for small communities, to provide advanced payment of $500,000 or 50 percent of the grant award, whichever is less, for projects in which the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

Proposition 1 funding / drinking water funding: Proposition 1 was enacted by AB 1471 (Rendon, Chapter 188, Statutes of 2014) and approved by the voters of California on November 4, 2014. Proposition 1 authorized $7.12 billion in general obligation bonds for state water supply infrastructure projects, such as public water system improvements, surface and groundwater storage, drinking water protection, water recycling and advanced water treatment technology, water supply management and conveyance, wastewater treatment, drought relief, emergency water supplies, and ecosystem and watershed protection and restoration. The measure also redirected $425 million in unsold bonds that voters previously approved for water and other environmental uses.

Proposition 1 allocates $520 million for drinking water for disadvantaged communities and for wastewater treatment in small communities. Of the $520 million, Proposition 1 allocates $260 million to the Small Community Grant Fund for wastewater treatment in small communities, as mentioned above, and $260 million for drinking water grants and loans for public water system infrastructure improvements and related actions to meet safe drinking water standards, to ensure

affordable drinking water, or both, in disadvantaged communities. According to the State Water Board, Proposition 1 drinking water funds are administered consistent with the Drinking Water State Revolving Fund (DWSRF) Intended Use Plan and the DWSRF Policy, to the extent allowed by federal regulations and state law. The State Water Board reports that as of March 8, 2018, it has an unencumbered balance of $8.4 million available from Proposition 1 drinking water funds. The State Water Board has committed these remaining Proposition 1 drinking water funds and anticipates fully encumbering the funds by May 2018.

This bill would require the State Water Board, within 60 days of awarding a grant from specified Proposition 1 drinking water funds, to provide advanced payment of $500,000 or 25 percent of the grant award, whichever is less.

Advanced payments of public funds: For most publicly funded projects, funds are disbursed only after costs are incurred. This bill requires advanced payments of funds before the invoice is submitted, including for funds associated with the state's two State Revolving Funds (SRFs), the CWSRF, and the DWSRF. There is some concern that the state's operating agreements with United States Environmental Protection Agency specifically disallow the State Water Board to draw funds from either SRF until costs have been incurred (CWSRF Operating Agreement, § II(A)(2)(f); DWSRF Operating Agreement, § II(G)(1)). This agreement language comes from the federal regulations in 40 CFR Part 35 (40 Code of Federal Regulations (CFR), § 35.3160 [CWSRF]; 40 CFR, § 35.3565 [DWSRF].) Should this bill be enacted, it is likely the State Water Board would need to request permission from USEPA to use advanced payments on funding related to the SRFs.

Future funds impacted by the bill: In addition to the funding sources mentioned in this analysis, future funding sources, such as funding through Proposition 68, the Parks, Environment, and Water Bond, which is on the ballot in California as a legislatively referred bond act on June 5, 2018, could be impacted by the requirements of this bill. Proposition 68 also contains advanced funding provisions for IRWM projects.

Are advanced funds always necessary?: This bill requires advanced funding within the three different funding programs mentioned above; the IRWM grant program for regional water resources management; the Small Community Grant Fund for wastewater treatment improvements in small communities; and, specified Proposition1 drinking water funding for drinking water system improvements in disadvantaged communities. When AB 2356 (Arambula, 2008) was heard in the Assembly Environmental Safety and Toxic Materials Committee, Committee members were concerned that the bill required the State Water Board, for all financial assistance recipients that fit the definition of small, disadvantaged community, to provide advanced payment of up to 25% of the financial assistance amount for wastewater projects. The concern was that not all small, disadvantaged communities need a 25% advance of financial assistance funds and advanced funds could sit idle in their accounts or not be expended within a reasonable timeframe. Requiring advanced funds in every instance seemed inflexible, and could potentially create administrative challenges for both the State Water Board and recipients. Therefore, the bill was amended in Committee to instead require the State Water Board to advance up to 25% of the financial assistance amount when an advance is needed for the project to proceed to an efficient manner.

In addition to requiring advanced payment in all cases within the three funding programs included in the bill, AB 2060 includes provisions requiring the funding recipient to expend the

advanced funds within six months of the date of receipt, unless the administering agency waives this requirement. The author may wish to similarly link need to the advanced payment requirements in this bill.

Conflict with AB 2064 (Gloria): AB 2064 (Gloria) requires DWR to provide advanced funding of any remaining grant funds under IRWM funding to project proponents that have received a prior advanced payment, satisfied all quarterly reporting requirements, and submitted a first one-half project accountability report to DWR. The author should work together with Assemblymember Gloria to ensure that AB 2060 and AB 2064 do not conflict.

Double referral: On March 20, 2018, this bill passed the Assembly Water, Parks, and Wildlife Committee on a 15 – 0 vote.

Proposed amendments:

In order to ensure that the advanced payment requirements in the bill consider project proponent need, the Committee may wish to consider amending the bill to provide that the administering agency shall provide advanced payment of funds under the provisions of the bill if the project proponent requests advanced payment and the project proponent demonstrates a need for the advanced funds.

In addition, the Committee may wish to consider amending the bill with the technical amendments proposed by the Assembly Water, Parks, and Wildlife Committee that link current statutory definitions of "disadvantaged community" and "nonprofit organization" to the provisions of the bill.

Related legislation:

1) AB 2064 (Gloria). Requires DWR to provide advanced funding of any remaining grant funds under IRWM to project proponents that have received a prior advanced payment, satisfied all quarterly reporting requirements, and submitted a first one-half project accountability report to DWR. This bill passed the Assembly Water, Parks, and Wildlife Committee on March 20, 2018, and is currently in the Assembly Appropriations Committee.

2) SB 208 (Lara, Chapter 675, Statutes of 2015). Requires DWR to provide advanced funding of 50% of the grant for IRWM plan grants less than $1 million when the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

3) AB 1471 (Rendon, Chapter 188, Statutes of 2014). Provides, under the Water Quality, Supply, and Infrastructure Improvement Act of 2014, approved by the voters as Proposition 1 at the November 4, 2014, statewide general election, $7.5 billion in bond funding for water-related projects and programs, including $520 million for expenditures, grants, and loans for projects that improve water quality or help provide clean, safe, and reliable drinking water for all Californians.

4) AB 2356 (Arambula, Chapter 609, Statutes of 2008). Creates the Small Community Grant Fund and authorizes the State Water Board to assess an annual charge to be deposited in the grant fund in lieu of interest that would otherwise be charged on a financing.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
California Municipal Utilities Association
California Water Association
Desert Water Agency
Pacific Forest Trust
Rural County Representatives of California

Opposition

None received.

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2189 (Santiago) – As Amended March 15, 2018

SUBJECT: Hazardous substances: lead: cleanup: Exide Technologies facility

SUMMARY: Extends the expenditure deadline from June 30, 2018, to June 30, 2021, for the Department of Toxic Substances Control (DTSC) to cleanup properties contaminated with lead near the Exide Technologies (Exide) facility in Vernon, California and appropriates $12 million to DTSC for the investigation and cleanup of parkways near Exide. Specifically, **this bill**:

1) Extends the expenditure deadline from June 30, 2018, to June 30, 2021, for DTSC to expend $176 million to cleanup lead contaminated properties near Exide.

2) Appropriates $12 million from the Toxic Substances Control Account to DTSC for lead sampling and testing of public parkways in communities surrounding Exide.

3) Requires the lead sampling and testing of parkways to be completed by July 1, 2019.

4) Requires DTSC to post on its internet website the number of parkways sampled and tested, and update these numbers at least twice per month until July 1, 2019.

5) Authorizes the funds from the $12 million appropriation to be used for interim removal or remedial action measures of those parkways that pose a substantial danger to human health or the environment.

6) Requires the County of Los Angeles, to the extent feasible, to use any lead-based paint remediation federal funding or grant funding for lead-based paint remediation, to provide residents in the communities surrounding Exide with wraparound services, including, but not limited to: the abatement of lead-based paint hazards on residential properties; the production of a survey to residents to determine which county resources and programs are being accessed by households for lead remediation; ongoing blood-lead level testing of residents; and, providing residents educational literature and resources on the dangers of lead.

EXISTING LAW:

1) Creates the Hazardous Waste Control Law (HWCL), which authorizes DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)

2) Establishes the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA) program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment. (HSC § 25300 et seq.)

3) Appropriates $176,600,000 from the Toxic Substances Control Account to DTSC and shall be available for expenditure through June 30, 2018. Makes these moneys available for any of the following: activities related to the cleanup and investigation of properties contaminated

with lead in the communities surrounding Exide; job training activities related to the cleanup and investigation of the properties contaminated with lead in the communities surrounding Exide; and, actions taken to pursue all available remedies against potentially responsible parties, including, but not limited to, cost recovery actions against entities that are potentially responsible, for the costs related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide. (AB 118 Santiago, Chapter 10, Statutes of 2016)

4) Authorizes a loan from the state General Fund to the Toxic Substances Control Account under DTSC for activities relating to the investigation and cleanup of properties around Exide. Requires that all funds recovered from the potentially responsible parties shall be used to repay the loan made pursuant to this item. Authorizes the Director of the Department of Finance (Director), if the amount of moneys received from the cost recovery efforts is insufficient to fully repay the loan made pursuant to this item, to forgive any remaining balance if, at least 90 days before forgiving any balance, the Director submits a notification to the Joint Legislative Budget Committee. (SB 93, De León, Chapter 9, Statutes of 2016)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"AB 2189 appropriates $12 million to DTSC for the purposes of testing the public parkways around the Exide Technologies facility in Vernon, California, for lead contamination.

The Exide Technologies battery recycling facility in Vernon, CA operated for over 90 years -- the last 33 on a temporary permit from DTSC. During the last three decades, DTSC documented over 100 violations including lead and acid leaks, an overflowing pond of toxic sludge, and hazardous levels of lead in the soil outside the facility. South Coast Air District also reported arsenic emissions from the facility creating an elevated cancer risk for as many as 110,000 people in the area stretching from Boyle Heights to Huntington Park.

The Exide facility finally closed in 2015 under an agreement with the federal government. Closure of the plant was a major milestone. But it is just step one in how we rectify the damage that has been incurred by these communities. The people of this area are sick, with long-term health implications, and they continue to be exposed to lead dust daily in their yards and houses.

The Budget Act of 2016 included $176.6 million in expedited funding (via my AB 118) to DTSC for the purposes of testing, clean-up, and job training in the communities surrounding Exide. Clean-up efforts covered by that measure include yards and homes, but do[es] not include the public parkways leading into contaminated homes.

AB 2189 proposes to appropriate $12 million to DTSC for the express purpose of lead testing of parkways around the Exide facility. The measure also requires the County of Los Angeles, to the extent feasible, to use lead-based paint remediation funding it has received from the U.S. Department of Housing and Urban Development to prioritize the cleaning of homes within the Exide area. Additionally, AB 2189 expresses the intent of the Legislature

to examine federal, state, and local lead remediation thresholds to seek conformity to potentially direct additional resources to the impacted residents of this area."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to public health or the environment. DTSC utilizes the HSAA for cleanup of contaminated sites and the HWCL for the regulation of hazardous waste sites. The HSAA is intended to provide compensation for out-of-pocket medical expenses and lost wages or business incomes resulting from injuries caused by exposure to hazardous substances. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

Exide: Exide Technologies is located in the City of Vernon, about five miles southeast of downtown Los Angeles. The facility occupies 15 acres in a heavily industrial region with surrounding residential areas. Facility operations included recycling lead-bearing scrap materials obtained from spent lead-acid batteries. This facility operated under an interim status permit for more than 30 years. During that time, inspectors documented more than 100 violations, including lead and acid leaks, an overflowing pond of toxic sludge, enormous cracks in the floor and hazardous levels of lead in the soil outside.

DTSC permanently suspended operations at Exide in 2014 and the facility closed in 2015 after DTSC notified Exide that its application for a new permit would be denied. DTSC then ordered Exide to test and clean up residential properties and conduct its own testing.

DTSC's analysis of the Preliminary Investigation Area (PIA) indicates that releases from the facility deposited lead dust across an area of southeast Los Angeles County, resulting in contamination extending 1.7 miles from the facility and impacting up to 10,000 properties, including residences, parks, and schools. The South Coast Air Quality Management District also cited the facility numerous times, and reported that arsenic emissions from Exide created an elevated risk of cancer for as many as 11,000 people in the area stretching from Boyle Heights to Huntington Park.

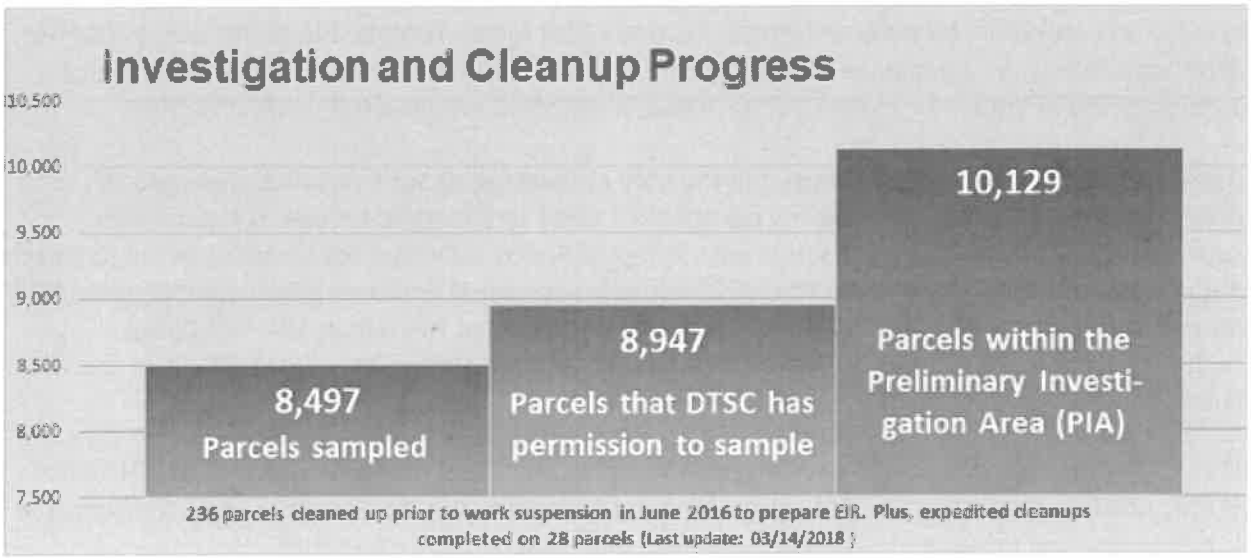
In August 2015, the Legislature and the Governor approved $7 million of emergency funding to test up to 1,500 residential properties, parks, schools, and daycare centers in the surrounding community; develop a comprehensive cleanup plan; and, begin cleanup of the highest priority sites based on the degree of lead contamination and other exposure factors.

On April 20, 2016, Governor Edmund G. Brown signed Assembly Bill 118 (Santiago, Chapter 10, Statutes of 2016) and Senate Bill 93 (De León, Chapter 9, Statutes of 2016) to appropriate

$176.6 million to DTSC to expedite residential sampling and cleanup in communities within a 1.7-mile area surrounding the former Exide battery recycling facility in Vernon, California (Facility). The 1.7-mile area surrounding Exide is designated as the Preliminary Investigation Area (PIA).

In July 2017, DTSC released the Final Removal Action Plan (Cleanup Plan), and a Final Environmental Impact Report (EIR) related to the cleanup of properties in the PIA. The Cleanup Plan is focused on cleaning up approximately 2,500 residential properties, schools, parks, daycare centers, and child care facilities within the PIA. The PIA includes sections of the cities of Vernon, Bell, Huntington Park, Commerce, Maywood, Los Angeles (Boyle Heights neighborhood), and an area of unincorporated Los Angeles County (East Los Angeles neighborhoods). Additionally, the EIR analyzed a larger cleanup project, up to 10,000 properties in the PIA, and would allow DTSC to continue the cleanup of properties beyond the 2,500 initially selected properties as funds allow.

Below is the status of the sampling and cleanup of properties near Exide:



Parkways near Exide: Parkways are the soil and or grass area between the street and the property. DTSC evaluated whether or not to include the parkways as part of the EIR and chose not to include them because DTSC felt they did not post the same potential for exposure as a residential front or backyard. Who owns the parkways? It is complicated. Generally speaking the parkways are owned by each of the cities they are located in and the County in the unincorporated areas near Exide.

Cleaning up the parkways: During the cleanup planning process, including the development and adoption of the EIR for the cleanup of the residential properties there has been concern by residents near Exide that the failure to include the parkways in the EIR could mean that residents will be exposed to lead even if their properties are cleaned up. To remedy this concern, AB 2198 specifically directs DTSC to investigate and cleanup the parkways in the residential communities near Exide and provides $12 million for this effort.

Lead: Lead has been listed under California's Proposition 65's requirements as a substance that can cause reproductive damage and birth defects since 1987 and has been on the list of chemicals known to cause cancer since 1992. According to the Office of Environmental Health Hazard Assessment, lead has multiple toxic effects on the human body. Decreased intelligence in children and increased blood pressure in adults are among the more serious non-carcinogenic effects. There is no level of lead that has been proven safe, either for children or for adults. Exposure to lead is a significant health concern, especially for young children and infants whose growing bodies tend to absorb more lead than the average adult.

Lead cleanup inside homes: DTSC has authority to cleanup soil and groundwater contamination; however, they lack authority and expertise when it comes to cleaning up the interior of a home. The County of Los Angeles Department of Public Health (County) works with the state Department of Public Health with regard to childhood blood lead data and the County responds to elevated blood lead levels of children. AB 2189 seeks to use the County's expertise to provide additional public health services to residents who live near Exide. AB 2189 requires the County to provide residents near Exide with wraparound services including the abatement of lead-based paint on residential properties, a survey of residents to identify which County programs and services are being accessed by residents, ongoing blood-lead testing, and educational literature on the dangers of lead.

Need for extension of deadline to expend cleanup funds: On February 27, 2018, DTSC notified Environmental Quality Management (EQM) that it was terminating contract negotiations. This is significant because EQM was the winning bidder for the contract to cleanup approximately 2,500 properties near Exide. Given that this contract is terminated and DTSC currently does not have a contractor to complete the work, it is near impossible that the 2,500 properties will be cleaned up by the June 30, 2018 deadline in current law. AB 2189 will extend the deadline three years to utilize the $176 million already allocated for cleaning up residential properties near Exide.

Related legislation:

1) AB 118 (Santiago, Chapter 10, Statutes of 2016). Appropriate $176.6 million (Toxic Substances Control Account) to the Department of Toxic Substances Control (DTSC) to use for activities related to the cleanup and investigation of properties contaminated with lead in the communities surrounding the Exide Technologies facility in the City of Vernon, California.

2) SB 93 (De León, Chapter 9, Statutes of 2016). Amends the 2015-16 Budget Act to include a new transfer of funds to address urgent cleanup of lead contamination in the communities surrounding the Exide Technologies facility in the City of Vernon.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2370 (Holden) – As Amended April 5, 2018

SUBJECT: Lead exposure: child day care facilities: family day care homes

SUMMARY: Requires the State Department of Social Services, in conjunction with the State Water Resources Control Board (State Water Board), to adopt regulations for the testing of drinking water for lead at licensed child day care centers, and requires licensed child day care facilities to provide information on lead exposure to the parents or legal guardians of the children it serves. Specifically, **this bill**:

1) Provides that a licensed child day care center is eligible to apply for, and receive, loan funding from the Child Care Facilities Revolving Fund to remediate lead contamination at its center and to pay for drinking water system improvements that are necessary to ensure that the center's drinking water is lead-free.

2) Requires a licensed child day care center that receives loan funding from the Child Care Facilities Revolving Fund to demonstrate both a financial need and a lack of reasonable alternative funding sources.

3) Requires a licensed child day care facility, upon enrolling a child, to request that the child's parent or guardian provide the child day care facility with documentation demonstrating that the enrolling child has received a blood lead screening test.

4) Requires a licensed child day care facility, if a parent or guardian does not provide the child day care facility with documentation that the child received a blood lead screening test, to provide the parent or guardian with all of the following information:

   a) Risks and effects of lead exposure; and,

   b) Blood lead testing recommendations and requirements.

5) States that failure of a parent or guardian to comply shall not prevent the child day care facility from enrolling the child.

6) Requires the training for at least one director or teacher at each day care center, in addition to other required training, to include instruction in the prevention of lead exposure.

7) Requires licensees, who have a license issued before January 1, 2019, to comply with the lead instruction training requirements by April 1, 2019.

8) Requires, on or before July 1, 2020, the State Department of Social Services, in conjunction with the State Water Board, to adopt regulations for the testing of drinking water at licensed child care centers to ensure that the drinking water is lead-free. Requires the regulations to include, at a minimum, all of the following:

a) A requirement that a licensed child care center shall provide potable, non-contaminated drinking water to children in its care;

b) A requirement that initial testing of drinking water at a licensed child care center shall be performed by January 1, 2022, and that periodic testing is performed every five years thereafter;

c) A requirement that the drinking water testing results shall be submitted to the State Water Board within three months of testing, and timelines by which the State Water Board shall transmit the testing data to the State Department of Social Services;

d) A fair and reasonable enforcement mechanism; and,

e) Parental notification requirements.

9) Defines "non-contaminated drinking water" as, among other qualifications as determined by the State Department of Social Services and the State Water Board, drinking water that is lead-free.

EXISTING LAW:

1) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels, or MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health & Safety Code (HSC) § 116270, et seq.)

2) Declares childhood lead exposure as the most significant childhood environmental health problem in the state and establishes the Childhood Lead Poisoning Prevention Program to reduce the incidence of childhood lead exposure in California. (HSC § 124125, et seq.)

3) Defines a "child day care facility" as a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes. (HSC § 1596.750)

4) Defines a "licensed child day care center" as any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers. (HSC 1596.76)

5) Requires, pursuant to the federal Lead and Copper Rule (LCR), that all public drinking water systems regularly test a sample of high-risk homes for lead at the tap. (40 Code of Federal Regulations (CFR) Part 141)

6) Establishes as policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "Drinking water at most child care centers is not tested for lead. This is a problem because many water pipes, faucets, and fixtures still in use contain lead, and over time, this lead can leach into the drinking water. Yet we know young children are the most harmed by lead because they absorb much of the lead they ingest …
>
> When very young children drink water contaminated with lead, they absorb 40 to 50 percent of the ingested lead. Adults, on the other hand, absorb between 5 to 15 percent.
>
> AB 2370 addresses the need to enforce existing laws and regulations requiring child care centers to provide children safe and potable drinking water from "non-contaminating" fixtures."

Licensed child care: The bill establishes various new requirements on licensed child care establishments, but there is an important distinction between the two types of establishments.

Licensed child day care centers are any child day care facility other than a family day care home, which includes infant centers, preschools, extended day care facilities, and school-age child care centers. Centers are larger facilities serving greater numbers of children. At this time, these centers care for the lion share of children enrolled in licensed child care statewide — about 700,000 out of 1 million children.

Licensed child day care facilities provide nonmedical care to children younger than 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facilities include day care centers, employer-sponsored child care centers, and family day care homes.

Lead: Lead has been listed under California's Proposition 65 since 1987 as a substance that can cause reproductive damage and birth defects, and has been listed as a chemical known to cause cancer since 1992. Lead exposure and lead poisoning are also associated with cognitive and other health impacts, especially to children, that appear irreversible. There is no level of lead that has been proven safe, either for children or for adults.

Lead in water: The most prevalent sources of lead in drinking water are from pipes, fixtures, and associated hardware from which the lead can leach. According to *Lead in Drinking Water and Human Blood Levels in the United States*, published by the National Center for Environmental Health in 2012, nearly all lead in users' tap water does not come from the primary water source or from the municipal treatment plant, but is a result of corrosion resulting from materials containing lead coming into contact with water after it leaves the treatment plant. Lead can enter a building's drinking water by leaching from lead service connections, from lead solder used in copper piping, and from brass fixtures.

The amount of lead in tap water can depend on several factors, including the age and material of the pipes, concentration of lead in water delivered by the public utility, and corrosiveness of the water. More corrosive water can cause greater lead leaching from pipes.

What do we know about California's pipes? There are about 7,500 public water systems throughout the state, and they are all regulated by the State Water Board's Division of Drinking Water. California has stringent testing and monitoring protocols in place that ensure that drinking water supplies meet California's health standards for drinking water and that appropriate chemistry is maintained to inhibit corrosion of the pipes delivering drinking water. In addition, the State Water Board tracks all water sources in California for pH and salinity levels for potential corrosion, and tracks which water providers add corrosion inhibitors to their water supplies.

As it relates specifically to the pipes conveying the water, SB 1398 (Leyva, Chapter 731, Statutes of 2016), requires community water systems to compile an inventory of, and a schedule for, replacing all known leaded service lines (pipes) used in their systems by 2020. This requirement does not apply to service lines on the customer's side of the meter; however, if the water system determines that a lead service line is also on the customer side of the meter (such as a licensed child day care facility), the State Water Board highly recommends that the water system notify the customer of the lead service line and if possible, assist in the replacement.

Lead in plumbing: Beginning January 1, 2010, California law prohibited the introduction into commerce of any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not "lead free."

That law defines "lead free" as not more than 0.2 percent lead when used with respect to solder and flux, not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures, and not more than 8 percent when used with respect to pipes and pipe fittings. (HSC § 116875(e)-(f))

This applies to kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking. However, service saddles, backflow preventers for non-potable services such as irrigation and industrial uses, and water distribution main gate valves that are two inches in diameter and above are excluded.

The federal SDWA, which defines "lead free" with the same metrics as California law, prohibits the "use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 1986, in the installation or repair of (i) any public water system; or (ii) any plumbing in a residential or non-residential facility providing water for human consumption, that is not lead free."

AB 2370 requires the State Department of Social Services, in conjunction with the State Water Board, to adopt regulations for the testing of drinking water at licensed child care centers to ensure that the drinking water is lead free. The bill stipulates that those regulations have a requirement "that a licensed child care center shall provide potable, non-contaminated drinking water to children in its care" and defines "non-contaminated drinking water" as, among other qualifications as determined by the State Department of Social Services and the State Water Board, drinking water that is lead free.

Since "lead free" plumbing can contain concentrations of lead, the State Water Board and State Department of Social Services will have to determine how "lead free" will be defined under the regulations required by this bill.

Federal lead testing requirements: In 1991, the US EPA adopted the Lead and Copper Rule (LCR), which established "action levels" for lead of 15 µg/L (0.015 mg/L). The LCR requires a public water system to test water at the tap at a sample of their customers served for lead levels. Sample sizes vary based on population served. For example, if a school serves between 500-3,300 students, its sample size under the LCR is 20 tap sites (water fountains). If more than 10 percent of the samples collected are at or above the action level for lead, it can trigger 'actions' that include public education, water quality parameter monitoring, corrosion control treatment, source water monitoring/treatment, public education, and lead service line replacement.

Licensed child day care facilities that have their own water supply and are considered transient or non-transient, non-community water systems are subject to the LCR requirements.

A transient non-community water system is a non-community water system that does not regularly serve at least 25 of the same persons over six months per year. These are facilities such as gas stations and roadside rest areas that do not have any customers of their water systems. Non-transient non-community water systems are public water systems that are not a community water system and that regularly serves at least 25 of the same persons over six months per year. These are facilities like summer camps and potentially licensed child day care facilities.

Who is responsible for child day care facility drinking water? The State Water Board does not have regulatory authority over licensed child day care facilities or centers, unless a child day care facility or center has its own water supply, and is considered a transient or non-transient non-community water system. As described, those facilities are regulated under the federal LCR and have to test water at a sample of taps for lead levels.

Informing parents about childhood lead exposure: Under the California Department of Public Health's regulations for the Childhood Lead Poisoning Prevention Program, physicians are required to screen all children between 12-months and 72-months of age for lead exposure and provide information to the parent or legal guardian about the hazards of lead and the common pathways for exposure.

Recent legislative hearings have shined a light on overall low childhood blood lead testing rates statewide, and suggested an uneven implementation of the physician's requirements for screening children for and informing them about lead.

