California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

BILL QUIRK
CHAIR

AGENDA

Wednesday, April 7, 2021
9 a.m. -- State Capitol, Room 4202

ADOPTION OF COMMITTEE RULES

REGULAR ORDER OF BUSINESS

BILLS HEARD IN FILE ORDER

TESTIMONY MAY BE LIMITED

1.	AB 1	Cristina Garcia	Hazardous waste.
2.	AB 1250	Calderon	Water and sewer system corporations: consolidation of service.
3.	AB 480	Carrillo	Hazardous substances.
4.	AB 652	Friedman	Product safety: juvenile products: chemicals: perfluoroalkyl and polyfluoroalkyl substances.
5.	AB 762	Lee	Hazardous emissions and substances: schoolsites: private and charter schools.
6.	AB 1200	Ting	Plant-based food packaging: cookware: hazardous chemicals.
7.	AB 100	Holden	Drinking water: pipes and fittings: lead content.
8.	AB 304	Quirk	Contaminated sites: waste releases or surface or groundwater contamination: local oversight: remedial actions.
9.	AB 732	Quirk	Department of Toxic Substances Control: Toxic Substances Control Account.

CONSENT CALENDAR

10.	AB 332	Environmental Safety and Toxic Materials	Hazardous waste: treated wood waste: management standards.(Urgency)
11.	AB 440	Bigelow	Bear Lake Reservoir: recreational use.
12.	AB 698	Environmental Safety and Toxic Materials	Hazardous waste: small quantity generator.
13.	AB 818	Bloom	Solid waste: premoistened nonwoven disposable wipes.
14.	AB 1024	Santiago	Hazardous substances: correction and remedial actions: milestones and contracting.
15.	AB 1298	Bloom	Pesticides: use of 2nd generation anticoagulant rodenticides.

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1 (Cristina Garcia) – As Introduced December 7, 2020

SUBJECT: Hazardous waste

SUMMARY: Creates the Board of Environmental Safety (Board) within the California Environmental Protection Agency (Cal/EPA) to provide policy direction to and oversight of the Department of Toxic Substances Control (DTSC). Raises and recasts existing fees within the Hazardous Waste Control Account (HWCA) to fill a projected deficit of approximately eighteen million dollars. Specifically, this bill:

1) Creates the Board within Cal/EPA to oversee and provide transparency to DTSC and would consist of five members, all of whom shall represent the general public interest.

2) Re-establishes the Fee Task Force (originally established pursuant to SB 1222 (Calderon, Chapter 638, Statutes of 1995), to be convened by the Secretary of Cal/EPA, to review the existing charges supporting the HWCA and the Toxics Substances Control Account (TSCA). Requires the Secretary to provide recommendations to the Legislature by January 2023 as part of the Governor's proposed budget.

3) Repeals an outdated statute regarding a statewide hazardous waste management plan (Plan, enacted in the 1980's) and update the statutory requirements for the state to develop a Plan to include an identification of areas of the state that are disproportionately impacted by hazardous waste treatment and disposal activities. Requires the Plan to contain a description of steps to reduce the generation of hazardous wastes. Requires this Plan to involve a public process with meetings throughout the state and requires the Plan to be completed by March 1, 2025 and updated every three years thereafter.

4) Requires that the owner or operator of a hazardous waste facility submit to DTSC a written cost estimate associated with necessary corrective actions after DTSC has identified a release of hazardous waste; applying this same process for responsible parties for cleanup sites.

5) Eliminates the Manifest Fee, Disposal Fee, and Environmental Protection Agency Identification Fee and revises, recasts, and raises the Facility Fee and Generation and Handling Fee to raise approximately $20 million annually for regulated activities under the HWCA. Eliminates current exemptions to the Facility Fee and Generation and Handling Fee to be compliant with the Supermajority Vote to Pass New Taxes and Fees Act, enacted by voters in 2010, known as Proposition 26.

6) Phases in a requirement that all permit renewal applications must be submitted at least two years before expiration. Deems the permit extended until DTSC takes final action on the application, if the renewal application is submitted in time. Establishes a process by which the Board may review any final permit decision that DTSC has not made by these deadlines.

7) Requires DTSC to post on its website a timeline of the estimated dates of milestones in the application review process within 90 days of receiving a completed application for a renewal of a hazardous waste permit.

8) Authorizes a one-time surcharge to the Generation and Handling Fee and Facility Fee only for calendar year 2022 to cover the costs associated with the development of the Plan.

EXISTING LAW:

1) Requires DTSC to enforce the standards within the Hazardous Waste Control Law (HWCL) and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code Section (HSC) § 25180)

2) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)

3) 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 HWCL. (HSC § 25200 (a))

4) 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))

5) Establishes, pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA), a 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.)

6) Creates, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 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. 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,

> "For years the Legislature has been raising a wide range of issues with the performance of DTSC including extremely long permit process times, poor enforcement, delayed site remediation, and a failure to respond to public concerns. We have made numerous legislative efforts to improve different aspects of DTSC programs, but the current and also previous administrations have either vetoed such efforts or asked the Legislature to hold-off while internal efforts to improve the function of DTSC were underway. Unfortunately, none of these internal efforts have resulted in substantial improvements in DTSC's operations, which is why I introduced AB 1.

In addition to the programmatic problems, DTSC has faced substantial structural deficit in the Hazardous Waste Control Account (HWCA) that necessitated the appropriation of $27.5 million from the General Fund to cover their regulatory costs for just last fiscal year, HWCA also needed $19.5 million in this fiscal year. The Toxic Substances Control Account (TSCA) is also in severe structural imbalance, needing $7.7 million this year which has been negatively affecting the remediation of orphan sites throughout the state, thereby creating public health risks and preventing the reuse of those lands.

AB 1 creates the Board of Environmental Safety a policy setting and permit appeals body that will consist of five members, make a number of statutory changes to deadlines within the permitting process to ensure timely response by both the permit applicants and DTSC, and would make improvements to the department's financial assurances requirements. Lastly, AB 1 would create a fee task force led by the Secretary of CalEPA charged with making a comprehensive evaluation of DTSC's fee structure to identify a funding structure that would provide sufficient resources for DTSC to carry out its statutory mandates.

We strongly share the Administration's belief that programmatic improvements to DTSC will not be achieved unless and until DTSC has sufficient fiscal resources to achieve its statutory mandates. But at the same time the legislature must be able to anticipate improved performance by the department with sufficient funding.

The current poor condition of DTSC will continue to put disadvantaged communities in danger. Many of these communities are similar to those that lack safe and affordable drinking water, which is why we believe we share a common goal of protecting these communities for this generation and the next. DTSC must be reformed if we want to properly care for our most vulnerable populations that have been exposed to toxics from decades. If we are going to truly start to address the systemic racism in our systems, we need to take action now to fix a department that's in charge of protecting the public's health, especially those in low income communities of color where we are most likely to be over burdened with these toxics. DTSC's inefficiencies and the inability to address this is cutting black and brown and poor people's life's short in addition to making us live with chronic diseases. We optimistically hope that the Administration will look to AB 1 as we continue to negotiate and will work together along with stakeholders to fully reshape this entity into one that can oversee the management of hazardous waste in the state in a transparent manner that is fully protective of communities and public health."

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's hazardous waste management permitting program: DTSC is responsible for administering the hazardous waste facility permitting program established under the 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, provide public involvement on issues related to permitted facilities.

DTSC's hazardous waste management enforcement program: DTSC's inspection and enforcement responsibilities include its delegated authority under RCRA, California's HWCL, and state laws pertaining to toxics in packaging, toxic substances in consumer products, and disposal of universal wastes such as electronic waste. Core activities of DTSC's hazardous waste management program include routine compliance inspections and targeted compliance inspections. Routine compliance inspections involve review of submitted data and reports as well as physical observation, testing, and evaluation of regulated facilities. Targeted compliance inspections involve review of specific units or processes in response to focused concerns or to inform permitting decisions, as well as analysis of current and historical compliance to inform those decisions.

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.

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. Additionally, DTSC ensures that the state meets the federal requirements that California pays 10 percent of cleanup costs for federal Superfund sites and 100 percent of the operation and maintenance costs after cleanup is complete. 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 laws also authorize DTSC to recover costs and expenses it incurs in carrying out these activities.

Recent criticism of DTSC: Over the past decade or so, DTSC has 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. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or with numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit, as well as the costs associated with processing a permit.

Legislative Oversight: Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the budget and policy committees have evaluated the

following four main areas: (1) reviewing and monitoring the department's strategic plan and reorganization; (2) auditing cost recovery at the department; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at the department.

Numerous statutory changes have been made to clarify and strengthen DTSC's statutes to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain, in addition a fiscal deficit persists.

DTSC Independent Review Panel (IRP): In 2015, the Legislature passed and the Governor signed SB 83 (Budget Committee, 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. 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. In the absence of the IRP, the Governor and the Legislature should consider a DTSC governing board or other structural change to enhance transparency and accountability and regularly monitor the status of the IRP-suggested recommendations and performance metrics, as well as DTSC's ongoing initiatives and decision-making."

DTSC's fiscal situation: DTSC's funding comes primarily from the HWCA and TSCA. The HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. The HWCA funds DTSC's regulatory work overseeing hazardous waste management activities in the state. The TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee (which was established as a 2/3 vote tax). TSCA funds DTSC's work dealing with cleaning up contaminated properties, including federal Superfund sites and state orphan sites, as well as funding the Safer Consumer Products Program (also known as the Green Chemistry Program).

Both HWCA and TSCA have been operating with a structural deficit. Expenditures out of HWCA and TSCA have exceeded revenues for many years. The Budget Act of 2019-2020 provided the HWCA with $27.5 million from the General Fund to backfill the shortfall and maintain existing operations. The Governor's proposed budget for 2020-2021 provides a $12 million backfill from special funds for the TSCA and a backfill of approximately $19 million for the HWCA (also from special funds) as those accounts were projected to be insolvent in the budget year.

Governor Newsom's response to DTSC's fiscal situation: As part of the 2020-2021 budget the Newsom Administration proposed a reform package intended to resolve DTSC's governance and fiscal problems. The Administration proposed to remedy DTSC's fiscal instability by providing DTSC the ongoing authority to set and revise fees. The Administration included trailer bill language with its proposal to raise fees in the HWCA and TSCA; this language was proposed as a 2/3 vote measure. To address transparency and governance issues, the Administration proposed, also with trailer bill language, to create the Board of Environmental Safety. AB 1

similarly enacts the Board as well as raises the HWCA fees, nearly identical to the Administration HWCA proposal, except it leaves out the 2/3 vote increase for TSCA.

Governor Newsom proposes new DTSC reform package as part of 2021-2022 budget: The Governor's DTSC Reform package contains three major components: Establishing a Board of Environmental Safety; Fee Reform; and, Programmatic Reform.

The Governor is proposing to create a five-member Board with the members of the Board appointed by the Governor. The Chairperson of the Board would be full-time and the remaining Board members would be half-time. The Board would: set fees and fee rates; decide permit appeals for hazardous waste facilities; provide opportunities for public comment on DTSC's permit and remediation decisions; review and approve the DTSC Director's annual priorities and performance metrics; provide long-term goals for DTSC's programs; and, provide an annual performance review of the DTSC Director. Along with the Board, this proposal establishes an Ombudsperson to receive and evaluate complaints and suggestions regarding any action, program, or policy of DTSC.

The Governor is proposing a major overhaul of DTSC's fee structure. The proposal is designed to produce sufficient revenue to eliminate the need to provide General Fund revenues to close DTSC's baseline funding gap; pay the costs associated with the Board, support staff, and Ombudsperson; provide for an additionally $59 million in revenue to support anticipated near-term staffing needs, likely beginning in 2022; and, begin to establish a prudent reserve. Additionally, the proposal eliminates three fees under the HWCA (disposal fee, manifest user fee, and EPA ID fee); restructures the generator fee into a generation and handling fee; establishes a per ton rate for the generation and handling fee; raises and sets a new base rate for the facility fee; and, eliminates all of the exemptions except the exemption for small quantity generators (those that generate less than 5 tons per year). This fee reform proposal also includes changes to the Environmental Fee. The proposal permanently eliminates the fee for businesses with less than 100 employees, freezes the fee for businesses with 100-499 employees (this fee can change if the Board raises the fee in the future); and, more than triples the fee for businesses with 500 or more employees.

The Governor's proposal includes programmatic changes. The proposal establishes a hazardous waste management plan (Plan) to be presented to the Board. Within the Plan would be recommendations to establish hazardous waste reduction goals; update DTSC's pollution prevention program; and, reduce the risk of exposure to communities threatened by releases of hazardous waste. Additionally the Governor's proposal includes changes to strengthen financial assurance requirements for permitted hazardous waste facilities and establishes accountability requirements for DTSC's permitting of renewal applications for hazardous waste facilities.

How does the Governor's new DTSC reform compare to AB 1?: One of the major changes to the Governor's DTSC Reform package is the inclusion of programmatic reform, which is very similar to (almost identical to) the policy changes proposed in AB 1. For the most part, the differences between the two proposal's programmatic reforms are largely technical in nature. Additionally, both proposals creating the Board are very similar, but there is one big difference, the Governor's Board proposal gives the Board the ability to increase fees, while AB 1 does not convey this authority to the Board. Instead, AB 1 creates a Fee Task Force that would look at all aspects of funding the department and would require the Secretary of CalEPA to propose fees in a manner to sustain DTSC's programs. The Governor's proposal does not contain a fee task

force. When it comes to the fee changes, the proposals are very similar with a few significant differences: AB 1 is only proposing fee changes to the HWCA fees (and these are almost identical to the Governor HWCA fee changes). AB 1's fees do not contain any exemptions and are majority vote regulatory fees. The Governor's HWCA fees do contain one exemption, for small quantity generators, and are coupled with the Environmental Fee changes as a 2/3 vote tax.

AB 1 builds upon the oversight work done by the Legislature by bringing some transparency to DTSC's decision-making process. Holding public meetings to discuss regulatory work, the status of cleanup sites, or why a permit decision has been delayed for a decade or longer will at least provide stakeholders with access to information they otherwise would not have. Managing hazardous waste is a complex and potentially dangerous task; incorrect handling of certain hazardous wastes could pose significant threats to human health and safety and the environment. Ensuring compliance with state and federal hazardous waste laws is one DTSC's core regulatory functions. The Legislature has seen many bills over the last several years that deal with changes or reforms to DTSC; while the Governor and the Director of DTSC change, the problems seem to continue. While there has been progress by DTSC in some areas, is it time for a bigger change? AB 1 seeks to answer this question by adding a policy setting and oversight Board over DTSC. The Board envisioned within AB 1 would provide the public with transparency to DTSC's major permitting and cleanup decisions to address the perceived lack of transparency, which is a major concern cited by virtually all stakeholders of DTSC. Additionally, this bill gives the Board some early direction to help focus DTSC's efforts on improving its permitting of hazardous waste facilities as well as improving its ability to safely and efficiently oversee the cleanup of contaminated sites. AB 1 also stabilizes the funding for DTSC's hazardous waste regulatory work while setting up a stakeholder process to address DTSC's long-term fiscal situation.

Arguments in Support: According to the California Council for Environmental & Economic Balance (CCEEB), "As you may be aware, CCEEB has worked closely and in good faith over the past two years with Assemblywoman Garcia and the Assembly on meaningful reform of DTSC, most notably via her AB 995 (2020) which CCEEB was pleased to support following amendments to address some of the key concerns and priorities of our members. While much work remains, CCEEB supports AB 1 as the first step to meaningfully address issues raised by CCEEB and other stakeholders about the transparency, accountability, responsiveness and timeliness of DTSC across its program areas. And while CCEEB supports AB 1, we would note that additional work remains ahead of us to ensure the provisions of AB 1, and more, address the fundamental operational, regulatory and fiscal concerns with the Department."

Arguments in Opposition: None on file.

Related Legislation:

1) AB 732 (Quirk). Increases the rates of the Environmental Fee in an amount sufficient to close the structural deficit within TSCA and provide base funding to support the Site Mitigation Program and Safe Consumer Products Program. This bill is pending action in the Assembly Environmental Safety and Toxic Materials Committee.

2 AB 995 (C. Garcia, 2020). Would have created the Board of Environmental Safety (Board) within the California Environmental Protection Agency (Cal/EPA) to provide policy direction to and oversight of the Department of Toxic Substances Control (DTSC). Raises

and recasts existing fees within the Hazardous Waste Control Account (HWCA) to fill a projected deficit of approximately eighteen million dollars. This bill was vetoed by the Governor.

2) AB 2094 (Kalra, 2018). Would have required DTSC to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters. This bill was held in the Senate Appropriations Committee.

3) AB 2345 (Reyes, 2018). As it was heard before the ESTM Committee, would have made statutory changes to improve the process for the permitting of hazardous waste facilities. This bill was later amended to require the California Energy Commission to require each large electrical corporation to establish a tariff or tariffs that provide for bill credits for electricity generated by eligible renewable generating facilities and exported to the electrical grid. This bill was held in Senate the Rules Committee.

4) AB 2606 (Fong). Would have required DTSC to process a hazardous waste facility renewal permit in an expedited manner if DTSC determines certain conditions apply. This bill was held in the Senate Appropriations Committee.

5) AB 248 (Reyes, 2017). Would have made statutory changes to improve the permitting process for hazardous waste facilities. This bill was vetoed by the Governor.

6) AB 1179 (Kalra, 2017). Would have required DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and for hazardous waste generators and transporters. This bill was vetoed by the Governor.

7) SB 774 (Leyva, 2017). As it was heard before the ESTM Committee, would have created the California Toxic Substances Board within DTSC to provide oversight of California's hazardous waste management and the remediation of contaminated sites. This bill was later amended to require the California State University Trustees to oversee a competitive process to award funds to the Wildland and Wildland Urban Interface Wildfire Research Grant Program and appropriate $5 million from the General Fund to the Trustees in order to oversee the program. This bill was vetoed by the Governor.

8) SB 812 (De León, 2014). Would have modified the permitting process and public participation requirements for hazardous waste facilities. Would have established a Bureau of Internal Affairs to oversee DTSC and investigate departmental misconduct and a DTSC Citizen Oversight Committee to receive and review allegations of misconduct. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Professional Scientists
California Council for Environmental & Economic Balance (CCEEB)
Clean Harbors Environmental Services, Inc.
Clean Water Action

Environmental Working Group (EWG)
Los Angeles County Chief Executive Office
Military Services in California
Natural Resources Defense Council (NRDC)
Waste Management & Affiliated Entities

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1250 (Calderon) – As Introduced February 19, 2021

SUBJECT: Water and sewer system corporations: consolidation of service

SUMMARY: Establishes timeframes by which the California Public Utilities Commission (CPUC) is required to take action on a request for water system consolidation. Specifically, **this bill**:

1) Provides that the provisions of the bill shall be known, and may be cited, as the Consolidation for Safe Drinking Water Act of 2021.

2) Makes legislative findings about public and state small water system compliance with drinking water standards and about the merit of water system consolidations.

3) Provides that it is the intent of the Legislature to promote timely consolidation of water systems to provide an adequate supply of safe drinking water for all residents of California.

4) Defines "consolidate" as joining two or more public water systems, state small water systems, or affected residences not served by a public water system into a single public water system.

5) Authorizes a water or sewer system corporation to file an application and obtain approval from the CPUC through an order authorizing that water or sewer system corporation to consolidate with a public water system or state small water system.

6) Requires the CPUC to approve or deny a filed application for consolidation within eight months of its filing, unless the CPUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline by up to four months.

7) Authorizes the CPUC to grant additional extensions of four months or less.

8) Authorizes a water or sewer system corporation, for a consolidation valued at $5 million or less, to file an advice letter and obtain approval from the CPUC through a resolution authorizing that water or sewer system corporation to consolidate with a public water system or state small water system.

9) Authorizes the executive director or the director of the division of the CPUC having regulatory jurisdiction over the water or sewer system corporation, if a filed advice letter is uncontested, to give approval.

10) Requires the CPUC, absent incomplete documentation, to approve or deny the advice letter within 120 days of its filing by the applicant water or sewer system corporation unless the executive director makes a written determination that the deadline cannot be met, including

findings as to the reason, and issues a response extending the deadline by up to 60 days. Authorizes the executive director to grant additional extensions of 60 days.

11) Authorizes the CPUC, for a consolidation valued at $5 million or less, to designate a different procedure if it determines that the consolidation warrants a more comprehensive review than the advice letter procedure provides.

12) Requires the CPUC, for purposes of a consolidation valued at $5 million or less, to prioritize cases in which a water or sewer system corporation consolidates with a public water system or state small water system that is subject to a citation or a compliance order for failure to meet primary or secondary drinking water standards.

13) Requires a water or sewer system corporation seeking to consolidate with a public water system or state small water system pursuant to the provisions of the bill to give adequate public notice and provide adequate opportunities for public participation, as determined by the CPUC.

14) Clarifies that the provisions of the bill do not require a public water system or state small water system that is not subject to the jurisdiction, control, and regulation of the CPUC to obtain authorization from the CPUC before consolidating with a public water system or state small water system.

EXISTING LAW:

1) Declares that it is 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)

2) Defines "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. (Health & Safety Code (HSC) § 116275 (h))

3) Defines "state small water system" as a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. (HSC 116275 § (n))

4) Requires the State Water Resources Control Board (State Water Board), in administering Safe Drinking Water Act 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)

5) 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))

6) Makes legislative findings that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and that it is in the interest of the people of the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems. (HSC § 116760.10 (h))

7) Prohibits a public utility from selling, leasing, assigning, mortgaging, or otherwise disposing of, or encumbering the whole or any part of its property necessary or useful in the performance of its duties to the public, or by any means whatsoever, directly or indirectly, merge or consolidate its other property, or franchises or permits or any part thereof, without first having either secured an order from the CPUC authorizing it to do so for qualified transactions valued above $5 million, or, for qualified transactions valued at $5 million or less, filed an advice letter and obtained approval from the CPUC authorizing it to do so. (Public Utilities Code (PUC) § 851 (a))

8) Authorizes, if the advice letter is uncontested, the executive director or the director of the division of the CPUC having regulatory jurisdiction over the utility to approve the request. (PUC § 851 (a))

9) Requires the CPUC to determine the types of transactions valued at $5 million or less that qualify for advice letter handling. Authorizes, for a qualified transaction valued at $5 million or less, the CPUC to designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. (PUC § 851 (a))

10) Requires, absent protest or incomplete documentation, the CPUC to approve or deny the advice letter within 120 days of its filing by the applicant public utility. (PUC § 851 (a))

11) States that no public utility, subsidiary, affiliate or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold any part of the capital stock of any other public utility without having been first authorized to do so by the CPUC. (PUC § 852)

12) States that the intent of the Legislature is that transactions with monetary values that materially impact a public utility's rate base should not qualify for expedited advice letter treatment. (PUC § 853 (d))

13) Prohibits a person or corporation from merging, acquiring, or controlling, either directly or indirectly, any public utility organized and doing business in this state without first securing authorization to do so from the CPUC. Provides that any merger, acquisition, or control without that prior authorization from the CPUC is void. (PUC § 854)

14) Requires the CPUC, in a ratesetting case (which includes acquisitions), to resolve the issues raised in the scoping memo within 18 months of the date the proceeding is initiated, unless the CPUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. (PUC § 1701.5 (a))

15) Authorizes the CPUC to specify in a scoping memo a resolution date later than 18 months from the date the proceeding is initiated, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date. (PUC § 1701.5 (b))

16) Provides that the Legislature finds and declares all of the following:
   a) Public water systems are faced with the need to replace or upgrade the public water system infrastructure to meet increasingly stringent state and federal safe drinking water laws and regulations governing fire flow standards for public fire protection;
   b) Increasing amounts of capital are required to finance the necessary investment in public water system infrastructure;
   c) Scale economies are achievable in the operation of public water systems; and,
   d) Providing water corporations with an incentive to achieve these scale economies will provide benefits to ratepayers. (PUC § 2719)

17) Requires the CPUC to use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation. (PUC § 2720)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1250 dictates the timelines for small water system consolidations, when approval by the California Public Utilities Commission (CPUC) is needed. Currently, many smaller water systems in our state cannot afford, or are unable to raise rates sufficiently, to make the improvements necessary to provide clean drinking water to residents. These systems may decide to sell their system, customer owners of a mutual water company vote to sell their system, or after residents in a municipality vote to have their system consolidated into another water utility. Unfortunately, some consolidation applicants have experienced CPUC approval backlogs, waiting as long as 24 months before they can provide clean water to a community. This bill will set deadlines for the completion of small water system consolidations, requiring CPUC consolidation approval or denial within 8 months for applications and 4 months for advice letters."

Human right to water: In 2012, by enacting Assembly Bill (AB) 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 established state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply issues, contaminants, costs of treatment and distribution systems, climate change, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors continue to challenge progress in implementing the Human Right to Water.

Drinking water contamination in disadvantaged communities: The February 2018, University of California (UC) Davis report, "*The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities*," summarizes drinking water issues facing rural disadvantaged communities as follows.

"In California, lack of access to clean, safe, and affordable water is a threat to public health and well-being, and violates the state's newly codified Human Right to Water. In low-income communities located outside city boundaries (known as disadvantaged unincorporated communities or DUCs), drinking water is often unsafe to drink. In many such localities, drinking water is contaminated by industrial by-products (usually associated with agriculture, oil and gas production, transportation, and manufacturing) and compromised by inadequate wastewater treatment and disposal systems, as well as naturally occurring toxic substances like arsenic and uranium. Many DUC residents in the San Joaquin Valley pay a triple penalty to obtain safe water: they bear the health costs of unsafe drinking water; they purchase that unsafe water at high costs; and they must also purchase "substitute" water—typically expensive bottled water—for drinking and cooking.

Lack of access to clean, safe and affordable drinking water has a racial and ethnic component: the vast majority of DUC residents are people of color who also face cumulative impacts from environmental contamination brought on by proximity to air pollution, pesticides, toxic facilities and waste disposal. Without city governments to directly represent their interests and provide essential services, residents of DUCs have been systematically deprived of access to important means of democratic governance."

While the 2018 UC Davis report focuses on DUCs in the San Joaquin Valley, the findings are consistent with a more expansive 2013 State Water Board report and a 2012 UC Davis report that found 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 2018 UC Davis report also found that a significant number of DUC residents live close to an existing and water-quality compliant community water system that could provide clean drinking water.

While public attention over the past decades has largely focused on drinking water issues facing rural disadvantaged communities, urban disadvantaged communities also face challenges with access to safe, reliable, affordable drinking water, especially when serviced by small water systems. A 2021 UCLA Water Resources Group report, *The Human Right to Water in Poor Communities of Color*, identifies 64 community water systems in Los Angeles County alone that serve disadvantaged or severely disadvantaged populations. These 64 water systems have 281,000 connections and serve approximately one million people, nearly 10% of the population of Los Angeles County in 2019. The report notes that 29 of these systems serve disadvantaged communities of color in Southern Los Angeles County. While clearly not all of these systems have trouble providing clean drinking water, the very public problems facing smaller urban systems like Sativa and Maywood, which consistently fail to provide palatable water and face technical, managerial, and financial constraints, highlight the fact that disadvantaged communities statewide can face challenges to accessing safe, reliable, and affordable drinking water.

Providing safe, affordable 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 for 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.

Consolidation of water systems: Consolidation is the joining of two or more water systems, which often consists of a smaller system being absorbed into a larger water system. One way to do this is through physical consolidation. Managerial consolidations also exist. Managerial consolidation is when a small water system becomes part of a larger water system for all managerial purposes, but continues to use their original water supply and distribution system.

According to the United States Environmental Protection Agency, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating public water systems and extending service from existing public water systems to communities and areas that currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability.

Oversight of California's drinking water systems: No single authority is responsible for oversight of all the different types of water systems; however, the State Water Board has general authority over the water quality and drinking water functions of the state government. Under the federal and California Safe Drinking Water Acts, the State Water Board administers provisions relating to public water systems and regulates drinking water to protect public health, including, among other things, adopting primary drinking water standards and permitting public water systems.

The State Water Board is responsible for the regulatory oversight of ~7,500 public water systems. A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. Many people think of public water systems as large city or regional water suppliers, but they also include small housing communities, businesses, and even schools and restaurants that provide water. A public water system is not necessarily a public entity, and most public water systems are privately owned.

The State Water Board notes that approximately 92 percent of public water systems serve less than 1,000 connections. Small public water systems are often less resilient to natural disasters, such as drought and fire, have more difficulty adjusting to regulatory changes, and may struggle to fund infrastructure maintenance and replacement due to poor economies of scale and lack of staff. As a result, the State Water Board supports water partnerships whenever feasible. Water partnerships can take many forms, including: local resource sharing, physical consolidation, managerial consolidation, and full regionalization. In 2015, SB 88 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to require that system to consolidate with, or receive an extension of service from, a compliant public water system.

CPUC: The CPUC is responsible for ensuring that California's investor-owned water utilities deliver clean, safe, and reliable water to their customers at reasonable rates. The CPUC's Water Division regulates more than 100 investor-owned water and sewer utilities under the CPUC's jurisdiction providing water service to about 16 percent of California's residents. Approximately

95 percent of that total is served by nine large water utilities, each serving more than 10,000 connections and about six million customers. Annual water and wastewater revenues under the CPUC's regulation total $1.4 billion.

Systems not regulated by the state: The State Water Board notes that there are about 60,000 people in the state served by approximately 1,350 state small water systems and approximately 1,080,000 people served by about 326,000 domestic wells, none of which are regulated by the state.

Coordination between the State Water Board and the CPUC: According to the draft *2020 Drinking Water Plan*, "As a result of shared responsibility for the regulation of investor-owned utilities with respect to water quality, the CPUC and the State Water Board's [Division of Drinking Water] have maintained a formal memorandum of understanding (MOU) to ensure consistency and coordination between the agencies' two programs. This memorandum defines common objectives, principles, agency responsibilities, and project coordination. The staff of the two agencies routinely meet to ensure that the goals of the MOU are being complied with, and to coordinate the activities between the two agencies. The large (Class A) investor-owned utilities have acknowledged the coordination between the two organizations and may participate in joint meetings with the staff of both agencies. The CPUC can impose stricter water quality requirements; an example being the CPUC requirement that Class A utilities implement the distribution system operations plan of the California Water Works Standards, which is a more stringent requirement than that which [Division of Drinking Water] mandates."

Consolidation of water systems regulated by the CPUC: California has a rich legislative history of supporting water system consolidations, though most of the discussions, at least in the Assembly Environmental Safety and Toxic Materials Committee, have focused on water systems regulated by the State Water Board outside of the jurisdiction of the CPUC. Water system consolidations under the jurisdiction of the CPUC are considered acquisitions and mergers, and the statutory and regulatory authority for, and processes for approval of, those transactions differs greatly from that of the State Water Board.

