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California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS



BILL QUIRK
CHAIR

AGENDA

Tuesday, June 14, 2022
1:30 p.m. -- State Capitol, Room 444

Chief Consultant
Josh Tooker

Senior Consultant
Shannon McKinney
Naomi Ondrasek

Consultant
Manar Zaghlula

Committee Secretary
Pia Estrada

HEARD IN FILE ORDER

- | | | | |
|----|---------|-----------|---|
| 1. | SB 502 | Allen | Hazardous materials: green chemistry: consumer products. |
| 2. | SB 891 | Hertzberg | Business licenses: stormwater discharge compliance. |
| 3. | SB 1254 | Hertzberg | Drinking water: administrator: managerial and other services. |
| 4. | SB 1076 | Archuleta | Lead-based paint. |
| 5. | SB 1144 | Wiener | Water efficiency and quality assessment reports: state buildings and public school buildings. |
| 6. | SB 1215 | Newman | Responsible Battery Recycling Act of 2022. |

CONSENT CALENDAR

- | | | | |
|----|---------|-----------|---|
| 7. | SB 1153 | Archuleta | Rechargeable Battery Recycling Act of 2006: data reporting. |
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Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 502 (Allen) – As Amended June 2, 2022

SENATE VOTE: 27-5

SUBJECT: Hazardous materials: green chemistry: consumer products

SUMMARY: Updates and reforms California's Safer Consumer Products (Green Chemistry) program, including, among other things, creating a streamlined alternatives analysis process; requiring manufacturers to provide information to the Department of Toxic Substances Control (DTSC) on a consumer product's ingredients, use and sales upon request; and authorizing DTSC to enforce product chemical information request violations. Specifically, **this bill:**

General provisions:

- 1) Makes legislative findings that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.
- 2) Defines "chemical manufacturer" as a person who manufactures a chemical or chemical ingredient that is used in a consumer product.
- 3) Defines "product manufacturer" as a person who manufactures a consumer product or a person who controls the manufacturing process for, or specifies the use of a chemical to be included in, a consumer product.
- 4) Makes technical, clarifying, and conforming changes to Green Chemistry statute.

Information in lieu of an alternatives analysis:

- 5) Authorizes DTSC, in lieu of requiring an analysis of alternatives, to instead rely on all or part of one or more applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product, in existence at the time of consideration, and to proceed directly to a regulatory response.
- 6) Requires that any study or evaluation that DTSC proposes to rely on in lieu of the alternatives analysis satisfy one of the reliability criteria delineated in Section 69501.1 of Title 22 of the California Code of Regulations (on reliable information).
- 7) Requires DTSC to provide public notice and an opportunity for comment from the public, including responsible entities, on the proposal to rely on the studies or evaluations. Authorizes DTSC to combine the proposal with the proposal to list a chemical-product combination as a priority product.
- 8) Requires that the proposal address any relevant regulatory response selection factors listed in subdivision (c) of Section 69506 of Title 22 of the California Code of Regulations (on

regulatory response selection factors) that product manufacturers would be required to address as part of the regulatory response.

- 9) Authorizes DTSC, if it determines that a study or evaluation upon which it is relying in lieu of an alternatives analysis does not address one or more relevant regulatory response selection factors, to augment the study or evaluation with additional information that addresses the relevant regulatory response selection factors.
- 10) Requires DTSC, following public notice and comment, to make a formal determination of whether the studies or evaluations are applicable and meet the specified reliability criteria and requirements, and whether all relevant factors have been addressed. Requires DTSC to publish a summary of its determination, including whether it plans to proceed to regulatory responses.
- 11) Requires, if regulatory responses are planned, the summary not to be judicially reviewable until regulatory responses are finalized.
- 12) Authorizes DTSC, following a formal determination, to issue regulatory responses based on the studies or evaluations, after providing public notice and an opportunity for comment from the public, including responsible entities, on the regulatory responses. Requires DTSC to respond to all comments it receives.
- 13) Requires DTSC to amend Sections 69504 (on the petition process) and 69504.1 (on the merits of review of the petition process) of Title 22 of the California Code of Regulations to allow a person to petition DTSC for a regulatory response based on the information provided in lieu of the alternatives analysis. Requires that the revision of these regulations be deemed to be a change without regulatory effect.
- 14) Provides that if DTSC provides public notice of a proposed regulation pursuant to the process outlined in this bill, and an opportunity to comment prior to the adoption of the regulation, the dispute resolution procedures specified in regulation shall not be available to a person who seeks to dispute the regulation and the requirement to exhaust administrative remedies in regulation does not apply.

Information requests:

- 15) Authorizes DTSC to issue a formal request for information from product manufacturers, which must be accompanied by a brief statement on why DTSC is requesting the information.
- 16) Requires a product manufacturer to provide to DTSC data and information on the ingredients and use of a consumer product upon DTSC's request within the time specified.
- 17) Authorizes DTSC to request, among other information, all of the following:
 - a) Information on ingredient chemical identity, concentration, and functional use;
 - b) Existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations; and,
 - c) Data on state product sales, or national product sales in the absence of state product sales data.

- 18) Requires the product manufacturer, if it certifies in writing that it does not have access to the information, and that it has attempted to, but cannot, obtain that information from one or more suppliers or chemical manufacturers, to provide the identity and contact information of those suppliers or chemical manufacturers to DTSC. Requires that the product manufacturer, if it does the above, be considered to be in compliance with the data and information request and be absolved of liability for violating the request for provision of that information.
- 19) Authorizes DTSC to issue an independent information request to a supplier or chemical manufacturer identified by the product manufacturer for the unknown information that the product manufacturer certifies it does not have access to, as well as for the identity and contact information of other suppliers or chemical manufacturers, as necessary.
- 20) Requires a supplier or chemical manufacturer, upon DTSC's request, to provide the information requested.
- 21) Provides that the supplier or chemical manufacturer shall be considered to be in violation of the law, and is liable for civil penalties delineated below, to the extent that it fails to comply with an information request in its entirety.
- 22) Authorizes DTSC to seek data and information for any product category or subcategory published in a previous Priority Product Work Plan or being considered for inclusion in an upcoming Priority Product Work Plan.
- 23) Requires DTSC to provide 30 days for a response to a request for data or information, unless DTSC concludes additional time is necessary for the entity to obtain the necessary information. Requires DTSC, if it determines that a longer time is required, to identify the deadline for response, which shall not exceed 120 days. Authorizes DTSC, if the entity is in communication with DTSC and is working in good faith to fulfill the DTSC's request, to exceed 120 days by granting additional time in an amount not to exceed 60 days.
- 24) Authorizes a product manufacturer, chemical manufacturer, or supplier, in providing data or information in response to a request from DTSC, to raise trade secret claims.

Enforcement of information request violations:

- 25) Provides that a person who violates a request for information shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each separate violation or, for continuing violations, for each day that violation continues. Authorizes liability to be imposed in a civil action or administratively.
- 26) Requires that a penalty collected for violation of an information request be deposited in the Toxic Substances Control Account in the General Fund.
- 27) Requires DTSC, in imposing an administrative penalty for violation of an information request, to take into consideration the nature, circumstances, extent, and gravity of the violation, the history of previous violations, the violator's ability to pay the penalty, and the deterrent effect of the penalty.

28) Provides that nothing in this bill shall be construed to impose liability for a civil penalty for a violation resulting from another party's failure to comply with an independent information request issued by DTSC.

Priority Product Work Plans

29) Requires DTSC, subject to an appropriation by the Legislature, to include in each Priority Product Work Plan, commencing with the 2024–26 Priority Product Work Plan, a brief description of all of the following information:

- a) Information that DTSC has, at the time the work plan is issued, on the chemicals or chemical ingredients that may be chemicals of concern that are contained in consumer products within each product category or subcategory;
- b) Any additional ingredient information that is needed for DTSC to evaluate the safety of those consumer products;
- c) Information specifying how DTSC plans to collect the additional information it requests, if any; and,
- d) Timelines for completion, not to exceed seven years from the date of issuance of the work plan, of all of the following with regard to at least five product categories or subcategories in each work plan:
 - i) The collection of requested information; and,
 - ii) All actions required for a consumer product that contains a chemical of concern, including, but not limited to, the listing of that product as a priority product, the completion of an alternatives analysis for the product, and the finalization of regulatory response determinations.

30) Requires DTSC, in determining the data needed and actions required pursuant to the timeline, to take into account all chemicals that are known to serve, or can potentially serve, the same function in the product categories or subcategories, such as surfactants, preservatives, or plasticizers, in order to avoid the substitution of one chemical with another chemical on the candidate chemical list.

31) Provides that an action to enforce the timelines shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

EXISTING LAW:

Under the Green Chemistry Statutes:

- 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 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. (HSC § 25253(a))
- 3) Requires DTSC to adopt regulations that specify the range of 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(b))

- 4) Authorizes a person providing information to DTSC to identify information that is a trade secret and prohibits release of that information unless DTSC makes a determination that the information should be made public. (HSC § 25257.)
- 5) Requires DTSC to revise its 2015-17 Priority Product Work Plan to include lead-acid batteries for consideration and evaluation as a potential priority product. (HSC § 25253.5.)

Under the Safer Consumer Products Regulations:

- 6) Defines "reliable information" as a scientific study or other scientific information that meets specified criteria. (22 California Code of Regulations (CCR) § 69501.1(a) (57))
- 7) Delineates selection factors that DTSC may consider when selecting regulatory responses for Priority Products and/or selected alternative products. (22 CCR § 69506(c))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"SB 502 updates California's Green Chemistry program in order to protect consumers from toxic chemicals in their daily lives. In 2008, California established the Green Chemistry Initiative (GCI) to identify toxic chemicals in household products and compel manufacturers to switch to alternatives when necessary. The GCI was intended to be an expedient, science-based framework for assessing a chemical's threat to humans and regulating its producers. The GCI created the Safer Consumer Products (SCP) program, a four-step process run by the [DTSC], which seeks to identify products that may contain specific hazardous chemicals, calls upon manufacturers to find alternatives, and grants DTSC the ability to regulate the dangerous products. Unfortunately, after thirteen years, not a single chemical has made it through the third stage of the SCP framework. The SCP program has been slow and data gaps hinder informed decision-making.

The Public Health Institute issued a report outlining strategies to improve the program. Based on that report, SB 502 improves accountability and transparency, creates streamlining processes, and gives DTSC authority to collect product ingredient data. Specifically, SB 502 grants DTSC clear authority, backed by the ability to issue fines, to obtain product ingredient data from manufacturers and, if needed, their chemical suppliers; requires DTSC to adopt a seven-year timeline to identify and assess five priority products (or product categories); and streamlines the informal resolution and appeals processes and creates a fast-track for when existing high-quality studies overwhelmingly support DTSC moving quickly to a regulatory response to protect public health.

Without changes to improve implementation, the consumer health benefits of the Safer Consumer Products program will not be realized. The adjustments made by SB 502 will

ensure DTSC has the tools they need to efficiently identify and address unsafe chemical ingredients in everyday products."

Chemicals in products: Industrial chemicals have become a part of everyday life, contributing to improvements in medicine, technology, and infrastructure and touching just about everything people come into contact with. More than 85,000 chemicals have been registered for use in the United States, and more than 700 new chemicals enter the marketplace each year. As more and more chemicals enter our homes and workplaces, the need to better understand and prevent the potential adverse effects these chemicals may have on human health and on the environment becomes even more critical.

According to a 2014 article in *The Journal of Environmental Studies and Sciences*, which summarizes other studies, as a consequence of weaknesses in federal chemicals policy, chemicals suspected of being hazardous are found in numerous consumer and commercial products, including some to which children likely are exposed. The Centers for Disease Control and Prevention have detected hundreds of industrial chemicals in the bodies of American children and adults. Many of these chemicals have been linked to adverse health effects, but for the majority, there is too little information to understand their potential for long-term harm.

These decades of federal under-regulation of toxic chemicals have, according to a 2020 article in *Ecology Law Quarterly*, which also summarizes other studies, produced a United States environmental disease burden in asthma from exposure to air pollution, neurological harm from exposure to lead and pesticides, and other children's health effects that are cumulatively estimated to cost the United States over \$76 billion annually. A subset of endocrine disrupting chemicals found in food, personal care products, and everyday household items is estimated to account for more than \$340 billion overall in health costs and lost wages each year, with associated human suffering. The article posits that in the resulting chemicals policy emergency, states have become the first responders.

In California, as reported in a 2008 report released by the Regents of the University of California, chemical and pollution related diseases among children and workers cost the state's insurers, businesses, and families an estimated \$2.6 billion in direct and indirect costs per year. In 2004, more than 200,000 California workers were diagnosed with deadly, chronic diseases - such as cancer or emphysema - attributable to chemical exposure in the workplace. Over that same year, 240,000 cases of preventable childhood diseases related to exposure to chemical substances were diagnosed.

The 2014 article in *The Journal of Environmental Studies and Sciences* notes that experts estimate that the environmental contribution to disease may explain a quarter to a third of the global disease burden. In addition to human health effects, environmental contamination continues to erode biodiversity and ecosystem health worldwide.

Green Chemistry: Green Chemistry, as defined in *Green Chemistry: Theory and Practice*, is "the utilization of a set of principles that reduces or eliminates the use or generation of hazardous substances in the design, manufacture and application of chemical products." For the last century, environmental and public health protection has concentrated on capturing and storing hazardous waste. Green Chemistry is a fundamentally different approach to environmental and public health protection, transitioning away from managing hazardous chemicals to reducing or eliminating their use in the product or process altogether. Green Chemistry encourages cleaner

and less-polluting industrial processes, while creating new economic opportunities in the design and use of chemicals, materials, products, and processes.

Green Chemistry in California: In 2008, the California legislature recognized the principle of Green Chemistry by enacting two landmark pieces of legislation, AB 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008) and SB 509 (Simitian, Chapter 560, Statutes of 2008). These bills lay the statutory foundation for the state's Green Chemistry program and intend to establish a comprehensive approach to chemicals policy.

The structure for regulatory action required by the Green Chemistry legislation is broad and general. Rather than specifying particular chemicals or explicit regulatory action on those chemicals, the statutes authorize state agencies, primarily DTSC, to set up a process to identify and evaluate chemicals of concern and the products in which they are found, and to impose appropriate regulatory action for those chemicals and products in order to protect people and the environment. This unique statutory approach anticipated state agencies playing a greater role in developing strategies and policies designed to meet the general objectives of the statute.

Statutory requirements for the California Green Chemistry regulations: The bulk of the statutory requirements for establishing regulations governing the Green Chemistry program was included in AB 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008) in HSC § 25252, et seq. Its companion bill, SB 509 (Simitian, Chapter 560, Statutes of 2008), in HSC § 25251 and 25256, et seq, also includes provisions related to the regulations. AB 1879 requires DTSC to adopt regulations that fulfill two major requirements: 1) establish a process to *identify and prioritize* chemicals or chemical ingredients in consumer products that may be considered a chemical of concern; and, 2) establish a process for *evaluating* chemicals of concern in consumer products, and their potential alternatives, to determine how best to *limit exposure or to reduce the level of hazard posed* by the chemical.

The Safer Consumer Products regulatory process: To implement the Green Chemistry statutes, DTSC created what it called a "four-step continuous, science-based, iterative" regulatory process, which it deemed the "Safer Consumer Products" (SCP) regulations. The SCP regulations were adopted October 2013, and follow the process below:

- 1) Candidate Chemicals – The regulations establish a list of "candidate chemicals" based on the work already done by other authoritative organizations, and specify a process for DTSC to identify additional chemicals as candidate chemicals.
- 2) Priority Products – The regulations require DTSC to evaluate and prioritize product/candidate chemical combinations to develop a list of "priority products" for which alternatives analyses must be conducted. A candidate chemical that is the basis for a product being listed as a priority product is designated as a chemical of concern for that product and any alternative considered or selected to replace that product.
- 3) Alternatives Analysis – The regulations require responsible entities (manufacturers, importers, assemblers, and retailers) to notify DTSC when their product is listed as a priority product. DTSC will post this information on its website. Manufacturers (or other responsible entities) of a product listed as a priority product must perform an alternatives analysis for the product and the chemicals of concern in the product to determine how best to limit exposures to, or reduce the level of adverse public health and environmental impacts posed by, the chemicals of concern in the product.