Therefore, this bill proposes using licensed child day care facilities as conduits of information about lead to the population the Childhood Lead Poisoning Prevention Program covers: children.

Specifically, AB 2370 would require a licensed child day care facility, when enrolling a child, to request that the child's parent or guardian provide proof that the child has had a blood lead test. If the parent cannot or does not provide that proof, the bill requires the licensed child care facility to provide information on lead risks and providers who offer blood lead testing. This provision is modeled after requirements on licensed child day care facilities in the City of San Diego, and other municipalities around the nation.

The bill would also require at least one director or teacher at the facility to get trained in the instruction in the prevention of lead exposure so that provider is equipped to provide lead prevention information. This training would be provided by the Emergency Medical Services Authority (EMSA)-approved vendors, including the American Red Cross, American Heart Association, and universities that currently provide training for licensed day care providers in pediatric first aid, preventive health practices, and other requirements under current law.

While requiring licensed child day care facility teachers and directors to provide information on lead exposure would help close the gap on a lack of information about how serious lead exposure is to children, the author may wish to consider tying up a few loose ends.

First, the author could clarify what information the licensed child day care facility should be providing parents and legal guardians. CDPH, in fact, has informative brochures on lead exposure prevention that licensed child day care facility providers could initially hand out; however, additional information or handouts would need to be developed on the current lead testing requirements.

Second, the Department of Social Services has regulations for implementing the statute on licensed child day care facility training requirements. Should this bill amend current law to require training on lead exposure, the Department of Social Services will likely have to amend its regulations, which will delay the ability for the licensed child day care facility providers to get trained and provide information on lead to parents and legal guardians. Since the effective date of the bill is currently January 1, 2019, the author may wish to consider an appropriate effective date for the new provision on required training.

Third, the current law that the bill amends requiring lead exposure training does not require EMSA-approved vendors to be appropriately trained in lead exposure prevention. Therefore, the author may wish to consider clarifying in the bill that those institutions be equipped to sufficiently provide the training.

Child Care Facilities Revolving Fund: This bill makes licensed child day care facilities eligible to apply for, and receive, loan funding from the Child Care Facilities Revolving Fund to remediate lead contamination at its facility and to pay for drinking water system improvements that are necessary to ensure that the facility's drinking water is lead free.

Established in 1997 by AB 1578 (Midgen, Leach, and Alpert, Chapter 299, Statutes of 1997), the Child Care Facilities Revolving Fund (Fund) provides loan funding for the renovation, repair, or improvement of an existing building in order to ensure the building is suitable for licensure for child care and development services. The Fund also allows for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services. Since it was established, the Fund has received 1,175 applications for funding of child care facilities projects, according to data from the California Department of Education (CDE). Currently, CDE has 120 contracts with participating agencies for the funding of new relocatable buildings, which have the potential to increase capacity and serve 12,430 children in California.

According to the *Child Care Facilities Revolving Fund 2016-17 Annual Report*, which provides information on the number of funding requests received and their purpose, no funding was provided for drinking water infrastructure at a licensed child day care facility.

REGISTERED SUPPORT / OPPOSITION:

Support

Environmental Working Group (Sponsor)
7th Generation Advisors
Arc and United Cerebral Palsy California Collaboration
California League of Conservation Voters
Center for Environmental Health
Center for Food Safety
Children's Advocacy Institute
Clean Water Action
Coalition of California Welfare Rights Organizations
Community Water Center
Environmental Working Group
Friends Committee on Legislation of California
Healthy Black Families, Inc.
Natural Resources Defense Council
San Francisco Bay Area Physicians for Social Responsibility
SmartOakland
Trust for Public Land
Western Center on Law & Poverty

Opposition

None on file.

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2422 (Bloom) – As Amended April 3, 2018

SUBJECT: Pesticides: use of anticoagulants

SUMMARY: Prohibits the use, except as specified, of any pesticide that contains an anticoagulant. Specifically, **this bill**:

1) Makes legislative findings about the utility of wild predators in maintaining ecosystem health and about the deleterious impact of rodenticides on predatory species.

2) Declares that the provisions in the bill shall be known as the California Natural Predator Protection Act of 2018.

3) Prohibits the use, except as specified, of any pesticide that contains an anticoagulant.

4) Provides that anticoagulants include, but are not limited to, brodifacoum, bromadiolone, chlorophacinone, difenacoum, difethialone, diphacinone, and warfarin.

5) Provides that the prohibition on the use of an anticoagulant pesticide does not apply if the local health authority determines that an emergency pest infestation poses an immediate threat to public health, or could cause significant economic damage and the county agricultural commissioner determines that use of a pesticide that contains an anticoagulant pesticide is necessary to remediate the emergency pest infestation.

6) Provides that a pest management provider may apply to the county agricultural commissioner to request the use of an anticoagulant pesticide in the case of an emergency pest infestation that poses an immediate threat to public health or could cause significant economic damage.

7) Requires the county agricultural commissioner to respond to the request in a timely manner.

8) Authorizes the county agricultural commissioner to impose additional conditions for emergency applications of an anticoagulant pesticide.

9) Provides that the prohibition on the use of an anticoagulant pesticide does not apply to any governmental agency employee who is a vector control technician who uses pesticides for public health activities.

10) Provides that the prohibition on the use of an anticoagulant pesticide does not apply to a mosquito or vector control district that uses pesticides to protect public health.

11) Provides that the prohibition on the use of an anticoagulant pesticide does not apply to agricultural activities, as defined in statute.

12) Adds the following locations to the 'agricultural activities' exemption for use of an anticoagulant pesticide:

a) Warehouses used to store foods for human or animal consumption;

b) Agricultural food production sites, including, but not limited to, slaughterhouses and canneries; and,

c) Factories, breweries, wineries, or any other location where rodent or pest populations need to be controlled for food safety or agricultural purposes.

13) Deletes existing statute that prohibits the use of second generation anticoagulant rodenticides in wildlife habitat areas, as defined.

EXISTING LAW:

1) Authorizes the state's pesticide regulatory program and mandates the Department of Pesticide Regulation (DPR) to, among other things, provide for the proper, safe, and efficient use of pesticides essential for the production of food and fiber, for the protection of public health and safety, and for the protection of the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides. (Food and Agriculture Code (FAC) § 11401 et seq.)

2) Prohibits, except for use for agricultural activities, the use in a state park, state wildlife refuge, or state conservancy of any pesticide that contains one or more of the following second generation anticoagulant pesticides: brodifacoum, bromadiolone, difenacoum, and difethialone. (FAC § 12978.7)

3) Defines "agricultural activities" as those activities that generate products, including any horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee, or farm product. (FAC § 564 and 54004)

4) Requires the director of DPR to control and otherwise regulate the use of restricted materials. (FAC § 14001)

5) Prohibits a person from using or possessing any pesticide designated as a restricted material for any agricultural use except under a written permit of the local agricultural commissioner. (FAC § 14006.5)

6) Prohibits, except as provided by regulation, the possession or use of a restricted material by any person except a certified private or commercial applicator, or someone under the direct supervision of a certified private or commercial applicator. (FAC § 14015)

7) Designates as restricted materials pesticides containing brodifacoum, bromadiolone, difenacoum, and difethialone. (Title 3 California Code of Regulations (CCR), § 6400 (2014))

8) Prohibits the use of brodifacoum, bromadiolone, difenacoum, and difethialone in any above ground bait more than 50 feet from a man-made structure unless there is a feature associated with the site that is harboring or attracting the pests targeted on the label between the 50-foot limit and the placement limit specified on the label. (Title 3 CCR § 6471 (2014))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 2422, seeks to take stronger measures to protect children, pets, and wildlife from unintentional rodenticide poisoning. The use of rat, mouse, and rodent poisons by the general public and licensed applicators leads to the deaths of wildlife and pets, and the hospitalization and illness of children. AB 2422 allows for common sense controls on these dangerous poisons in order to eliminate their use where they lead to unnecessary poisonings to non-target organisms while still allowing for their use to protect California's agricultural economy and to protect public health and the environment."

Rodents: Many species of rodents inhabit California, including squirrels, chipmunks, beavers, gophers, rats, and mice. Rodents native to California play an important ecological role, and are a major food source for predators and scavengers, including hawks, eagles, foxes, coyotes, and bobcats. Rodents, however, are pests when they infest houses, threaten public health, and destroy property. According to the Centers for Disease Control and Prevention, rats and mice spread more than 35 diseases to humans worldwide. In North America, diseases that spread from rats and mice to humans include hantavirus and salmonellosis. Rodent infestations can also damage or destroy critical habitat, native plants and animals, crops, property, and food supplies.

Rodent control: According to the United States Environmental Protection (USEPA), the most important steps in eliminating and preventing rodent infestations are keeping living spaces clean; preventing rodent access; and, eliminating potential nesting areas. Other options to control rodent infestations include lethal traps, live traps, and chemical control (rodenticides).

Rodenticides: Rodenticides are pesticides designed to kill rodents, but the ingestion of, or sometimes contact with rodenticides can have the same type of effect on any mammal. Contact with rodenticides can also affect birds and fish. Rodenticides are usually formulated as baits, which are designed to attract animals. Baits used in agriculture and natural areas may contain ground meat, vegetables, grains, or fruits, which may be attractive to non-target wildlife, children, and pets.

According to the USEPA, most of the rodenticides used today are anticoagulant compounds, either first or second generation, that interfere with blood clotting and cause death from excessive bleeding. Deaths typically occur between four days and two weeks after rodents begin to feed on the bait.

First-generation anticoagulants (FGARs) include the anticoagulants that were developed as rodenticides before 1970. These compounds are much more toxic when feeding occurs on several successive days rather than on one day only. Chlorpophacinone, diphacinone, and warfarin are FGARs that are registered to control rats and mice in the United States.

Second-generation anticoagulants (SGARs) were developed beginning in the 1970s to control rodents that are resistant to FGARs. SGARs are more likely than FGARs to be able to kill after a single night's feeding, and tend to remain in animal tissues longer than do first-generation compounds. Because of this, SGARs pose greater risks to non-target species that might feed on bait only once or that might feed upon animals that have eaten the bait. Due to these risks, SGARS are no longer registered for use in products geared toward consumers and are registered

only for the commercial pest control and structural pest control markets. SGARs registered in the United States include brodifacoum, bromadiolone, difenacoum, and difethialone.

The third category of rodenticides consists of those considered acute toxicants. Acute toxicant rodenticides have differing ways of affecting rodents, including affecting the nervous system, causing heart and kidney failure, and reacting to stomach acid to cause rapid death. In this category, bromethalin, zinc phosphide, and strychnine kill rodents after one feeding, often within a few hours. Formulated as baits, they are highly toxic to people, pets, and wildlife. Cholecalciferol, another acute toxicant, usually requires multiple feedings to kill rodents, and can only be used by licensed pesticide applicators.

Dangers of rodenticides: According to the California Department of Fish and Wildlife (DFW), the use of poison baits to control rodents has injured and killed hundreds or thousands of wild animals and pets throughout California. Predatory and scavenging birds and mammals that eat dead or dying rodents that have consumed these baits will also be poisoned. Large predators, such as mountain lions, can be impacted by consuming smaller predators that have preyed upon poisoned rodents. Pets will also eat dead or dying rodents and unprotected bait.

Request for California-restricted materials designation for SGARs: In July 2011, DFW requested that DPR designate all SGARs as California-restricted materials in order to mitigate non-target wildlife exposure in California. DFW contends that dozens of species are impacted by anticoagulant pesticides, including the golden eagle, great-horned owl, Cooper's hawk, American kestrel, black bear, fisher, red fox, gray fox, San Joaquin kit fox (federally endangered), coyote, mountain lion, bobcat, and badger.

Restricted materials are pesticides deemed to have a higher potential to cause harm to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or other crops compared to other pesticides. With certain exceptions, restricted materials may be purchased and used only by or under the supervision of a certified commercial or private applicator under a permit issued by the County Agricultural Commissioner (CAC).

California requires permits for restricted materials so that the local CAC can assess, in advance, the potential effects of the proposed application on public health and the environment. Permits are time and site specific, and include use practices to reduce adverse effects. The CAC may deny permits or require feasible alternatives to be used.

Analysis of anticoagulant rodenticides on wildlife in California: In response to DFW's 2011 request, DPR took steps to obtain wildlife incident and mortality data between 1995 and 2011, which it analyzed together with land use data and rodenticide use and sales data between 2006 and 2010. DPR considered data from multiple sources, including DFW, private agencies, individuals, available journal articles, and other resources. Of the 492 non-target mammals and bird necropsies included in DPR's analysis, 368 (74.8 percent) had residues of one or more anticoagulant rodenticide (FGARs and SGARs). Of the 368 animals that tested positive for at least one anticoagulant rodenticide, 359 (97.6 percent) had residues of at least one SGAR while 65 (17.7 percent) had residues of at least one FGAR.

After reviewing all the data obtained from both urban and rural areas, DPR found that SGAR exposure and toxicity to non-target wildlife is a statewide problem, regardless of the setting.

DPR found that the use of SGARs presents a hazard related to persistent residues in target animals resulting in impacts to non-target wildlife.

State regulatory action on SGARs: While certain mitigation efforts had previously been in effect for some SGARS, following its findings on the impacts of SGARs on wildlife throughout the state, on March 18, 2014, DPR designated the active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone as California-restricted materials, making all SGAR products restricted materials.

In the March 2014 action, DPR further restricted the use of SGARs by prohibiting the placement of aboveground baits containing SGARs more than 50 feet from a human-made structure, unless there is a feature associated with the site that is harboring or attracting pests. SGARs target commensal rodents, such as the house mouse, Norway rat, and roof rat, which generally live in close association with humans and are dependent upon human habits for food, water, and shelter. DPR contends that restricting the use of all SGARs to only certified applicators and limiting its use to near structures will significantly reduce unintended exposures to non-target wildlife. These use restrictions for SGARs went into effect on July 1, 2014.

Have the regulations been effective? In order to determine a positive regulatory outcome, which in this case would be a decrease in SGAR exposure rates, in 2013, DPR entered into contract with WildCare, a nonprofit organization that operates a wildlife rehabilitation hospital in the San Francisco Bay Area. The contract was for WildCare to provide DPR SGAR exposure data on non-target wild animals. DPR renewed the contract in 2014 for two more years. Through December, 2016, WildCare provided DPR with exposure data for 115 domestic pets and 276 wild animals.

On March 14, 2017, DPR drafted a report about the study noting that of the 276 wild animals tested, exposure rates to non-target wildlife SGARs were high, both before and after the new regulations took effect. Specifically, of the wild animals tested in 2013-14, 86% (82/95) were exposed to SGARs (before the new regulations took effect), 91% (75/82) in 2015, and 77% (76/99) in 2016. DPR contends that there is no long-term trend apparent in the data among the wild animals selected for testing. Additionally, DPR concluded that it is unclear to what extent the biases in the sampling/selection method in the WildCare study affected the reported exposure rates (the dataset was composed of wild animals that died at the WildCare wildlife rehabilitation hospital, not randomly selected animals).

DPR contends that the main factors governing pesticide exposure rates in non-target wild animals are use patterns (i.e., the way that the products are used), use rates (i.e., the amount used), and the physicochemical characteristics of the pesticides. The new SGAR regulations changed the use patterns, and restricted the purchase, sales, and use of SGARs to certified applicators only, but, DPR contends, it is most likely still too early to determine if the regulations are having an effect on non-target wildlife exposure. Secondary exposure is more difficult to control, because a mouse or a rat that has a SGARs in its body can still move around and be consumed by animals higher up on the food chain. DPR ultimately concluded that additional data is needed to determine if there is a long-term trend in the exposure rates, and to determine if the new regulations will decrease exposure rates among tested wild animals.

State legislative action on SGARs: In 2014, the Legislature passed, and Governor Edmund G. Brown Jr signed, AB 2657 (Bloom, Chapter 475, Statutes of 2014), which prohibits the use of

SGARs in wildlife habitat areas, defined as any state park, state wildlife refuge, or state conservancy. The provisions of this bill went into effect on January 1, 2015.

Next steps: While the author of AB 2422 believes that the regulations put forth by DPR and legislation on SGARs in wildlife areas are important steps toward protecting the public and wildlife from unintended exposure to anticoagulant rodenticides, he does not believe that they sufficiently protect vulnerable wildlife, pets, or children from unintentional rodenticide exposure. The goal of AB 2422 is to augment existing regulatory and legislative action by prohibiting the use of FGARs and SGARs, except in public health emergencies, for agricultural activities, or for vector control.

Alternatives to FGARs and SGARs: According to DFW and DPR, the most effective and safest ways to address rodent issues are through exclusion and sanitation—by eliminating factors that allow rodents to reproduce and thrive. DPR notes that rodenticides do not eradicate rodents and may not reduce their numbers for long. If there is an area-wide population of rodents, rodents from the edges move into the available space vacated by the poisoned rodents. Rodent numbers surge when people leave unpicked fruit on trees and pet food outside. Rodents find shelter when people ignore clutter and overgrown vines and allow access inside houses and garages.

To address these issues, DPR and DFW suggest that people who have identified a rodent population should eliminate rodent entrances to the structure (seal holes, fill cracks, and install door sweeps); remove brush piles and debris near the structure; and, remove other food sources, such as pet food, wild bird seed, and fruit from trees. In addition to exclusion and sanitation, traps and electrocution devices can also be employed to address rodent pests.

Unintended consequences? While sanitation and exclusion are the most effective methods for long-term rodent control, should the prohibition on FGARS and SGARS be enacted though this bill, acute toxicant rodenticides would still be allowed. Consumers could still purchase and use bromethalin, zinc phosphide, and strychnine. Professional applicators could additionally use cholecalciferol.

According to DPR, bromethalin, which is designed to kill in a single feeding, affects the nervous system and causes symptoms such as lack of coordination, tremors, seizures, paralysis, and often death within 2 to 4 days after ingestion. Antidotes to bromethalin do not exist. Treatment includes intravenous fluids and drugs to decrease brain swelling.

Most brands of pesticides that contain zinc phosphide are registered for consumer use for pocket gopher control only. Professional applicators can additionally use a few brands for mouse and rat control. When rodents feed on bait containing zinc phosphide, they die quickly because their stomach acid reacts with phosphide to produce toxic phosphine gas. Predators and scavengers can be poisoned if they eat enough of the gut content of animals recently killed with zinc phosphide. Zinc phosphide is toxic to birds, fish, and other wildlife.

Some strychnine-containing bait products are labeled for consumer use in California and others are restricted materials. Strychnine causes nerve cells to fire rapidly, which causes severe muscle spasms and leads to death. Several recent deaths of non-target wildlife have been caused by improper use of strychnine.

Baits containing the acute toxicant cholecalciferol (Vitamin D) can be used by professional applicators, but not consumers. High doses of cholecalciferol raise blood calcium levels and cause heart and kidney failure in rodents. Secondary poisoning cases related to cholecalciferol are less frequent than those for other rodenticides, but it is not a very effective tool for rodent control.

Should the prohibition on FGARs and SGARs in this bill be enacted, without corresponding requirements or support of an integrated pest management approach to rodent management, it is possible that the use of acute toxicants to control rodents would increase. Additionally, cholecalciferol is not very effective, raising the concern that should it be used widely, resistance could occur. Instituting stronger state support of, or requirements for, integrated pesticide management approaches to rodent control would likely reduce the use of rodenticides overall.

Should the use of FGARs and SGARs be restricted through the existing regulatory framework? In California, pesticides are generally regulated though labeling requirements and the designation of the pesticide as a restricted material. However, there are examples in statute of specific pesticide use restrictions and requirements, such as Education Code § 17610.1, which prohibits the use of specified pesticides on a school site, as defined, and FAC § 12978.7, which prohibits the use of SGARs in wildlife habitat areas. Instead of adding restrictions for the use of FGARs and SGARs through legislation, should the proposed restrictions in this bill instead be examined through the regulatory process?

Clarification needed: AB 2442 exempts "agricultural activities," as defined in statute, from the pesticide prohibition in the bill. Additionally, the bill adds the following to the definition of agricultural activities, "Factories, breweries, wineries, or any other location where rodent or pest populations need to be controlled for food safety or agricultural purposes." As it is unclear whether restaurants and other establishments that serve food would be included under the definition of "agricultural activities," as it is currently drafted, and it was not the author's intent to exempt restaurants from the requirements of the bill, the author may wish to amend the bill to clarify his intent. Additionally, the author may wish to clarify the local entities and classifications of pesticide applicators referenced in the bill.

Arguments in support: The Center for Biological Diversity argues, "The use of rat, mouse, and rodent poisons by the general public and licensed applicators leads to the deaths of wildlife and pets and the hospitalization and illness of people, especially children. AB 2422 allows for common sense controls on these dangerous poisons in order to eliminate their use where they lead to unnecessary poisonings to non-target organisms while still allowing for their use to protect public health and California's agricultural economy…AB 2422 is narrowly targeted to the most dangerous rodenticide uses and specifically exempts agricultural activities and uses by licensed professionals after essential steps necessary to reduce long term rodent infestations have been taken… Given the wide array of cost-effective alternatives available on the market today to address rodent infestations, there is no need for our families and the environment to continue to suffer poisonings due to rodenticides. Integrated pest management strategies prevent infestations by sealing buildings and eliminating food and water sources, and are a necessary first step. Lethal rodent control strategies that involve snap traps, electric traps, and other non-toxic methods can then be implemented to address any infestations. Several types of less toxic rodenticides are available as well. More information on effective and affordable alternatives can be found at www.SafeRodentControl.org... According to safety calculations from the Environmental Protection Agency (EPA), the estimated child exposure from taking just one 5-

gram bite of rodenticide bait greatly exceeds possible safe levels. Between 1999 and 2009, the American Association of Poison Control Centers received reports of an average of 17,000 human exposures to rodenticides each year, with 85% of these exposures, (i.e., approximately 15,000 per year), occurring to children less than 6 years of age."

Arguments in opposition: According to the Pest Control Operators of California, "If all anticoagulant rodenticides are banned in California, communities from San Diego to Yreka will be overrun with unwanted rodents carrying diseases including Hantavirus, rat bite fever, trichinosis, plague, murine typhus, infectious jaundice and more… Anticoagulant rodenticides are the most effective tools available to control rodents. Recent research shows that rodents can detect mechanical traps and then teach each other of presence of these traps causing these interventions to be useless in controlling that rodent population. Restricting the use of anticoagulant baits could lead to more problems than solutions. One aspect of anticoagulants is that there is an antidote in the case of an unintended exposure while acute rodenticides do not. The availability of an antidote is one reason anticoagulants are the preferred rodenticides by all users, including structural."

The California Agricultural Commissioners and Sealers Association (CACASA) argues, "CACASA is concerned that prohibition of anticoagulants may pose significant public health issues for those who would typically use rodenticides to assist with issues in pest control to protect the public and themselves against rodents with potentially deadly diseases, such as hantavirus and the bubonic plague. Further, the county agricultural commissioner does not currently recommend or prescribe uses of pesticides as directed by the bill. Commissioners issue use permits to certified applicators and the label dictates the appropriate use of the product."

Double referral: This bill has been double referred to the Assembly Water, Parks, and Wildlife Committee.

Recent related legislation:

1) AB 1687 (Bloom, 2017). Would have prohibited the use of any pesticide that contains one or more of nine specified active ingredients (including all first and second generation anticoagulant rodenticides and some acute toxicants). The Assembly Committee on Environmental Safety and Toxic Materials hearing on this bill was cancelled at the request of the author and the bill subsequently died on file.

2) AB 2596 (Bloom, 2016). Would have prohibited the use of second generation anticoagulant rodenticides. The Assembly Committee on Environmental Safety and Toxic Materials hearing on this bill was cancelled at the request of the author and the bill subsequently died on file.

3) AB 2657 (Bloom, Chapter 475, Statutes of 2014). Prohibits the use of second generation anticoagulant rodenticides in wildlife habitat areas, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Biological Diversity
Citizens for Los Angeles Wildlife

City of Malibu
City of Moorpark
Friends of Griffith Park
Humane Wildlife Control
In Defense of Animals
Laguna Greenbelt, Inc.
Las Virgenes Homeowners Federation, Inc.
Morro Coast Audubon Society
Raptors are the Solution
Rodenticide Free Project
Santa Cruz Bird Club
Santa Monica Mountains Fund
Save Open Space/Santa Monica Mountains
Sea and Sage Audubon Society
Social Compassion in Legislation
Topanga Creek Watershed Committee
The Federation of Hillside and Canyon Associations, Inc.
Wildlife Care of Southern California
Wildlife Research Institute
382 Individuals

Opposition

American Chemistry Council
Animal Pest Management Services, Inc.
California Agricultural Commissioners and Sealers Association
California Chamber of Commerce
California League of Food Processors
California Manufacturing and Technology Association
California Retailers Association
Crop Life America
Household & Commercial Products Association
National Pest Management Association
Pest Control Operators of California
RISE
Syngenta
Western Plant Health Association

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2606 (Fong) – As Amended April 2, 2018

SUBJECT: Hazardous waste: facilities: permits: renewals

SUMMARY: Provides that a hazardous waste facility renewal permit shall be deemed approved within 90 days of submittal of the permit and caps the amount the Department of Toxic Substances Control (DTSC) can be reimbursed for processing the permit application. Specifically, **this bill**:

1) Provides that a hazardous waste facility renewal permit shall be deemed approved 90 days after submittal of the permit to DTSC if DTSC has not taken action on the permit and if all of the following apply:

   a) Operations at the hazardous waste facility have not changed significantly since the approval of the permit for the preceding term;

   b) The hazardous waste facility did not have any significant issues with compliance during the preceding term of the permit; and,

   c) The hazardous waste facility was not the subject of any significant public concerns during the preceding term of the permit.

2) Caps the amount that DTSC can be reimbursed for processing a renewal of a hazardous waste facility permit at two hundred thousand dollars ($200,000) for large storage or treatment facilities, and one hundred thousand dollars ($100,000) for all other hazardous waste facilities.

EXISTING LAW:

1) Authorizes DTSC to issue permits for the use and operation of one or more hazardous waste management units at a facility that meets the standards adopted pursuant to the Hazardous Waste Control Law (HWCL). (Health and Safety Code (HSC) § 25200 (a))

2) Requires DTSC to impose conditions on each permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))

3) Requires a permit issued by DTSC to be for a fixed term, not to exceed ten years. (HSC § 25200 (c) (1)(A))

4) Requires an owner or operator of a hazardous waste facility who intends to extend the term of the permit, before the fixed term expires, to submit a complete Part A application. (HSC § 25200 (c) (1)(B))

5) States that when a complete Part A renewal application has been submitted before the end of the permit's fixed term, the permit is deemed extended until the renewal application is

approved or denied and the owner or operator has exhausted all applicable rights of appeal. (HSC § 25200 (c)(1)(B))

6) Requires an owner or operator of a permitted hazardous waste facility to submit an application for permit renewal at least 180 days before the expiration date of the permit. (22 California Code of Regulations (CCR) § 66270.10)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"California's Hazardous Waste Management program oversees the issuance of permits for the state's 118 hazardous waste facilities. These permits, valid for 10 years, allow operators to manage, treat, transfer, and store various hazardous materials.

The permit program is currently running a decades-long backlog of new and renewal applications. Under existing law, facilities that submit timely renewal applications may continue operating past the expiration date of the original permit under what are referred to as "continuing permits". Due to the backlog, many facilities have been operating under continuing permit status.

Legislative solutions have sought to improve the backlog via increased funding and resources for the department. According to the LAO, these additional resources were intended to eliminate the existing backlog of permit applications and complete most future decisions on permit renewals within two years of permits becoming continued.

Additionally, the costs to renew these applications have skyrocketed. SB 839 (2016) moved from a flat-rate system to a "fee-for-service" system. This system requires facilities to reimburse DTSC for its costs associated with processing the application. Under this system, many facilities have seen their permit renewal costs increase substantially. Travis Air Force Base, for example, has seen a ten-fold increase from $35,000 to more than $330,000. As a result, the Air Force is considering closing down a portion of the facility due to infeasible costs.

The potential closures of Travis Air Force Base and other hazardous waste facilities greatly increase the risk of mismanagement of these toxic substances. AB 2606 will streamline the renewal process for facilities that have not made significant changes to operations, and places a cap on permit fees.