On the CPUC side, the Legislature enacted the Public Water System Investment and Consolidation Act of 1997 to provide water corporations with an incentive to acquire public water systems needing improved infrastructure in order to meet increasingly stringent safe drinking water laws and regulations. The Act does this by requiring the CPUC to use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation, and to use this value for rate setting.

Applications versus advice letters: State law requires public water utilities to obtain CPUC approval to merge with or buy another public utility or to sell useful utility property. The CPUC processes utility transactions, such as acquisitions, in two ways: by application or by advice letter.

Acquisitions through application undergo a formal legal process overseen by an administrative law judge. These formal proceedings take a considerable amount of time because they usually involve complex issues that require analysis, they provide an opportunity for public meetings and public participation workshops, and they consider recommendations by affected parties through the judicial process. Statute requires the CPUC in a ratesetting case (which includes acquisitions), to resolve the issues raised in the application within 18 months of the date the

proceeding is initiated, unless the CPUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. Statute also authorizes the CPUC to specify a resolution date later than 18 months from the date the proceeding is initiated, if that application includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date.

Acquisitions through advice letter generally involve small, non-controversial, unprotested transactions where rates for existing and acquired customers will not be adversely impacted. Advice letters do not provide an opportunity for public meetings or public workshops, and the time frame to protest an advice letter is shorter than it is for an application. Statute requires the CPUC to determine the types of transactions valued at $5 million or less that qualify for advice letter handling, and authorizes, for a qualified transaction valued at $5 million or less, the CPUC to designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Statute requires, absent protest or incomplete documentation, the CPUC to approve or deny the advice letter within 120 days of its filing by the applicant public utility.

The CPUC can, and has in recent years, required water utilities to file applications for acquisitions of municipal water systems instead of advice letters, particularly if there may be rate impacts for either the existing system's customers or the acquired system's customers. For example, recent acquisitions of municipal water systems, such as Bellflower and Montebello, were requested through formal applications because they have been protested, raise important policy questions, and could result in increased rates for existing customers.

Since 2007, 29 investor-owned utilities have acquired water systems. In addition, there are five proposed acquisitions in progress: four by application (East Pasadena, Warring Water Co., Bellflower, and Montebello) and one by advice letter (Robbins Water System in Sutter County).

Current expedited process for small water systems with health and safety violations: The CPUC's current rules provide a process to help expedite the acquisition of small water utilities with failing water systems, referred to as "Inadequately Maintained and Operated Small Water Systems (IMOSWS)." Per CPUC decision 99-10-064, an advice letter process can be used to transfer assets of IMOSWS instead of the application process. An IMOSWS is defined as any water system serving fewer than 2,000 customers that is subject to a compliance order or citation related to drinking water standards. According to the CPUC, this process has been utilized recently with the consolidation of the Rolling Hills Water System with the Bakman Water Company in Madera.

The Public Advocates Office: The Public Advocates Office (PAO) is an independent organization within the CPUC that advocates on behalf of utility ratepayers to achieve safe and reliable water service at the least possible cost. The PAO often is the only party in water acquisition proceedings other than the acquiring investor-owned water utility and the owner of the water system being sold.

The PAO conducts a thorough public interest review of investor-owned water utility applications seeking approval to acquire other water systems. Staff from the PAO spend an average of 985 person-hours per year evaluating proposed acquisitions to determine whether they are in the public interest and in the interest of utility ratepayers.

The PAO states that it supports expedited CPUC treatment only of proposed acquisitions of troubled, inadequately operated and maintained small water utilities (i.e., with 2,000 or less customer connections) that are subject to an outstanding order of the State Water Board to implement improvements to address violations in the state's safe drinking water standards. They note that the advice letter process is the CPUC's expedited process and is appropriate in these circumstances, and that the PAO has previously supported such acquisitions. They state that the CPUC's formal application process is necessary for rigorous evaluation of strategic business acquisitions to ensure they are in the public interest and transparent to all ratepayers that will be impacted.

Other delays in approval: The average length of time for the CPUC to approve water system acquisitions over the last five years appears to be around 400 days; however, two acquisitions over the last five years have stretched to over 500 days and two other to more than 700 days. The volume of work on the CPUC; limited staff resources dedicated to water utility issues; the workload of the administrative law judges; public meetings, public participation, and other requirements involved in contested proceedings; as well as the nuances of individual acquisition cases, can impact approval time. In addition, the parties in the proceeding, usually the purchasing utility and the PAO, discuss at length the purchase price. The PAO has a duty to protect ratepayer dollars, and so they scrutinize the transactions happening before the CPUC. Under an expedited advice letter process, the PAO, and even CPUC staff, would have less of an opportunity to complete a thorough vetting of consolidation transactions.

According to the California Water Association, the sponsor of the bill, "Unfortunately, many recent acquisition proceedings took well over a year to reach final decision. Even small acquisitions of less than $2 million stretched on much longer than the 245-day period. Some causes of the delays are unique to individual proceedings; others are not. The Public Advocates Office (PAO) vigorously opposes most acquisition applications, even where there is little basis for doing so and final decisions reject the PAO's arguments. The discovery, hearings, briefing, comments, and other requirements involved in such heavily contested proceedings are key factors in why some recent applications have taken years rather than months. The Commission recently implemented more extensive application disclosure requirements intended to "streamline" the application process. It is, however, not clear that such requirements will move the process along more expeditiously. Those requirements may simply add more matters for the parties to disagree over, which may only further delay proceedings."

This bill: This bill requires the CPUC to approve or deny a filed application for consolidation within eight months of its filing, unless the CPUC makes a written determination that the deadline cannot be met. It also authorizes a water or sewer system corporation, for a consolidation valued at $5 million or less, to file an advice letter and obtain approval from the CPUC through a resolution authorizing that consolidation. The bill then requires the CPUC, absent incomplete documentation, to approve or deny the advice letter within 120 days of its filing, unless the executive director makes a written determination that the deadline cannot be met. The bill authorizes the CPUC to grant additional extensions for both the application and advice letter processes delineated in the bill. The bill also authorizes the CPUC, for a consolidation valued at $5 million or less, to designate a different procedure if it determines that the consolidation warrants a more comprehensive review than the advice letter procedure provides. Ultimately, this bill will shorten the timeframe, from 18 to 8 months, by which the CPUC must approve or deny applications for acquisitions, and will make it easier for investor

owned utilities to process water consolidation transactions with smaller systems through the advice letter process instead of application.

Policy considerations: As mentioned previously, the Legislature, and, indeed, this Committee, has a long history of supporting policy changes that would increase, and even require, the consolidation of drinking water systems to improve access to safe, clean, affordable, accessible, and reliable drinking water, especially to disadvantaged communities. This Committee has jurisdiction over, and a special interest in, the water quality, public health, and environmental justice aspects of public water system consolidation policy; however, provisions of this bill specific to CPUC acquisitions, including potential impacts on rates for existing system's customers or the acquired system's customers; the appropriateness of reduced transparency and limited opportunities for public participation in acquisitions; and, limiting the time that the PAO and CPUC have thoroughly examine public impacts, need to be further vetted. The potential for improved access to clean and safe drinking water needs to be balanced against potential impacts to ratepayers and loss of opportunities for meaningful public participation. It is also unclear if and how the provisions of the bill are duplicative to the IMOSWS process.

Double referral. Should this Committee approve this bill, it will be re-referred to the Assembly Committee on Utilities and Energy for their consideration.

Recent related legislation:

1) SB 1096 (Caballero, 2020). Would have established timeframes by which the CPUC is required to take action on a request for water system consolidation. SB 1096 was substantially similar to AB 1250. The referral of SB 1096 to the Senate Committee on Environmental Quality was rescinded due to the shortened 2020 Legislative Calendar.

2) AB 1751 (Chiu, 2019). Would have established timeframes by which the CPUC is required to take action on a request for water system consolidation. The final version of AB 1751 was substantially similar to AB 1250. AB 1751 was held on the suspense file in the Senate Committee on Appropriations.

3) AB 508 (Chu, Chapter 352, Statutes of 2019). Makes changes to statute related to the State Water Board's authority to order the consolidation of drinking water systems.

4) SB 200 (Monning, Chapter 120, Statutes of 2019). Establishes the Safe and Affordable Drinking Water Fund to provide $130 million per year that will be used to develop and implement sustainable solutions for small systems with violations of drinking water standards. Authorizes the money to be spent on operations and maintenance costs, cost of consolidating with larger system, provision of replacement water, and funding for administrators to run the small systems.

5) AB 2339 (Gipson, Chapter 866, Statues of 2018). Authorizes the City of El Monte, the City of Montebello, and the City of Willows to sell its public water utility through an alternative simplified procedure for the purpose of consolidating with another public water system.

6) AB 2501 (Chu, Chapter 871, Statutes of 2018). Provides additional authority to the State Water Board to order consolidations.

7) AB 272 (Gipson, 2017). Would have allowed a city to sell its small community water system for the purpose of consolidating with another public water system without obtaining voter approval. AB 272 was held on the suspense file in the Assembly Appropriations Committee.

8) SB 552 (Wolk, Chapter 773, Statutes of 2016). Expands the State Water Board's authority by enabling it to, in order to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, contract with a competent administrator to provide managerial and technical expertise to that system, if sufficient funding is available. Authorizes the State Water Board to order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.

9) SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015). Authorizes the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system).

REGISTERED SUPPORT / OPPOSITION:

Support

California Water Association (SPONSOR)
Association of California Water Agencies (ACWA)
California American Water
California Water Service
Great Oaks Water Company
Liberty Utilities
Regional Water Authority
San Gabriel Valley Water Company

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 480 (Carrillo) – As Amended March 30, 2021

SUBJECT: Hazardous substances

SUMMARY: Authorizes a Unified Program Agency (UPA), in the event of a hazardous waste spill or release that the UPA reasonably determines poses an imminent and substantial endangerment to public health, to take actions to protect the health and safety of the public. Specifically, **this bill**:

1) Requires the reporting by a handler of a hazardous material, hazardous waste, or hazardous substance release or threatened release to the Certified Unified Program Agency (CUPA) as follows:

   a) For facilities subject to the Hazardous Materials Release Response Plans and Inventory statute, upon discovery of any release or threatened release, the reporting shall be made immediately upon discovery; and,

   b) For facilities not subject to the Hazardous Materials Release Response Plans and Inventory statute, upon the discovery of an actual release that results in an emergency response. Defines "emergency response" as the activation of any public emergency response personnel who are responsible for response, mitigation, or recovery activities in a hazardous material incident where public health, public safety, or the environment may be affected.

2) Requires the handler, an employee, authorized representative, agent, or designee of those entities, to provide state, city, or county fire or public health or safety personnel and emergency response personnel with access to the handler's facility if there is a release or threatened release of hazardous material, hazardous waste, or a hazardous substance.

3) Authorizes a CUPA, if a release, spill, escape, or entry, as defined, of hazardous waste or a hazardous substance occurs and the CUPA, in consultation with the local health officer, reasonably determines that the release, spill, escape, or entry poses an imminent and substantial endangerment to public health, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the air or environment, to take the following actions to protect the health and safety of the public:

   a) Issue an order to the responsible party to immediately suspend or discontinue the activity causing or contributing to the release, spill, escape, or entry of the hazardous waste or hazardous substance. Requires the order to remain in effect until the CUPA determines that the imminent and substantial endangerment to public health has been abated.

   b) Coordinate with other appropriate regulatory agencies that may take any other action necessary to protect the public health, including, but not limited to, environmental investigations and temporary relief to, or relocation of, affected individuals.

c) An action taken by the CUPA under this section shall be supported by written findings, including evidence of local health officer consultation and be consistent with criteria developed by CUPAs to determine whether an imminent and substantial endangerment to public health has occurred.

4) Requires the facility or responsible party to be provided an opportunity to appeal an order pursuant to this section.

5) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

EXISTING LAW:

1) Authorizes the Department of Toxic Substances Control (DTSC) to temporarily suspend any permit, registration, or certificate issued by DTSC prior to any hearing if DTSC determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. (Health and Safety Code (HSC) § 25186.2)

2) Defines "Certified Unified Program Agency" or "CUPA" as the agency certified by the Secretary of the California Environmental Protection Agency (CalEPA) to implement the unified program within a jurisdiction. (HSC § 25404 (a)(1)(A)

3) Defines "Unified Program Agency" or "UPA" as the CUPA to implement or enforce a particular Unified Program element. The UPAs have the responsibility and authority to implement and enforce the unified program requirements and the regulations adopted to implement those. (HSC § 25404 (a)(1)(C))

4) Defines a "Unified program facility permit" as a permit issued pursuant to the unified program. (HSC § 25404 (a)(6))

5) Requires the Secretary of California Environmental Protection Agency (CalEPA) to adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program. (HSC § 25404 (b)

5) Authorizes the Director to declare a health emergency or local health officer to declare a local health emergency in the jurisdiction or any area thereof affected by the threat to the public health, if a release, spill, escape, or entry of waste occurs and the Director or the local health officer reasonably determines that the waste is a hazardous waste or medical waste, or that it may become a hazardous waste or medical waste because of a combination or reaction with other substances or materials, and the Director or local health officer reasonably determines that the release or escape is an immediate threat to the public health, or whenever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent. (HSC § 101080)

6) Requires each County Board of Supervisors to appoint a county health officer. (HSC §101000)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 480 will strengthen local authority to take immediate action against local threats to the public's health and safety, including the ability for local jurisdictions to direct a facility or a portion of a facility to temporarily discontinue the operations that caused an exposure.

AB 480 is a direct response to concerns and frustrations expressed by community members who are impacted by toxic pollution. This bill is imperative to ensure that local authorities, closest to our communities, can expeditiously act in the interest of our constituents and better protect the public's health and safety."

Certified Unified Program Agencies (CUPAs): The Secretary of the CalEPA oversees the "unified hazardous waste and hazardous materials management" regulatory program (Unified Program). Currently, there are 81 CUPAs in California. The Unified Program consolidates and coordinates the following six existing programs:

1) Hazardous Materials Release Response Plans and Inventories (Business Plans);
2) California Accidental Release Prevention (CalARP) Program;
3) Underground Storage Tank Program (USTP);
4) Aboveground Petroleum Storage Act (APSA);
5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; 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 the CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying UPAs. 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 the Hazardous Material Release Response Plan (Business Plan) and the Area Plans for Hazardous Materials Emergencies.
3) Office of the State Fire Marshal (Office): The Office evaluates and provides technical assistance for the APSA Program.
4) State Water Resources Control Board (State Water Board): The State Water Board evaluates and provides technical assistance for the USTP under the USTP.
5) Department of Toxic Substances Control (DTSC): The Department of Toxic Substances Control evaluates and provides technical assistance for the Hazardous Waste Generator Program, including Onsite Treatment (Tiered Permitting).

Roles of CUPAs: UPAs or CUPAs regulate thousands of businesses; however, there are business facilities that pose a danger to public safety by operating outside of the regulatory framework and fail to obtain, renew, or pay their Unified Program permits. Additionally, CUPAs have the authority to issue an administrative enforcement order to require businesses to comply with regulations, make corrective actions, and quarantine waste, among other actions. However, CUPAs do not have the enforcement authority to require businesses to immediately discontinue or close facilities or portions of facilities even if they know the business poses an imminent danger to public health and safety. Without swift and strong enforcement actions and penalties against businesses that have not complied with the permitting requirements, public health and safety is left vulnerable.

Explosion at a metal recycling facility in Maywood: In June of 2016, there was a three-alarm fire on the 3500 block of Fruitland Avenue which ripped through a pair of commercial buildings, sparking a series of strong explosions, and sending a thick plume of noxious smoke over the region. Firefighters found flames shooting through the roofs of two structures, one of which was a metal-recycling plant. Crews began pouring water on the flames, but the oxygen from the water created a chemical reaction with the burning magnesium, one of the metals being stored at the facility and awaiting recycling, producing what one fire official described as "fireballs" and setting off strong explosions. Several hundred people had to be evacuated from nearby homes and businesses.

Dangerous conditions imposed by tons of chemicals at the site hampered firefighters' efforts to douse the flames. Firefighters were ordered to use a breathing apparatus because of the fumes from the magnesium and a number of other substances at the business. A hazardous-materials team was sent to the scene, and officials from the South Coast Air Quality Management District (SCAQMD) were notified. The SCAQMD later issued a smoke advisory, saying odor from the plume of smoke was prompting complaints across the region.

Hexavalent Chromium release in Southern California: Commonly referred to as chromium 6, hexavalent chromium is toxic and inhaling the substance for long periods increases the risk of lung and nasal cancers, as well as other respiratory issues. Exposure to the substance can also occur through eating or drinking contaminated foods or water and through direct skin contact.

In February 2017, the City of Long Beach began working with the SCAQMD after community members along the Paramount border began to complain of metallic smelling emissions. Additional complaints from the public began to surface regarding plants in Paramount, including complaints about Lubeco, a metal finishing plant in Long Beach. The city and the SCAQMD jointly conducted an inspection in Northeast Long Beach, where two facilities had been highlighted as potential sources for the spikes in hexavalent chromium leading to the petition against Lubeco. As a result of this investigation, the SCAQMD filed a petition for Lubeco, Inc. to abate or close down its operations.

Additionally, in December 2017, the SCAQMD ordered a Paramount metal finishing facility to shut down all operations and processes that emit hexavalent chromium. The SCAQMD ordered Anaplex Corp. to cease operating the equipment temporarily. The order remained in effect for a week while air tests could be conducted to show the levels of hexavalent chromium have decreased to acceptable levels.

These examples of dangerous threats from business handling hazardous chemicals highlight the dangers that CUPAs confront. Additionally, in these examples the CUPAs did not have authority to order a business to cease operations temporarily like the SCAQMD.

CUPAs have to respond to a variety of urgent and emergency situations dealing with hazardous substances and chemicals that pose an immediate risk to human health and safety.

However, they do not have authority to order a business to temporarily cease operations even if the conditions at the business pose an immediate threat to human health and safety.

AB 480 provides CUPAs with authority similar to other agencies with similar responsibilities such as SCAQMD and DTSC in order to best protect the human health and safety of the people of California. Absent this authority, a CUPA would need to persuade a local district attorney to go to court to seek an injunction against the offending business, even while the dangerous conditions persist.

Legislative history: Over the last couple of years, the legislature has considered iterations of the proposed policy in AB 480.

The first was AB 1500 (Carrillo, 2019), which would have authorized a UPA to temporarily suspend a facilities permit, including shutting down a facility, if conditions at the facility pose an imminent or substantial threat to public health and safety, and it would have authorized a local health officer to take necessary protective action to protect public health and safety from specified releases of hazardous substances that pose an imminent or substantial endangerment to the public.

AB 1500 was heard in this committee, but was ultimately held on the Senate Appropriations Committee Suspense File.

AB 2298 (Carrillo, 2020) was subsequently introduced in 2020 as a reintroduction of AB 1500. It was referred to this committee, but not heard due to the pandemic.

Which brings us to AB 480: AB 480 has been revised to address concerns raised over AB 1500 and AB 2298.

However, a lingering concern is over how AB 480, as drafted, would be interpreted in practice. The regulated industry has expressed concerns about the discretion this bill would give to CUPAs to determine when an event is substantive and imminent. Industry groups suggest that, to prevent arbitrary and capricious closures around subjective statutory language, the bill should further clarify how a CUPA will determine when an event is both substantive and imminent.

Understanding "imminent and substantial": DTSC issued guidance titled "Imminent and/or Substantial Endangerment Policy, Procedure and Guidelines" that "establishes policy and procedure and provides guidance to Department of Toxic Substance Control … staff on utilizing our Imminent and/or Substantial Endangerment (I/SE) Determination and Order and Remedial Action Order (RAO) and Consent Order (CO) authority." That guidance defines "imminent," "substantial," and "endangerment," and that guidance has been available and relied upon since 1993.

Consequently, the terms "imminent and substantial" have been enacted throughout the Hazardous Waste Control Law, and it is used within contexts that comport to DTSC's guidance and define how the terms are to be interpreted without explicit definitions.

A recent example includes AB 1075 (Alejo, Chapter 460, Statutes of 2016), which established standards for what constitutes a repeat, serious hazardous waste facility violation and specified the enforcement action to be taken by DTSC. That law, HSC 25186.5, specifically states, "The department may temporarily suspend any permit, registration, or certificate issued pursuant to this chapter prior to any hearing if the department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment."

Another section, HSC § 25199.8 (Chapter 1354, Statutes of 1989) provides that "a court may enjoin a lead or responsible agency from approving a permit or license if the court finds that the approval would result in an imminent or substantial endangerment of the public health or the environment or if there are other compelling reasons that the action or proceeding should not be stayed."

Furthermore, CUPAs have current authority related to removal or remedial actions determined to be necessary to address an imminent and substantial endangerment based upon a finding by the CUPA. (HSC § 25187)

Lastly, to provide abundant clarity on when a CUPA shall invoke its authority to determine a hazardous waste release is both imminent and substantial, AB 480 reads, "(e) Notwithstanding other law, if a release, spill, escape, or entry, as described in paragraph (2) of subdivision (b) of Section 101075, of hazardous waste, as defined in Section 101075, or a hazardous substance, as defined in Section 25316, occurs and the UPA, in consultation with the local health officer, reasonably determines that the release, spill, escape, or entry poses an imminent and substantial endangerment to public health, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the air or environment,"

Therefore, the bill would specify that in making the "imminent and substantial endangerment" determination, the CUPA would have to consider factors, such as carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the air or environment.

It is important to note that the goal of AB 480 is to protect the public from an ongoing spill or release of a hazardous material or hazardous substance. The authority this bill proposes to give to CUPA's is already convened to similar regulatory entities such as DTSC and local air pollution control districts. CUPA's also have similar regulatory expertise to DTSC and local air districts, in overseeing facilities that handle hazardous materials and hazardous wastes.

Due process: Comparable to AB 1500, this bill provides a business with an opportunity for due process to appeal the shutdown or closure of the activities resulting in a release. The bill does not, however, determine what the process should be for timelines, requisite responses, and so forth. The way the bill is drafted, the appeals process would be at the discretion of the individual CUPAs to determine the appropriate procedure. Any appeal process, whether prescribed by the bill or established by the individual CUPAs, would have to comply with the Due Process requirements under the 14th Amendment of the US Constitution and Section 7 of Article I of the California Constitution. The author may wish to consider prescribing a uniform appeals process for the bill, though that is not necessary for the implementation of these provisions.

Release thresholds: Industry groups, including the California Business Properties Association, express concern that AB 480 lacks clear threshold provisions and that including hazardous substances releases under AB 480 without any language or reference to guide reporting and action by the CUPA may result in a mere drop of a regulated chemical triggering agency notification requirements that could result in a facility closure.

The bill clearly states that the CUPA, in consultation with the local health officer, must "reasonably determine that the release, spill, escape, or entry poses an imminent and substantial endangerment to public health." The term "reasonable" means having sound judgment; to be fair, sensible, and judicious. The term "reasonable" is used throughout California law and is widely understood. If both a CUPA *and* a local health officer determine a release or spill is at a threshold that a business owner feels is not reasonable, then the aforementioned appeals process is available to that business owner to refute the CUPA's determination.

Arguments in support: The California Association of Environmental Health Officers writes, "While California has established a robust hazardous materials and waste regulatory system, we have experienced numerous incidences over the past several years that warrant this additional public health protection. These incidences include releases of hexavalent chrome in Paramount and Long Beach, a large fire and magnesium release in Maywood and releases from a chemical facility in Richmond … We continue to work with all interested parties to ensure that this is a fair and effective measure that balances the rights of our communities to be protected from hazardous chemicals with the interests of the regulated businesses to safely operate their permitted facilities."

The California Fire Chiefs Association and Fire Districts Association of California write, "AB 480 is an important measure to allow multiple regulatory authorities to collaborate and prevent or reduce the emission of hazardous substances that pose a substantial risk to the health and safety of the public."

Arguments in opposition: The California Council for Environmental and Economic Balance writes, "Given the bill provides significant and expanded authority to UPAs to close facilities, it is imperative that the regulated community have clarity regarding scope, what constitutes a release that rises to the level of "imminent and substantial endangerment," much less what "imminent" and "substantial" mean in the context of a facility's obligations to ensure the safety of its employees and surrounding communities."

Related legislation:

1) AB 2298 (Carrillo, 2020). Would have authorized a CUPA to suspend, revoke, or withhold issuance of a unified program facility permit if conditions exist at the unified program facility that the UPA considers, consistent with criteria or factors, which the bill would require the UPAs in the state to develop, and are supported by written findings, an imminent or substantial endangerment to public health, safety, or the environment, and would have required the permittee to immediately discontinue operating that facility or function of the facility to which the permit or permit element applies until the endangerment is abated and the permit or permit element is issued, reinstated, or reissued. Would have authorized a UPA to suspend, revoke, or withhold the issuance of any unified program facility permit if a permittee of a facility, or the owner or operator, as appropriate, fails to take appropriate action to abate an endangerment. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

2) AB 1500 (Carrillo, 2019). Would have authorized a CUPA to temporarily suspend a facility's permit, including shutting down a facility, if conditions at the facility pose an imminent or substantial threat to public health and safety. It would also authorize a local health officer to take necessary protective action to protect public health and safety from specified releases of hazardous substances that pose an imminent or substantial endangerment to the public, in accordance with prescribed due process. This bill was held on the suspense file in the Senate Appropriations Committee.

3) AB 1646 (Muratsuchi, Chapter 588, Statutes of 2017). Requires an implementing agency to, in coordination with local emergency management agencies, unified program agencies, local first response agencies, and the public, develop an integrated alerting and notification system to be used to notify the community surrounding a petroleum refinery in the event of an incident at the refinery.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Environmental Health Administrators (CAEHA) (CO-SPONSOR)
County of Los Angeles Board of Supervisors (CO-SPONSOR)
California Fire Chiefs Association (CFCA)
California State Association of Counties
Clean Water Action
Fire Districts Association of California (FDAC)
Physicians for Social Responsibility - Los Angeles

Opposition

American Chemistry Council
California Business Properties Association
California Council for Environmental & Economic Balance (CCEEB)
California Fuels and Convenience Alliance
California Independent Petroleum Association (CIPA)
California Manufacturers & Technology Association
Chemical Industry Council of California
Industrial Environmental Association
Western Independent Refiners Association
Western States Petroleum Association

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 652 (Friedman) – As Amended March 29, 2021

SUBJECT: Product safety: juvenile products: chemicals: perfluoroalkyl and polyfluoroalkyl substances

SUMMARY: Prohibits, on or after July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain intentionally added perfluoroalkyl and polyfluoroalkyl substances or PFAS. Specifically, **this bill**:

1) Defines juvenile product as a product designed for use by infants and children younger than 12 years of age, including, but not limited to, a booster seat, changing pad, child restraint systems for use in motor vehicles and aircraft, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, portable hook-on chair, stroller, and sleeping products.

2) Defines sleeping products as assembled products designed or intended primarily for children 12 years of age to nap or sleep on, including, but not limited to, polyurethane foam mats, pads, or pillows, that may be covered or upholstered, including, but not limited to, any of the following items:
    a. Portable foam nap mats;
    b. Soft-sided portable cribs, which are framed enclosures with mesh or fabric side panels, floor, and foam padding;
    c. Playpens, which are framed enclosures, hard or soft sides, flooring, and foam padding;
    d. Play yards, which are portable framed enclosures with a foam pad bottom that may also have an attached bassinet;
    e. Infant travel beds, which are lightweight portable sleeping accommodations with a foam pad;
    f. Portable infant sleepers, which are portable accommodations with a foam pad that may be easily assembled and disassembled by folding or collapsing the structure;
    g. Bassinets, which are small beds or baskets with a foam pad and raised edges designed primarily for infants;
    h. Nap cots, which are narrow, elevated bed stands with a foam pad on top of the cot;
    i. Infant sleep positioners, which are mats with side bolsters or wedges used to elevate an infant's head or keep an infant in a desired position while sleeping. The mats, side bolsters, or wedges may contain foam pads;
    j. Bedside sleepers, which are framed enclosures with a foam pad that can attach to an adult-sized bed and are designed primarily for babies;
    k. Co-Sleepers, which are small foam structures placed in an adult-sized bed, designed to keep a baby from shifting in the bed and to allow a baby and adults to nap or sleep together in the same bed; and,
    l. Baby or toddler foam pillows, which are foam pillows designed primarily for babies or toddlers.

3) Defines "intentionally added perfluoroalkyl and polyfluoroalkyl substances or PFAS" as the presence or use of PFAS in a product or product component that has a functional or technical effect in the product or product component and is measured in total organic fluorine.

4) Defines "perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

5) Prohibits, on and after July 1, 2023, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances or PFAS.

6) Requires manufacturers to use the least toxic alternative when replacing PFAS chemicals in juvenile products.

7) Prohibits manufacturers from replacing PFAS chemicals with carcinogens or reproductive toxicants as identified by the United States Environmental Protection Agency (US EPA) or as listed in the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

EXISTING LAW:

1) Prohibits a person from selling or distributing in commerce any new juvenile products, mattresses, or upholstered furniture or any reupholstered furniture that contain, or a constituent components of which contains, covered flame retardant chemicals above specified levels. (Health and Safety Code (HSC) § 19101)

2) Prohibits a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use in this state, and prohibits a person from using in this state, class B firefighting foam containing intentionally added PFAS chemicals. (HSC § 13061-13062)

3) Prohibits the sale, manufacture or distribution in commerce of toys, child care articles or products that can be placed in a child's mouth that contain di-(2-ethylhexyl) phthalate, dibutyl phthalate, or benzyl butyl phthalate, as defined. (HSC § 108937)

4) Prohibits the sale, manufacture, or distribution of a bottle or cup or a liquid, food or beverage in a can, jar, or plastic bottle that contains bisphenol A if the item is primarily intended for children three years of age or younger. (HSC § 108940)

5) Prohibits the manufacture, sale and distribution of toys that are contaminated with any toxic substance. (HSC § 108555)

6) Requires the Department of Toxic Substances Control (DTSC) to adopt regulations to establish a process to identify and prioritize chemicals and chemical ingredients that may be considered chemicals of concern, as specified. (HSC § 25252)

a) Identifies, pursuant to regulation, chemicals that are candidates for the above-described process that exhibit a hazard trait and/or an environmental or toxicological end-point and meet certain criteria. (22 California Code of Regulations (C.C.R.) § 69502.2)

b) Requires, pursuant to regulation, DTSC to consider various factors when identifying and implementing regulatory responses for priority products, such as public health and environmental protection. (22 C.C.R. 69506)

7) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern and potential alternatives to those chemicals of concern to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern and potential regulatory responses that DTSC may take after the alternatives analysis is completed. Specifies, but does not limit, regulatory responses that DTSC can take, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"There is ample evidence of the harm that the PFAS chemicals have caused to human health. The best known cases are from pollution of drinking water with the older long-chain PFAS (such as the original Teflon chemical) causing cancer and birth defects. The two American manufacturers of PFAS, 3M and Chemours (the latter a spin-off from the original company DuPont), discontinued production of the long-chain PFAS and instead created a multitude of shorter chain versions. They claim PFAS is now safe, but the evidence does not support their claim. We have provided the committee with the science that shows that exposure to PFAS remains a great concern, and significantly, to babies and children. Last year, this Legislature found PFAS to be a great health concern causing significant pollution of our drinking water as caused by the use of PFAS fire-fighting foam. We passed SB 1044 to ban the use of this foam in almost all cases. Today, we are asking the Legislature to ban its use in a range of products designed for use by babies and small children, and to be sure, these uses are nonessential applications of this toxic chemical.