- 4) Regulatory Responses – The regulations require DTSC to identify and implement regulatory responses designed to protect public health and/or the environment, and maximize the use of acceptable and feasible alternatives of least concern. DTSC may require regulatory responses for a priority product (if the manufacturer decides to retain the priority product), or for an alternative product selected to replace the priority product.

Challenges with implementation: In October 2018, the Public Health Institute, an independent non-profit organization, released a report, *California's Green Chemistry Initiative at Age 10: An Evaluation of its Progress and Promise*, evaluating the Green Chemistry program in California. The report noted that while the Green Chemistry program is an innovative program with the potential to drive the market for safer chemicals and products, and while it includes many of the attributes of a successful chemicals policy, it has failed to achieve its full potential in several ways. According to the report, "the pace of implementation of the SCP Program has been slow and DTSC has unclear authority to collect necessary information on chemicals in products. California's overall efforts and investment have not been sufficient to foster robust research and development of safer product chemistry. The SCP's Candidate Chemical List needs to be updated over time to capture chemicals with Hazard Traits consistent with breast cancer-causing chemicals and other potential health threats. And, the Toxics Information Clearinghouse currently provides no useful information but could be repurposed for more effective use."

In the almost 15 years since the passage of the original Green Chemistry legislation, DTSC has only adopted five priority products and has two more priority products currently undergoing the regulatory process.

The report makes recommendations to improve the Green Chemistry program to ensure greater success at making consumer products safer. Among its recommendations are:

- 1) The Legislature should authorize DTSC to take expedited action when safer alternatives are already available;
- 2) The Legislature should give DTSC clear authority to require manufacturers to disclose the function and use of chemicals in products, maintaining appropriate protections for confidential business information; and,
- 3) The Legislature should provide some flexibility in the AB 1879 alternatives analysis criteria to allow DTSC to use existing high-quality alternatives analysis. DTSC also needs authority to recoup costs from manufacturers to review analyses or to conduct independent analyses if necessary.

The report further encourages the California Environmental Protection Agency, in order to fully support California's commitment to a safer future, to develop a comprehensive proposal for sustainable and substantially increased funding for all aspects of California's Green Chemistry program.

This bill: According to the author, the intent of this bill is to, "update California's Green Chemistry Initiative to reflect recommendations from the Public Health Institute's recent 10 year retrospective report." Specifically, this bill creates a streamlined alternatives analysis process by authorizing DTSC, in lieu of requiring an alternatives analysis from the manufacturer, to instead rely on applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product. These alternative studies or evaluations

must meet the definition of "reliable information," as defined in the Safer Consumer Products regulations. "Reliable information" includes a scientific study or scientific information published in a (1) scientifically peer-reviewed report or journal; (2) report of the United States National Academies; or, (3) government agency report or report that was conducted, developed, submitted, prepared for, or reviewed by a government agency.

This bill also authorizes DTSC to formally request information on the ingredients, use, and sale of a consumer product from product manufacturers; requires product manufacturers to provide that information to DTSC; and, gives DTSC the authority to enforce these product information requests. Finally, this bill sets guidelines and timeframes by which DTSC must complete Priority Product Work Plans, which dictate the direction of the Safer Consumer Products program.

Previous hearings on the Green Chemistry program: Given the significant agency discretion over the Green Chemistry program granted by the Green Chemistry bills, the Legislature has an important oversight obligation to assure that state agencies have complied with both the letter, as well as the spirit, of the law. The Assembly Environmental Safety and Toxic Materials (ESTM) Committee has routinely held hearings on the program as part of the Legislature's ongoing responsibility to ensure that broad agency authority is used effectively and efficiently to protect the public and the environment from toxic chemicals in products. The ESTM Committee most recently held a hearing, jointly with the Senate Environmental Quality Committee, on February 12, 2019, during which the Committees investigated DTSC's management of the Green Chemistry program and heard testimony on the findings and recommendations of the Public Health Institute's report.

This bill reflects the testimony presented at the most recent Green Chemistry hearing and the Committees' subsequent discussions on proposals to improve the State's Green Chemistry program.

Recent related bills:

SB 392 (Allen, 2019). SB 502 is nearly identical to SB 392 (Allen, 2019), as amended on the Assembly floor. SB 392 died on the Assembly inactive file.

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners
Clean Water Action
Environmental Working Group
National Stewardship Action Council
Natural Resources Defense Council (NRDC)

Opposition

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 891 (Hertzberg) – As Amended May 18, 2022

SENATE VOTE: 27-2

SUBJECT: Business licenses: stormwater discharge compliance

SUMMARY: Specifies that application requirements for a person who conducts a business operation that is a regulated industry required to enroll with the National Pollutant Discharge Elimination System (NPDES) permit program apply not only to business licenses, but also to instruments and permits equivalent to a business license. Specifically, **this bill:**

- 1) Specifies that application requirements for a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code, to enroll with the National Pollutant Discharge Elimination System (NPDES) permit program by providing specified information, under penalty of perjury, apply not only to an initial business license or business renewal license submitted to a city, but also an equivalent instrument or permit submitted to a city or county.
- 2) Requires a city or county to make the identification number provided in specified compliance documentation transferred to the State Water Resources Control Board (State Water Board) available to the public upon request in a manner consistent with the procedures of the California Public Records Act (Division 10, commencing with Section 7920.000, of Title 1 of the Government Code).
- 3) Clarifies that these requirements do not apply to a city or county that does not issue or renew, or does not have an application process for issuing or renewing, business licenses, equivalent instruments, or permits that include a business license.
- 4) Specifies that, for purposes of Section 16000.3 and Section 16100.3 of the Business and Professions Code, a business license, equivalent instrument, or permit includes a business license, equivalent instrument, or permit issued solely for the purpose of raising revenue.
- 5) Requires each Regional Water Quality Control Board (Regional Water Board) that receives money pursuant to specified allocations from the Waste Discharge Permit Fund for fees collected from a nonapplicability (NONA) identification number or no exposure certification (NEC) identification number issued for a facility by the State Water Board on or after January 1, 2020, to spend 50 percent or more of that money on stormwater inspections, to determine whether a NONA or NEC was appropriately issued for the facility.
- 6) Requires the State Water Board, on or before June 1, 2023, to require all recipients of a NONA identification number or NEC identification number, issued by the State Water Board on or after January 1, 2020, to upload all pertinent information used to seek a NONA or NEC to the Stormwater Multiple Application and Report Tracking System database.
- 7) Makes technical and clarifying changes.

EXISTING LAW:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States (U.S.) and regulate quality standards for surface waters. (33 United States Code (USC) § 1251 et seq.)
- 2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program requiring the State Water Board and the nine Regional Water Boards to prescribe discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 USC § 1342)
- 3) Prohibits, pursuant to the Porter-Cologne Water Quality Control Act, prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code (WC) § 13000, et seq.)
- 4) Delegates to the Regional Water Boards the ability to adopt water quality standards within their regional jurisdictions. (WC § 13240)
- 5) Requires a regulated industry business operation to demonstrate enrollment in the NPDES permit program by providing the following information on an initial business license application or business license renewal application (Business and Professions Code § 16000.3 and 16100.3):
 - a. Name and location of facilities;
 - b. The Standard Industrial Classification (SIC) code for the business;
 - c. For each facility, any of the following, issued by the State Water Board:
 - i. Stormwater permit number or Waste Discharger Identification (WDID) number;
 - ii. WDID application number;
 - iii. Notice of Non-Applicability (NONA) identification number; or,
 - iv. No Exposure Certification (NEC).
- 6) Defines the categories of facilities considered to be engaging in industrial activity associated with stormwater discharge that require an NPDES permit. (40 Code of Federal Regulations (CFR) § 122.26(b)(14))
- 7) Defines municipal separate stormwater systems (MS4s) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a state. (40 CFR § 122.26(b)(8))

FISCAL EFFECT: Unknown.

COMMENTS:

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

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

Stormwater: Stormwater is defined by the U.S. Environmental Protection Agency (U.S. EPA) as the runoff generated when precipitation from rain and snowmelt events flows over land or impervious surfaces such as rooftops, paved streets, highways, or parking lots, without percolating into the ground. Stormwater runoff can carry pollutants including oil, pesticides, sediment, trash, bacteria, and metal and move contaminants directly into a local stream, lake, or bay. Pollutants that are swept up in stormwater can lead to exceedances of total maximum daily loads in the water sources into which the runoff flows. Both the U.S. EPA and the Regional Water Boards have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health.

NPDES permit program: To curb the harmful effects of pollution from stormwater runoff, federal law requires states to set restrictions on the pollutants that can be discharged into water bodies and requires local jurisdictions, including cities, counties, and other public entities, to obtain storm sewer permits. The NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the U.S. Point sources are discrete conveyances such as pipes, ditches, channels, tunnels, conduits, discrete fissures, and containers. The NPDES program, a federal program established by the Clean Water Act, has been delegated to the state for implementation through the State Water Board and the nine Regional Water Boards. An NPDES permit contains limits on what can be discharged, monitoring and reporting requirements, and other provisions that aim to ensure discharges do not impair water quality or harm human health and the environment.

Cities and local jurisdictions that operate municipal separate storm sewer systems (MS4s) must obtain NPDES permit coverage for discharges of municipal stormwater to waters of the US. Similarly, industry owners must have NPDES permit coverage for stormwater from their industrial activity sites, and construction contractors must have NPDES permit coverage for stormwater from construction sites that disturb more than an acre of land. Hence, the NPDES stormwater program regulates stormwater discharges from three potential sources: (1) MS4s, (2) construction activities, and (3) industrial activities.

Stormwater pollution in California: In California, stormwater pollution is regulated by the State Water Board and the nine Regional Water Boards. According to the California Department of Transportation (Caltrans), the state's largest municipal stormwater discharger, there are six top pollutants in stormwater in the state: trash and litter, sediments, nutrients, bacteria, metals, and pesticides. Caltrans is particularly focused on reducing these contaminants at the source, on roads and highways, to prevent them from running off untreated into the state's water bodies. Notably, as California experiences prolonged drought conditions, the concentration of water contaminants increases with decreasing water levels, highlighting the urgency of source reduction and cleanup efforts. However, stormwater may also act as a resource and recharge groundwater when properly managed.

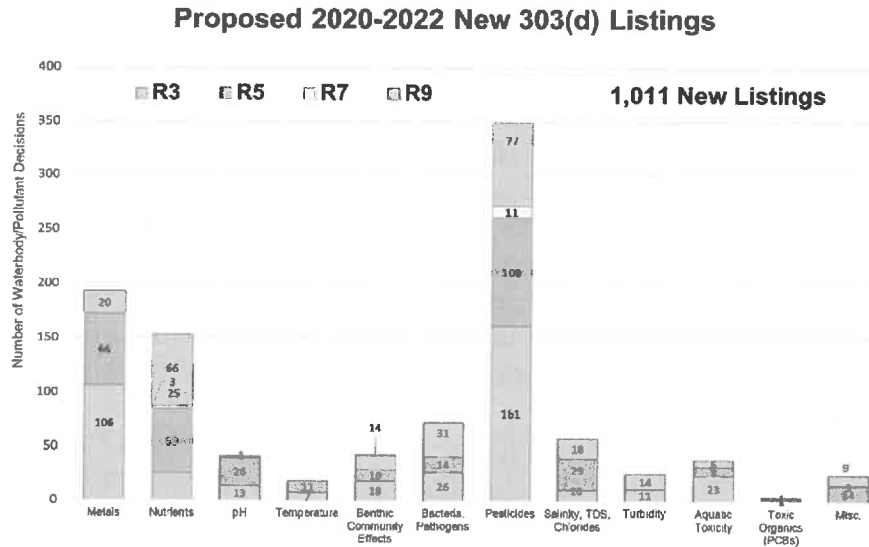
To comply with the federal CWA, the State and Regional Water Boards are required to publish biennial water quality reports and lists of impaired waters in the state, referred to as section 305(b) reports and section 303(d) lists, respectively. For each impaired water on the 303(d) list, California must note the causal pollutant of the impairment, if known. In general, once a water body has been added to a state's list of impaired waters it remains on the list until a Total Maximum Daily Load (TMDL) is developed and approved by U.S. EPA, at which point the water body is taken off the 303(d) list but tracked until the water is fully restored. According to U.S.



EPA, a TMDL is the calculation of the maximum amount of a pollutant allowed to enter a water body so that it will meet and continue to meet water quality standards for the specified pollutant. A TMDL establishes a pollutant reduction target and informs load reductions necessary at the source(s).

The State Water Board publishes the 303(d) list and 305(b) report together, referring to the final product as the "Integrated Report". California's Integrated Report is developed in "cycles" with three Regional Water Boards being on-cycle in a given two-year period. The 2020-2022 Integrated Report included on-cycle regions 3 (Central Coast), 5 (Central Valley), and 9 (San Diego) and an off-cycle assessment for region 7 (Colorado River Basin) (see map).

Compared to the 2018 303(d) list, 1,011 water bodies were added in the assessed regions in the 2020-2022 report due to impaired water quality of the surface water, and 224 waters were delisted, bringing the state's current total number of 303(d)-listed water bodies to 5,157. The 2024 assessment will review regions 2 (San Francisco Bay), 4 (Los Angeles), and 8 (Santa Ana) with the Sacramento River watershed of the Central Valley region as an off-cycle evaluation.



Proposed new 303(d) listings in the 2020-2022 evaluation cycle. Four regions (R3, R5, R7, and R9) were evaluated and the number of waterbody-pollutant decisions is shown by contaminant type and region.

Industrial Stormwater Program: According to the State Water Board, the federal CWA requires industries that fall under certain industrial classifications and that discharge stormwater into a storm drain system or to surface waters to obtain an NPDES permit. In California, industries regulated under this provision must either obtain an individual NPDES permit or apply to be covered under the State's General Permit for Stormwater Discharges Associated with Industrial Activities, also known as Industrial General Permit (IGP). The IGP is an NPDES permit for stormwater associated with industrial activities discharging to waters of the United States. The IGP is called a general permit because many industrial facilities are covered by the same permit, but comply with its requirements at their individual industrial facilities. Industrial facilities that are typically required to obtain IGP coverage include manufacturers, landfills, mining, steam generating electricity, hazardous waste facilities, transportation with vehicle maintenance, larger sewage and wastewater plants, recycling facilities, and oil and gas facilities.

The State Water Board maintains a list of industries that are regulated by the IGP. These industries are represented as Standard Industrial Classification (SIC) codes. The SIC code is a four-digit code system established by the federal government to classify industries and promote uniformity of data collected by various government entities. Currently, there are over 500 SIC codes primarily divided into the following activity categories:

- a. Agriculture, Forestry, And Fishing;
- b. Mining;
- c. Construction;
- d. Manufacturing;
- e. Transportation, Communications, Electric, Gas, And Sanitary Services;
- f. Wholesale Trade;
- g. Retail Trade;
- h. Finance, Insurance, And Real Estate;
- i. Services; and,
- j. Public Administration

According to the State Water Board, compliance with the IGP requires the implementation of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to achieve performance standards, as well as the development of a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring plan. The SWPPP identifies the site-specific sources of pollutants and describes the best management practices implemented at the facility to prevent dry weather runoff and to reduce pollutants in storm water discharges. Dischargers are required to submit an annual report to the State Water Board via the online Storm Water Multiple Application and Report Tracking System (SMARTS) database. SMARTS serves as the federally compliant electronic platform for dischargers, regulators, and the public to enter, manage, and view stormwater data including permit registration documents, compliance, and monitoring data associated with California's Storm Water General Permits.