Specifically, AB 2606 will require DTSC, where an applicant is seeking a ***renewal*** of their hazardous waste permit, to grant the application if the facility meets the following conditions:

a. Has not had a significant change in operations
b. Has not had significant compliance issues
c. Has not had significant public concerns

AB 2606 also caps fees at no more than $200,000 for large storage and treatment facilities, and no more than $100,000 for all other facilities."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

DTSC Independent Review Panel (IRP): In 2015, the Legislature passed and the Governor signed, SB 83 (Chapter 24, Statutes of 2015) which established within DTSC a three-member IRP to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. The statute stipulates that IRP membership shall be comprised of a community representative, a person with scientific experience related to toxic materials, and a local government management expert. Pursuant to SB 83, the IRP was authorized until January 1, 2018. Over the course of its term, the IRP conducted 24 public meetings and released 11 progress and annual reports. On January 8, 2018 the IRP released its final report and recommendations concluding: "The Department has implemented, or is working on, most of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics. However, there is more work to be done."

DTSC's hazardous waste management permitting program: DTSC is responsible for administering the hazardous waste facility permitting program established under the California HWCL and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include: review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and, providing public involvement on issues related to permitted facilities. In general, DTSC issues permits for complex and large facilities, such as Class I landfills, large treatment facilities, and facilities managing RCRA hazardous waste.

A hazardous waste facility permit granted by DTSC authorizes a facility to transfer, treat, store, or dispose of hazardous waste. Presently there are 119 permitted hazardous waste facilities in California. In order for a facility to gain authorization to treat, store, transfer, or dispose of hazardous waste, its permit application must include a detailed description of the facility's activities, units, equipment, operation plans, recordkeeping system, procedures for response to accidental release of toxic substances or other emergencies, and training. The application will also contain engineering and structural specifications, closure plans, closure cost estimates, and the mechanism for financial assurance in the event of closure. Ultimately, the applicant must demonstrate the ability to manage the waste in a protective manner. DTSC permit applications must also address requirements beyond hazardous waste laws and regulations. For example, the permit process must adhere to the California Environmental Quality Act (CEQA) requirements, which involves a comprehensive review of impacts of the facility on public health and the environment.

At any point in the permit application review process, if DTSC finds that the facility does not meet applicable standards, it can deny the permit application. Either an approval or denial by DTSC is considered a permit decision. Federal and state law allow facilities with expired permits to continue to operate if the facility has submitted an application for renewal that is administratively complete in advance of the permit expiration date. These types of permits (i.e., expired permits for a facility that has submitted an administratively complete application for a permit renewal) are referred to as "continued permits."

Over the past decade or so, DTSC had received complaints from the public about its permitting program and held meetings with the public, the regulated community, and stakeholders to identify and understand concerns about its permitting program.

In 2012, DTSC commissioned CPS HR Consulting, a non-profit corporation established under the California Joint Powers Authority, to conduct an external review of the permitting program. The review found that permitting decisions were not timely, taking upwards of four years to complete on average and that the permitting program restructuring from Fiscal Year (FY) 2008-2009 had resulted in a lack of management structure. The review found that the lack of management structure was a factor in the poor performance of the program; lacked consistent processes for making permitting decisions; resulted in deficient training of staff; lead to a lack of clarity around when to deny or revoke a permit; and, resulted in a lack of performance metrics.

In early 2014, DTSC developed a Permitting Enhancement Work Plan (Work Plan) to significantly upgrade and strengthen DTSC's permitting program and to ensure that the problems of the past would not resurface in the future. The Work Plan serves as a comprehensive roadmap to guide DTSC's efforts to improve the permitting program's ability to issue protective, timely, and enforceable permits using more transparent standards and consistent procedures. In addition, DTSC mapped, for the first time, the entire permitting process and memorialized it in the form of a baseline flow chart that staff can work from and incorporate future improvements.

Beginning in FY 2015-2016, DTSC's permitting program established a performance management approach similar to that used by the DTSC cleanup program. One of the essential elements to the implementation of this performance management approach is the development of an annual work plan. The annual work plan specifies due dates for major milestones in the permitting process on permitting projects, tracks completion of permitting activities, increases communication between staff and management on permit progress, and measures planned versus completed milestones as a performance measure of the permitting program.

Permit processing time: Ensuring that hazardous waste facilities are managed safely begins with proper and timely permitting by DTSC. These facilities handle dangerous substances and involve complex processes, making the review of permit applications challenging, yet extremely important. Before DTSC embarked upon improving the permitting program, the average time it took to process an application was 4.4 years, with some applications continuing 10-20 years past the expiration of their permit. Given the dangerous nature of substances at these facilities, it is very important that the public be kept informed about these facilities, including the siting, permit process, and enforcement actions taken at these facilities.

Currently, the only time the public is involved in the permit process is when there is a draft permit decision released by DTSC. If a permit application takes 10 years to review, that means it could have been 20 years since the public has been provided information about the hazardous

waste facility in their community. DTSC's permit improvements have a stated goal of being able to process 90% of the permit applications within 2 years; however, under current law, this means that even if DTSC achieves this goal, all of these permits will exceed their expiration by a year and a half.

Fees support DTSC's hazardous waste regulatory program: DTSC's hazardous waste regulatory program consists of the regulation of the generation, treatment, storage, transportation, and disposal of state-only and federal hazardous waste; permitting and inspection of hazardous waste facilities; enforcement of hazardous waste control laws and regulations; and, regulation, policy and procedure development. DTSC's hazardous waste program is funded by fees assessed to businesses in California that generate, store, transport, treat, or dispose of hazardous waste. These fees are the:

1) Generator Fee: Paid by generators that produce 5 or more tons of hazardous waste per calendar year;
2) Disposal Fee: Paid by persons who dispose of hazardous waste to land in California;
3) Facility Fee: Annual fee paid by hazardous waste facilities operating under a Full Permit;
4) Standardized Permit, Post Closure Permit, or Transportable Treatment Unit Permit;
5) EPA ID Verification Fee: Assessed to businesses that require an EPA ID number;
6) Manifest User Fee & Manifest Processing Fee: Paid by users of manifests; and,
7) Activity Fee: Paid by persons applying for hazardous waste facility permits, permit modifications, or permit renewals. (Note: this fee was removed in 2016 and replaced by a "fee for service").

DTSC removes the permitting activity fee: In 2016, DTSC proposed removing the "Activity Fee" and replacing it with a reimbursement for a "fee for service" option. The proposal was adopted by the Legislature and incorporated into the budget in 2016. When DTSC proposed this change it stated that it did not receive enough fees from the "Activity Fee" in order to cover its permitting costs. Here is some information DTSC provided:

Budget	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Actual permitting costs	$3,096,000	$3,387,000	$3,586,000	$5,413,000
Revenue Activity Fee	$402,000	$356,000	$293,000	$628,000

As this information shows, DTSC did not receive enough revenue from the permitting "Activity Fee" to cover the permitting costs. This information also shows that the permitting costs fluctuate over time depending on how many permit applications DTSC receives in any given year. AB 2606 proposes to cap the amount of fees DTSC can receive for its permitting work, the author may wish to consider how much it will cost DTSC to process these permits in a timely fashion, and whether the caps proposed in AB 2606 will provide sufficient funding.

Similar legislation to AB 2606: AB 2345 (Reyes), which passed out of this Committee on March 20, 2018, also addresses the DTSC permitting process. AB 2345 requires a permit applicant to submit its application two years before their permit expires. The approaches in both bills appear compatible. If the permit applications are submitted sooner, as envisioned within AB 2345, then it could speed up the time DTSC reaches a permit decision, which is the focus of AB 2606. It is

important to note that both bills amend the same section of law, therefore the author will want to consider how to address potential chaptering conflicts in the future.

Expedited permit renewal: The current approach in the bill has some flaws; however, there is value in setting up a process to expedite certain permit renewals. AB 2606 currently deems an application approved within 90 days; however, current state and federal requirements include a public process with a public meeting and comment period as well as a draft and final permit application. This current process allows the public to participate as well as offers a pathway for the public or the facility to appeal DTSC's permit decision. If DTSC is forced into making a decision within 90 days, there likely will not be ample time for public participation or even the ability for the facility or the public to appeal the permit decision. Therefore the author and Committee may wish to consider the following amendments to the bill to set up an expedited permit renewal process for those facilities that have not had any major violations.

Specifically, the Committee and author may wish to consider the following:

On page 3, strike lines 28-40 inclusive and insert:

(2) The department shall process permit renewal applications in an expedited manner, if all of the following apply:

(a) The permit renewal application was submitted two years before the current permit expires.
(b) Operations at the hazardous facility have not changed significantly since the approval of the facility's current permit;
(c) The hazardous waste facility did not have any major violations where the facility did not return to compliance in a timely manner during the term of the current permit.
(d) There were not any significant concerns raised by the public during the public process associated with the facility's current permit.

(3) When processing a permit renewal in an expedited manner pursuant to (2), the Department shall begin the review process as early as possible, shall ensure that the public process is adhered to, and shall issue a permit decision no later than six months after the current permit has expired.

(4) The expedited permit renewal process, described in (2) shall not be available to a land disposal facility.

Related legislation:

1) AB 2345 (Reyes). Makes statutory changes to improve the permitting process for the permitting of hazardous waste facilities. Amends the same section of law as AB 2606. This bill is pending action on the Assembly Floor.

2) AB 248 (Reyes, 2017). Would have required an applicant for a hazardous waste facilities permit to submit their application two years before their permit expires. This bill was vetoed by the Governor.

3) SB 774 (Leyva). Creates the California Toxic Substances Board (Board) within DTSC to provide effective, reliable, transparent, and accountable oversight of California's hazardous

waste management and of the remediation of contaminated sites. This bill is on the inactive file on the Assembly Floor.

4) SB 812 (De León). Would have revised DTSC's permitting process for hazardous waste facilities, including deeming permit applications denied if they were not acted on by DTSC within three years after permit expiration. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Business Properties Association
California Manufacturers & Technology Association
California Small Business Alliance
Camarillo Chamber of Commerce
Clean Harbors
El Dorado County Chamber of Commerce
Industrial Environmental Association
Safety-Kleen
Southwest California Legislative Council
United States Department of the Navy

Opposition

California Environmental Justice Alliance
Center on Race, Poverty and the Environment
Sierra Club

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2648 (Friedman) – As Amended April 2, 2018

SUBJECT: Civil actions: limitations: real property

SUMMARY: Provides that the 10-year statute of limitation does not apply to an action for a personal injury resulting from water contamination due to a latent construction defect.

EXISTING LAW:

1) Requires that any claim resulting from a latent construction defect must be brought within 10 years after the substantial completion of the construction. (Code of Civil Procedure (CCP) § 337.15)

2) Provides that the 10-year statute of limitation does not apply to an action based on willful misconduct or fraudulent concealment due to a latent construction defect. (CCP § 337.15 (f))

3) Establishes the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA) to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment. (Health and Safety Code (HSC) § 25300 et seq.)

4) Provides that the Department of Toxic Substances Control (DTSC) or the State Regional Water Quality Control Board (Regional Water Board) shall bring an action for cost recovery due to a hazardous waste or hazardous substance within three years after completion of all response or corrective actions which have been certified by DTSC or the Regional Water Board. (HSC § 25360.4)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "California regulates and monitors pollution based on the type of pollution. Air pollution is monitored at its source to determine what is being released into the atmosphere and in what quantities. Water pollution, however, is monitored very differently. Most water pollution occurs as a result of contamination from some type of holding structure. Many of these structures, such as underground storage tanks, above ground storage tanks, and landfills all have their own sets of regulations and requirements they are subject to. When there are instances of water contamination state and local agencies determine which entity is responsible and oversee the clean-up process.
>
> State and local agencies are subjected to different statutes of limitation which often don't begin to accrue until discovery of the contamination. However, when the party seeking remediation is an individual rather than an agency, the statute of limitations is often less generous.

Under § 337.15 of the Code of Civil Procedure, any individual seeking damages for an injury resulting from a construction defect cannot bring such a claim unless suit is brought within 10 years of completion of construction. An issue arises when the injury is caused by water contamination, which often takes years—sometimes decades—to detect.

Because of the unique nature of water contamination, the length of time it often takes for a holding structure to fail and begin leaking, and the amount of time it takes to detect the effects of water contamination, it is necessary that California allow individuals a path to recover damages that result from such water contamination."

Hazardous substances/hazardous waste: There is the potential for public health and environmental harm that can be caused by various hazardous substances used in industrial, manufacturing, and other processes. According to the United State Environmental Protection Agency (US EPA), over the next several decades, federal, state, and local governments and private industry will commit billions of dollars annually to clean up sites contaminated with hazardous waste and petroleum products from a variety of industrial sources. Additionally, there could be as many as 355,000 contaminated sites in the United States that will require cleanup over the next 30 years and that the cost of this cleanup may amount to as much as $250 billion.

Hazardous substance is a broad term that includes many chemicals and materials that present an imminent and substantial danger to public health or welfare. Improper use and disposal of these products can result in hazardous waste. According to the US EPA, hazardous wastes or substances are potentially hazardous to human health or the environment when they are improperly managed. They possess at least one of following characteristics: ignitability, corrosiveness, reactivity, or toxicity, or they appear on special US EPA lists.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA or Superfund, provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the US EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. The US EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act. Through various enforcement tools, the US EPA obtains private party cleanup through orders, consent decrees, and other small party settlements. The US EPA also recovers costs from financially viable individuals and companies once a response action has been completed. CERCLA defines liable parties as current owners and operators of a facility, former owners and operators of a facility at the time of disposal, persons who arranged for treatment or disposal of hazardous substances, and transporters of hazardous substances who selected the disposal site. A person who falls within the definition of one of these classes may be held liable under CERCLA. Under CERCLA, an initial action to recover costs from responsible parties must commence within three years of completing removal activities, or within six years of beginning the implementation of remedial activities.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances and for hazardous waste disposal sites that pose a threat to public health or the environment. DTSC use the HSAA for cleanup of contaminated sites. The HSAA is intended to provide compensation for out-of-pocket medical expenses and lost wages or business incomes resulting from injuries caused by exposure to hazardous substances. The

HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

Statute of limitations for a hazardous substance: Under the HSAA, DTSC or a Regional Water Board shall bring an action for cost recovery of a hazardous substance or hazardous waste within three years after completion of all response or corrective actions have been certified by DTSC or the Regional Water Board.

Groundwater in California: California depends heavily on groundwater to meet its water supply needs. Groundwater, which largely comes from rain and snow that percolates through soil and rock, supplies approximately 40 percent of the state water supply. Groundwater use increases during drought conditions. Groundwater pumped from more than 14,000 active public supply wells provides part or all of the drinking water to more than 80 percent of California residents. More than 6,000 wells have been shut down since the 1980s, many for water quality reasons. In addition, up to two million California residents are served either by the estimated 250,000 to 600,000 private domestic wells or by water systems serving fewer than 15 service connections. Unlike public drinking water systems, there are no federal or state regulations covering water quality served from private domestic wells.

Groundwater contamination: Most groundwater is brought to the surface by pumping it from a well. Groundwater quality can be contaminated by both naturally-occurring and man-made contaminants. Naturally-occurring chemicals typically come from dissolving rocks, soil, and decaying plant material. Fertilizers and pesticides contaminate groundwater when applied or used incorrectly. Leaking underground storage tanks, human waste from leaking septic tanks broken sewer pipes and wastewater systems, and contaminated irrigation water are also sources of contamination. All of these can result in contaminants entering groundwater including nitrate (fertilizers), salts, pesticides, pharmaceuticals, and bacteria. It can take years, even decades for these contaminants to reach and contaminate the groundwater.

Different rules for bringing an action regarding contamination: There are different statutes of limitations for dealing with contamination depending on the party bringing the action. The state Attorney General or a district attorney can bring an action under state or federal law for contamination, including water contamination, three years after the contamination has been cleaned up. This means that the contamination could have been ongoing for decades, yet there is no limitation for action until the contamination has been removed. However, for anyone else bringing an action, there is a 10 year limitation that starts when construction is complete. Construction of pipes, tanks, and other structures that hold various chemicals could begin leaking and the resulting contamination could take years, even decades before the contamination reaches groundwater and is detected. AB 2648 is seeking to provide people in California with the ability to bring an action against someone who caused water contamination and hold them responsible, regardless of when the structure that caused the contamination began to leak or fail.

No limit to bring an action: AB 2648 removes the statute of limitations for someone bringing an action for a personal injury resulting from water contamination. If there is no longer a limit, then someone could bring an action for contamination that may have happened and even been cleaned

up decades ago. The author and Committee may wish to consider replacing some type of limit in statute, perhaps tying the limit to when the contamination was discovered.

Double referral: Should this bill be approved by this Committee, it will be heard next in the Assembly Judiciary Committee.

Related legislation: AB 1207 (Furatani, 2012). Would have clarified that the statute of repose regarding latent construction defects does not apply to actions for either damages for personal injury or wrongful death; or, personal injury or property damages caused or contributed to by exposure to any hazardous substance, pollutant, or contaminant released into the environment. This bill was held in Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Sierra Club California

Opposition

American Council of Engineering Companies
Associated Builders and Contractors – Northern California Chapter
Associated General Contractors of California
American Subcontractors Association
Building Owners and Managers Association of California
California Apartment Association
California Association of Specialty Contractors
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Chapters of the National Electrical Contractors Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Sheet Metal & Air Conditioning Contractors
Commercial Real Estate Development Association of California
Construction Employers Association
International Council of Shopping Centers
Northern California Allied Trades
Southern California Contractors Association
United Contractors
Wall and Ceiling Alliance

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2728 (Chen) – As Introduced February 15, 2018

SUBJECT: Replacement of corroded or lead-containing plumbing or service lines: loans

SUMMARY: Authorizes the State Water Resources Control Board (State Water Board) to establish a grant program to provide funding for the replacement of corroded or lead-containing plumbing and service lines that adversely impact drinking water standards. Specifically, **this bill**:

1) Authorizes the State Water Board, to the extent that funding is available, to establish a grant program to provide funding to counties and qualified nonprofit organizations to provide low-interest loans to property owners for the replacement of corroded or lead-containing plumbing and service lines that adversely impact drinking water quality and for the installation of a point-of-use (POU) or point-of-entry (POE) water treatment system if replacement of corroded or lead-containing plumbing or service lines is not feasible or is cost-prohibitive.

2) Authorizes the State Water Board to use a funding source that is authorized for and consistent with the purposes of this grant program.

3) Requires the State Water Board to use reasonable and feasible efforts to secure local matching funds for the purposes of providing a grant.

4) Authorizes the State Water Board to advance funds pursuant to an agreement with a county or qualified nonprofit organization. Exempts this authorization from current law requiring advances to qualified nonprofit organizations not to exceed 25 percent of the annual allocation from being made during the fiscal year.

5) Authorizes a county or qualified nonprofit organization to apply to the State Water Board for a grant to provide low-interest loans.

6) Authorizes a county to enter into a contract with a private financial institution to provide loans.

7) Authorizes the State Water Board to award a grant to a qualified nonprofit organization only if it is located in a county that has not been awarded a grant.

8) Requires a county or qualified nonprofit organization that receives a grant under this program to annually provide the following information to the State Water Board:

   a) The number of loans awarded;

   b) The types of projects funded;

   c) Project costs; and,

d) Whether there is demand for additional funding.

9) Requires any loan to be secured by appropriate collateral, which may include a mortgage on the residence, and requires the loan to be repaid within 10 to 30 years in accordance with terms established by the State Water Board. Prohibits the interest rate on the loan from exceeding 3-percent.

10) Requires a loan recipient to furnish evidence of and continually maintain homeowner's insurance on the security residence to protect the county or qualified nonprofit organization's interest in the residence throughout the useful life of the improvement.

11) Authorizes the State Water Board to adopt guidelines it determines are necessary to carry out and establish this grant program.

12) Defines "Property owner" as either of the following:

a) An individual who has a household income at or below 120 percent of the statewide median household income; has an ownership interest in the residence; is unable to obtain financial assistance at reasonable terms and conditions from private lenders and lacks the resources to undertake these improvements; and, demonstrates an ability to repay the loan; or,

b) A local educational agency, to the extent authorized by law.

13) Defines "qualified nonprofit organization" as an organization with experience in providing financial and technical assistance to disadvantaged communities and that is qualified to operate in California and is qualified for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

EXISTING LAW:

1) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels (MCL)) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health and Safety Code (HSC) § 116270)

2) Provides, pursuant to authority under the federal Safe Drinking Water Act (SDWA) (42 U.S.C. Sec. 300j et seq.), for the establishment of a perpetual drinking water revolving fund, which will be partially capitalized by federal contributions. Authorizes California to enact the Safe Drinking Water State Revolving Fund (DWSRF) law to authorize the state to establish and implement a state drinking water revolving fund that will meet federal conditions for receipt of federal funds. (HSC § 116760.10 (a))

3) Defines "lead free" in plumbing as not more than 0.2 percent lead when used with respect to solder and flux, not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures, and not more than 8 percent when used with respect to pipes and pipe fittings. (HSC § 116875(e)-(f))

4) Requires, by July 1, 2018, a public water system to compile an inventory of known lead user service lines in use in its distribution system and identify areas that may have lead user service lines in use in its distribution system. (HSC § 116885 (a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

> "In recent years, there have been reports of discolored water and lead-containing pipes and fixtures in private homes throughout California. In 2014, residents of the city of Gardena experienced a discoloration and odor of the drinking water in their homes. Water officials in Gardena said the problem was caused by aging infrastructure, including pipes that needed to be replaced. In 2016, the US EPA investigated reports of discolored water in the city of Fresno. Water officials said the source of discoloration was from corrosion found in galvanized pipes or lead-containing fixtures that were used to build these properties in the 1990s and 2000s. Parts of Northeast Fresno had water samples test at lead levels above the federal threshold requiring corrective action.
>
> Though cities work with property owners to encourage them to make changes to the plumbing on their property that is likely the source of discoloration, there are few to no programs in place to assist property owners plumbing maintenance projects aimed at improving water quality on private property. Many of these property owners are unable to afford higher-interest, private loans for these purposes. Although the State Water Board has made attempts to combat water quality problems on private property, they have no existing authority to provide financial assistance for these purposes. By allowing the program to be administered locally, California can expect rapid improvements to dangerous water conditions in private homes throughout the state."

Lead in water: The most prevalent sources of lead in drinking water are from pipes, fixtures, and associated hardware from which the lead can leach. According to *Lead in Drinking Water and Human Blood Levels in the United States*, published by the National Center for Environmental Health in 2012, nearly all lead in users' tap water does not come from the primary water source or from the municipal treatment plant, but is a result of corrosion resulting from materials containing lead coming into contact with water after it leaves the treatment plant. Lead can enter a building's drinking water by leaching from lead service connections, from lead solder used in copper piping, and from brass fixtures.

The amount of lead in tap water can depend on several factors, including the age and material of the pipes, concentration of lead in water delivered by the public utility, and corrosiveness of the water. More corrosive water can cause greater leaching from pipes.

Flint, Michigan: Flint is located along the Flint River northwest of Detroit, Michigan. In April 2014, Flint switched its water supply from Lake Huron (via Detroit) to the Flint River. The Flint River water is corrosive (high pH and low salinity levels), which, absent a corrosion inhibitor additive, can erode the pipes or solder exposing lead. As a cost-saving measure, water officials opted not to add the corrosion inhibitor chemicals. The corrosive Flint River water caused lead from aging pipes to leach into the water supply, causing extremely elevated levels of lead.

As a result of the Flint lead crisis, the rest of the nation has become more cognizant of and eager to inventory and replace aging and potentially lead-bearing plumbing.

Federal lead testing requirements: In 1991, the US EPA adopted the Lead and Copper Rule (LCR), which established "action levels" for lead of 15 µg/L (0.015 mg/L). The LCR requires a public water system to test water at the tap at a sample of their customers served for lead levels. Sample sizes vary based on population served. For example, if a school serves between 500-3,300 students, its sample size under the LCR is 20 tap sites (water fountains). If more than 10 percent of the samples collected are at or above the action level for lead, it can trigger 'actions' that include public education, water quality parameter monitoring, corrosion control treatment, source water monitoring/treatment, public education, and lead service line replacement. The LCR requires lead samples to be collected every 6 months.

Given the relatively small sample sizes, the LCR is far from exhaustive for identifying lead pipes in residential plumbing.

Galvanized pipes: Galvanized pipes are steel pipes that have been dipped in a protective zinc coating to prevent corrosion and rust. Galvanized piping was commonly installed in homes built before 1960. When it was invented, galvanized pipe was an alternative to lead pipe for water supply lines. Today, however, we have learned that decades of exposure to water will cause galvanized pipes to corrode and rust on the inside.

Many galvanized pipes were dipped in molten, naturally occurring zinc. Naturally occurring zinc is impure, so these pipes were bathed in zinc that also contained lead and other impurities. The zinc coating elongated the life of the steel pipes, but added small amount of lead and other substances that could potentially be harmful. Any galvanized pipes ever connected to lead plumbing (including service lines) would create more cause for concern. The corrosion inside galvanized steel pipes could have trapped small pieces of the lead. Even if the lead plumbing was removed years ago, the galvanized steel pipes could still periodically release the trapped lead into the water flow.

The only way to ensure that lead is not mobilized from plumbing to a tap in a home is to fully replace the galvanized plumbing and any lead service lines.

Fresno: In 2018, residents in northeast Fresno reported discoloration of their water coming from corroded galvanized pipes. The homes that are in that area of the city are served by canal water processed by the city's Northeast Surface Water Treatment plant. Unstable water chemistry in their galvanized pipes accelerated corrosion of the protective zinc layer on the inside of iron pipes. As a result, the water showed signs of iron and zinc, as well as the lead introduced through the zinc galvanizing process.

Since January, residents of 1,531 homes in northeast Fresno have submitted complaints or concerns about discolored water coming from their faucets, or asked for their water to be tested. The city is continuing to run tests on water samples from those homes.

In August 2017, the Fresno City Council banned zinc-coated metal (galvanized) pipe for plumbing in new residential and commercial construction and major renovation work. However, this ban does not help any resident that currently has galvanized pipes do anything about replacing those pipes.

Current lead service line replacement efforts: SB 1398 (Leyva, Chapter 731, Statutes of 2016) requires community water systems to compile an inventory of all known leaded service lines used in their systems, identify areas that may have lead service lines in use in their systems, and establish a timeline for replacing those known leaded service lines.

The requirements of SB 1398 do not extend to water lines (plumbing) on the customer's side of the meter or the meter itself, but would include, for example, certain plumbing fixtures, like lead goose necks, associated with the user service line on the water system side of the meter.

If the water system determines that a lead service line is also on the customer side of the meter, the State Water Board highly recommends that the water system notify the customer of the lead service line and if possible, assist in the replacement.

Costs to replace galvanized plumbing: Costs to replace pipes and plumbing certainly vary, depending on the amount of plumbing, location, and type of plumbing with which its being replaced. According to the National Association of Realtors, replacing old pipes in a 1,500 square foot, two-bathroom home costs $4,000 to $10,000. These costs can be prohibitive to many homeowners, especially those in low-income and disadvantaged communities.

Existing state financing programs: The State Water Board administers the DWSRF, which is a self-perpetuating financial assistance program to assist public water systems in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with the SDWA requirements.

Eligible applications for DWSRF funding include counties and nonprofit organizations, but the projects that would be eligible for grants under this bill would not be eligible for DWSRF funding. The author contends the bill is needed to address the hole in public financing available to individual property owners.

The Legislature has established precedent for creating state financing programs for individual home owners.

AB 277 (Mathis, Chapter 438, Statutes of 2017) authorizes the State Water Board to implement low-interest loan and grant programs for counties and qualified nonprofit organizations to fund water and wastewater facilities and improvements for households and small water systems, to the extent funds are available. To date, though, this has not been funded for implementation.

Treatment devices: AB 2728 would allow counties and qualified nonprofit organizations that received grants from the State Water Board to provide low-interest loans for the installation of a POU and POE water treatment system if replacement of corroded or lead-containing plumbing or service lines is not feasible or is cost-prohibitive.