It is helpful to look back at AB 2998, passed and signed into law in 2018, in understanding the approach in this proposed bill, AB 652. Assemblymember Bloom's bill banned the use of flame retardant chemicals in these same juvenile products, stating they were harmful to the health of children and non-essential uses. Quoting from the analysis by this committee in April 2018, Assemblymember Bloom gave this rationale for why the committee should pass the bill:

> 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.
>
> 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 chemical is dangerous to the general population, infants and firefighters have especially high exposure risks….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.

If one substitutes the phrase "PFAS chemicals" for "flame retardants," the rationale for AB 2998 fits AB 652 very well.

Opponents to AB 652 may argue that this bill is unnecessary because we have DTSC's Safer Consumer Product Program to relieve the Legislature of handling chemical/toxics issues such as this. While that program is doing good work, it is proceeding at an exceedingly slow pace. We could wait another decade before they *might* get to the issue of PFAS in these juvenile products. Meanwhile, our children are being exposed to unseen, tiny amounts of a chemical that will stay in their bodies for years and possibly causing a host of serious health issues.

I want to emphasize that DTSC has already made findings about the use of PFAS in consumer products in two Priority Products profiles, for carpets and rugs and for plant-based food packaging. They lay out the science that confirms that these chemicals are a threat to the health of Californians and must be removed or substituted with safer alternatives. The same science and conclusions apply to the use of PFAS in the consumer products included in AB 652."

Perfluoroalkyl and polyfluoroalkyl substances, also known as PFAS chemicals: PFAS chemicals are a class of man-made chemicals that do not occur naturally in the environment and have been widely used in manufacturing since the 1940s. PFAS chemicals are technically defined as having at least one fully fluorinated carbon atom (a carbon atom bonded to fluorine instead of hydrogen). The bond between carbon and fluorine is one of the strongest bonds known in organic chemistry. PFAS chemicals have many of these bonds, which makes them extremely stable. This stability is useful in manufacturing applications because they can withstand high heat and create durable products. However, this stability also makes PFAS chemicals extremely difficult to break down, so they are persistent in the environment and are sometimes referred to as "forever chemicals."

PFAS chemicals have been used widely in industrial and consumer product applications. They are frequently used as surface coating and protectant due to their unique ability to repel water, dirt, oil and grease. As a result, PFAS chemicals can be found in consumer products including carpets, clothing, furniture upholstery, paper packaging for food, and other materials (e.g., cookware) that are designed to be waterproof, stain-resistant, or non-stick. PFAS chemicals have been used in firefighting foam, electronics and semiconductor manufacturing, oil and gas exploration, and other industrial processes.

As of September 2020, over 9,000 PFAS chemicals were included in the US EPA's Master List of PFAS Substances. There may be more unknown PFAS chemicals that are formed through the degradation of other PFAS chemicals or that are manufactured but not listed in existing databases. Due to the large number of chemicals included, PFAS chemicals have a wide range of chemical properties and uses. DTSC has divided PFAS Chemicals into four categories: perfluoroalkyl acids (PFAAs), PFAA precursors that can eventually degrade into PFAAs, perfluoropolyethers (PFPEs), and fluoropolymers.

Of all PFAS chemicals, PFAAs are the most studied and can be divided into long-chain and short-chain chemicals. Long-chain PFAAs have longer molecules with six fluorinated carbons or more (although this varies slightly based on the type of PFAA). Long-chain PFAAs include perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), which have been the most extensively studied and regulated PFAS chemicals to date. PFOA is most commonly known as the chemical used to produce Teflon and PFOS was formerly used in Scotchgard™. PFOS and PFOA are extremely persistent in soil and water due to their resistance to environmental degradation processes, and can bioaccumulate and persist in human and animal tissues. As long-chain PFAAs have been phased out, short-chain PFAAs like perfluorobutanesulfonic acid (PFBS) have been substituted in their place.

PFAA precursors are chemicals that can degrade into PFAAs in the environment or be converted into PFAAs within living organisms. By some estimates, 85% of known PFAS chemicals are PFAA precursors.

Both PFPEs and fluoropolymers are not known to degrade to PFAAs, except under heated conditions (e.g. combustion). However, PFAAs are used in the manufacturing process of fluoropolymers and can occur as impurities in fluoropolymers.

Exposure to PFAS chemicals: The main route of exposure to PFAS is through ingestion, by eating or drinking contaminated food or liquid or swallowing contaminated household dust. PFAS exposure can also occur by breathing air containing PFAS or using products treated with PFAS. Consumer products have been a large source of exposure to these chemicals for most people because PFAS is prevalent in many widely used products and can be released into household dust, air, and food. However, it should also be noted that environmental exposure through air and drinking water has become an increasing concern due to the persistence and accumulation of PFAS chemicals like PFAAs in the environment. PFAAs and their precursor chemicals are known to be widespread in air, household dust, soil, water (including drinking water), and human food. For example, groundwater contamination typically has been associated with industrial facilities where these chemicals were manufactured or used in products like firefighting foam, or in areas near landfills that accept items containing PFAS. Because of their presence and persistence in multiple environmental compartments, exposure to PFAS chemicals can continue decades after their release into the environment.

Health Impacts of PFAS chemicals: According to the Agency for Toxic Substances and Disease Registry, research suggests that exposure to PFAS may lead to increased cholesterol levels, decreased vaccine response in children, changes in liver enzymes, increased risk of high blood pressure in pregnant women, decreased infant birth weights, and increased risk of kidney or testicular cancer.

PFAS chemicals accumulate in protein-rich tissues such as blood, liver, brain, kidney, lung, and muscle. While early studies suggested that bioaccumulation of PFAS chemicals depended on carbon chain length (i.e. whether they were long-chain or short-chain), newer science continues to raise concerns about a wide range of PFAS chemicals. The Scientific Guidance Panel, a panel of expert scientists from outside of state government that provide scientific advice to the California Office of Environmental Health Hazard Assessment (OEHHA) found that, "given the wide range of new PFAS chemicals, many more replacement chemicals, precursors, or breakdown products might also be detected in human blood or other biological samples."

Risks of PFAS to Infants and Children: According to DTSC, children below the age of 12 are more susceptible to adverse health impacts from exposures to chemicals (like PFAS) than adults. Childhood is a critical period for development and exposure to environmental contaminants during this time can have adverse consequences later in life. In addition, infants and toddlers may be particularly at risk because they have increased hand-to mouth behavior, they spend a significant amount of time spent crawling and in close proximity to indoor dust sources, and they have a higher amount of skin relative to the size of their body, which can increase their potential exposures to chemicals in consumer products. Multiple studies have found significant associations between PFAS exposure and adverse immune outcomes in children, including decreased immune response to vaccines. According to "Exposure to Perfluorinated Alkyl Substances and Health Outcomes in Children: A Systematic Review of the Epidemiologic Literature" by Rappazzo et al., there is evidence for positive associations between prenatal and/or childhood exposure to PFAS and adverse health effects in children that include dyslipidemia (abnormally elevated cholesterol or fats in the blood), suppressed immune system response, impaired kidney function, and delayed onset of menstruation.

Long-chain PFAS Voluntary Phase-out: Since these chemicals have been used in an array of consumer products, scientists have found PFOA and PFOS in the blood of nearly all people tested. Between 2000 and 2002, PFOS was voluntarily phased-out of production in the US by its primary manufacturer, 3M. Beginning in 2006 other manufacturers began to voluntarily limit the number of ongoing uses of PFOA as part of the US EPA's PFOA Stewardship Program. According to the Centers for Disease Control and Prevention's (CDC) National Health and Nutrition Examination Survey (NHANES), blood levels of PFOA and PFOS declined by more than 60% and 80%, respectively, from 1999 to 2014, likely as a result of this phase out. However, the results of the NHANES survey still reported detectable PFAS levels in nearly all participants at the end of that period.

Short-chain PFAS Raise Concerns of Regrettable Substitutions: Short-chain PFAS chemicals are widely used as alternatives to long-chain PFAS chemicals like PFOA and PFOS. The limited but growing data on these newer chemicals indicate that they are of similar structure and still may have toxic impacts. While they do not persist in the human body for as long as long-chain PFAS chemicals, they can still accumulate in plants (and thus enter the food chain), they are more mobile in water and more difficult to treat, and they are more likely to be released from consumer products into the air. Short-chain PFAS have been linked with toxic impacts in animal and *in vitro* studies, including reproductive toxicity and development toxicity.

Federal action on PFAS: In May 2016, the US EPA issued a lifetime health advisory for PFOS and PFOA for drinking water, advising municipalities that they should notify their customers of the presence of combined PFOS and PFOA levels over 70 parts per trillion (ppt) in community water supplies. The US EPA recommended that the notification of customers include information on the increased risk to health, especially for susceptible populations. As part of this advisory, the US EPA stated, "exposure to PFOA and PFOS over certain levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes)." The US EPA's health advisories are non-enforceable, non-regulatory, and provide technical information to states' agencies and other public health officials.

Following the US EPA National Leadership Summit on PFAS in 2018, the US EPA released their formal PFAS Action Plan in 2019. The Action Plan describes long- and short-term actions planned to evaluate whether and how to regulate PFAS under various federal programs, but does not set forth any regulatory measures. In December 2019, the US EPA issued interim recommendations for PFOS and PFOA in groundwater at sites under federal cleanup programs. The 2020 appropriations package passed in December 2019 appropriated funds for the US EPA to establish maximum contaminant levels (MCLs), health-protective drinking water standards to be met by public water systems, under the Safe Drinking Water Act (SDWA) for PFAS, and to designate PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The US EPA is also reviewing a Toxicity Assessment for PFBS.

State action on PFAS: California has undertaken efforts to address PFAS chemicals across several state agencies. All PFAS chemicals are Candidate Chemicals under the DTSC Safer Consumer Products (Green Chemistry) Program, because they exhibit a hazard trait and/or an environmental or toxicological endpoint, and the entire class was added by the California Environmental Contaminant Biomonitoring Program (also known as Biomonitoring California) to its list of Priority Chemicals. DTSC has proposed regulations to list carpets and rugs containing PFAS as Priority Products. A Priority Product is a consumer product identified by DTSC that contains one or more Candidate Chemicals that have a hazard trait that can harm people or the environment. Every three years, the Safer Consumer Products Program issues a Priority Product Work Plan, which describes the categories of consumer products the program will investigate to identify Priority Products. DTSC has also proposed adding treatments containing PFAS for use on converted textiles or leathers such as carpets, upholstery, clothing and shoes, as Priority Products. Additionally, DTSC included PFAS in food packaging as part of their 2018-2020 Priority Product Work Plan and have proposed investigating children's products in their Draft Priority Product Work Plan for 2021-2023. For this purpose, DTSC has defined children's products in accordance with the definition set forth by the Washington State Legislature (RCW 70A.430.010). This includes toys; children's cosmetics; children's jewelry; any product designed or intended by the manufacturer to help a child with sucking or teething; to facilitate sleep, relaxation, or the feeding of a child; and children's car seats. The Washington State definition additionally excludes children's and consumer electronic products as well as other items.

Under Proposition 65, OEHHA listed PFOA and PFOS as chemicals known to the state to cause reproductive toxicity. At the request of the State Water Resources Control Board (State Water Board), OEHHA is in the process of establishing public health goals, concentrations of contaminants in drinking water that pose no significant acute or chronic health risks, for PFOS and PFOA. The State Water Board has also requested that OEHHA evaluate whether some PFAS chemicals should be grouped together for regulatory purposes.

Regulating PFAS as a Class: DTSC's Safer Consumer Products Program has adopted a rationale of regulating PFAS chemicals as a class. This rationale was presented in an article entitled "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program" and was published in *Environmental Health Perspectives* in February 2021. The scientists acknowledge that there are many different types of PFAS chemicals and divide them into four categories (PFAAs, PFAA precursors that can eventually degrade into PFAAs, perfluoropolyethers (PFPEs), and fluoropolymers).

Despite the differences among PFAS, the authors state, "Based on the currently available science, we have concluded that it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach…The available information demonstrates that all PFAS chemicals or their degradation, reaction or metabolism products have at least one hazard trait of concern to the State of California: environmental persistence…In the case of PFAS, we believe that all members of the class have a potential for significant and widespread adverse impacts due to their extremely high environmental persistence, coupled with growing evidence for human and ecological health hazards for impurities, metabolites and degradation products of the subset commonly used in consumer products."

Other authors have also recently made the case for managing PFAS as a chemical class, including in "Strategies for grouping per- and polyfluoroalkyl substances (PFAS) to protect human and environmental health" published in June 2020, in *Environmental Science: Processes & Impacts* and in "Scientific Basis for Managing PFAS as a Chemical Class" also published in June 2020, in *Environmental Science & Technology Letters.*

In response to the concept of regulating PFAS as a class, industry scientists published a comment in *Environmental Science & Technology Letters,* suggesting, "Before a class-based approach for PFAS like that suggested by Kwiatkowski et al. is adopted, the process should follow the well-justified path of previous regulatory actions and rely on an extensive scientific evaluation of each PFAS subgroup and compounds within."

Similarly, the chemical industry points to a 2018 paper published in Integrated Environmental Assessment and Management by industry researchers that argues that fluoropolymers, which are high molecular weight polymers, have unique properties that constitute a distinct class within the PFAS group and that fluoropolymers satisfy widely accepted assessment criteria to be considered as "polymers of low concern" (PLC). The paper contends that fluoropolymers are distinctly different from other polymeric and nonpolymeric PFAS and should be separated from them for hazard assessment or regulatory purposes.

PFAS in Juvenile Products: PFAS chemicals including PFAA precursors are used in children's products as a surface coating to make products water and dirt resistant. One study (Wu et al., 2020) tested 18 car seats and found that nearly all of the fabric and foam samples analyzed contained PFAS. The study's authors raised concerns that PFAA precursors present in the fabric of several of the car seats could degrade into PFAAs (which have more toxic properties) under UV light. Another study (Zheng et al., 2020) tested nap mats in seven childcare centers based in Seattle, Washington. PFAS chemicals were found in both the foam and the vinyl covers for the nap mats, suggesting that this could have originated from the manufacturing process. The authors note that children are unlikely be exposed to PFAS in nap mats through their skin because sheets are often used with these products, but that these consumer products could contribute to PFAS found in household dust, which young children ingest. They also tested samples of the dust in the daycares and raised concerns that 75% of the PFAS detected in the dust are PFAA precursors that could break down into more toxic PFAAs. A report by the Commission for Environmental Cooperation also found PFAS in baby bibs, children's waterproof clothing, and baby mats, pads and blankets.

Alternatives to PFAS in Juvenile Products: Using PFAS as a surface coating for ease of cleanup has been characterized by scientists as a non-essential use of PFAS in a 2019 review titled "The concept of essential use for determining when uses of PFASs can be phased out" by Cousins et

al. This review suggests banning PFAS chemicals in non-essential uses regardless of available substitutes. For other applications, like outdoor clothing and gear that requires waterproofing, the review authors suggest that PFAS are substitutable. A variety of non-PFAS and biodegradable and water repellant coatings have been developed for water proofing textiles. Outdoor gear manufacturers have also developed new woven materials using water repellant fibers as well. These alternatives require further study to ensure that there are no toxic impacts, but they do not share the same exposure hazards (i.e. persistence) as PFAS chemicals.

Chemical Bans and the Safer Consumer Products Program: In 2008, the State of California enacted AB 1879 (Feuer, Chapter 559, Statutes of 2008) to mandate that a regulatory process be established for identifying and prioritizing chemicals of concern in consumer products and to create methods for analyzing alternatives to existing hazardous chemicals. DTSC established a regulatory process, pursuant to the Safer Consumer Product (SCP) regulations, for identifying and prioritizing chemicals of concern in consumer products and evaluating safer alternatives to those chemicals. This approach provides science-based criteria and procedures for identifying and evaluating alternatives with the objective of replacing chemicals of concern with safer chemicals and avoiding the use of substitute chemicals that pose equal or greater harm.

Opponents of AB 652 argue that this bill would ban a broad class of chemicals in a wide range of products stating, "Such decisions should be grounded in science and evaluation of particular product-chemical combinations, as would be the case under the Department of Toxic Substances Control's Safer Consumer Products regulation."

While the intent of AB 1879 was to establish a robust and thorough regulatory process rooted in science, not politics, to consider exposure to chemicals in consumer products, it has long been recognized that DTSC does not have the resources to evaluate all chemicals in every consumer product application. While the SCP Program set up a regulatory framework to scientifically evaluate product safety, the permutations of product and chemical combinations are virtually limitless; DTSC has the formidable task of identifying Priority Products, from tens of thousands of products in commerce, which product/Candidate Chemical combinations to research and for which an analysis to identify safer alternatives must be conducted,.

It is important to note that when AB 1879 passed, that bill did not provide DTSC with any funding to implement the SCP Program. DTSC has had to use existing staff, redirected off of other work to implement the SCP Program. As noted in the Governor's proposed budget for fiscal year 2021-2022, the account that funds the SCP Program, the Toxic Substances Control Account, has been operating with a structural deficit for a number of years and this year needs approximately $13 million of General Fund just to maintain a base level of service. Additionally, in early 2021, DTSC released a detailed workload analysis, highlighting their lack of resources to fully implement various programs including the SCP Program. DTSC also stated that if the increased revenue that is proposed in the Governor's budget does not get approved, then their work on any new products under the SCP Program will slow down to potentially one or two Priority Products being identified each year. There is nothing in the statutes that, in any way, preclude the Legislature from taking legislative action on consumer products or use of chemicals in consumer product applications and on more than once occasion a DTSC Director has testified before this committee that the Legislature continues to retain its authority to ban or restrict the sale of any product. When there is science to support a change in state policy to protect public health, the Legislature, made of up elected officials responsible to their constituents, can respond to that science more expeditiously than DTSC. Since AB 1879 was

enacted, the Legislature has enacted policies on various chemical-product applications, including a ban on flame retardants in children's products (AB 2998, Chapter 924, Statutes of 2018); labeling requirements on upholstered furniture that contains flame retardants SB 1019 (Leno, Chapter 862, Statutes of 2014); a ban on BPA in toddler sippy cups and bottles (AB 1319, Butler, Chapter 467, Statutes of 2011); a ban on the sale of jewelry with cadmium at certain levels AB 929 (Pavley, Chapter 313, Statutes of 2010); and, a ban on the sale of brake pads containing copper in exceedances of certain levels SB 346 (Kehoe, Chapter 307, Statutes of 2010).

DTSC, in fact, wrote in support of AB 1319 (Butler) stating: "DTSC does not believe that the regulations should ever be viewed as excluding action that the Legislature might take to address specific product related concerns that are brought to its attention." In the next three years, DTSC may consider listing children's products as a Priority Product. However, since AB 1879 was enacted in 2008, the SCP has moved deliberatively, with three product-chemical combinations currently finalized and three more in various stages of the program. But, not a single product has yet completed the alternatives analysis. In addition, no product has yet been subject to a regulatory response, which could include a ban on a chemical, a restriction on a chemical, labeling requirements, or no action at all. State scientists, including those at DTSC and OEHHA, have determined that PFAS chemicals definitively pose a threat to human health at various levels and in various capacities. AB 652, in recognition of the state's science, is proposing to protect the public from the risks of PFAS chemicals more expeditiously than DTSC is currently able.

Possibility of Regrettable Substitutions: AB 652, as written, includes some protection to prevent substituting PFAS chemicals with chemicals that will have toxic effects. By prohibiting the entire class of PFAS chemicals from being intentionally added to juvenile products, this bill prevents substituting one PFAS chemical with another PFAS chemical. However, the current language would not prevent substituting PFAS with chemicals that would have exposure traits or health impacts similar to those of PFAS.

To prevent regrettable substitutions, the author specifies that manufacturers should use the least toxic alternative and prohibits the use of alternatives that are known carcinogens or reproductive toxicants as identified by the US EPA or listed under Proposition 65. This language is well-intentioned, but failed to prevent regrettable substitutions when it as used in AB 1319 (Butler, 2011) which banned bisphenol A in beverage containers used by young children. The concerns with bisphenol A primarily involved endocrine disrupting activity. The prohibition on substituting carcinogens and reproductive toxicants did not prevent manufacturers from replacing bisphenol A with bisphenol S and bisphenol F. As bisphenol S and bisphenol F have been used in more products and further studied, it appears they exhibit similar endocrine-disrupting behavior and may be just as harmful.

Similarly, the health impacts of PFAS chemicals are not limited to reproductive toxicity and carcinogenicity and, of the thousands of known PFAS chemicals, only two (PFOA and PFOS) are currently found on the Proposition 65 lists. Banning PFAS chemicals and circumventing the alternatives assessment process that would be required by DTSC's Safer Consumer Products Program could result in substituting PFAS with chemicals that have similar health impacts (e.g. immunosuppression) or exposure hazards (e.g. extreme persistence). An option the author may wish to consider is prohibiting or discouraging the use of chemicals listed on DTSC's Candidate Chemicals list, which includes 23 authoritative lists (including the Proposition 65 lists). These authoritative lists identify chemicals based on hazard traits and potential exposure concerns and

reflect the best available knowledge on chemicals of concern to California, federal agencies, Canada, and the European Union. The authoritative lists include additional relevant health impacts, including neurotoxicity and endocrine disruption, as well as chemicals that are known to be persistent and bioaccumulative.

Definition of Juvenile Products: AB 652 defines juvenile products broadly as "products designed for use by infants and children under 12 years of age, including, but not limited to," a list specified above. Compared to AB 2998 (Bloom, 2018), AB 652 expands the definition of juvenile products by including child restraint systems (e.g. car seats) and because it does not include exemptions that were specified in AB 2998. AB 2998 specifically excluded products that were not primarily for use in the home, parts and products used in vehicles and aircraft, and consumer electronics from the definition of juvenile products and further exempted electronic components of juvenile products and any associated casings from the prohibitions.

PFAS chemicals are used in the manufacture of semiconductors because they are one of the few chemicals that can withstand the high temperatures involved in the manufacturing process. Fluoropolymers may also be used to insulate wires and cable in electronics, including medical equipment. Fluoropolymers can also be used as a coating in medical devices like needles, catheters, stents, and components of dialysis machines. In general, fluoropolymers (including those in implanted devices) do not pose a risk to the consumer and may be considered an essential use of PFAS depending on the specific application. The author may wish to consider excluding certain products for which the use of PFAS chemicals is considered essential, specifically medical devices and electronic products. This could be accomplished by exempting medical devices as defined in Section 4023 of the Business of Professions Code, which are also not considered to be consumer products under the purview of the Safer Consumer Products Program. An additional exemption for consumer electronics and electronic components of juvenile products could be modeled after the exemptions included in AB 2998.

Definition of Intentionally Added PFAS: AB 652 defines intentionally added PFAS as PFAS that has a "functional or technical effect in the product or product component and is measured in total organic fluorine." The need to demonstrate intent may complicate enforcement and could create an incentive for manufacturers to maintain plausible deniability when it comes to the presence of PFAS in feed stocks and raw materials. Meanwhile, the health impacts of PFAS remain the same regardless of the source. To provide further clarity and ensure that juvenile products do not contain high levels of PFAS, the author may wish to amend the definition of intentionally added PFAS to align with the definition proposed in AB 1200 (Ting, 2021). The definition in AB 1200 includes "the presence of PFAS in a product or product component at or above 100 parts per million, as measured in total organic fluorine."

This bill: AB 652 uses the knowledge and science that has evolved regarding PFAS and leverages the legislative model created by AB 2998 to protect children—a population that is both more susceptible to adverse health impacts from PFAS exposure and more likely to be exposed to PFAS through consumer products. In addition, this bill prohibits non-essential use of PFAS, which helps to reduce levels of PFAS in drinking water, waste streams, and the broader environment. However, modifications to this bill would help to: 1) ensure that PFAS chemicals are not substituted with other harmful chemicals, 2) protect essential uses of PFAS for which there are no feasible alternatives, and 3) ensure that the prohibition on PFAS can be enforced when substantial levels of PFAS are detected in juvenile products.

Arguments in Support of AB 652: A coalition of organizations including the sponsor, the Environmental Working Group, writes that they "support Assemblymember Friedman's AB 652, which prohibits PFAS chemicals from being used in a wide range of juvenile products, as defined. Simply put, the use of these chemicals is not essential for these products to be utilized, and their use results in exposure to toxic chemicals by our most vulnerable population.

PFAS have been linked to serious health problems, including cancer, hormone disruption, kidney and liver damage, thyroid disease, and immune system disruption. The entire class of PFAS chemicals has been recognized as chemicals of concern by a wide array of scientific experts at the state and federal level. Recent research suggests that PFAS may reduce the immune system's response to vaccinations, which in the midst of a pandemic, has compounded the medical, scientific and political concern. As part of their Safer Consumer Products program, the California Department of Toxic Substances Control has verified the science that shows potential harm to humans from PFAS, thus effectively refuting the industry's claim that the newer short-chain PFAS are safe compared to the older long-chain versions."

Arguments in Opposition of AB 652: The American Chemistry Council, the Advanced Medical Technology Association, the Auto Care Association, the California Chamber of Commerce, CAWA-Representing the Automotive Aftermarket Industry, the Chemical Industry Council of California, the International Sleep Products Association, and the Juvenile Products Manufacturers Association raised concerns including 1) that this bill bans a broad array of PFAS chemicals with diverse and differing chemistries, 2) that the definition of juvenile product as defined could impact electronics, outdoor apparel and equipment, toys and healthcare equipment that are marketed to children under 12, 3) that this bill sidesteps DTSC's Safer Consumer Products Program, and 4) that this bill could result in increased litigation due to a lack of enforcement mechanism. These organizations argue in opposition,

> "As drafted, AB 652 utilizes a general definition of "PFAS" that treats all of these chemistries the same, regardless of their distinct physical and chemical properties or if they are used in a product where potential exposure is minimal to non-existent. These properties define the risk the product poses to the user. A grouping approach is indiscriminate; it ignores potential indicators of health risk and may be cited as justification for use restrictions on many other products regardless of whether those actions would be beneficial or harmful to the public. Such decisions should be grounded in science and evaluation of particular product-chemical combinations, as would be the case under the Department of Toxic Substances Control's Safer Consumer Products regulation."

Related Legislation:

1) AB 1200 (Ting, 2021). Would prohibit the sale of food packaging that contains intentionally added PFAS; requires cookware manufacturers to label their product if it contains a chemical on specified lists; and prohibits a manufacturer from making a claim that the cookware is free of a chemical if the chemical belongs to a chemical group or class, as specified. Currently pending in the Assembly Committee on Environmental Safety and Toxic Materials.

2) SB 1044 (Allen, Chapter 308, Statutes of 2020). Prohibits the manufacture, sale, distribution, and use of class B firefighting foam containing PFAS chemicals, with some exceptions, and required notification of the presence of PFAS in the protective equipment of firefighters.

3) SB 1056 (Portantino, 2020). Would have required the State Water Board to establish an analytical laboratory method that can be used as a tool to assess the extent of PFAS contamination in drinking water, surface water, groundwater, and wastewater. This bill was held in the Senate Environmental Quality Committee.

4) AB 756 (C. Garcia, Chapter 162, Statutes of 2019). Authorizes the State Water Board to order one or more public water systems to monitor for PFAS chemicals and establishes a separate customer notification process as a result of any confirmed detection.

5) AB 841 (Ting, 2019). Would have required OEHHA to adopt a work plan to assess which substances in the class of PFAS substances should be tested as a risk to human health, and would require OEHHA, as part of the assessments, to determine which PFAS substances are appropriate candidates for notification levels to be adopted by the State Water Board. This bill was held in the Senate Environmental Quality Committee.

6) AB 2998 (Bloom, Chapter 925, Statutes of 2018). Prohibited a person or manufacturer from selling or distributing in commerce any new juvenile products, mattresses or upholstered furniture or any reupholstered furniture that contained flame retardant chemicals above specified levels.

7) AB 958 (Ting, 2018). Would have required a manufacturer of food packaging or cookware sold in the state to visibly disclose on an exterior location of the food packaging or cookware packaging a specified statement relating to the presence of PFAS. This bill was held on the Senate Floor.

8) AB 1319 (Butler, Chapter 467, Statutes of 2011). Prohibits the manufacture, sale, or distribution in commerce of any bottle or cup that contains bisphenol A at a specified level if that bottle or cup is intended for consumption by children 3 years old or younger.

REGISTERED SUPPORT / OPPOSITION:

Support

Environmental Working Group (SPONSOR)
7th Generation Advisors
Alliance of Nurses for Healthy Environments
American Academy of Pediatrics, California
American College of Obstetricians and Gynecologists District IX
Breast Cancer Prevention Partners
California Alliance of Nurses for Healthy Environments
California Municipal Utilities Association
California Nurses Association
California Product Stewardship Council
California Water Association
CALPIRG, California Public Interest Research Group
Center for Food Safety; the
Center for Public Environmental Oversight
Clean Water Action
Consumer Federation of California
Environment California

Facts: Families Advocating for Chemical & Toxins Safety
Friends Committee on Legislation of California
Los Angeles County Sanitation Districts
National Stewardship Action Council
Regional Water Authority
S.F. Bay Physicians for Social Responsibility
Safer States
San Francisco Department of the Environment

Opposition

Advanced Medical Technology Association (ADVAMED)
American Chemistry Council
Auto Care Association
California Chamber of Commerce
CAWA
Chemical Industry Council of California
International Sleep Products Association
Juvenile Products Manufacturers Association

Analysis Prepared by: Marika Nell / E.S. & T.M. /

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 762 (Lee) – As Amended March 30, 2021

SUBJECT: Hazardous emissions and substances: schoolsites: private and charter schools

SUMMARY: Requires charter schools and private schools to follow the same siting requirements as public schools for evaluating a schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste. Requires the evaluation, under the California Environmental Quality Act (CEQA), of a potential charter schoolsite to follow the same CEQA process as public schools.

EXISTING LAW:

1) Prohibits the governing board of a school district from approving a project involving the acquisition of a school site unless the school district, as the lead agency, determines that the property to be built upon is not a current or former hazardous waste site or a hazardous substances release site and the school district has consulted with state and local agencies and made a finding that the health risks or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school. (Education Code (EDC) § 17213)

2) Requires the governing board of a school district, as a condition of receiving state funding, prior to the acquisition of a schoolsite to conduct a Phase I environmental assessment or a preliminary endangerment assessment of the proposed schoolsite. (EDC § 17213.1)

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

4) 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 public health or the environment. (HSC § 25300 et seq.)