Business License Requirements under Senate Bill 205: Senate Bill (SB) 205 (Hertzberg, Chapter 470, Statutes of 2019) added sections 16000.3 and 16100.3 to the Business and Professions Code and section 13383.10 to the Water Code, and requires a person applying to a city or county for a new or renewed business license on or after January 1, 2020 to demonstrate enrollment in an NPDES storm water permit, if such a permit is required for the activities of the industrial business.

The impetus for SB 205 came from data suggesting that many businesses were not enrolled in the IGP, yet polluting surface waters with industrial discharges. In 2019, the California Coastkeeper Alliance wrote in support that the bill "addresses the pervasive issue of unenrolled industrial facilities by requiring applicable facilities to demonstrate compliance with the IGP when applying for or renewing a business license. This allows local municipalities and the Water Boards to readily identify industrial discharges and ensure these discharges are enrolled under the statewide permit."

Under SB 205, if a business' primary SIC Code is listed as a potentially regulated SIC code, the business may need to enroll for coverage under the IGP. Alternatively, it can provide a notice of non-applicability (NONA) to the city or county before the business license is issued or renewed. NONA is an optional certification that is available to industrial facilities without covered activities or those that can prove that the discharged industrial stormwater does not flow into a water of the U.S. For facilities with activities covered under the IGP, but where all industrial materials and activities are not exposed to stormwater at any point on the property, a No Exposure Certification (NEC) can be obtained. A business seeking an NEC must meet all NEC checklist criteria and certify the absence of exposure to stormwater in SMARTS.

Cities and counties may use information provided by the State Water Board or develop their own processes for determining whether a business is appropriately covered by the IGP. Cities and counties may also reach out to professional associations, such as the Association of California Water Agencies, the California State Association of Counties, and the California League of Cities, that provide municipalities with assistance. Those cities and counties that do not have an application process for issuance or renewal of business licenses are exempt from the provisions of SB 205.

This bill: SB 891 expands the applicability of SB 205 requirements to businesses that seek, or seek to renew, an instrument or permit equivalent to a business license. According to the author, several municipalities currently do not require demonstration of coverage under the IGP when approving or renewing a business license because these cities and counties issue "business certificates" or an alternative. This bill amends the Business and Professions Code sections

established by SB 205 to clarify that, regardless of terminology, a business must be covered by the IGP, or provide a NONA or an NEC. In addition, SB 891 requires that the Regional Water Boards receiving fees from NONAs and NECs spend at least 50 percent on stormwater inspections to confirm that a facility's NONA or NEC was appropriately issued.

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

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

Despite the law's enactment in 2020, several municipalities are still not verifying enrollment in IGP when approving or renewing an industrial facility's business license because they issue "business certificates" instead of "business licenses," as specified in SB 205 (Hertzberg). Additionally, business licenses are still awarded to facilities that should be covered by an IGP, but are not enrolled, without providing proof of exemption from existing stormwater regulations.

SB 891 closes a loophole in current law by clarifying its intent and requiring an industrial facility to demonstrate compliance with existing stormwater regulations when applying for or renewing a permit *similar* to a business license. This measure also requires facilities to report information to the existing Stormwater Multiple Application and Report Tracking System (SMARTS) so the state can verify whether an industrial facility has lawful justification for a non-applicability or non-exposure certification. Finally, SB 891 requires that regional boards use 50% of funds collected from nonapplicability or no exposure certification to fund stormwater inspections to determine whether those certifications were appropriately issued for those facilities."

Minor technical comment: The Committee has discussed a minor technical change that seeks to clarify that all references to a 'business license' in the bill text encompass equivalent instruments and permits.

Double referral: Should this bill pass this Committee, it will be re-referred to the Assembly Committee on Local Government.

Related legislation:

- 1) AB 2106 (R. Rivas, 2022). Requires the State Water Board to modernize its stormwater tracking system and to establish a statewide commercial, industrial, and institutional NPDES order. This bill is pending action in the Senate Environmental Quality Committee.

- 2) AB 377 (R. Rivas, 2021). Would have required, by January 1, 2025, the State Water Board and the Regional Water Boards to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. Would have required, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state. This bill was not heard in the Assembly Appropriations Committee.
- 3) SB 205 (Hertzberg, Chapter 470, Statutes of 2019). Requires a business operation in a regulated industry to demonstrate enrollment in the NPDES permit program when applying for an initial business license or business license renewal.
- 4) AB 1093 (Rubio, 2019). Would have required the State Water Board to establish Financial Capability Analysis guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions. This bill was vetoed by the Governor.
- 5) SB 541 (Allen, Chapter 811, Statutes of 2017). Requires the State Water Board, in consultation with the Regional Water Boards, and the Division of the State Architect within the Department of General Services, to recommend best design and use practices for stormwater and dry weather runoff capture practices that can be applied to new, reconstructed, or altered public schools, including school grounds.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance (Sponsor)
Coachella Valley Waterkeeper
Coastal Environmental Rights Foundation
Environmental Center of San Diego
Environmental Defense Center
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper
Monterey Coastkeeper
Orange County Coastkeeper
Planning and Conservation League
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Yuba River Waterkeeper
7th Generation Advisors

Opposition

None on file.

Analysis Prepared by: Manar Zaghlula / E.S. & T.M. /

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1254 (Hertzberg) – As Amended April 28, 2022

SENATE VOTE: 36-0

SUBJECT: Drinking water: administrator: managerial and other services

SUMMARY: Authorizes the State Water Resources Control Board (State Water Board) to appoint an administrator for an at-risk water system and limits the liability of a water system administrator appointed by the State Water Board. Specifically, **this bill:**

- 1) Defines "operation period" as the period during which an administrator provides services to a designated water system, as defined.
- 2) Requires the State Water Board, if it has not held a public meeting on an ordered consolidation or extension of service, to provide a public water system or state small water system an opportunity to show that is not an at-risk water system before it is determined to be a designated water system.
- 3) Clarifies that the meeting and comment opportunities that the State Water Board must conduct prior to determining that a public water system or state small water system is a designated water system must be accessible to the public.
- 4) Provides that an administrator appointed to a designated water system shall not be liable for claims by past or existing ratepayers, or those who consumed water provided through the designated water system, if good faith, reasonable effort, and ordinary care were used by the administrator to assume possession of, or to operate, the designated water system.
- 5) Provides that an administrator appointed for a designated water system shall not be liable for claims by past or existing ratepayers, or those who consumed water provided through the designated water system, for any injury or damages that occurred before the commencement of the operation period.
- 6) Provides that this bill does not limit or supersede any other law authorizing claims against the State Water Board or providing a defense to liability, and shall not be construed to create any new or expanded basis for liability.
- 7) Clarifies that the provisions of this bill should not be construed to do any of the following:
 - a) Relieve a water district, water wholesaler, or any other entity from complying with any provision of federal or state law, including those pertaining to drinking water quality;
 - b) Impair any cause of action by the Attorney General, a district attorney, a city attorney, or other public prosecutor, or impair any other action or proceeding brought by, or on behalf of, a regulatory agency;
 - c) Impair any claim alleging the taking of property without compensation within the meaning of either the Fifth Amendment to the United States Constitution or Section 19 of Article I of the California Constitution; or,

- d) Relieve any person or entity from liability for action or inaction in bad faith, or without reasonable effort or ordinary care.
- 8) Provides that nothing in this bill shall absolve, indemnify, or protect a prior operator, designated water system, or individual from liability based on an act or failure to act prior to the operation period.
- 9) Expands, for the purposes of the appointment of an administrator, the definition of a "designated water system" to include an at-risk water system.
- 10) Makes other technical and conforming changes to statute that relates to appointed administrators of drinking water systems.

EXISTING LAW:

- 1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300 (f) et seq.)
- 2) Establishes as policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)
- 3) Requires, pursuant to the California SDWA, the State Water Board to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)
- 4) Creates the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. (HSC § 116766.)
- 5) Defines an "at-risk water system" as a water system that meets all the following conditions:
 - a) The water system is either a public water system with 3,300 or fewer connections or a state small water system;
 - b) The system serves a disadvantaged community; and,
 - c) The system is at risk of consistently failing to provide an adequate supply of safe drinking water, as specified. (HSC § 116681(d).)
- 6) Authorizes the State Water Board, when a public water system or a state small water system serving a disadvantaged community consistently fails, or is at risk of failing, to provide an adequate supply of safe drinking water, or when a disadvantaged community is reliant on a domestic well that consistently fails, or is at risk of failing, to provide an adequate supply of safe drinking water, to order consolidation with a receiving water system. Provides that the consolidation can be either physical or operational. (HSC § 116682 (a)(1))
- 7) Limits the liability of a consolidated water system, wholesaler, or any other agency in the chain of distribution that delivers water to a consolidated water system, as specified. (HSC § 116684)

- 8) Authorizes the State Water Board, in order to provide an adequate supply of affordable, safe drinking water to disadvantaged communities, voluntary participants, and public water systems that have demonstrated difficulty in maintaining technical, managerial, and financial capacity and to prevent fraud, waste, and abuse, to:
 - a) Contract with, or provide a grant to, an administrator to provide administrative, technical, operational, legal or managerial services, or any combination of those services, to a designated public water system to assist the designated public water system with the provision of an adequate supply of affordable, safe drinking water; and,
 - b) Order the designated water system to accept administrative, technical, operational, legal, or managerial services, including full management and control of all aspects of the designated water system, from an administrator selected by the State Water Board. (HSC § 116686(a).)

- 9) Defines a "designated water system" as a public water system or state small water system that has been ordered by the State Water Board to consolidate, or a public water system or state small water system that serves a disadvantaged community and that the state board finds consistently fails to provide an adequate supply of affordable, safe drinking water. (HSC § 116686(m)(2).)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Access to water is a fundamental human right and every Californian should be able [to] turn on their tap and expect clean water to flow – it is unacceptable this is not the case for over one million Californians, primarily those in small and disadvantaged communities. Currently, over 300 public water systems are failing to provide safe drinking water, and over 600 water systems are at-risk of failing.

While the [State Water Board] can appoint third-party administrators to assist failing public water systems, the [State Water Board] struggles to recruit and retain administrators due to uncertainty around legal liability. SB 1254 provides statutory limited liability clarifications for appointed administrators, and expands administrator appointment authority to at-risk water systems. This ensures the [State Water Board] can more effectively appoint administrators and advances the state's goal of providing safe drinking water for all Californians."

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: While most drinking water in California meets requirements for health and safety, surface waters and aquifers used for drinking water can be contaminated by various chemicals, microbes, and radionuclides. According to the US EPA, common sources of drinking water contaminants include:

- *Industry and agriculture.* Organic solvents, petroleum products, and heavy metals from disposal sites or storage facilities can migrate into aquifers. Pesticides and fertilizers can be carried into lakes and streams by rainfall runoff or snowmelt, or can percolate into aquifers.
- *Human and animal waste.* Human waste from sewage and septic systems can carry harmful microbes into drinking water sources, as can wastes from animal feedlots and wildlife. Major contaminants resulting from human and animal waste include Giardia, Cryptosporidium, and E. coli.
- *Treatment and distribution.* While treatment can remove many contaminants, it can also leave behind byproducts (such as trihalomethanes) that may themselves be harmful. Water can also become contaminated after it enters the distribution system, from a breach in the piping system or from corrosion of plumbing materials made from lead or copper.
- *Natural sources.* Some ground water is unsuitable or challenging to use for drinking because the local underground conditions include high levels of certain contaminants. For example, as ground water travels through rock and soil, it can pick up naturally occurring arsenic, other heavy metals, or radionuclides.

According to the Office of the Environmental Health Hazard Assessment, disadvantaged communities and people in rural areas are exposed to contaminants in their drinking water more often than people in other parts of the state. The State Water Board reports that more than half a million Californians are currently without clean drinking water because of systems that contain contaminants such as arsenic, nitrates, and 123-TCP. More than 500 rural and small water systems with less than 100 connections face the greatest risk—these systems are least likely to be able to afford necessary upgrades or absorb the cost of consolidating with another system. By contrast, more than 400 of the largest systems (with 3,000 or more customers), which serve more than 90 percent of the state’s 39.5 million residents, have delivered safe drinking water to customers for decades.

Health effects of drinking water contaminants: The US EPA reports that there is a broad range of health effects associated with exposure to drinking water contaminants. Ingestion or exposure to pathogens at sufficient doses can result in gastrointestinal illness with symptoms such as diarrhea, nausea, stomach cramps, and vomiting. Exposure to higher doses of chemicals, metals, or radionuclides through drinking water can produce biological responses, toxicological effects, and more severe health impacts including cancer, developmental or reproductive effects, neurological effects, and organ damage.

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 water to meet drinking water standards. In many cases, technological advances are not yet 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 maintain and operate what are sometimes complex drinking water systems.

Restructuring water systems: According to the US EPA, 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. Restructuring can involve consolidation, which is the physical or managerial joining of two or more water systems. Physical consolidation involves the merging or sharing of physical

infrastructure, such as distribution pipelines or water treatment facilities. Managerial, or operational, consolidation involves sharing financial, managerial, or technical capacity. The State Water Board maintains that consolidating public water systems reduces costs and improves reliability. Consolidation does this by extending costs to a larger pool of ratepayers.

Restructuring can also include the use of a contracted entity for administration of the water system. The State Water Board notes that the use of a contracted administrator, in cases where public water systems have proven inadequate, would provide technical and managerial capacity, economies of scale, and other efficiencies.

Appointed water system administrators: While California had recognized the benefits of water system consolidation for decades prior to 2016, SB 552 (Wolk, Chapter 773, Statutes of 2016) gave the State Water Board an additional restructuring tool. SB 552 authorizes the State Water Board, in order "to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse," to contract with an administrator to provide administrative and managerial services to a public water system that serves a disadvantaged community and that consistently fails to provide an adequate and affordable supply of safe drinking water. SB 552 also authorized the State Water Board to order the failing water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.

The State Water Board describes an administrator as a person or entity that the State Water Board has determined is qualified to operate and manage a water system. Potential administrators include individual people; businesses, such as engineering firms; non-profits; local agencies; and, other entities.

Currently, there are two scenarios that qualify a water system for the appointment of an administrator. First, a water system qualifies if it both serves a disadvantaged community and consistently fails to provide an adequate supply of safe and affordable drinking water. Second, a water system qualifies if the State Water Board has ordered it to consolidate with another water system. Water systems that qualify for an appointed administrator are called, "designated water systems."

The State Water Board notes that the administrator program is an integral part of the Safe and Affordable Fund for Equity and Resiliency (SAFER) program, which was established from the Safe and Affordable Drinking Water Fund (Fund) through SB 200 (Monning, Chapter 120, Statutes of 2019). The Fund provides \$130 million per year to develop and implement sustainable solutions for small systems with drinking water standards violations. Fund monies may be allocated for operations and maintenance costs, costs of consolidating with larger systems, the provision of replacement water, and funding for administrators to manage small water systems.

This bill: Expands the State Water Board's administrator appointment authority to authorize the State Water Board to also appoint an administrator for "at-risk" water systems. Statute defines an "at-risk water system" as a water system that meets all the following conditions: the water system is either a public water system with 3,300 or fewer connections or a state small water system; it serves a disadvantaged community; and, it is at risk of consistently failing to provide an adequate supply of safe drinking water, as specified. Currently, the State Water Board is only

authorized to appoint an administrator if the water system is *failing* or has been ordered to consolidate with another system.

Administrator liability: Administrator liability refers to the civil liability an administrator could potentially face as a result of being appointed to operate and manage a water system. Currently, no statutory provisions address under which circumstances an administrator may be liable. Because of this, according to the State Water Board, it is difficult to determine exactly and to what extent an administrator can be held liable for serving. Since the administrator position is unique and fairly newly created by the Legislature, there is uncertainty about how existing executive and officer liability legal principles will apply. The State Water Board argues that this legal uncertainty has prevented many potential administrators from participating in the program.

Challenges with installing drinking water administrators: According to the State Water Board, which is sponsoring this bill, identifying willing and capable administrators has been a significant challenge. Currently, the State Water Board has 13 active administrator projects for public water systems and state small water systems, but only one administrator has been appointed. Many more administrators will be needed as the State Water Board updates its Human Right to Water list and prioritizes projects. The State Water Board argues that this lack of available, qualified administrators has undermined progress towards providing safe and affordable drinking water.

The State Water Board notes that numerous potential administrators, particularly engineering firms that could potentially provide administrator services to systems throughout the state, have expressed serious concerns about the lack of statutory liability protections for administrators. These engineering firms have advised the State Water Board that explicit statutory liability protections for administrators would enable them to be more willing to commit to serving as administrators. Accordingly, the State Water Board argues that statutory liability protection for administrators is necessary to remove barriers for private water systems acting as administrators, to enable the State Water Board to expeditiously appoint an administrator, and to enable the State Water Board to begin to provide funding to public water systems in emergency situations.

This bill: This bill exempts State Water Board appointed administrators from liability for water delivered by the water system prior to the appointment of the administrator. It also exempts administrators from liability if good faith, reasonable effort, and ordinary care are used in the operation of the system. However, the water system itself may still be liable for circumstances that existed before the appointment of an administrator. Additionally, an administrator can be held accountable for injuries or damages if the administrator's operation of the system was in bad faith, or without reasonable effort or ordinary care.

Similar liability protections: The State Water Board argues that the liability protection language in this bill is similar to limited liability protection that the Legislature has authorized for public water systems that take over the operations of failing water systems as part of a State Water Board ordered consolidation (SB 88, Senate Budget Committee, Chapter 27, Statutes of 2015). Similar language is also found in AB 1577 (Gibson, Chapter 859, Statutes of 2018), in which the Legislature provided limited liability for a successor agency to assume the role of administrator of the Sativa Los Angeles County Water System.

Double referral: SB 1254 has been double-referred. Should this bill pass the Assembly Committee on Environmental Safety and Toxic Materials, it will be referred to the Assembly Judiciary Committee.

Related legislation:

- 1) SB 403 (Gonzalez, Chapter 242, Statutes of 2021). Authorizes the State Water Board to order the consolidation of at-risk domestic wells and at-risk water systems.
- 2) SB 1280 (Monning, 2020). Would have authorized the State Water Board to order consolidation between a receiving water system and an at-risk water system, as defined, under specified circumstances. This bill was held in the Senate Environmental Quality Committee.
- 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, including setting a deadline of July 1, 2020, as the date by which the State Water Board must develop a policy that provides a process for members of a disadvantaged community to petition for consolidation; and, deleting statute that required the State Water Board, before ordering consolidation or extension of service, to obtain written consent to the project from a domestic well owner.
- 4) SB 200 (Monning, Chapter 120, Statutes of 2019). Establishes the Safe and Affordable Drinking Water Fund (Fund) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long terms. Transfers annually, until June 30, 2030, to the Fund five percent of the proceeds of the Greenhouse Gas Reduction Fund, up to \$130 million. Authorizes monies from the Fund for the administration of drinking water programs. Specifies that administrators are eligible for funding.
- 5) AB 1577 (Gibson, Chapter 859, Statutes of 2018). Requires the State Water Board to order the Sativa-Los Angeles County Water District to accept administrative and managerial services from an administrator selected by the State Water Board.
- 6) AB 2501 (Chu, Chapter 871, Statutes of 2018). Authorizes the State Water Board to order consolidation with a receiving water system when a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water; prohibits, for an ordered consolidation, the receiving water system from charging specified fees or imposing specified conditions on customers of the subsumed water system that it would not otherwise charge or impose; and, makes other changes to ordered consolidation law.
- 7) SB 623 (Monning, 2017). Would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, to assist communities and individual domestic well users in addressing contaminants in drinking water that exceed safe drinking water standards. This bill was held in the Assembly Rules Committee.
- 8) SB 778 (Hertzberg, 2017). Would have required the State Water Board to report on public water system consolidations to date, and their success or failure. This bill was held in the Assembly Appropriations Committee.

- 9) SB 552 (Wolk, Chapter 773, Statutes of 2016). Authorizes the State Water Board to contract with an administrator to provide administrative and managerial services to a designated public water system to assist with the provision of an adequate and affordable supply of safe drinking water. Authorizes the State Water Board to order the failing water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.
- 10) SB 88 (Budget Committee, Chapter 27, Statutes of 2015). Authorizes the State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with, or receive service from, public water systems with safe, reliable, and adequate drinking water.
- 11) AB 685 (Eng, Chapter 524, Statutes of 2012). Declares that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and requires relevant state agencies, including the Department of Water Resources, the State Water Board, and the State Department of Public Health, to consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies (ACWA)
California Municipal Utilities Association
California Water Association
Clean Water Action
Community Water Center
Eastern Municipal Water District
Leadership Counsel for Justice & Accountability
Water Replenishment District of Southern California

Opposition

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1076 (Archuleta) – As Amended April 18, 2022

SENATE VOTE: 32-6

SUBJECT: Lead-based paint

SUMMARY: Requires the California Department of Public Health (CDPH) to promulgate regulations governing lead-related construction work to conform to the federal Environmental Protection Agency's (U.S. EPA) Lead Renovation, Repair, and Painting Rule (RRP).

Specifically, **this bill:**

- 1) Requires CDPH to review and amend its regulations governing lead-related construction work, including training and certification for workers and accreditation for trainers in lead-safe work practices to comply with specified federal and state regulations adopted pursuant to Health and Safety Code (HSC) Sections 105250 (Accreditation of Training Providers and Certification of Individuals) and 124160 (Childhood Lead Poisoning Prevention Program) and the U.S. EPA's Lead Renovation, Repair and Painting Rule (40 Code of Federal Regulations (CFR) § 745).
- 2) Requires the amended regulations to include, but not be limited to, a copy of the worker and firm certification to be provided before the start of the job to the prime contractor or other employers on the site and to be posted on the job site beside the Division of Occupational Safety and Health Lead-Work Pre-Job Notification as required by state regulations.
- 3) Requires CDPH to adopt regulations establishing fees for the certifications or accreditations established pursuant to HSC § 105250, and requires the fees imposed to be established at levels not exceeding an amount sufficient to cover the costs of developing, administering, and enforcing the standards and regulations adopted under this section.
- 4) Requires the fees established to be deposited into the Lead-Related Construction Fund.
- 5) Authorizes CDPH to implement and administer the provisions of the measure through all-county letters or similar instructions from CDPH until regulations are adopted.
- 6) Requires CDPH to adopt emergency regulations implementing the provisions of this measure and authorizes CDPH to readopt any emergency regulation authorized by this measure that is the same as, or substantially equivalent to, an emergency regulation previously adopted.
- 7) Defines the initial adoption of emergency regulations under this measure and one readoption of emergency regulations as an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Specifies that an emergency is exempt from review by the Office of Administrative Law, but requires the emergency regulations and one readoption thereof to be submitted to the Office of Administrative Law for filing with the Secretary of State, and remain in effect for no more than 180 days, at which point

final regulations may be adopted.

- 8) Requires, on and after January 1, 2024, in addition to persons required by existing law, the following to have a certificate: a firm, as defined by 40 CFR § 745.83, and at least one person onsite and employed by a firm, doing renovation, repair, or painting work for compensation in a residential or public building that will disturb lead-based paint or presumed lead-based paint, as defined in state regulations.
- 9) Exempts persons performing routine maintenance and repairs in housing from having a certificate if they are not performing any renovation, repair, or painting services for compensation in a residential or public building.
- 10) Authorizes CDPH or any local enforcement agency to enter, inspect, and photograph, as specified, any premises where abatement, a lead hazard evaluation, or renovation, repair, or painting is being conducted or has been ordered and to enter the place of business of any person who conducts such activities and inspect and copy any business record of such persons to determine whether the person is complying with the provisions of this measure.
- 11) Specifies that a violation by persons of certification requirements related to lead construction work, as outlined, is punishable by a civil penalty of no less than \$5,000 per violation per day.
- 12) Specifies that a violation by a firm of certification requirements related to lead construction work, as outlined, is punishable by a civil penalty of no less than \$10,000 per violation per day.
- 13) Establishes that each subsequent violation of the provisions of this measure may be subject to a civil penalty of no more than \$37,500 per violation per day or punishable by imprisonment for no more than six months in the county jail, a fine of no more than \$1,000, or both imprisonment and the fine.
- 14) Requires that in the assessment of the amount of the criminal or civil liability any one or more of the following circumstances shall be considered: the nature and seriousness of the misconduct; the number of violations; the persistence of the misconduct; the length of time over which the misconduct occurred; the willfulness of the misconduct; and, the violator's assets, liabilities, net worth, and other relevant factors.
- 15) Requires CDPH and the Contractors State License Board (CSLB) to collaborate to develop and implement an education and outreach program for every person and firm that is required to have a certificate pursuant to the provisions of the measure. Requires that the program be implemented on or before July 1, 2023, and include information on who is required to have, and the requirements and process to obtain, a certificate.

EXISTING LAW:

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

- 2) Establishes the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X) to require anyone selling or leasing single- and multi-family housing units built before 1978 to disclose information about lead-based paint hazards to prospective buyers or tenants. (Public Law 102-550)
- 3) Establishes the US EPA's Lead-Based Paint RRP to require workers to be certified and trained in the use of lead-safe work practices, and requires renovation, repair, and painting firms to be US EPA-certified. (40 CFR § 745)
- 4) Prohibits the use of lead for residential use in the United States. (16 CFR § 1303)
- 5) Defines "firm" as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or, a nonprofit organization. (40 CFR § 745.83)
- 6) Establishes the Residential Lead-Based Paint Hazard Reduction Program to require any person offering lead-related construction courses to meet CDPH certificate requirement. (HSC § 105250)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 1076 will protect children from lead poisoning by harmonizing state and federal training and certification requirements for lead safe work practices related to work that can disturb lead paint. Additionally under this proposal, California will follow the lead of fourteen other states and streamline state and federal requirements to address confusing inconsistencies and to move enforcement of this new program down to the local level."

Human health impacts of lead: The element lead (chemical symbol: Pb) is a naturally occurring heavy metal found in small amounts in the earth's crust. While it has some beneficial uses, it can be toxic to humans and animals, causing negative health impacts. According to U.S. EPA, lead is ubiquitous in the environment. Lead and lead compounds have been used in a wide variety of products found in and around homes, including paint, ceramics, pipes and plumbing materials, solders, gasoline, batteries, ammunition, and cosmetics. Lead may enter the environment from these past and current uses and can also be emitted into the environment from industrial sources and contaminated sites, such as former lead smelters.

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. There is no level of lead that has been proven safe, either for children or for adults. Lead is particularly harmful to children as their growing bodies absorb more lead compared to adults. The brain and nervous system of a child is also more sensitive to the damaging effects of lead. Lead can affect almost every organ system in the body and even low levels of lead in the blood of children can result in behavioral and learning problems, lower IQ, hyperactivity, slowed growth, hearing problems, and anemia. Babies and young children face an increased likelihood of lead exposure as they may ingest dust or soil contaminated with lead when putting their hands or objects into their mouths. Children may also be exposed to lead by eating and drinking food

or water containing lead or from dishes or glasses that contain lead. In adults, lead exposure can cause increased blood pressure and incidence of hypertension, reduced kidney function, and reproductive harm in men and women. Lead can also accumulate in bones over time.

History of lead-based paint: Pre-1978, lead-based paint was in great demand due to its washability and durability. It was repeatedly endorsed by federal, state, and local governments, and specified for use on government buildings until the mid-1970s. For example, the 1950 California Department of Education vocational book on painting endorsed the use of white lead paint. As uses of lead pigments in paints evolved, so did the primary pathways through which people were thought to be exposed to lead and the level of exposure thought to be safe. It was not until 1974 that household dust emerged as a possible pathway for lead exposure.

In 1978, the federal government banned consumer uses of lead paint. Despite the ban, buildings built prior to the prohibition still likely have lead paint. Due to the significant health issues caused by lead exposure, California requires anyone who performs lead-based paint risk assessment or removal to be certified or accredited by CDPH.

State action on lead paint: In 1991, the California Legislature enacted AB 2038, the Childhood Lead Poisoning Prevention Act of 1991, which established a program within the State Department of Health Services (DHS, now CDPH) to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 and Title X of the Housing and Community Development Act. It required DHS to adopt regulations regarding accreditation of training providers that engage in or supervise lead-related construction work, and required the establishment of fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations. The fees are deposited into the Lead-Related Construction Fund.

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

SB 460 also required any person being paid for lead construction, including inspection, risk assessment, or designing plans for the abatement of lead hazards, and any person performing lead inspections or abatement in a public elementary, preschool, or day care center, to have a certificate from DHS.

Environmental justice concerns with lead: Lead pollution is particularly prevalent in disadvantaged communities and communities of color. In public comments submitted by California Attorney General Rob Bonta on the U.S. EPA's Lead Strategy, the Attorney General wrote, "Lead exposure in the United States is a public health crisis, and one that we urgently need to address. The EPA's Lead Strategy recognizes a simple fact: That lead pollution disproportionately impacts low-income communities and communities of color. At the California Department of Justice, we've fought to reduce lead levels in consumer products and the environment, but we need strong federal action to address longstanding inequities in lead exposure."

While lead pollution is abundant in the environment and man-made structures, low-income communities face significant hurdles in the removal or avoidance of lead in their daily lives.

Dangerous levels of lead are disproportionately found in environmental justice communities that have older houses and lack the financial resources to remove old lead pipes and fixtures that are contaminating drinking water. With regard to lead in air emissions, the combustion of leaded aviation gas in piston-engine planes is the single largest contributor of airborne lead emissions. Disadvantaged communities are much more likely to live or attend school near airports, increasing their exposure to lead from fuel emissions. California ranks first in the nation for the number of lead-polluting airports. Low-income communities of color are also exposed to lead-based paint in their homes at higher rates due to difficulty accessing affordable housing in good repair and workers tracking dust contaminated with lead into their homes and thus exposing their families.

California's existing regulation on lead-based paint: CDPH has regulations (California Code of Regulations (CCR), Title 17, Sections 35001, et seq) that spell out requirements for lead hazard evaluation and abatement activities, accreditation of training providers, and certification of individuals engaged in lead-based paint activities.

In addition, the California Division of Occupational Safety and Health (Cal-OSHA) has regulations (CCR, Title 8, Section 1532.1, et seq) that provide worker protection requirements for employees conducting lead-related construction activities. Cal-OSHA's regulations limit occupational exposure to lead and require employers to use engineering controls, safe work practices, and other control measures. These regulations apply to all employers regardless of what kind of work they perform.

Lead-Based Paint Renovation, Repair and Painting (RRP) Rule: Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. On April 22, 2008, the U.S. EPA issued the RRP requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the RRP, beginning in April 2010, contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes, childcare facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. This includes in-house maintenance staff and many types of outside contractors. Under the RRP, child-occupied facilities are defined as residential, public, or commercial buildings where children younger than age six are present on a regular basis.

According to the U.S. EPA, any activity that disturbs paint in pre-1978 housing and child-occupied facilities is covered, including:

- a. Remodeling and repair/maintenance;
- b. Electrical work;
- c. Plumbing;
- d. Painting preparation;
- e. Carpentry; and,
- f. Window replacement.

The following housing or activities are not covered by the RRP rule:

- g. Housing built in 1978 or later;

- h. Housing specifically for elderly or disabled persons, unless children under 6 reside or are expected to reside there;
- i. "Zero-bedroom" dwellings (studio apartments, dormitories, etc.);
- j. Housing or components declared lead-free by a certified inspector or risk assessor. A certified renovator may also declare specific components lead-free using a U.S. EPA recognized test kit or by collecting paint chip samples for analysis by a U.S. EPA recognized laboratory; and,
- k. Minor repair and maintenance activities that disturb 6 square feet or less of paint per room inside, or 20 square feet or less on the exterior of a home or building. However, window replacement, and partial and full demolition activities, are always covered regardless of square footage.

A concern with the RRP is that many of the specific training requirements either undermine California's requirements, or create confusion with California's requirements. While California's lead laws and federal RRP complement each other in many ways, subtle differences and inconsistencies between the two make the regulatory framework on lead in buildings confusing.

According to the cosponsors of the bill, the California Association of Code Enforcement Officers and the Environmental Working Group, in some instances practices that are allowed under the RRP are not allowed in California. Renovators and contractors are required to learn and adhere to two sets of rules and have to navigate the inconsistencies on their own.

This bill: To address conflicts between state and federal regulations, SB 1076 would eliminate the current regulatory confusion regarding certification for lead paint removal by conforming federal and state laws and providing funding for increased enforcement of all laws regarding lead-based paint. The bill also enables CDPH to adopt emergency regulations in response to a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, or if a statute deems a situation to be an emergency under the Administrative Procedures Act (APA). Lastly, the bill updates requirements for firms to be certified and updates and establishes penalties for violations of certification requirements.

Arguments in support: In a coalition support letter, several organizations including the cosponsors, the California Association of Code Enforcement Officers and the Environmental Working Group, write, "Under this proposal, California would follow the lead of fourteen other states, one tribe and streamline state and federal requirements to address confusing inconsistencies and improve use of lead safe work practices. California would also assume management of, and revenues generated by, the now federal program, which is called the Lead Renovation, Repair, and Painting (RRP) program.

Lead-based paint was used in over 38 million homes in the U.S. until it was banned from residential use in 1978. [...] People are exposed to lead most commonly by ingesting lead in dust, which often is invisible and released by lead-based paint. Renovation, repair and painting projects disturb surfaces covered in lead-based paint and create lead-contaminated dust that endangers residents young and old, and workers repairing the building. [...] Lead can affect children's developing brains and nervous systems, causing reduced IQ, learning disabilities, and behavioral problems with impacts lasting into adulthood. Lead poisoning in adults can cause high blood pressure and reproductive harm. [...]

Low-income communities of color are exposed to lead at higher rates due to lack of access to affordable housing in good repair. In Los Angeles County, for example, 85% of elevated blood-lead levels in children under six years of age are Latinos. Workers doing painting, remodeling and repair are also at high risk of exposure to lead in homes, as are their families because dust contaminated with lead may be tracked in homes from work clothes and shoes.

While California's lead protection laws and the federal Renovation and Repair Program (RRP) complement each other in many ways, subtle differences and inconsistencies between the two make the regulatory framework concerning lead in buildings confusing. And because renovators and contractors have to figure out how to deal with the inconsistencies on their own, they can easily, and unintentionally, violate either California or federal lead laws. [...]

The solution to this confusing set up is to align state and federal lead laws so that the state can assume management and enforcement of the RRP. Such alignment would also allow the state to recoup certification fees that are currently paid to the US Treasury, and use those revenues to fund the program and enforcement activities."

Double referral: Should this bill pass this Committee, it will be re-referred to the Assembly Committee on the Judiciary.

Related legislation:

- 1) SB 377 (Monning, 2017). Would have required CDPH to promulgate regulations governing lead-related construction work to conform to the US EPA's RRP Rule. This bill died on the Assembly inactive file.
- 2) SB 1073 (Monning, 2016). Would have required CDPH to update regulations governing lead-related construction work to conform to the US EPA's RRP Rule. This bill was amended with content unrelated to the subject.
- 3) SB 460 (Ortiz, Chapter 931, Statutes of 2002). Established the requirement that lead-safe work practices be used in pre-1978 buildings.

REGISTERED SUPPORT / OPPOSITION:

Support

Environmental Working Group (Co-Sponsor)
 California Association of Code Enforcement Officers (Co-Sponsor)
 Alameda County Board of Supervisors
 Bay Area Business Roundtable (BABRT)
 Berkeley; City of
 California Association of Professional Scientists
 California Nurses for Environmental Health and Justice
 California Rural Legal Assistance Foundation
 Center for Environmental Health
 Children Now
 Clean Water Action
 Coalition for Economic Survival (CES)
 County of Santa Clara

Demolition With Hazards
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
Impact Oakland Now
International Faith Based Coalition
Lead and Environmental Hazards Association
National Association of Minority Contractors Northern California
Non-toxic Neighborhoods
Planning and Conservation League
Public Health Institute
Revalue.io
San Francisco Bay Physicians for Social Responsibility
Western Center on Law and Poverty

Opposition

None on file.

Analysis Prepared by: Manar Zaghlula / E.S. & T.M. /

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1144 (Wiener) – As Amended June 8, 2022

SENATE VOTE: 36-1

SUBJECT: Water efficiency and quality assessment reports: state buildings and public school buildings

SUMMARY: : Requires, by January 1, 2024, the operator of a building owned or operated by a state agency or public school to complete a water efficiency and quality assessment report for each building. Specifically, **this bill:**

- 1) Defines a "covered building" as a building owned and occupied, or leased, maintained, and occupied, by a state agency, or a building that is a public school building.
- 2) Defines "Legionella" as Legionella pneumophila bacteria.
- 3) Defines "operating agency" as the entity responsible for the operation and maintenance of a covered building.
- 4) Defines "school building" as any of the following: a structure used for the instruction of public school children, including a classroom, laboratory, library, research facility or administrative facility; an eating facility located in a school or a school kitchen; a gymnasium or other facility used for athletic or recreational activities or for courses in physical education; a dormitory or other living area of a residential school; and, a maintenance, storage, or utility facility essential to the operation of any of the above described buildings that contains a potable water system.
- 5) Defines "state agency" as any state office, officer, department, division, bureau, board, commission, organization, or agency including, without limitation, the University of California, the California State University, the California Community Colleges, and the Judicial Council.
- 6) Requires, no later than January 1, 2024, an operating agency to complete a water efficiency and quality assessment report for each covered building. Requires that the report include all of the following: the name of the person preparing the report; the address of the covered building; an inventory of all noncompliant plumbing fixtures and noncompliant appliances in the covered building; an evaluation of the feasibility and costs of installing a graywater system in the covered building or connecting to a recycled water system for outdoor uses; an evaluation of whether the building contains lead pipe or piping of an unknown material installed prior to 1986; an evaluation of whether the building contains non-lead free pipe, lead pipe, or piping of an unknown material installed prior to 2010; and, testing and assessment of water quality in the building's potable water systems for lead contamination and testing of the building's potable water system, water features, ice-making machines and cooling towers for Legionella.

- 7) Authorizes an operating agency, if it is responsible for the operation and maintenance of more than one covered building, to complete the water efficiency and quality assessment report for the covered buildings staggered over a period of years and completed on or before December 1, 2027.
- 8) Requires an operating agency to replace noncompliant plumbing fixtures and noncompliant appliances that fail to meet water efficiency standards with water-conserving plumbing fixtures and water-conserving appliances at the earliest practical time, subject to available funding.
- 9) Requires an operating agency to install the graywater system or connect to a recycled water system at the earliest practical time, subject to available funding if the water efficiency and quality assessment report has determined it to be feasible and cost-effective.
- 10) Requires an operating agency to fill all drinking and cooking water sources with certified National Sanitation Foundation (NSF)/American National Standards Institute (ANSI) 42 and 53 filters if the water efficiency and quality assessment report determines that a building contains lead pipe or non-lead-free pipe. Requires the filters to be installed as soon as possible but no later than one year from receipt of the water efficiency and quality assessment report and subject to available funding.
- 11) Requires an operating agency to replace the lead pipe at the earliest practical time, subject to available funding.
- 12) Requires an operating agency, until the lead pipe is replaced, to post a warning that the building contains lead pipe in the outside lobby window of the building or other conspicuous place near the primary entrance and clearly visible to the public.
- 13) Requires an operating agency, if the lead pipe has not been replaced within 12 months of the completion of the water efficiency and quality assessment report, to prepare a water quality management plan that establishes a remediation plan, interim mitigation measures, and a regular testing schedule for lead in the building drinking water until remediation is completed.
- 14) Requires the water quality management plan to be designed by a water management program team that includes qualified personnel.
- 15) Requires an operating agency to remediate contamination from Legionella at the earliest practical time, if the water efficiency and quality assessment report determines that a building's potable water system, ice-making machines, water features, or cooling towers are contaminated by Legionella at levels that exceed state safety standards.
- 16) Requires an operating agency, until the Legionella contamination is fully remediated, to post a notice of contamination in the outside lobby window of the building or other conspicuous place near the primary entrance and clearly visible to the public and requires the operating agency to take all other measures necessary to protect occupants.
- 17) Requires an operating agency to implement a Legionella management program for any covered building with a cooling tower system, no later than one year after completion of the water efficiency and quality assessment report.

- 18) Requires the Legionella management program to be designed to minimize the growth and transmission of Legionella bacteria in the cooling tower system, consistent with ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 188, as it may be amended.
- 19) Authorizes the State Water Resources Control Board (State Water Board) to periodically monitor operating agencies to ensure that a Legionella management program is in place.
- 20) Requires an operating agency to notify the local health department within 24 hours of receipt of a Legionella culture sampling analysis that exceeds 1,000 colony forming units per milliliter (CFU/mL). Requires the operating agency to also notify the public of the exceedance by posting a notice in the outside lobby window of the building or other conspicuous place near the primary entrance and clearly visible to the public.
- 21) Requires, on or before January 1, 2024, the State Water Board to adopt regulations necessary to implement the water efficiency and quality program for public schools and state buildings.

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) Establishes the Lead-Safe Schools Protection Act and requires the State Department of Health Services (DHS) to conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. (Education Code (EC) § 32240-32245)
- 3) Requires, pursuant to the Lead-Safe Schools Protection Act, that the California Department of Public Health (CDPH) work with the California Department of Education to develop voluntary guidelines for distribution to request schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures. (EC § 32242 (g))
- 4) Requires a school district to provide access to free, fresh drinking water during meal times in the food service areas of the schools under its jurisdiction, including, but not necessarily limited to, areas where reimbursable meals under the National School Lunch Program or the federal School Breakfast Program are served or consumed. Authorizes a school district to comply with this requirement by, among other means, providing cups and containers of water or soliciting or receiving donated bottled water. (EC § 38086)
- 5) Defines "state agency" as any state office, officer, department, division, bureau, board, commission, organization, or agency including, without limitation, the University of California, the California State University, the California Community Colleges, and the Judicial Council. (Government Code § 15802 (g))
- 6) Defines "graywater" as untreated wastewater that has not been contaminated by any toilet discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and does not present a threat from contamination by unhealthful processing, manufacturing, or operating wastes. Clarifies that "graywater" includes wastewater from bathtubs, showers,

bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers. (Health and Safety Code (HSC) § 17922.12 (a))

- 7) Requires the California Building Standards Commission to adopt building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses in nonresidential occupancies. (HSC § 18941.8)
- 8) Requires a school district to notify parents, pupils, teachers, and other school personnel of drinking water results immediately if the school district is required to provide alternative drinking water sources, and authorizes a school district to comply with that requirement by providing notification of the test results during the next regularly scheduled public school meeting. (HSC § 116450)
- 10) 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. (HSC § 116875(a))
- 11) 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))
- 12) 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))
- 13) Establishes as policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 1144 will require state agencies and public schools to test their plumbing systems for contamination and compliance with efficiency standards. According to the Office of Environmental Health Hazard Assessment, nearly one million Californians lack access to clean water. This issue is heightened at our public schools, with 53% of participating school districts reporting the presence of lead in at least one of their drinking water fountains on a campus. Across 1,300 public schools, 2,100 water fountains were found to be contaminated with lead. These concerning rates of lead exposure exclude other contaminants that are potentially present, such as Legionella, which has extremely detrimental health effects. This type of contamination is not unique to schools, as older buildings with aged plumbing fixtures, like many state agency buildings, often find similar results. It is crucial that California tests for this type of exposure among our school-age children and state workers, and when possible, replace the systems that are causing this contamination. SB 1144 will ensure that no plumbing fixtures or appliances continue to poison water systems without proper intervention.

Additionally, SB 1144 expands the type of water system testing public schools and state agencies will do to include efficiency measures. The age of plumbing systems in public schools and state agency buildings often cause additional issues beyond the contamination detailed above, including diminished water efficiency. Whether it be leaks slowly dripping away thousands of gallons, or outdated fixtures utilizing excessive amounts of water per usage, such as a toilet using multiple gallons per flush, the loss of water across the state is immeasurable. To curb this waste and ensure the state is working to protect a resource as valuable as water, SB 1144 will require efficiency testing for all plumbing fixtures and appliances, and where possible, replacement of outdated and inefficient plumbing fixtures, as well as the installation of an on-site graywater system."

The problem with 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 on the list of chemicals known to cause cancer since 1992. Even at low levels, lead may cause a range of health effects including behavioral problems and learning disabilities. Children six years old and younger are most at risk because this is when the brain is developing. The United States Environmental Protection Agency (US EPA) estimates that 10 to 20 percent of the total lead exposure for young children comes from drinking water.

There is no level of lead that has been proven safe, either for children or for adults. Both the U.S. Centers for Disease Control and Prevention (CDC) and CDPH consider any blood lead level more than 10 µg/dl (micrograms of lead per deciliter of blood; equivalent to a concentration of 100 parts per billion or ppb) to be unsafe for children.

Lead in water: The most prevalent sources of lead in drinking water are pipes, fixtures, and associated hardware from which the lead can leach. 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 (or, for private domestic wells, the concentration of lead in raw groundwater), and corrosivity (acidity, temperature, and the concentration of other mineral components) of the water. More corrosive water can cause greater leaching from pipes. As pipes age, mineral deposits will form a coating on the inside of the pipes that protect against further corrosion. However, older homes with lead pipes can still have significant concentrations of lead in their tap 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."

Recently enacted AB 100 (Holden, Chapter 692, Statutes of 2021) requires 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.

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 at any school that requested it for lead.

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 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.

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 childcare 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.)

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 (1 ppb) 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.

Graywater: In California, graywater is defined as, "untreated wastewater that has not been contaminated by any toilet discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and does not present a threat from contamination by unhealthful processing, manufacturing, or operating wastes." Under California law, graywater includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers. SB 1144 requires operating agencies of covered building to evaluate if graywater system are feasible and cost effective to be installed in a covered building.

Benefits of graywater: With careful management, graywater can be a beneficial source of recycled water. Graywater that can be used directly or with a reasonable level of local treatment (i.e., at the point of use) includes water from clothes washers, showers, baths, and faucets (non-kitchen). According to a 2009 UCLA report, *Graywater- A Potential Source of Water*, graywater constitutes about 60% of the total indoor water use in single-family homes. The report points out that 1.3% of the total indoor water used in a single-family home is for washing dishes.

Health risks of graywater: The recycling and reuse of graywater can create health risks, such as potential exposure to pathogenic bacteria and viruses. Exposure to graywater can occur both through direct contact and through exposure to graywater-contaminated irrigated landscaping, crops, or groundwater. For this reason, it is important that robust regulations with strong public health and environmental protections are promulgated for the reuse of graywater.

Graywater regulation in California: Since the 1990s, California's Building Code has included provisions that authorized the installation and use of graywater systems, but the regulations were deemed by many to be restrictive and complicated.

In 2008, California revised its approach to graywater regulation by enacting SB 1258 (Lowenthal, Chapter 172, Statutes of 2008), the "Showers to Flowers" bill, which shifted responsibility for regulating residential graywater use from the Department of Water Resources to the Department of Housing and Community Development (HCD). SB 1258 required the HCD to revise building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses. The goal of the bill was to facilitate and encourage safe graywater systems in California.

Legionnaire's disease: Legionnaires' disease, a severe, sometimes fatal pneumonia, can occur in persons who inhale aerosolized droplets of water contaminated with bacteria of the genus *Legionella*. Exposure to *Legionella* in freshwater environments such as lakes and streams does not lead to disease; however, in manmade water systems, *Legionella* can grow and spread to susceptible hosts.

According to the CDC, "Legionnaires' disease is a lung infection that is fatal for about one in 10 persons who become infected. *Legionella*, the bacterium that causes Legionnaires' disease, grows well in warm water, but can be killed by disinfectants, such as chlorine. Persons can get Legionnaires' disease when they breathe in small droplets of water contaminated with *Legionella*.

Persons most likely to get Legionnaires' disease are those aged ≥ 50 years, smokers, and persons with underlying medical conditions, such as chronic lung disease or weakened immune systems. *Legionella* grows best in building water systems that are not well maintained, especially where levels of chlorine or other disinfectants are low and water temperatures are optimal for its

growth. Legionnaires' disease outbreaks most often occur in hotels, long-term care facilities, and hospitals. The most common sources are potable water (e.g., drinkable water used for showering), cooling towers, hot tubs, and decorative fountains.

The key to preventing outbreaks is good management of building water systems, according to new industry standards. Outbreaks have occurred because of process failures (65%), human errors (52%), equipment failures (35%), external conditions (35%), or a combination of these (48%). Building owners and managers should determine if their building water systems are at increased risk for *Legionella* growth and spread. If so, they should develop and use a *Legionella* water management program according to the new industry standards."

Legionellosis: Risk Management for Building Water Systems (ASHRAE 188 standard): In 2015, ASHRAE developed a new standard aimed at preventing the growth and spread of *Legionella*. Created as a voluntary consensus standard, ASHRAE 188 provides guidance developed by a committee comprised of academic, industry, and government subject matter experts. However, the standard does not have regulatory authority unless it is incorporated into local building codes. By creating a framework for proactively managing building water systems and reducing the potential for *Legionella* growth in these systems, following the standard can help building and facility managers prevent many but not all cases of legionellosis. SB 1144 requires the *Legionella* management plan to be consistent with ASHRAE 188.

Specifically, ASHRAE 188 defines the types of buildings and devices that need a water management program; minimum components of a water management program; devices (e.g., hot tubs, cooling towers) that need to be controlled in order to prevent the growth and spread of *Legionella*; who should be on a water management program team; and, when and how often water management programs should be reassessed and updated.

ASHRAE 188 applies to healthcare facilities: where patients stay overnight; where people with chronic or acute medical problems (e.g. burns, cancer) and people with a weakened immune system are housed or treated; and, that primarily house people older than 65 years. The standard also contains special considerations for healthcare facilities. The CDC encourages all healthcare facilities to include clinical disease surveillance in addition to environmental surveillance in their legionellosis risk management plans.

The intended audience of ASHRAE 188 is people who maintain and manage building water systems, including systems for potable water used for drinking and showering, non-potable, and recreational water. This includes building owners and managers, as well as people who operate, maintain, and repair existing buildings, and people involved in the design, construction, and commissioning of new buildings. The standard may also be used by health departments or other governmental or regulatory entities to make recommendations about prevention of Legionnaires' disease or in the writing and enforcing of local codes. ASHRAE 188 is not intended as a standard for single-family or small multi-family residential buildings.

Notably, ASHRAE 188 does not require building owners to test for *Legionella*. In the standard, water management teams are advised to determine whether testing should be performed, and, if performed, to determine the frequency of, locations for, and plans for the response to results of testing. There is no evidence-based consensus recommendation regarding routine testing for *Legionella* for the prevention of legionellosis, as many research gaps exist. However, if testing

is performed and *Legionella* is found, a plan should be in place to remove *Legionella* from the water system.

This bill: SB 1144 requires operators of school buildings and state buildings to complete a water efficiency and quality assessment report for each covered building to evaluate if the building contains lead pipes, if it is feasible and cost-effective to install a graywater system or connect to a recycled water system, and to test for and develop a management plan for any *Legionella* contamination. As of the writing of this analysis, continued author discussions may lead to several changes, if the bill passes this Committee, including:

- A. Removing the requirement for initial testing of *Legionella*;
- B. Clarifying that the "available funds" from which a state agency or school must replace a pipe or water cooling system does not refer to a school's general fund, but other sources such as future bond funds, federal funding, or other potential sources of funding; and,
- C. Clarifying whether it is feasible for schools to install graywater systems given the potentially low volume of source water available at a school site.

Issues for consideration: Even with the above clarifications, the author and stakeholders may wish to consider clarifying several additional areas to further improve the bill:

- A. Should schools or state agencies perform the lead testing or should community water systems? AB 746 (Statutes of 2017) required, under the oversight of the State Water Board, community water systems to test for lead and, if exceedances were found, to take specific actions. Given this precedent and that community water systems are more experienced with testing drinking water for contaminants, the author may wish to consider requiring community water systems to perform the lead testing for covered buildings in the bill.
- B. The bill requires the State Water Board to adopt regulations by January 1, 2024 to implement this bill. However, completion of the water efficiency and quality assessment report is also required by that date. Therefore, the regulations adopted by the State Water Board cannot be used to guide or inform state agencies or public schools in complying with these requirements. The author may wish to consider moving the deadline for compliance out further. The author may also wish to provide greater detail and direction to the State Water Board on adopting regulations on lead testing, graywater systems, establishing a water management program team and developing a water quality management plan, and developing and implementing a *Legionella* management plan.
- C. Further, the bill requires an operating agency to determine if a building's potable water systems, ice-making machines, water features, or cooling towers exceed state safety standards for *Legionella*. However, as the committee is not aware of any California safety standards for *Legionella*, the author may wish to further clarify this standard.
- D. Lastly, the bill requires testing drinking water for lead and states that buildings that have tested for lead contamination in the last 10 years may comply with the lead testing requirement by providing the results of that test. However, the bill does not specify to whom the operating agency should provide test results. The author may wish to further clarify how buildings with previous lead testing results can obtain an exemption from the lead testing requirements in the bill.

Arguments in Support: According to the California Pipe Trades Council, "Existing law requires that State Water Resources Control board regulate public drinking water to protect people's health and requires that pipes must be lead free. We also know that access to clean, safe water is a fundamental human right. Schools are especially afflicted by poor water quality. Data

collected in 2019 and 2020 showed that 53% of reporting school districts found lead in at least one of their water fountains on campus, and 2,100 water fountains tested positive for lead at 1,300 California schools. We must act to provide Californians with safe, reliable drinking water.

SB 1144 will address these problems by requiring a one-time assessment of water quality and efficiency in all public school and state agency buildings within a year of this legislation taking effect. These sites must be tested for lead, radon, Legionella, and other contaminants as well as an inventory of lead pipes in the buildings. SB 1144 would require that noncompliant plumbing fixtures and appliances must be replaced if traces of lead are found or if the pipe is of unknown material installed prior to 1986. One year after the assessment report, the operating agency must implement a Legionella management program for any covered building with a cooling tower system to have routine sampling and disinfection plans.

SB 1144 is essential legislation for providing safe water in our schools and for conserving water at a time of historic drought. Water quality in California is amounting to a public health crisis, and we cannot sit back while our children consume unsafe water."

Arguments in Opposition: According to the Alliance to Prevent Legionnaires' Disease (APLD), "APLD is a nonprofit public health advocacy group dedicated to reducing the occurrence of Legionnaires' disease by promoting public research, education, best practices for water management, and advocating for comprehensive policies to combat and investigate this preventable disease.

As an organization dedicated to the reduction of Legionnaires' disease, one might think that the Alliance to Prevent Legionnaires' Disease would gladly sign-on in support of SB 1144 that purports to protect Californians from Legionnaires'. However, it is precisely due to our commitment to reducing Legionnaires' disease that we *strongly oppose* the inclusion of provisions related to *legionella* bacteria in SB 1144.

We are very concerned that the provisions of this bill related to *legionella* do not effectively address Legionnaires' disease and we see it as counterproductive providing a false sense of protection while distracting from the core issues that drive the vast majority of Legionnaires' cases.

Legionnaires' disease is a waterborne illness. *Legionella* bacteria is found in source water like lakes and rivers that supply our public water system and provide our homes and buildings with the water we drink, use to shower and for various other purposes. According to the CDC, 96% of Legionnaires' disease cases are sporadic and isolated from larger outbreaks. In California, there are approximately 450 cases of Legionnaires' disease annually so approximately 432 are individual and sporadic cases. With EPA studies finding that approximately 50% of all household taps tested positive for *legionella*, these cases can often be traced back to drinking water. And we are particularly concerned about home-based exposure given the daily water use and intense exposure to water in our homes with the average family of four using 300 gallons per day. *Legionella* exists in the source water and public water distribution system. It is far more effective to properly manage, treat and monitor water in the public distribution system than it is to try to address these pathogens after they have already entered premise plumbing."

As it relates to schools:

According to a number of education based organizations, "We write to express opposition to SB 1144 (Wiener), as amended May 19, 2022. We appreciate the intent to ensure clean water for California's students and teachers, but we believe SB 1144 is a duplicative and complicated solution in search of a problem.

SB 1144 creates a very costly state mandate with no identified funding source, workforce pipeline development, or technical assistance for some of its most burdensome provisions. At a time when the facility needs for existing schools statewide exceeds \$8 billion, these additional requirements would prioritize limited resources to achieve unclear goals. Further, the measure also fails to consider the existing testing and reporting system for lead exposure through AB 746 (Statutes of 2018).

We question the need for a complicated assessment and mitigation mandate without clear, measurable goals. Assembly Bill 746 (Statutes of 2018) required all schools to test water fountains and faucets for elevated lead levels. For any source with lead content above 15 parts per billion, schools were required to cease use of that fountain or faucet until the elevated lead level was mitigated. The California State Water Resources Control Board (SWRCB) has detailed information regarding the outcome of this robust testing program.

When there is contamination at the end-point of a water system, it is not possible to know from testing a faucet or fixture whether the contamination occurred before or after entering the school site. Any program that addresses water quality in schools should be in partnership with the water agencies that supply water to schools. This was demonstrated when water agencies conducted the lead tests prescribed by AB 746.

SB 1144 does not identify a funding source for the water quality assessment nor the possible repairs that may be required at every school in California. The lab tests alone cost an estimated \$6,500 per school site for the lead assessment; testing other contaminants would be an additional cost.

SB 1144 states that if a building contains lead pipe, the school must post a lead pipe warning visible to the public until the pipe is replaced. If the lead pipe has not been replaced within 12 months of the assessment report, the school shall prepare a water quality management plan that establishes a remediation plan, interim mitigation measures where appropriate, and regular testing schedule.

We recognize the seriousness of potential Legionella contamination, which can lead to severe illness and even loss of life. However, there has been no justification (anecdotal or data-driven) provided as to why Legionella should be the subject of such widespread testing, assessment and planning. We are unaware of even a single case of Legionnaire's Disease attributed to a school water system in California."

Double referral: Should SB 1144 be approved by the Assembly Environmental Safety & Toxic Materials Committee, it will be re-referred to the Assembly Education Committee.

Related legislation:

- 1) AB 1931 (Luz Rivas). Requires a community water system to create an inventory of lead service lines in its distribution system and create a timeline for the replacement or removal of

lead services lines that the community water system owns. This bill is pending referral in the Senate Rules Committee.

- 2) AB 100 (Holden, Chapter 692, Statutes of 2021). Requires endpoint plumbing fixtures to meet a performance standard in addition to existing content standard to qualify as "lead free" under California law.
- 3) 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.
- 4) AB 746 (Gonzalez, Chapter 746, Statutes of 2017). Requires a community water system that serves a schoolsite built before January 1, 2010, to test for lead in the potable water system of the schoolsite on or before July 1, 2019.
- 5) SB 1398 (Leyva, Chapter 731, Statutes of 2016). Requires a public water system to identify and replace known leaded plumbing.
- 6) AB 2124 (E. Garcia, Lackey, 2016) would have required a public water system to include in its water analysis samples from schools, day care facilities, and health care facilities, to the extent those locations are within the public water system. It was held in Senate Environmental Quality Committee.
- 7) SB 334 (Leyva, 2015). This bill would have required CDPH to test drinking water sources at a sample of schoolsites for lead, and establish the intent of the Legislature to prioritize testing of schoolsites that have high risk factors. It was vetoed.
- 8) 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 State Pipe Trades Council (Sponsor)

Opposition

Alliance to Prevent Legionnaires' Disease, INC
Association of California School Administrators
California Association of School Business Officials (CASBO)
California Coalition for Adequate School Housing (CASH)
California School Boards Association
County School Facilities Consortium
Erin Brockovich Foundation
Integrated Resource Management, Inc.
Los Angeles Unified School District
Riverside County Office of Education

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1215 (Newman) – As Amended June 8, 2022

SENATE VOTE: 28-8

SUBJECT: Responsible Battery Recycling Act of 2022

SUMMARY: Creates the Responsible Battery Recycling Act (Act) of 2022, which requires producers of covered batteries and covered battery-embedded products, as defined, to establish a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products. Specifically, **this bill:**

- 1) Defines "covered battery" as a device consisting of one or more electrically connected electrochemical cells designed to receive, store, and deliver electric energy. (These are commonly thought of as household batteries such as single-use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes, e.g., AAA, AA, C, D, 9-Volt, and small sealed lead-acid batteries.
- 2) Provides that "covered battery" does not include any of the following:
 - a) A primary battery weighing over two kilograms that is a non-rechargeable battery, including but not limited to alkaline, carbon-zinc, and lithium metal batteries;
 - b) A rechargeable battery weighing over five kilograms and having a watt-hour rating of more than 300 watt-hours;
 - c) A lead acid battery;
 - d) A battery contained in a motor vehicle (this exclusion does not apply to a battery in a motorized scooter, motorized skateboard, a motorized hoverboard, or a device intended to propel or move upon a highway only one individual person); and,
 - e) A fuel cell electrical generating facility.
- 3) Defines "covered battery-embedded product" as a product containing a battery or battery pack that is not designed to be removed from the product by the consumer.
- 4) Provides that "covered battery-embedded product" does not include any of the following:
 - a) A medical device;
 - b) A covered electronic device; and,
 - c) An energy storage system.
- 5) Defines "distributor" as a company that has a contractual relationship with one or more producers to market and sell covered batteries or covered battery-embedded products to retailers.

- 6) Defines "producer" as the person who manufactures the covered battery or covered battery-embedded product and who sells, offers for sale, or distributes the covered battery or covered battery-embedded product in or into the state.
- 7) Defines "rechargeable battery" as a battery that contains one or more voltaic or galvanic cells, electrically connected to produce electric energy, and that is designed to be recharged.
- 8) Provides that "rechargeable battery" does not include a battery that contains electrolytes as a free liquid or a battery that employs lead-acid technology, unless that battery is sealed and contains no free liquid electrolytes.
- 9) Defines "retailer" as a person who sells covered batteries or covered battery-embedded products in or into the state to a person through any means, including, but not limited to, sales outlets, catalogs, the telephone, the internet, or any electronic means.
- 10) Defines "stewardship organization" as an organization exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code that is established by a group of producers in accordance with this bill to develop and implement a stewardship program.
- 11) Defines "stewardship plan" or "plan" as a plan developed by a stewardship organization or producer for the collection, transportation, and recycling, and the safe and proper management, of covered batteries or covered battery-embedded products.
- 12) Defines "stewardship program" as a program established by a producer or stewardship organization for the free and convenient collection, transportation, and recycling, and the safe and proper management, of covered batteries, covered battery-embedded products, or covered batteries and covered battery-embedded products pursuant to a plan approved by the Department of Resources, Recycling, and Recovery (CalRecycle).
- 13) Requires, on or before January 1, 2025, CalRecycle, in consultation with the Department of Toxic Substances Control (DTSC), to adopt regulations to implement the Act.
- 14) Requires a producer, no later than 90 days after the effective date of the Act, to provide to CalRecycle a list of covered batteries and covered battery-embedded products that the producer sells or offers for sale in the state.
- 15) Authorizes producers to establish one or more stewardship organizations to develop and implement the covered battery and covered battery-embedded product recycling program established by this Act.
- 16) Requires, within six months of the effective date of the regulations adopted by CalRecycle, a producer or stewardship organization to develop and submit to CalRecycle a stewardship plan for the collection, transportation, recycling, and safe and proper management, of covered batteries, covered battery-embedded products or covered batteries and covered battery-embedded products in the state.
- 17) Requires a stewardship plan for covered batteries and covered battery-embedded products to include multiple standards and elements including:

- a) The names of producers, distributors, importers, manufacturers, brands and covered batteries or covered battery-embedded products covered under the stewardship plan;
 - b) A free and convenient collection system for covered batteries or covered battery-embedded products in each county of the state that meets specified requirements;
 - c) Collection sites with the necessary equipment, training, signage, safety guidance, and educational materials;
 - d) A funding mechanism to provide sufficient funding for the producer or stewardship organization to implement the plan;
 - e) A description of the process by which covered batteries or covered battery-embedded products will be processed and recycled following collection at collection sites;
 - f) Developing strategies, in consultation with the California Environmental Protection Agency's Environmental Justice Task Force and other relevant stakeholders, for collecting covered batteries or covered battery-embedded products for recycling in areas and communities that face unique challenges associated with proper waste management, such as poverty, language barriers, and illegal disposal;
 - g) A comprehensive statewide education and outreach program designed to promote participation in the collection and recycling program offered by the stewardship organization; and,
 - h) A description of goals and metrics used to determine the success of the statewide education and outreach program.
- 18) Requires, at least 90 days before submitting a plan to CalRecycle, a producer or stewardship organization to submit its entire proposed plan to DTSC for its review.
 - 19) Requires DTSC to review the plan for compliance with state and federal laws and regulations related to its authority, make a determination of compliance or noncompliance, and provide that determination to the producer or stewardship organization and CalRecycle within 90 days of receipt of the plan.
 - 20) Requires CalRecycle to review the stewardship plan for compliance with the Act and to approve, disapprove, or conditionally approve the plan within 90 days of receipt of the plan.
 - 21) Requires, on or before December 31, 2025, a producer or a stewardship organization to have a complete plan approved by CalRecycle in order to be in compliance with the Act.
 - 22) Requires, within 270 days of receiving approval of a plan from CalRecycle, a producer or stewardship organization to fully implement its stewardship program.
 - 23) Requires a producer or stewardship organization to prepare and submit to CalRecycle, with the submission of a proposed plan, a proposed stewardship program budget for the next five calendar years.
 - 24) Requires CalRecycle, within 90 days of receipt of a stewardship program budget, to approve, disapprove, or conditionally approve a stewardship program budget.

- 25) Requires a producer or stewardship organization to annually submit to CalRecycle, and make publicly available on its internet website, an annual report containing specified information on the stewardship program.
- 26) Requires CalRecycle, on or before July 1, 2027, and on or before July 1 each year thereafter, to post on its internet website a list of producers that are in compliance with the Act.
- 27) Authorizes CalRecycle to impose an administrative civil penalty on a producer, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site that is in violation of the Act.
- 28) Repeals, as of January 1, 2027, the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004.
- 29) Exempts certain actions taken by a stewardship organization or producer from the Cartwright Act, Business and Professions Code Section 16700 et seq., the Unfair Practices Act, Business and Professions Code Section 17000 et seq., and the Unfair Competition Law, Business and Professions Code Section 17200 et seq.

EXISTING LAW:

- 1) Enacts the Rechargeable Battery Recycling Act of 2006, which requires every retailer to have a system in place, on or before July 1, 2006, for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal. (Public Resources Code (PRC) § 42451-42456)
- 2) Enacts the Electronic Waste Recycling Act of 2003 (EWRA), which establishes a program for consumers to return, recycle, and ensure the safe and environmentally sound disposal of video display devices, such as televisions and computer monitors that are hazardous wastes when discarded. (PRC § 42460 et seq.)
- 3) Enacts the Cell Phone Recycling Act 2004, which requires all retailers of cellular telephones (cell phones) to have in place a system for the collection, reuse, and recycling of cell phones and requires DTSC to provide information on cell phone recycling. (PRC § 42490-42499)
- 4) Creates the Hazardous Waste Control Law (HWCL) and provides DTSC with responsibility for overseeing the management of hazardous waste in California. (Health and Safety Code § 25100 et seq)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Because of the hazardous metals and corrosive materials that batteries contain, California classifies batteries as hazardous waste and bans them from solid waste landfills. When improperly discarded, lithium-ion (Li-ion) batteries in particular pose serious fire, health and safety hazards. In a world where batteries are increasingly powering everything, we still haven't solved for how to safely dispose of them. Currently, an estimated 75-92% of lithium-ion batteries are disposed of improperly."

The influx of these batteries into our waste stream has resulted in an alarming number of fires in our material recovery facilities, waste collection trucks, and landfills – fires that pose serious toxic threats to the health and safety of workers, firefighters and the surrounding community. SB 1215 will replace the current, labyrinthine and unsafe process for battery disposal with a safe, convenient, and accessible system for consumers to safely dispose of depleted batteries. SB 1215 requires the producers of batteries and battery-embedded products sold in California to develop, finance, and implement this program in collaboration with CalRecycle to recover and recycle their products."

Universal waste: Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses. Universal wastes include televisions, computers, other electronic devices, batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others.

The hazardous waste regulations (California Code of Regulations (CCR), Title 22, Division 4.5, Chapter 11, Section 66261.9) identify seven categories of hazardous wastes that can be managed as universal wastes. Any unwanted item that falls within one of these waste streams can be handled, transported, and recycled following the simple requirements set forth in the universal waste regulations (CCR, Title 22, Division 4.5, Chapter 23) versus the more stringent requirements for hazardous waste.

California's Universal Waste Rule allows individuals and businesses to transport, handle, and recycle certain common hazardous wastes, termed universal wastes, in a manner that differs from the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and are not disposed of in the trash. The universal waste requirements are also less complex and easier to comply with, thereby increasing compliance.

Regulation of batteries: State law, the HWCL, prohibits the disposal of batteries in the trash or household recycling collection bins intended to receive other non-hazardous waste and/or recyclable materials. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These include single use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes (AAA, AA, C, D, button cell, 9-Volt) and small sealed lead-acid batteries.

These batteries, sold individually, would be "covered batteries" under SB 1215. However, many batteries are sold within products, such as lithium-ion batteries, which are widely used in portable electronics like laptops, smart phones, digital cameras, game consoles, and cordless power tools. Some of these products would be considered "covered battery-embedded products" under the bill if the battery is not designed to be removed from the product by the consumer.

If batteries end up in the trash or a recycling bin, owners/operators of solid waste transfer stations, municipal landfills, and recycling centers who discover batteries in the waste or recyclable materials are required to remove and manage the batteries separately. The facility that removes the batteries from the municipal solid waste stream or recyclable materials becomes the generator of the hazardous waste batteries and must comply with hazardous waste management regulations. Facilities that do not properly manage hazardous waste may be subject to regulatory enforcement and may be liable for monetary penalties.

Depending on the type of battery and applicable management requirements, batteries must be sent to a facility permitted to accept hazardous waste batteries, universal wastes, or spent lead acid batteries. Only facilities that have a DTSC permit or other type of authorization to treat, store, or dispose of hazardous wastes may accept hazardous waste batteries. Persons that do not have a DTSC permit may accept and store universal waste batteries and spent lead acid batteries if they operate according to the regulations specifically tailored for those types of batteries.

California Rechargeable Battery Recycling Act: Most portable electronic devices use rechargeable batteries, and millions of rechargeable batteries are sold in California each year. In 2005, to help promote proper disposal of rechargeable batteries by the public, the Governor signed the California Rechargeable Recycling Act, AB 1125 (Pavley, Chapter 572, Statutes of 2005), which requires retailers to have a mechanism to accept all rechargeable batteries from consumers for recycling.

Large chain supermarkets and persons (including corporations or franchisees) who have less than one million dollars annually in gross sales are not subject to the law's requirements. Also, sales of rechargeable batteries that are contained in, or packaged with, a battery-operated device are not subject to this law. However, a retailer selling replacement batteries for such devices must comply.

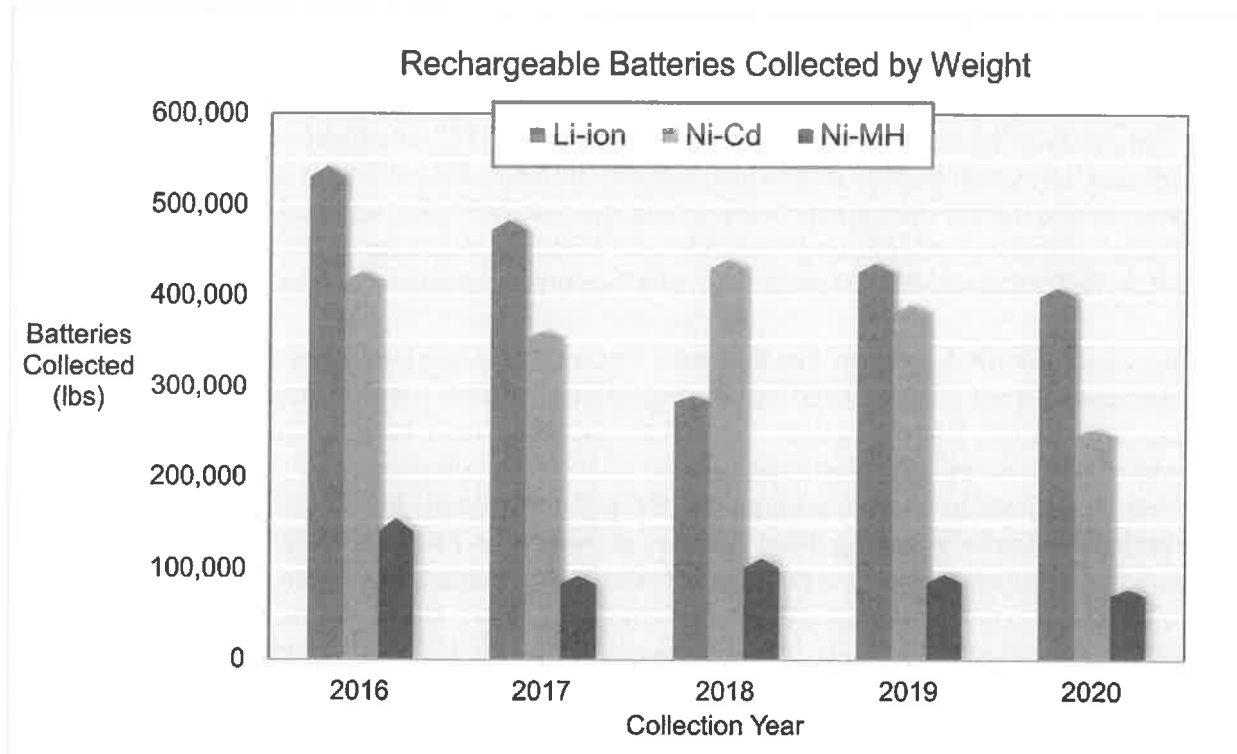
To track how effective this program is, the law requires DTSC to survey battery handling and/or recycling facilities and post on its website, by July 1 of each year, the estimated amount, by weight, of each type of rechargeable batteries returned for recycling in California during the previous calendar year. DTSC receives data voluntarily submitted by the major California battery recyclers to estimate how many rechargeable batteries, by type (e.g., nickel-cadmium, nickel metal hydride, etc.), are collected in each calendar year.

According to DTSC's website, the following are approximate quantities of rechargeable batteries collected for recycling in California in 2020:

- 408,823 pounds of lithium ion batteries
- 252,969 pounds of nickel cadmium batteries
- 77,766 pounds of nickel metal hydride batteries
- 4,810,578 pounds of small sealed lead acid batteries

It is difficult to accurately estimate the quantity of rechargeable batteries collected for recycling in California due to the following reasons: some battery handlers and recyclers do not track the state from which batteries are collected; batteries contained within electronic devices that are recycled (e.g., cell phones and laptop computers) are not counted separately but may represent a significant portion of the total quantity; there may be duplicate data as some battery handlers collect batteries from other collection points; and, California law does not require battery handlers or recyclers to report the number or weight of batteries collected for recycling.

The figure below shows the total estimated amounts of batteries collected by weight for three rechargeable battery types from 2016-2020, according to DTSC. On average the amount of each battery type collected is trending downward over time.



Product stewardship (stewardship): Product stewardship, also known as Extended Producer Responsibility (EPR), is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public. Product stewardship encourages product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond. CalRecycle has developed a product stewardship framework and checklists to guide statutory proposals that would allow CalRecycle and other stakeholders to implement product stewardship programs.

Current state stewardship programs: There are several statewide Stewardship programs in California, all of which are overseen by CalRecycle. They include: carpet materials management, paint product management, mattress product management, and home-generated pharmaceutical waste and sharps waste.

Successful collection of batteries remains out of reach: Even though there are laws on the books to require the collection of some rechargeable batteries, recent information suggests that collection efforts are not succeeding. As a result, these hazardous waste batteries are ending up in the solid waste stream where they can be damaged or crushed which can result in fires in solid waste trucks and solid waste facilities. The fact that current collection efforts are falling short does not seem to be disputed.

How to improve collection of batteries? Some state programs for collecting waste, such as those for electronic waste collection, enact a fee on the product and have the state set up a program for the collection of that waste. Other programs, such as EPR programs, place the requirements on those that produce the environmentally harmful waste. SB 1215 establishes an EPR program for batteries and battery-embedded products in order to improve the collection and recycling of these batteries. While the bill does create a new program some collection and recycling infrastructure for batteries already exist, such as plastic tubes for batteries at retailer or other locations. It is likely that the EPR program will work to greatly improve and expand that existing infrastructure.

Finding a solution for batteries: For the past 17 years the issue of how to best deal with end-of-life batteries has been contemplated by the Legislature, with the first law passing in 2005 – the Rechargeable Battery Recycling Act. Since that time, there have been similar efforts to deal with end-of-life non-rechargeable batteries. SB 1215 is the culmination of years of stakeholder work that is designed to create a program for the safe and responsible collection and recycling of all household batteries including those batteries embedded in products. This bill creates a structure that requires the producers of these batteries to establish a program where consumers, free of charge, can safely dispose of their batteries and battery-embedded products. While there currently is collection of batteries, it is underperforming. SB 1215 will greatly increase the number of batteries collected for recycling. As of the preparation of this analysis, there are ongoing negotiations that could further shape the bill as it continues to move through the legislative process.

Arguments in Support: According to RethinkWaste, California Product Stewardship Council, and Californians Against Waste,

"Due to the hazardous metals and corrosive materials that batteries contain, California classifies batteries as hazardous waste and bans them from solid waste landfills. When consumers are done with their loose batteries and portable electronics, they must collect, sort, and ultimately find an appropriate disposal option. Unfortunately, California currently lacks a streamlined and convenient collection and recycling system for batteries and batteries embedded in products.

Because of a combination of increased consumption and a lack of convenient disposal options, higher levels of toxic batteries and products are entering the waste stream. When improperly discarded, lithium-ion (Li-ion) batteries in particular pose serious fire, health, and safety hazards. The influx of improperly disposed of Li-ion batteries into the waste stream has resulted in an alarming number of materials recovery facilities (MRFs), waste collection trucks, and landfills experiencing fires.

Oftentimes, Li-ion batteries are embedded in and irremovable from products, including portable electronics, such as phones, laptops, and power tools. When loose Li-ion batteries or Li-ion batteries embedded in products experience intense physical pressure – which is common in California's waste processing system – the batteries can spark a fire or even explode.

For the average consumer, it can often be difficult to distinguish between chemistries of batteries, such as alkaline, nickel cadmium, and Li-ion. Therefore, to ensure the proper disposal of all battery chemistries and reduce the fire and safety risk, SB 1215 would require free collection for most loose and product-embedded batteries at convenient locations across

the state. SB 1215 would also encourage manufacturers to be more responsible for the life cycle of their products by creating a producer-run program. Lastly, SB 1215 would support a circular economy by battery recycling to the extent that is economically and technically feasible.

Manufacturers must be more responsible for the products they create – both loose batteries and ones embedded in other products – if we are going to protect our workers, communities, and waste management infrastructure from battery-related fires."

Arguments in Opposition: According to the Toy Association,

"While we understand the important of battery recycling, we believe the recycling structure created by this bill is overly burdensome, if not unworkable.

While the goal of extended producer responsibility is to place mandates on the producer AB 2440 defines non-battery producers, as producers. Manufacturers of consumer products would be mandated to fund a new state stewardship program for batteries - products our companies do not manufacture. And no exclusions are provided for consumer product manufacturers who purchase covered batteries from a battery manufacturer who is already paying into a stewardship program. In sum, we believe that the definition of producer needs to capture the actual manufacturer of the battery as the primary responsible entity.

This legislation proposes a massive new program that includes collection and recycling of single-use batteries, rechargeable batteries and consumer products that contain batteries which will require different procedures for collection and different processes, equipment, etc. for recycling. Consumer products may vary significantly in their materials and components which would need to be recycled along with the batteries. There should be some research into the benefits and costs of this type of extended producer responsibility program structure.

We believe the structure of this extended producer responsibility program needs further vetting and we urge you to oppose moving the bill forward."

Double-referral: Should SB 1215 pass this Committee, it will be re-referred to the Assembly Natural Resources Committee.

Related legislation:

- 1) SB 2440 (Irwin). Creates the Responsible Battery Recycling Act (Act) of 2022, which requires producers of covered batteries and covered battery-embedded products, as defined, to establish a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products. This bill is pending action in the Senate Environmental Quality Committee.
- 2) SB 289 (Newman, 2021). Would have enacted the Battery and Battery-Embedded Product Recycling and Fire Risk Reduction Act of 2021, which would have required the producers of batteries and battery-embedded products to establish a stewardship program for those products, with full implementation on or before June 30, 2025. This bill was held on the suspense file in the Senate Appropriations Committee.

- 3) AB 1509 (Mullin, 2019). Would have established the Lithium-Ion Battery Recycling Program within CalRecycle, which would have required manufacturers of lithium-ion batteries to provide convenient collection, transportation, and disposal of lithium-ion batteries. This bill was not heard in the Senate Environmental Quality Committee and subsequently died on file.
- 4) AB 2832 (Dahle, Chapter 822, Statutes of 2018). Requires the Secretary for the California Environmental Protection Agency to convene a research group to review and advise the Legislature on policies pertaining to the recovery and recycling of lithium-ion vehicle batteries sold with motor vehicles in the state.
- 5) SB 212 (Jackson, Chapter 1004, Statutes of 2018). Requires entities that sell drugs or sharps in the state to individually, or with other entities, develop and implement a statewide home-generated drug stewardship plan, or a home-generated sharps waste stewardship plan, or both, for the collection and proper disposal of home-generated drug and sharps waste. Requires CalRecycle to oversee and enforce each stewardship plan.
- 6) AB 488 (Williams, 2013). Would have required producers of non-rechargeable household batteries to develop and implement a plan to collect and manage batteries sold in the state. This bill was held on the suspense file in the Assembly Appropriations Committee.
- 7) AB 1125 (Pavley, Chapter 572, Statutes of 2005). Enacts the Rechargeable Battery Recycling Act of 2006, and requires retailers of rechargeable batteries, by July 1, 2006, to establish a system for accepting rechargeable batteries for reuse, recycling, or proper disposal.
- 8) AB 2901 (Pavley, Chapter 891, Statutes of 2004). Enacts the Cell Phone Recycling Act of 2004 and requires all retailers of cellular telephone to have in place a system for the collection, reuse and recycling of cell phones. Requires DTSC to provide information on cell phone recycling.
- 9) SB 20 (Sher, Chapter 526, Statutes of 2003). Enacts the Electronic Waste Recycling Act of 2003 to provide for the convenient recycling of covered electronic devices in California.

REGISTERED SUPPORT / OPPOSITION:

Support

California Product Stewardship Council (Co-Sponsor)
Californians Against Waste (Co-Sponsor)
South Bayside Waste Management Authority (SBWMA) DBA Rethinkwaste (Co-Sponsor)
Active San Gabriel Valley
California Professional Firefighters
California Resource Recovery Association
California State Association of Counties (CSAC)
California Waste Haulers Council
Central Contra Costa Sanitary District
City of Roseville

City of Thousand Oaks
Clean Water Action
Delta Diablo
Environmental Working Group
League of California Cities
Los Angeles County Solid Waste Management Committee/integrated Waste Management Task-
Force
Marin Household Hazardous Waste Facility
Monterey Regional Waste Management District
Napa Recycling & Waste Services
Recyclesmart
Republic Services - Western Region
Republic Services INC.
Resource Recovery Coalition of California
Rural County Representatives of California (RCRC)
San Diego; County of
Santa Clara County Recycling and Waste Reduction Commission
Sea Hugger
Stopwaste
Urban Counties of California
Waste Management
Western Placer Waste Management Authority (WPWMA)
Zero Waste Company
Zero Waste Sonoma

Opposition

Association of Home Appliance Manufacturers
California Retailers Association
The Toy Association

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1153 (Archuleta) – As Introduced February 16, 2022

SENATE VOTE: 33-0

SUBJECT: Rechargeable Battery Recycling Act of 2006: data reporting

SUMMARY: Requires a battery handling or recycling facility to provide data regarding the collection of batteries for recycling to the Department of Toxic Substances Control (DTSC).

EXISTING LAW:

- 1) Enacts the Rechargeable Battery Recycling Act of 2006, which requires every retailer to have a system in place, on or before July 1, 2006, for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal. (Public Resources Code § 42451-42456)
- 2) Creates the Hazardous Waste Control Law (HWCL) and provides DTSC with responsibility for overseeing the management of hazardous waste in California. (Health and Safety Code § 25100 et seq).

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "There is no requirement under current law for battery handlers to respond to the Department of Toxic Substances Control when they are surveyed for battery handling information. This has led to low survey return rates, which is a problem because these surveys provide valuable information to the Department. SB 1153 addresses this problem by requiring a battery handling or battery recycling facility to provide battery-recycling data to the Department of Toxic Substances Control in the form requested by the department, and on or before the date requested by the department."

Universal waste: Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses. Universal wastes include televisions, computers, other electronic devices, batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others.

The hazardous waste regulations (California Code of Regulations (CCR), Title 22, Division 4.5, Chapter 11 Section 66261.9) identify seven categories of hazardous wastes that can be managed as universal wastes. Any unwanted item that falls within one of these waste streams can be handled, transported, and recycled following the simple requirements set forth in the universal waste regulations (CCR, Title 22, Division 4.5, Chapter 23) versus the more stringent requirements for hazardous waste.

California's Universal Waste Rule allows individuals and businesses to transport, handle, and recycle certain common hazardous wastes, termed universal wastes, in a manner that differs from

the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and are not disposed of in the trash. The universal waste requirements are also less complex and easier to comply with, thereby increasing compliance.

Regulation of batteries: State law, the HWCL, prohibits the disposal of batteries in the trash or household recycling collection bins intended to receive other non-hazardous waste and/or recyclable materials. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These include single use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes (AAA, AA, C, D, button cell, 9-Volt, and small sealed lead-acid batteries).

If batteries end up in the trash or a recycling bin, owners/operators of solid waste transfer stations, municipal landfills, and recycling centers who discover batteries in the waste or recyclable materials are required to remove and manage the batteries separately. The facility that removes the batteries from the municipal solid waste stream or recyclable materials becomes the generator of the hazardous waste batteries and must comply with hazardous waste management regulations. Facilities that do not properly manage hazardous waste may be subject to regulatory enforcement and may be liable for monetary penalties.

Depending on the type of battery and applicable management requirements, batteries must be sent to a facility permitted to accept hazardous waste batteries, universal wastes, or spent lead acid batteries. Only facilities that have a DTSC permit or other type of authorization to treat, store, or dispose of hazardous wastes may accept hazardous waste batteries. Persons that do not have a DTSC permit may accept and store universal waste batteries and spent lead acid batteries if they operate according to the regulations specifically tailored for those types of batteries.

California Rechargeable Battery Recycling Act: Most portable electronic devices use rechargeable batteries and millions of rechargeable batteries are sold in California each year. In 2005, to help promote proper disposal of rechargeable batteries by the public, the Governor signed the California Rechargeable Recycling Act AB 1125 (Pavley, Chapter 572, Statutes of 2005), which requires retailers to have a mechanism to accept all rechargeable batteries from consumers for recycling.

Large chain supermarkets and persons (including corporations or franchisees) who have less than one million dollars annually in gross sales are not subject to the law's requirements. Also, sales of rechargeable batteries that are contained in, or packaged with, a battery-operated device are not subject to this law. However, a retailer selling replacement batteries for such devices must comply.

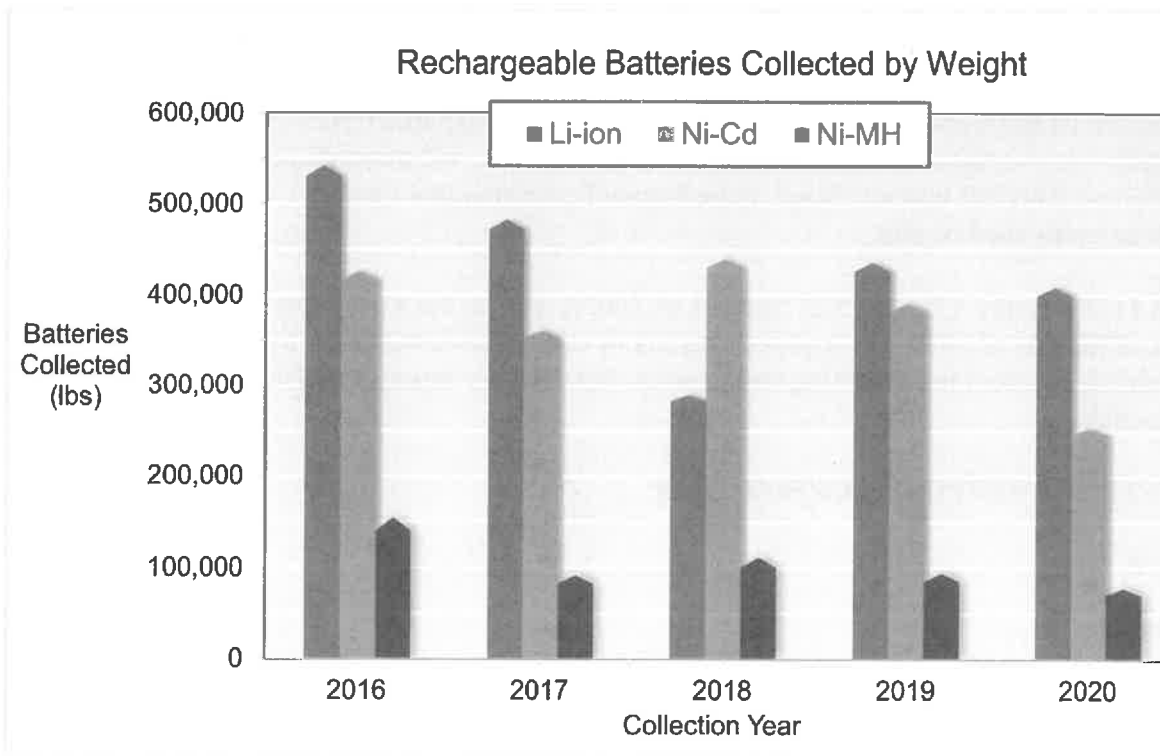
To track how effective this program is, the law requires DTSC to survey battery handling and/or recycling facilities and post on its website, by July 1 of each year, the estimated amount, by weight, of each type of rechargeable batteries returned for recycling in California during the previous calendar year. DTSC receives data voluntarily submitted by the major California battery recyclers to estimate how many rechargeable batteries, by type (e.g., nickel-cadmium, nickel metal hydride, etc.), are collected in each calendar year.

According to DTSC's website, the following are approximate quantities of rechargeable batteries collected for recycling in California in 2020:

- 408,823 pounds of lithium ion batteries
- 252,969 pounds of nickel cadmium batteries
- 77,766 pounds of nickel metal hydride batteries
- 4,810,578 pounds of small sealed lead acid batteries

It is difficult to accurately estimate the quantity of rechargeable batteries collected for recycling in California due to the following reasons: some battery handlers and recyclers do not track the state from which batteries are collected; batteries contained within electronic devices that are recycled (e.g., cell phones and laptop computers) are not counted separately but may represent a significant portion of the total quantity; there may be duplicate data as some battery handlers collect batteries from other collection points; and, California law does not require battery handlers or recyclers to report the number or weight of batteries collected for recycling.

The figure below shows the total estimated amounts of batteries collected by weight for three rechargeable battery types from 2016-2020, according to DTSC. On average the amount of each battery type collected is trending downward over time.



This bill: SB 1153 requires battery handlers and battery recyclers to provide data on the batteries that they collect for recycling. Currently, DTSC is required to survey these battery handlers however the information received is not complete and some handlers do not respond to the survey. In order to gain a better understanding of the state's performance collecting batteries for recycling, improved data gathering of current collection efforts is needed. These data will help with current recycling efforts and to inform future policy changes regarding batteries and battery recycling.

Related Legislation:

- 1) AB 2440 (Irwin). Creates the Responsible Battery Recycling Act (Act) of 2022, which requires producers of covered batteries and covered battery-embedded products, as defined, to establish a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products. This bill is pending referral in the Senate Rules Committee.
- 2) SB 1215 (Newman). Creates the Responsible Battery Recycling Act (Act) of 2022, which requires producers of covered batteries and covered battery-embedded products, as defined, to establish a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products. This bill is pending action in the Assembly Environmental Safety and Toxic Materials Committee.
- 3) SB 289 (Newman, 2021). Would have enacted the Battery and Battery-Embedded Product Recycling and Fire Risk Reduction Act of 2021, which would have required the producers of batteries and battery-embedded products to establish a stewardship program for those products, with full implementation on or before June 30, 2025. This bill was held on the suspense file in the Senate Appropriations Committee.
- 4) AB 1509 (Mullin, 2019). Would have established the Lithium-Ion Battery Recycling Program within CalRecycle which would have required manufacturers of lithium-ion batteries to provide convenient collection, transportation, and disposal of lithium-ion batteries. This bill was not heard in the Senate Environmental Quality Committee and subsequently died on file.
- 5) AB 1125 (Pavley, Chapter 572, Statutes of 2005). Enacts the Rechargeable Battery Recycling Act of 2006 and requires retailers of rechargeable batteries, by July 1, 2006, to establish a system for accepting rechargeable batteries for reuse, recycling, or proper disposal.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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