POU water treatment units are designed to treat small amounts of drinking water for use in the home. These devices can sit on the counter, attach to the faucet, or be installed under the sink. They differ from POE devices, which are installed on the water line as it enters the home and treats all the water in the building.

There are several POU devices on the market that treat for lead, including reverse-osmosis devices, usually installed underneath the sink; distillers, which can sit on top of a counter; tap

filters; under-sink filters; and, countertop filters, which typically have a hose that attaches to the faucet. Likewise, POE technologies, including Reverse Osmosis and Cation Exchange, are available for use to treat lead.

However, as it relates to POE use for water treatment, the US EPA's April 2006 report Point-of-Use or Point-of-Entry Treatment Options for Small Drinking Water Systems states that, "Unit installation can be a complicated and time-consuming process, particularly for POE devices. Improper installation can lead to unit malfunction, a decrease in the unit's effective life, leaks, and difficulties with maintenance and sampling."

Therefore, the author may wish to consider including requirements in the bill, or suggest the State Water Board include requirements in any subsequent regulations adopted pursuant to this bill, that a county or qualified nonprofit providing POE treatment devices install and monitor them appropriately.

Related legislation: AB 277 (Mathis, Chapter 438, Statutes of 2017). Authorizes the State Water Board to establish the Water and Wastewater Loan and Grant Program to provide funding to eligible applicants for drinking water and wastewater treatment improvements. Authorizes a county or qualified nonprofit organization to apply to the board for a grant to award loans or grants, or both, to an eligible applicant.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Association of Realtors

Opposition

None on file.

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2775 (Kalra) – As Introduced February 16, 2018

SUBJECT: Professional cosmetics: labeling requirements

SUMMARY: Requires professional cosmetics to meet the same federal labeling requirements as cosmetics sold at retail for consumer use. Specifically, **this bill**:

1) Requires, on or after July 1, 2020, a professional cosmetic for sale to have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to the Federal Food, Drug, and Cosmetic Act (FD&C Act) and the Federal Fair Packaging and Labeling Act (FPLA).

2) Defines "professional" as a person that has been granted a license by the State Board of Barbering and Cosmetology to practice in the field of cosmetology, nail care, barbering, or esthetics.

3) Defines "professional cosmetic" as a cosmetic product that is intended or marketed to be used only by a professional on account of a specific ingredient, an increased concentration of an ingredient, or another quality that requires safe handling, or is otherwise used by a professional.

EXISTING LAW:

1) Considers, pursuant to the Sherman, Food Drug & Cosmetic Act (Sherman Act) any cosmetic misbranded if its package does not bear a label containing all of the following information: the name and place of business of the manufacturer, packer, or distributor; and, an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. (Health & Safety Code (HSC) § 111740)

2) Requires, pursuant to the Safe Consumer Cosmetic Act (Cosmetics Act), manufacturers of a cosmetic subject to regulation by the federal Food and Drug Administration (FDA) to submit to California Department of Public Health (CDPH) a list of its cosmetic products sold in California that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. (HSC § 111792)

3) Requires, pursuant to the FD&C Act, cosmetics produced or distributed for retail sale to consumers for their personal care to bear an ingredient declaration. (21 Code of Federal Regulations (CFR) 701.3)

4) Requires, pursuant to the FPLA, each package of household "consumer commodities" to bear a label on which there is a statement identifying the commodity, e.g., detergent, sponges, etc.; the name and place of business of the manufacturer, packer, or distributor; and, the net quantity of contents in terms of weight, measure, or numerical count. (16 CFR Parts 500, 501, 502, 503)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

> "AB 2775 would require manufacturers to list all ingredients on the labels of professional cosmetic products, except for those protected by trade secrets, to provide open information for consumers, salon workers, and the general public. It is important to note that under current law, professional cosmetic products; those used in salons on a daily basis, are not required to be labeled. This bill would simply apply the existing industry labeling requirement for retail cosmetic products to commercial products.
>
> While retail cosmetic products are sold to the public for lifestyle consumption, professional cosmetic products are used by salon workers for upwards of 8 hours per day, resulting in many cases of acute to severe health symptoms. AB 2775 gives salon workers and consumers the ability to view ingredients in an open way that is already standardized across our food, cleaning, and retail cosmetics."

Public health dangers of salon cosmetics: Cosmetic products are most heavily used by women of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to substances that can cause cancer and reproductive toxicity. Chemicals in professional cosmetics can also be harmful to salon customers.

According to the United States Department of Labor, "Working in a nail salon exposes workers to many different chemicals each day. These exposures can "add up," especially when many products are being used at the same time, the products are used day after day, or when there is poor ventilation in the salon. When this happens, workers can get sick. Many salon workers also work long hours, which adds to the amount of time they may be exposed to chemicals. These types of exposures may make workers sick immediately or cause effects over time."

A 2012 study conducted by the Department of Toxic Substances Control (DTSC), *Summary of Data and Findings from Testing of Nail Products Collected from the San Francisco Bay Area*, revealed that numerous nail care products sampled in the San Francisco Bay Area displayed toxic-free claims that were not supported by laboratory testing. DTSC scientists discovered that despite claims to be free of one or more of the "toxic-trio" ingredients – toluene, formaldehyde, and DBP – some nail care products sold in Northern California contained high levels of toluene and DBP. The study provided a snapshot of whether potentially harmful chemicals could be found in available products.

Federal cosmetic regulatory requirements: Under the FD&C Act (21 United States Code Sec. 301), cosmetics and their ingredients are not required to be approved before they are sold to the public and the FDA does not have the authority to require manufacturers to file health and safety data on cosmetic ingredients or to order a recall of a dangerous cosmetic product.

As it relates to labeling, cosmetics marketed in the United States, whether manufactured here or imported from abroad, must be in compliance with the provisions of the federal FD&C Act and the FPLA. The FPLA requires each package of household "consumer commodities" to bear a label on which there is a statement identifying the commodity, e.g., detergent, sponges, etc.; the name and place of business of the manufacturer, packer, or distributor; and, the net quantity of contents in terms of weight, measure, or numerical count.

The FD&C Act requires ingredients to be identified by the names established or adopted by regulation; those accepted by the FDA as exempt from public disclosure may be stated as "and other ingredients" (21 CFR 701.3(a)). The FD&C Act exempts chemicals used as fragrances or flavoring from being identified as ingredients on the labels of cosmetic products.

Cosmetics produced or distributed for retail sale to consumers for personal use are required to have an ingredient declaration (21 CFR 701.3). Professional cosmetics, such as hair preparation products, make-up products, skin cleansing or emollient creams used by persons at their places of work, are exempt from this requirement provided these products are not also sold to consumers at professional establishments or workplaces for their consumption at home. In other words, the FD&C Act does not require any ingredient labeling on cosmetic products sold for commercial use only, thereby denying any information on ingredients to professional salon workers.

State cosmetic regulatory requirements: California's Cosmetics Act (SB 484 (Migden), Chapter 729, Statutes of 2005) requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. CDPH maintains an active, searchable database with all of the data collected from manufacturers under the Cosmetics Act to make that data user-friendly and available to the public. Anyone can search the database for a type of product; a specific product name; or, a brand or company name to get more information about whether a product contains a covered chemical.

There are several issues with the Cosmetics Act that make it relatively ineffective. First, there is a general lack of knowledge about the existence of the CDPH database, and it is unknown how widely it is used or whether it is helpful to consumers, employers, or anyone else interested in ascertaining the toxicity of a cosmetic product. Second, the database includes carcinogenic and reproductive toxicants, but not all ingredients that could cause harm, such as skin and respiratory irritants, neurotoxins, etc. Third, CDPH does not have any enforcement authority or penalty authority over the manufacturers that are covered, so not all manufacturers are currently complying and submitting their products' information, and there is no way to compel their compliance.

It is also unknown how much overlap there is with the cosmetics represented in the database and those covered under this bill.

The Sherman Act, administered by CDPH to regulate cosmetics, broadly defines a cosmetic as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance.

The Sherman Act establishes specific labeling requirements consistent with federal labeling requirements, deeming a cosmetic to be "misbranded if it is in package form and it does not bear a label containing all of the following information: (a) The name and place of business of the manufacturer, packer, or distributor; and, (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count." (HSC § 111740)

The Sherman Act also authorizes CDPH to require that the label on a cosmetic to bear the common or usual name of the article, if any, and in case the article consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance by weight; however, trade secrets are exempt from this requirement. (HSC § 110370)

Establishing consistency: Cosmetics sold at the retail level are required to be labeled with ingredients, while cosmetic sold to professionals are not. However, there are some manufacturers who make both retail and professional-grade cosmetics. For example, OPI nail polish is sold to both retail consumers and professional salons. There are likely more examples.

The intent of this bill is to create labeling parity for all cosmetics.

Related legislation:

AB 1575 (Kalra, 2017). This bill was identical to AB 2775. It was held in Senate Appropriations Committee.

SB 258 (Lara, Chapter 830, Statutes of 2017). Requires a manufacturer of a cleaning product manufactured or sold in California on or after July 1, 2018, to disclose each ingredient contained in the product on the product label.

AB 2125 (Chu, Chapter 564, Statutes of 2016). Requires DTSC to publish guidelines for cities, counties, and cities and counties to voluntarily implement local HNSR programs. Allows the guidelines to include, but not be limited to, specified criteria, such as the potential for exposure of nail salon workers and customers to chemicals.

SB 1019 (Leno, Chapter 862, Statutes of 2014). Requires labels on upholstered furniture to indicate if the product contains chemical flame retardants.

SB 928 (Simitian, 2010). Would have required manufacturers to disclosure the chemical content of specified types of cleaning products sold in California. It was held in the Assembly Appropriations Committee.

Double referral: This bill was heard in the Assembly Health Committee on April 3, 2018, where it was approved unanimously, 15-0.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
ACT for Women and Girls
Alaska Community Action on Toxics
American Cancer Society Action Network
American College of Obstetricians and Gynecologists
Asian Health Services
Asian Immigrant Women Advocates
Asian Pacific Environmental Network
Beautycounter
Black Women for Wellness
Breast Cancer Prevention Partners
California Chamber of Commerce
California Healthy Nail Salon Collaborative
California Pan-Ethnic Health Network
Clean Water Action
Community Health Partnership
Consumer Federation of California

Côte
Educate. Advocate.
Empower Family California
Environmental Working Group
National Employment Law Project
Personal Care Products Council
Physicians for Social Responsibility – Los Angeles
Physicians for Social Responsibility – San Francisco Bay Area
Professional Beauty Association
Sierra Club California
Silent Spring Institute
SkinOwl
Tenoverten
University of California, Los Angeles, Labor Occupational Safety and Health Program
Vapour Organic Beauty
Women's Foundation of CA
Women's Voices for the Earth
Worksafe

Opposition

None on file.

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2803 (Limón) – As Amended March 23, 2018

SUBJECT: Carpenter-Presley-Tanner Hazardous Substance Account Act

SUMMARY: Adds "lead-based paint that is bioavailable" to the definition of a hazardous substance and states that a residential property owner with contaminated lead-based paint is not a responsible party under the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA).

EXISTING LAW:

1) Establishes the HSAA to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment. (Health and Safety Code (HSC) § 25300 et seq.)

2) Defines "hazardous substance" as a substance, element, compound, mixture, or solution designated under federal law; a hazardous waste listed or designated under federal law; a toxic pollutant or hazardous air pollutant listed under federal law; or, a hazardous waste or extremely hazardous waste as defined in state law. (HSC § 25316)

3) Defines "responsible party or liable person" as those persons described in federal law; however, a responsible party does not include a person that has developed or implemented investigative or remedial technology for a release site, if that technology has been approved by the Department of Toxic Substances Control (DTSC). (HSC § 25323.5)

4) Creates a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (U.S.C.) § 9601 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 2803 would provide liability protection for homeowners whose homes are contaminated with lead based-paint; which has been recognized by California to be a hazardous substance and a human risk. This would allow homeowners to seek damages for clean-up or otherwise implement their own clean-up without fear of liability lawsuits."

Hazardous substances/hazardous waste: Information provided by the US EPA advises that over the next several decades, federal, state, and local governments and private industry will commit billions of dollars annually to clean up sites contaminated with hazardous waste and petroleum products from a variety of industrial sources. Accordingly, in the United States, there could be

as many as 355,000 contaminated sites that will require cleanup over the next 30 years and that the cost of this cleanup may amount to as much as $250 billion.

Hazardous substance is a broad term that includes many chemicals and materials that present an imminent and substantial danger to public health or welfare. Improper use and disposal of these products can result in hazardous waste. According to the US EPA, hazardous wastes or substances are potentially hazardous to human health or the environment when they are improperly managed. They possess at least one of following characteristics: ignitability, corrosiveness, reactivity, or toxicity, or they appear on special US EPA lists.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA or Superfund provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the US EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. The US EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act. Through various enforcement tools, the US EPA obtains private party cleanup through orders, consent decrees, and other small party settlements. The US EPA also recovers costs from financially viable individuals and companies once a response action has been completed. CERCLA defines liable parties as current owners and operators of a facility, former owners and operators of a facility at the time of disposal, persons who arranged for treatment or disposal of hazardous substances, and transporters of hazardous substances who selected the disposal site. A person who falls within the definition of one of these classes may be held liable under CERCLA.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances and for hazardous waste disposal sites that pose a threat to public health or the environment. DTSC uses the HSAA for cleanup of contaminated sites and the Hazardous Waste Control Law for the regulation of hazardous waste sites. The HSAA is intended to provide compensation for out-of-pocket medical expenses and lost wages or business incomes resulting from injuries caused by exposure to hazardous substances. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

Lead is a well-known toxin: Lead has been listed under California's Proposition 65 since 1987 as a substance that can cause reproductive damage and birth defects and has been listed as a chemical known to cause cancer since 1992. According to the Office of Environmental Health Hazard Assessment, lead has multiple toxic effects on the human body. Decreased intelligence in children and increased blood pressure in adults are among the more serious non-carcinogenic effects. There is no level of lead that has been proven safe, either for children or for adults.

The Center for Disease Control and Prevention (CDC) found, based on the U.S. Census Bureau 2010 count of the number of children between the ages of 1 and 5 years old, that approximately 2.6% of U.S. children in that age group have high levels of lead in their blood (blood lead levels $\geq$ 5 micrograms per deciliter (µg/dL)).

Exposure to lead can seriously harm a child's health. Even a slight elevation in blood levels can reduce IQ and stunt development. Millions of children are being exposed to lead in their homes through aging lead-based paint, increasing their risks for damage to the brain and nervous system, slowed growth and development, learning and behavior problems, hearing, and speech problems.

The CDC's 2012 Advisory Committee on Childhood Lead Poisoning Prevention statement *Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention* found that the adverse health effects of blood lead levels less than 10 μg/dL in children extend beyond cognitive function to include cardiovascular, immunological, and endocrine effects.

Lead-based paint history: Lead-based paint was shipped in Colonial days to what became the United States as a luxury good, and was later used to paint such important structures as the White House, the Capitol, and Mount Vernon.

When lead pigment was used in paints, currently reported risks to children were unknown and unknowable. Medical science has evolved, leading to concerns about childhood health that had not existed when lead-based paint was marketed.

Before 1940, paint manufacturers began to use non-lead pigments, such as lithopone, zinc oxide, and titanium dioxide, in many interior paints mixed at the factory. In fact, Sherwin-Williams introduced the first, successful lead-free water-based paint for interior use in 1941. Its easy use, clean-up, and quick drying launched a do-it-yourself paint market.

In 1948, the Baltimore Public Health Department observed an increase in childhood lead poisoning in Baltimore, primarily among those who lived in its substantial number of rundown, neglected row houses amid massive amounts of peeling and flaking lead paint. That led health inspectors to investigate those houses and to learn that children were eating lead from peeling and chipping lead paint in that city's inner-city housing, poorly maintained during and after World War II.

As soon as those new concerns were raised, the paint industry worked closely with public health officials to investigate the risk. The paint industry provided research funding, which helped lead to the Baltimore Public Health Department issuing a ban in 1951 on the use of lead pigment in interior paint in Baltimore housing. That was the first restriction on the use of interior lead paint in the country.

When the same problem was found in the dilapidated housing in older cities in the Northeast and Midwest, the paint industry also worked with the American Academy of Pediatrics, along with other groups interested in child health issues. In 1955, a voluntary national standard was adopted to prohibit, in effect, the use of lead pigments in interior residential paints.

When lead-based paint was marketed before 1978, it was a legal product in great demand because it was washable and durable. It was repeatedly endorsed by the federal, state, and local governments, and specified for use on government buildings until the mid-1970s. For example, the 1950 California Department of Education vocational book on painting endorsed the use of white lead paint.

It was not until 1974 that a new theory emerged on the predominant pathway for children to be exposed to gratuitous levels of lead. In a paper by Dr. James W. Sayre, *House and Hand Dust as a Potential Source of Childhood Lead Exposure*, Dr. Sayre felt that the major source might be house dust, contaminated with lead from many sources. The theory was that children were licking their hands that had become dirty with lead-contaminated dust. His theory brought about a move beyond the earlier recognition of a risk from chipping and peeling paint. He also observed that average blood lead levels of children living in low-risk areas of Rochester, New York, were in the range then of 18-25 µg/dL.

In 1978, the U.S. Consumer Product Safety Commission banned consumer uses of lead-based paint. However, buildings built prior to the ban still likely have lead paint, as well as commercial, government, and industrial buildings and structures, which are permitted to use lead-based paint.

Lead-based paint, like all paint, inevitably deteriorates: it flakes, chips, and turns to dust and can contaminate the air, soil, floors and other surfaces in the home. This is particularly true of lead paint on windows, doors, and other friction surfaces.

Lead-based paint in California: According to the Legislative Analysist's Office, about 60% of houses in California were built before 1978 and are presumed to have lead-based paint.

As a case in point, about 75% of Alameda County's homes were built before 1980, which amounts to 430,000 units. Nearly 174,000 of those units are pre-1950. Lead-based paint hazards in Oakland homes are considered by local health officials to be "coming close to crisis mode." In Oakland, between 80% and 90% of the housing is pre-1978, which accounts for about 174,000 units.

In Los Angeles County, 77% of the housing was built before 1978, which is more than 2.6 million housing units. More than 900,000 of those housing units are pre-1950. In at least 75% LA County's lead poisoning cases, lead-based paint is a potential source of the lead poisoning. At least 70% of those cases involve individuals living in pre-1978 housing.

Lead-paint cleanup costs: Lead-based paint removal costs an estimated $8-$15 a square foot, which means removing all lead from a house of 1,200-2,000 square feet could run as much as $9,600-$30,000, according to RealtyTimes.com. The average removal project runs around $10,000 for a typical pre-1978 home.

Judgment against paint industry: In 2000, a complaint was filed on behalf of the People of the State of California against three major paint manufacturers to hold former lead paint manufacturers responsible for promoting lead paint for use in homes despite their knowledge that the product was highly toxic. The case was filed by Santa Clara County, and nine other cities and counties subsequently joined the litigation: the County of Alameda, the City of Oakland, the City and County of San Francisco, the City of San Diego, the County of Los Angeles, the County of Monterey, the County of San Mateo, the County of Solano, and the County of Ventura.

After a six-week trial in 2013, the trial court issued its order in 2014, finding that Sherwin-Williams, ConAgra, and NL Industries (collectively, the "manufacturers") had created a public nuisance in the 10 jurisdictions by promoting lead paint for interior use despite knowledge of the substantial harms that would result. The public nuisance created by these manufacturers consists

of the collective presence of lead paint in the interiors of homes in the ten cities and counties. The three paint manufacturers were ordered to pay $1.15 billion into a fund to inspect for and abate lead paint in all homes constructed up through 1980. (The court did *not* find that lead paint on any individual property is a public nuisance, and thus no individual homes were declared a public nuisance.)

Manufacturers were ordered to pay $1.15 billion to fund inspection for, and abatement of, lead paint and lead-contaminated dust from the interiors of homes and lead-contaminated soil around homes built in 1980 or earlier in the ten cities and counties; remediation of any structural deficiencies in the homes that would cause the lead control measures to fail; and, public education and outreach necessary for the program.

The ten cities and counties were designated to oversee the lead inspection and abatement program in their respective jurisdictions. Property owners' participation would be entirely voluntary, and any funds unspent after four years would revert back to the manufacturers.

In 2017, the Court of Appeal upheld the Superior Court's determination that Manufacturers were liable for creating a public nuisance in the ten cities and counties. (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51). However, the Court of Appeal limited the judgment to homes built before 1951.

On February 14, 2018, the California Supreme Court denied requests by the manufacturers to review a decision requiring those companies to pay several hundred million dollars to identify and clean up lead paint from millions of homes built before 1951 in Santa Clara County and nine other California cities and counties. The manufacturers plan to further appeal the decision to the U.S. Supreme Court. In the meantime, however, the case is returning to the Superior Court to (1) calculate the amount that manufacturers must pay for pre-1951 homes only and (2) decide on a receiver to administer the fund and distribute the monies to the ten cities and counties.

Safe Homes and Schools Act: In spite of the court's findings, the paint manufacturers are proposing an initiative for the November 2018 statewide ballot that would relieve paint manufacturers of liability, undo the actions by multiple courts, and put the sole financial responsibility on California homeowners for cleaning up lead-contaminated paint.

Specifically, the ballot measure, titled The Safe Homes and Schools Act would authorize $2 billion in general obligation bonds to remediate homes for various hazards (mold, asbestos, pests, radon, and lead); declare that lead-based paint is not a "public nuisance;" and, would retroactively nullify all cases pending or pending on appeal as of November 1, 2017. According to the Legislative Analysist's Office, if the bonds were sold at an average interest rate of 5%, the cost would be $3.9 billion to pay off both principal ($2 billion) and interest ($1.9 billion), which would be paid for by taxpayers.

AB 2803 achieves two objectives: First, it ensures that homeowners that have lead-based paint cannot be sued by the lead paint manufacturers. Second, it ensures that the lead paint manufacturers remain and will still be liable for their lead contamination regardless of the failure or passage of the initiative. Based on the judgements of the courts, this seems to be a reasonable proposal.

Related legislation: Lead-based paint is still in many California homes built before 1978, putting another generation of kids at risk. A package of legislation has been introduced to address the proposed policy provisions in the pending ballot measure, as well as set up frameworks for implementing the settlement funds should the ballot measure fail. The package includes the following bills:

AB 2073 (Chiu) protects homeowners from frivolous lawsuits threatened by the lead paint manufacturers if the homeowners participate in the abatement program created by the judgement. This legislation delivers needed assurance that homeowners, who do the right thing by removing toxic paint from their homes, will not be victimized by frivolous litigation from deep-pocketed paint companies. This bill will be heard in the Assembly Judiciary Committee.

AB 2934 (Stone) would allow the California Department of Public Health to contract with counties to certify lead paint inspectors. This bill helps fill a shortage of inspectors to help bring homes up to safe standards. Additional qualified, lead paint inspectors will be needed as work proceeds to remove toxic paint from homes under the judgement. This bill will be heard in this Committee on April 24th.

AB 2074 (Bonta) removes a significant hurdle to homeowners holding poison paint manufacturers legally accountable for injuries by establishing that lead paint companies are responsible to prove they did not produce, sell, distribute or promote the lead-based paint used during a particular time or area, and allowing homeowners to hold companies jointly liable if there were multiple companies selling or distributing paint at that time and area. Codifying this "risk contribution" theory in statute allows those poisoned by lead-based paint, who are unable to identify the exact manufacturer of the lead paint pigment, a new avenue to litigate cases they may not otherwise be able to litigate. This bill will be heard in the Assembly Judiciary Committee.

AB 2995 (Carrillo) classifies the presence of lead-based paint in a home or building as a physical injury to the property, enabling property owners to sue for the cost of abating or removing lead paint to prevent the further deterioration of peoples' health. Secondly, the bill delays the start of the clock on the statute of limitations to when property owners become aware that lead paint is present, rather than starting the clock at the time of purchase. This bill will be heard in the Assembly Judiciary Committee.

AB 2803 (Limon) would provide additional liability protection for homeowners by redefining the definition of "hazardous substance" to include lead-based paint for purposes of the Carpenter-Presley-Tanner-Hazardous Substance Account Act, otherwise known as California's Superfund law. This would allow homeowners to seek damages for clean-up or otherwise implement their own clean-up without fear of liability lawsuits. Should this bill be approved by this Committee, it will be heard next in the Assembly Judiciary Committee.

Double referral: Should this bill be approved by this Committee, it will be heard next in the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California League of Conservation Voters
City of Oakland
Clean Water Action

Opposition

California Manufacturers & Technology Association
Industrial Environmental Association

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2832 (Dahle) – As Introduced February 16, 2018

SUBJECT: Recycling and reuse: lithium-ion batteries.

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to identify recycling opportunities for lithium-ion batteries and develop a grant program for lithium-ion (Li-ion) battery recycling. Specifically, **this bill**:

1) Establishes the intent of the Legislature to avoid the disposal in landfills of lithium-ion batteries from electric vehicles, as electric vehicles become a larger portion of the vehicle fleet, by identifying opportunities for the reuse and recycling of those lithium-ion batteries that are no longer suitable for their intended purposes; and, provide consumers with an opportunity to properly dispose of Li-ion batteries from electric vehicles, at no cost to consumers.

2) Requires DTSC to collaborate with the State Air Resources Board (ARB), the Department of Resources Recycling and Recovery (CalRecycle), the State Energy Resources Conservation and Development Commission (CEC), the Bureau of Automotive Repair (BAR), and stakeholders to do both of the following:

   a) Identify approaches for the reuse or recycling of Li-ion batteries from electric vehicles when the batteries are no longer suitable for their intended purposes, in order to minimize the amount of potentially hazardous material that enters the state's waste disposal system; and,

   b) Submit a report to the Legislature, on or before July 1, 2020, based on findings pursuant to subdivision (a), and sunsets this reporting requirement on January 1, 2024.

3) Requires DTSC to develop a grant program to fund the development of recycling and reuse opportunities for lithium-ion batteries from electric vehicles when the batteries are no longer suitable for their intended purposes.

4) Establishes that entities and persons eligible for a grant shall include, but are not limited to, manufacturers of Li-ion batteries for electric vehicles.

5) Requires CalRecycle to develop a process for a consumer to properly dispose of a lithium-ion battery from an electric vehicle, at no cost to the consumer.

EXISTING LAW:

1) Prohibits the disposal of a lead-acid battery at a solid waste facility, or on or in any land, surface waters, watercourses, or marine waters. (Health and Safety Code (HSC) § 25215.2)

2) Establishes the Lead-Acid Battery Recycling Act of 2016 (Act) to impose fees on lead-acid batteries to fund lead contamination cleanup. (HSC § 25215)

3) Establishes the California Rechargeable Battery Recycling Act to require retailers to have a mechanism to accept all non-vehicular rechargeable batteries from consumers for recycling. (Public Resources Code § 42451)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "This bill requires DTSC, Cal Recycle and other stakeholders identified to develop a plan for the recycling and recovery of Lithium-Ion electric vehicle batteries. Since this is a fairly new problem, there are currently no programs in place to handle this. Currently there are approximately 300,000 electric vehicles on the road. This paired with pending legislation that could increase these numbers by 2040, and the Governor's EO B-48-18 which requires all state entities work with the private sector and all appropriate levels of government to put at least 5 million zero-emission vehicles on the roads it's time for California to come up with a plan to address the end of life needs of these batteries."

Zero emission vehicles (ZEVs): Zero emission vehicles, or ZEVs, is an umbrella term for hydrogen fuel cell electric vehicles, battery electric vehicles (EVs), and plug-in hybrid electric vehicles (PHEVs). ZEVs are vehicles that emit no exhaust gas from the onboard source of power, hence the term 'zero emission.'

Value of ZEVs to California goals: California has some of the most ambitious climate emission reduction goals in the nation, which include goals to reduce petroleum use in California by up to 50% from 2015 levels by 2030, and reducing greenhouse gas emissions 40% below 1990 levels by 2030. The transportation sector represents about 40% of California's total greenhouse gas emissions portfolio, so promoting ZEVs, and replacing traditional gas-powered cars with ZEVs, is a very big part of California's mission to reduce those climate emissions.