5) Requires DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under the HSAA. (HSC § 25356)

6) Creates CEQA which provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. (Public Resources Code (PRC) § 21050)

7) Defines "lead agency" as the public agency that has the principal responsibility for carrying out or approving a project that may have a significant effect upon the environment. (PRC § 21067)

8) Prohibits an environmental impact report (EIR) from being certified or a negative declaration from being approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless certain conditions are met. (PRC § 21151.8)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Private and some charter schools are not required to meet the same siting requirements as public schools, before building a new school. As a result, a school could potentially be built at an unsafe location near sources of hazardous emissions, substances, or waste. Consequently, the public health and safety of the students, teachers, and school employees could be put at risk.

The bill would require private and charter schools to identify nearby sources of air pollution, consult with their local air districts, and meet siting requirements by evaluating the schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California. HWCL statute 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. Current law prohibits a public school from being built on a hazardous waste site permitted by DTSC. This bill would apply that prohibition to school sites for private and charter schools as well.

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 overseeing hazardous waste disposal sites that pose a threat to public health or the environment. 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. DTSC utilizes the HSAA for cleanup of contaminated sites and the HWCL for the regulation of hazardous waste sites. Current law prohibits a public school from being built on a hazardous waste site permitted by DTSC or a site with hazardous substances on a list compiled by DTSC. This bill would apply that prohibition to school sites for private and charter schools as well.

California Environmental Quality Act (CEQA): CEQA generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project subject to CEQA will not cause any adverse environmental impacts, a public agency may adopt a brief document known as a negative declaration. If the project may cause adverse environmental impacts, the public agency must prepare a more detailed study called an Environmental Impact Report (EIR). An EIR contains in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. A key

feature of the CEQA process is the opportunity for the public to review and provide input on both negative declarations and EIRs.

Evaluation of proposed schoolsites for potential hazardous substance contamination: All proposed school sites that receive state funding for acquisition or construction are required to go through a rigorous environmental review and cleanup process under DTSC's oversight. School districts conduct environmental assessments to provide basic information for determining if there has been a release of hazardous material at the sites, or if a naturally occurring hazardous material that presents a risk to human health or the environment may be present. Outreach activities integrated into the process allow a more active role for stakeholders in the selection process for school sites.

Siting of schools is a complicated process: Siting schools is not an easy process. Existing law and state regulations prohibit school districts seeking state bond funds from being located on land that was previously a hazardous waste disposal site, that contains pipelines that carry hazardous substances, or that is near a freeway and other busy traffic corridors and railyards that have the potential to expose students and school staff to hazardous air emissions. Existing law also requires school districts to comply with CEQA requirements, review by DTSC, and approval by the California Department of Education (CDE) to ensure the design plans meet the academic need of the school. School districts must also comply with the Field Act, which ensures that school buildings can withstand earthquakes. School districts must submit all school design plans to the Division of State Architect to ensure that the architectural design plans meet fire, life, and safety requirements, Field Act requirements, and access requirements under the Americans with Disability Act. Charter schools are not required to comply with school siting requirements unless they receive state school bond funds. Private schools are not subject to the requirements in the Education Code unless specified, typically related to health and safety issues.

Charter schools: Charter schools are authorized by school district boards and county boards of education. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the authorizing board and charter organizers. According to the CDE, in the 2018-19 academic year, there were 1,317 charter schools in California, with an enrollment of over 630,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. A charter school is usually created or organized by a group of teachers, parents, community leaders, a community-based organization, or an education management organization.

This bill: AB 762 amends existing law to require charter schools and private schools to perform the same evaluation for a proposed schoolsite as is required for public schools. It seems very reasonable to provide the students of charter schools and private schools with the same protections from hazardous chemicals at a potential schoolsite that is afforded to students who attend public schools. In addition, AB 762 is requiring the lead agency, under CEQA, over a charter school, to complete the same evaluations as is required for a lead agency of a public school. There are thousands of known contaminated sites in California, however, there are estimates of tens of thousands of unknown contaminated sites in the state. A site may have been an industrial site in the early 1900's and then been vacant for decades, and its potential of containing hazardous substances is unknown until there is an environmental assessment of the property. It is important that potential schoolsites, regardless of whether the school is a public

school, private school, or charter school, be properly evaluated in order to protect the health and well-being of the future students who will attend that school.

Arguments in Support: According to the Bay Area Air Quality Management District, "In order to ensure the public health and safety of all students and school employees in California, the potential location for a new private school or charter school needs to be properly evaluated. AB 762 will achieve this by requiring that private schools and charter schools meet the same siting requirements as public schools."

Double-Referral: Should the committee approve this bill, it will be re-referred to the Assembly Education Committee for their consideration.

Related legislation:

1) AB 2882 (Chu, 2020). Would have required charter schools and private schools to follow the same siting requirements as public schools for evaluating a schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste. Would have required the evaluation of a potential charter schoolsite under CEQA to follow the same process as public schools under CEQA. This bill was held in the Senate Environmental Quality Committee.

2) AB 2825 (Ruskin, 2006). Would have required a school district, in preparing the EIR on a proposed schoolsite, to identify any proposed facilities that emit hazardous air emissions or handle specified hazardous substances within a one-fourth mile of the proposed site. This bill was vetoed by Governor Schwarzenegger.

3) SB 1224 (Ortiz, 2004). Would have required school districts to contact DTSC if a potential health risk to students caused by a hazardous material is discovered. Would have allowed DTSC to oversee, review, and approve a site investigation and remediation for such a risk, and would have allowed deferred maintenance funding to be used for the investigation, mitigation, and removal of hazardous materials. This bill was held in the Senate Education Committee.

4) SB 352 (Escutia, Chapter 668, Statutes of 2003). Prohibits a local educational agency from approving the acquisition of a schoolsite within 500 feet of a busy roadway unless the air quality at the site does not pose a health risk to pupils or staff.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Air Quality Management District (SPONSOR)
California Air Pollution Control Officers Association
California Association of Private School Organizations
San Diego; County of

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1200 (Ting) – As Amended March 29, 2021

SUBJECT: Plant-based food packaging: cookware: hazardous chemicals

SUMMARY: Prohibits, commencing on January 1, 2023, the sale of food packaging that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS); requires, commencing on January 1, 2024, cookware manufacturers to label their product if it contains a chemical on specified lists; and prohibits, commencing on January 1, 2024, a manufacturer from making a claim that cookware is free of a chemical if the chemical belongs to a chemical group or class, as specified. Specifically, **this bill**:

Plant-Based Food Packaging Containing PFAS

1) Defines "food packaging" as a nondurable package, packaging component, or food service ware that is intended to contain, serve, store, handle, protect, or market food, foodstuff, or beverages, and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers. Clarifies that "food packaging" includes, but is not limited to, food or beverage containers, take-out food containers, unit product boxes, liners, wrappers, serving vessels, eating utensils, food boxes, and disposable plates, bowls, or trays.

2) Defines "intentionally added perfluoroalkyl and polyfluoroalkyl substances or PFAS" as either of the following:

   a) The presence or use of PFAS in a product or product component that has a functional or technical effect in the product or product component; or,

   b) The presence of PFAS in a product or product component at or in exceedance of 100 parts per million, as measured in total organic fluorine.

3) Defines "perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

4) Prohibits, commencing on January 1, 2023, a person from distributing, selling, or offering for sale in the state any food packaging that contains intentionally added PFAS.

5) Requires a manufacturer to use the least toxic alternative when replacing PFAS chemicals in products in food packaging.

Chemical Disclosures for Cookware

1) Defines "cookware" as durable houseware items that are used in homes and restaurants to prepare, dispense, store, or serve food, foodstuff, or beverages. Clarifies that "cookware" includes, but is not limited to, pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, kitchen tools, spoons, and spatulas.

2) Defines "designated list" as the list of chemicals identified as candidate chemicals that exhibit a hazard trait or an environmental or toxicological endpoint that meets the criteria specified in regulations adopted by the Department of Toxic Substances Control (DTSC) pursuant to the Safer Consumer Products (Green Chemistry) statute, and is published on DTSC's internet website pursuant to those regulations.

3) Defines "manufacturer" as both a person or entity who manufactures the cookware and whose name appears on the product label; and, a person or entity who the cookware is manufactured for or distributed by, identified by the product label pursuant to the federal Fair Packaging and Labeling Act.

4) Requires, commencing on January 1, 2024, a manufacturer of cookware sold in the state that contains one or more intentionally added chemicals present on the designated list to include on the product label a statement, in both English and Spanish, that reads: "This product contains one or more chemicals of concern for human health or the environment as identified by the State of California. For more ingredient information, visit" followed by an address for an internet website that provides the information specified in this bill.

5) Requires a manufacturer to ensure that the statement required on the product label is visible and legible to the consumer, including on the product listing for online sales.

6) Requires, commencing on January 1, 2023, a manufacturer of cookware sold in the state that contains one or more intentionally added chemicals present on the designated list to post on the internet website for the cookware all of the following:

   a) A list of all chemicals in the cookware that are also present on the designated list;

   b) The names of the authoritative list or lists referenced by DTSC in compiling the designated list on which each chemical in the cookware is present; and,

   c) A link to the internet website for the authoritative list or lists.

7) Prohibits, commencing on January 1, 2024, a manufacturer from making a claim, either on the cookware package or on the internet website for the cookware, that the cookware is free of any specific chemical if the chemical belongs to a chemical group or class identified on the designated list, unless no individual chemical from that chemical group or class is intentionally added to the cookware.

8) Prohibits a person from selling, offering for sale, or distributing in the state a cookware product that does not comply with the labeling and disclosure provisions in this bill.

EXISTING LAW:

1) Requires, commencing January 1, 2022, a person that sells firefighter personal protective equipment to provide a written notice to the purchaser if the firefighter personal protective equipment contains intentionally added PFAS chemicals. (Health and Safety Code (HSC) § 13029. (b)(1))

2) Prohibits, commencing January 1, 2022, a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use, and a person from using, class B firefighting foam containing intentionally added PFAS chemicals. (HSC § 13061 (b)(1))

3) Prohibits, on and after June 1, 2006, a person from manufacturing, processing, or distributing in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE. (HSC § 108922)

4) Prohibits, commencing January 1, 2009, a person or entity from manufacturing, selling, or distributing in commerce any toy or child care article that contains di-(2-ethylhexyl) phthalate, dibutyl phthalate, or benzyl butyl phthalate. (HSC § 108937 (a))

5) Prohibits, commencing January 1, 2009, a person or entity from manufacturing, selling, or distributing in commerce any toy or child care article intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate, diisodecyl phthalate, or di-n-octyl phthalate. (HSC § 108937(b))

6) Prohibits, on and after July 1, 2013, a person from manufacturing, selling, or distributing in commerce any bottle or cup that contains bisphenol A (BPA) if the bottle or cup is designed or intended to be filled with any liquid, food, or beverage intended primarily for consumption from that bottle or cup by children three years of age or younger. (HSC § 108940)

7) States that it is the intent of the Legislature to provide consumers and workers with ingredient information about cleaning products that encourages informed purchasing decisions and reduces public health impacts from exposure to potentially harmful chemicals in cleaning products by requiring product manufacturers to provide a specific list of the chemicals used in their products, and requiring specified employers to provide that information to their employees. (HSC § 108950 (a))

8) Requires a manufacturer of cleaning products sold in the state to disclose on the product label, as specified, whether the product contains any intentionally added ingredients that are included on specified authoritative lists of chemicals that pose risks to human health. (HSC § 108954 (a))

9) Requires a manufacturer of a cleaning products sold in the state to disclose the manufacturer's toll-free telephone number and internet website address on the designated product label. (HSC § 108954 (b)(1))

10) Requires a manufacturer of a cleaning product sold in the state to post on its internet website, in an electronically readable format, specified information, including a list of each intentionally added ingredient contained in the product. (HSC § 108954)

11) Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale, in commerce any cosmetic product that contains any of specified intentionally added ingredients. (HSC § 108980 (a))

12) Authorizes the State Water Resources Control Board (State Water Board) to order a public water system to monitor for PFAS, requires community water systems to report detections,

and where a detected level of these substances exceeds the response level, to take a water source out of use or provide a prescribed public notification. (HSC §116378)

Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):

1) Prohibits a person, in the course of doing business, from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water. (HSC § 25249.5)

2) Prohibits a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)

3) Requires the Governor to publish a list of chemicals known to cause cancer or reproductive toxicity and to annually revise the list. The Office of Environmental Health Hazard Assessment (OEHHA) has listed perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as chemicals known to the state to cause developmental toxicity. (HSC § 25249.8)

Under the Green Chemistry statutes:

1) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified. (HSC § 25252)

    a) Identifies, pursuant to regulation, chemicals that are candidates for the above-described process that exhibit a hazard trait and/or an environmental or toxicological end-point and is included on one of many specified authoritative lists (this is often referred to as the "list of lists"). (22 California Code of Regulations (C.C.R.) § 69502.2)

    b) Requires, pursuant to regulation, DTSC to consider various factors when identifying and implementing regulatory responses for priority products, such as public health and environmental protection. (22 C.C.R. 69506)

2) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products, and their potential alternatives, to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern. (HSC § 25253 (a))

3) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1200 would ban the use of intentionally added PFAS from plant-based food packaging, require cookware manufacturers to attach a disclosure label if certain chemicals are found in their cookware, and require truth in advertising when marketing cookware to be free of certain chemicals. Dangerous chemicals should not be wrapped around our food or leaching into our food from our pots and pans at home. By passing AB 1200, California can assess chemicals that our families are ingesting so that they cannot further damage our health and the environment."

Plant-Based Food Packaging Containing PFAS

Perfluoroalkyl and polyfluoroalkyl substances (PFAS): PFAS are a group of human-made chemicals that do not occur naturally in the environment and have been synthesized for heat, water, and lipid resistance. PFAS are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. All PFASs share one common trait – highly stable carbon-fluorine bonds that make them or their final degradation products highly persistent in the environment. These chemicals can be classified as perfluoroalkyl or polyfluoroalkyl substances depending on how many hydrogen atoms have been replaced by fluorine atoms.

PFAS have been used extensively for decades in surface coating and protectant formulations due to their unique ability to reduce the surface tension of liquids, including in consumer products such as carpets, clothing, fabrics for furniture, apparel, paper packaging for food, non-stick cookware, and other products designed to be waterproof or water resistant, grease and stain-resistant, or non-stick. Applications span many sectors of the economy, including aerospace, apparel, automotive, building and construction, chemicals and pharmaceuticals, electronics and semiconductors, energy, oil and gas exploration, first responder safety, and health care. During production, use, and disposal, PFAS can migrate into the soil, water, and air.

As of September 2020, more than 9,000 PFAS chemicals were included in the United States Environmental Protection Agency's (US EPA's) Master List of PFAS Substances. Of all PFAS compounds, perfluoroalkyl acids (PFAAs), which include perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), are the most extensively studied and are associated with a number of different health hazards, including endocrine disruption, developmental and reproductive toxicity, and immune dysregulation. PFOA, most commonly known as the chemical that had been used to produce Teflon, and PFOS, formerly used in Scotchgard, are known as "long-chain" chemicals, meaning they have six or more carbon molecules. These chemicals are extremely persistent in soil and water due to their resistance to typical environmental degradation processes, and can bioaccumulate and persist in human and animal tissues. According to DTSC, the majority (~85%) of PFAS are PFAA precursors, meaning they can degrade or metabolize into PFAAs in the environment or in living organisms.

While PFOS, PFOA, and other long-chain PFAS have recently declined in use, short-chain PFAS, including short-chain PFAAs, are widely used as alternatives to long-chain PFAS. Emerging data on these newer chemicals indicate that they are also highly persistent in the environment, behave in similar fashion in the human body, particularly at the cellular level, as long-chain PFAS, and are even more mobile in the environment than long-chain PFAS. This means that they travel even more easily, can be harder to clean up, and are more likely to be released from consumer products than are long chain PFAS.

PFAS are ubiquitous, and are found in indoor and outdoor environments; in plants, wildlife, companion animals, production animals, and humans; and, in food and drinking water. Scientists have found PFOA and PFOS in the blood of nearly all people tested. According to the Centers for Disease Control and Prevention (CDC), blood levels of both PFOS and PFOA have steadily decreased in US residents since 1999-2000. However, the 2011−2012 US National Health and Nutrition Examination Survey reported detectable serum PFAS concentrations in 97% of individuals.

Exposure to PFAS: The main route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), and through inhalation and ingestion of contaminated indoor air and dust. Food can become contaminated with PFAS through contaminated soil and water used to grow the food; food packaging containing PFAS, and equipment that used PFAS during food processing. Studies have shown that PFAS can transfer from pregnant mothers to their fetuses via the placenta during gestation, as well as transfer from nursing mothers to their infants via breastfeeding. Young children may also experience higher exposure levels than adults due to greater dust ingestion rates and hand-to-mouth transfer from PFAS-treated consumer products. Industrial workers, carpet installers, carpet cleaners, firefighters, and workers in furniture, furnishings, outdoor clothing, and carpet stores may also experience above average PFAS exposure levels.

Exposure to PFAS in drinking water has also become an intensifying concern due to the persistence of PFAS chemicals in the environment and their tendency to accumulate in groundwater. Groundwater PFAS contamination typically has been associated with industrial facilities where these chemicals were manufactured or used in other products, and in airfields where the chemicals have been used for firefighting. PFAS chemicals can also enter the environment and drinking water through composting, landfilling, recycling, and incineration of products containing PFAS, such as food packaging. Because of their presence and persistence in many drinking water supplies, PFAS remain a serious source of exposure decades after their release into the environment.

Like humans, wildlife is exposed to PFAS by consuming contaminated water or food. Within aquatic food webs, PFAS were found to increase in concentration from ambient water to plankton and further up the food chain.

Hazard traits of PFAS: According to DTSC, all PFAS display at least one of the hazard traits identified in California's Green Chemistry Hazard Traits Regulations (22 C.C.R § 69401 et seq.). PFAS are either extremely persistent in the environment, or they degrade into extremely persistent PFAS, leading them to be deemed, "forever chemicals." Most PFAS are mobile in environmental media such as air and water, and thus are widespread in living organisms and the environment. Several PFAS bioaccumulate significantly in animals or plants and there is emerging evidence of toxicity in these substances.

DTSC contends that exposure to PFAS can lead to adverse health outcomes in humans. If humans are exposed to PFAS through diet, drinking water or inhalation, some of these chemicals remain in the body for a long time. As people continue to be exposed to PFAS, the PFAS levels in their bodies may increase to the point where they suffer from adverse health effects. Studies indicate that some PFAS can cause reproductive, developmental, liver and kidney, and immunological effects, as well as tumors in laboratory animals. The most consistent findings from human epidemiology studies are a small increase in serum cholesterol levels among

exposed populations, with more limited findings related to infant birth weights, can affect the immune system and increase the risk of cancer and thyroid hormone disruption. According to the Agency for Toxic Substances and Disease Registry, research suggests that exposure to PFAS may lead to increased cholesterol levels, decreased vaccine response in children, changes in liver enzymes, increased risk of high blood pressure in pregnant women, decreased infant birth weights, and increased risk of kidney or testicular cancer.

Some PFAS have also been linked to phytotoxicity, aquatic toxicity, and terrestrial ecotoxicity.

Historic US action on PFAS: Federal interest in PFAS has spanned decades, and manufacturers have been aware of the PFASs' adverse impact potential since the 1970s or 1980s. In 2005, the US EPA's Office of Pollution Prevention and Toxics Science Advisory Board labeled PFOA a 'likely' carcinogen in humans. In 2007, the CDC published the results of two studies of human exposure to 11 PFASs. In both studies, PFOS and PFOA, as well as another PFAS, perfluorohexane sulfonic acid (PFHxS), were detected in approximately 98% of the population.

While research on PFOA was being compiled by federal agencies, in 2004, the US EPA took administrative action against DuPont, a manufacturer of PFOA, for violations consisting of multiple failures to report known information to US EPA about substantial risk of injury to human health or the environment from PFOA from 1981 through 2001. In 2005, the US EPA settled with DuPont for violations related to PFOA exposure for the largest civil administrative penalty US EPA had ever obtained under any federal environmental statute.

Beginning in 2003, the US EPA negotiated with multiple parties to produce missing information on PFOA through enforceable consent agreements, memoranda of understanding, and voluntary commitments. In January 2006, the US EPA and eight prominent companies in the industry, including 3M and DuPont, created the 2010/15 PFOA Stewardship Program. Under the program, the companies committed to voluntarily reduce emissions and product content of PFOA and related chemicals on a global basis by 95 percent by 2010, and to work toward eliminating emissions and product content of these chemicals by 2015.

According to the US EPA's website, all participating companies state that they met the PFOA Stewardship Program goals. Companies reported that to meet the program goals, most stopped the manufacture and import of long-chain PFASs, and then transitioned to alternative chemicals. Many of these alternatives were other PFAS. Other companies exited the PFAS industry altogether.

Unfortunately, according to the February 2021 article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program," in *Environmental Health Perspectives*, the approach of regulating only individual PFAS or a limited subset of PFAS has led to the replacement of those PFAS with other members of the class that have less well-characterized hazard profiles. The article argues that these alternatives may even be worse, in some respects, than the PFAS being replaced, thus constituting a "regrettable substitution." For example, the article points out that since the voluntary phaseout of the longer-chain PFAS in some regions, manufacturers have shifted to PFAS with six or fewer carbons, such as perfluorohexanoic acid (PFHxA) and other shorter-chain PFAS chemistries, which are less studied but have also been documented to display multiple hazard trait.

Recent US EPA action on PFAS: In February, 2019, the US EPA published "EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan," which "outlines concrete steps the agency is taking to address PFAS and to protect public health." The action plan noted, among other things, movement toward drinking water standards for PFOA and PFOS, movement toward designating PFOA and PFOS as hazardous materials; the consideration of adding PFAS chemicals to the Toxic Release Inventory, and developing risk communication strategies to address concerns related to PFAS. In December, 2019, the US EPA issued interim recommendations for PFOS and PFOA in groundwater at sites under federal cleanup programs. The 2020 appropriations package passed in December 2019 appropriated funds for the US EPA to establish maximum contaminant levels (MCLs), health-protective drinking water standards to be met by public water systems, under the Safe Drinking Water Act, for PFAS, and to designate PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

State action on PFAS: California has undertaken efforts to address PFAS substances across several state agencies.

At DTSC, all PFAS chemicals are candidate chemicals under the Safer Consumer Products (SCP, previously known as Green Chemistry) Program, because they exhibit a hazard trait and/or an environmental or toxicological endpoint, and the entire class was added by the California Environmental Contaminant Biomonitoring Program to its list of priority chemicals.

In February, 2020, DTSC initiated formal rulemaking to list carpets and rugs containing PFAS as priority products under the SCP Program. DTSC expects to finalize the regulation designating carpets and rugs with PFAS as a priority product by October 1, 2021, and the preliminary alternatives analysis reports for carpets and rugs with PFAS are expected to be due roughly 6 months later.

In April 2020, DTSC also initiated the environmental scientific peer review process on its proposal to designate treatments containing PFAS for use on converted textiles or leathers as a priority product under the SCP Program, and expects to issue a notice of proposed rulemaking by July, 2021. DTSC expects to, after a public comment period, finalize the regulation designating converted textiles with PFAS as a priority product by around July 2022, with an effective date likely around October 2022.

DTSC is additionally in the preliminary stages of designating food packaging with PFAS as a priority product under the SCP Program. DTSC's pre-regulatory work on this topic is currently undergoing scientific peer review, which is expected to be completed by the end of April. DTSC anticipates issuing a notice of proposed rulemaking around the end of 2021, initiating a 45-day public comment period. DTSC expects to finalize the regulation around the end of 2022, with an effective date likely to be April 1, 2023.

DTSC has also proposed investigating children's products with PFAS in their Draft Priority Product Work Plan for 2021-2023.

OEHHA, under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), listed PFOA and PFOS as chemicals known to the state to cause reproductive toxicity. At the request of the State Water Board, OEHHA is in the process of establishing public health goals, or concentrations of contaminants in drinking water that pose no significant acute or chronic health

risks, for PFOS and PFOA. The State Water Board has also requested that OEHHA evaluate whether some PFAS chemicals should be grouped together for regulatory purposes.

The State Water Board has taken a number of additional recent actions related to PFAS in drinking water, including, in July 2020, issuing Investigative Orders to Publicly Owned Treatment Works (POTW) that receive PFAS in their influent wastewater flow and then potentially distribute it out of the POTW in the effluent wastewater, biosolids, and reverse osmosis concentrate, to include sampling for 31 PFAS compounds. It also issued a General Order, in August 2020, for public water systems to sample for and report PFAS.

Regulating PFAS as a class: DTSC, through its SCP Program has adopted a rationale for regulating PFAS chemicals as a class, concluding, "it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February, 2021, *Environmental Health Perspectives* article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program." The authors of the article state,

> "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions. Regulations that focus solely on perfluoroalkyl acids (PFAAs) are ineffective, given that nearly all other PFAS can generate PFAAs in the environment… We at the California DTSC propose regulating certain consumer products if they contain any member of the class of PFAS because: *a*) all PFAS, or their degradation, reaction, or metabolism products, display at least one common hazard trait according to the California Code of Regulations, namely environmental persistence; and *b*) certain key PFAS that are the degradation, reaction or metabolism products, or impurities of nearly all other PFAS display additional hazard traits, including toxicity; are widespread in the environment, humans, and biota; and will continue to cause adverse impacts for as long as any PFAS continue to be used. Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

Other authors have also recently made the case for managing PFAS as a chemical class, including in "Scientific Basis for Managing PFAS as a Chemical Class" published in June, 2020, in *Environmental Science & Technology Letters* and "Strategies for grouping per- and polyfluoroalkyl substances (PFAS) to protect human and environmental health" also published in June, 2020, in *Environmental Science: Processes & Impacts.*

In opposition to the concept of regulating PFAS as a class, the chemical industry points to a 2018 paper published in *Integrated Environmental Assessment and Management* by industry researchers that argues that fluoropolymers, which are high molecular weight polymers, have unique properties that constitute a distinct class within the PFAS group and that fluoropolymers satisfy widely accepted assessment criteria to be considered as "polymers of low concern" (PLC). The paper contends that fluoropolymers are distinctly different from other polymeric and nonpolymeric PFAS and should be separated from them for hazard assessment or regulatory purposes. DTSC states that they are highly persistent in the environment.

PFAS exposure via food contact substances: The US EPA contends that people can be exposed to low levels of PFAS through food, which can become contaminated with PFASs through

contaminated soil and water used to grow the food; food packaging; and, equipment used to process food.

In its July 2020, "Product – Chemical Profile for Food Packaging Containing Perfluoroalkyl or Polyfluoroalkyl Substances" Discussion Draft (Discussion Draft), DTSC contends that, "Plant fiber-based food packaging products treated with PFASs for grease, oil, or water resistance can expose humans and biota to PFASs during their manufacturing, use, and end-of-life. PFASs can migrate from food packaging into the packaged food, with migration rates dependent on the temperature, acidity, storage time, and fat content of the food. Used PFAS-treated paper, paperboard, and molded fiber food packaging products are sometimes composted, releasing PFASs into the compost. When used food packaging is sent to a landfill, the PFASs can migrate into landfill leachate, contaminating surface waters and the surrounding environment. When applied to soil as fertilizers, biosolids from wastewater treatment plants that treat PFAS-contaminated landfill leachate can contaminate drinking water sources with PFASs, as well as crops such as potatoes, grains, and leafy vegetables. Recycled products made from PFAS-treated paper, paperboard, and molded fiber food packaging can also be a source of PFAS exposure. Harmful PFAS combustion products may also be released when these products are incinerated."

The Discussion Draft points to a 2018 policy statement that American Academy of Pediatrics released about the risk that food additives pose to children's health, highlighting the potential adverse effects associated with exposure to PFAS in food packaging. This statement cites support from the Endocrine Society, a joint 2013 report from the World Health Organization and United Nations Environment Program, and a statement from the International Federation of Gynecology and Obstetrics in 2015, indicating broad consensus on protecting children's health from environmental contaminants, including the PFAS used in food packaging.

Regulation of PFASs in food contact materials: Federal regulations specify which PFASs are allowed in food contact materials. According to the Discussion Draft, through its Food Contact Notification (FCN) process, the federal Food and Drug Administration (FDA) has approved 17 distinct PFAS formulations for use in plant fiber-based food packaging applications. Fifteen of these PFASs are sidechain fluorinated polymers, and two are perfluoropolyethers (PFPEs). A total of 28 FCNs were filed for these 17 unique PFAS formulations. Additionally, one PFAS (chromium III complex of N- ethyl – N – heptadecylfluoro-octane sulfonyl glycine) is allowed to be used in food packaging pursuant to the Code of Federal Regulations list of indirect additives.

Other action on PFAS in food packaging: The State of California is not the only entity looking at taking action on PFAS in food packaging.

New York enacted legislation in December 2020, which prohibits, commencing December 31, 2022, a person from distributing, selling, or offering for sale in New York any food packaging containing PFAS substances as intentionally added chemicals.

Washington state enacted legislation in 2018, which, beginning January 1, 2022, prohibits a person from manufacturing, knowingly selling, offering for sale, distributing for sale, or distributing for use food packaging to which PFAS chemicals have been intentionally added in any amount. The prohibitions in this bill do not take effect until the Washington Department of Ecology identifies that safer alternatives are available, the safer alternative determination is supported by feedback from an external peer review of the Washington Department of Ecology's alternatives assessment; and, publishes findings, as required. On March 8, 2021, Washington

announced that, based on the availability of safer alternatives, PFAS in four types of food packaging (wraps and liners (wax-coated options); plates (clay-coated and reusable options); food boats (clay-coated and reusable options); pizza boxes (uncoated options)) will be banned as of February 2023. Washington is embarking on addressing PFAS in trays, bags and sleeves, clamshells, and interlocking food containers.

Maine enacted legislation similar to Washington's in 2019 that authorizes the Washington State Department of Environmental Protection to, by rule, prohibit a manufacturer, supplier, or distributor from offering for sale or for promotional purposes a food package to which PFAS have been intentionally introduced in any amount greater than an incidental presence once the Washington State Department of Environmental Protection has determined that a safer alternative exists.

The author also points to local California ordinances that have created a patchwork of requirements regarding PFAS in food packaging in our state. He notes that the following California municipalities have adopted local ordinances that require single-use food service ware to be free of all intentionally added fluorinated chemicals: San Francisco, Berkeley, San Anselmo, and the County of San Mateo. He also notes that Carmel, Richmond, and the County of Santa Cruz have all adopted local ordinances that require single-use food ware to be certified compostable by the Biodegradable Products Institute. This certification process requires food packaging to contain no intentionally added fluorinated chemicals and show less than 100 ppm total fluorine.