Encouraging ZEV sales is a state priority: In 2012, Governor Jerry Brown issued Executive Order (EO) B-16-12 directing state government to help accelerate the market for ZEVs in California. This EO calls for 1.5 million ZEVs in California by 2025 and establishes several milestones to achieve this goal.

In 2014, the State Legislature passed and Governor Brown signed the California Charge Ahead Initiative (SB 1275, De Léon, Chapter 530, Statutes of 2014) to support consumer incentives and rebates to help achieve one million ZEVs on California's roads by January 1, 2023.

In 2015, the State Legislature passed and Governor Brown signed into law the Clean Energy and Pollution Reduction Act of 2015 (SB 350, De Léon, Chapter 547, Statutes of 2015), which established a statewide policy to effectuate widespread electrification of the transportation sector.

Most recently, on January 26, 2018, Governor Jerry Brown signed EO B-48-18 to call for a new target of 5 million ZEVs in California by 2030. The Governor is also proposing a new eight-year initiative to continue the state's clean vehicle rebates and spur more electric vehicle charging station infrastructure investments. This $2.5 billion initiative is aimed to bring 250,000 vehicle charging stations to California by 2025.

State policies supporting ZEVs: Supporting those lofty goals are various state policies that have been enacted or promulgated by state agencies to expand the fleet of ZEVs on California roads.

The State of California continues to provide monetary rebates of up to $2,500 for the purchase or long-term (30 months or more) lease of ZEVs. (There are also federal rebates for ZEVs consumers can take advantage of in addition to the state's rebates.)

The state also gives high occupancy vehicle (HOV) lane access to ZEV drivers, regardless of being a single passenger or HOV, as a benefit for driving a ZEV.

The California Air Resources Board also has the ZEV mandate, which requires auto manufacturers to produce an increasing number of pure ZEVs (battery electric as well as fuel cell electric vehicles).

How many ZEVs and Li-ion batteries are on the road today: California increased the number of ZEVs in the state by 1300% in six years—growing from 25,000 in 2012 to more than 450,000 today—and ZEVs now account for approximately 4.5-5 percent of all new car sales in California. All ZEVs contain a Li-ion battery to provide their electric power.

Li-ion batteries: Li-ion batteries, widely used in portable electronics like laptops, smart phones, digital cameras, game consoles, and cordless power tools, are also widely used as vehicle batteries in ZEVs.

The traditional Li-ion chemistry involves a lithium cobalt oxide cathode and a graphite anode. Li-ion batteries are efficient at holding charges and recharging to power a car, and traditional Li-ion batteries can have hundreds to a few thousand charge cycles through their lives. The life-span of Li-ion battery is anywhere between 10-20 years.

Li-ion batteries are hazardous waste: All batteries are considered hazardous waste in California when they are discarded. Batteries are considered hazardous because of the metals and/or other toxic or corrosive materials contain within. Batteries are potentially a valuable source of recyclable metal.

All batteries in California that are intended for disposal must be recycled, or taken to a household hazardous waste disposal facility, a universal waste handler (e.g. storage facility or broker), or an authorized recycling facility.

Hazardous waste regulations designate a category of hazardous wastes called "universal waste" (u-waste). DTSC regulation recognizes all batteries that exhibit a characteristic of a hazardous waste as a u-waste.

This bill recognizes automotive Li-ion batteries as hazardous waste consistent with state laws and regulations.

Li-ion battery waste: According to CalRecycle's 2014 Waste Characterization Study, batteries, which includes include car, flashlight, small appliance, watch, and hearing aid batteries, represented 11,887 tons (0.003%) of California's overall disposed waste stream. However, this figure does not distinguish between single-use and automotive batteries, but it is also likely that automotive Li-ion batteries represent a de minimis amount of this total.

According to a presentation to DTSC from Occupational Knowledge International, by 2028, roughly 8 million kilotons of waste Li-ion batteries from ZEVs are expected to be generated; by 2038, the estimate is 55 million kilotons.

Collection rates today: It is unknown how many Li-ion batteries are being collected for end of life management.

There are currently about 35 million total cars on the road in California. Of those, about 450,000-500,000 are ZEVs. ZEV car sales started to increase in 2011, when they still represented less than 0.5% of total sales. The life span of those cars' batteries have not yet maxed out, so ZEV car owners have not yet, en masse, needed replacement Li-ion car batteries. There simply is no data from new car dealers or auto body shops on spent Li-ion batteries being collected.

While current end-of-life management for automotive Li-ion batteries is completely unknown, there is no doubt that there is a need for infrastructure to manage the inevitable waste of ZEV Li-ion batteries.

Current Li-ion battery management: According to the U.S. Geological Survey, historically, lithium recycling has been insignificant, but has increased over time owing to the growth in consumption of lithium batteries. One U.S. company has recycled lithium metal and lithium-ion batteries since 1992 at its facility in British Columbia, Canada. In 2009, the U.S. Department of Energy awarded the company $9.5 million to construct the first U.S. recycling facility for lithium-ion batteries, which was still under construction in 2014.

In California, because Li-ion batteries are considered a hazardous or universal waste, any facility that accepts them for collection, storage, waste management, or recycling would have to be permitted by the Department of Toxic Substances Control for managing hazardous waste.

It is unknown how many facilities are permitted by DTSC to accept Li-ion batteries from hybrids and electric vehicles for management or recycling.

Market for Li-ion batteries: End-of-life management of Li-ion automotive batteries is still nascent, but, theoretically, they could be collected for end-of-life management as hazardous waste, recycling, reuse, or potentially even refurbishment.

If there is a market for reusing Li-ion and Cobalt, recycling these automotive batteries could prove to be lucrative.

There is also potential for repurposing Li-ion batteries for alternative (non-vehicular) energy storage. According to the report by the Lawrence Livermore Laboratory prepared for the California Energy Commission, *Plug-In Electric Vehicle Battery Recycling Scale-Up Strategies for California (2015-2050): Logistics, Life-Cycle Environmental Implications, and Second-Life Potential*, batteries used in ZEVs "have a lifetime of 8-10 years, and they have significant capacity left for less demanding, second-life stationary energy storage applications after their capacity fades below acceptable levels [for a car]. This second-life battery can be used in California's electricity grid for demand response and frequency regulation to help stabilize the network, or to support residential customers using off-grid solar arrays. At this time, the late-stage degradation pattern of batteries is not yet quantified."

California has battery recycling programs, but not Li-ion: The California Rechargeable Battery Recycling Act (Act) (AB 1125, Pavley, Chapter 572, Statutes of 2005) banned all household batteries from solid waste landfill disposal and required retailers to take back rechargeable batteries for recycling at no cost to consumers. Rechargeable batteries covered under the Act include small, non-vehicular, rechargeable nickel-cadmium, nickel metal hydride, lithium ion, or sealed lead-acid battery, or a battery pack containing these types of batteries.

According to DTSC's data for 2012, nearly 22.2 million pounds of rechargeable batteries were collected from consumers for recycling, which include approximately 700,000 pounds of Li-ion batteries (non-vehicular) batteries. It is difficult to say how well this program has worked for collecting household lithium-ion batteries because batteries contained within electronic devices that are recycled (e.g. cell phones and laptop computers) are not counted separately but may represent a significant portion of the total quantity, and California law does not require battery handlers or recyclers to report the number or weight of batteries collected for recycling; however, the increase in battery collection has steadily increased over the years since the Act was enacted.

Under the Lead-Acid Battery Recycling Act of 2016 (AB 2153, C. Garcia, Chapter 666, Statutes of 2016), consumers are charged a $1 fee per lead-acid car battery at the point of sale. Manufacturers also pay a $1 fee on each battery sold in the state. The money from the fee revenues are used to clean up areas of the state that have been contaminated by the production and recycling of lead acid batteries.

According to a 2007 contracted report to the California Integrated Waste Management Board (CIWMB, which is now CalRecycle), *Framework for Evaluating End-of-Life Product Management Systems in California*, the need to have disposal options for lead-acid batteries lead to an industry response by BCI, Inc. to promote model legislation for states to enact. That resulted in a model that included a landfill ban, a mandatory retailer-take back system, and mandatory collection of deposit on the purchase of a new battery if an old battery is not returned. California adopted a modified version of the model legislation in 1989. According to the auto care industry, 99.6% of all lead-acid core batteries are currently recycled in California.

Given the history with developing lead-acid battery waste management in California, the author may wish to consider including industry perspective in the study required by the bill. This could be done by clarifying that "stakeholders" in section 42420.2 specifically includes ZEV manufacturers, battery manufacturers, and hazardous waste management facility operators in California.

Infrastructure, as well as understanding, is lacking: Little research has been devoted to understanding the challenges and tradeoffs associated with end-of-life management strategies for ZEV batteries, and the pace at which new collection, second life, and recycling infrastructure must be scaled up.

Developing a roadmap for building the infrastructure necessary to process used batteries and divert them to appropriate uses requires much research.

The bill requires DTSC, in collaboration with CalRecycle, ARB, BAR, and the CEC, to study the potential approaches to reuse or recycling for ZEV Li-ion batteries once they are spent. Given the exponentially growing number of ZEVs on the road, the fact Li-ion batteries are considered

hazardous, and the need to have systems in place to collect these products when they are done with their useful life, studying the possibilities now is prudent.

Who should foot the bill for Li-ion battery management?: The bill currently requires DTSC to create a grant program to fund the development of recycling and reuse opportunities for Li-ion batteries from ZEVs.

It is a policy question as to whether the state – taxpayers – should be paying the bill for collection and recycling. Collection and recycling for automotive lead-acid batteries, for example, are paid for through a $1 fee paid by consumers and a $1 fee by manufacturers on each lead-acid battery sold.

The author believes that, given the state resources, such as GGRF funds, invested in getting ZEVs on the road in place of gas-powered cars, there should be commensurate investment from the state to establish the infrastructure to handle the waste batteries as a result of those ZEV policies. For instance, after January 1, 2021, GGRF funds will not be legally restricted to greenhouse gas-reduction projects, and could be used to jumpstart the infrastructure economy for Li-ion battery collection and recycling. State funds could be used to incentivize auto-body shops to be trained in battery removal and permitted to store the batteries; assist battery collectors, recyclers, and transporters to get the appropriate hazardous waste permits; and, support state efforts to regulate the resale/reuse of Li-ion batteries.

On the contrary, ZEVs receive state and federal rebates to lower the purchase price of the vehicle, and ZEV drivers do not have to pay the state road improvement fee, which contributes to the state's road repair fund. Therefore, charging ZEV drivers a consumer fee to fund battery management, much like the lead-acid battery consumer fee, may be an appropriate option for funding a new state program.

As a practical reality, it should be noted that auto manufacturers are currently struggling to meet the ZEV mandate to manufacture a set amount of ZEVs, as determined and mandated by ARB. Despite state and federal incentives for consumers to buy ZEVs, HOV lane access, and free charging stations statewide, consumers have not been purchasing ZEVs at a rate fast enough for the manufacturers to comply with the ZEV mandate. Various factors influence the sale of ZEVs, such as gas prices, which is out of the manufacturers' control. Adding a Li-ion battery recycling fee may make the uphill battle to selling ZEVs, and meeting the Governor's ZEV goals, more challenging.

There are many unknowns about Li-ion collection, transport, recycling options, and marketability. Before the state appropriates or collects money and creates a program, it needs to understand the scope of what is needed.

Related legislation:

1) AB 193 (Cevantes). Provides rebates for electric vehicles and rebates for the replacement or refurbishment of electric vehicle batteries. Held on Inactive file in the Senate.

2) AB 2407 (Ting). Requires the California Environmental Protection Agency to convene a Lithium-Ion Car Battery Recycling Advisory Group to review and advise the Legislature on policies pertaining to the recovery and reuse of Li-ion batteries. Will be heard in this Committee on April 24, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

State of California Auto Dismantlers Association

Opposition

None on file.

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2892 (Quirk) – As Introduced February 16, 2018

SUBJECT: Pest control: mosquito abatement

SUMMARY: Establishes the California Mosquito Surveillance and Research Program to be administered by the California Department of Public Health (CDPH). Specifically, **this bill**:

1) Establishes the California Mosquito Surveillance and Research Program to be administered by CDPH and requires CDPH to:

   a) Maintain an interactive Internet Web site for the management and dissemination of data on mosquito-borne virus and surveillance control;

   b) Provide confirmation of tests done by local or state agencies;

   (c) Work in conjunction with local mosquito abatement and vector control districts to conduct research on arbovirus surveillance, transmission of vector-borne disease, and mosquito ecology and control;

   d) Coordinate with the Mosquito and Vector Control Association of California, local mosquito abatement and vector control districts, local governments, and other affected stakeholders to share information; and,

   e) Perform other duties as necessary to protect the public and agricultural health of the state.

EXISTING LAW:

1) Establishes the Mosquito Abatement and Vector Control Law, which authorizes the establishment of mosquito abatement and vector control districts governed by a board of trustees. (Health and Safety Code (HSC) § 2000)

2) Requires CDPH to maintain a program of vector biology and control including providing consultation and assistance to local vector control agencies; surveillance of vectors and vector-borne diseases; coordinating and conducting emergency vector control; training and certifying government agency vector control technicians; and, disseminating information to the public regarding protection from vectors and vector-borne diseases. (HSC § 116110)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "This bill would identify the California Mosquito Surveillance and Research Program (CalSURV), to be administered by CDPH, in statute as the statewide surveillance database to track and predict the emergence of invasive species and mosquito-borne diseases, provide confirmation of state and local agency testing, and other duties.

CalSURV is already operating as a the primary resource center for CDPH, university researchers, and state and local agencies to work collaboratively in order to track and prevent the spread of mosquito borne viruses like Zika and West Nile.

Unfortunately, CalSURV is currently dependent on competitive grants. Its success is in constant flux, leaving staff vulnerable to losing their employment and forced to abandon the numerous projects being worked on.

AB 2892 allows CDPH to direct funding to CalSURV in addition to further legitimize the efforts and research being done through CalSURV as a critically necessary platform to support surveillance and research to improve the health of all Californians."

CDPH Vector Borne Disease Efforts: CDPH protects the health and well-being of Californians from diseases transmitted to people from insects and other animals. CDPH conducts prevention, surveillance, and control of vector-borne diseases, including Hantavirus pulmonary syndrome, plague, Lyme disease, West Nile virus, and other tick-borne and mosquito-borne diseases. Specifically, CDPH develops and implements statewide vector-borne disease surveillance, prevention, and control programs; designs and conducts scientific investigations to further enhance the knowledge of vector-borne diseases in California; coordinates preparedness activities for detection and response to introduced vectors and vector-borne diseases, such as West Nile virus; conducts emergency vector control when disease outbreaks occur; advises local agencies on public health issues related to vector-borne diseases; oversees local vector control agency activities through a cooperative agreement; oversees the Vector Control Technician Certification and Continuing Education programs; provides information, training, and educational materials to governmental agencies and the public; and, provides assistance in coordinating issues related to the management of Africanized honey bees, red imported fire ants, head lice, and bed bugs.

California Mosquito-borne disease surveillance program: California has a comprehensive mosquito-borne disease surveillance program that has monitored mosquito abundance and mosquito-borne virus activity since 1969, and is an integral part of integrated mosquito management programs conducted by local mosquito and vector control agencies. Surveillance and interagency response guidelines have been published previously by CDPH and the Mosquito and Vector Control Association of California. California is vulnerable to the introduction of highly virulent mosquito-borne viruses of public and veterinary health concern, such as West Nile Virus, Japanese encephalitis, dengue, Zika, chikungunya, yellow fever, Rift Valley fever, and Venezuelan equine encephalitis viruses. If an existing or introduced virus is detected, it is critical that local and state agencies are prepared to respond in a concerted effort to protect people and animals from infection and disease.

Mosquito-borne viruses: Mosquito-borne viruses belong to a group of viruses commonly referred to as arboviruses (for arthropod-borne). Although 15 mosquito-borne viruses are known to occur in California, only West Nile Virus, western equine encephalomyelitis virus, and St. Louis encephalitis virus have caused significant human disease. West Nile Virus continues to seriously impact the health of humans, horses, and wild birds throughout the state. Since 2003, there have been 6,030 West Nile Virus human cases with 248 deaths and 1,255 horse cases. Consequently, the California Arbovirus Surveillance Program emphasizes monitoring and providing early detection of these viruses.

California Vector Borne Disease Surveillance System (CalSURV): CalSURV was established in 2006 as a joint effort by CDPH and University of California (UC). This joint effort allowed for collaboration between CDPH, UC, and local mosquito and vector control agencies in order to track and prevent the spread of mosquito borne viruses like Zika and West Nile. Through CalSURV's online portal, organizations from across the state are able to provide real-time reporting and visualization of potentially dangerous mosquito public health risks and communicate solutions. CalSURV also works as a statewide database for these groups to use for ongoing research. Viruses such as Zika and West Nile have no vaccines and can have long-term health implications. With CalSURV, local agencies and CDPH can effectively document and track the mosquito migration patterns and rate of infection while working cross-functionally with mosquito control professionals.

AB 2892 establishes CalSURV within statute under CDPH. By placing CalSurv in statute, the bill is recognizing that surveilling vector-borne diseases is a statewide issue and is ensuring the timely and accurate dissemination of information from state and local agencies to the public. It is important to the state and in the best interest of protecting human health that real-time information on mosquito-borne viruses are tracked and reported. AB 2892 ensures that the state of California is at the forefront of mosquito borne disease surveillance and prevention, by giving CDPH responsibility over this surveillance program.

Related legislation: SB 382 (Pan, 2017). Would have created the California Mosquito Surveillance and Research Program Account to fund the California Vector-borne Disease Surveillance System and research grants to help mitigate the effects of increasing vector populations. This bill was held on the suspense file in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Blood Centers of California
Butte County Mosquito and Vector Control District
Coachella Valley Mosquito and Vector Control District
County Health Executive Association of California
Fresno Mosquito and Vector Control District
Fresno Westside Mosquito Abatement District
Lake County Vector Control District
Marin/Sonoma Mosquito & Vector Control District
Mosquito and Vector Control Association of California
Orange County Mosquito and Vector Control District
Sacramento-Yolo Mosquito & Vector Control District
San Mateo County Mosquito & Vector Control District
Santa Cruz County Agricultural Commissioner – Mosquito and Vector Control Division
Shasta Mosquito and Vector Control District
Tulare Mosquito Abatement District
Turlock Mosquito Abatement District

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2998 (Bloom) – As Amended April 3, 2018

SUBJECT: Juvenile products: flame retardant materials

SUMMARY: Prohibits, on or after January 1, 2020, a person, including a manufacturer, from selling or distributing in commerce any new juvenile products, mattresses, or upholstered furniture, or reupholstered furniture, that contain, or a constituent component of which contains, flame retardant (FR) chemicals above specified levels. Specifically, **this bill**:

1) Makes findings about the utility and hazards of FR chemicals.

2) Defines "juvenile product" as a product subject to the Home Furnishings and Thermal Insulation Act and designed for residential use by infants and children younger than 12 years of age, including, but not limited to, a bassinet, booster seat, changing pad, floor play mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard, portable hook-on chair, stroller, and children's nap mat.

3) Exempts from the definition of juvenile products the following:

   a) Products that are not primarily intended for use in the home, such as products or components for motor vehicles, watercraft, aircraft, or other vehicles;

   b) Products subject to Federal Motor Vehicle Safety Standards regarding parts and products used in vehicles and aircraft;

   c) Products required to meet state flammability standards in Technical Bulletin 133, entitled "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies;" and,

   d) Consumer electronic products that do not fall under the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's (Bureau's) jurisdiction for flammability standards.

4) Defines "reupholstered furniture" as furniture whose original fabric, padding, decking, barrier material, foam, or other resilient filling has been replaced by a custom upholsterer, that has not been sold since the time of the replacement, and that is required to meet the flammability standards set forth in Technical Bulletin (TB) 117-2013 entitled "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture." Excludes from the definition of reupholstered furniture, products required to meet Technical Bulletin 133.

5) Prohibits, on or after January 1, 2020, a person, including a manufacturer, from selling or distributing in commerce in this state any new, not previously owned juvenile products, mattresses, or upholstered furniture that contains, or a constituent component of which contains, flame retardant (FR) chemicals at levels above 1,000 parts per million (ppm).

6) Prohibits, on or after January 1, 2020, a custom upholsterer from repairing, reupholstering, recovering, restoring, or renewing upholstered furniture or reupholstered furniture using components that contain FR chemicals at levels above 1,000 parts per million.

7) Exempts from the prohibition both of the following:

   a) Electronic components of juvenile products, mattresses, reupholstered furniture, upholstered furniture, or any associated casing for those electronic components; and,

   b) Upholstered or reupholstered furniture components other than those separate constituent parts of upholstered furniture sold in California, as identified in Technical Bulletin 117-2013, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials.

8) Authorizes the director of the Bureau to adopt regulations and rules necessary or appropriate for the implementation and enforcement of this prohibition.

9) Requires the Bureau to enforce and ensure compliance with this prohibition.

10) Requires the Bureau to provide the Department of Toxic Substances Control (DTSC) with a selection of samples from products prohibited from containing FR chemicals to test for compliance.

11) Requires the Bureau to select samples based on consultation with DTSC, taking into account a range of manufacturers and types of covered products.

12) Requires the Bureau to integrate these testing requirements into the existing testing program for testing compliance with existing upholstered furniture labeling requirements for added FR chemicals.

13) Authorizes the Bureau, if DTSC's testing shows that any reupholstered furniture or new, not previously owned juvenile products, mattresses, or upholstered furniture is in violation of the FR chemical prohibition, to assess fines for violations against manufacturers of the product for the violation.

14) Authorizes the Bureau, if a person continues to sell or distribute products in commerce in this state belonging to the same stock keeping unit (SKU) as products that do not comply with FR chemical prohibition, after notice of the violation is posted on the Bureau's Internet Web site, to assess fines against the person for the continued sale or distribution of those products.

15) Requires the Bureau to make information about any citation for violation of the FR chemical prohibition available to the public on its Internet Web site, and to develop a process for keeping interested persons informed about updates to notices of violations posted on the Bureau's Internet Web site.

16) Requires that a fine for a violation of the FR chemical prohibition be assessed in accordance with the following schedule:

   a) The fine for the first violation shall be not less than $1,000, but not more $2,500;

b) The fine for the second violation shall be not less than $2,500, but not more than $5,000;

c) The fine for the third violation shall be not less than $5,000, but not more than $7,500; and,

d) The fine for any subsequent violation shall be not less than $7,500, but not more than $10,000.

17) Requires the Bureau, in determining the amount of the fine for a violation of the FR chemical prohibition, to consider the following factors:

a) The nature and severity of the violation;

b) The good or bad faith of the cited person;

c) The history of previous violations;

d) Evidence that the violation was willful; and,

e) The extent to which the cited person or entity has cooperated with the Bureau.

18) Requires the Bureau to adjust all minimum and maximum fines relative to violations of the FR chemical prohibition for inflation every five years.

19) Requires that the adjustment be equivalent to the percentage, if any, that the Consumer Price Index at the time of adjustment exceeds the Consumer Price Index at the time the FR chemical prohibition in this bill goes into effect. Requires any increase to be rounded as prescribed.

20) Requires the Bureau to receive complaints from consumers concerning products regulated by this bill sold in this state.

EXISTING LAW:

1) Establishes the Home Furnishings and Thermal Insulation Act (Act) and requires it to be administered by the Bureau within the Department of Consumer Affairs (DCA). (Business and Professions Code (BPC) § 19000 et seq.)

2) Requires protection of the public to be the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. Requires, whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public to be paramount. (BPC § 19004.1)

3) Specifies that the Act applies to upholstered furniture, bedding and filling materials, and insulation sold in California regardless of its point of origin. (BPC § 19070)

4) Defines, in reference to flexible polyurethane foam, upholstered furniture, and reupholstered furniture (upholstered furniture) labeling requirements, "flame retardant chemical" as any chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. Provides that flame retardant chemicals include, but are not limited to, halogenated, phosphorous-based, nitrogen-based, and nanoscale flame retardants, flame retardant chemicals listed as "designated chemicals" pursuant to Biomonitoring statutes, and any chemical or chemical compound for which "flame retardant" appears on the substance Safety Data Sheet persuant to the Code of Federal Regulaions. (BPC § 19094 (a)(3))

5) Requires a manufacturer of upholstered furniture to indicate whether or not the product contains added FR chemicals by including a statutorily required "flame retardant chemical statement" and an "X" indicating the presence of FR chemicals on the required FR label, per TB 117-2013. (BPC § 19094 (b)(1))

6) Requires the manufacturer of upholstered furniture sold in California to retain that documentation to show whether FR chemicals were added to their products and to provide this information to the Bureau. (BPC § 19094 (c)(1) and § 19094 (c)(3)(A))

7) Requires the Bureau to ensure compliance with the FR labeling and documentation requirements for upholstered furniture. (BPC § 19094 (c)(2))

8) Requires the Bureau to assess specified fines for the failure of the manufacturer of upholstered furniture to maintain or provide to the Bureau the documentation establishing the accuracy of the FR chemical statement on the label. (BPC § 19094 (c)(3)(B))

9) Requires the Bureau to provide DTSC with a selection of samples from upholstered furniture marked "contains NO added FR chemicals" for testing for the presence of added flame retardant chemicals, as specified, and to reimburse DTSC for the cost of testing. (BPC § 19094 (c)(3)(D)(i))

10) Authorizes the Bureau, if DTSC's testing shows that upholstered furniture labeled as "contain NO added flame retardant chemicals" is mislabeled because it contains added flame retardant chemicals, to assess fines for violations against manufacturers of the upholstered furniture and component manufacturers to be held jointly and severally liable for the violation. (BPC § 19094 (c)(3)(E)(i))

11) Requires all mattresses and mattress sets manufactured for sale in this state to be fire retardant. Defines, for these products, "fire retardant" as a product that meets the standards for resistance to open-flame test adopted by the United States Consumer Product Safety Commission (CPSC) and set forth in the Code of Federal Regulations. (BPC § 19161 (a))

12) Requires all flexible polyurethane foam, as defined, that is offered for sale to the general public at retail outlets to be fire retardant, as defined by the Bureau. (BPC § 19161.3)

13) Authorizes the chief of the Bureau to, subject to the approval of DCA and in his or her discretion, exempt items of upholstered furniture which are deemed not to pose a serious fire hazard from fire retardant requirements. (BPC § 19161.5)

14) Requires, under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), the Governor to cause a list to be published of those chemicals known to the state to cause cancer or reproductive toxicity, and to cause such list to be revised and republished in light of additional knowledge at least once per year. Currently, 14 FR chemicals are listed under Proposition 65. (Health and Safety Code (HSC) § 25249.8)

15) Requires, under Safer Consumer Products (Green Chemistry) statutes, DTSC to identify and prioritize chemicals of concern and to adopt regulations to evaluate chemicals of concern in consumer products to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. Authorizes DTSC to take specified regulatory actions to limit exposure or to reduce the level of hazard posed by a chemical of concern. DTSC listed two FR chemicals in children's foam padded sleeping products in their first round of action under this law. (HSC § 25251 et. seq.)

16) Prohibits a person from manufacturing, processing, or distributing in commerce a product or part of a product that contains more than 1/10th of 1% of pentaBDE or octaBDE. (HSC § 108922)

17) Requires, pursuant to Technical Bulletin (TB) 117-2013, beginning January 1, 2015, all filling materials and cover fabrics contained in any article of upholstered furniture and added to reuphosltered furniture sold in California to meet certain smolder resistant testing standards, and to be labeled as specified. (Article 13, Division 3, Title 4, California Code of Regulations (CCR) § 1374)

18) Exempts from compliance with TB 117-2013 the following juvenile products: bassinets, booster seats, car seats, changing pads, floor play mats, highchairs, highchair pads, infant bouncers, infant carriers, infant seats, infant swings, infant walkers, nursing pads, nursing pillows, playpen side pads, playards, portable hook-on chairs, and strollers. (Article 13, Division 3, Title 4 , CCR § 1374.2)

19) Requires mattresses and mattress pads to meet a standard for flammability through a cigarette ignition resistance test. (16 Code of Federal Regulations (CFR) 1632)

20) Requires mattresses and mattress sets to meet a standard for flammability through an open flame test. (16 CFR 1633)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "Many of the chemicals used to make flame retardants accumulate in the blood and fat of humans and have been shown to lead to endocrine disruption, infertility, and reduced IQ. Although exposure to these chemicals is dangerous to the general population, infants and firefighters have especially high exposure risks…

In addition to being toxic, flame retardants are also ineffective. According to California's Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation [Bureau], flame-retardant chemicals in furniture do not provide a meaningful fire safety benefit. The National Fire Protection Association, the nation's long-established independent authority on scientifically-based fire safety standard, reported similar findings in a white paper on upholstered furniture ignitions, which concluded that flame retardant foams *"did not offer a practically, significantly greater level of open flame safety as did the untreated foams..."*

A restriction on the sale of specific products containing chemical flame retardants is the only way to ensure that every Californian has access to products that don't present a dire health risk to their families just by their mere presence in a home. This bill will, for example, prevent children from inhaling migrating toxic particles or ingesting them when they mouth certain juvenile products. Likewise, this bill will reduce the toxic exposures to firefighters when they battle blazes in homes and commercial structures these products burn."

What are flame retardant (FR) chemicals? Flame retardant chemicals, which have been used since the 1970s, are chemicals added to plastic, foam, textiles, electronics, building materials, and other products to slow or prevent the start or growth of fire. While there are hundreds of different FR chemicals, FR chemicals are often broken into categories based on chemical structure and properties. In general, FRs are grouped based on whether they contain bromine, chlorine, phosphorus, nitrogen, metals, or boron. Brominated FRs and organophosphorus FRs are two types of commonly used FR chemicals.

Where are FR chemicals used? FR chemicals are often added or applied to the following products: furnishings, such as foam, upholstery, mattresses, carpets, curtains, and fabric blinds; electronics and electrical devices, such as computers, laptops, phones, televisions, household appliances, wires, and cables; building and construction materials, such as electrical wires and cables; insulation materials, such as polystyrene and polyurethane insulation foams; and, transportation products, such as seats, seat covers and fillings, bumpers, overhead compartments, and other parts of automobiles, airplanes, and trains.

AB 2998 prohibits the sale or distribution of products in four categories that contain FR chemicals: reupholstered furniture, and new, not previously owned juvenile products, mattresses, and upholstered furniture.

Human exposure to FR chemicals: Human exposure to FRs occurs mainly through inhalation or ingestion of FR contaminated dust. Food and water contaminated with FRs is another source of exposure. Exposure from dermal contact with contaminated soil and dust may also occur.

Contaminated dust enters households and the environment when foam treated with FR chemicals in upholstered furniture and other products breaks down and escapes the product as dust. FR chemicals also enter the environment through manufacturing processes and through the disposal of treated products. Electronic waste and the uncontrolled burning and dismantling of electronic and electric waste contribute to FRs in the environment. Medical studies have linked FR chemicals to job-related cancer and other illnesses in American firefighters, indicating heightened exposure during fires.

Research conducted in 2014 by the Environmental Working Group and Duke University found that young children typically have 3 – 5 times higher amounts of FR chemicals in their systems than do their mothers, likely because they spend more time on the floor amongst contaminated dust and put their hands (and other contaminated products) in their mouths more frequently than do adults. Studies also show that infants are additionally exposed to FRs through the ingestion of breast milk.

Since many FR chemicals do not easily break down, they can remain persistent in the environment for years. They can also bio accumulate in people and animals over time.

Human health impacts of flame retardant chemicals: According to the National Institute of Environmental Health Sciences (NIEHS), FRs can offer benefits when they are added to some products; however, a growing body of evidence shows that many of these chemicals are associated with adverse health effects in animals and humans, including endocrine and thyroid disruption; impacts to the immune system; reproductive toxicity; cancer; and, adverse effects on fetal and child development and on neurologic function. There are currently 14 FR chemicals listed in California, through Proposition 65, as known to cause cancer, birth defects, or other reproductive harm.

Polybrominated diphenyl ethers (PBDEs), a brominated FR and the most thoroughly studied of the FR chemicals, have been found in birds, fish, shellfish, amphibians, marine mammals, sewage sludge, sediments, air samples, meats, dairy products, and even vegetables. There has been extensive animal research over the past decade indicating that PBDE exposure can lead to abnormalities in learning, memory, and neurodevelopment, and linking exposure to hyperactivity, endocrine disruption, and other neurotoxicological effects. In animal studies conducted by the National Toxicology Program (NTP) at NIEHS, several PBDEs have been shown to cause cancer.

In humans, PBDEs have been found to accumulate in blood, fat, and breast milk. Recent research has shown that PBDE exposure in humans may lead to endocrine disruption, reproductive difficulty, neurodevelopmental issues, reduced IQ, and elevated thyroid levels. Studies have found PBDEs in fetal cord blood, indicating that these chemicals can cross the placenta and expose fetuses during critical times of development. American children with higher PBDE levels tend to score worse on assessments of learning and attention, and these deficiencies persist throughout childhood. The National Academies of Sciences, Engineering, and Medicine reviewed research on PBDEs and concluded they are a presumed hazard to human intelligence.

While PBDEs are being phased out of use, alternative FR chemicals are pervasive and have raised similar and other toxicological concerns to those raised by PBDE formulations. Studies have linked exposure to other flame retardant chemicals to endocrine disruption; fertility issues; and, carcinogenic, mutagenic, reprotoxic, obesogenic, and neurotoxicological effects. The chemicals have also been found to also be persistent and bio accumulative. According to Veena Singla, Ph.D., Associate Director of the Program on Reproductive Health and the Environment at the University of California, San Francisco, "The toxicity of these [replacement] flame retardants is established, and more research emerges every day linking exposures to these chemicals with adverse health impacts in people."

The NEIHS points to a few specific examples of impacts of FR chemicals other than PBDEs. Tetrabromobisphenol A (TBBPA), currently the world's most highly produced brominated flame

retardant, appears to have endocrine-disrupting properties and a NTP study found that it caused cancers of the uterus in female rats and liver in male mice. Hexabromocyclododecane (HBCD), another brominated FR, has been shown to have effects on the brain, immune system, and reproductive system, and to cause endocrine disruption in animals.

Some organophosphate FRs have been identified as replacement chemicals for PBDEs. NIEHS states that findings show that some of these replacement organophosphate FRs have activity comparable to the phased-out PBDEs.

Additional types of flame retardants are still being found worldwide. For example, the chlorinated organophosphate tris(1,3-dichloro-2-propyl)phosphate (TDCPP) has been linked to cancer in rats, and has been shown to be present in humans. NIEHS-supported researchers found that some of the components of the FR Firemaster 550 caused endocrine and metabolic effects in rats and may lead to obesity and an increase in the onset of puberty.

Researchers are continuing to study these newer commercial mixtures, as well as conduct longer-term and different studies on other FR chemicals, to determine how they are metabolized in the body, determine whether they may cause adverse health effects, and what long term impacts of exposure may be.

California's upholstered furniture flammability standard: The Bureau develops flammability standards in the form of Technical Bulletins (TBs), which are adopted through regulation. There are also a number of other federal flammability standards developed by the United States CPSC, which are currently in effect nationwide. While the CPSC has been studying a national residential upholstered furniture standard for several years, California remains the only state with a residential upholstered furniture flammability standard. However, since California is such a large portion of the national market, most manufacturers choose to meet California's standards for their products sold across the country.

TB 117: In October 1975, the Bureau promulgated regulations that resulted in the development of TB 117 entitled, "Requirements, Test Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in Upholstered Furniture." This mandatory performance standard required that the concealed filling materials and cover fabric of upholstered furniture undergo individual component testing to ensure that they passed open flame and cigarette smolder tests. The main emphasis of TB 117 was on the open flame testing of interior filling materials, which had to withstand exposure to a 12-second small open flame. Manufacturers predominately met this requirement through using polyurethane foam treated with FR chemicals.

In 2012, the Bureau determined that TB 117 did not adequately address the flammability performance of upholstered furniture cover fabric and its interactions with underlying filling materials. Furthermore, the Bureau found that the addition of FR chemicals to foam can actually increase smolder propensity. In addition, concerns were intensifying about the negative human health and environmental impacts caused by FR chemicals. On June 18, 2012, Governor Jerry Brown directed the Bureau to revise the flammability standards for upholstered furniture sold in the state, saying "Toxic flame retardants are found in everything from high chairs to couches and a growing body of evidence suggests that these chemicals harm human health and the environment. We must find better ways to meet fire safety standards by reducing and eliminating—wherever possible—dangerous chemicals."

TB 117- 2013: In recognition of TB 117's fire safety shortcomings, as well as noting the health concerns related to flame retardant chemicals, the Bureau published TB 117- 2013, entitled "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture," in November 2013. TB 117-2013 updates flammability standards from the open flame method of testing to a smoldering test. Manufacturers have indicated that they can comply with TB 117-2013 without the use of flame retardant chemicals. TB 117-2013 required manufacturers to come into full mandatory compliance by January 1, 2015. TB 117-2013 supersedes TB 117.

Are FR chemicals needed in furniture? When promulgating TB 117- 2013, the Bureau cited the following documents drafted, and conclusions drawn, by the CPSC. The CPSC document, "Upholstered Furniture Full Scale Chair Tests - Open Flame Ignition Results and Analysis" found that there are no significant fire performance differences between the FR foams formulated to pass TB 117 and untreated foams. The CPSC study, "Upholstered Furniture Flammability: Regulatory Options for Small Open Flame & Smoking Material Ignited Fires" found that upholstery cover fabrics play a more important role in fire behavior performance than filling material. The CPSC study, "Performance Criteria, and Standard Materials for the CPSC Staff Draft Upholstered Furniture Standard" found that FR treated foam with a relatively low concentration of FR chemicals actually *increases* the damage to cover fabrics from a smoldering cigarette relative to untreated foam. The Bureau performed their own research, the results of which were consistent with the observations made by the CPSC.

Voluntary phase out of FR chemicals in furniture: According to the author of the bill, dozens of retailers and manufacturers have pledged to eliminate FRs in their products. These include Ashley Furniture, Crate and Barrel, Bob's Discount Furniture, Ethan Allen, IKEA, La-Z-Boy, Macy's, Pier 1 Imports, Restoration Hardware, Sam's Club, and Walmart.

Are FR chemicals used in upholstered furniture to comply with flammability requirements? Due to a statutory requirement enacted by Senate Bill (SB) 1019 (Leno, Chapter 862, Statutes of 2014), the Bureau sampled upholstered furniture from January 1, 2017 – July 15, 2017 to determine whether manufacturers were following statutory requirements to label furniture as having, or not having, added FR chemicals. The Bureau found that of the samples, 75% were marked as having no added FR chemicals, and 22% were marked as having added FR chemicals. (One of the samples marked as not having added FR chemicals did actually have the chemicals, but the others tested (9 of 10) did not.) The Bureau found relatively similar rates of denoting FR use in upholstered furniture in 2015 and 2016. While these samples are small, they imply that most upholstered furniture manufacturers are complying with TB 117-2013 without the use of added FR chemicals.

AB 2998 prohibits the sale of upholstered and reupholstered furniture with FR chemicals.

Juvenile products and flammability standards: In 2010, the Bureau found that some juvenile products contain a much lesser fuel load content (i.e. foam, batting) than average adult seating furniture. In addition, these products are less likely to be ignited or come in contact with an ignition source under the exercise of reasonable care and supervision of adults. Therefore, in December 2010, the Bureau published the finding that three specified juvenile products (strollers, infant carriers, and nursing pillows) "will not pose a serious fire hazard to infants and children if they are exempt from the TB 117 flammability requirements," and updated its regulations to exempt those products from TB 117. In November 2013, the Bureau again

amended regulations to exempt fifteen additional juvenile products from meeting the flammability requirements of the now-in-effect TB 117-2013. The exempted juvenile products (total of eighteen) are: bassinets, booster seats, car seats, changing pads, floor play mats, highchairs, highchair pads, infant bouncers, infant carriers, infant seats, infant swings, infant walker, nursing pads, nursing pillows, playpen side pads, playards, portable hook-on chairs, and strollers. This full exemption became effective on January 1, 2014.

AB 2998 prohibits the sale of juvenile products with FR chemicals. Juvenile products are defined in the bill as including, but not limited to, a bassinet, booster seat, changing pad, floor play mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard, portable hook-on chair, stroller, and children's nap mat. The definition of juvenile products in the bill is largely the same as those products explicitly exempted from California's flammability standards, except the list in the bill excludes car seats and includes children's nap mats.

Flame retardants in juvenile products: Despite an exemption from California flammability standards, tests on juvenile products show that these products continue to contain FR chemicals. For example, tests commissioned by the Center for Environmental Health and performed by Duke University in August 2014 on children's nap mats found that six of the 10 tested mats contained FR chemicals. In another example, in 2014 the State of Washington Department of Ecology tested 10 changing pads and found that three contained FR chemicals. Additional testing by Duke University found that of 17 nap mats purchased in April and May 2015, nearly a year and a half after the exemption from TB 117-2013 went into effect, three were identified as containing FR chemicals. The Center for Environmental Health reports that in 2016, of the 27 juvenile products they tested, 18 products (67%) had no identified FR chemicals, and 7 had known FR chemicals (26%).

Flammability standards, mattresses: All mattresses sold in the United States must meet the requirements of 16 CFR Parts 1632 and 1633, as regulated by the CPSC. 16 CFR 1632 requires mattresses and mattress pads to meet a standard for flammability through a cigarette ignition resistance test, and 16 CFR 1633 requires mattresses and mattress sets to meet a standard for flammability through an open flame test. California has additional, conforming flammability regulations for mattresses.

Fire retardants in mattresses: According to the International Sleep Products Association, which represents mattress manufacturers, "Our members meet the requirements of Parts 1632 and 1633 [of the CFR] using a variety of different materials. These standards do not require the use of foams that contain brominated fire retardants. Instead, we use different fabrics and fibers to protect the interior materials in mattresses from igniting when exposed to harmful heat sources. Those fabrics and fibers have been used safely for decades in a variety of applications, including as fire fighter gear, race driver garments and building materials." They add, "The industry moved away from foam embedded with chemical FRs years ago. Mattress FR strategies use barrier methods which incorporate, among other things, silica (sand) embedded into rayon which then covers the foam and creates the fire retardant barrier."

Despite the assertion that mattress manufacturers do not use added FR chemicals, sponsors of the bill point to a survey completed by Conservation Minnesota in 2015 in which 9 out of 14 manufacturers reported not being FR-free, and to a 2012 laboratory test and following story by

the Chicago Tribune that found that 11 of the 27 baby mattresses they tested contained the FR TDCPP.

AB 2998 prohibits the sale of mattresses with FR chemicals.

Flame retardant chemicals and the Safer Consumer Products regulations: AB 1879 (Feuer, Chapter 559, Statutes of 2008) enacted California's Safer Consumer Product, or Green Chemistry, program, which requires DTSC to identify, prioritize, and evaluate chemicals of concern in consumer products to determine how best to limit exposure or to reduce the level of hazard posed by those chemicals. It also authorizes DTSC to take regulatory action to limit exposure or to reduce the level of hazard posed by a chemical of concern.

On March 13, 2014, under the program, DTSC released its first list of three "priority products," which are consumer products identified by DTSC as containing one or more chemicals of concern– known as "candidate chemicals" – that have a hazard trait that can harm people or the environment. DTSC placed products on list based on two criteria: 1) the products have the potential to expose people or the environment to one or more candidate chemicals, and 2) this exposure has the potential to "contribute to or cause significant or widespread adverse impacts." This list included children's foam-padded sleeping products (nap mats and cots, sleep positioners, travel beds, bassinet foam, portable crib mattresses, play pens, car bed pads) that contain the FR TDCPP. After a thorough review of the research, DTSC determined that children may be at risk for adverse health effects if they use or are near children's foam-padded sleeping products that contain the chemical FRs TDCPP or TCEP and promulgated the regulation for Children's Foam-Padded Sleeping Products containing TDCPP or TCEP as a Priority Product, which went into effect on July 1, 2017. Manufacturers were required to notify DTSC that their children's foam-padded sleeping products contain TDCPP or TCEP by September 1, 2017. The next step of the regulatory process is that manufacturers of children's foam sleeping products that contain TDCPP or TCEP must submit an alternatives analysis, after which DTSC will formulate a regulatory response.

Local action on FRs: In October 2017, the city and county of San Francisco passed an ordinance that prohibits, beginning January 1, 2019, an establishment in San Francisco from selling upholstered furniture, reupholstered furniture, and juvenile products, any component of which has been made with or contains a flame retardant chemical at a level above 1,000 ppm.

Do chemical bans work? Two recent studies by DTSC scientists showed that PBDE levels were decreasing. DTSC describes the first study, published in December 2015, as designed to assess the effect of the legislative action that led to the phase out of PBDEs. The study compared PBDEs in breast milk of California women collected at two different time periods, before and after the phase out. The first group of 82 women was recruited in 2003-05 and the second group of 66 women in 2009-11. Overall, PBDEs dropped by 39% between the two time periods. According to DTSC, despite the decrease, 30% of breastfed infants are still exposed to unacceptably high PBDE levels.

The second study, published in January 2016, looked at PBDEs and other persistent chemical contaminants in the blood of house cats. In collaboration with local veterinarians, DTSC scientists recruited cats from two time periods: 2008-10 and 2012-13. PBDE levels in the second time period had dropped by half, whereas other chemical contaminants showed no significant changes.

DTSC asserts that these results show that regulatory interventions have a demonstrable effect on exposures.

Current flame retardant labeling requirements: SB 1019 (Leno, Chapter 862, Statutes of 2014), which became effective on January 1, 2015, requires a manufacturer of upholstered furniture regulated by TB 117-2013 to indicate on the product label whether or not the product contains added flame retardant chemicals. It also sets up an enforcement scheme similar to that described in AB 2998.

Is labeling necessary if this bill passes? Current law requires a manufacturer of upholstered furniture regulated by TB 117-2013 to indicate on the product label whether or not the product contains added flame retardant chemicals. This bill prohibits the sale of juvenile products, mattresses, upholstered furniture, or reupholstered furniture that contains FR chemicals. Should the provisions of this bill be enacted and all upholstered furniture be prohibited from containing FR chemicals, are the current upholstered furniture labeling requirements necessary?

Arguments in support of AB 2998: According to the California Professional Firefighters (CPF), "It is the presence of flame retardants and other toxic chemicals in our homes and buildings that makes fires today much more toxic than ever before. In recent years, research has revealed that these toxic chemicals are not only ineffective, they are associated with a wide range of well-documented, serious health effects in people, particularly firefighters… The cumulative effect of prolonged exposure to flame retardants and their combustion by-products over the course of one's fire service career can be devastating: not only via the manifestation of occupational cancer, but job-caused heart, lung and other debilitating diseases, which can be traced to toxic exposures, like those involving flame retardant chemicals. In fact, recent studies show that firefighters have much higher levels and different patterns of these cancer-causing chemicals in their blood than the general population… The [Bureau] found that flame-retardant chemicals in furniture do not provide a meaningful fire safety benefit. In fact, the presence of some flame-retardant chemicals can result in more toxic smoke containing cancer-causing chemicals like dioxins and furans when there is a fire -- putting firefighters at increased risk. Independent research from the US Department of Commerce's National Bureau of Standards and CPSC found that flame retardant foam compliant with California's old flammability standard TB 117 was not effective in reducing fire hazards."

Kay Chesterfield, Inc., writes in support, "We always hear from our clients that they do not want flame retardant chemicals in their reupholstered furniture because they are harmful to the health of their children and provide no fire safety benefit… In addition to providing healthy materials to our clients, not using polyurethane foam treated with flame retardant chemicals protects our workers from being exposed to these toxic chemicals."

Roche Bobois San Francisco argues in support, "As a furniture retailer, AB 2998 does not pose compliance challenges for our business. When the California furniture flammability regulation passed, Roche Bobois elected to remove flame retardant chemicals from all of our furniture products."

According to a coalition of public health and environmental advocacy organizations, "Children living in California have some of the highest documented blood concentrations of certain flame retardant chemicals compared to other children in the U.S. Flame retardant chemicals have been

linked to cancer, reduced IQ, attention problems, hormone disruption and infertility… A prohibition on the sale of specific products containing chemical flame retardants has already been adopted in Maine, Rhode Island and the County of San Francisco."

Arguments in opposition of AB 2998: The American Chemistry Council, the California Chamber of Commerce, the California Manufacturers & Technology Association, the California Retailers Association, the Juvenile Products Manufacturers Association (JMPA), the National Federation of Independent Business, the Retail Industry Leaders Association, and the Toy Association argue in opposition, "Safety is a top priority for our industries, and we believe consumers deserve to have confidence that the products they buy are safe for their intended uses. Our members invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of the products we produce and sell. Though this legislation may be well intentioned, we have the following concerns: a presumption that the presence of any substance meant to suppress ignition or the spread of a fire in these applications means the product is somehow harmful; the definition of "flame retardant chemical" is so broad that it would essentially restrict chemistries not yet even invented regardless of the compounds human health/environmental profile and its evaluation by competent regulatory authorities; the bill does not recognize the important role certain chemistries play in protecting consumers from a variety of hazards, including the risk from fire; the legislation sidesteps the state's existing Safer Consumer Products (SCP) program currently being implemented by the Department of Toxic Substances Control (DTSC); and the bill does not take into consideration the current flame retardant evaluation work underway by the United States Environmental Protection Agency (USEPA) and the Consumer Product Safety Commission (CPSC)."

The International Sleep Products Association argues in opposition, "AB 2998's extraordinarily broad definition for "flame retardant chemical" would likely ban from sale in California mattresses that contain most if not all of the fabric and fiber materials that the industry uses to meet the federal flammability standards. As a result, AB 2998 would frustrate the strong federal purpose advanced by the CPSC's federal mattress flammability standards."

According to JMPA, "A uniform statewide approach to the regulation of flame retardant regulation in upholstered furniture and juvenile products is necessary - if Assembly Bill 2998 is to move forward. While JPMA is productively trying to work with the San Francisco Department of the Environment on this issue, as they are the only locality in California to take action on flame retardants impacting juvenile products, statewide uniformity is still necessary for this issue."

Related legislation:

1) SB 763 (Leno, 2015). Would have required manufacturers of juvenile products manufactured on or after July 1, 2016 to indicate on a label whether or not the product contains added flame retardant chemicals. This bill was substantially amended in the Assembly Appropriations Committee, and later deleted and amended to contain provisions in an unrelated subject area.

2) SB 1019 (Leno, Chapter 862, Statutes of 2014). Requires a manufacturer of upholstered furniture to indicate on the product label whether or not a product contains added flame retardant chemicals.

3) AB 2197 (Mitchell, 2012). Would have required the Bureau to revise regulations to require all seating furniture sold or offered for sale to meet a smolder flammability test rather than an open flame-test. This bill was not heard in the Assembly ESTM committee, at the author's request. The provisions of this bill were largely implemented through regulation through the adoption of TB 117-2013.

4) SB 147 (Leno, 2011). Would have required the Bureau, on or before March 1, 2013, to modify the requirements for flammability of upholstered furniture to include a smolder flammability test as an alternative method of compliance. This bill failed passage in the Senate Committee on Business, Professions, and Economic Development. Note: The provisions of this bill were largely implemented through regulation through the adoption of TB 117-2013.

5) SB 1291 (Leno, 2010). Would have required DTSC to include, as a chemical under consideration in the Green Chemistry process, any chemical that is used, or is proposed to be used, as a flame retardant. This bill was placed on the inactive file on the Senate Floor and died on file.

6) SB 772 (Leno, 2009). Would have exempted "juvenile products," as defined, from flame retardant regulations, unless the Bureau determined that the juvenile product posed a serious fire hazard. This bill was held under submission in the Assembly Appropriations Committee. Note: The provisions of this bill have been largely implemented through regulation.

7) AB 706 (Leno, 2008). Would have required, commencing July 1, 2010, seating furniture and bedding products to comply with certain requirements, including that they not contain a chemical or component not in compliance with alternatives assessment requirements, and would have required DTSC to adopt methodology for an alternative assessment to review the classes of chemicals used to meet fire retardant standards. This bill failed passage on the Senate Floor.

8) AB 302 (Chan, Chapter 205, Statutes of 2003). Prohibited the use of penta and octa PBDEs after January 1, 2008.

Double referral: This bill is double referred to the Assembly Committee on Privacy and Consumer Protection.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters (Co- Sponsor)
Center for Environmental Health (Co- Sponsor)
Natural Resources Defense Council (Co- Sponsor)
A Voice for Choice Advocacy
Association of Regional Center Agencies
Biomonitoring Resource Center
Breast Cancer Action
California League of Conservation Voters
CALPIRG

Center for Biological Diversity
City and County of San Francisco
Clean Water Action
Coalition for Clean Air
Communications Workers of America – District 9, AFLCIO
Connecticut Clean Water Action/Clean Water Fund
Consumer Attorneys of California
Consumer Federation of California
Ecology Center
Educate. Advocate.
Empower Family California
Environmental Working Group
Friends of the Earth
Green Science Policy Institute
Health Care Without Harm
Healthy Building Network
International Association of Fire Fighters
Kay Chesterfield, Inc.
Perkins + Will
Physicians for Social Responsibility, San Francisco Bay Area Chapter
Plastic Pollution Coalition
Roche Bobois San Francisco
Safer States
Seventh Generation Advisors
Silent Spring Institute
Sprout San Francisco
Sustainable Furnishings Council
Sustainable San Francisco
The 5 Gyres Institute
WorkSafe

Opposition

American Chemistry Council
California Chamber of Commerce
California Manufacturers and Technology Association
California Retailers Association
International Sleep Products Association
Juvenile Products Manufacturers Association
National Federation of Independent Business
Retail Industry Leaders Association
The Toy Association

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 3009 (Quirk) – As Amended April 3, 2018

SUBJECT: Hazardous materials: lead-based paint.

SUMMARY: Imposes a new fee on paint manufacturers, for each gallon of paint sold in the state. Specifically, **this bill**:

1) Establishes the Lead-Based Paint Abatement and Remediation Act of 2018.

2) Defines "dealer" as a person who engages in the retail sale of paint directly to persons in California. A dealer includes a manufacturer of paint that sells that paint at retail directly to a person through any means, including, but not limited to, sale outlets, catalogues, Internet sales, or other electronic means.

3) Defines "manufacturer" as a person who manufactures paint and who sells, offers for sale, or distributes paint in this state; or, a person who imports paint for purposes of sale or distribution.

4) Requires, on and after July 1, 2019, or, on and after six months after the operative date of this chapter, whichever is later, a fee of $1 to be imposed on manufacturers for each gallon of paint it sells at retail to a person in California, or that it sells to a dealer, wholesaler, distributor, or other person for retail sale.

5) Requires the California Paint Fee to be paid to the California Department of Tax and Fee Administration (DTFA) and requires the fee to be collected in accordance with the Fee Collection Procedures Law.

6) Requires all dealers and manufacturers to register with the DTFA.

7) Authorizes the DTFA to require payment of the California Paint Fee and the filing of the returns on a schedule other than quarterly periods.

8) Requires the California Paint Fee to be managed as follows:

   a) Requires the DTFA to retain moneys necessary for payments of refunds and reimbursements of DTFA expenses in the collection of the California Paint Fees;

   b) Requires the remaining moneys to be deposited into the Lead-Based Paint Cleanup Fund, and be made available upon appropriation of the Legislature to the Department of Toxic Substances Control (DTSC) to provide grants to cities and counties for the investigation, abatement, or removal of lead-based paint from the interior, exterior, or both the interior and exterior, of single-family or multifamily residences within their respective jurisdictions; and,

   c) Requires moneys in the Lead-Based Paint Cleanup Fund to be used for the repayment of the $2 billion in bonds authorized to be issued and sold by the November 2018 ballot initiative titled "Eliminates Certain Liability for Lead-Paint Manufacturers. Authorizes

Bonds to Fund Structural and Environmental Remediation Projects" by the Attorney General (Initiative 17-0049), thereby supplanting General Fund moneys.

9) Provides that the California Paint Fee shall only go into effect if the initiative measure titled, "Eliminates Certain Liability for Lead-Paint Manufacturers. Authorizes Bonds to Fund Structural and Environmental Remediation Projects" by the Attorney General (Initiative 17-0049) is enacted and becomes operative.