Several major U.S. food retailers have also shifted, or have committed to shifting, to PFAS-free food packaging. For example, in December 2018, Whole Foods Market removed PFAS-containing food and bakery packaging from its stores. In January 2020, Taco Bell committed to globally phasing out all PFASs in "consumer-facing packaging materials" by 2025. McDonald's has also committed to remove all added fluorinated compounds from their "guest packaging materials" globally by 2025. Albertsons, the second-largest grocery chain in the United States., Panera Bread, and Chipotle have initiated efforts to eliminate PFAS from their food packaging.

Internationally, the European Commission's "EU's Chemicals Strategy for Sustainability Towards a Toxic-Free Environment," published in October 2020, states,

> "Per- and polyfluoroalkyl substances (PFAS) require special attention, considering the large number of cases of contamination of soil and water - including drinking water - in the EU and globally, the number of people affected with a full spectrum of illnesses and the related societal and economic costs. That is why the Commission proposes a comprehensive set of actions to address the use of and contamination with PFAS. Those aim to ensure, in particular, that the use of PFAS is phased out in the [European Union] EU, unless it is proven essential for society. The Commission will:
>
> - ban all PFAS as a group in fire-fighting foams as well as in other uses, allowing their use only where they are essential for society;
> - address PFAS with a group approach, under relevant legislation on water, sustainable products, food, industrial emissions, and waste;
> - address PFAS concerns on a global scale through the relevant international fora and in bilateral policy dialogues with third countries;

- establish an EU-wide approach and provide financial support under research and innovation programmes to identify and develop innovative methodologies for remediating PFAS contamination in the environment and in products; and,
- provide research and innovation funding for safe innovations to substitute PFAS under Horizon Europe."

Alternatives to PFAS in food packaging: DTSC's Discussion Draft discusses potential alternatives to PFAS in food packaging. The Discussion Draft notes that, based on well-established business cases, the Nordic Council of Ministers concluded in 2017 that safer and more sustainable alternatives to PFASs in paper and paperboard food packaging products are available for all intended functional uses and food types. The Nordic Council of Ministers also found that, except for natural greaseproof paper, which can be more expensive, alternatives are cost-neutral for retailers.

The Discussion Draft discussed alternatives to PFASs for plant fiber-based food packaging, including physical barriers, alternative processing, alternative chemical barriers or coatings, and alternative materials. Physical barriers can be made of plastic such as polyethylene, polyethylene terephthalate (PET), polyvinyl alcohol, or polylactic acid (PLA), as well as of silicone, aluminum, clay, wax, or biowax. Machine-finished paper uses alternative processing to avoid the use of PFASs. Alternative chemical barriers or coatings include starch, carboxymethyl cellulose, aqueous dispersions of copolymers such as styrene and butadiene, aqueous dispersions of waxes, water-soluble hydroxyethylcellulose, chitosan, alkyl ketene dimer, alkenyl succinic anhydride, silicone, and several proprietary coatings of unknown composition. There are also alternatives to paper, paperboard, and molded fiber materials such as palm leaf, bamboo, and various plastics, and also bio-based plastics, which can be generated from plants, fungi, or organic wastes

While DTSC did not assess the relative safety of these alternatives in their Discussion Draft, and some of these alternatives could have negative environmental or public health impacts, the Washington State Department of Ecology recently did complete an alternatives assessment on PFAS in food packaging. The Washington State Department of Ecology found "safer alternatives" to PFAS in four types of food packaging applications: wraps and liners, plates, food boats, and pizza boxes, but did not find appropriate replacements for other food packaging applications including trays, bags and sleeves, French fry cartons, clamshells, interlocking food containers, and bowls. The Washington State Department of Ecology will further evaluate these categories in the coming months.

This bill: This bill prohibits, commencing on January 1, 2023, a person from distributing, selling, or offering for sale in the state any food packaging that contains intentionally added PFAS. It also requires a manufacturer to use the least toxic alternative when replacing PFAS chemicals in products in food packaging.

Chemical bans and the Safer Consumer Products (SCP) Program: As noted previously, DTSC is currently proposing to list one or more plant fiber-based food packaging containing PFAS as priority products under the SCP program. In 2008, California enacted AB 1879 (Feuer, Chapter 559, Statutes of 2008) to establish a regulatory process for identifying and prioritizing chemicals of concern in consumer products, to create methods for analyzing alternatives to existing hazardous chemicals, and to ultimately take regulatory action to reduce the level of harm from the chemicals in those products. DTSC did this by promulgating the SCP regulations, which

took effect in October 2013. DTSC's approach provides science-based criteria and procedures for identifying and evaluating alternatives with the objective of replacing chemicals of concern with safer chemicals and avoiding the use of substitute chemicals that pose equal or greater harm.

While the intent of AB 1879 was to establish a robust and thorough regulatory process rooted in science to consider exposure to chemicals in consumer products, it has long been recognized that DTSC does not have the resources to evaluate all chemicals in every consumer product application. The permutations of product and chemical combinations are virtually limitless. Not only does the SCP Program lack a dedicated funding source to fund DTSC's work, DTSC is currently operating under a structural deficit, leaving further constrained resources for the SCP program.

While DTSC's decisions to designate or consider some chemical/product combinations as priority products have resulted in manufacturers voluntarily removing the chemical from their product, as was the case with children's foam-padded sleeping products containing the flame retardants TDCPP or TCEP. DTSC has only gone through the alternatives analysis process for two other priority products (paint strippers with methylene chloride and spray polyurethane foam with unreacted MDI). DTSC is currently undergoing the regulatory response process for spray polyurethane foam, but this work is currently on hold pending a lawsuit the American Chemistry Council filed regarding the listing.

Further, SCP statute does not preclude the Legislature from taking legislative action on consumer products or the use of chemicals in consumer product applications. When there is credible scientific evidence to support a change in state policy to protect public health, the Legislature can respond to that science more expeditiously than can DTSC. Since AB 1879 was enacted, the Legislature has enacted policies on various chemical-product applications, including a ban on firefighting foam containing PFAS chemicals (SB 1044, Allen, Chapter 308, Statutes of 2020); a ban on flame retardants in children's products (AB 2998, Bloom, Chapter 924, Statutes of 2018); labeling requirements on upholstered furniture that contains flame retardants (SB 1019, Leno, Chapter 862, Statutes of 2014); a ban on BPA in toddler sippy cups and bottles (AB 1319, Butler, Chapter 467, Statutes of 2011); a ban on the sale of jewelry with cadmium at certain levels (AB 929, Pavley, Chapter 313, Statutes of 2010); and, a ban on the sale of brake pads containing copper in exceedances of certain levels SB 346 (Kehoe, Chapter 307, Statutes of 2010).

DTSC, in fact, wrote in support of AB 1319 (Butler) stating: "DTSC does not believe that the [SCP] regulations should ever be viewed as excluding action that the Legislature might take to address specific product related concerns that are brought to its attention. Not only have the regulations taken longer to adopt than originally anticipated, DTSC also expects that the process to be represented in the regulations will be subject to time and resource constraints. There may be circumstances that warrant more timely action than DTSC can accommodate through its process."

State scientists, including those at DTSC, have determined that PFAS in food packaging pose a threat to human health. AB 1200, in recognition of the state's science, is proposing to take action to reduce the public's exposure to PFAS more expeditiously than DTSC is currently able.

Chemical Disclosures for Cookware

Chemicals in cookware: According to the Minnesota Pollution Control Agency (MPCA), fluoropolymer coatings are commonly applied to cookware to give it an anti-stick surface. The MPCA notes that Teflon is the most well-known of these non-stick chemicals. The main chemical in Teflon currently is the chemical polytetrafluoroethylene (PTFE), which is a polymer form of PFAS. The MCPA says that when heated to high temperatures, PTFE can start to break down and release toxic fumes. According to the MCPA, breathing these fumes can be hazardous to both humans and pets (especially birds). Until 2013, Teflon was produced using PFOA, a chemical that has been linked to a number of health conditions and is now present in most people's blood. The MCPA says that although several non-stick cookware brands currently claim to be PFOA-free or Teflon-free, they may have been made with other fluoropolymers with similar properties, and therefore similar concerns as, PFOA.

The author's office points to a December 2020 report by The Ecology Center titled, "What's Cooking? PFAS and Other Chemical Hazards in Nonstick Cooking and Baking Pans" (cookware report) as justification for the cookware provisions in the bill. The authors of the cookware report found that 79% of tested nonstick cooking pans and 20% of tested nonstick baking pans were coated with the PFAS PTFE. The Ecology Center testing also revealed the presence of BPA in the non-stick coating of some of the cookware and baking pans.

For the cookware report, researchers tested 14 nonstick cooking pans and 10 nonstick baking pans to identify their coatings, choosing cookware that represented a range of brands and prices. The sample drew from 10 popular retailers, including discount "dollar" stores and top cookware brands as identified by Consumer Reports Magazine. Testing by the Ecology Center found that most (11 of 14) tested nonstick cooking pans and some (2 of 10) baking pans are coated with PTFE. The report notes that PTFE pan coatings have been known to release hazardous chemicals into the air when heated to temperatures in exceedance of 400-500 degrees Fahrenheit, which are temperatures that occur when stove burners are set to high.

The same study by the Ecology Center found that some labels on cookware make the marketing claim "PFOA free," which refers to one specific PFAS chemical, despite the fact that the cookware may contain PTFE or other PFAS chemicals. The author's office argues that this sends a false message to the buyer that the product does not contain any PFAS, or other risky chemicals. He argues that consumers cannot make informed purchases if cookware is not accurately labeled as to the presence of toxic chemicals, or if they are misled by deceptive marketing.

In addition to the potential exposure of consumers to chemicals in their cookware, the author points to the life cycle concerns related to PFAS chemicals in cookware as a need for the cookware provisions in the bill. He argues that the production and manufacturing of PFAS chemicals and products with PFAS can expose workers and the environment; that the use of pans with PTFE coatings have been known to release hazardous chemicals into the air when heated; and, that the landfilling, recycling, or incineration of products with PFAS present potential opportunities for entering landfill leachate or gradually seeping into groundwater. He notes that this is particularly concerning because many of these disposal sites are in disadvantaged communities.

Recent labeling requirements in California: In an effort to provide consumers with the information they need to make educated decisions about the products they buy, the California legislature has recently passed several bills that require disclosure of chemicals in specific products. These include:

- SB 312 (Leyva, Chapter 315, Statutes of 2020) – Establishes the Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020, which requires disclosure of specified flavor and fragrance ingredients that are found in cosmetic products that are on any of the authoritative lists identified in the bill to the Department of Public Health (DPH) and requires DPH to post on its existing database of cosmetic product information a list of those fragrance ingredients and flavor ingredients and their associated health hazards.

- AB 1989 (Garcia, Chapter 272, Statues of 2020) – Establishes the Menstrual Products Right to Know Act of 2020, which requires the disclosure of ingredients in menstrual products on a label on the product and a website starting on January 1, 2023.

- SB 258 (Lara, Chapter 830, Statutes of 2017) – Establishes the Cleaning Product Right to Know Act of 2017, which requires manufacturers of cleaning products to disclose chemical ingredients that are found in any of the authoritative lists identified in the bill on the product label and on the manufacturers website.

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

This bill: This bill requires, commencing January 1, 2024 a manufacturer of cookware sold in the state that contains one or more intentionally added chemicals present on DTSC's candidate chemical list to include on the product label a statement, in both English and Spanish, that reads: "This product contains one or more chemicals of concern for human health or the environment as identified by the State of California. For more ingredient information, visit" followed by an address for an internet website that provides the information specified in this bill. DTSC's candidate chemical list was developed under the SCP Program, and is based on established authoritative lists. Candidate chemicals must exhibit a hazard trait and/or an environmental or toxicological endpoint and be found on one or more of the authoritative lists.

This bill also requires, commencing on January 1, 2023, a manufacturer of cookware that contains intentionally added chemicals present on the candidate chemical list to post a list of the chemicals, and specified information about them, on the internet website for the cookware. This bill also prohibits, commencing on January 1, 2024, a manufacturer from making a claim, either on the cookware package or on the internet website for the cookware, that the cookware is free of any specific chemical if the chemical belongs to a chemical group or class identified on the candidate chemical list, unless no individual chemical from that chemical group or class is intentionally added to the cookware.

Arguments in support: According to the co-sponsors of the bill,

> "The entire class of PFAS chemicals has been recognized as chemicals of concern by a wide array of scientific experts at both the state and federal level. The California legislature recognized PFAS as a class when it passed SB 1044 (Allen, 2020) to prohibit their use in

firefighting foam. The Department of Toxic Substance Control's (DTSC) Safer Consumer Products Program has extensively reviewed PFAS chemicals in three product categories and has made a convincing case for treating PFAS as a class. The California Biomonitoring Program also includes the entire class of PFAS on the program's priority chemical list. The U.S. Congress adopted a class approach to PFAS when it banned the use of all PFAS in military Meals Ready-to-Eat. The growing and international public, medical, scientific and political concerns about PFAS pollution have risen to unprecedented heights and have recently become even more pointed due to reports that PFAS may reduce the immune system's response to vaccinations, as we cope with a worldwide pandemic… Federal regulation of food packaging and cookware is woefully inadequate, allowing hazardous chemicals to be used in these products. The result of this failure is that people and the environment are exposed to hazardous chemicals when food packaging and cookware products are manufactured, used, and thrown away (or recycled)… Single use paper-based food packaging is often coated by manufacturers with PFAS, which can migrate from the paper packaging into the food… When paper packaging is composted, which is increasingly occurring to reduce landfill waste, the chemicals can re-enter the food chain through compost-treated agricultural soils. Additionally, food packaging contributes to PFAS contamination of our waterways through manufacturing releases, litter and leaching from landfills… With no federal requirements for any disclosure of chemicals in cookware, consumers are left in the dark and face a plethora of confusing claims, some of which are misleading or inaccurate, particularly when it comes to non-stick surfaces… This lack of transparency leaves the public to potentially and unwittingly expose themselves to hazardous chemicals. For example, pans may off-gas chemicals when pans are subject to high heat, or pans may expose a consumer to hazardous coatings that are scratched or peeling. Chemicals of concern in cookware may also contribute to pollution both upstream in the manufacturing process and downstream in the disposal phase… AB 1200 would address these issues in combination."

Arguments in opposition: According to the opponents of the bill,

"AB 1200 proposes a blanket prohibition on all PFAS chemistries that may be used in an expansive list of food packaging applications without any examination of safety, consideration of US Food and Drug Administration (FDA) requirements, functionality or assessment of potential alternatives. As you may know, the Department of Toxic Substances Control (DTSC) has proposed to list one or more plant fiber-based food packaging PFAS substances as Priority Products under the Safer Consumer Products (SCP) regulations… To address criticisms that the SCP program is not moving fast enough to assess and regulate chemical/product combinations, Senator Ben Allen has introduced SB 502, legislation that passed the Senate Committee on Environmental Quality on March 15, 2021… Given the amount of work and time already spent by DTSC on this issue, it would be a prudent use of the state's resources to allow for this regulatory process to be completed… Additionally, the Washington State Department of Ecology (Ecology) recently completed an AA on PFAS in food packaging. While the report found "safer alternatives" to PFAS in four types of food packaging applications: wraps and liners, plates, food boats and pizza boxes, Ecology did not find appropriate replacements for other food packaging applications including trays, bags and sleeves, French fry cartons, clamshells, interlocking food containers and bowls. Ecology will be evaluating these categories in the coming months… Imposing a blanket restriction without the benefit of understanding the conclusions of these types of scientific assessments would be premature. We urge you to consider amending the effective date in your legislation

to better correspond with the completion and findings of these regulatory activities… AB 1200 would impose new product labeling and disclosure requirements on manufacturers of cookware. This language is overly broad, lacks credible scientific foundation and inappropriately utilizes a list of chemicals to suggest potential harmful impacts to human health or the environment. We believe this provision should be deleted in its entirety… Finally, since the bill does not authorize any particular state agency or department to enforce these provisions, this legislation opens the door for an increase in 3rd party lawsuits against manufacturers. The business community is already subject to bounty hunter suits under Proposition 65 and AB 1200 could make an already difficult situation worse."

Related legislation:

1. AB 1989 (Garcia, Chapter 272, Statutes of 2020). Establishes the Menstrual Products Right to Know Act of 2020, which requires, starting on January 1, 2023, the disclosure of ingredients in menstrual products on a label on the product and on a website.

2. SB 1044 (Allen, Chapter 308, Statutes of 2020). Prohibits the manufacture, sale, distribution, and use of firefighting foam containing PFAS chemicals by January 1, 2022, with some exceptions, and requires notification of the presence of PFAS in the protective equipment of firefighters.

3. SB 1056 (Portantino, 2020). Would have required the State Water Board to establish an analytical laboratory method that can be used as a tool to assess the extent of PFAS contamination in drinking water, surface water, groundwater, and wastewater. This bill was held in the Senate Environmental Quality Committee.

4. SB 312 (Leyva, Chapter 315, Statutes of 2020). Establishes the Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020, which requires disclosure of specified flavor and fragrance ingredients that are found in cosmetic products that are on any of the authoritative lists identified in the bill to the Department of Public Health (DPH) and requires DPH to post on its existing database of cosmetic product information a list of those fragrance ingredients and flavor ingredients and their associated health hazards.

5. AB 756 (C. Garcia, Chapter 162, Statutes of 2019). Authorizes the State Water Board to order one or more public water systems to monitor for PFAS and requires municipalities to notify consumers for PFAS detected above notification levels.

6. AB 841 (Ting, Chapter 372, Statutes of 2019). As heard by the Assembly, would have required OEHHA to assess PFAS substances, especially as they might be found in drinking water, to determine which might pose a potential risk to human health. The contents of this bill were deleted in the Senate and amended with unrelated content.

7. AB 958 (Ting, 2018). Would have required a manufacturer of food packaging or cookware sold in the state to visibly disclose on an exterior location of the food packaging or cookware packaging a specified statement relating to the presence of PFAS in the product. This bill was held on the Senate Floor.

8. SB 258 (Lara, Chapter 830, Statutes of 2017). Establishes the Cleaning Product Right to Know Act of 2017, which requires manufacturers of cleaning products to disclose chemical

ingredients that are found in any of the authoritative lists identified in the bill on the product label and on the manufacturers' website.

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

10. SB 1313 (Corbett, 2008). Would have prohibited the manufacture, sale, or distribution of any food contact substance, as defined, which contains perfluorinated compounds, as defined, in any concentration exceeding 10 parts per billion. This bill was vetoed by Governor Arnold Schwarzenegger whose veto message said, "I have signed AB 1879 (Feuer) and SB 509 (Simitian) which mark the beginning of California's historic Green Chemistry Initiative. It is within this process that chemicals like PFCs should be addressed."

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners (CO-SPONSOR)
Center for Environmental Health (CO-SPONSOR)
Clean Water Action (CO-SPONSOR)
Environmental Working Group (CO-SPONSOR)
Natural Resources Defense Council (CO-SPONSOR)
Alliance of Nurses for Healthy Environments
American Academy of Pediatrics, California
American College of Obstetricians and Gynecologists District IX
Ban Single Use Plastic (SUP)
Black Women for Wellness Action Project
Breast Cancer Action
Breast Cancer Over Time
California Alliance of Nurses for Healthy Environments
California Association of Sanitation Agencies
California Compost Coalition
California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California Product Stewardship Council
Californians Against Waste
CALPIRG
Center for Community Action and Environmental Justice
Center for Oceanic Awareness, Research, and Education, the
Center for Public Environmental Oversight
Clean Production Action
Compost Manufacturing Alliance
Consumer Attorneys of California
Consumer Federation of California
Courage California
Defend Our Health (formerly Environmental Health Strategy Center)
Educate. Advocate.
Erin Brockovich Foundation

Facts: Families Advocating for Chemical & Toxins Safety
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
Friends of The Earth U.S.
Heal the Bay
Integrated Resource Management
Just Transition Alliance
Keep a Breast
Los Angeles County Sanitation Districts
Made Safe
Marin Sanitary Service
Michael J Fox Foundation
National Stewardship Action Council
Northern California Recycling Association
Pacoima Beautiful
Plastic Oceans International
Plastic Pollution Coalition
Recology
Resource Recovery Coalition of California
Rethink Disposable
Safer States
San Francisco Bay Physicians for Social Responsibility
San Francisco Baykeeper
Save Our Shores
Science and Environmental Health Network
Seventh Generation Advisors
Sierra Club California
The 5 Gyres Institute
Upstream
Wishtoyo Chumash Foundation
Womens Voices for The Earth
Woodland Coalition for Green Schools
Worksafe
Zero Waste USA

Opposition

American Chemistry Council
American Forest & Paper Association
California Chamber of Commerce
California Manufacturers & Technology Association
Chemical Industry Council of California

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 100 (Holden) – As Amended April 5, 2021

SUBJECT: Drinking water: pipes and fittings: lead content

SUMMARY: Requires endpoint plumbing fixtures to meet a performance standard in addition to existing content standard to qualify as "lead free" under California law. Specifically, **this bill**:

1) Requires the Department of Toxic Substances Control (DTSC), when evaluating an endpoint device's compliance with the "lead free" requirements, to base its evaluation upon documentation provided by an American National Standards Institute (ANSI) accredited third party that has certified that the endpoint device does not leach more than one microgram per deciliter (µg/L) after a three week curing process, as calculated pursuant to specified standards.

2) Defines "endpoint device" as a single device typically installed within the last one liter of the water distribution system of a building. Defines endpoint device as including all of the following: remote chillers; lavatory faucets; bar faucets; kitchen faucets; hot and cold water dispensers; drinking fountains; drinking fountain bubblers; water coolers; glass fillers; and, residential refrigerator ice makers.

3) Excludes from the definition of endpoint device both of the following:

   a) Devices specifically exempted from section nine, "Mechanical Plumbing Devices," of the 2020 NSF International/American National Standards Institute Standard 61, effective June 2020 (NSF was formerly known as National Sanitation Foundation before 1990); and,

   b) Devices the 2020 NSF International/ANSI Standard 61, effective June 2020, subjects to a different lead leaching standard or normalization requirement.

4) Requires an endpoint device to meet both of the following to be considered "lead free":

   a) Current statutory requirements for "lead free;" and,

   b) The device does not leach more than one microgram of lead for test statistic Q or R, when normalized for a first draw sample up to or equal to one liter in volume, as calculated in accordance with the 2020 NSF International Standard 61, effective June 2020, and certified by an ANSI accredited third party.

5) Clarifies the State Water Resources Control Board's (State Water Board) authority to retain its independent authority in administering the "lead free" provisions of the California Safe Drinking Water Act.

EXISTING LAW:

1) Prohibits, under the federal Safe Drinking Water Act (SDWA), the use of pipe, any pipe or plumbing fitting or fixture, solder, or flux that is not lead free in any public water system or facility providing drinking water. (Public Law 116–92 §1417)

2) Prohibits the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not "lead free" in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption. (Health & Safety Code (HSC) § 116875(a))

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

4) Requires all pipe, pipe or plumbing fittings or fixtures, solder, or flux to be certified by an independent ANSI accredited third party, including, but not limited to, NSF International, as being in compliance with this law. (HSC § 116875(g)(1))

5) Requires the certification described above to, at a minimum, include testing of materials in accordance with the protocols used by DTSC in implementing Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20. (HSC § 116875(g)(2)(A))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "We all expect the water we drink to keep us healthy and not make us sick. California has progressively been working to reduce residents' exposure to lead. Yet lead is still leaching into drinking water through faucets, fixtures, and other end use plumbing devices during the curing process which can last for weeks. We can fix this by requiring all faucets/fixtures and other endpoint devices to leach as little lead as possible and third party testing demonstrates that this standard can be met."

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: Concern about lead in drinking water has heightened since the Flint, Michigan water crisis, and, in fact, some of 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.

Lead in plumbing: Beginning January 1, 2010, California law (AB 1953, Chan, Chapter 853, Statutes of 2006) banned for sale and use 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 definition applies to kitchen faucets, bathroom faucets, and any other endpoint 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 larger 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 100 proposes to require endpoint plumbing devices, such as faucets, fixtures, and water fountains to meet a performance standard to comply with the requirement to be "lead free." This performance standard will prevent the sale in California of endpoint devices that leach more than one µg/L of lead.

Third party certification: The federal and California "lead free" plumbing requirements have been incorporated into the ANSI standard issued by NSF International as NSF/ANSI 61.

NSF is an independent, not-for-profit organization that develops consensus national standards, and provides product inspection, testing, and certification. To address contamination in drinking water, the United States Environmental Protection Agency contracted with NSF in 1985 to lead a consortium of public and private partners (PPP) to develop health-based product standards for products that could be used in public drinking water supplies. These standards were developed as American National Standards using the principles required under the essential requirements of the ANSI.

The efforts of the PPP led to the 1988 release of NSF/ANSI 60 and NSF/ANSI 61 and a related conformity assessment program to certify that products meet the standards' requirements.

NSF is the entity that currently certifies faucets as meeting state and federal plumbing standards. Current law requires all pipe, pipe or plumbing fittings or fixtures, solder, or flux to be certified

by an independent ANSI accredited third party, including, but not limited to, NSF International, as being in compliance with the "lead free" standard (HSC § 116875(g)(1)).

This ANSI standard limits the amount of impurities that individual products can introduce into a home's water supply for potable water contact, including lead and other metals, volatile organic chemicals, phthalates, and bisphenol A. Products covered by this standard include faucets, pipe, drinking water fountains, water meters, and water storage tanks. That standard also sets a limit of five µg/L lead leaching in overnight samples from endpoint devices over the first three weeks of use. The leaching limit is based on a specific protocol in NSF/ANSI 61.

NSF/ANSI 61 Section 9 certifies lead leaching from endpoint devices (i.e., components within the last 1 L of water) using an evaluation criterion known as the "Q statistic," which must be less than five µg/L for faucets. This statistic is the calculation of the upper 90% confidence interval of the 75th percentile, and is used to translate the component's lead contribution to a 1 L sample. The Q statistic calculation is described in-depth in the NSF/ANSI standard.

Although the ANSI 61 accreditation standard itself prohibits certified faucets from leaching more than five µg/L lead, California law does not express a lead leaching standard. State law only limits the amount of lead that can be in the water-touching metal of faucets and fixtures. As a result, state enforcement actions, such as faucet testing, do not address the lead-leaching rates of faucets sold in California.

"Lead free" does not mean lead free: California's "lead free" plumbing statute reduced the allowable amount of lead in plumbing fixtures, but still allows for lead, which can, and does, leach into the water.

Consumers are unaware that lead-free devices leach any lead – and many would be shocked to learn the faucets leach so much lead – especially in the first few weeks of use.

On April 25, 2018, NSF International released a report, *Analysis of lead extraction results obtained during Q statistic evaluations on devices submitted as 'lead free'; under NSF/ANSI 61*, which provided data on 692 plumbing products (which included approximately 500 faucets) that had been submitted to NSF for certification since 2011 as "lead free."

The report found that 73% of faucets leach one µg/L or less. That indicates more than a quarter of the faucets on the market that meet California's "lead free" plumbing standard are leaching lead into the drinking water, but it also means nearly two-thirds of the faucets on the market today would meet the performance standard proposed by this bill.

Unfortunately, there currently is no easy way to identify these "lower lead" models as the manufacturers do not make their Q values public. Additionally, NSF did not test every single individual endpoint device; rather, it tested "families" of products with similar or common materials or components that can be covered by the testing, so even NSF cannot provide information on each endpoint device's Q value if it is lower than five µg/L.

Efforts to test lead in drinking water: Given the impacts of lead on children, California has made it a priority in recent years to address lead in drinking water by testing the taps at institutions that cater to children.

In 2017, AB 746 (Gonzalez, Chapter 746, Statutes of 2017) was enacted to require community water systems that serve a schoolsite built before January 1, 2010, to test for lead in the potable faucets of the schoolsite on or before July 1, 2019. Concurrently, the State Water Board required approximately 1,200 community water systems to test the drinking water for lead at any school that requested it.

Furthermore, in 2018, the Legislature enacted AB 2370 (Holden, Chapter 676, Statutes of 2018) to require the state to test drinking water at all licensed childcare centers and recommended remediation strategies if lead is detected, including faucet replacement. The Budget Act of 2019-20 included $5 million to start that testing process ahead of AB 2370 implementation given the fact that lead exposure to babies and toddlers is critical.

Under the proposed AB 2370 sampling protocols, there is a five parts per billion (ppb) lead action level, and a requirement that all test results – with detections down to 1 ppb – be reported. (Please note that 1 ppb $\neq$ 1 µg/L. Both are very low thresholds for lead in drinking water, but are not the same measurement.)

Results from water testing at schools: There are approximately 9,000 K-12 schools in California serving more than six million school-age children, and more than 600,000 California children are enrolled in 10,500 licensed child care centers.

The AB 746 testing was completed in July 2019, and the data show that approximately 18% of K-12 public school campuses found at least one faucet that dispensed lead containing 5 ppb lead or more. (Many schools that tested their drinking water did not test all of the drinking water fountains or faucets of potable water, so there could be a greater percentage of schools with lead contaminated drinking water.) The testing at childcare centers has not yet commenced, but there is concern the results could mirror what we are seeing at schools.

The timing of AB 100 is relevant; when lead is found in drinking water, faucets tend to carry the majority of the blame for the lead exposure, and are also one of the easiest things to remediate. However, if a significant portion of the "lead free" faucets on the market are leaching lead, then any remediation at a school or childcare center to replace a faucet will be for naught.

Goals to reduce lead in drinking water: The American Academy of Pediatrics (AAP) recommends that drinking water in public schools should not exceed one µg/L lead. Specifically, the AAP is calling for state and local governments to take steps to ensure that the water lead concentrations at school water fountains do not ever exceed one µg/L.

At an October 2019 public hearing, the State Water Board agreed to adopt a goal of reducing lead in childcare centers' drinking water to no more than 1 ppb. The State Water Board's decision represents the toughest action in the country to date on this issue.

Members of the State Water Board did not vote to approve the health-protective lead goal during the meeting but did instruct its staff to include it in the recommendations and protocols the State Water Board will send to the Department of Social Services (DSS), which oversees licensed childcare centers and will administer the lead testing program pursuant to AB 2370.

AB 100 would effectively codify a performance standard in addition to the existing content standard that would require endpoint devices to leach less than one µg/L helping the state meet those drinking water goals.

Time is of the essence: The introduction of AB 2060 (Holden, 2020), which was ultimately held in the Senate Appropriations Committee last year, ignited renewed interest at NSF International to move to a lower NSF/ANSI 61 standard. NSF wrote last year to this committee that there had been growing consensus to make any new requirement mandatory (as AB 2060 proposed).

To allow time for manufacturers to comply with a more stringent standard, NSF requested an effective date of January 1, 2024, for all plumbing fixtures, not just endpoint devices, to meet a Q≤ 1 value. After negotiations on implementation timing, AB 2060 provided a tiered implementation through 2024 to require gradually increasing percentages of end-point devices be sold as compliant to allow time for certification.

Due to the time sensitivity of childcare centers and other consumers replacing their faucets now, the author has moved up the implementation date to January 1, 2022, in this bill.

Plumbing Manufacturers International (PMI), which represents manufacturers of 90% of the United States' plumbing products with more than 150 brands, is supportive of the standard being lowered to one µg/L lead, but would prefer the implementation date be set back to January 1, 2024.

Committee recommendation: The author may wish to continue working with PMI to establish a timeline that work for the impending remediation efforts at schools and child care centers while allowing manufacturers time to comply with the certification protocols for a lower Q value. With a potentially delayed 2024 implementation date, consumers will need to be appropriately informed about which endpoint devices are best to prevent lead exposure. A simple, easily understandable label affixed to the packaging of devices communicating that they meet the current "lead free" statute and are certified as meeting the NSF/ANSI/CAN 61: $Q \leq 1$ standard could be a potential compromise.

Related legislation:

1) AB 2060 (Holden, 2020). Would have required endpoint plumbing fixtures to meet a performance standard, in addition the current statutory content standard for lead, to meet conditions for "lead free." This bill was held in the Senate Appropriations Committee.

2) AB 1953 (Chan, Chapter 853, Statutes of 2006). Banned for sale and use 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."

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Interest Research Group, CALPIRG (CO-SPONSOR)
Clean Water Action (CO-SPONSOR)
Environmental Working Group (CO-SPONSOR)
Alliance of Nurses for Healthy Environments
Breast Cancer Prevention Partners
California Alliance of Nurses for Healthy Environments
California Coastkeeper Alliance

California League of Conservation Voters
California Water Association
Coalition of California Welfare Rights Organizations
East Bay Municipal Utility District
Environment California
Environmental Defense Fund
Environmental Health Coalition
Erin Brockovich Foundation
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
Integrated Resource Management
San Francisco Bay Area Physicians for Social Responsibility
Sierra Club California
Western Center on Law and Poverty

Opposition

Plumbing Manufacturers International (opposed unless amended)

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 304 (Quirk) – As Amended March 23, 2021

SUBJECT: Contaminated sites: waste releases or surface or groundwater contamination: local oversight: remedial actions

SUMMARY: Provides state oversight and sets requirements for local officers overseeing remedial action at sites with released hazardous waste. Specifically, **this bill**:

1) Amends the requirements for reimbursement of remediation costs from the Site Cleanup Subaccount to include costs from investigation and cleanup operations required by unified program agencies and local health officers under any section of the Water Code.

2) Amends the definition of "local officer" to mean a county health officer, city health officer, or county director of environmental health who has been granted authority by their jurisdiction to enter into remedial action agreements and oversee remedial action at sites with released hazardous waste.

3) Permits a responsible party for the release of hazardous waste to request a local officer oversee the remedial action if the local officer complies with notification requirements and has provided the Department of Toxic Substances Control (DTSC) and regional water quality control board (regional water board) with the following in the past twelve months:

   a) A description of the technical expertise and staff resources available to oversee the remediation of the release site, including resumes of appropriately licensed professionals;

   b) Certification that appropriate financial resources and funding mechanisms are available to oversee the remediation of the site;

   c) Certification that all applicable statutory requirements will be adhered to, and that if enforcement action is necessary, it will be conducted or promptly referred to DTSC or the regional water board; and,

   d) Certification that accurate records will be maintained and kept up to date, including through the use of the State Water Resources Control Board's (State Water Board) GeoTracker electronic data management system (GeoTracker), and kept in compliance with electronic reporting requirements.

4) Requires the remedial action agreement to specify the testing, monitoring and analysis that the responsible party will carry out, proposed remedial actions, required reporting and public notifications, and enforcement actions or referrals in the event of noncompliance.

5) Permits a local officer who enters into a remedial action agreement to withdraw from the agreement after giving the responsible party at least 30 days' notice and making one or more of the specified findings.

6) Authorizes DTSC or the regional water board to inform the local officer that they will retain oversight authority for the waste release during the notification period. Prohibits a local

officer from entering into a remedial action agreement if they are informed DTSC or the regional water board will retain oversight authority.

7) Requires a local officer entering into a remedial action agreement to establish a global identification number and public record for the State Water Board's GeoTracker and upload a copy of the remedial action agreement under their global identification number. Requires local officers to comply with electronic reporting requirements, and include these reporting requirements as provisions of the remedial action agreement.

8) Prohibits DTSC or the regional water board from assuming regulatory oversight authority of a waste release after a remedial action agreement has been entered into unless DTSC or the regional water board make one or more of the specified determinations. Requires notification to occur with a minimum 30 day notice after which the remedial action agreement is no longer valid.

9) Requires local officers, at least 30 days before certifying the cleanup goals in the remedial action agreement were accomplished, to conduct a public notification process that must include, at a minimum, notifying DTSC, the regional water board, agencies with authority to issue building permits on land affected by the waste release, and owners and occupants of the property impacted by the waste release and adjacent to the waste release. Requires the public notice to be posted on GeoTracker under the global identification number for the site.

10) Requires the local officer to provide the responsible party with a document describing the release of waste, remedial action taken, and certification that the cleanup goals were accomplished after the local officer determines a permanent remedy for the release of waste has been achieved. Requires the document be posted on GeoTracker under the global identification number established for the site.

11) Provides that nothing prohibits DTSC, the State Water Board, or regional water board from assuming jurisdiction over a waste release or taking enforcement action.

12) Requires a local officer to provide written notification to DTSC and the regional water board at least 30 days before entering into a remedial action agreement.

13) Requires the written notification to include:

    a) Names and addresses of current site owners if different from the responsible party;

    b) Address and location of site or sites to which the remedial action agreement will apply;

    c) A description of any known local, state, or federal regulatory involvement at the site;

    d) A preliminary description of the release, and the anticipated investigation or remediation, if known; and,

    e) The name, phone number and email address of the local officer's technical staff who are available to oversee the remediation of the release site.

EXISTING LAW:

1) Authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request a local officer to supervise the remedial action. Authorizes the local officer to supervise the remedial action if the local officer determine that adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. (Health & Safety Code (HSC) § 101480 (b))

2) Prohibits a local officer from overseeing remedial action at specified sites determined by DTSC. (HSC § 101483)

3) Requires a local officer to provide written notice with specified information to DTSC and the appropriate regional water board at least 10 working days prior to entering into an agreement with a responsible party. (HSC § 101487)

4) Authorizes the California Environmental Protection Agency (CalEPA) to certify Unified Program Agencies (CUPAs) to carry out environmental programs on behalf of the state, including programs related to the regulation of hazardous waste generators and onsite hazardous waste treatment, and the regulation of petroleum underground storage tanks. (HSC § 25404 - 25404.9)

5) Authorizes the State Water Board to certify local agencies as qualified to clean up or oversee a responsible party to clean up soil and groundwater contamination from leaking underground storage tanks. Prohibits local agencies from overseeing the cleanup of leaking underground storage tank sites unless they have been certified by the State Water Board. (HSC § 25297.01)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill*: According to the author, "AB 304 will help to ensure that local health officers who oversee the cleanup of contaminated sites have the necessary expertise, knowledge, and resources to carry out remediation responsibilities in a manner that is protective of public health. This bill sets certain requirements for local health officers overseeing a contaminated site cleanup including electronic reporting, public notification, and written notice to DTSC and the State Water Board detailing technical and fiscal resources available for the cleanup. AB 304 will provide consistency to cleanups throughout the state and reduce the likelihood that cleanups will have be re-opened due to ongoing contamination."

Remedial actions for waste releases: There are currently thousands of contaminated sites across the state and the unauthorized releases of pollutants pose a risk to public health and the environment. These sites are complex and vary widely. They can include pesticide manufacturing facilities, rail yards, ports, dry cleaners, and refineries where pollutants were released to the soil, groundwater, surface water, and/or sediment. The types of pollutants encountered at these sites are plentiful and diverse and can include solvents, heavy metals, and petroleum. Some of these pollutants can persist in the environment, meaning that today's contaminated sites may be due to historical or recent unauthorized releases of pollutants.

The State Water Board and DTSC both have authority to do hazardous waste cleanup, but have different jurisdictions. The State Water Board oversees remediation where hazardous waste impacts surface or ground waters of the state, as well as underground storage tank contamination.

There are nine regional water boards that exercise rulemaking and regulatory activities in regions defined by watersheds. DTSC oversees all other hazardous waste release cleanup.

The regional water boards and DTSC are charged with identifying parties that are responsible for the contamination, setting cleanup standards and requirements, and overseeing the cleanup of contaminated sites to ensure that they are properly remediated and do not continue to pose a threat to public health and the environment. State law specifies requirements for cleaning up contaminated sites, and the regional water boards and DTSC have developed extensive policies and procedures for determining the extent and type of contamination, and processes and standards for the proper remediation of contaminated sites.

Local oversight of hazardous waste cleanup: Historically, the California legislature has acknowledged that local agencies, when provided sufficient resources and information, can help the state address, through oversight or abatement efforts, the sites that require cleanup. AB 3193 (Polanco, Chapter 1113, Statutes of 1990), the Polanco Redevelopment Act, was enacted as part of the Community Redevelopment Act to assist redevelopment agencies in responding to brownfield properties (properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation cost and liability concerns) in their redevelopment areas. (HSC § 33459-33459.8) Under the law, redevelopment agencies could take action to remediate releases of hazardous substances on a property that was part of a redevelopment project. The redevelopment agencies were granted qualified immunity from liability under state or local law, provided that the cleanup was conducted in accordance with a remedial action plan approved by DTSC or a regional water board. (HSC § 33459.3)

The CUPAs were created through the enactment of SB 1082 (Calderon, Chapter 418, Statutes of 1993) to be regulated under the unified hazardous waste and hazard materials management regulatory program (Unified Program). The Unified Program ensures consistency throughout the state for the implementation of administrative requirements, permits, inspections, and enforcement at the local regulatory level. CalEPA oversees the statewide implementation of the Unified Program and its 81 CUPAs, which apply regulatory standards established by the Governor's Office of Emergency Services, DTSC, the Office of the State Fire Marshal, the State Water Board, and CalEPA. DTSC may certify CUPAs to oversee the cleanup of contaminated sites, if DTSC determines they are qualified to do so. Under the Unified Program, CUPAs are certified to do corrective action on a limited number of tiered permitted hazardous waste facility sites. These CUPAs may be certified by DTSC as approved for "Tier 1 cleanup oversight" for less complex sites, or "Tier 2 cleanup oversight" for complex or high risk sites.

The Site Designation Process was enacted by AB 2061 (Umberg, Chapter 1184, Statutes of 1993) to allow a responsible party to request CalEPA to designate a local agency to oversee the cleanup action. AB 1248 (O'Connell, Chapter 671, Statutes of 1995) authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request the local health officer to supervise the remedial action. The law authorizes the local health officer to supervise the remedial action if the officer determines adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. This program, commonly referred to as the "voluntary cleanup program," requires local health officers to enter into a remedial action agreement with the responsible party which specifies the testing, monitoring, and analysis that the responsible party will undertake to determine the extent and type of contamination at the site and the remedial actions that will be undertaken by the responsible party. (HSC § 101480)

In 2001, the California Land Environmental Restoration & Reuse Act (SB 32, Escutia, Chapter 764, Statutes of 2001) established a new hazardous materials investigation and cleanup program to be administered by local agencies with oversight from DTSC or the regional water board, and would provide cost reimbursement.

When the Legislature dissolved local redevelopment agencies (AB 1X 26, Blumenfield, Chapter 5, Statutes of 2011), it created problems regarding local access to brownfield remediation tools previously granted under the authority of the Polanco Redevelopment Act. AB 1X 26 required successor agencies to expeditiously dispose of assets and properties of former redevelopment agencies. However, there was a concern that many of those properties would either be difficult for successor agencies to sell or maximize the value of in the sale due to the actual or perceived contamination of the site. Therefore, the Legislature subsequently enacted AB 440 (Gatto, Chapter 588, Statutes of 2013) to authorize a local agency (a county, city, or housing authority) to take any action, similar to that under the Polanco Redevelopment Act, to remedy or remove a release of hazardous material on or under a "blighted property" within a "blighted area." AB 440 also provides immunity from further liability to the local agency, any person who enters into an agreement with that local agency to develop the property, and any future property owners.

Under the State Water Board's Local Oversight Program (LOP), the State Water Board certifies local agencies (regardless of whether they are local health agencies) as qualified to clean up or oversee a responsible party cleanup of soil and groundwater contamination from leaking underground storage tanks. (HSC § 25297.1) Local agencies are prohibited from overseeing the cleanup of leaking underground storage tank cleanup sites unless they have been certified by the State Water Board.

Status of the voluntary cleanup program: Local health officers currently oversee remediation sites pursuant to a voluntary agreement for any sites where there is no lead agency (i.e. DTSC or regional water board) providing oversight and where local health officers determine they have the appropriate level of expertise. These sites include redevelopment with various previous site uses, such as gas stations, dry cleaners, industrial sites, gun range contamination, large spills from truck accidents, spills from aboveground tanks, contaminated soils associated with disposal sites, and spills from machinery or other equipment, including transformers.

The United State Environmental Protection Agency estimates that there are between 96,000 and 212,000 contaminated sites in California. DTSC has identified approximately 9,800 contaminated sites statewide. Current law authorizing local health officers to oversee site remediation helps to fill the gap where state agencies may not have the bandwidth to address the large number of contaminated sites in a timely manner.

In order to enter into a voluntary cleanup agreement with a responsible party, a local health officer is required to first provide written notification to DTSC and the appropriate regional water board(s) within 10 working days prior to entering into an agreement with a responsible party to ensure the state is aware of the site remediation and who is conducting it. (HSC § 101487) There are a number of sites where local health officers are prohibited from using the voluntary cleanup agreement authority, including, but not limited to, any State Response, federal Superfund, military, and backlog sites designated by DTSC; sites subject to a cleanup and abatement order for a violation of any waste discharge requirement into a water source; or, sites that are under Phase I Environmental Assessment. (HSC § 101483) The notification required to the state before entering into a voluntary agreement provides the opportunity for the state and

local health officer to determine the applicability of the local health officer's authority to oversee the site remediation.

Current law allows the local health officer to determine whether they have the staff resources, technical expertise, and capabilities to oversee site remediation, and if not, they can refer the cleanup to the state. Local health officers can also refer voluntary cleanups to DTSC or the regional water board if the site becomes large or more complex than first expected, or if the responsible party is not in compliance with the remedial action agreement.

The State Water Board's LOP certifies local health officers to oversee the cleanup of sites contaminated by leaking underground storage tanks. However, current law does not provide state oversight or certification of local health officers implementing the voluntary cleanup program. There is relatively little data available on cleanups of contaminated sites under the voluntary cleanup program because local agencies are not required to upload their cleanup data to the State Water Board and DTSC's websites and most do not do so voluntarily. Regional water boards have found instances in which cleanups of contaminated sites overseen by a local health officer under the voluntary cleanup program have been inadequate. Specifically, problems have arisen including: inconsistent cleanup oversight practices, under-qualified personnel conducting highly specialized technical oversight, lack of data entry, lack of public access to case records, poorly documented sites, and approval of site closures that may not meet the regional water board or DTSC requirements even though the site has been certified by the local agency as "clean."

Standards for local health officers: AB 432 (Quirk, 2019) would have required the State Water Board and DTSC to develop and implement a program to certify local officers to enter into remedial action agreements for the oversight and abatement of hazardous wastes. AB 432 would have been similar to the State Water Board's existing LOP program for certifying local agencies to oversee the cleanup of sites contaminated by leaking underground storage tanks.

There were several concerns with the certification program proposed in AB 432, including that the certification program could become too onerous, timely, and costly for local health officers, making them less likely to apply for the authority due to limited local resources. If local health officers were to opt out of the proposed certification program, there would have been a greater burden on DTSC and the regional water boards to oversee more cleanup sites. AB 432 was held on suspense in the Assembly Appropriations Committee.

AB 2333 (Quirk, 2020) would have taken a different approach than AB 432, instead setting a number of requirements for local health officers overseeing the cleanup of contaminated sites. AB 2333 died in the Senate Environmental Quality Committee due to time constraints imposed on hearings due to the COVID-19 pandemic. AB 304 is a re-introduction of AB 2333 and takes the same approach. In order to enhance oversight and transparency, AB 304 sets forth requirements for local health officers, including: providing more detailed written notification to DTSC and the regional water board before entering into a remedial action agreement; specifying proposed remedial actions, required reporting and public notifications, and enforcement actions or referrals in the event of noncompliance in remedial action agreements; and, establishing a global identification number for the site through the State Water Board's GeoTracker and complying with electronic reporting requirements. In order to provide more consistency for the certification of cleanups, AB 304 requires local health officers to provide public notification and

documents outlining the remedial action and certification of cleanup goals to the responsible party.

The requirements for local health officers described above would apply to remedial action agreements entered into on or after January 1, 2022. For open cases where remedial action agreements have been entered into before January 1, 2022, only the certification requirements of providing public notification and documents to the responsible party, and posting both of these on GeoTracker would apply.

In addition to the requirements for entering into remedial action agreements and certifying cleanups, AB 304 authorizes DTSC or the regional water board to retain oversight authority before or after entering into a remedial action agreement. AB 304 prohibits DTSC or the regional water board from assuming oversight authority over a release where a remedial action agreement has already been entered into unless DTSC or the regional water board makes one or more of the specified determinations related to insufficient resources to oversee the remedial action or insufficient enforcement authority to ensure the responsible party is in compliance with the remedial action agreement. If DTSC or the regional water board do assume regulatory oversight authority, they are required to provide a minimum 30-day notice, and local health officers will still be able to recover costs from the responsible party for their work up until that point.

Related legislation:

1) AB 2333 (Quirk, 2020), Would require local health officers who oversee contaminated sites to provide DTSC and the State Water Board with written notice detailing the technical and fiscal resources available for the cleanup. This bill was held in the Senate Environmental Quality Committee due to the COVID-19 pandemic.

2) AB 432 (Quirk, 2019). Would require the State Water Board and DTSC to develop and implement a certification program for local health officers who enter into remedial action agreements. This bill was held on suspense in the Assembly Appropriations Committee.

3) AB 440 (Gatto, Chapter 588, Statutes of 2013). Authorizes a local agency to take any action, similar to that under the Polanco Redevelopment Act, to remedy or remove a release of hazardous material on or under a "blighted property" within a "blighted area."

4) AB 1701 (Wieckowski, Chapter 536, Statutes of 2012). Requires the State Water Board to establish a program for certifying cities and counties to oversee the cleanup of leaking underground storage tanks and prohibits cities and counties from overseeing the cleanup unless they have been certified by the State Water Board.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Marika Nell / E.S. & T.M. /

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 732 (Quirk) – As Introduced February 16, 2021

SUBJECT: Department of Toxic Substances Control: Toxic Substances Control Account

SUMMARY: Increases the amount of the Environmental Fee in order to close the structural deficit of the Toxic Substances Account Act (TSCA). This fee increase is intended to provide stable funding for the Safer Consumer Products Program and the Site Mitigation Program under the Department of Toxic Substances Control (DTSC). Specifically, this bill:

1) Increases the amount of the Environmental Fee, while maintaining the existing structure of the Fee. The fee is levied on all businesses based upon the number of employees and the increases are as follows:

   a) Increases the fee for businesses with 50 or more employees but fewer than 75 employees from $357 per year to $525 per year;

   b) Increases the fee for businesses with 75 or more employees but fewer than 100 employees from $627 per year to $922 per year;

   c) Increases the fee for businesses with 100 or more employees but fewer than 250 employees from $1,244 per year to $1,831 per year;

   d) Increases the fee for businesses with 250 or more employees but fewer than 500 employees from $2,669 per year to $3,928 per year;

   e) Increases the fee for businesses with 500 or more employees but fewer than 1,000 employees from $4,985 per year to $7,336 per year; and,

   f) Increases the fee for businesses with 1,000 or more employees from $16,911 per year to $24,886 per year.

EXISTING LAW:

1) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals and chemical ingredients that may be considered chemicals of concern, as specified. (Health & Safety Code (HSC) § 25252)

2) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products and potential alternatives to those chemicals of concern to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern, and to establish potential regulatory responses that DTSC may take after the alternatives analysis is completed. Specifies, but does not limit, regulatory responses that DTSC can take, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)

3) 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 public health or the environment. (HSC § 25300 et seq.)

4) Requires DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under the HSAA. (HSC § 25356)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "DTSC has been operating under a deficit for a number of years and in the current budget year, the TSCA needs a backfill of $13 million from the General Fund just to maintain base level funding. The TSCA supports very important programs such as the Safer Consumer Products Program, which looks at chemicals in products, and the Site Mitigation Program, which oversees the cleanup of contaminated sites. The main funding source for TSCA is the Environmental Fee, which can only be raised by a change in statue and hasn't been raised statutorily in over 20 years. AB 732 solves this fiscal deficit by raising the Environmental Fee in an amount to cover the base funding for programs supported by TSCA."

DTSC's three major programs: DTSC is responsible for protecting public health and the environment by overseeing the state's response to releases of hazardous substances and disposal of hazardous waste. DTSC investigates, removes and remediates contamination as part of that mission. DTSC's operations fall under three major program areas:

- Site Mitigation and Restoration Program. This program is responsible for the cleanup and restoration of contaminated sites throughout the state; including legacy landfills (e.g., Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Lab, military bases, former industrial properties, orphan sites, federal Superfund sites, and school sites.

- Hazardous Waste Management Program. This program is responsible for regulating the management of hazardous waste. Under the program, DTSC issues permit decisions for proposed new hazardous waste facilities and the approximately 110 existing hazardous waste facilities in California that treat, store, and dispose of hazardous waste. The program's staff conducts inspections and takes enforcement actions to ensure compliance with hazardous waste laws and regulations. This program oversees the hazardous waste generator program. In addition, it provides hazardous waste management-related policy support, regulatory and statutory interpretation, financial assurance, and data management support for internal and external stakeholders. The program also provides emergency response support for hazardous materials-related emergencies throughout California.

- Safer Consumers Products and Workplaces Program. This program is responsible for reducing toxic chemicals in consumer products, creating new business opportunities in the emerging green chemistry industry, and helping consumers and businesses identify what chemicals are in the products they buy. DTSC identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products.

History of the Environmental Fee: The current Environmental Fee structure is the product of a statutorily mandated Fee Reform Task Force created by SB 1222, Calderon (Chapter 638, Statutes of 1995). The Environmental Fee is imposed on an organization, which includes a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship. The Environmental Fee is assessed annually and is tiered based upon the number of employees within an organization. Those organizations with less than 50 employees are not subject to the Environmental Fee. The Environmental Fee is adjusted (up or down) annually based upon changes to the Consumer Price Index and DTSC publishes the current fee amount on its website each calendar year. Some fee suggestions from the Task Force were enacted in SB 660, Sher (Chapter 870, Statutes of 1997); however, SB 660 did not authorize DTSC to set or adjust fees to address changing funding needs or varying levels of activity.

Toxic Substances Control Account (TSCA): TSCA is authorized to fund a number of programs; however, the vast majority of funding from TSCA goes to support DTSC's site mitigation program and the Safer Consumer Products Program. TSCA receives approximately 80 percent of its revenue from the Environmental Fee. The remaining 20 percent of TSCA revenues comes from cost recovery revenues, penalties, and interest. The growth of operational costs that exceed Environmental Fee revenue resulted in a structural imbalance in TSCA. According to the Governor's proposed budget for 2021-2022 the current deficit, the amount to maintain current services levels, in TSCA is $13 million.

Criticism of DTSC: In addition to its fiscal deficiencies, DTSC has been criticized for lack of transparency and ineffective implementation of its statutory mandates. Specific incidents across California have exposed and continue to expose glaring failings in DTSC's implementation of its core programs, as well as its support programs. Such incidences include the mishandling of the hazardous waste facility permitting and enforcement of Exide and the Quemetco battery recycling facilities; delayed site remediation; failed public participation and transparency activities; and, personnel issues. These situations have all led to decreased stakeholder confidence and public trust in DTSC's ability to meet its mandate to protect public health and the environment.

Recent Legislative reform efforts of DTSC: At the end of the legislative session in 2019, Assemblymembers Cristina Garcia, Bloom, and others introduced AB 995, which sought to reform DTSC as well as assess the appropriate fee structure needed to enable a functioning department. To accomplish these goals, AB 995 would have established a Board of Environmental Safety at DTSC and would have created a fee taskforce to evaluate DTSC's funding needs and recommend fees to support its programs. The newly created Board would have been the policy setting body for DTSC, would have decided permit appeals, and would have been be the public interface for DTSC. One of the first tasks anticipated for this Board was for it to approve a statewide Hazardous Waste Management Plan. AB 995 would have also restructured and increase fees for DTSC's hazardous waste management program and those fees are deposited into the Hazardous Waste Control Account (HWCA).

AB 995 was passed by the Legislature in August 2020 but was vetoed by the Governor. The veto message cites the lack of fiscal reform in the bill as the reason for the veto. It should be noted that AB 995 did contain fiscal reform for HWCA; however, the bill did not include fiscal reform for TSCA. This year Assemblymember Cristina Garcia has reintroduced the ideas in the bill as AB 1 and she continues discussions with the Administration.

Governor Newsom proposes new DTSC reform package as part of 2021-2022 budget: The Governor's DTSC Reform package contains three major components: Establishing a Board of Environmental Safety (Board); Fee Reform; and, Programmatic Reform. This proposal is a combination of budget change proposals and budget trailer bill language.

The Governor is proposing to create a five-member Board with the members of the Board appointed by the Governor. The Board would provide policy direction to and oversight of DTSC. The Chairperson of the Board would be full-time and the remaining Board members would be half-time. The Board would: set fees and fee rates; decide permit appeals for hazardous waste facilities; provide opportunities for public comment on DTSC's permit and remediation decisions; review and approve the DTSC Director's annual priorities and performance metrics; provide long-term goals for DTSC's programs; and, provide an annual performance review of the DTSC Director. Along with the Board, this proposal establishes an Ombudsperson to receive and evaluate complaints and suggestions regarding any action, program, or policy of DTSC.

The Governor is also proposing a major overhaul of DTSC's fee structure. The proposal is designed to produce sufficient revenue to eliminate the need to provide General Fund revenues to fund DTSC's baseline funding gap; pay the costs associated with the Board, support staff, and Ombudsperson; provide for an additionally $59 million in revenue to support anticipated near-term staffing needs, likely beginning in 2022; and, begin to establish a prudent reserve. Additionally, the proposal eliminates three fees under the HWCA (disposal fee, manifest user fee, and EPA ID fee); restructures the generator fee into a generation and handling fee; establishes a per ton rate for the generation and handling fee; raises and sets and new base rate for the facility fee; and, eliminates all of the exemptions except the exemption for small quantity generators (those that generate less than 5 tons a year). This fee reform proposal also includes changes to the Environmental Fee. The proposal permanently eliminates the fee for businesses with less than 100 employees, freezes the fee for businesses with 100-499 employees (this fee can change if the Board raises the fee in the future); and, more than triples the fee for businesses with 500 or more employees.

The Governor's proposal includes programmatic changes. The proposal establishes a hazardous waste management plan (Plan) to be presented to the Board for its approval. The goal of the Plan is to guide DTSC's hazardous waste policies and regulatory program in the future. Within the Plan would be recommendations to establish hazardous waste reduction goals; update DTSC's pollution prevention program; and, reduce the risk of exposure to communities threatened by releases of hazardous waste. Additionally the Governor's proposal includes changes to strengthen financial assurance requirements for permitted hazardous waste facilities and establishes accountability requirements for DTSC's permitting of renewal applications for hazardous waste facilities.

How does AB 732 compare to the Governor's Budget Proposal: AB 732 simply raises the Environmental Fee using the existing fee structure. The Governor's budget proposal, however, makes changes to the Environmental Fee as well as authorizes a Board of Environmental Safety to raise the Environmental Fee up to an amount double that which is currently proposed in the Governor's budget. The Governor proposes to eliminate the fee for businesses with less than 100 employees, freeze the fee (until the new Board authorizes an increase) for businesses with 100-499 employees and more than triples the fee for businesses with 500 or more employees. This is

an interesting approach as it places the current and future burden of funding TSCA on larger businesses, while AB 732 maintains the existing fee structure which spreads out the fee to a broader base of businesses, those with 50 employees or more.

Looking at AB 1 and AB 732, one could conclude that together these bills contain the same policy and fiscal concepts as contained within the Governor's budget proposal. AB 732 provides funding for two of DTSC's three core programs: Site Mitigation and Safer Consumer Products. These programs deal with California's toxic legacy of contamination as well as look to a future where products are engineered without toxic chemicals in the first place. To the average person funding these important programs would be a "no brainer"; however, the reality the Legislature and Administration face is more complicated by the fact that the funding source for these programs, the Environmental Fee, is a 2/3 vote tax. The alternatives to not raising this tax are to raise another tax, greatly reduce or completely stop work on cleaning up contaminated properties, or look at majority vote mechanisms for programs such as the Safer Consumer Products Program. If these programs are to remain, they need to be funded in some manner.

Arguments in Support: None on file.

Arguments in Opposition: According to the California Association for Health Services at Home (CAHSAH), representing home health, hospice and home care agencies since 1966, "[CAHSAH] has adopted an oppose unless amended position on AB 732 which nearly doubles the annual fee for organizations that use, generate, store, or conduct activities in the state related to hazardous materials. This bill would create a financial burden for many home health and hospice agencies that must transport limited amounts of sharps and other hazardous wound care bandages from the home to a licensed hazardous waste disposal company. Therefore, we are asking that the bill be amended by creating an exemption from this annual fee for home health agencies licensed under Health and Safety Code 1725 and hospice entities licensed under Health and Safety Codes 1745 and 1250 (n)."

Related Legislation:

1) AB 1350 (Patterson). Exempts, for three years, businesses with less than 100 employees from the Environmental Fee. This bill is pending action in the Assembly Environmental Safety and Toxic Materials Committee.

2) AB 995 (C. Garcia, 2020). Would have created the Board of Environmental Safety (Board) within the California Environmental Protection Agency (Cal/EPA) to provide policy direction to and oversight of the Department of Toxic Substances Control (DTSC). Raises and recasts existing fees within the Hazardous Waste Control Account (HWCA) to fill a projected deficit of approximately eighteen million dollars. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Association for Health Services At Home (oppose unless amended)

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 332 (Committee on Environmental Safety and Toxic Materials) – As Amended March 26, 2021

SUBJECT: Hazardous waste: treated wood waste: management standards

SUMMARY: Authorizes treated wood waste (TWW) to be managed under alternative management standards (AMS) instead of as a hazardous waste.

EXISTING LAW:

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

2) Prohibits the disposal of any hazardous waste when the disposal is at a facility that does not have a permit from DTSC. (HSC § 25189.5)

3) Prohibits the owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site from accepting, treating, storing, or disposing of hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facility permit or other grant of authorization from DTSC. (HSC § 25201)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The alternative management standards for TWW, expired on December 31, 2020, as the result of the veto of SB 68 (Galgiani). This has created great uncertainty with how TWW shall be managed. Without clear guidance I am greatly concerned that TWW will be mismanaged and ultimately discarded by the side of the road, or disposed of in a manner that could increase the risk of exposure to chemicals from TWW. AB 322 will solve this problem by re-authorizing the alternative management standards that have been in place in regulation since July 2008. I expect there to be further discussions on how to best manage TWW with the Administration, however, the first step is to ensure that TWW is safely managed while those discussions continue."

Treated wood waste (TWW): According to DTSC, treated wood is wood that has been treated with a chemical preservative for protection against pests, fungal decay, or other environmental conditions. Typically, treated wood is used where contact with the ground or with water is likely. Examples of treated wood uses include fence posts, sill plates, railroad ties, utility poles, docks, piers, landscape timbers, pilings, guardrails, and decking. When treated wood has reached the end of its useful life, it becomes TWW.

DTSC reports that TWW contains hazardous chemicals, such as arsenic, chromium, copper, creosote, and pentachlorophenol, which are known to be toxic or carcinogenic and which pose a risk to human health and to the environment. Harmful exposure to these chemicals may result

from dermal contact with TWW, or from inhalation or ingestion of TWW particulate (e.g., sawdust and smoke). If TWW is not properly disposed of, the chemicals in the waste can contaminate surface water and groundwater.

California's TWW program: California's regulatory authority and disposal guidelines for TWW were established in Health and Safety Code (HSC) pursuant to AB 1353 (Matthews, Chapter 597, Statutes of 2004). HSC § 25150.7(f) requires DTSC to adopt regulations establishing alternative management standards (AMS) for TWW, which it did in July, 2008. In addition, HSC § 25150 (d)(l) authorizes the disposal of TWW in either a class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit approved to accept TWW by the appropriate Regional Water Quality Control Board.

Because TWW contains hazardous chemicals, it is subject to California's HWCL. Without AMS, TWW is required to be managed as hazardous waste, placing an increased burden on the regulated business community and on the public. Therefore, AB 1353 provided DTSC with the statutory authority to develop, through regulations, AMS for TWW that were based upon hazardous waste requirements, but were adjusted for the unique circumstances associated with TWW. AMS lessen storage requirements, extend accumulation periods, allow shipments without a hazardous waste manifest and a hazardous waste hauler, and allow disposal at specific non-hazardous waste landfills. According to DTSC, the AMS simplify and facilitate the safe and economical disposal of TWW.

DTSC's TWW evaluations: AB 1353 also required DTSC to "prepare and post on its Web site a report that makes a determination regarding the successful compliance with, and implementation of TWW law". In June 2011, DTSC published "Treated Wood Waste Management in California; AB 1353 Implementation Report, June 2011." The report contained some alarming findings, including that, "Based on a very limited number of inspections, TWW generators inspected by DTSC were found to have more—and more serious—violations, some of which posed potential threats to the environment and/or public health."

Following the 2011 report, SB 162 (Galgiani, Chapter 351, Statutes of 2015), in addition to extending the sunset of TWW law by 3 years to December 31, 2020, required a more comprehensive evaluation of the TWW program, due January 1, 2018 (this was pushed back to July 1, 2018 in a later bill). This evaluation, which included compliance with, and implementation of, TWW law and regulation, was meant to better inform a decision on whether the TWW program is sufficiently protective of public health and the environment and may be extended indefinitely.

Specifically, SB 162 required the report to include, among other components:

a) Data, and evaluation of that data, on the rates of compliance and the injuries associated with handling TWW based on DTSC inspections of TWW generator sites and TWW disposal facilities;
b) An evaluation of the adequacy of protective measures taken in tracking, handling, and disposing of treated wood waste;
c) Data regarding the unauthorized disposal of TWW at disposal facilities that have not been approved for that disposal;
d) Conclusions regarding the handling of TWW; and,
e) Recommendations for changes to the handling of TWW to ensure the protection of public health and the environment.

DTSC released the resultant report, *"Treated Wood Waste—Implementation of Senate Bill 162 (2015)"* in March 2019. To meet the requirements imposed by SB 162, DTSC conducted 126 compliance inspections of TWW generators and disposal facilities in California. In addition, responses to TWW surveys from household hazardous waste collection facilities, certified unified program agencies (CUPAs), solid waste transfer stations, and load check program facilities were evaluated. The report's "Conclusions" section includes the following:

> "From May 2017 to February 2018, 126 inspections of TWW facilities and generators conducted throughout the state indicate a high noncompliance rate with the AMS for TWW. Approximately 60 percent of the inspections conducted resulted in citations of one or more violations (seven class I, 68 class II, and 69 minor).
>
> The most frequently cited violations were: lack of personnel training specific to TWW handling, inadequate accumulation area labeling, failure to submit generator notifications, providing incomplete or incorrect information in semiannual reports, and allowing TWW to come in contact with the ground....
>
> Based on discussions with TWW handlers during inspections, most noncompliance issues appear to be due to the lack of regular inspections, enforcement, and training or outreach."

No recommendations on TWW from DTSC: Though required by statute, DTSC's resultant report did not include, "recommendations for changes to the handling of [TWW] to ensure the protection of public health and the environment." However, the report did note that, "Based on discussions with TWW handlers during inspections, most noncompliance issues appear to be due to the lack of regular inspections, enforcement, and training or outreach." With additional resources, DTSC could carry out regular inspection, enforcement, training, and outreach programs that would likely result in higher rates of compliance.

Sunset of statute authorizing AMS for TWW: SB 68 (Galgiani, 2019-2020) was introduced to make various changes to the TWW program, however, the biggest change is that the bill proposed to eliminate the sunset for the AMS, which would have made the authority for the AMS permanent. Without SB 68 the AMS statute and regulations would sunset on December 31, 2020. Governor Gavin Newsom vetoed SB 68, which ultimately eliminated the statutory authority for the AMS and eliminated the authority for the AMS regulations.

DTSC expects the AMS for TWW to return: The veto of SB 68 meant that, beginning on January 1, 2021, TWW will be a fully regulated California-only hazardous waste. DTSC developed a fact sheet that explains the new requirements that apply to the management of TWW. However, DTSC also posted on its website the following information:

> "DTSC expects efforts in the upcoming legislative session to reinstate the AMS, or other requirements to govern the management of TWW. To facilitate the management of TWW in the interim, DTSC intends to offer interested parties a variance to allow the variance recipient's TWW to be managed according to variance conditions that are similar to the existing AMS. The variances are intended to be short term in nature, providing time for the Legislature, DTSC, and impacted stakeholders to develop a longer-term strategy to effectively and safely manage TWW.

While DTSC intends to offer TWW variances, the forms and procedures are not yet available. DTSC is currently developing systems and processes that will allow us to efficiently process a large number of TWW variance requests. Presently, our plan is to invite interested parties to apply for variances beginning in mid-February 2021, and to begin issuing variances on March 1, 2021.

DTSC will provide additional information and instructions about when and how to apply for a variance in the new year, including information regarding the cost of obtaining a variance. Please refer back to this webpage periodically for updates and information about applying for a variance.

It is important to note that unless and until a variance is obtained, any TWW generator, handler, transporter or disposal facility must comply with the applicable hazardous waste management requirements for the TWW they handle. Illegal management of hazardous waste can result in significant penalties for noncompliance."

Re-authorizing AMS for TWW: AB 332 authorizes TWW to be managed under AMS instead of managed as hazardous waste. AB 332 effectively takes the AMS that DTSC had adopted via regulation and places the AMS into statute. The AMS being proposed in this bill are the same management standards for TWW that have been in place in regulation since July 2008. Given that the statutory authority for the AMS expired on December 31, 2020, and the variances that DTSC is issuing are for a six month period, AB 332 additionally contains an urgency clause so that the AMS will take effect immediately.

Issues pending further discussion: As noted in the discussion and evaluation of the AMS as required under SB 162, as well as noted on DTSC's website, even with the AMS back in place there are still issues to be worked on. With the AMS being in statute, in order to make any changes to the AMS, statute would have to be amended, versus previously when DTSC had the authority to make changes via regulation. Additionally, since the AMS have been in place since 2008, significant programmatic changes have not been made. Once authority is granted for AMS, the administration and Legislature may wish to consider further changes to update the program and improve compliance with the AMS. The Legislature may also wish to consider some type of review of the AMS, similar to, but maybe not exactly, a sunset of the AMS authority.

Previous related legislation:

1) SB 68 (Galgiani). Would have deleted the December 31, 2020, sunset on TWW statute; required the wood preserving industry to prepare training materials on how to best handle, dispose of, and otherwise manage TWW; and, required DTSC to perform regular inspections of representative TWW generator sites and TWW disposal facilities. This bill was vetoed by the Governor.

2) SB 839 (Committee on Budget and Fiscal Review, Chapter 839, Statutes of 2016). Extended, from January 1, 2018 to July 1, 2018, the time by which DTSC was required to prepare, post on its website, and provide the appropriate policy committees of the Legislature the comprehensive TWW report.

3) SB 162 (Galgiani, Chapter 351, Statutes of 2015). Extended the sunset date on TWW statute from June 1, 2017 to December 31, 2020, and required DTSC to, on or before January 1, 2018, prepare, post on its website, and provide to the Legislature a comprehensive report on the implementation of TWW law.

4) SB 909 (La Malfa, Chapter 601, Statutes of 2011). Modified code relating to TWW disposal, including: extended the sunset of statute related to TWW disposal requirements from 2012 to 2017; deleted obsolete sections of code, including a reference to a required TWW report; and, specified the website and phone number that wholesalers and retailers of treated wood and treated wood-like products are required to post on warning signs so that consumers can access information about treated wood.

5) AB 1353 (Matthews, Chapter 597, Statutes of 2004). Required TWW to be disposed of in a class I hazardous waste landfill or a composite-lined portion of a solid waste landfill unit (class II or class III); required DTSC to establish management standards for TWW; and, required DTSC, by June 1, 2011, to prepare and post on its website a report that makes a determination regarding the implementation and compliance rate.

REGISTERED SUPPORT / OPPOSITION:

Support

Agricultural Council of California
Aiken-Ford Lumber, Co.
Allweather Wood, LLC
Amador County Board of Supervisors
American Chemistry Council
American Forest & Paper Association
American Wood Council
Associated General Contractors of California
Auto Care Association
Bay Planning Coalition
BB&S Treated Lumber of New England
Brooks Manufacturing Co.
Cal Chamber
CalCIMA
California Association of Harbor Masters and Port Captains
California Association of Winegrape Growers
California Automotive Wholesalers' Association
California Biomass Energy Alliance
California Builders Alliance
California Building Industry Association
California Cascade
California Cattlemen's Association
California Farm Bureau Federation
California Forestry Association
California Fresh Fruit Association
California Landscape Contractors Association
California Manufacturers & Technology Association

California Product Stewardship Council
California Retailers Association
California Waste & Recycling Association
California Waste Haulers Council
Chemical Industry Council of California
City of Oroville
City of Santa Clara
City of Watsonville
Conrad Forest Products
Construction & Demolition Recycling Association
Contra Costa County
County of Lake
County of Sacramento
Creosote Council III, Inc.
CSAC
Del Norte Solid Waste Management Authority
Exterior Wood / Taiga Building Products
Fontana Wood Preserving, Inc./Fontana Wholesale Lumber, Inc.
Gemini Forest Products
Hexion, Inc.
Humboldt Redwood Company, LLC
Humboldt Waste Management Authority
JH Baxter
Kern; County of
Koppers INC.
League of California Cities
Lonza Wood Protection
Los Angeles County Sanitation Districts
LP Building Solutions
Manke Lumber Company
Marine Recreation Association
Mcfarland Cascade Holdings, Inc.
Mendo Recycle
Nadra
Nisus Corporation
North American Wood Pole Council
Osmose Utilities Services, Inc.
Pacific States Treating
Pacific Wood Services
Premier Recycle Company
Princeton Wood Preservers, Ltd.
Railway Tie Association
Rain Carbon, Inc. - Ruetgers Canada
Recology Waste Zero
Recyclesmart
Republic Services, Inc.
Resource Recovery Coalition of California
Rural County Representatives of California (RCRC)
Sacramento Regional Builders Exchange (SRBX)

Santa Barbara County Solid Waste Local Task Force
Sierra Pacific Industries
South Bayside Waste Management Authority (SBWMA) DBA Rethinkwaste
Southeastern Lumber Manufacturers Association
Southern Pressure Treaters Association
Stopwaste
Swana California Chapters Legislative Task Force
Thunderbolt Wood Treating
Treated Wood Council
United Contractors
Viance, LLC
Waste Management
West Coast Lumber & Building Material Association
Western Placer Waste Management Authority (WPWMA)
Western Wood Preservers Institute
Wheeler Lumber, LLC
Wine Institute
Wood Preservation Canada
Zero Waste Sonoma

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 440 (Bigelow) – As Amended March 24, 2021

SUBJECT: Bear Lake Reservoir: recreational use

SUMMARY: Deletes the sunset on the bodily contact prohibition exemption for Bear Lake Reservoir, and deletes other bodily contact restrictions, thus authorizing, if specified conditions are met, bodily contact with the water at Bear Lake Reservoir to occur all year and in perpetuity. Specifically, **this bill**:

1) Deletes the requirement that, for bodily contact to occur at Bear Lake Reservoir, the Lake Alpine Water Company conduct monitoring for cryptosporidium, giardia, and total coliform bacteria, including E. coli and fecal coliform, at the reservoir intake and at post treatment no less than three times during the four month period when bodily contact is allowed, thus reverting monitoring requirements to be at a frequency determined by the State Water Resources Control Board (State Water Board).

2) Deletes the four month per year bodily contact restriction at Bear Lake Reservoir.

3) Deletes the January 1, 2022, sunset on the bodily contact exemption for Bear Lake Reservoir.

EXISTING LAW:

1) Establishes as state policy that all public waters should be used for multiple purposes, to the extent that the uses are consistent with public health and public safety. (Health and Safety Code (HSC) § 115825 (a))

2) Prohibits recreational uses in which the participant has bodily contact with water in a reservoir in which water is stored for domestic use, except as provided in statute for specified reservoirs and under specified conditions. (HSC § 115825 (b))

3) Prohibits bodily contact with the water in Bear Lake Reservoir, unless all of the following conditions, among others, are satisfied:
   a) The water subsequently receives, as specified, complete water treatment, in compliance with all applicable State Water Board regulations, including oxidation, filtration, and disinfection, before being used for domestic purposes;
   b) The Lake Alpine Water Company conducts a monitoring program for cryptosporidium, giardia, and total coliform bacteria, including E. coli and fecal coliform, at the reservoir intake and at post treatment at a frequency determined by the State Water Board, but no less than three times during the period when bodily contact is allowed;
   c) The reservoir is operated in compliance with regulations of the State Water Board; and,
   d) Bodily contact is allowed for no more than four months each year. (HSC § 115843.6 (a))

4) Provides that the recreational use of Bear Lake Reservoir shall be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir, or required by the State Water Board, that are required to further protect or enhance the public

health and safety and do not conflict with the regulations of the State Water Board. (HSC § 115843.6 (b))

5) Requires the Lake Alpine Water Company to file, on or before December 31, 2017, and biennially thereafter, with the Legislature, a report, as specified, on the recreational uses at Bear Lake Reservoir and the water treatment program for that reservoir. (HSC § 115843.6 (c))

6) Requires the State Water Board to, at the end of each recreational season, annually review monitoring and reporting data from Bear Lake Reservoir to ensure full compliance. (HSC § 115843.6 (e)(1))

7) Provides that if at any time the State Water Board finds a failure to comply with monitoring, treatment, or reporting requirements, the bodily contact restriction exemption shall cease immediately, and a permit issued to the Lake Alpine Water Company pursuant to California Safe Drinking Water Act may be subject to suspension, amendment, or revocation. (HSC § 115843.6 (e)(2))

8) Provides that failure of the Lake Alpine Water Company to comply with the bodily contact exemption requirements shall be deemed a violation of the California Safe Drinking Water Act and shall be subject to any applicable fines, penalties, or other enforcement action provided under that Act. (HSC § 115843.6 (e)(2))

9) Sunsets the bodily contact exemption for Bear Lake Reservoir on January 1, 2022. (HSC § 115843.6 (g)

10) Authorizes body contact sports in reservoirs constructed and operated as part of the State Water Project, other than terminal reservoirs from which water is supplied for domestic use without purification treatment after withdrawal from such reservoirs, to the extent that it is compatible with public health and safety requirements. (Water Code § 12944.(a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Residents of Bear Valley enjoy spending their summers in Bear Lake Reservoir, and Lake Alpine Water Company has shown that they can treat the water to account for human bodily contact. The current use exemptions expire next year, so we should extend them to allow the community to continue to enjoy the lake."

Bodily contact with water in California reservoirs: The California Health and Safety Code (HSC) establishes as state policy that all public waters are to be used for multiple purposes, as long as the uses are consistent with public health and safety. To this end, HSC prohibits recreational uses in which the participant has bodily contact with water in a reservoir in which water is stored for domestic use. Bodily contact with domestic water supplies can be a source of fecal pathogens and other contaminants that, if not treated, can be a serious threat to public health. The HSC does provide exemptions from this bodily contact prohibition, however, for all reservoirs in San Diego County, the Nacimiento Reservoir, the Modesto Reservoir, the Sly Park Reservoir, the Canyon Lake Reservoir, and the Bear Lake Reservoir. In each of these cases,

statute delineates health and safety requirements, including monitoring and treatment requirements, which must be met in order for the exemption to stay in effect. California Water Code makes an additional exemption for bodily contact with water in reservoirs constructed and operated as part of the State Water Project, to the extent that the recreation is compatible with public health and safety requirements.

Lake Alpine Water Company: Lake Alpine Water Company is a privately owned water utility serving Bear Valley in Alpine County. Lake Alpine Water Company serves nearly 300 single family homes, 20 businesses, and 179 condominium units. Lake Alpine Water Company is regulated by the California Public Utilities Commission and the State Water Board. The water source for Lake Alpine Water Company is the Bear Lake Reservoir, contained by an earthen dam in the town of Bear Valley. All water is obtained from springs and snow melt into Bear Lake.

Bear Lake Reservoir: According to Lake Alpine Water Company, Bear Lake is a private thirteen-acre lake surrounded by a lodge pole pine and white fir forest and residential homes in the unincorporated community of Bear Valley in Alpine County. Access to the lake is provided by three small sandy beaches. All other shoreline is private property or earthen dam. The lake is frozen or snowed over from mid-November through mid-May. The weather allows for recreational use of the lake from June through September. The lake is posted as private and is used only by the members and guests of Bear Valley Residents Incorporated. Uses of the lake include wading, swimming, sailing, windsurfing, paddling, and fishing. Dogs and other pets are not allowed in the lake or at any of the access points. No motorized watercrafts of any kind are allowed in the lake.

The Lake Alpine Water Company reports that the number of visitors to Bear Lake Reservoir is weather dependent. There can be little to no use until June 15. During July and August, attendance averages 70 people per day with peak use of 130 people per day. Use tapers off again after August 15 and, due to water temperature, attendance typically drops to zero after September 15.

Bodily contact recreation in Bear Lake Reservoir: The HSC prohibits bodily contact with the water in Bear Lake Reservoir, unless all of the following conditions, among others, are satisfied:

a) The water subsequently receives, as specified, complete water treatment, in compliance with all applicable State Water Board regulations, including oxidation, filtration, and disinfection, before being used for domestic purposes;
b) The Lake Alpine Water Company conducts a monitoring program for cryptosporidium, giardia, and total coliform bacteria, including E. coli and fecal coliform, at the reservoir intake and at post treatment at a frequency determined by the State Water Board, but no less than three times during the period when bodily contact is allowed; and,
c) The reservoir is operated in compliance with regulations of the State Water Board; and,
d) Bodily contact is allowed for no more than four months each year.

The Lake Alpine Water Company monitors Bear Lake Reservoir watershed for coliform, fecal coliform, E. coli, giardia, and cryptosporidium and provides a biennial report to the Legislature on the recreational uses at Bear Lake Reservoir and the water treatment program for that reservoir.

In its most recent report, released in 2019, the Lake Alpine Water Company noted that Bear Lake Reservoir samples for coliform increased from 2017-2019, but determined that the increase is associated with an increase in the dissolved oxygen level of the hypolimnetic layer. Oxygen is concentrated onshore and pumped into the bottom of the lake through an array of diffusion hoses. By increasing the dissolved oxygen levels in the hypolimnetic layer, the water treatment operators were able to decrease iron and manganese concentrations, therefore improving water quality. The Lake Alpine Water Company maintains that despite the higher total coliform levels, counts for both fecal coliform and E. coli levels decreased. They noted that all lake samples tested negative for both giardia and cryptosporidium.

Water quality issues related to bodily contact at Bear Lake Reservoir: The State Water Board indicates that it has not identified any specific water quality issues related to bodily contact at Bear Lake Reservoir that would raise concern, and, given the relatively limited number of users at Bear Lake Reservoir, they do not anticipate a high likelihood of violations or concerns in the future. However, should the State Water Board find a failure to comply with monitoring, treatment, or reporting requirements, the bodily contact restriction exemption shall cease immediately, and a permit issued to the Lake Alpine Water Company pursuant to California Safe Drinking Water Act may be subject to suspension, amendment, or revocation.

This bill: AB 440 deletes the sunset on the bodily contact exemption for Bear Lake Reservoir, the four month bodily contact restriction, and the frequency by which the Lake Alpine Water Company must monitor the water during the four month period in which bodily contact is currently allowed, thus authorizing, if specified conditions are met, bodily contact with the water at Bear Lake Reservoir to occur all year and in perpetuity. The State Water Board's regulatory authority over the reservoir remains intact.

Previous related legislation:

1) SB 930 (Gaines, Chapter 149, Statues of 2016). Extended the sunset on the bodily contact exemption for Bear Lake Reservoir until January 1, 2022, and required the Lake Alpine Water Company to file a biennial report file with the Legislature on the recreational uses at Bear Lake Reservoir and the water treatment program for that reservoir.

2) SB 14 (Gaines, Chapter 172, Statutes of 2013). Authorized, until January 1, 2017, recreational uses at Bear Lake Reservoir, if certain conditions are met, including water treatment, monitoring, and reporting requirements.

3) SB 1063 (Gaines, 2012). Would have authorized, until January 1, 2016, recreational uses at Bear Lake Reservoir if certain conditions are met, including water treatment, monitoring, and reporting requirements. SB 1063 was vetoed by Governor Brown.

4) AB 1934 (Leslie, Chapter 374, Statutes of 2004). Authorizes recreational uses, until January 1, 2007, at Bear Lake Reservoir if certain conditions are met.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 698 (Committee on Environmental Safety and Toxic Materials) – As Introduced February 16, 2021

SUBJECT: Hazardous waste: small quantity generator

SUMMARY: Updates terms within the state Hazardous Waste Control Law (HWCL) to conform to recent changes in federal hazardous waste regulation promulgated by the United States Environmental Protection Agency (US EPA) under their Generator Improvement Rule (GIR).

EXISTING LAW:

1. Establishes the national hazardous waste management program under Subtitle C of the Resources Conservation and Recovery Act (RCRA). (42 United States Code § 6901 et seq.)

2. Creates the HWCL, which authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code § 25100 et. seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: In May 2017, the US EPA's GIR went into effect nationwide; however, it is not yet in effect in California. This is because, while California is authorized to implement RCRA, it must first adopt the GIR. DTSC is finalizing the regulatory changes needed to conform to the GIR and AB 698 makes the statutory changes necessary to conform to the federal changes. This bill is necessary to ensure that those generators of hazardous waste, especially those that operate in multiple states, have clear and consistent rules and regulations to follow.

Federal hazardous waste regulation: RCRA established three programs: hazardous waste management (RCRA Subtitle C), solid waste management (RCRA Subtitle D), and the underground storage tank program (RCRA Subtitle I). RCRA provides "cradle-to-grave" control of solid and hazardous waste by establishing management requirements for generators and transporters of hazardous waste treatment, storage, and disposal facilities. Most states have been authorized to implement some or all of the RCRA Subtitle C program. State RCRA programs must be at least as stringent as the federal program, but states also can adopt more stringent requirements.

California Hazardous Waste Control Law: The HWCL is the state's program that implements and enforces federal hazardous waste law in California. The HWCL covers the entire management of hazardous waste, from the point that the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility. Statute 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. DTSC's hazardous

waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.

Federal hazardous waste generator rule: The federal hazardous waste generator regulatory program was originally promulgated in 1980. Over the course of the last several decades, the US EPA, through experience with implementing the program, and in various meetings, correspondence, and discussions with the states and the regulated community, has become aware of the need for more clarity, consistency, and flexibility. Many of these issues were identified in a 2004 program evaluation of the hazardous waste generator program conducted by the US EPA. In 2013, a separate US EPA program evaluation addressing hazardous waste determinations also identified a number of concerns related to generators being able to make a proper hazardous waste determination.

After consolidating the feedback from the regulated community, states, and other stakeholders, the US EPA developed a proposal to improve the entire hazardous waste generator program to strengthen environmental protection while ensuring businesses have the flexibility and certainty they need to successfully operate. The proposed rule was published in the *Federal Register* (FR) on September 25, 2015 (80 FR 57918).

The US EPA Administrator signed the final Hazardous Waste Generator Improvements Rule (GIR) on October 28, 2016, and it was published in the FR on November 28, 2016. The GIR finalizes a much-needed update to the hazardous waste generator regulations to make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed, and close important gaps in the regulations. In addition to finalizing key flexibilities, the GIR enhances the safety of facilities, employees, and the general public by improving hazardous waste risk communication and ensuring that emergency management requirements meet today's needs.

Implementing the GIR in California: On May 30, 2017, the US EPA's Hazardous Waste GIR went into effect. However, because California is an authorized state, the GIR does not take effect in California until DTSC adopts the rule, or parts thereof, via the rulemaking process.

DTSC will adopt some portions of the GIR. To accomplish this, DTSC will conduct a non-substantive (Under the California Code of Regulations, Title 1, section 100(a)(1) or Section 100) rulemaking that will: adopt regulations from the GIR that are more stringent than California's hazardous waste generator regulations (these regulations are considered mandatory provisions) and re-organize California's hazardous waste generator regulations to align with the federal re-organization. DTSC is required to adopt provisions of the rule that are identified as more stringent than US EPA's previous regulations and are also more stringent than California's current hazardous waste laws and implementing regulations. These provisions are considered mandatory because DTSC must adopt them to maintain authorization to administer California's hazardous waste program in lieu of the federal program pursuant to RCRA.

In addition to the changes in state regulation, state law needs to be updated to conform to the changes made by the GIR. AB 698 updates state law to conform to the US EPA's GIR and will conform to the changes to state regulations being adopted by DTSC that conform to the GIR.

Related legislation:

1) AB 3261 (ESTM, 2020). Updates terms within the state HWCL to conform to recent changes in federal hazardous waste regulation promulgated by the US EPA under their GIR. This bill was held in the Senate Environmental Quality Committee.

2) AB 1597 (ESTM, Chapter 133, Statutes of 2019). Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA electronic manifest system.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 818 (Bloom) – As Introduced February 16, 2021

SUBJECT: Solid waste: premoistened nonwoven disposable wipes

SUMMARY: Requires labels indicating that a product should not be flushed on specified nonwoven disposable products, establishes enforcement provisions, and establishes a consumer education and outreach program. Specifically, **this bill**:

1) Requires covered nonwoven disposable wipes, by July 1, 2022, to be labeled clearly and conspicuously to communicate that they should not be flushed, and prescribes specified "Do Not Flush" symbols, size, and location requirements for the label.

2) Defines a covered product as a consumer product sold in the state or offered for sale in the state that is either a premoistened nonwoven disposable wipe marketed as a baby wipe or diapering wipe, or a premoistened nonwoven disposable wipe that is both composed entirely of or in part of petrochemical-derived fibers and is likely to be used in a bathroom and has significant potential to be flushed, including baby wipes, bathroom cleaning wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting wipes, hand sanitizing wipes, antibacterial wipes, facial and makeup removal wipes, general purpose cleaning wipes, personal care wipes for use on the body, feminine hygiene wipes, adult incontinence wipes, adult hygiene wipes, and body cleansing wipes.

3) Prohibits a covered entity, a manufacturer of a covered product, from making a representation about the flushable attributes, benefits, performance, or efficacy of those premoistened nonwoven disposable wipes, as provided.

4) Establishes enforcement provisions.

5) Provides that enforcement actions may be brought by the Attorney General, by a district attorney, by a city attorney, a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

6) Stipulates that these provisions supersede and preempt all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the labeling of covered products.

7) Establishes a consumer education and outreach program, as specified, and sunset the consumer outreach program on December 31, 2026.

8) Requires covered entities to report to the Senate Committee on Environmental Quality, the Assembly Committee on Environmental Safety and Toxic Materials Committee, and the State Water Resources Control Board (State Water Board) on their activities on an annual basis.

9) Sunsets the bill on January 1, 2027.

EXISTING LAW:

Under federal guidelines:

1) Defines biodegradability and requires environmental marketing claims and claims of degradability, biodegradability, and photodegradability be qualified to the extent necessary to avoid consumer deception about the product or package's ability to degrade in the environment where it is customarily disposed and the rate and extent of degradation. (Federal Trade Commission (FTC), Green Guide Part 260 § 260.8)

2) Regulates the labeling requirements on various consumer products and requires any person who represents in advertising or on the label or container of a consumer good that the product is not harmful to, or is beneficial to, the natural environment, through the use of terms such as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, to maintain in written form in its records specified information and documentation supporting the validity of the representation. (FTC, Green Guide Part 260 § 260.4)

Under state law:

1) States that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. Provides that for consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials. (Public Resources Code § 42355.5)

2) Provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. (Business and Professions Code (BCP) § 17580.5 (a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "When wet wipes products are flushed into the sewer system they can cause significant issues for private property owners, sewer collection systems, and wastewater treatment plants. Wet products that do not break down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners. Wet wipes have been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners."

What does "flushable" mean? Generally, toilet paper is universally considered flushable due to the nature of its use as well as the design of the product to disperse upon being flushed. However, there currently is no federal or state definition of what constitutes a "flushable" consumer product.

As a result, companies have used their own definitions and methods to determine the flushability of their products. For consumers and wastewater agencies, this means there has been no single reference from which to assess the flushability of a product other than the marketing claim on a package.

Flushable products: This lack of standardization, or regulation, has led to consumer confusion and lack of clarity in the market place as to the appropriateness of disposing certain products via plumbing systems.

In the 1980s, wipes advertised as "flushable" first appeared on the market. Since then, two types of flushable wipes have been designed and introduced: dispersible and low-strength wipes. Low-strength has been one approach to making nonwovens with permanent bonds flushable. These wipes collapse in a toilet, presenting a very small profile and the flexibility to travel through pipes unencumbered. However, their low wet strength makes them poor performers in most cleaning jobs. The second type of flushable wipe is dispersible. These products perform like a standard wipe as far as strength and softness, but in a toilet disperse into individual fibers or small groups of fibers.

More and more, an increasingly diverse range of disposable products has become available for consumer use. The growth of the market for such products is evidence of their popularity with the public, but their increased use brings with it discussion about their disposal, especially the topic of flushability.

For disposable products that address public health and hygiene considerations, consumers often mistakenly use the wastewater system as a preferred means of disposal. These products include disinfectant wipes and baby wipes (which are often confused with "flushable" wipes), feminine hygiene products, diapers, diaper liners, dog poop bags, wash cloths, condoms, and more. While consumer behavior cannot be legislated, legislation can steer manufacturing and labeling in a direction that better informs consumers how to behave. In the case of this bill, the intent is to better inform consumers about wipes suitable for flushing.

Problems with nonflushable products: Products that are poorly designed or not at all intended to be flushed down the toilet can cause sewer blockages, which damage sewer lines and can lead to costly sanitary sewer overflows. Damage and overflows present dangers to public health and the environment.

A buildup of nonflushable products has been shown to cause clogs in sewage pumps, lead to entanglements in sewage treatment equipment, lead to sewer backups in residences, and increase the risk of a sanitary sewer overflow during a storm.

Wipes weave together and form large "rags" that can become massive obstructions in sewer lines when they combine with other improperly flushed items and fats, oils, and greases. These obstructions are commonly referred to as "fatburgs," and in addition to being a disgusting environmental problem, local agencies spend significant time and resources to remediate them. In the worst cases, fatburgs attributed to wipes contribute to sanitary sewer overflows, which are a threat to public health and the environment, and result in fines and penalties to public agencies.

The increased maintenance needed to prevent problems from products that should not be flushed is very costly to public wastewater agencies. Many of the sanitation agencies are finding wipes are the main culprit of the problem. In some cities, such as Petaluma, costly screening facilities

have failed to stop these indispersible products from finding their way through the wastewater system.

In 2011, the Orange County Sanitation District (OCSD) conducted nearly 1,000 preventative or corrective de-ragging maintenance calls on 10 of their 15 regional pump stations. The total labor cost for these actions was more than $300,000. OCSD continues to spend labor hours to avoid clogging that could lead to a sewer spill. Their crews routinely remove non-dispersables from their three hardest hit stations every Monday and Thursday. On August 13, 2012, the equivalent of 40 large trash bags on non-dispersable materials overburdened their new headworks and completely plugged three new washer compactors. It took six to eight hours and up to 10 plant employees to restore normal operations. The OCSD notes that operations and maintenance costs are going up. Spending more public agency money to reengineer the problem away by installing new machinery is not a sustainable solution.

A pandemic makes everything worse: Following Governor Newsom's COVID-19 Stay-At-Home order (Executive Order N-33-20, enacted on March 19, 2020), consumer panic buying and subsequent shortages of toilet paper resulted in the increased flushing of alternatives like baby wipes and other non-flushable debris. As a result, local officials reported a large spike in non-flushable debris in sewer systems last spring, resulting in significant and costly operational impacts. Wastewater operators in Redding, San Clemente, Orange County, Lakeport, Victorville, Beale Air Force Base, Napa, Cupertino, Tiburon, Marin, and San Diego reported wipes clogging sewage systems.

State Water Board Advisory regarding Flushing Wipes and COVID-19: In March 2020, the State Water Board issued an advisory, warning the public not to flush disinfecting wipes down the toilet:

> *"Flushing wipes, paper towels and similar products down toilets will clog sewers and cause backups and overflows at wastewater treatment facilities, creating an additional public health risk in the midst of the coronavirus pandemic. Even wipes labeled "flushable" will clog pipes and interfere with sewage collection and treatment throughout the state.*
>
> *"Wastewater treatment facilities around the state already are reporting issues with their sewer management collection systems. These facilities are asking state residents to not discard wipes in the toilet, but instead to throw them in the trash to avoid backups and overflow. A majority of urban centers are on centralized sewage collection systems depend on gravity and enough water flow to move along human waste and biodegrable toilet paper. The systems were not designed for individual nylon wipes and paper towels. The wipes do not break down like toilet paper, and therefore clog systems very quickly.*
>
> *"Wipes are among the leading causes of sewer system backups, impacting sewer system and treatment plant pumps and treatment systems. Many spills go to our lakes, rivers, and oceans where they have broad ranging impacts on public-health and the environment. Preventing sewer spills is important, especially during this COVID-19 emergency, for the protection of public health and the environment."*

Establishing a workable flushable standard for flushable wipes: While there is not yet a regulatory standard for what is allowable to be flushed, there are both industry and water

association standards that have used rigorous testing and engineering assessments to define "flushability."

Last session, the Legislature considered AB 1672 (Bloom) to discern which guidance would be best to inform how to legislate "flushability." Stakeholders including the California Association of Sanitation Agencies, and INDA and EDANA, the trade associations for non-woven fabrics, came to an agreement to establish labeling requirements for products that should *not* be flushed in lieu of defining what can be flushed. AB 1672 was held in the Senate Appropriations Committee amidst a truncated legislative session due to the pandemic; therefore, the author reintroduced the agreed-upon language from last year in AB 818.

Non-flushable labeling: There are many kinds of wipes on the market: "flushable" wipes, disinfectant cleaning wipes, makeup remover wipes, personal hygiene wipes, and baby wipes, among others. The wipes currently sold as flushable are made of cotton. Many of the wipes on the market not intended by the manufacturer to be flushable (but often are flushed by consumers) are made of cotton and plastic materials to make the wipes more durable (such as cleaning wipes). To try to address some of the consumer confusion, AB 818 requires specified products to be clearly labeled that they are not flushable per INDA's labeling requirements. INDA's Code of Practice includes a "Do Not Flush" symbol for companies to use on product packaging.

Arguments in support: Consumer Brands writes, "It is important to distinguish the fundamental differences between non-flushable wipes and flushable wipes. Non-flushable wipes, such as baby wipes and hard surface disinfectant wipes, are designed for stronger wiping tasks and therefore are to be thrown into the trash, not the toilet. Accordingly, most are labeled "Do Not Flush." Industry wide "Do Not Flush" labeling of packaging for wipes not designed to be flushable is the primary focus of industry's Code of Practice and AB 818. We believe a clear and consistent communication strategy on packaging is crucial to promote proper disposal and in turn minimize negative impacts of non-flushable products on municipal wastewater systems. Consumer Brands supports AB 818's provisions on consumer outreach and education to promote awareness, understanding, and compliance with the "Do Not Flush" label."

Related legislation:

1) AB 1672 (Bloom, 2019). Would have required labels indicating that a product should not be flushed on specified nonwoven disposable products and establish enforcement provisions and a consumer education and outreach program. This bill was held in the Senate Appropriations Committee.

2) AB 2256 (Huffman, 2010). Would have prohibited a person from packaging or labeling a consumer product for distribution or sale in California as flushable, sewer and septic safe, or other like term or phrase unless the product meets certain criteria, as specified. This bill was held in the Senate Environmental Quality Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

National Stewardship Action Council (SPONSOR)
7th Generation Advisors
Alliance of Nurses for Healthy Environments
American Chemistry Council
American Forest & Paper Association
Association of California Water Agencies (ACWA)
Bay Area Pollution Prevention Group
California Advocates, Inc.
California Product Stewardship Council
California Resource Recovery Association
California State Association of Counties (CSAC)
California Water Association
Californians Against Waste
Camarillo Sanitary District
Camarillo; City of
Center for Oceanic Awareness, Research, and Education, the
Central Contra Costa Sanitary District
City of Camarillo
City of Roseville
City of Sunnyvale
City of Thousand Oaks
Clean Water Action
Credo Beauty
CSAC
Cucamonga Valley Water District
Defenders of Wildlife
Delta Diablo
East Bay Municipal Utility District
Eastern Municipal Water District
Facts: Families Advocating for Chemical & Toxins Safety
Full Circle Environmental
Heal the Bay
Irvine Ranch Water District
Kimberly-Clark Corporation
Las Virgenes Municipal Water District
League of California Cities
Los Angeles City Councilmember Paul Koretz
Los Angeles County Board of Supervisors
Los Angeles County Division, League of California Cities
Los Angeles County Sanitation Districts
Marin Sanitary Service
Merced County Regional Waste Management Authority
Monterey One Water
Natracare
Northern California Recycling Association

Ocean Conservancy
Personal Care Products Council
Plastic Oceans International
Plastic Pollution Coalition
Proctor & Gamble
Rancho Water
Rethinkwaste
Russian River Watershed Association
Save Our Shores
Sea Hugger
Sierra Club California
Sonoma Water
Stege Sanitary District
Surfrider Foundation
Thousand Oaks; City of
Upstream
Vallejo Flood and Wastewater District
Western Municipal Water District
Wishtoyo Chumash Foundation
Zanker Recycling
Zero Waste Sonoma
Zero Waste USA

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1024 (Santiago) – As Amended March 30, 2021

SUBJECT: Hazardous substances: correction and remedial actions: milestones and contracting

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to post on its internet website the easily accessible information of each cleanup project, as specified, and directs funds appropriated to DTSC to be spent on specified cleanup activities associated with the cleanup of the former Exide Battery facility in Vernon, California (Exide). Specifically, **this bill**:

1) Requires DTSC, when conducting a cleanup of a contaminated site, to at least partially incorporate fixed-price contracting for the performance of the cleanup and to establish performance milestones for the cleanup to ensure that the actions are performed at the appropriate pace.

2) Requires DTSC create a public dashboard on its internet website containing easily accessible information on all response or corrective actions. The dashboard shall include all of the following information:

   a) The address of the site at which the response or corrective action is taking place;

   b) The nature of the contamination;

   c) The proposal to cleanup the contamination, when available;

   d) The estimated or actual time for review of the cleanup proposal;

   e) Performance milestones for the response or corrective actions; and,

   e) A link to a web page with more detailed information on the response or corrective action in the department's Envirostor database.

3) Requires that moneys appropriated by the Legislature to DTSC for fiscal year 2021-2022 for the cleanup of Exide, to be allocated as follows:

   a) $31,400,000 to complete the cleanup of the 3,200 most contaminated properties identified by DTSC near Exide;

   b) $390,000,000 for the cleanup of the 4,600 residential properties contaminated by Exide, that are not included as part of the 3,200 most contaminated properties; and,

   c) $119,000,000 for future closure and onsite corrective action at Exide to complete all phases of the Exide closure plan.

4) Requires that moneys recovered by DTSC from responsible parties relating to Exide shall be used to repay the General Fund for costs incurred in the cleanup of contaminated sites near Exide.

EXISTING LAW:

1) Creates the Hazardous Waste Control Law (HWCL), which authorizes DTSC to regulate the management of hazardous waste 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 public health or to the environment. (HSC § 25300 et seq.)

3) Appropriates $176,600,000 from the Toxic Substances Control Account to DTSC and to 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 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 be used to repay the loan made pursuant to SB 93. 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 SB 93, 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, "Exide's pollution is one of the gravest environmental disasters in California's history. Exide polluted the homes of nearly 100,000 children and families and then shifted the cost to clean up Exide's mess onto the taxpayers. This is one of the most repugnant examples of corporate greed in recent memory. Further, the Department of Toxic Substances Control's blundering oversight of the Exide cleanup resulted in more delays, more costs, and, ultimately, more exposure to lead for California's most vulnerable families.

"AB 1024 would institute necessary transparency and accountability measures for the Department to prevent a botched cleanup oversight from ever happening again. These measures will give the public clear notice and expectations for all cleanups overseen by DTSC. Importantly, this bill will also fund the remainder of the Exide residential and facility cleanup so that our communities can begin to recover from years of environmental degradation."

Regulation of hazardous waste: The Hazardous Waste Control Law (HWCL) 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 uses the HSAA for cleanup of contaminated sites and the HWCL for the regulation of hazardous waste sites. 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: Lead has been listed under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) 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.

Exide: Exide, headquartered in Georgia, is a worldwide producer, distributor, and recycler of lead-acid batteries. In 2000, Exide purchased a facility—first opened in 1922—in an industrialized area in the City of Vernon, a few miles southeast of downtown Los Angeles, and operated the facility until its closure in 2015. 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. The facility processed about 25,000 batteries a day, providing a source of lead for new 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. Over the course of decades of operation, the facility polluted the soil beneath it with high levels of lead, arsenic, cadmium, and other toxic metals. It also contaminated groundwater, released battery acid onto roads, and contaminated homes and yards in surrounding communities with lead emissions.

In November of 2014, DTSC announced an enforcement order against Exide's Vernon facility because of the emission of airborne lead contamination, as well as on-site contamination. The order required, among other things, that the company sample the soil for lead contamination and undertake the cleanup of contaminated properties in an initial assessment area in nearby residential neighborhoods. In March 2015, DTSC informed Exide that its hazardous waste permit application would be denied, and Exide permanently closed the facility.

Investigation of contamination and beginning of cleanup near Exide: 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 community surrounding the

Vernon Exide facility; 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 of the state's General Fund 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. The 1.7-mile area surrounding Exide is designated as the Preliminary Investigation Area (PIA). The funding made available for DTSC would enable them to clean up approximately 2,500 of the highest priority properties within 1.7 miles of the facility over a two-year period. The highest priority properties were determined to be those with the highest levels of lead in soil and greatest risk of exposure.

On December 8, 2016, DTSC released the Final Exide Closure Plan and Final Environmental Impact Report. The Final Exide Closure Plan describes how the hazardous waste management units at Exide will be decontaminated and removed in a manner that is protective of public health and the environment. The plan incorporates many of the recommendations submitted by the community during the public engagement process.

Cleanup activities to date: As of March 19, 2021, DTSC had completed cleanup at 2,407 parcels using 26 cleanup crews. There are a total of 10,161 parcels within the PIA and of that total DTSC has sampled 8,606 parcels and of the 9,050 properties it has permission to sample. DTSC is in the process of contracting for the sampling of parcels it has permission to sample but has not yet sampled.

Funding provided for Exide cleanup to date: In order to expedite the cleanup of contamination in the residential neighborhoods surrounding Exide to address the public health threats posed, the Legislature has provided approximately $269 million for cleanup and enforcement activities including 1) $7 million in emergency funding, the Legislature provided in 2015-16 to sample up to 1,500 residential properties around the Exide facility; develop a comprehensive cleanup plan; and, begin cleanup of the 50 highest-priority properties based on the extent of lead contamination and the potential for exposure; 2) AB 118, (Santiago, Chapter 10, Statutes of 2016) and SB 93 (de León, Chapter 9, Statutes of 2016) provided a one-time $176.6 million General Fund loan to TSCA for Exide-related cleanup of residential properties; 3) in 2019-20, the Legislature approved a loan of $24.5 million from the General Fund to the Toxic Substances Control Account to complete cleanup activities at residences, schools, parks, day care centers, and child care facilities near Exide; and, 4) in 2019-20, the Legislature approved a loan of $50 million one-time General Fund to the Toxic Substances Control Account to accelerate the cleanup of additional properties within 1.7 miles of Exide.

Exide Bankruptcy: Exide filed its third bankruptcy petition on May 19, 2020, and following the federal bankruptcy court's approval on October 20, 2020, Exide's assets were liquidated. On October 26, 2020, Exide transferred title of the Vernon Plant to the trustee for the Exide Vernon Environmental Response Trust, a trust created pursuant to Exide's Fourth Amended Bankruptcy Plan. The trustee is required to implement closure activities and corrective action at the Vernon Plant, but the trustee has insufficient resources to complete these actions.

Recent audit of DTSC's cleanup activities near Exide: On October 27, 2020, the California State Auditor released an audit of the steps taken by DTSC to identify and remove lead contamination

from more than 10,000 properties surrounding a former lead battery recycling facility in Vernon, California. According to the state auditor,

> "Despite the importance of removing lead contamination, we found that DTSC's cleanup efforts are behind schedule.
>
> "We are particularly concerned that DTSC has not removed contaminated soil from a total of 31 school, childcare facility, and park properties even though it had available options for cleaning those sites. This is troubling because the children who may frequent these locations are at particularly high risk from the negative health effects of lead. Additionally, DTSC is behind schedule in its effort to clean 3,200 of the most contaminated properties. DTSC estimated it could clean these properties by June 2021. However, it has not cleaned properties at its expected pace and recently slowed its cleanup pace further due to a dispute with a contractor. At its current pace, DTSC will not finish cleaning the most contaminated properties until more than one year after the expected completion date. Finally, after DTSC finishes cleaning these 3,200 properties, an estimated 4,600 properties will remain contaminated and DTSC has not established a timeline or strategy to clean those properties.
>
> "Furthermore, the cleanup project is likely to cost hundreds of millions of dollars more than the State has provided DTSC to date. The State has provided DTSC about $250 million to clean the 3,200 most contaminated properties. We estimate that by the time DTSC spends all of this funding, 269 of these properties will still be contaminated. The department's poor cost estimation and cost overruns by one of its contractors have contributed to DTSC spending more than expected to clean the contamination. At current spending rates, we estimate that DTSC will need about $390 million more than it has been allocated to date to completely clean all 7,800 contaminated properties. Although the State expected it would recover its costs from Exide, in October 2020 a federal court approved a bankruptcy settlement that leaves significant questions about the State's ability to obtain reimbursement for the cleanup."

Audit recommendations: According to the audit:

"To ensure that it has sufficient funding to clean up all lead-contaminated properties in the cleanup site, DTSC should do the following:

"Identify the full amount of funding it needs to complete the cleanup of the 3,200 most contaminated properties and the remaining 4,600 contaminated properties. It should submit a request for funding in time for spring 2021 budget discussions that includes a range of funding options that spans from funding for the full cleanup to funding for only a portion of the remaining contaminated properties.

"Immediately revise its cost estimation methods to encompass the factors that it now knows will affect its overall costs. If needed, it should contract for expertise in determining accurate and complete estimates of the remaining cleanup cost.

"To protect against the unsustainably high costs it has incurred thus far in the cleanup project, DTSC should structure its future cleanup contracts to at least partially incorporate fixed prices.

"To ensure that it minimizes the exposure of children and other at-risk individuals to lead contamination, DTSC should immediately solicit a contractor to clean the 31 remaining childcare

centers, parks, and schools. It should use the TCRA process to expedite this cleanup if necessary.

"To ensure its ability to clean as many lead-contaminated properties as possible in a timely manner, DTSC should immediately begin soliciting an additional contractor to clean properties within the cleanup site. It should include performance standards for the pace of cleanup in its existing and future cleanup contracts.

"To ensure that the public and policy makers have the information they need to make informed decisions, DTSC should, by no later than April 2021, identify and publicize a date by which it expects to complete cleanup for all properties that meet or exceed the standard for lead contamination of 80 ppm identified in DTSC's cleanup plan. It should post this information on its website and, at least every six months, publish an update that indicates whether it is on track to meet that expected completion date based on its rate of progress."

DTSC's response to audit: On October 7, DTSC provided the following response to the audit:

"The Department of Toxic Substances Control (DTSC) appreciates the opportunity to respond to the findings and recommendations in the California State Auditor's (CSA) Audit Report. DTSC would like to thank you and your staff for the time and effort dedicated to conducting this audit. We would also like to thank Assembly Member Santiago for requesting this audit.

"The State of California made a strong commitment to immediately help people who live around the former Exide facility by jumpstarting a cleanup while DTSC worked to hold Exide accountable to finish the cleanup it was responsible for performing. The State provided approximately $250 million for DTSC to conduct cleanups at up to 3,200 of the most heavily-contaminated parcels. Without this commitment, communities would have been forced to wait for cleanups to commence.

"DTSC appreciates the insights gained from discussions with your staff and from your audit's findings and recommendations. We believe this process provided DTSC with information we will use to better serve the people who live around the former Exide facility in Vernon, California. This is especially important given that only one other site in the nation exceeds the size of DTSC's residential cleanup, which is the largest, most logistically complex residential cleanup project the state of California has ever undertaken.

"DTSC concurs with the recommendations in the audit report and has started to implement some and will implement all of the audit's recommendations."

State will pursue responsible parties: Exide, and any other responsible party, is legally responsible to clean up all of the properties that were contaminated by its operations. AB 118 included language that DTSC must take actions 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.

On December 14, 2020 DTSC filed litigation against prior owners and operators of the former Exide Technologies smelter in Vernon. The lawsuit seeks to hold these polluters accountable for reimbursement of costs the state has shouldered to investigate and clean up the site and surrounding area from contamination. It also asks the court to require defendants to investigate

and clean up the remaining contamination. Several companies that sent or transported large amounts of hazardous materials to the facility for disposal or treatment are also included as defendants in the Federal lawsuit.

Additionally, DTSC recently appealed the October 2020 bankruptcy court's ruling that allowed Exide to walk away from its responsibility to safely close the facility and clean up the toxic contamination. DTSC maintains its claim that Exide is responsible in its appeal of the bankruptcy court's ruling.

Why the funding and contracting changes are being pursued in AB 1024: The author of AB 1024 is also the Legislator who requested the audit of DTSC's cleanup near Exide. Given the delays and cost overruns cited in the audit, AB 1024 is incorporating several of the audit's recommendations in order to reduce the likelihood of delays and cost overruns on future cleanups projects overseen by DTSC. According to DTSC's response to the audit the department will be providing the Legislature with the funding estimates for the remaining cleanup in April 2021. In the event DTSC does not provide those cost estimates, AB 1024 continues to keep the dialogue alive. This bill also seeks to provide assurances to those living near Exide that the cleanup and closure activities will continue at the same time the state continues to seek cost recovery from potential responsible parties.

Arguments in Support: According to the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, "[We] would like to inform this committee of our support of Assembly Bill 1024, as introduced on February 18, 2021. This bill would allocate $540.4 million to fund the cleanup of this environmental disaster while also establishing transparency for the DTSC who will oversee the cleanup. With Exide's ultimate demise, the state is now tasked with the cleanup of the abandoned facility and the protection of the communities affected by the fallout. Moreover, DTSC will be held accountable for their role in the gross mismanagement of resources and funds that could have prevented this disaster. The people living in this area face long-term health issues and continue to be exposed to lead dust daily. AB 1024 will take a significant step to restore the health and safety of the people in these communities and preventing cleanup delays from happening again."

Arguments in Oppositions: None on file.

Related legislation:

1) AB 1462 (Santiago, 2019). Would have appropriated one hundred million dollars ($100,000,000) from the state General Fund to DTSC for activities related to accelerating the investigation and cleanup of homes and communities within a 1.7 mile radius of Exide. This bill was held on the suspense file in the Assembly Appropriations Committee.

2) AB 2189 (Santiago, 2018). Extends the expenditure deadline from June 30, 2018, to June 30, 2021, for DTSC to cleanup properties contaminated with lead near the Exide and appropriates $12 million to DTSC for the investigation and cleanup of parkways near Exide. This bill was held on the suspense file in the Senate Appropriations Committee.

3) AB 118 (Santiago, Chapter 10, Statutes of 2016). Appropriated $176.6 million to DTSC to use for activities related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide.

4) SB 93 (de León, Chapter 9, Statutes of 2016). Amends the 2015-2016 Budget Act to include a new transfer of funds to address urgent cleanup of lead contamination in the communities surrounding Exide.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
Breast Cancer Prevention Partners
California State Council of Service Employees International Union (SEIU California)
International Union of Operating Engineers, Local 12
LiUNA Local 300
Los Angeles County Board of Supervisors

Opposition

None on file.

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

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1298 (Bloom) – As Amended March 25, 2021

SUBJECT: Pesticides: use of 2nd generation anticoagulant rodenticides

SUMMARY: Corrects a drafting error in Assembly Bill (AB) 1788 (Bloom, Chapter 250, Statutes of 2020) related to the prohibition of the use of second generation anticoagulant rodenticides (SGARs). Specifically, **this bill**:

1) Moves a provision in the Food and Agriculture Code (FAC) enacted by AB 1788 related to the California Department of Fish and Wildlife's (DFW's) determination that the use of SGARs is required to control or eradicate an invasive rodent population for the protection of threatened or endangered species or their habitats.

2) Moves the described provision from the FAC section related to the certification of a reevaluation of SGARs to the FAC section related to exemptions from the prohibition on SGARs, thus exempting from prohibition the use of SGARs that DFW determines is required to control or eradicate an invasive rodent population for the protection of threatened or endangered species or their habitats.

3) Makes other technical, non-substantive changes to statute enacted by AB 1788.

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. (FAC § 11401 et seq.)

2) Defines "second generation anticoagulant rodenticide" as any pesticide product containing any of the following active ingredients: brodifacoum, bromadiolone, difenacoum or difethialone. (FAC § 12978.7(a))

3) Prohibits, except as specified, the use of a SGAR in a wildlife habitat area, as defined. (FAC § 12978.7 (b))

4) Prohibits, except as specified, the use of a SGAR in the state until the director of DPR makes a certification that DPR has completed a reevaluation of SGARs. (FAC § 12978.7 (c))

5) Lists exemptions to the prohibition of the use of SGARs, including for public health activities; to protect water supply infrastructure; for mosquito and vector control; to eradicate nonnative invasive species; for research purposes, as specified, related to the reevaluation of SGARs; for medical waste generators; and, for agricultural activities. (FAC § 12978.7 (e - f))

6) Provides that after the director of DPR determines that all of the following conditions have occurred, the director shall certify to the Secretary of State of that determination:

   a) DPR has completed the reevaluation of SGARs, as commenced by DPR on March 12, 2019;

   b) DPR has adopted any additional restrictions, in consultation with DFW, necessary to ensure that continued use of SGARs is not reasonably expected to result in significant adverse effects to nontarget wildlife and those restrictions are operative; and,

   c) DFW determines that control or eradication of invasive rodent populations is necessary for the protection of threatened or endangered species or their habitats and requires the use of a second generation anticoagulant rodenticide. (FAC § 12978.7 (g))

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's office, "AB 1298, makes clarifications to AB 1788, specifically section [FAC] (g)(3) within AB 1788 can be misinterpreted to mean that in order for the reevaluation to take effect, CDFW must determine the use of SGARs is necessary to protect endangered species or their habitats. The clarifications made in AB 1298 will aid to provide necessary clarification on a provision related to the Department's reevaluation, and will restore the statutory intent to allow for the use of SGAR's to control invasive species and address the protection of endangered species or their habitats."

Rodent control: Rodents native to California play an important ecological role, and are a major food source for predators and scavengers; however, rodents are pests when they infest houses, threaten public health, and destroy property. Rodent infestations can also damage or destroy critical habitats, native plants and animals, crops, and food supplies.

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 controls (rodenticides).

Rodenticides: While rodenticides are pesticides designed to kill rodents, the ingestion of, or sometimes contact with, rodenticides can have the same type of effect on other animals. Predatory and scavenging birds and mammals that eat dead or dying rodents that have consumed these baits will also be poisoned. DFW contends that the use of poison baits to control rodents has injured and killed hundreds or thousands of pets and wild animals throughout California,

including the golden eagle, great-horned owl, black bear, fisher, San Joaquin kit fox (federally endangered), coyote, mountain lion, bobcat, and badger.

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. While both compounds can impact nontarget species, SGARs are more likely than first generation anticoagulants 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.

State regulatory action on SGARs: While certain mitigation efforts had previously been in effect for some SGARS, due to the impacts of SGARs on wildlife throughout the state, on March 18, 2014, DPR designated all SGAR products as restricted materials, thus restricting their purchase and use by, or under the supervision of, a certified commercial or private applicator under a permit issued by the County Agricultural Commissioner.

Reevaluation of SGARs: In November 2018, DPR released an investigation that found that while the 2014 regulations changed SGAR use patterns by restricting their purchase, sale, and use, reported rates of non-target wildlife exposure to SGARs have not decreased. Additionally, the investigation found evidence of possible population-level impacts among non-target wildlife in California due to statistically significant associations with SGAR exposure and sublethal impacts. In response to these findings and public comment, on March 12, 2019, the director of DPR noticed the final decision to begin the reevaluation of SGARs.

According to DPR, reevaluations end in several ways. If the data show that use of the pesticide presents no significant adverse effects, DPR closes the reevaluation without added mitigation measures. If new restrictions are necessary, DPR places controls on the use of the pesticide to mitigate the potential adverse effect. DPR may also revise labels to mitigate hazards. If the adverse effect cannot be mitigated, DPR suspends or cancels the product registration.

For the SGAR reevaluation, DPR required registrants to submit existing data related to nontarget wildlife exposure. The information received is currently under review, and DPR will use the information to develop additional data requirements for SGAR products subject to reevaluation. There is no set time frame for completion of the reevaluation. Of note, however, is that, in response to the reevaluation, registrants submitted voluntary cancellations for all three previously registered difenacoum products. As of May 2019, DPR no longer had any difenacoum products, which are a SGAR, registered for use in California.

AB 1788: As noted by DPR, on September 29, 2020, Governor Gavin Newsom signed AB 1788 (Bloom, Chapter 250, Statues of 2020) to prohibit uses of SGARs due to their threat to mountain lions and other wildlife. AB 1788, which became effective January 1, 2021, prohibits the use of SGARs statewide until the DPR director certifies DPR's completion of its reevaluation of SGARs and DPR develops, in consultation with DFW, and implements, use restrictions necessary to protect wildlife.

Since initiating the reevaluation in March 2019, DPR has reviewed scientific studies on links between SGAR use and non-target wildlife exposure, and will evaluate options for mitigating

associated risks. According to DPR, the passage of AB 1788 emphasizes the importance of this work, and DPR is committed to a timely completion of the reevaluation.

This bill: AB 1298 corrects a drafting error enacted by AB 1788 related to DFW's determination that the use of SGARs is required to control or eradicate an invasive rodent population for the protection of threatened or endangered species or their habitats. The bill moves the described provision from the FAC section related to the certification of a reevaluation of SGARs to the FAC section related to exemptions from the prohibition on SGARs. This change ultimately exempts from the statutory prohibition the use of SGARs that DFW determines is required to control or eradicate an invasive rodent population for the protection of threatened or endangered species or their habitats.

Double referral: Should the Assembly Committee on Environmental Safety and Toxic Materials approve this bill, it will be referred to the Assembly Water, Parks, and Wildlife Committee.

Recent related legislation:

1) AB 1788 (Bloom, Chapter 250, Statutes of 2020). Prohibits the use SGARs until the director of DPR certifies a completed reevaluation of SGARs.

2) AB 2422 (Bloom, 2018). Would have prohibited the use, except as specified, of any pesticide that contains an anticoagulant. The Assembly Water, Parks, and Wildlife Committee hearing on this bill was cancelled at the request of the author and the bill subsequently died on file.

3) 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.

4) 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.

5) 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

American College of Obstetricians and Gynecologists District IX

Opposition

None on file.

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