EXISTING LAW:

1) Establishes the federal Lead-Based Paint Poisoning Prevention Act to create a prohibition against the future use of lead-based paint. (42 United States Code 4851)

2) Prohibits the use of lead-based paint for residential use in the United States. (16 Code of Federal Regulations (CFR) 1303)

3) Establishes the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X) to require anyone selling or leasing single-family and multifamily housing units built before 1978 to disclose information about lead-based paint hazards to prospective buyers or tenants. (Federal Public Law 102-550)

4) Establishes the United States Environmental Protection Agency's (US EPA) Lead-Based Paint Renovation, Repair and Painting (RRP) Rule to require workers to be certified and trained in the use of lead-safe work practices, and requires renovation, repair, and painting firms to be US EPA-certified. (40 CFR 745).

5) Establishes the Residential Lead-Based Paint Hazard Reduction Program to require any person offering lead-related construction courses to meet the California Department of Public Health's (CDPH) certificate requirements. (Health & Safety Code (HSC) § 105250, et seq.)

6) Establishes the Childhood Lead Poisoning Prevention Act of 1991, which requires CDPH to adopt regulations under the Childhood Lead Poisoning Prevention Program (CLPPP) establishing a standard of care at least as stringent as the most recent United States Centers for Disease Control (CDC) screening guidelines, requiring all children to be evaluated for risk of lead poisoning by health care providers during each child's periodic health assessment. (HSC § 124125, et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "It took more than a decade of litigation for the courts to reach a careful and well thought out decision about the role the paint industry played in knowingly selling poisonous paint. It was poisonous because it contained lead. There is no safe exposure to lead. Now, industry wants to circumvent the court ruling with an initiative. AB 3009 holds them accountable. Specifically, this bill would enact a fee on paint manufacturers for all paint sold in California. The money from the fee would be used to clean up lead paint that has contaminated homes throughout California. AB 3009 goes into effect only if the initiative that the paint industry is sponsoring passes."

Lead is a well-known toxin: Lead has been listed under California's Proposition 65 since 1987 as a substance that can cause reproductive damage and birth defects and has been listed as a chemical known to cause cancer since 1992. According to the Office of Environmental Health Hazard Assessment, lead has multiple toxic effects on the human body. Decreased intelligence in children and increased blood pressure in adults are among the more serious non-carcinogenic effects. There is no level of lead that has been proven safe, either for children or for adults.

The CDC found, based on the U.S. Census Bureau 2010 count of the number of children between the ages of 1 and 5 years old, that approximately 2.6% of U.S. children in that age group have high levels of lead in their blood (blood lead levels ≥ 5 micrograms per deciliter (μg/dL)).

Exposure to lead can seriously harm a child's health. Even a slight elevation in blood levels can reduce IQ and stunt development. Millions of children are being exposed to lead in their homes through aging lead-based paint, increasing their risks for damage to the brain and nervous system, slowed growth and development, learning and behavior problems, hearing, and speech problems.

The CDC's 2012 Advisory Committee on Childhood Lead Poisoning Prevention statement *Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention* found that the adverse health effects of blood lead levels less than 10 μg/dL in children extend beyond cognitive function to include cardiovascular, immunological, and endocrine effects.

Lead-based paint history: Lead-based paint was shipped in Colonial days to what became the United States as a luxury good, and was later used to paint such important structures as the White House, the Capitol, and Mount Vernon.

When lead pigment was used in paints, currently reported risks to children were unknown and unknowable. Medical science has evolved, leading to concerns about childhood health that had not existed when lead-based paint was marketed.

Before 1940, paint manufacturers began to use non-lead pigments, such as lithopone, zinc oxide, and titanium dioxide, in many interior paints mixed at the factory. In fact, Sherwin-Williams introduced the first, successful lead-free water-based paint for interior use in 1941. Its easy use, clean-up, and quick drying launched a do-it-yourself paint market.

In 1948, the Baltimore Public Health Department observed an increase in childhood lead poisoning in Baltimore, primarily among those who lived in its substantial number of rundown, neglected row houses amid massive amounts of peeling and flaking lead paint. That led health inspectors to investigate those houses and to learn that children were eating lead from peeling and chipping lead paint in that city's inner-city housing, poorly maintained during and after World War II.

As soon as those new concerns were raised, the paint industry worked closely with public health officials to investigate the risk. The paint industry provided research funding, which helped lead to the Baltimore Public Health Department issuing a ban in 1951 on the use of lead pigment in interior paint in Baltimore housing. That was the first restriction on the use of interior lead paint in the country.

When the same problem was found in the dilapidated housing in older cities in the Northeast and Midwest, the paint industry also worked with the American Academy of Pediatrics, along with other groups interested in child health issues. In 1955, a voluntary national standard was adopted to prohibit, in effect, the use of lead pigments in interior residential paints.

When lead-based paint was marketed before 1978, it was a legal product in great demand because it was washable and durable. It was repeatedly endorsed by the federal, state, and local governments, and specified for use on government buildings until the mid-1970s. For example, the 1950 California Department of Education vocational book on painting endorsed the use of white lead paint.

It was not until 1974 that a new theory emerged on the predominant pathway for children to be exposed to gratuitous levels of lead. In a paper by Dr. James W. Sayre, *House and Hand Dust as a Potential Source of Childhood Lead Exposure*, Dr. Sayre felt that the major source might be house dust, contaminated with lead from many sources. The theory was that children were licking their hands that had become dirty with lead-contaminated dust. His theory brought about a move beyond the earlier recognition of a risk from chipping and peeling paint. He also observed that average blood lead levels of children living in low-risk areas of Rochester, New York, were in the range then of 18-25 µg/dL.

In 1978, the U.S. Consumer Product Safety Commission banned consumer uses of lead-based paint. However, buildings built prior to the ban still likely have lead paint, as well as commercial, government, and industrial buildings and structures, which are permitted to use lead-based paint.

Lead-based paint, like all paint, inevitably deteriorates: it flakes, chips, and turns to dust and can contaminate the air, soil, floors and other surfaces in the home. This is particularly true of lead paint on windows, doors, and other friction surfaces.

Lead-based paint in California: According to the Legislative Analysist's Office, about 60% of houses in California were built before 1978 and are presumed to have lead-based paint.

As a case in point, about 75% of Alameda County's homes were built before 1980, which amounts to 430,000 units. Nearly 174,000 of those units are pre-1950. Lead-based paint hazards in Oakland homes are considered by local health officials to be "coming close to crisis mode." In Oakland, between 80% and 90% of the housing is pre-1978, which accounts for about 174,000 units.

In Los Angeles County, 77% of the housing was built before 1978, which is more than 2.6 million housing units. More than 900,000 of those housing units are pre-1950. In at least 75% LA County's lead poisoning cases, lead-based paint is a potential source of the lead poisoning. At least 70% of those cases involve individuals living in pre-1978 housing.

Lead-paint cleanup costs: Lead-based paint removal costs an estimated $8-$15 a square foot, which means removing all lead from a house of 1,200-2,000 square feet could run as much as $9,600-$30,000, according to RealtyTimes.com. The average removal project runs around $10,000 for a typical pre-1978 home.

The following chart provides an estimate of the number of pre-1978 housing units in ten jurisdictions around the state. The estimated costs for cleanup in these jurisdictions alone are $400 million.

Selected California County and City Housing Age Percentages (2011 U.S. Census Estimates) [3]

County or City	% Pre-1980	Total Housing Units (2011 Estimate)
County		
Alameda	74.3	584,631
Los Angeles	76.4	3,449,489
Monterey	66.2	138,811
San Mateo	79.1	271,363
Santa Clara	67.3	633,349
Solano	51.1	153,295
Ventura	60.5	282,521
City		
Oakland	83.3	175,054
San Diego	60.5	513,906
San Francisco	82.4	378,261

[3] Summed for housing age bands from U.S. Census Bureau figures

There is a long history of regulating lead-paint cleanup: In 1991, the California Legislature enacted AB 2038 (Connelly, Chapter 799, Statues of 1991), the Childhood Lead Poisoning Prevention Act of 1991, which established a program within the State Department of Health Services (DHS, which is now the CDPH) to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 and Title X of the Housing and Community Development Act of 1992. It required DHS to adopt regulations regarding the accreditation of training providers that engage in or supervise lead-related construction work, and required the establishment of fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations.

In 2003, the Legislature enacted SB 460 (Ortiz, Chapter 931, Statutes of 2002) to establish the requirement that lead safe work practices be used in pre-1978 buildings. SB 460 added lead hazards to the conditions that make premises uninhabitable and substandard. It also prohibited an individual from disturbing more than a "de minimis" amount of lead-based paint without "containment."

On April 22, 2008, the US EPA issued the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning.

These laws underscore how critically important the cleanup is of lead-based paint, the importance of it being done correctly, and the expertise required, which is the reason cleanup is so expensive.

Existing paint industry-supported programs: The California Paint Stewardship Law, enacted by AB 1343 (Huffman, Chapter 420, Statutes of 2010), established an industry-led, statewide architectural paint recovery program to manage the reuse, recycling, and proper disposal of leftover paint. This recovery program is fully implemented and funded by the paint industry to recover and properly manage unused residential paint. It does not, however, provide any process or funding for lead-paint abatement or remediation.

The paint industry does provide financial support for CDPH's CLPPP to provide evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. The CLPPP is entirely supported by fees assessed on paint manufacturers or other industries that have historically contributed to environmental lead contamination.

Since 1993, paint manufacturers have paid a fee to fund health care referrals, environmental assessments, and educational activities under CLPPP to reduce a child's exposure to lead and the consequences of the exposure. Under the current method used for assessing the fee, each manufacturer's liability is based on a "historic market share attributions" concept. When annually adjusting the fee, CDPH also considers the number of children served by CLPPP as well as changes in the consumer price index.

These funds are strictly limited by Supreme Court of California case law, and cannot be used for lead-paint cleanup.

The state does not have any dedicated funding source or program that is sufficiently equipped to remediate or abate the lead-based paint in homes statewide. AB 3009 would close the gap on funding with a new fee on the paint industry only if the initiative passes. More information on the fee proposed by this bill is below.

Judgment against paint industry: In 2000, a complaint was filed on behalf of the People of the State of California against three major paint manufacturers to hold former lead paint manufacturers responsible for promoting lead paint for use in homes despite their knowledge that the product was highly toxic. The case was filed by Santa Clara County, and nine other cities and counties subsequently joined the litigation: the County of Alameda, the City of Oakland, the City and County of San Francisco, the City of San Diego, the County of Los Angeles, the County of Monterey, the County of San Mateo, the County of Solano, and the County of Ventura.

After a six-week trial in 2013, the trial court issued its order in 2014, finding that Sherwin-Williams, ConAgra, and NL Industries (collectively, the "manufacturers") had created a public nuisance in the 10 jurisdictions by promoting lead paint for interior use despite knowledge of the substantial harms that would result. The public nuisance created by these manufacturers consists of the collective presence of lead paint in the interiors of homes in the ten cities and counties. The three paint manufacturers were ordered to pay $1.15 billion into a fund to inspect for and abate lead paint in all homes constructed up through 1980. (The court did *not* find that lead paint on any individual property is a public nuisance, and thus no individual homes were declared a public nuisance.)

Manufacturers were ordered to pay $1.15 billion to fund inspection for, and abatement of, lead paint and lead-contaminated dust from the interiors of homes and lead-contaminated soil around homes built in 1980 or earlier in the ten cities and counties; remediation of any structural deficiencies in the homes that would cause the lead control measures to fail; and, public education and outreach necessary for the program.

The ten cities and counties were designated to oversee the lead inspection and abatement program in their respective jurisdictions. Property owners' participation would be entirely voluntary, and any funds unspent after four years would revert back to the manufacturers.

In 2017, the Court of Appeal upheld the Superior Court's determination that Manufacturers were liable for creating a public nuisance in the ten cities and counties. (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51.). However, the Court of Appeal limited the judgment to homes built before 1951.

On February 14, 2018, the California Supreme Court denied requests by the manufacturers to review a decision requiring those companies to pay several hundred million dollars to identify and clean up lead paint from millions of homes built before 1951 in Santa Clara County and nine other California cities and counties. The manufacturers plan to further appeal the decision to the U.S. Supreme Court. In the meantime, however, the case is returning to the Superior Court to (1) calculate the amount that manufacturers must pay for pre-1951 homes only and (2) decide on a receiver to administer the fund and distribute the monies to the ten cities and counties.

Safe Homes and Schools Act: In spite of the court's findings, the paint manufacturers are proposing an initiative for the November 2018 statewide ballot that would relieve paint manufacturers of liability, undo the actions by multiple courts, and put the sole financial responsibility on California homeowners for cleaning up lead-contaminated paint.

Specifically, the ballot measure titled, The Safe Homes and Schools Act, would authorize $2 billion in general obligation bonds to remediate homes for various hazards (mold, asbestos, pests, radon, and lead); declare that lead-based paint is not a "public nuisance;" and, would retroactively nullify all cases pending or pending on appeal as of November 1, 2017. According to the Legislative Analysist's Office, if the bonds were sold at an average interest rate of 5%, the cost would be $3.9 billion to pay off both principal ($2 billion) and interest ($1.9 billion), which would be paid for by taxpayers.

Making the polluter pay: AB 3009 would apply the "polluter pays" principal and impose a $1 California Paint Fee on all paint manufacturers for each gallon of paint sold in California. The money from the fee would go to cities and counties that would then provide it to residents of single-family or multi-family homes for the purposes of cleaning up lead paint that has contaminated the interior, exterior, or both, of those homes.

The paint manufacturers' ballot measure is intended to directly usurp the judicial branch of government and circumvent their responsibility to clean up the pollution their knowingly caused.

AB 3009 provides a remedy by providing that the fee in the bill will only be imposed if the initiative passes and shall be used to repay the bonds in lieu of General Funds.

According to the PaintCare's *California Paint Stewardship Program Annual Report for July 1, 2016- June 30, 2017*, the volume of architectural paint sold in the reporting period was 69,244,571 gallons, nearly unchanged from the previous reporting period. According to those figures, a $1 California Paint Fee would generate roughly $69 million annually, yet the bonds issued pursuant to The Safe Homes and Schools Act, should they be approved, would cost taxpayers nearly $4 billion. Therefore, to accelerate repayment of those bonds, the author may wish to consider increasing the fee to $2 per gallon of paint sold.

Related legislation: Lead-based paint is still in many California homes built before 1978, putting another generation of kids at risk. A package of legislation has been introduced to address the proposed policy provisions in the pending ballot measure, as well as set up frameworks for implementing the settlement funds should the ballot measure fail. The package includes the following bills:

AB 2073 (Chiu) protects homeowners from frivolous lawsuits threatened by the lead paint manufacturers if the homeowners participate in the abatement program created by the judgement. This legislation delivers needed assurance that homeowners, who do the right thing by removing toxic paint from their homes, will not be victimized by frivolous litigation from deep-pocketed paint companies. This bill will be heard in the Assembly Judiciary Committee.

AB 2934 (Stone) would allow the California Department of Public Health to contract with counties to certify lead paint inspectors. This bill helps fill a shortage of inspectors to help bring homes up to safe standards. Additional qualified, lead paint inspectors will be needed as work proceeds to remove toxic paint from homes under the judgement. This bill will be heard in this Committee on April 24th.

AB 2074 (Bonta) removes a significant hurdle to homeowners holding poison paint manufacturers legally accountable for injuries by establishing that lead paint companies are responsible to prove they did not produce, sell, distribute or promote the lead-based paint used during a particular time or area, and allowing homeowners to hold companies jointly liable if there were multiple companies selling or distributing paint at that time and area. Codifying this "risk contribution" theory in statute allows those poisoned by lead-based paint, who are unable to identify the exact manufacturer of the lead paint pigment, a new avenue to litigate cases they may not otherwise be able to litigate. This bill will be heard in the Assembly Judiciary Committee.

AB 2995 (Carrillo) classifies the presence of lead-based paint in a home or building as a physical injury to the property, enabling property owners to sue for the cost of abating or removing lead paint to prevent the further deterioration of peoples' health. Secondly, the bill delays the start of the clock on the statute of limitations to when property owners become aware that lead paint is present, rather than starting the clock at the time of purchase. This bill will be heard in the Assembly Judiciary Committee.

AB 2803 (Limon) would provide additional liability protection for homeowners by redefining the definition of "hazardous substance" to include lead-based paint for purposes of the Carpenter-Presley-Tanner-Hazardous Substance Account Act, otherwise known as California's Superfund law. This would allow homeowners to seek damages for clean-up or otherwise implement their own clean-up without fear of liability lawsuits. Should this bill be approved by this Committee, it will be heard next in the Assembly Judiciary Committee.

Double referral: Should this bill be approved by this Committee, it will be heard next in the Assembly Revenue & Taxation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California League of Conservation Voters
City of Oakland
Clean Water Action
County of Santa Clara

Opposition

American Coatings Association
California Paint Council

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 3014 (Quirk) – As Amended March 23, 2018

SUBJECT: Brake friction materials: copper limits: high performance road and track capable vehicle exemption

SUMMARY: Exempts high performance road and track capable vehicles and brake friction materials for use on those vehicles from the requirement that those brake friction materials contain no more than 5 percent copper by weight by January 1, 2021.

EXISTING LAW:

1) Prohibits, on and after January 1, 2014, any motor vehicle brake friction materials from being sold in California if they contain the following constituents and exceed the following concentrations: cadmium (0.01 percent by weight); chromium (VI)-salts (0.1 percent by weight); lead (0.1 percent by weight); mercury (0.1 percent by weight); and, asbestiform fibers (0.1 percent by weight). (Health and Safety Code (HSC) § 25250.51 (a))

2) Authorizes motor vehicle manufacturers and distributors, wholesalers, or retailers of replacement brake friction materials to continue to sell non-compliant brake friction materials, until December 31, 2023, for the sole purpose of depleting their inventory. (HSC § 25250.51 (b))

3) Prohibits, on and after January 1, 2021, any motor vehicle brake friction material from being sold in California if it exceeds 5 percent copper weight. (HSC § 25250.52)

4) Prohibits, on and after January 1, 2025, any motor vehicle brake friction material from being sold in California if it exceeds 0.5 percent copper weight. (HSC § 25250.53)

5) Exempts brake friction materials from the requirements of having to meet certain concentrations of specific constituents for the following vehicle classes:

   (a) Military tactical support vehicles;

   (b) Vehicles employing internal closed oil immersed brakes, or a similar brake system that is fully contained and emits no copper, other debris, or fluids under normal operating conditions;

   (c) Brakes designed for the primary purpose of holding the vehicle stationary and not designed to be used while the vehicle is in motion;

   (d) Motorcycles;

   (e) Motor vehicles subject to voluntary or mandatory recalls of brake friction materials or systems due to safety concerns;

   (f) Motor vehicles manufactured by small volume manufacturers, as defined in Section 1900 of Title 13 of the California Code of Regulations;

(g) Vehicles manufactured prior to January 1, 2021, and brake friction materials for use on vehicles manufactured prior to January 1, 2021, from the requirements of HSC 25250.52; and,

(h) Vehicles manufactured prior to January 1, 2025, and brake friction materials for use on vehicles manufactured prior to January 1, 2025, from the requirements of HSC 25250.53. (HSC § 25250.55)

6) Requires, on or before January 1, 2023, the Department of Toxic Substances Control (DTSC) and the California State Water Resources Control Board (State Water Board) to submit to the Governor and Legislature a report on the implementation of vehicle brake copper reduction efforts and the progress toward meeting the copper total maximum daily load (TMDL) allocations in the state. (HSC § 25250.65)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "In 2010, the Legislature passed SB 346 (Kehoe) which limited the use of copper in motor vehicle brake pads. The automotive industry is working to achieve the 0.5 percent copper solutions for all vehicles, as well the intermediate solution of less than 5% copper subject to the 2021 deadline. However, few technical solutions exist in the intermediate copper range for high performance road and track capable vehicles, none of which have been found to satisfy the entire industry. For some high-performance road and track-capable vehicles, the industry is just now beginning to identify friction material technology that will support the regulation. Due to the requirement to perform on the track in addition to the road, implementation of very low copper friction solutions require significant re-engineering of the brake system to integrate successfully to achieve critical safety and performance requirements.

AB 3014 provides a narrow exemption for high performance road and track capable vehicles, and brake friction materials for use on these vehicles, from the 2021 deadline. Manufacturers of these vehicles will continue to pursue and would be required to achieve the 0.5% copper requirement for all vehicles being sold in the state by 2025. By excluding track capable vehicles from the 2021 deadline, the automotive industry will be able to remain competitive in California while it works to reduce copper levels by January 1, 2025."

Copper in the aquatic environment: According to the U.S. EPA, elevated levels of copper are toxic in aquatic environments and may adversely affect fish, invertebrates, plants, and amphibians. Acute toxic effects may include mortality of organisms; chronic toxicity can result in reductions in survival, reproduction, and growth. Motor vehicles are a major source of toxic contaminants such as copper, a metal that originates from vehicle exhaust and brake pad wear. Copper and other pollutants are deposited on roads and other impervious surfaces and then transported to aquatic habitats via storm water runoff.

Total Maximum Daily Loads (TMDLs): The State Water Board has established TMDLs as allowable pollution limits on copper and other pollutants in several Southern California urban watersheds. Failure to comply with these TMDLs will result in serious penalties to local governments. The ubiquity of copper in the urban environment, and the technical difficulty and

impracticality of treating storm water to remove it, mean that compliance with copper TMDLs will not be feasible without source reduction of copper, such as reducing copper from brake pads.

DTSC: DTSC was established to protect California against threats to public health and degradation to the environment and to restore properties degraded by past environmental contamination. Through its statutory mandates, DTSC cleans up existing contamination, regulates management of hazardous wastes, and prevents pollution by working with businesses to reduce their hazardous waste and use of toxic materials.

California copper brake pad law: On September 27, 2010, Governor Schwarzenegger signed SB 346 (Kehoe, Chapter 307, Statutes of 2010) which prohibits the sale of automobile brake pads sold in California containing more than trace amounts of copper, certain heavy metals, and asbestos. The purpose is to reduce the amount of copper and other toxic substances released from brakes from entering California's streams, rivers, and marine environment.

SB 346 phased in the bans. In 2014, it banned brake pads containing more than trace amounts of heavy metals and asbestos. In 2021 it bans brake pads containing more than 5 percent copper. By 2025, the law reduces the amount of copper allowed to almost zero. Copper is toxic to many aquatic organisms and limiting the copper content of brakes is essential to comply with a federal Clean Water Act mandate, including copper water quality standards and TMDLs in California's urban watersheds.

SB 346 requires manufacturers to comply with laboratory testing and certify with a mark that their products comply with the restrictions set for brake pads. DTSC, the Washington State Department of Ecology, and the Society of Automotive Engineers (SAE) Brake Materials Environmental Task Force have developed criteria for testing and marking brake pads that meet state laws and regulations. Washington State passed a law similar to SB 346 in 2010 and adopted regulations in 2012.

High performance and track capable vehicles: What is a track capable vehicle? Essentially, it's a car that can legally drive on the road and also has the power to race on a race track. These track capable cars may include some cars that look like race cars but also include regular looking cars on the outside but have engines and brakes that are different than the rest of the vehicles. As a result of technical challenges, manufacturers have not yet developed brake pads for these high performance and track capable vehicles that meet the copper reduction limits for the 2021 deadline. Therefore, AB 3014 provides these track capable vehicles with a narrow exemption from that deadline but continues to hold these vehicles to the 2025 deadline.

Technical amendments: There is an incorrect code reference in the bill, specifically the committee and author may wish to make the following technical amendment:

On page 3, on line 6, strike "~~25205.52~~" and insert "25250.52"

Related Legislation:

1) AB 501 (Nazarian, Chapter 392, Statutes of 2013). Authorizes motor vehicle dealers to continue to sell or offer for sale brake friction material not certified as compliant with the chemical standards, if the brake friction material was installed on a vehicle before the dealer

acquired the vehicle. Exempts specified motortrucks or two-axle truck tractors from the motor carrier permit requirements.

2) SB 346 (Kehoe, Chapter 307, Statues of 2010). Restricts the use of copper and other toxic chemicals in automobile brake pads. Limits the use of copper in motor vehicle brake pads to no more than five percent by weight on or after January 1, 2021, and no more than .5 percent by weight on or after January 2025.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance of Automobile Manufacturers

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 3138 (Muratsuchi) – As Introduced February 16, 2018

SUBJECT: Hazardous materials: management: civil liability

SUMMARY: Makes the maximum civil or administrative liability $25,000 per day for any California Accidental Release Prevention program (CalARP) violation.

EXISTING LAW:

1) Implements, through the creation of CalARP (Health and Safety Code (HSC) §25531 et seq.), federal Clean Air Act (CAA) amendments enacted in 1990 for the prevention of accidental releases of hazardous substances in the state. (42 United States Code (USC) §7412 (r))

2) Requires a person or stationary source to establish and implement a Risk Management Plan (RMP) for emergency response to a release or threatened release of a hazardous material if the business meets certain criteria. (HSC § 25507 (a))

3) Specifies what must be included in an RMP, including, but not limited to:

    a. Regulated substances held onsite at the stationary source;
    b. Offsite consequences of an accidental release of a regulated substance;
    c. Accident history of the stationary source;
    d. Emergency response program for the stationary source;
    e. Coordination with local emergency responders;
    f. Hazard review or process hazard analysis;
    g. Operating procedures at the stationary source;
    h. Training of the stationary source's personnel;
    i. Maintenance and mechanical integrity of the stationary source's physical plant; and,
    j. Incident investigation.

4) Defines an "administering agency" as a certified unified program agency (CUPA). (HSC § 25532 (b))

5) Requires a CUPA to inspect every CalARP facility at least once every three years to evaluate compliance with law, regulation, and the provisions set out in the site's RMP. Sets out a procedure for CUPAs to perform an audit to review the adequacy of the RMP itself. (HSC §25537, Code of Federal Regulations Title 40 §68.22)

6) Requires a CUPA, within 15 days of determining that an RMP is complete, to make the RMP available to the public for review and comment for at least 45 days. Requires the CUPAs to distribute a notice of the public's right to review the RMP and place the notice in a local newspaper, on the administering agency's website, and to interested persons and organizations via the mail. (HSC § 25535.2)

7) Requires an RMP to be made available to the public, except for offsite consequence analysis data. Requires the administering agency to insure that any member of the public has access, by appointment, to a copy of the offsite consequence analysis data. Allows a member of the public to read, but not remove, reproduce, print, scan, or image the documents relating to the offsite consequence analysis data. (California Code of Regulations Title 19, Division 2, Chapter 4.5, Section 2775.5)

8) Requires a CUPA to implement an integrated alerting and notification system for communities surrounding petroleum refineries in case of an incident at the refinery in accordance with AB 1646 (Muratsuchi, Chapter 588, Statutes of 2017) effective January 1, 2018. Pays for this system through fees levied by the CUPA on the petroleum refinery. (HSC §25536.6)

9) Requires an owner or operator of stationary sources required to submit an RMP and that are petroleum refineries or petrochemical manufacturing facilities, when contracting for the performance of construction, maintenance, and related work, to require that its contractors and any subcontractors use a "skilled and trained workforce," as defined, to perform all onsite work within an apprenticeable occupation in the building and construction trades, except as specified. (HSC §25536.7)

10) Establishes penalties for violations of CalARP as follows:

    a. Sets the maximum civil or administrative liability at $25,000 per day the violation occurs for cases where a person or stationary source knowingly violates CalARP after reasonable notice of the violation. (HSC §25540(b))

    b. Sets the maximum civil or administrative liability at $2,000 per day the violation occurs for other cases where an entity violates CalARP. (HSC §25540(a))

    c. Sets misdemeanor criminal penalties, punishable by up to one year of imprisonment, if a person or stationary source knowingly violates CalARP after reasonable notice of the violation. (HSC §25540.1)

    d. Sets criminal penalties, punishable by up to one year imprisonment and/or not more than $25,000 per day of violation for first time violations or up to three years imprisonment and/or fines within the range $2,000 to $50,000 for each day of violation for convictions based on violations committed after a first conviction under this section, for a person or stationary source who knowingly makes a false materials statement on documents maintained for the purpose of CalARP, who destroys or alters such documents, or who carries out other specified actions related to the integrity of information maintained for compliance with CalARP. (HSC §25541)

    e. Requires, for all of the above (a-d), a person or stationary source to be assessed the full cost of an emergency response and the cost of cleaning up of and disposing of the hazardous materials if the violation results in, or significantly contributes to, an emergency, including fire. (HSC §25540(b), §25540(a), §25540.1, and §25541)

    f. Sets civil or criminal liability at up to $10,000 for each day of violation for violations of CalARP related to specific sections of the CAA. (HSC §25540.5 and HSC §25541.3, 42 USC §7412(l) and 7412(r))

g. Requires that civil and criminal enforcement actions may not be brought for the same CalARP offences. (HSC §25541.5)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author, "AB 3138 will hold refineries and other facilities that handle highly toxic or flammable chemicals accountable for the safety of workers and communities, to better anticipate problems and prevent accidents that might pose serious risks to the public and environment. This bill raises penalties for these facilities that are consistent to recent increases to similar penalties to provide greater deterrence for violators. This ensures California leads the nation in protecting the safety and health of workers and people in nearby communities."

Certified Unified Program Agencies (CUPAs): The Unified Program was created by SB 1082 (Calderon, Chapter 418, Statutes of 1993), to unify administration, permits, inspections, and enforcement of hazardous waste and hazardous materials management programs across the state. Hazardous materials include petroleum. CUPAs implementing these programs are certified by the California Environmental Protection Agency (CalEPA). Currently, there are 81 CUPAs in California. The Unified Program manages the following programs:

1) Hazardous Materials Release Response Plans and Inventories (HMBP);
2) CalARP;
3) Underground Storage Tank Program;
4) Aboveground Petroleum Storage Act;
5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs (HWCA); and,
6) California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

State agencies involved in the implementation of the Unified Program are responsible for setting program element standards, working with CalEPA to ensure program consistency, and providing technical assistance to the CUPAs. The following state agencies are involved with the Unified program:

1) CalEPA: The Secretary of CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying CUPAs. CUPAs are accountable for carrying out responsibilities previously handled by approximately 1,300 different state and local agencies.
2) Governor's Office of Emergency Services (Cal OES): The Cal OES evaluates and provides technical assistance for CalARP, HMBP (Business Plan), and the Area Plan Programs.

California Accidental Release Prevention (CalARP) program: CalARP was implemented on January 1, 1997 and replaced the California Risk Management and Prevention Program. The purpose of the CalARP program is to prevent accidental releases of substances that can cause serious harm to the public and the environment, to minimize the damage if releases do occur, and to satisfy community right-to-know laws. This is accomplished by requiring businesses that handle more than a threshold quantity of a regulated substance listed in the regulations to

develop a RMP. An RMP is a detailed engineering analysis of the potential accident factors present at a business and the mitigation measures that can be implemented to reduce this accident potential. The RMP contains safety information, a hazard review, operating procedures, training requirements, maintenance requirements, compliance audits, and incident investigation procedures. The RMP has four program levels where the lowest program level applies to businesses that do not present an offsite impact to the community, and the highest program level applies to petroleum refineries.

The CalARP program is implemented at the local government level by CUPAs and is designed so that the CUPAs work directly with the regulated businesses. The CUPAs determine the level of detail in the RMPs, review the RMPs, conduct facility inspections, and provide public access to most of the information.

CalARP covers the most dangerous chemicals and processes: Similar to CalARP, the HMBP requires emergency planning and reporting of types and amounts of hazardous chemicals, location, and storage information. However, the two programs are separate and distinct: HMBP applies to a broad category of hazardous substances HSC §25501 while CalARP only applies to a distinct set of substances that are extremely hazardous or extremely hazardous when used in large quantities as listed in CCR Title 19 §2770.5. Furthermore, requirements under CalARP also go beyond those shared with the HMBP as described above. Examples of extremely hazardous substances and their threshold levels in California include more than 500 pounds of anhydrous ammonia, more than 100 pounds hydrogen fluoride, or more than 10,000 pounds for flammable substances including hydrogen and methane.

Examples of CalARP violations:

Chevron Richmond Refinery fire: On August 6, 2012, light gas oil vapor escaped from a ruptured pipe forming a flammable cloud that ignited and burned for approximately five hours. Eighteen workers escaped through the gas cloud minutes before the fire erupted and a Chevron firefighter escaped through the fire, surviving because of his full fire gear. Six employees suffered minor injuries. Fifteen thousand people from the surrounding communities sought medical treatment at nearby medical facilities for ailments including breathing problems, chest pain, shortness of breath, sore throat, and headaches. According to the Chemical Safety Board's investigation, the release was due to the failure of a weak, corroded pipe and ineffective implementation of internal recommendations designed to prevent these failures. California Division of Occupational Safety and Health (Cal/OSHA) settled with Chevron for a $1 million fine and ordered upgrades possibly amounting to $20 million. Had liability for the fire been pursued under CalARP, according to existing statutes, it is very likely that $2,000 per violation per day would have been the maximum allowable penalty.

Gibson Wine Co. ammonia release: In September 2012, 284 pounds of anhydrous ammonium escaped after a worker opened the wrong valve on the winery's refrigeration system. This worker called for an evacuation of the building. However, one worker was overcome by the ammonia cloud. Other employees attempted to rescue him but were unable to locate the necessary emergency equipment. This worker died from ammonia inhalation. The United States (US) Department of Justice and US Environmental Protection Agency (US EPA) sought civil penalties against Gibson Wine Co. for violations of 42 U.S.C. §7412(r)(l) and (7), the sections of the CAA pursuant to which CalARP was formed as well as violations of other federal laws. The CAA violations alleged in the 2016 US complaint against Gibson Wine Co. include failure to

comply with good engineering practices, failure to adequately train employees, inadequate component labeling, inaccurate ammonia inventory, and many others. Under the Federal Civil Penalties Inflation Adjustment Act of 1990 and the US EPA's Civil Monetary Penalty Inflation Adjustment Rule, CAA maximum civil penalties enacted $25,000 per day of violation reached a maximum of $44,539 per day for each violation that occurred on or after November 2, 2015. In February 2018, the US Department of Justice and US EPA reached a settlement with Gibson Wine Co. for $330,000.

Praxair ammonia release: Anhydrous ammonia was accidentally released on three separate occasions in 2013, 2014, and 2015 at the same Praxair facility. The 2013 release involved a number of violations, including failure to immediately report the release, and $6,300 in administrative penalties were imposed. The second accident was the largest of the three. More than 8,000 pounds of ammonia escaped, requiring workers at an adjacent refinery to shelter in place. The CUPA inspector observed Class I and minor violations; a notice of violation was issued for failure to implement site specific operating procedures that resulted in the release, and for failure to properly inspect and test piping systems and other components. Even though this was not the facility's first accidental release, the two incidences involved different violations. Therefore, the maximum of $2,000 per day of violation applied to the violations in the 2014 case as well, and $6,900 in administrative penalties were imposed. Praxair once again failed to immediately report the release in 2015 and was issued a single $25,000 fine. Records available in the California Environmental Reporting System reflect no further releases in 2016, 2017, or, to date, in 2018.

Notably, the 2015 Torrance Refinery explosion was not associated with any CalARP violations, but resulted in a near miss of the refinery's alkylation unit, which uses modified hydrofluoric acid, an extremely hazardous chemical mixture covered under CalARP.

Penalties for CUPA program violations: Civil and administrative penalties collected by the CUPAs are put towards enhancing program and enforcement capabilities. Current CalARP law provides some level statutorily mandated tiered enforcement by designating separate maximum penalties for CalARP violations before or after reasonable notice of a violation. Other CUPA programs have different penalty schemes. For example, the Aboveground Petroleum Storage Act sets a maximum civil penalty of $5,000 per day of violation for first time violations and $10,000 per day of violation for subsequent violations while the HWCA simply sets the maximum allowable penalty at $70,000 per day of violation. Different maximum penalties may also be set for major and minor violations. There is significant variability in the penalty structures and maximum penalties set for different CUPA programs for several reasons. In part, they are justifiable reflection of the different dangers posed by violations of the different laws. However, the varied origins of the laws before they were unified under the CUPAs also explain the variability. Where penalties have been changed, they have been changed in only one or a subset of programs rather than coordinated across programs.

Setting in statute the maximum allowable penalty for CalARP violations at $25,000 per day of violation, regardless of whether reasonable notice has been given, removes some statutory clarity and assurance around how penalties will be levied. However, it does not mean that the maximum will be sought in all cases. CUPAs assess administrative penalties based both on statutorily allowed ranges and on the severity and circumstances of the violation. CUPAs are required by law to take into consideration the "nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a

threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community." (HSC §25404.1.1(b)) Administrative penalties may be appealed, and each CUPA has an enforcement plan laying out enforcement procedures, including the criteria for which a case may be referred for prosecution.

As enacted in 1986, civil liability under the section amended by this bill (HSC §25540) was maximum $2,000 per day of violation or, if a business commits a violation knowingly after reasonable notice, maximum of $5,000 per day of violation. In 1988, $5,000 was increased to $25,000. CalARP penalties have not since been changed or adjusted for inflation. Other penalties are also set out in CalARP but are not affected by AB 3138. For comparison, the maximum allowable penalties under HMBP is $2,000 or, if a business commits a violation knowingly after reasonable notice, maximum $5,000 per day of violation (HSC §25515). Furthermore, as discussed above, the maximum civil penalty for HWCA violations is $70,000 per day of violation (HSC §25188). AB 245 (Quirk, Chapter 499, Statutes of 2017) raised the maximum penalty for HWCA violations from $25,000 per day to $70,000 per day, synchronizing it approximately with federal Resource Conservation and Recovery Act maximum penalty levels.

AB 3138 does not increase the maximum civil and administrative penalties for CalARP beyond $25,000 per day of violation, though CalARP specifically serves to mitigate risk in the highest stakes situations involving hazardous substances, to protect workers and surrounding communities from fires, accidental releases, and other dangers that arise when stationary sources handle extremely hazardous substances.

Related legislation:

1) AB 245 (Quirk, Chapter 499, Statutes of 2017). This bill increased the maximum allowable administrative and civil penalties from $25,000 to $70,000 for violations of the HWCA.

2) AB 1646 (Muratsuchi, Chapter 588, Statutes of 2017). This bill required an implementing agency to develop an integrated alerting and notification system, in coordination with local emergency management agencies, unified program agencies, local first response agencies, and the public, to be used to notify the community surrounding a petroleum refinery in the event of an incident at the refinery.

3) SB 54 (Hancock, Chapter 795, Statutes of 2013). This bill required an owner or operator of stationary sources required to submit an RMP and that are petroleum refineries or petrochemical manufacturing facilities, when contracting for the performance of construction, maintenance and related work, to require that its contractors and any subcontractors use a "skilled and trained workforce," to perform all onsite work within an apprenticeable occupation in the building and construction trades, except as specified.

Double-referral: Should this bill pass the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Environmental Health Administrators

Opposition

American Chemistry Council
California Chamber of Commerce
California manufacturers & Technology Association
Civil Justice Association of California
Western States Petroleum Association

Analysis Prepared by: Amy Gilson / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2541 (Salas) – As Amended March 15, 2018

SUBJECT: Safe Drinking Water State Revolving Fund: project financing: severely disadvantaged communities

SUMMARY: Revises the conditions under which the State Water Resources Control Board (State Water Board) may provide funding for projects to low-income communities. Specifically, **this bill**:

1) Authorizes the State Water Board to provide up to 100% grant funding, in addition to providing principal forgiveness and 0-percent financing on loans, from the Safe Drinking Water State Revolving Fund (DWSRF) to a project for a water system that serves a severely disadvantaged community (SDAC).

2) Deletes the requirement that a water system must demonstrate that repaying a Safe Drinking Water State Revolving Fund loan with interest would result in unaffordable water rates.

3) Deletes the definition of unaffordable water rates.

EXISTING LAW:

1) Establishes, as the policy of the state, that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code (WC) § 106.3 (a))

2) Requires all relevant state agencies, including the Department of Water Resources, the State Water Board, and the State Department of Public Health, to consider the above "human right to water" state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water, as defined. (WC § 106.3 (b))

3) Provides that because the federal Safe Drinking Water Act (42 U.S.C. Sec. 300j et seq.) provides for the establishment of a perpetual drinking water revolving fund, which will be partially capitalized by federal contributions, it is in the interest of the people of the state, in order to ensure full participation by the state under the federal Safe Drinking Water Act, to enact DWSRF law to authorize the state to establish and implement a state drinking water revolving fund that will meet federal conditions for receipt of federal funds. (Health and Safety Code (HSC) § 116760.10 (a))

4) Creates in the State Treasury the DWSRF, and provides that moneys in the fund are continuously appropriated, without regard to fiscal years, to the State Water Board for expenditure in accordance with DWSRF law. (HSC § 116760.30 (a))

5) Defines SDAC as a community with a median household income (MHI) of less than 60 percent of the statewide average. (HSC § 116760.20 (n))

6) Requires, under the DWSRF law, the State Water Board to determine what portion of the full costs the water system is capable of repaying and authorizes funding in the form of a loan or other repayable financing for that amount. Authorizes the State Water Board to authorize a grant or principal forgiveness to a system, as defined, that serves a disadvantaged community only to the extent that the State Water Board finds the water system is unable to repay the full costs of the financing. (HSC § 116761.20 (b)(1))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

> "AB 560 (Salas, Chapter 552, Statutes of 2017) authorized the State Water Board to provide grants and principal forgiveness, rather than loans, to SDACs accessing funding under the DWSRF.
>
> AB 560 required that, in order for the funding to be provided as a grant, the applicant must show that repaying a loan would result in unaffordable water rates, or that their water rates already exceeded the affordability threshold of 1.5 percent of median household income. However, before the bill became law, the State Water Board published the 2017-18 DWSRF Intended Use Plan, which provides grants to SDACs without evaluation of current water rates. The DWSRF Intended Use Plan is revised and released annually.
>
> AB 2541 would clarify the law and ensure continuing authority for the State Water Board to provide grants and principal forgiveness to SDACs without showing that water rates exceed the affordability threshold.
>
> This measure enables water systems serving SDACs to keep their water rates as low as possible, and ensures that they do not need to artificially raise water rates in order to qualify for grant funding. This will ensure that all SDACs are eligible for grants to provide badly needed drinking water improvements."

Drinking water needs: According to the State Water Board, 98% of Californians are served by public water systems' drinking water that meets federal and state drinking water standards, which leaves 2% of Californians with drinking water that fails to meet state and federal drinking water standards.

Nitrates, hexavalent chromium, perchlorate, arsenic, and other contaminants are present in water supplies across the state, and water treatment can be costly. It is estimated that more than 1 million California residents who live in mostly rural areas have unreliable access to safe drinking water. Similarly, according to the United States Environmental Protection Agency's (US EPA) *Small Drinking Water Systems research*, drinking water treatment challenges are likely to disproportionately affect small drinking water systems due to limited resources and treatment options, among other factors.

Drinking water funding needs: The US EPA has estimated that California will need more than $40 billion dollars in drinking water infrastructure improvements over the next 20 years.

Consistent with that, based on the *2011 Drinking Water Infrastructure Needs Survey*, California drinking water needs are more than $2.2 billion per year for the next 20 years.

Drinking water resources are limited, however, and cuts to drinking water programs may be forthcoming. The Trump Administration's Fiscal Year 2019 budget plan, released February 2018, is proposing to cut more than $2.5 billion from the annual budget of the US EPA. The proposed cuts include a 36% cut to the Safe and Sustainable Water Resources research program, which is dedicated to addressing contaminant problems in drinking water systems; a 33% cut to the Pollution Control Grant Program, which provides assistance to states and tribes to prevent surface and groundwater pollution; and, a 16% cut to various drinking water programs related to compliance with the Safe Drinking Water Act.

Given California's ongoing water quality challenges, and the fact state resources are limited for investment in drinking water improvements, state funds have to be spent carefully and thoughtfully on the communities that most need help achieving compliance with drinking water standards.

Safe Drinking Water State Revolving Fund (DWSRF): Congress established the DWSRF as part of the 1996 Safe Drinking Water Act Amendments to better enable public water systems to comply with national primary drinking water standards and to protect public health. The DWSRF provides financial assistance in the form of capitalization grants to states to provide low interest loans and other assistance to public water systems. In order to receive these funds, states must provide a state match equal to 20 percent of the federal capitalization grants and must create a drinking water state revolving fund program for public water system infrastructure needs and other drinking water-related activities. In response, California established the DWSRF through SB 1307 (Costa-Thompson, Chapter 734, Statutes of 1997) to help fund the state's drinking water needs. In California, the State Water Board's Division of Financial Assistance administers the DWSRF Program.

DWRSF funding prioritization: The 2017-18 DWSRF Intended Use Plan (IUP) provides specific details on key aspects of the DWSRF program, including short and long-term goals, the priority setting process used to rank projects, and the types of projects considered eligible to receive available DWSRF funding. The IUP states that subject to certain affordability criteria, the State Water Board intends to provide the maximum amount allowed from the 2017 Capitalization Grant as principal forgiveness to eligible public water systems that serve disadvantaged communities (DACs) and SDACs for projects that represent California's highest public health priorities and that are ready to proceed to a financing agreement. (Capitalization grants are federal grants from the US EPA awarded to states to create and maintain DWSRF programs; California uses those grant funds for the state revolving fund to assist public water systems finance the costs of infrastructure needed to comply with the SDWA.)

The IUP additionally states that it is the intent of the State Water Board to provide for the effective and equitable use of the limited amount of DWSRF and Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Drinking Water funds for principal forgiveness/grant funds, and the eligible grant and/or principal forgiveness funding amount for any project may be reduced for good cause.

Unaffordable water rates vs. SDAC: Current law, as enacted by AB 560 (Salas, Chapter 552, Statutes of 2017), authorized the State Water Board to provide principal forgiveness, grant

funding, and 0-percent financing to a project for a water system with a service area that qualifies as a SDAC if the water system demonstrates that repaying a DWSRF loan would result in unaffordable water rates. AB 560 defined "unaffordable water rates" as an average water bill that is at least 1.5-percent of the MHI of the service area or other percentage that the State Water Board determines is appropriate to reflect funding priorities.

AB 2541 is proposing to delete the requirement that the State Water Board may provide those financing options if a water system demonstrates that repaying a DWSRF loan with interest would result in unaffordable water rates, and instead authorize that funding to a water system that serves a SDAC. Current law defines SDAC as a community with an MHI of less than 60 percent of the statewide average.

According to Self-Help Enterprises, "A water rate affordability standard of 1.5% of MHI is often applied as a measure of whether a community water system can afford to accept any loan as part of a capital project funding package. By making grant funding available to SDACs only once the water system demonstrates that repaying a DWSRF loan with interest would result in unaffordable water rates, the bill effectively holds SDACs to the same affordability standard as disadvantaged communities, who are slightly better resourced at 80% of state MHI.

The current IUP for the DWSRF does not hold SDACs to any affordability standard, instead making grants available to the neediest communities regardless of how much their existing water rates are. We believe this is the better approach. AB2541 would codify this beneficial funding scenario for SDACs and preserve their access to affordable drinking water funding from the State of California."

Under current statute, the State Water Board must consider SDACs and DACs with regard to affordability, eliminating any preferential treatment for SDACs. SDACs are treated like DACs, even though they are significantly poorer than DACs. SDACs with relatively low water rates would have to raise rates artificially to reach the affordability threshold and qualify for grant. AB 2541 seeks to remedy this.

Related legislation: AB 560 (Salas, Chapter 552, Statutes of 2017). Authorized the State Water Board to provide grants and principal forgiveness, rather than loans, to SDACs accessing funding under the DWSRF.

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association
Self-Help Enterprises (Sponsor)

Opposition

None on file

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2928 (Chen) – As Amended March 19, 2018

SUBJECT: Hazardous waste: used oil

SUMMARY: Authorizes generators of highly controlled used oil to test their used oil once per year for the purposes of determining if the used oil is a hazardous waste, and allows generators to not have to manage their used oil as hazardous waste under certain conditions. Specifically, **this bill**:

1) Authorizes generators of highly controlled used oil to test their used oil once per year for the purposes of determining if the used oil is a hazardous waste and subject to regulation by the Department of Toxic Substances Control (DTSC).

2) Requires a generator of highly controlled used oil to include a certification of the annual test with each shipment of used oil that the generator claims is not a hazardous waste and shall maintain this certification statement on which the certification is based and is subject to audit by DTSC, the Unified Program Agency, or the Department of Resources, Recycling, and Recovery (CalRecycle).

3) Defines a "generator of highly controlled used oil" as a generator of used oil for whom all of the following apply: the generator services, repairs, and maintains equipment owned and operated only by the generator; the generator does not derive revenue from servicing and repairing its equipment; the generator's used oil is generated from equipment of similar types that are used under similar operating conditions; the generator does not use or store halogenated solvents; and, the generator provides a certification statement at the time the generator notifies DTSC that the generator employs management practices that prevent halogenated solvents from coming into contact with, or commingling with, the used oil that the generator is claiming is not a hazardous waste.

EXISTING LAW:

1) Creates the Hazardous Waste Control Law (HWCL), which authorizes DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)

2) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)

3) Establishes management standards for used oil including transportation, testing, and storage requirements. (HSC § 25250 et seq.)

4) Requires used oil to be managed as a hazardous waste unless it is excluded through regulation; is dielectric fluid removed from oil-filled electrical equipment that is filtered and

replaced onsite; or, it has been shown through testing by the generator to meet the requirements for exclusion within the HWCL. (HSC §25250.4)

5) Defines used oil as "any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities." (HSC § 25250.1)

6) Creates the California Oil Recycling Enhancement (CORE) Act which is designed to reduce the illegal disposal of used oil and recycle and reclaim used oil to the greatest extent possible. (Public Resources Code § 48601)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "AB 2928 seeks to provide regulatory and cost relief for a narrow subset of highly controlled used oil, as defined, managed in such a way that it does not exhibit characteristics outlined in statute and regulation deeming it hazardous waste nor contaminated with halogenated solvents. This narrow subset of used oil is entirely recyclable. If a generator were able to certify it is not hazardous or contaminated with halogenated solvents subject to auditing and verification by DTSC, CalRecycle or a CUPA, it would be excluded from being deemed hazardous waste by DTSC and instead be handled as recycled oil under CalRecycle's used oil program. This would help reduce some of the regulatory burdens associated with currently being required to manage all used oil as hazardous waste; potentially reduce a generator's hazardous waste status (small vs. large quantity generator); result in cost savings associated with more manageable and reasonable requirements; and ensure more highly controlled used oil is recycled versus being commingled with contaminated oils, solvents, and shipped out of state for disposal. As an added benefit, in providing this alternative pathway, the highly controlled used oil could have a more direct pathway to recycling and help reduce the state's hazardous waste generation numbers – an interest of DTSC relative to their 50% hazardous waste reduction goal."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

Used oil generated in California: Approximately 100 million gallons of used oil are recycled in California each year. An estimated 14 million gallons of California used oil gets recycled out-of-state each year. DTSC's used oil program regulates the proper management of used oil through inspections and enforcement of used oil recyclers, transfer facilities, and transporters. The CORE Act implemented by CalRecycle outlines the requirements for responsible management of used oil in California to reduce the amount of illegal disposal of used oil and encourage recycling and reuse, thereby minimizing impact to the environment.

Regulation of used oil: State law defines used oil as "any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities." Used oil includes, but is not limited to, the following used motor oils, used industrial oils, vehicle crankcase oils, hydraulic oils, transformer oils, engine lubricating oils, compressor oils, refrigeration oils, transmission fluids, turbine oils, metalworking oils, gearbox and differential oils, bearing oils, railroad oils, gear oils, and vegetable oils used for lubrication. Waste synthetic oils that may be managed as used oil include oil derived from coal, oil shale, or polymers, water-soluble petroleum-based oils, vegetable or animal oil used as a lubricant, hydraulic fluid, and heat transfer fluid.

Used oil does not include: antifreeze, brake fluid, other automotive wastes, fuels, and solvents. Substances which are not regulated as used oils include: oils with a flashpoint below 100°F; oils mixed with hazardous waste; wastewater containing small amounts of used oil; oily wastes that are not used oil; oily wastewaters that are not used oil; tank bottoms; used oil processing bottoms; used oil re-refining distillation bottoms; cooking oils (edible); grease; oils containing 5 parts per million (ppm) polychlorinated biphenyls (PCBs) or greater; or, oils containing more than 1,000 ppm total halogens.

Management of used oil: State law requires that used oil be managed as a hazardous waste in California unless it has been recycled and is shown to meet the specifications for recycled oil in statute, or qualifies for a recycling exclusion under the law. Consumers who change their own oil must manage their used oil appropriately (e.g., by taking it to a used oil collection center, etc., and never disposing of it to land, water, storm drains, etc.). Consumers are allowed to transport their own used oil to a used oil collection center or to a used oil recycling facility without any permits or utilizing a hazardous waste manifest.

Under state law, businesses generating used oil, as well as used oil collection centers are required to meet all hazardous waste generator requirements. There are specific requirements for the types of containers used oil is stored in and for how long the used oil can be stored by the generator of the used oil. Additionally, some of the business generators of used oil are required to have secondary containment for their tanks, which is essentially a backup system designed to prevent the release and migration of wastes or accumulated liquids from the storage tank. Prior to transporting individual containers of used oil, regulations require that the generator must label shipping containers for used oil as follows: "HAZARDOUS WASTE - State and Federal Law Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, or the U.S. Environmental Protection Agency."

Retail used oil generator and proprietary used oil generator: For the business sector (non-consumer) used oil is generated in the state by two distinct processes. The first category of used oil generators is comprised of generators who service, repair, and maintain equipment owned and operated by third-parties and who intend to profit from the arrangement. Examples of these generators are mechanics to whom individuals and companies take their vehicles and equipment for service and repairs, including oil changes. These generators are retail generators. The second category of used oil generators is comprised of generators who service, repair, and maintain equipment owned and operated by themselves, and for whom the process is not a revenue center, but rather is a net cost to them. Examples of these generators are trucking companies, railroads, utilities, and refineries, among others. These generators are proprietary generators of "highly controlled used oil." The major distinction between retail and proprietary

generators is that retail generators do not control the use of the oil while in the equipment, and only have control of the oil upon generating the oil as a waste. Proprietary generators control the oil from the time it is new oil, until the time it is removed from the equipment and generated as a waste.

As the above information shows, managing used oil as a hazardous waste is complex. Anytime someone gets her/his car serviced and the oil is changed, that business, that provided the oil change service, is required to manage the used oil as a hazardous waste. Likewise, anytime a business, such as a railroad or a utility, that has a fleet of vehicles, changes the oil within their fleet, they also are required to manage the oil as a hazardous waste.

AB 2928 is seeking to allow a specified universe of used oil, generated by a "highly controlled generator" to be allowed to not have managed their used oil as a hazardous waste. These highly controlled generators are those that would have their own fleet of vehicles, manage the vehicles, and maintain the vehicles. The approach within AB 2928 is an interesting one that is worth exploring. Providing a process to allow a segment of used oil to not be managed as a hazardous waste, is a new one, and one that will need to be well thought out with proper oversight. This bill gets that process started.

Double referral: Should this bill be approved by this Committee, it will be heard next in the Assembly Natural Resources Committee.

Related legislation:

1) SB 546 (Lowenthal, Chapter 353, Statutes of 2009). Raised the fee paid by lubricating oil manufacturers from 16 cents to 24 cents per gallon; increased the incentives paid for recycling used oil; increased the testing requirements for used oil transporters and requires that transporters be inspected annually.

2) AB 907 (Chesbro, 2009). Would have made a variety of changes to the statutes regulating used lubricating oil including reducing the number of used oil collectors that can apply for recycling incentives; creating a new incentive for re-refined oil; and ,allowing additional funding for local government oil recycling efforts. This bill was not heard on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council for Environmental and Economic Balance (sponsor)
California Manufacturers & Technology Association
California Railroad Industry
Chemical Industry Council of California
Western Independent Refiners Association

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /