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Assembly California Legislature

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS BILL QUIRK, CHAIR ASSEMBLYMEMBER, TWENTIETH DISTRICT

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AGENDA

Tuesday, April 25, 2017
1:30 p.m. -- State Capitol, Room 444

HEARD IN SIGN-IN ORDER

- | | | | |
|-----|---------|-----------------|---|
| 1. | AB 444 | Ting | Medical waste: home-generated medical waste. |
| 2. | AB 483 | Bocanegra | Airports: pollution. |
| 3. | AB 514 | Salas | Medical waste: pharmaceuticals. |
| 4. | AB 885 | Rubio | Pupil health: drinking water: lead. |
| 5. | AB 958 | Ting | Hazardous materials: perfluoroalkyl and polyfluoroalkyl substances. |
| 6. | AB 1179 | Kalra | Hazardous waste facilities: inspections. |
| 7. | AB 1180 | Holden | California tire fee: Stormwater Permit Compliance Fund.(Urgency) |
| 8. | AB 1490 | Gray | State Water Resources Control Board: school drinking water. |
| 9. | AB 1529 | Thurmond | Cross-connection or backflow prevention device inspectors: certification. |
| 10. | AB 1575 | Kalra | Professional cosmetics: labeling requirements. |
| 11. | AB 1605 | Caballero | Maximum contaminant level: nitrate: replacement water. |
| 12. | AB 1645 | Muratsuchi | Hydrogen fluoride: notice of use: substitution. |
| 13. | AB 1646 | Muratsuchi | Hazardous materials: risk management plans: petroleum refineries. |
| 14. | AB 1663 | Cristina Garcia | Lead-acid batteries. |
| 15. | AB 1671 | Caballero | Backflow protection and cross-connection controls: regulations. |

PROPOSED CONSENT

- | | | | |
|-----|---------|--------|--|
| 16. | AB 166 | Salas | Safe drinking water: household filtration systems: rebate program. |
| 17. | AB 339 | Mathis | State Water Pollution Cleanup and Abatement Account. |
| 18. | AB 560 | Salas | Safe Drinking Water State Revolving Fund: project financing: severely disadvantaged communities. |
| 19. | AB 1207 | Brough | Radioactive material: transportation. |
| 20. | AB 1343 | Chen | Water conservation: school districts: Go Low Flow Water Conservation Partnerships. |



Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 444 (Ting) – As Amended April 18, 2017

SUBJECT: Medical waste: home-generated medical waste

SUMMARY: Authorizes the California Environmental Protection Agency (Cal/EPA) to develop a statewide program for the collection, transportation, and disposal of home-generated medical waste, including sharps waste and pharmaceutical waste. Specifically, **this bill:**

- 1) Authorizes Cal/EPA to develop a statewide program, in consultation with stakeholders, for the collection, transportation, and disposal of home-generated medical waste, which may include home-generated sharps waste and home-generated pharmaceutical waste. Requires the program to comply with all federal and state laws related to the collection, transportation, and disposal of medical waste, and prohibits implementation without an appropriation through the Budget Act.
- 2) Defines "stakeholder" as a person who will be participating in the program that will be implemented by a proposed home-generated medical waste collection, transportation and disposal program, including, but not limited to, consumers, retailers, distributors, and health care providers and facilities.
- 3) Defines "home-generated sharps" as hypodermic needles, syringes with needles attached, pen needles, intravenous needles, lancets, or any other similar device intended to self-inject medication at home.
- 4) Defines "home-generated pharmaceutical waste" as a prescription or over-the-counter human or veterinary home-generated pharmaceutical, as defined in the Federal Food, Drug, and Cosmetic Act, that is a waste, as defined in state law (Health and Safety Code (HSC) § 25124), derived from a household, including, but not limited to, a multifamily residence or household.

EXISTING LAW:

- 1) Authorizes a city and a county household hazardous waste (HHW) element to include a program for the safe collection, treatment, and disposal of sharps waste generated by households. (Public Resources Code (PRC) § 41502)
- 2) Requires manufacturers of self-injectable medications to annually submit a plan describing how it provides for the safe collection and proper disposal of medical sharps. (PRC § 47115)
- 3) Requires each county to prepare a HHW element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes, which are generated by households in the city and which should be separated from the solid waste stream. (PRC § 41510)
- 4) Defines "home-generated sharps waste" as hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of

medications derived from a household, including a multifamily residence or household. (Health & Safety Code (HSC) § 117671)

- 5) Prohibits the disposal of home-generated sharps waste in the trash or recycling containers, and requires that all sharps waste be transported to a collection center in a sharps container approved by the local enforcement agency. (HSC § 118286)
- 6) Pursuant to the Medical Waste Management Act (MWMA) (HSC § 117600, *et seq.*):
 - a. Defines "medical waste" as including waste generated from the consolidation of home-generated sharps. (HSC § 117690)
 - b. Authorizes a registered medical waste generator to accept and consolidate home-generated sharps waste with the facility's medical waste stream under specified conditions. (HSC § 118147)
 - c. Requires a person generating or treating sharps waste to ensure that the medical waste is treated to render it solid waste prior to disposal. (HSC § 118215)
 - d. Requires sharps waste to be rendered noninfectious prior to disposal by a specified treatment method. (HSC § 118225)
 - e. Specifies containerization, storage and labeling requirements for sharps waste. (HSC § 1118275, 118285, and 118286)
 - f. Authorizes a local enforcement agency to approve a location as a point of consolidation for the collection of home-generated sharps waste, which, after collection, shall be transported and treated as medical waste. (HSC § 117904)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "This bill provides authority to the California Environmental Protection Agency (CalEPA) to develop a take-back program for home-generated pharmaceutical and sharps waste, subject to Budget appropriation. Current law does not provide for a comprehensive statewide take-back program for home-generated medical waste, and California homes contain increasing numbers of medical waste, both pharmaceutical and sharps, which are not always being disposed of properly.

California has set a goal to recycle 75% of waste by 2020, which will require a great deal more of hand sorting of our waste stream. Inaction on sharps disposal may leave some workers over-exposed to health dangers, a risk compounded by the growing use of home-generated sharps."

Medical sharps: An estimated one million Californians inject medications outside traditional health care facilities, which generate approximately 936 million sharps each year, and the numbers of patients using injectable medications will continue to grow because it is an effective delivery method for various medications. The most common home use of sharps is to manage diabetes. Other reasons to inject at home include hepatitis, multiple sclerosis, infertility,

migraines, allergies, hemophilia, and medications for pets.

Sharps waste: According to statistics from the California Department of Resources, Recycling and Recovery (CalRecycle), 43% of all self-injectors throw needles in the trash. According to CalRecycle's 2014 waste characterization study, *2014 Disposal-Facility-Based Characterization of Solid Waste in California*, the composition of California's overall disposed waste stream is dissected by material type. There is not a line-item for home-generated sharps, but under the category of HHW is the subcategory "Remainder/Composite Household Hazardous," which includes household hazardous material that, if improperly put in the solid waste stream, may present handling problems or other hazards, such as pesticides and caustic cleaners, sharps, medications, and supplements. The 2014 report estimates that remainder/composite household hazardous materials comprises more than 94,000 lbs (0.2%), of the total solid waste stream.

Sharps collection: Home-generated sharps waste is required to be put into an approved sharps container before being transported out to an approved drop-off location or via mail-back program. CalRecycle maintains the Facility Information Toolbox (FacIT) Website, which currently lists more than 600 facilities where residents can take their home-generated sharps such as hospitals, pharmacies, or HHW facilities.

While disposal of sharps is illegal, there is no statutory program in place to require the management of sharps by manufacturers, pharmaceutical companies, pharmacies, or others. Current law allows for a streamlined oversight structure for those that do wish to provide a voluntary disposal for sharps to their customers or the general public, but there is no mandate for them to do so. Some pharmacies and health care providers have developed programs as a way to assist their customers and have reported some success.

Currently, out of California's 58 counties, three counties (Tulare, San Luis Obispo, and Santa Cruz) and two cities (Galt and Santa Cruz) have an ordinance that has some level of requirements on retail establishments that sell sharps to accept the used sharps for proper disposal. Other jurisdictions are considering a similar ordinance. According to CalRecycle, approximately 50 counties provide free disposal. At least eight counties and some cities provide free sharps containers and one county provides free mail-back containers to its residents as long as supplies last.

Sharps collection requirements under the Medical Waste Management Act (MWMA): The Department of Public Health (DPH) has the authority to approve locations as points of consolidation for the collection of home-generated sharps waste, which, after collection, is transported and treated as medical waste. An approved consolidation location is known as a "home-generated sharps consolidation point." A home-generated sharps consolidation point must comply with all of the following requirements: (1) All sharps waste shall be placed in sharps containers; and (2) sharps containers ready for disposal shall not be held for more than seven days without the written approval of the enforcement agency.

Joint Legislative Audit Committee (JLAC) audit of pharmaceutical and sharps waste: In 2016, Assemblymembers Ting and Gray submitted an audit request that was approved that requested that the State Auditor provide independently developed and verified information related to the DPH, CalRecycle, and a selection of counties' waste disposal standards for home-generated sharps and pharmaceutical waste. The release of this audit is expected in May of 2017.

Specifically the audit will:

- 1) Include a review and evaluation of the laws, rules, and regulations significant to the audit objectives;
- 2) Determine, to the extent possible, the volume of home-generated sharps waste and pharmaceutical waste that was disposed of statewide using approved household disposal methods over the past three years;
- 3) Estimate, to the extent possible, the volume of home-generated sharps waste and pharmaceutical waste that may have been improperly disposed of statewide over the past three years;
- 4) Assess, to the extent possible, differences in home-generated sharps waste and pharmaceutical waste in areas with needle exchange programs versus areas without such programs;
- 5) Identify the methods that exist currently for free home-generated sharps and pharmaceutical waste disposal within California;
- 6) To the extent that information is available, determine the collection rate for voluntary take-back programs manufacturers funded in the past three years for home-generated sharps and pharmaceutical waste;
- 7) Determine which medical waste collection models generate the best waste collection results for both home-generated sharps and pharmaceutical waste. Consider county-based collection models, including needle exchange programs, as well as those adopted in Canada and other countries;
- 8) Identify any existing regulatory limitations on establishing home-generated sharps or pharmaceutical waste collection sites or on methods for collecting that waste. Assess the reasonableness of any barriers that exist;
- 9) Determine the statewide capacity for processing home-generated sharps and pharmaceutical waste in each of the last three years;
- 10) Determine the existing waste processing capacity in California that could accommodate growth in proper home-generated sharps and, if applicable, pharmaceutical waste disposal;
- 11) Determine where home-generated sharps and pharmaceutical waste is processed and the methods used to process the waste;
- 12) To the extent possible, compare processing rates for home-generated sharps waste and, if applicable, home-generated pharmaceutical waste, in a selection of jurisdictions the CDPH oversees to a comparable selection of jurisdictions with local oversight. Determine what differences exist among the jurisdictions that may affect California's processing rates;

- 13) Identify the recommendations CalRecycle and CDPH have made regarding home-generated sharps and pharmaceutical waste collection and disposal. Assess whether the recommendations reflect best practices; and,
- 14) Review and assess any other issues that are significant to the audit.

There have been several legislative attempts over the past several years dealing with home-generated medical waste. Additionally, there have been several local ordinances adopted throughout the state that also regulate home-generated medical waste within their jurisdiction. The recent audit, expected to be released in May of this year, will ideally provide all stakeholders with a common set up information regarding the current management of home-generated medical waste. AB 444 seeks to establish a statewide program for the collection, transportation and disposal of home-generated medical waste in California.

Related bills:

- 1) SB 212 (Jackson). Defines “home-generated pharmaceutical waste” as a prescription or over-the-counter human or veterinary home-generated pharmaceutical, as defined in Section 109925 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C.A. Sec. 321(g)(1)), that is a waste, as defined in Section 25124, derived from a household, including, but not limited to, a multifamily residence or household. This bill is pending action on the Senate Floor.
- 2) AB 2039 (Ting, 2016). Would have required the development and implementation of industry-generated plans to collect and recycle home-generated sharps. Held in the Assembly Environmental Safety and Toxic Materials Committee.
- 3) SB 1229 (Jackson, Chapter 238 Statutes of 2016). Provides qualified immunity from civil and criminal liability of participating entities that take reasonable care to ensure the health and safety of consumers and employees when maintaining secure drug take-back bins on their premises.
- 4) AB 1159 (Gordon, 2015). Proposed establishing a pilot product stewardship program for the management of medical sharps and household primary batteries. It was approved by the Assembly Environmental Safety & Toxic Materials Committee on April 28, 2015 by a 6-0 vote. AB 1159 was held in the Assembly Appropriations Committee.
- 5) AB 1893 (Stone/Eggman, 2014). Proposed requiring customers be given a free sharps disposal container with the sale of 50 or more medical sharps for self-injection. AB 1893 was pulled by the author from the Assembly Floor.
- 6) AB 403 (Stone/Eggman, 2013). Proposed requiring manufacturers that sell medical sharps to establish a product stewardship plan for home-generated medical waste. AB 403 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 483 (Bocanegra) – As Amended April 18, 2017

SUBJECT: Airports: pollution

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to conduct soil sampling at an airport, as defined, for the presence of hazardous wastes and to report its findings to the Legislature by July 1, 2019. Specifically, **this bill:**

- 1) Requires DTSC to conduct soil sampling at an airport, as defined, for the presence of hazardous wastes and to report its findings to the Legislature by July 1, 2019.
- 2) Defines an “airport” as a general aviation noncommercial airport that meets all of the following criteria. The airport:
 - a) Is located entirely within a disadvantaged community as identified by the California Environmental Protection Agency;
 - b) Is located entirely within the boundaries of an incorporated city with a population greater than 200,000 people;
 - c) Was first certified for operation by the Federal Aviation Administration before the year 1960; and,
 - d) Was not designated by the United States Army Corps of Engineers as a formerly used defense site.
- 3) Requires the California Air Resources Board, in coordination with air districts, to require airports to test the air quality at the airport to determine the airport’s impact on localized air pollution and the climate policy targets set for in the California Global Warming Solutions Act of 2006 and to post this information on its internet website by January 1, 2019, and annually thereafter.

EXISTING LAW:

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"Across California, many airports have been built over the past century serving a range of aircrafts, from international commercial service airports like SFO and LAX to very small non-commercial airports. Smaller airfields can play an important role for many communities, particularly for farming and firefighting purposes. In urban areas these airports can act as relief for larger airports in emergencies or when there is unexpectedly high air traffic.

While these airports can and often do provide several benefits to their surrounding communities, they can be a nuisance for noise, fumes, and the occasional aviation accident. In the Greater Los Angeles Area alone there are 24 general aviation airports that largely serve recreational pilots or small aviation business.

What remains unclear is the overall impact, at a localized level, that airports have on communities. These airports tend to have been built in the early 20th century in areas that were sparsely populated then, but are now tucked in the middle of residential neighborhoods. Given the state's interest in protecting the environment and its commitment to improving disadvantaged urban communities, it is important that we understand how these airports fit into broader state environmental policy objectives.

Much of urban Southern California is located in non-attainment areas for clean air. Assembly District 39, which is comprised of the northeast San Fernando Valley, includes the Whiteman Airport in Pacoima and sits next to the Van Nuys Airport and the Burbank Airport. When trying to understand localized sources of pollution in the Los Angeles region, understanding the impact of small old urban airports, like Whiteman Airport, is necessary to informing the larger conversation about air pollution.

Assembly Bill 483 will create a scientific body of research about small urban airports and their impacts on surrounding communities."

Airports as defined in AB 483: According to information supplied by the author's office, the definition of "airport" would include the following airports:

1. Whiteman Airport;
2. Riverside Municipal Airport ;
3. Modesto City-County Airport/Harry Sham Field; and,
4. Fresno-Chandler Executive Airport.

Hazardous substances/hazardous waste: The potential public health and environmental harm that can be caused by various hazardous substances used in industrial, manufacturing, and other processes has drawn widespread national attention. Information provided by the United States Environmental Protection Agency (US EPA) advises that over the next several decades, federal, state, and local governments and private industry will commit billions of dollars annually to clean up sites contaminated with hazardous waste and petroleum products from a variety of industrial sources. US EPA projects that as many as 355,000 contaminated sites will require

cleanup over the next 30 years and that the cost of this cleanup may amount to as much as \$250 billion.

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

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

Is there contamination at smaller general aviation airports in California?: A preliminary search of DTSC's Envirostor database of cleanup sites found 158 records for airports. However, many of these sites were former military sites and many of these records stated that they are inactive and need further evaluation. It seems that there may not be a very clear picture of potential contamination at these smaller airports. AB 483 is seeking to provide the state and the public with a little bit more information by requiring an investigation of four airports, geographically dispersed throughout the state. This environmental snapshot could help inform DTSC about whether or not there should be a deeper look into airports across the state.

Technical/clarifying suggestions for the Committee to consider: The bill requires DTSC to do soil sampling for hazardous waste, however this is potentially a narrow picture of the potential contamination at an airport. The term hazardous substance is much broader and includes hazardous waste. Additionally, limiting the investigation to only soil sampling may result in a narrow picture of the potential contamination at an airport. Generally speaking, the responsible party is ordered to complete and pay for the investigation and cleanup of a contaminated site, including the oversight costs of DTSC. The bill could be clarified to be more consistent with DTSC's current cleanup authority and require DTSC to order the airport owner/operator to investigate and cleanup any potential contamination at their airport.

As a result the author and committee may wish to consider the following clarifying amendments, to ensure consistency with current statute and DTSC's cleanup practices and procedures:

Health and Safety Code 25232.

(a) The department shall, require an owner/operator of an airport to conduct, a Preliminary endangerment assessment and a Phase I environmental assessment pursuant to this Chapter, soil sample testing at airports to determine if there is any contamination that needs to be removed or remediated at the airport. a presence of hazardous waste. The testing shall meet one of the following:

~~(1) The most recent requirements adopted by the American Society for Testing Materials for Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process.~~

~~(2) The requirements of Part 312 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations.~~

~~(b) The department may coordinate with the State Water Resources Control Board and any local agency to determine if, based on the soil sample testing conducted pursuant to this section, an airport poses a threat to a groundwater basin.~~

(b) The Department shall require the owner/operator of an airport to initiate investigations at airports pursuant to this section no later than July 1, 2018.

(c) The owner or operator of any airport investigated pursuant to (a), shall fully reimburse the department for all costs associated with the requirements of this section, including the departments oversight costs.

(d) The Department shall require the owner or operator of any airport where contamination is found to remove or remediate that contamination in accordance with this Chapter.

(e) No later than July 1, 2019, the department shall report on the findings of the investigation and cleanup of airports pursuant to this section, to the Legislature and shall post these findings on its internet website.

~~(e) (1) No later than July 1, 2019, the department, with the findings and determinations resulting from the soil sample testing conducted pursuant to subdivision (a), shall do both of the following:~~

~~(A) Report to the Legislature on its findings and determinations.~~

~~(B) Post the report to the Legislature on the department's Internet Web site.~~

~~(2) f) A report to be submitted to the Legislature pursuant to this subdivision section shall be submitted in compliance with Section 9795 of the Government Code.~~

REGISTERED SUPPORT / OPPOSITION:

Support

Environmental Working Group

Opposition

Aircraft Owners and Pilots Association

Association of California Airports

California Pilots Association

Southwest Chapter of the American Association of Airport Executives

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 514 (Salas) – As Amended April 17, 2017

SUBJECT: Medical waste: pharmaceuticals

SUMMARY: Exempts specified personal care products from the Medical Waste Management Act (MWMA). Specifically, **this bill:**

- 1) Exempts the following pharmaceutical wastes from the definition of "waste":
pharmaceuticals being sent out of the state to a reverse distributor that is licensed as a wholesaler of dangerous drugs by the California State Board of Pharmacy; and,
pharmaceuticals being sent by a reverse distributor offsite for treatment and disposal, or to a reverse distributor that is licensed as a wholesaler of dangerous drugs by the California State Board of Pharmacy and as a permitted transfer station if the reverse distributor is located within the state.
- 2) Amends the existing definition for "pharmaceutical" in the MWMA to exclude the following products if lawfully sold without a prescription:
 - a) Homeopathic drugs, remedies, and any other product with a National Drug Code identifying the product as "homeopathic" in the National Drug Code Directory;
 - b) Cosmetics, as defined in Section 201 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C.A. Sec. 321(i)); and,
 - c) Soap, shampoo, sunscreen, toothpaste, lip balm, antiperspirant, and saline products.

EXISTING LAW:

- 1) Defines "drug" under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as any article recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them. (21 United States Code (USC) Sec. 231 (g)(1))
- 2) Defines "cosmetic" as 1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and, 2) articles intended for use as a component of any such articles; except that such term shall not include soap. (21 USC Sec. 321(i))
- 3) Defines "waste" as any solid, liquid, semisolid, or contained gaseous discarded material. (Health & Safety Code (HSC) § 25124)
- 4) Establishes the MWMA to govern medical waste management at any facility where waste is generated, at transfer stations, and at treatment facilities. (HSC § 117600, et seq.)

- 5) Defines pharmaceutical waste as a prescription or over-the-counter human or veterinary drug, including, but not limited to, a drug as defined in Section 109925 of the FD&C Act. (HSC § 117747 (a))
- 6) Regulates the safety, adulteration, and labeling requirements for food, drugs, and cosmetics under the Sherman, Food, Drug & Cosmetic Act. (HSC § 110398)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"This bill would exclude cosmetics, homeopathic remedies, and other personal care products from the Medical Waste Management Act (MWMA). The MWMA mandates special containment, storage, and incineration for pharmaceutical waste, including over-the-counter pharmaceuticals (OTCs) and other health care products. This appears to be the unintended consequence of adding all pharmaceutical waste not regulated under federal hazardous waste management requirements to the definition of "biohazardous waste" in 1996. Under the Act, "biohazardous waste" is by definition "medical waste," which must be incinerated. Some regulators and prosecutors have interpreted the Act to apply to retailers and the OTC pharmaceuticals or products with "Drug Facts" labels in their stores.

The requirement to specially manage and incinerate OTCs, including some personal care products, as medical waste means that retailers selling these products are currently unable to manage them the same as other potentially hazardous or solid wastes, or to manage them in a way to reduce waste through recycling or other waste reduction options available for non-medical wastes under current law. This issue is unique to California and the longer it remains unresolved, the greater the impact to the state and its businesses.

AB 514 would promote waste reduction benefits and would allow retailers to consolidate management of OTCs and health care products with other waste programs currently in place for the management of other consumer products. This would enhance compliance implementation for retailers and would ensure these products are managed based on the products' characteristics rather than how they are labeled."

Medical Waste Management Act (MWMA): The MWMA was created to comprise a single, integrated, and complementary approach to the storage, treatment, transportation, and disposal of medical waste.

Medical waste is defined as waste materials generated at health care facilities, such as hospitals, clinics, physician's offices, dental practices, blood banks, and veterinary hospitals/clinics, as well as medical research facilities and laboratories. Medical waste includes pharmaceutical waste, including prescription or over-the-counter human or veterinary drugs.

Under the MWMA, pharmaceutical waste has to be incinerated at a permitted medical waste treatment facility; treated at temperatures in excess of 1300 degrees Fahrenheit; or steam sterilized at a permitted medical waste treatment facility.

Regulating pharmaceuticals: Pharmaceutical wastes were added to the MWMA in 1996 (SB 1996, Wright, Chapter 536). That legislation moved the regulation of pharmaceutical waste as hazardous waste by DTSC to the Department of Healthcare Services (now the California Department of Public Health (CDPH)) because pharmaceutical waste was not considered hazardous waste under federal law or as medical waste under the MWMA. SB 1996 did not, however, include under the definition of "pharmaceutical wastes" any pharmaceutical wastes regulated as solid waste pursuant to the California Integrated Waste Management Act.

AB 1442 (Wieckowski, Chapter 689, Statutes of 2012) excluded pharmaceuticals being sent to reverse distributors from the storage, disposal, and transport requirements of the MWMA. It also relaxed hauling requirements for pharmaceutical medical waste that is not reverse-distributed if the generator meets certain conditions. As a result, any non-saleable pharmaceutical that is returned to a licensed reverse distributor (and that is not hazardous under the federal Resource Conservation and Recovery Act (RCRA) or radioactive under the federal Radiation Control Law) is not considered pharmaceutical or medical waste, and is therefore not regulated by the MWMA. This has the effect of allowing most non-saleable pharmaceuticals to be transferred to reverse distributors without fear of violating the strict disposal and transportation requirements for medical waste.

AB 514 would expand on AB 1442 by exempting pharmaceuticals from the definition of "waste" if they are being sent out of the state to a reverse distributor that is licensed as a wholesaler of dangerous drugs by the California State Board of Pharmacy, or are pharmaceuticals being sent by a reverse distributor offsite for treatment and disposal, or to a reverse distributor that is licensed as a wholesaler of dangerous drugs by the California State Board of Pharmacy and as a permitted transfer station if the reverse distributor is located within the state.

When a product is a medical waste in California: The FD&C Act defines "drug" as an article recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. (FD&C Act § 201(g)(1))

In California, a "pharmaceutical" is a prescription or over-the-counter human or veterinary "drug", including, but not limited to, a drug as defined in Section 109925 of the FD&C Act (HSC § 117747).

A drug fact label is affixed to any product that makes a health claim. The FDA regulates, under the Fair Packaging and Labeling Act, the drug facts that are required to be labeled on a product. These pharmaceutical products must meet specified federal Food and Drug Administration (FDA) ingredient testing, disclosure, labeling and verification of health claim requirements. This includes prescription and over-the-counter drugs as well as some consumer products that make health claims.

As an exception, a food, dietary ingredient, or dietary supplement is not a drug under the FD&C Act if it contains the following statement on the label: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

Simply put, federal law defines what a drug is and dictates drug labeling requirements, and the state's MWMA dictates how pharmaceuticals, which is anything considered a drug under federal law, should be managed at the time of disposal.

When a cosmetic is considered a drug: AB 514 would exempt cosmetics, as defined in the FD&C Act, and all soap, shampoo, sunscreen, toothpaste, lip balm, antiperspirant, and saline products that are sold over-the-counter from being managed as a medical waste.

The FD&C Act defines cosmetics by their intended use, as "articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body...for cleansing, beautifying, promoting attractiveness, or altering the appearance." (§ 201(i)) Among the products included in this definition are skin moisturizers, perfumes, lipsticks, fingernail polishes, eye and facial makeup preparations, cleansing shampoos, permanent waves, hair colors, and deodorants, as well as any substance intended for use as a component of a cosmetic product.

Some products meet the definitions of both cosmetics and drugs. This may happen when a product has two intended uses. For example, a shampoo is a cosmetic because its intended use is to clean hair. An antidandruff shampoo is a drug because its intended use is to treat dandruff. Consequently, an antidandruff shampoo is both a cosmetic and a drug. Among other cosmetic/drug combinations are toothpastes that contain fluoride, Sun Protection Factor (SPF)-containing products intended to protect against sunburn, deodorants that are also antiperspirants, and moisturizers and makeup marketed with sun-protection claims. Products that are cosmetics but are also intended to treat or prevent disease, or affect the structure or functions of the human body, are also considered drugs and must comply with both the drug and cosmetic provisions of federal law. Most currently marketed cosmetics which are also drugs are over-the-counter drugs. Such products must comply with the requirements for both cosmetics and drugs.

Under the MWMA, pharmaceutical waste has to be incinerated at a permitted medical waste treatment facility; treated temperatures in excess of 1300 degrees Fahrenheit; or steam sterilized at a permitted medical waste treatment facility (HSC § 118215). This bill would exempt cosmetics and other over-the-counter products from the MWMA, which would afford retailers the ability to dispose those products as solid waste and not medical waste.

Importantly, before those products become wastes, they would still be regulated as both "drugs" and "cosmetics" under federal law.

Broad categorical exemption: Simply exempting "Soap, shampoo, sunscreen, toothpaste, lip balm, antiperspirant, and saline products" is a seemingly broad and undefined category of products.

The language is inspired by local drug take-back programs that are authorized by local jurisdictions to provide safe and convenient disposal for unwanted or unused pharmaceuticals, which have to be managed as medical wastes. The intent of these local programs is to ensure the proper management of pharmaceutical waste to prevent illegal disposal, flushing, and potential illegal use.

The Alameda County Safe Drug Disposal Ordinance (Ordinance) (Title 6, Alameda County HSC § 6.53.010 – 6.53.120), for example, allows constituents to return their pharmaceuticals for the County to manage, but excludes cosmetics, soap, laundry detergent, bleach, household cleaning products, shampoos, sunscreens, toothpaste, lip balm, antiperspirants, or other personal care

products that are regulated as both cosmetics and Nonprescription Drugs under the FD&C Act. San Mateo County similarly passed the San Mateo County Safe Medicine Disposal Ordinance, which exempted the same category of products from the eligible drugs that could be taken back by the County.

Other hazardous traits: It is important to note that exemption from the MWMA does not preclude a product from the Hazardous Waste Control Law (HWCL) if it exhibits hazardous characteristics.

The MWMA and HWCL specifically exempt medical wastes from regulation as hazardous waste (HSC § 25117(b), HSC§ 117690) unless the waste is a pharmaceutical that is regulated under RCRA. In that case, the waste is not medical waste, but hazardous waste. A medical waste could exhibit a hazardous waste characteristic, in which case it will be managed in accordance with the HWCL.

Exemptions are not just for retail stores: The changes to the MWMA under this bill would apply to all medical waste generators in California that are required to comply with the provisions of the MWMA.

According to the CDPH, approximately 100 million pounds of medical waste is treated annually at permitted offsite treatment facilities using steam sterilization (autoclaving) in California. The MWMA does not track the amount of medical waste treated by generators who perform treatment onsite.

Unfortunately, CDPH does not have data on medical waste generated and treated in California broken down by category, so it is unknown how much of the medical waste stream is made up of the products that would be exempt from this bill.

Retail Waste Working Group: SB 423 (Bates, Chapter 771, Statutes of 2016) required the Department of Toxic Substances Control (DTSC) to convene a Retail Waste Workgroup (Workgroup) tasked with identifying regulatory and policy directives that need clarification for managing consumer products. Specifically, the Workgroup is actively discussing California's hazardous waste regulatory requirements, challenges faced by the retail industry in complying with hazardous waste laws and the MWMA, making accurate hazardous waste determinations, and properly managing unsold retail consumer products. The Workgroup is comprised of representatives of large retailers, small retailers, district attorneys, certified unified program agencies, non-government organizations, local governments, other relevant state agencies as determined by DTSC (such as CDPH and the California Department of Resources Recycling and Recovery), manufacturers, reverse distributors, and other interested stakeholders.

The Workgroup is required, pursuant to SB 423, to adopt consensus recommendations for waste reduction opportunities. Recommendations are due June 1, 2017.

REGISTERED SUPPORT / OPPOSITION:

Support

American Cleaning Institute
California Retailers Association

Consumer Specialty Products Association
Personal Care Products Council

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 885 (Rubio) – As Amended April 18, 2017

SUBJECT: Pupil health: drinking water: lead

SUMMARY: Requires each school to develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking at the school, and requires a community water system to test schools annually for presence of lead. Specifically, **this bill:**

- 1) Requires a community water system to test, on or before July 1, 2019, and every year thereafter, for the presence of lead at each water outlet used for drinking or cooking at each school constructed before January 1, 1994, within the boundaries of the community water system.
- 2) Authorizes the State Water Resources Control Board (State Water Board) to alter the annual testing requirement on a case-by-case basis if it determines that a higher or lower frequency of testing is necessary or sufficient to ensure public health at the school, including, but not limited to, requiring the community water system to conduct additional testing after replacement of lead service lines at a school.
- 3) Requires a school, if testing reveals an elevated lead level at a water outlet used for drinking or cooking at a school, to do both of the following:
 - a) Within 24 hours of receiving notification from the community water system, close off access to the outlet, and report the test results to the water board; and,
 - b) Purchase and install water filters with NSF International or equivalent certification at all school faucets, fountains, and other outlets designated for drinking or cooking. Requires a school, to expedite water filter installation, to give priority to contractors that are local to the school with the expertise to execute the project.
- 4) Requires, on or before January 1, 2020, each school to develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking at the school. Requires the plan of action to include all of the following:
 - a) The manner in which the school will operate and maintain the water filters installed by the school;
 - b) An inventory of lead-bearing parts within the school's water delivery system, including, but not limited to, fixtures and plumbing with lead soldering, and how the school will replace those lead-bearing parts; and,
 - c) Any other measures to reduce lead contamination of water.
- 5) Authorizes a school to adjust its plan of action in response to public input.
- 6) Requires a school to submit its plan of action to an independent entity that is experienced in the replacement of lead-bearing parts for review of whether the school's plan of action will successfully result in the replacement of all lead-bearing parts.

- 7) Requires a school to amend and resubmit its plan of action until the independent entity makes this determination. Requires a school, once the independent entity makes this determination, to submit its plan of action to the State Water Board and the State Department of Education (CDE) for recordkeeping.
- 8) Requires a school to use the inventory created pursuant to this bill to replace all lead-bearing parts within the school's water delivery system, where feasible and cost effective, on or before July 1, 2020.
- 9) Establishes the intent of the Legislature that a school use grants and other external sources of funding to the maximum extent possible to fulfill this requirement.
- 10) Authorizes a school to seek the assistance of a local health agency, a community water system, or the State Water Board to help ensure its compliance with this section.
- 11) Exempts a school from the provisions of this bill, and exempts a community water system if the school demonstrates, to the satisfaction of the State Water Board, that its water delivery system is free of lead-bearing parts.
- 12) Defines "elevated lead level" as lead in excess of one part per billion (ppb) in water.
- 13) Defines "school" as a public elementary school, a public secondary school, a public preschool located on public school property, and a public day care facility located on public school property.
- 14) Requires a school to be responsible for the ongoing cost of operation and maintenance for all installed water filters at the school.

EXISTING LAW:

- 1) 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)
- 2) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels (MCL)) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health and Safety Code (HSC) § 116270)
- 3) Declares childhood lead exposure as the most significant childhood environmental health problem in the state and establishes the Childhood Lead Poisoning Prevention Program to reduce the incidence of childhood lead exposure in California. (HSC § 124125, et seq.)
- 4) Requires, pursuant to the federal Lead and Copper Rule (LCR), that all public drinking water systems regularly test a sample of high-risk homes for lead at the tap. (Code of Federal Regulations 40 CFR Part 141)
- 5) 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)

- 6) Requires, pursuant to the Lead-Safe Schools Protection Act, that the California Department of Public Health (CDPH) work with CDE to develop voluntary guidelines for distribution to schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures. (EC § 32242 (g))
- 7) 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)
- 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)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 885 would help prevent lead exposures by requiring public early education and K-12 schools to install and maintain filters certified to remove lead on taps used for drinking or cooking by April 1, 2018. In addition, the bill requires schools to develop and adopt a plan for replacing any lead-bearing parts in their water delivery systems. Finally, the bill requires periodic water testing at every public school in California. To help minimize costs and any undue burdens for schools, AB 885 also allows exemptions for schools that can prove their water delivery systems are free of lead pipes and lead-bearing parts."

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 for impaired brain development. The US EPA estimates that 10 to 20 percent of the total lead exposure for young children comes from drinking water.

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

Lead in water: The most prevalent sources of lead in drinking water are from pipes, fixtures, and associated hardware from which the lead can leach. 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 buildings, such as schools, with lead pipes can still have significant concentrations of lead in their tap water.

According to the Awwa Research Foundation's report, "Contribution of Service Line and Plumbing Fixtures to Lead and Copper Rule Compliance Issues," lead service lines are the cause of 50-75 percent of lead found in drinking water at the tap.

How many schools have lead contaminated water?: Current law required DHS to conduct a sample survey of schools to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources. In 1994, DHS conducted the study, "Lead Hazards in California's Public Elementary Schools and Child Care Facilities," to determine the extent of lead contamination in California schools based on a representative sample of 200 of California's public elementary schools and daycare facilities.

According to the report, water can be contaminated with lead by the source water system or by corrosion of lead plumbing or fixtures. Plumbing installed prior to 1930 is considered most likely to contain lead. However, lead could also leak from lead plumbing solder, which was commonly used until banned in 1984.

In its finding, the study stated, "US EPA has set the action level for lead in drinking water at 15 parts lead per billion (ppb) parts water. The action recommended by US EPA is to remove the drinking water outlet from service immediately until the lead content falls below the action level. Study data indicate that an estimated 18.1 percent of California schools are likely to have lead in drinking water at or above the federal action level. Lead exceeding this level was found at 10.5% of schools where the sampled outlet had been used within 24 hours of testing. These findings indicate that in some situations drinking water from school water outlets could contribute to children's lead exposure, and demonstrate a need for monitoring lead from drinking water outlets in schools ... Lead may be present in drinking water in up to one in five of California public elementary schools and child care facilities. A testing and replacement program will identify and eliminate this potential source of exposure."

Recent events have highlighted lead in school water: There are approximately 9,000 K-12 schools in California, most of which are served by more than 3,000 community water systems in the state. While these community water systems extensively and regularly test their drinking water sources for lead, lead could get into clean water at a school campus if there were corroded pipes or old fixtures at the school that contain lead.

In February 2017, the safety of drinking water was questioned after elevated levels of lead, copper, and bacteria were discovered at three campuses in the San Ysidro School District. As a result, the City of San Diego began testing for lead in water systems at San Diego Unified School District (SDUSD) campuses on April 4, 2017. Up to five samples will be taken at each schoolsite, from drinking fountains, cafeterias, and food preparation areas. If test results indicate that lead is present above allowable levels, the SDUSD will determine the source of contamination and take appropriate action on a case-by-case basis, for example, turning off water, replacing fixtures, or making plumbing repairs.

In addition, on February 12, 2017, the Sacramento Bee reported that 85 drinking fountains, bottle-filling stations, and sinks were shut down at Sacramento State University after elevated lead levels were discovered by students and teachers as part of a school project.

The Sacramento Bee also reported that Folsom Cordova Unified started testing water last year at schools built before 1960 that have galvanized steel pipes. The testing was prompted by elevated levels of copper, iron, and lead in water coming from a classroom tap in 2015 at Cordova Lane Center, which serves preschoolers and special education students. Additional tests at that school revealed high lead levels from spigots in a storage room, staff room, and a multipurpose room-kitchen. The original parts of the campus were completed in 1959 and had aging water lines that required repair. Follow-up tests showed no signs of lead.

In 2013, drinking water from schools in the Chino Valley Unified School District (CVUSD) tested positive for lead in exceedance of the federal standard of 15 ppb at twelve schools. Subsequently, CVUSD shut down the suspect fixtures and drinking fountains and provided bottled water for students and staff.

Because testing drinking water at schools is not mandatory, it is unknown whether these are isolated incidents or roughly representative of school districts statewide.

Guidance on testing school water: The US EPA recommends drinking fountains and kitchen sinks among the highest priority sites for testing drinking water at a schoolsite. The US EPA provides guidance for schools and child care facilities for conducting their own drinking water testing to ascertain whether or not the drinking water has lead contamination. The US EPA has developed the 3Ts (Training, Testing, and Telling) to help schools implement simple strategies for managing the health risks of lead in schools and drinking water. Despite such guidance, in 2006, only 56% of school districts in the United States required drinking water inspections for lead, and only 22% of districts had model drinking water quality policies.

Federal lead testing requirements: Under the SDWA, the US EPA is mandated to set enforceable MCLs for contaminants. While there is no MCL for lead, in 1991, the US EPA adopted the LCR, which established "action levels" for lead of 15 µg/L (or 15 ppb). The LCR requires schools that have their own water supply and are considered non-transient, non-community water systems to test water at the tap at a sample of their customers served (students) for lead levels. The sample size is based on the average daily attendance served by the school. If more than 10 percent of the samples collected are at or exceed the action level for lead, it can trigger 'actions' that include public education, water quality parameter monitoring, corrosion control treatment, source water monitoring/treatment, public education, and lead service line replacement. The LCR requires lead samples to be collected every 6 months.

According to the State Water Board, approximately 220 schools in California are also public water systems, and these schools have been doing lead and copper sampling since the federal regulations became effective.

Addressing lead in schools: AB 885 would require a public water system to annually test drinking water for the presence of lead at each water outlet used for drinking or cooking at each school.

The Association of California Water Agencies asserts that "If the sampling does not indicate a problem, there is not a problem. If it reveals levels that are higher than the USEPA action level, the outlet in question should be made inoperable or mitigated by flushing or other means until the parts in question are replaced with lead-free parts as defined in state law. Annual repeat testing is not necessary."

The author may wish to amend the bill to align the testing with current federal requirements, which require a sample of faucets to be tested, not all faucets to be tested.

In addition, the bill would require each school to develop and adopt a plan of action to prevent elevated lead levels in all water used for drinking or cooking at the school by creating an inventory of lead-bearing parts within the school's water delivery system, including fixtures and plumbing with lead soldering, and a plan for how the school will replace those lead-bearing parts.

Current law (described in detail below) provides specific definitions for "lead free," which allows for concentrations of lead in plumbing. Therefore, the author may wish to consider referencing current law and defining "lead-bearing parts" as anything that exceeds the current allowable lead concentrations.

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

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

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

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

Defining elevated levels of lead: AB 885 would establish a new elevated lead level in California at 1 ppb in water. Given the fact the CDC states there is no safe level of lead, a 15 ppb reference level may be inappropriately high. Determining an appropriate and science-supported threshold proves difficult, however.

Compliance with a 1 ppb reference level is challenging to predict. Identifying the current inventory of pipes in California and quantifying the aggregate amount of lead in each school would be one way to quantify the scope of risk and whether a 1 ppb reference level is reasonable.

The California Coalition for Adequate School Housing raises the concern that no building, even with the updated plumbing codes, would be compliant with the proposed requirements.

The Office of Environmental Health Hazard Assessment (OEHHA), in its 2009 report, "Public Health Goals for Chemicals in Drinking Water," established a revised Public Health Goal of 0.2 ppb (or 0.2 µg/L) for lead in drinking water, on the basis of new studies relating neurobehavioral deficits to lower lead concentrations in the blood than previously reported. The preexisting public health goal was 2 ppb for lead in drinking water.

Laboratory technologies may not be able to detect lead that low, however. The current "Detection Limit for Purposes of Reporting" for lead is 5 µg/L (5 ppb). Despite that, the currently enforceable lead threshold for drinking water is the federal LCR of 15 ppb.

Funding for lead testing: AB 885 states the intent of the Legislature that a school use grants and other external sources of funding to the maximum extent possible, and states the intent of the Legislature that costs incurred by a school be reimbursed as costs mandated by the state.

According to the author, the approximate cost to purchase and install filters at K-12 public schools in California is \$11.8 million. This cost estimate would provide an average of five certified filters for kitchen faucets (approximate cost of \$30 each) at each of the public schools in California. It is estimated that an average of five certified filters per school would be enough for all the taps used for cooking at California's public schools. This overall cost estimate would also cover 62,268 certified filters for water fountains (approximate cost of \$165 each with installation). 62,268 water fountain filters is enough for 1 water fountain for every 150 public school students.

On January 17, 2017, the State Water Board announced that all K-12 schools in the state can receive free testing for lead under a new initiative. The State Water Board is requiring all community water systems to test school drinking water upon request by the school's officials. Under this initiative, community water systems are now required to collect and analyze up to five water samples from drinking water fountains and regularly-used drinking water faucets at a school, if the testing is requested by appropriate school or school district personnel. This voluntary lead sampling program is a resource available to school districts and their campuses that wish to test for the presence of lead in the drinking water at school sites.

The State Water Board also created the Drinking Water For Schools Grant Program to provide \$9.5 million in funding to improve access to, and the quality of, drinking water in public schools.

Schools may be able to access those funds to satisfy the requirements of this bill. Additionally, if a school is having its drinking water faucets tested for lead under the State Water Board's initiative, or any other effort to test drinking water for lead, the author may wish to consider whether that testing should suffice for compliance under the bill to avoid unnecessary duplication.

Technical amendments: The Committee may wish to consider the following amendments:

- 1) Revising the definition of elevated lead level to reflect the current federal LCR action level for lead.

Sec. 32247 (f)(2) "Elevated lead level" means lead in excess of one part per billion in water a lead level that is greater than the United States Environmental Protection Agency drinking water standards for lead.

- 2) Requiring a sample of faucets to be tested at each school, consistent with federal regulations, instead of testing every faucet.
- 3) Assembly Education Committee recommended that only schools built before 1994 should be tested by referencing legislation enacted in 1993. In fact, that legislation was signed in 1992, so AB 855 should be amended to require testing of schools before 1993, rather than 1994.

Sec. 32247

(a)(1) A community water system shall test, on or before July 1, 2019, and every year thereafter, for the presence of lead at each a sample of water outlets, consistent with federal Lead and Copper Rule regulations, used for drinking or cooking at each school constructed before January 1, 1994-1993, within the boundaries of the community water system.

- 4) Establishing a qualifying definition for lead-bearing part.

(b) (3) (A) (ii) An inventory of lead-bearing parts, defined as any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that exceeds the lead values for "lead free" per HSC sec. 116875, within the school's water delivery system, including, but not limited to, fixtures and plumbing with lead soldering, and how the school will replace those lead-bearing parts as required by paragraph (4).

Related legislation:

AB 746 (Gonzales Fletcher). This bill would require drinking water to be tested at schoolsites for lead. Pending before the Assembly Education Committee.

AB 2124 (E. Garcia, Lackey, 2016). This bill 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. Held in Senate Environmental Quality Committee.

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. Vetoed.

Double referral: This bill was heard in the Assembly Education Committee on April 5, 2017, and was approved with a 5-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

CALPIRG (sponsor)
American Heart Association/American
Stroke Association
California Federation of Teachers
California Food Policy Advocates
California School Employees Association
California State PTA

California Teachers Association
Children's Defense Fund
East Bay Municipal Utility District (if
amended)
National Association of Social Workers
Pacific Water Quality Association
Water Quality Association

Opposition

Association of California Water Agencies
(unless amended)
California Association of School Business
Officials
California Municipal Utilities Association
(unless amended)

California School Boards Association
California School Facilities Consortium
California Special District Association
Coalition for Adequate School Housing
County School Facilities Consortium
East Valley Water District
Los Angeles Unified School District

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 958 (Ting) – As Amended April 20, 2017

SUBJECT: Hazardous materials: perfluoroalkyl and polyfluoroalkyl substances

SUMMARY: Prohibits a person from manufacturing, selling, or distributing in commerce any product that contains perfluoroalkyl or polyfluoroalkyl substances (PFASs) with eight or more carbon atoms and requires the Department of Toxic Substances Control (DTSC) to regulate all PFASs in food contact substances under the Green Chemistry program. Specifically, **this bill:**

- 1) Prohibits a person from manufacturing, selling, or distributing in commerce any product that contains PFASs with eight or more carbon atoms.
- 2) Requires DTSC to revise its 2015–17 Priority Product Work Plan, and subsequent work plans, as necessary, to include food contact substances, as that term may be defined by DTSC, containing PFASs for consideration and evaluation as a potential priority product.
- 3) Requires DTSC, on or before January 1, 2019, to identify food contact substances containing PFASs as draft priority products.
- 4) Requires DTSC, on or before January 1, 2020, to begin the adoption of regulations, in accordance with Green Chemistry statutes, for the identified food contact substances.

EXISTING LAW:

- 1) Prohibits, on and after June 1, 2006, a person from manufacturing, processing, or distributing in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE. (Health and Safety Code (HSC) § 108922)
- 2) Prohibits, commencing January 1, 2009, a person or entity from manufacturing, selling, or distributing in commerce any toy or child care article that contains di-(2-ethylhexyl) phthalate, dibutyl phthalate, or benzyl butyl phthalate. (HSC § 108937 (a))
- 3) Prohibits, commencing January 1, 2009, a person or entity from manufacturing, selling, or distributing in commerce any toy or child care article intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate, diisodecyl phthalate, or di-n-octyl phthalate. (HSC § 108937(b))
- 4) Prohibits, on and after July 1, 2013, a person from manufacturing, selling, or distributing in commerce any bottle or cup that contains bisphenol A (BPA) if the bottle or cup is designed or intended to be filled with any liquid, food, or beverage intended primarily for consumption from that bottle or cup by children three years of age or younger. (HSC § 108940)

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

- 1) Prohibits a person, in the course of doing business, from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water or onto or

into land where such chemical passes or probably will pass into any source of drinking water. (HSC § 25249.5)

- 2) Prohibits a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)
- 3) Requires the Governor to publish a list of chemicals known to cause cancer or reproductive toxicity and to annually revise the list. The Office of Environmental Health Hazard Assessment (OEHHA) has posted that it intends to list perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as known to the state to cause reproductive toxicity. (HSC § 25249.8)

Under the Green Chemistry statutes:

- 1) Requires DTSC, on or before January 1, 2011, to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered a chemical of concern. (HSC § 25252 (a))
- 2) Requires DTSC, on or before January 1, 2011, to adopt regulations to evaluate chemicals of concern and their potential alternatives in consumer products and to determine how best to limit exposure or to reduce the level of hazard posed by the chemical of concern in the product. (HSC § 25253(a)(1))
- 3) Authorizes DTSC to take specified regulatory actions to limit exposure or to reduce the level of hazard posed by a chemical of concern. (HSC § 25253(b))
- 4) 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)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"AB 958 would prohibit food providers from selling fast food wrappers and to-go containers containing perfluorinated chemicals (PFCs). PFCs are synthetic chemicals like those used in nonstick frying pans, raincoats and many other household products to water-proof and grease-proof products. PFCs have been used in food packaging for decades and its widespread use has led to its detection in virtually all Americans...

Certain types of PFCs have been linked to serious health hazards, including cancer, developmental problems, and reduced effectiveness of vaccines. In 2006, the U.S. Environmental Protection Agency (US EPA) began forcing chemical companies to phase out the use of long-chain PFCs. Today, U.S. manufacturers do not use long-chain PFCs, and instead have developed a short-chain PFC that they claim to not have the same harmful and toxic effects as its long-chain counterpart. While long-chain PFCs take longer to break down

in the environment, the half-life of some short-chain PFCs can be up to eight and half years...

A study published in *Environmental Science & Technology Letters* found that preliminary studies showed structural similarities between both long-chain and short-chain PFCs. During one industry experiment on a new form of PFC, rats exposed to the chemical developed cancerous tumors in the liver, pancreas, and testicles, as well as kidney disease, liver degeneration, and uterine polyps. Additionally, a 2013 *Environmental International* study demonstrates that short-chain PFCs accumulate in human organs and are not fully expelled from the human body."

Perfluoroalkyl and polyfluoroalkyl substances (PFASs): Per- and polyfluoroalkyl substances (together, PFASs, also sometimes referred to as perfluorinated chemicals, or PFCs) are a class of human-made chemicals, produced since the 1950s, not found naturally in the environment. Molecules in all PFAS chemicals contain carbon and fluorine atoms; some PFASs also include oxygen, hydrogen, sulfur, and/or nitrogen atoms. One characteristic that differentiates molecules of one PFAS from those of another is the chain length, or the number of carbon atoms in the molecule. For example, PFOA has eight carbon atoms, which is why it is sometimes referred to as C8. Scientists often study PFASs as a group because of potential similarities in their chemical properties and in their toxicity. The class of PFASs contains about 3,000 chemicals.

PFASs have many manufacturing and industrial applications because they impart useful properties, such as fire resistance and oil, stain, grease, and water repellency. The chemicals have been developed by different companies over time for use in a wide variety of industrial and consumer applications, including cosmetics, fire-fighting foams, food contact materials, household products, wire insulation, paper, paints, inks, medical devices, oil production, mining, pesticide formulations, textile, leather, and apparel.

Since the late 1990s, multiple long-chain PFASs, in particular PFOA and PFOS, have attracted worldwide attention in the scientific and regulatory communities and among the public. Numerous efforts and societal resources have been invested to understand, and in some cases to control, exposure to long-chain PFASs in multiple countries. Most significantly, after a production history of over half a century, PFOS and its precursors are now listed, and PFOA and related precursors are being evaluated for listing, under the Stockholm Convention on Persistent Organic Chemicals. There have also been a number of national and regional regulatory and voluntary initiatives established to regulate PFOS, PFOA, and other PFASs, mostly in developed countries. As PFOA and PFOS have declined in popularity, alternative PFASs have come under increased scrutiny for their similarities to their predecessors.

Hazard traits of PFASs: DTSC compiled the following information on the hazard traits of PFASs. The best-defined hazard trait of this chemical class is its high environmental persistence. PFASs that do break down in the environment and in living organisms convert to other PFASs that persist indefinitely and may be even more harmful. Unlike other persistent organic pollutants, PFASs accumulate in protein-rich organs rather than in fat.

Most of the publicly available research to date is limited to a few longer-chain PFASs, such as PFOA and PFOS. Longer-chain PFASs are known to accumulate and persist in living organisms, including humans. They have been linked to acute and chronic toxicity in aquatic life, such as microorganisms, algae, plants, invertebrates, amphibians, fish, and birds. PFAS

toxicity is less well characterized in terrestrial species, despite reports of their presence in a wide range of organisms. In humans, potential adverse health effects from chronic longer-chain PFAS exposure include increased serum cholesterol, thyroid disease, liver and kidney damage, immune system disruption, pregnancy-induced hypertension, and kidney and testicular cancers.

Shorter-chain PFASs are marketed as less toxic compared to the long-chains, mainly because they bioaccumulate less and are more readily eliminated from living organisms. However, according to DTSC, they are equally persistent and more mobile in the environment than the chemicals they are replacing, and also show potential for toxicity.

Exposure to PFASs: According to DTSC, PFASs are found globally in the aquatic and terrestrial environment; indoor dust; drinking water sources; food; wildlife; and, humans, including in the milk and serum of breastfeeding women.

DTSC contends that exposure begins early in a person's life, since mothers transfer PFASs to their babies via the placenta and breastfeeding. Young children may experience higher exposure levels than adults due to greater dust ingestion rates and hand-to-mouth transfer from PFASs-treated consumer products. Industrial workers, carpet installers, carpet cleaners and workers in furniture, furnishings, outdoor clothing, and carpet stores may also experience above average PFASs exposure levels. For the general population, PFASs exposure occurs mainly via contaminated food and drinking water, yet questions remain regarding how PFASs enter the environment, food, and water supplies.

PFASs in California: In California, all PFASs are Candidate Chemicals under DTSC's Safer Consumer Products program, also known as the Green Chemistry program, because the entire class was added by Biomonitoring California to its list of Priority Chemicals for measuring in the bodily fluids of Californians. The California Office of Environmental Health Hazard Assessment (OEHHA), under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), on September 16, 2016, posted a Notice of Intent to List both PFOA and PFOS under the authoritative bodies mechanism as chemicals known to the state to cause reproductive toxicity. OEHHA set an October 17, 2016, public comment deadline, which was extended to November 16, 2016. OEHHA is currently in the process of considering and responding to the comments they received on the Notice of Intent to List for PFOA and PFOS.

U.S. concerns related to PFASs: The United States Environmental Protection Agency (US EPA) began investigating PFOA because of its environmental persistence, its presence at low levels both in the environment and in the blood of the general U.S. population, and because PFOA caused developmental and other adverse effects in laboratory animals. Dozens of studies, mostly on laboratory animals, had linked exposure to PFASs to higher rates of prostate cancer, heart disease, stroke, diabetes, impaired fetal development, altered male reproductive hormones, and effects on the liver, thyroid gland, and immune system. In 2005, the US EPA's Office of Pollution Prevention and Toxics Science Advisory Board labeled PFOA a 'likely' carcinogen in humans.

In 2007, the Centers for Disease Control and Prevention (CDC) published the results of two studies of human exposure to 11 PFASs. In both studies, PFOS and PFOA, as well as another PFAS, perfluorohexane sulfonic acid (PFHxS), were detected in approximately 98% of the population. The CDC concluded that these findings confirm widespread PFAS exposure in the

United States' population. The CDC also reported that both PFOS and PFOA accumulate in wildlife such as bald eagles, mink, bears, sea mammals, and fish.

Federal action on PFOA: In 2004, the US EPA took administrative action against DuPont for violations consisting of multiple failures to report information to US EPA about substantial risk of injury to human health or the environment from a chemical during a period beginning in June of 1981 through March of 2001. Companies are required by the federal Toxic Substances Control Act (TSCA) to report such information immediately.

The action was based on the fact that in 1981, DuPont observed PFOA in blood samples taken from pregnant workers at its Washington Works facility in West Virginia and at least one woman had transferred the chemical to her fetus. DuPont detected the chemical in public water supplies near the facility as early as the mid-1980s. By 1991, DuPont had information that the chemical was in water supplies at a greater level than the company's exposure guidelines indicated would be without any effect to members of the community. In 1997, DuPont failed to provide US EPA with all toxicological information the company had regarding PFOA, despite a US EPA request for such information. An attorney working on a class action suit on behalf of citizens in Ohio and West Virginia brought this information to the US EPA in 2001.

In 2005, US EPA settled with DuPont for the largest civil administrative penalty US EPA had ever obtained under any federal environmental statute. The settlement involves DuPont's violations related to PFOA and requires DuPont to pay \$10.25 million in civil penalties and perform Supplemental Environmental Projects worth \$6.25 million.

US EPA PFOA Stewardship Program: Beginning in 2003, the US EPA negotiated with multiple parties to produce missing information on PFOA through enforceable consent agreements, memoranda of understanding, and voluntary commitments. In January 2006, the US EPA and eight prominent companies in the industry created the 2010/15 PFOA Stewardship Program. Under the program, the companies (3M/Dyneon, Arkema, Inc., AGC Chemicals/Asahi Glass, Ciba Specialty Chemicals, Clariant Corporation, Daikin, E.I. duPont de Nemours and Company, and Solvay Solexis) committed voluntarily to reduce emissions and product content of PFOA and related chemicals on a global basis by 95 percent by 2010, and to work toward eliminating emissions and product content of these chemicals by 2015.

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

Is the PFOA Stewardship Program enough?: According to US EPA, PFOS was not reported as manufactured (including imported) into the U.S. as part of the 2012 Chemical Data Reporting (CDR) effort or the previous collection effort in 2006, but there are some limited ongoing uses of PFOS (see 40 CFR §721.9582). The manufacture and import of PFOA has also been phased out in United States as part of the PFOA Stewardship Program; however, existing stocks of PFOA might still be used and there appears to be PFOA in some imported articles.

This bill would prohibit the manufacture, sale, or distribution in commerce of any product that contains long-chain PFASs (those with eight or more carbon atoms), including PFOS and PFOA.

PFAS exposure via food contact substances: US EPA contends that people can be exposed to low levels of PFASs through food, which can become contaminated with PFASs through contaminated soil and water used to grow the food; food packaging; and equipment used to process food.

According to the article, "Fluorinated Compounds in U.S. Fast Food Packaging," published February 1, 2017, in *Environmental Science and Technology Letters*, (Environ. Sci. Technol. Lett. 2017, 4, 105–111), PFAS-containing food contact materials, such as fast food packaging and microwave popcorn bags can contribute to indirect dietary exposure via migration into food. The article notes that the extent of migration of PFASs from food contact materials into food depends on the amount, type, and chain length of PFASs used, the type of food (e.g., fat- vs water-based), the contact time, and the temperature. Despite brief contact times between food contact materials and fast food, high temperatures and use of emulsified fats can significantly increase the extent of migration of PFASs into food. Short-chain PFAs were found to have migration efficiencies from paper bowls higher than those of long-chain analogues.

The *Environmental Science and Technology Letters* article notes that exposure to PFASs from fast food packaging is especially relevant for children, because one-third of children in the United States consume fast food daily and children may be more susceptible to the adverse health effects. The article describes a study in which, in 2014 and 2015, the authors collected 407 samples of food contact papers, paperboard containers, and beverage containers from fast food restaurants around the United States, and found that 46% of food contact papers and 20% of paperboard samples contained detectable fluorine. Additional testing on a subset of the samples found perfluorocarboxylates, perfluorosulfonates, and other known PFASs and/or unidentified polyfluorinated compounds. The study's authors concluded that the prevalence of fluorinated chemicals in fast food packaging demonstrates their potentially significant contribution to dietary PFAS exposure and environmental contamination during production and disposal.

Regulation of PFASs in food contact materials: Regulations in the United States specify which PFASs are allowed in food contact materials. According to the *Environmental Science and Technology Letters* article, the U.S. Food and Drug Administration (FDA) currently approves more than 90 unique monomer and polymer PFASs for use in food contact materials. In January 2016, the FDA amended a food additive regulation (which is one of the means by which substances in food contact materials are regulated) to no longer allow the use of three long-chained PFASs, and in November 2016, it again amended the regulation to no longer authorize the two remaining long-chain PFASs. The FDA's action means that any food additive use of these five PFASs is no longer allowed. If a company wanted to use these substances in the future as food additives, it would have to submit a new application to the agency and demonstrate that its use in food is safe. Other PFASs are still permitted for use in food contact substances.

The California Green Chemistry regulation: The California legislature passed, and Governor Schwarzenegger signed, the Green Chemistry law AB 1879 (Feuer, Chapter 559, Statutes of 2008) and SB 509 (Simitian, Chapter 560, Statutes of 2008) in 2008. The law authorizes and requires DTSC to adopt regulations to identify and prioritize chemicals of concern in consumer products, and their possible alternatives, and to take regulatory action to best protect people and the environment. In response, DTSC promulgated the Safer Consumer Products Regulations. According to DTSC, the regulations provide for a continuous four-step, science-based, ongoing process to identify safer consumer product alternatives. DTSC describes the process as follows:

- 1) Candidate Chemicals – The regulations establish a list of candidate chemicals (approximately 1,200) based on the work of authoritative organizations, and specify a DTSC process to add to the list. Candidate chemicals have at least one quality that can cause harm to people or the environment (called a hazard trait).
- 2) Priority Products – Priority products are consumer products that contain one or more candidate chemical. An initial list of three product-chemical combinations was released on March 13, 2014, and on July 15 2016, a proposal to list Children’s Foam-Padded Sleeping Products containing the flame retardants TDCPP and TCEP as a priority product began. Before a priority product is finalized it goes through the rulemaking process which may take up to one year. Sixty days after a priority product is finalized, responsible entities, e.g., manufacturers, will need to submit priority product notifications.
- 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 web site. Priority product manufacturers (or other responsible entities) must perform an alternatives analysis on the product's candidate chemicals to determine how to limit exposure to, or reduce the level of, public health and/or environmental harm.
- 4) Regulatory Responses – The regulations require DTSC to identify and implement regulatory responses that will 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 keep it, or for an alternative product selected to replace it.

This bill requires DTSC, on or before January 1, 2019, to identify food contact substances containing PFASs as draft priority products, and requires DTSC, on or before January 1, 2020, to begin the adoption of regulations, in accordance with Green Chemistry statutes, for the identified food contact substances as priority products.

Arguments in support: A coalition of supporters argue,

"Recent research done by independent scientists indicates that the newly constituted PFAS chemicals behave at the cellular level in a manner similar to the perilous PFOA and PFOS. In addition, another study observed that the revamped PFAS chemicals accumulate in human organs and are not fully expelled from the body, while another study found that rats exposed to a newer PFAS chemical developed cancerous tumors in the liver, pancreas, and testicles, as well as kidney disease, liver degeneration, and uterine polyps. Given these findings and the fact that newer PFASs' are persistent and can travel easily through soil and migrate into water and plants, scientists have described the proliferation of PFAS use "as an intractable, potentially never-ending chemicals management issue..."

To date, hundreds of leading independent scientists have joined together to call for global action to study and regulate the entire class of PFAS chemicals. These scientists opine that policy makers should limit the use of these chemicals and allow them to only be used for the most essential purposes...

Unfortunately, one non-essential use of PFASs is as a coating on food packaging, such as packaging for fatty and fast foods... These chemicals do not stay in the packaging, but migrate into the food they contain, and ultimately into the consumer's body... Consumers' exposure to PFASs through fast food is sobering since, on any given day, one in three American children eat fast food. In addition, Californians who live in low income urban communities of color eat more fast food than Californians in other areas...because they lack access to better food, are more dependent on packaged groceries, and are the targets of purposeful fast food marketing...

Since safer alternatives to PFAS-coated food packaging are readily available, we believe that continuing to allow the public and our environment to be widely exposed to PFASs is unconscionable. This is all the more true in disadvantaged communities that often live in food deserts where fast food is the "best" option as a regular meal choice. These communities are often burdened by disproportionate exposures to other toxic chemicals from their lived environment, compounding the impact of harm of PFAS on themselves and their families... AB 958 is a common sense response to this correctable problem..."

Arguments in opposition: The American Forest & Paper Association argues,

"Fluorochemicals should not be looked upon as one toxicologically-similar class of chemistry. Some of our members use short-chain fluorinated chemicals (fluorinated polymers) in food packaging to prevent oil and grease from seeping through the packaging... During [the phase out of long-chain fluorinated chemicals], chemical manufacturers initiated an intensive research and development effort to create innovative, well-studied alternatives, namely based on short-chain fluorinated polymers. These chemicals have greatly improved human and environmental health profiles with significantly shorter half-lives and lowered toxicity..."

Recently formulated fluorinated chemicals have been approved by the U.S. Food and Drug Administration (FDA) for use in food packaging... Many of these newer short-chain fluorinated chemicals were approved between 2005 and 2016. Consequently, any further regulation of acceptable fluorinated food packaging materials would negatively affect commerce and would provide no additional benefit to public or environmental health...

Legislation should target intentionally-added long-chain fluorinated chemicals and provide a de minimis threshold. In order to minimize the compliance burden on manufacturers that do not use the long-chain chemicals, the legislation should be amended to expressly target intentionally added long-chain chemicals and create a de minimis threshold."

In response to recent amendments to the bill, the American Chemistry Council (ACC) states that it, "recognizes the bill has been improved since first introduced but remains concerned that the current definition of substances subject to the ban provision is overly broad and does not take into account trace levels of these substances that may be found as a contaminants in manufacturing processes or as ingredients. A threshold level or language specifying the ban only applies to "intentionally added" substances should be considered. Furthermore, the bill should not mandate DTSC initiate rulemaking as part of its authority under the Safer Consumer Products program. DTSC's review may lead to a conclusion that formal rulemaking is not warranted. The Legislature should not predetermine the outcome before DTSC completes its work."

Previous related legislation:

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

REGISTERED SUPPORT / OPPOSITION:

Support

Clean Water Action (Co-sponsor)
Environmental Working Group (Co-sponsor)
Black Women for Wellness
Breast Cancer Prevention Partners
Californians Against Waste
Center for Biological Diversity
Consumer Federation of California
Coop Denmark
Grow Plastics LLC
Investor Environmental Health Network
Safer States
San Francisco Bay Area Physicians for Social Responsibility
San Francisco Baykeeper
Save our Shores
Seventh Generation Advisors
Upstream

Opposition

American Chemistry Council
American Forest & Paper Association
California Chamber of Commerce
California Grocers Association
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
California Travel Association
FluroCouncil
Foodservice Packaging Institute
Graphic Packaging International, Inc.
Grocery Manufacturers Association
International Franchise Association
National Federation of Independent Business
Plastics Industry Association

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1179 (Kalra) – As Amended April 17, 2017

SUBJECT: Hazardous waste facilities: inspections

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage and disposal facilities and for hazardous waste generators and transporters. Specifically, **this bill:**

- 1) Requires DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage and disposal facilities and for hazardous waste generators and transporters.
- 2) Requires DTSC, when adopting regulations establishing inspection frequencies for hazardous waste facilities, generators, and transporters, to include criteria for increasing the frequency of inspections based on factors including, but not limited to, compliance history, the quantity of hazardous waste handled, the ignitability, corrosivity, reactivity, and toxicity of hazardous waste handled, and proximity to sensitive habitats, sensitive receptors, or disadvantaged communities.
- 3) Requires DTSC to set the inspection frequency for hazardous waste landfills at no less than two times per calendar year. Requires the inspection frequency for any other permitted hazardous waste facility to be no less than once per calendar year.
- 4) Defines "disadvantaged community" as an area that is a low-income area and is disproportionately affected by environmental pollution or other hazards that can lead to negative health effects, exposure, or environmental degradation.
- 5) Defines "low-income area" as an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits.

EXISTING LAW:

- 1) Requires DTSC to enforce the standards within the Hazardous Waste Control Law (HWCL) and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code Section (HSC) § 25180)
- 2) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)
- 3) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"Current law provides DTSC with complete discretion on when and what frequency to provide facility inspections. AB 1179 sets a mandatory minimum to ensure that department is effectively monitoring and enforcing compliance at the facilities in its charge. AB 1179 will help ensure that violations are discovered quickly and facilities are brought back into compliance, thereby minimizing harm to nearby communities.

Communities across the state have expressed concerns regarding the regulation of hazardous waste facilities. The situation at the Exide facility in Vernon, California—where lax permitting and enforcement allowed the plant to operate near a disadvantaged community and emit toxic metals like lead for over three decades on a temporary permit—is a prime example that validates the public's concerns. More frequent inspections may have addressed violations sooner. While the plant has closed down, other communities should not suffer the same fate.

Hazardous waste facilities that are not in compliance with state and federal laws and regulations pose a risk to public health and the environment. It is vital that permitted hazardous waste facilities be inspected on a regular basis to ensure compliance with state and federal laws and regulations. AB 1179 sets minimum inspection frequencies for DTSC for hazardous waste facilities to ensure compliance."

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

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

According to DTSC documents dated January 2016, the following are the current inspection frequencies based on facility type:

# of facilities	Type of facility	Frequency
11	Operating Federal facility	every year
3	Operating landfill	every year
47	Operating treatment/storage facility	every 2 years
32	Operating treatment/storage state only	
	Or standardized permit	every 1-3 years
30	Post-closure facility	every 3-5 years

DTSC Independent Review Panel (IRP): In 2015, the Legislature passed and the Governor signed SB 83 (Chapter 24, Statutes of 2015) which establishes within DTSC a three-member IRP to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. The IRP is required to submit recommendations to the Governor and Legislature at the time of each submission of the Governor's budget, 90 days after the IRP was initially appointed and every 90 days thereafter on the Department's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management.

The IRP's third report was issued in July 2016 and focused on DTSC's enforcement program. This progress report consists of a discussion of DTSC's Hazardous Waste Management Program and an update on previously submitted IRP recommendations pertaining to enforcement. The IRP noted that DTSC met or exceeded its federal inspection targets under its federal grant under RCRA as well as nearly all of its state inspection commitments and targets during Fiscal Year 2015-16. Although the IRP believes the inspection targets should be clearer and reported to the public on a regular basis, DTSC deserves praise for the recent inspection metrics.

This IRP report offered three recommendations to the Governor and Legislature:

1. Include, in statute, inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and hazardous waste generators in statute. The frequencies should be based on facility compliance history, quantity of waste, toxicity risk, and proximity to sensitive habitats and populations at risk, including disadvantaged communities;
2. Support AB 1858 (Santiago, Chapter 449, statutes of 2016), which requires the Department of Motor Vehicles to establish an Unlicensed Automobile Dismantling Task Force to investigate the occurrences of unlicensed vehicle dismantling; and,
3. Increase the maximum penalties for violations of the HWCL to make them equivalent to the federal maximum penalties for similar violations, with an inflation allowance.

DTSC's Recent Program Improvements/Activities: DTSC received resources to develop and implement a two-year work-plan to improve its enforcement processes and outcomes in the Fiscal Year 2015-16 budget. The Improving Enforcement Performance Work-plan has the following goals: (1) clearly define the inspection and enforcement process and identify areas for streamlining the process as well as barriers; (2) establish clear metrics to evaluate performance; (3) create a formal review process for enforcement case management; (4) clearly communicate the inspection and enforcement processes to stakeholders and the community; and, (5)

incorporate community engagement in setting priorities. DTSC expects to accomplish all of the work-plan goals by June of 2017.

Managing hazardous waste is a complex and potentially dangerous task; incorrect handling of certain hazardous wastes could pose significant threats to human health and safety and the environment. Ensuring compliance with state and federal hazardous waste laws is one DTSC's core regulatory functions. Inspecting hazardous waste facilities is a vital tool to ensure that these hazardous waste facilities are in compliance or have returned to compliance from recent violations. Current law does not impose minimum inspection frequencies for hazardous waste facilities. Given the potential hazards associated with the mismanagement of these wastes it is appropriate to direct DTSC to adopt regulations for inspection frequencies for hazardous waste facilities, generators and transporters. The approach in AB 1179 provides DTSC flexibility on how best set inspection targets via a public rulemaking process.

Related legislation:

- 1) AB 245 (Gomez). This bill would require DTSC to review and approve corrective action cost estimates and financial assurances as a condition of an operational hazardous waste facility permit. This bill is in the Assembly Appropriations Committee, hearing pending.
- 2) AB 246 (Santiago). This bill would give DTSC the authority to require fence line monitoring by hazardous waste facility permit holders. This bill was placed on the suspense file in the Assembly Appropriations Committee on 4/5/17.
- 3) AB 247 (C. Garcia). This bill would require the Office of Environmental Health Hazard Assessment to convene a statewide lead taskforce to review and provide recommendations on policies and procedures to reduce lead poisoning in the state. This bill was placed on the suspense file in the Assembly Appropriations Committee on 4/5/17.
- 4) AB 248 (Reyes). This bill would make several changes to improve the permitting of hazardous waste facilities. This bill is in the Assembly Appropriations Committee, hearing pending.
- 5) AB 249 (Gomez). This bill would increase the maximum penalties for hazardous waste violations to make them equivalent to the federal penalties for the same violations. This bill is on the Assembly Floor 3rd Reading file as of 4/20/17.
- 6) SB 774 (Leyva). This bill creates the Toxic Substances Board, which would succeed to and be vested with all of the powers, duties, purposes, responsibilities, and jurisdiction of DTSC. This bill is scheduled to be heard in the Senate Environmental Quality Committee on 4/19/17.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Pacific Environmental Network
Breast Cancer Prevention Partners
California Environmental Justice Alliance

California League of Conservation Voters
Center For Race, Poverty and the Environment
Clean Water Action
Environmental Working Group
Friends of the Earth - US
Natural Resources Defense Council
Sierra Club California
The Trust for Public Land

Opposition

Alhambra Chamber of Commerce
California Business Properties Association
California Cement Manufacturers Environmental Coalition
California Chamber of Commerce
California Manufacturers and Technology Association
California Metals Coalition
California Small Business Alliance
Camarillo Chamber of Commerce
Chemical Industry Council of California
Clean Harbors Environmental Services, Inc.
Fontana Chamber of Commerce
El Dorado County Chamber of Commerce
Greater Fresno Area Chamber of Commerce
Industrial Environmental Association
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
National Federation of Independent Business
Norco Area Chamber of Commerce
North Orange County Chamber
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce & Visitors Bureau
Safety-Kleen, Inc.
San Diego Regional Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Simi Valley Chamber of Commerce
Torrance Chamber of Commerce
West Coast Lumber & Building Material Association
Western Plant Health Association
Western States Petroleum Association

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1180 (Holden) – As Amended April 19, 2017

SUBJECT: California tire fee: Stormwater Permit Compliance Fund

SUMMARY: Increases the California tire fee from \$1.75 to \$3.25, and directs the additional revenue to be available for grants for municipal stormwater projects that mitigate zinc pollution from tires. Specifically, **this bill:**

- 1) Increases the California tire fee from \$1.75 to \$3.25: directs the additional revenue to the Stormwater Permit Compliance Fund (Fund), to be administered by the California Water Resources Control Board (State Water Board); and, requires the State Water Board to provide grants for municipal stormwater projects that mitigate zinc pollution from tires.
- 2) Directs the money from the tire fee as follows: seventy-five cents (\$0.75) to the Air Pollution Control Fund, one dollar (\$1.00) to the California Tire Recycling Management Fund, and one dollar and fifty cents (\$1.50) to the Stormwater Permit Compliance Fund.
- 3) Authorizes the State Water Board to use funds in the Stormwater Permit Compliance Fund for competitive grants to fund projects and programs for a municipal storm sewer system compliance requirement that would prevent or remediate zinc pollutants caused by tires.
- 4) Provides that this is an urgency in order to help grant recipients achieve municipal storm sewer system permit compliance requirements that would prevent or remediate zinc pollutants caused by tires at the earliest possible time.

EXISTING LAW:

- 1) Enacts the "California tire fee" and requires a person who purchases a new tire to pay a California tire fee of one dollar and seventy-five cents (\$1.75) per tire. (Public Resources Code (PRC) § 42885)
- 2) Authorizes the Department of Resources, Recycling, and Recovery (CalRecycle) to award grants, subsidies, rebates, and loans, from the tire fee, to businesses or other enterprises and public entities that result in reduced landfill disposal of used whole tires and reduced illegal disposal or stockpiling of used whole tires. (PRC § 42872)
- 3) 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) § 1300 et seq.)
- 4) Requires the State Water Board to establish an online resource center that addresses measures available for municipalities to comply with municipal stormwater permit requirements. (WC § 13383.9)
- 5) Establishes the federal Clean Water Act to regulate discharges of pollutants into the waters of the United States and regulate quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)

- 6) Establishes the national pollutant discharge elimination system (NPDES) permit program to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in storm water, including municipal storm water systems. (33 U.S.C. § 1251 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Assembly Bill 1180 establishes the Stormwater Permit Compliance Fund within the State Treasury. This bill also increases the California tire fee by \$1.50 to raise revenue to fund projects and programs for municipal separate storm sewer system permit compliance requirements that would limit zinc pollutants caused by tires or other sources. Local governments have to go as far as employing costly reverse osmosis methods to fully filter out pollutants from water to make it potable. This bill seeks to provide funding relief for local and regional governments to comply with federal EPA standards and foster projects that address the need for better stormwater retention and cleaner water. "

Stormwater: Stormwater is runoff from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways or parking lots, carrying with it pollutants such as oil, pesticides, herbicides, sediment, trash, bacteria, and metals. The runoff can then drain directly into a local stream, lake, or bay. Often, the runoff drains into storm drains which eventually drain untreated into a local body of water. Both the United States Environmental Protection Agency (US EPA) and the Regional Water Quality Control Boards (Regional Water Board) have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health. However, stormwater may also act as a resource and recharge to groundwater when properly managed.

Regulating stormwater: For nearly two decades, the State Water Board has regulated runoff and treatment of storm water from industrial and municipal sources in California, including storm drains, rivers, streams, lakes, wetlands, and the ocean.

The federal Clean Water Act requires the State Water Board and regional water boards to regulate the discharge of storm water from a number of sources. Stormwater discharges in California are regulated through NPDES permits.

Tired derived zinc stormwater pollution: According to the report, "Zinc Sources in California Urban Runoff" prepared for the California Stormwater Quality Association on April 2015, the major sources of zinc in urban runoff are outdoor zinc surfaces (including galvanized surfaces) and tire wear debris. The report states, "Elevated zinc concentrations in urban runoff must be addressed for Clean Water Act compliance in many California urban areas, particularly in the Los Angeles and San Diego regions, which have multiple Total Maximum Daily Loads (TMDLs) for zinc. Treating urban runoff to achieve compliance, while theoretically feasible, could cost billions of dollars statewide. Controlling zinc at its source is a promising alternative. For outdoor zinc surfaces, both source control and on-site treatment of concentrated runoff appear to be technically feasible. Reducing zinc from tires will pose a greater challenge, as low-zinc and zinc-free products have little market presence and tire wear debris is widely dispersed across urban environments, making it very difficult to collect...Examine the possibility of petitioning the California Department of Toxic Substances Control (DTSC) to require evaluation

of zinc in tires under its Safer Consumer Products Regulations. If multiple California agencies determine that zinc reductions are necessary for Clean Water Act compliance and cannot reasonably be achieved from other sources, the potential to reduce zinc concentrations in tires should be evaluated."

Municipal Separate Storm Sewer Systems (MS4) Permitting Program: The Municipal Storm Water Permitting Program regulates storm water discharges from MS4 permits, which are issued in two phases. Under Phase I, NPDES storm water permits were issued for medium (serving between 100,000 and 250,000 people) and large (serving 250,000 people) municipalities. Most of these permits are issued to a group of co-permittees encompassing an entire metropolitan area. These permits are reissued as the permits expire. The Phase I MS4 permits require the discharger to develop and implement a Storm Water Management Plan/Program with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP). The management programs specify what best management practices (BMPs) will be used to address certain program areas. The program areas include public education and outreach; illicit discharge detection and elimination; construction and post-construction; and, good housekeeping for municipal operations. In general, medium and large municipalities are required to conduct monitoring.

Under Phase II, the State Water Board issues a General Permit for the Discharge of Storm Water from Small MS4s to provide permit coverage for smaller municipalities (population less than 100,000), including non-traditional Small MS4s, which are facilities such as military bases, public campuses, prisons and hospital complexes.

Los Angeles Regional Water Quality Board: The MS4 permit for the Los Angeles area adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) in 1996 allowed permittees to be in compliance with the permit as long as they were, in good faith, implementing the permit's iterative process of evaluating and improving the BMPs where necessary to comply with water quality standards. This was viewed as following the MEP standard.

However, several court challenges to this MS4 permit called the "good faith" standard into question, and the 2001 revised permit for the Los Angeles area did not contain the same standard. Instead, the Regional Board determined that MS4 permits must meet water quality standards and the NPDES permits must include limitations necessary to meet those standards. Federal and state law provide steep penalties for non-compliance with provisions in a discharge permit. The Clean Water Act authorizes civil penalties of up to \$37,500 per day per violation of permit conditions and also criminal penalties. California's Porter-Cologne Water Quality Act contains penalties for violation of discharge permit requirements, authorizing a penalty of up to \$25,000 per day per violation. However, according to the author, the cost to meet these water quality standards is also high.

Existing efforts to make resources available: In January 2014, in the midst of the state's ongoing four-year drought, Governor Jerry Brown released the California Water Action Plan that called for multiple-benefit storm water management solutions. To accomplish this, the state and regional water boards are working on multiple paths by providing financial assistance and working cooperatively with local agencies to encourage multiple benefit storm water projects for achieving regulatory compliance and supplemental water supplies.

The State Water Board has adopted the Storm Water Resource Plan Guidelines to provide guidance for entities preparing a Storm Water Resource Plan, and the Storm Water Grant Program Guidelines to assist interested applicants with obtaining grant funds for multiple-benefit storm water projects.

Proposition 1 Water Bond: The Water Quality, Supply, and Infrastructure Improvement Act of 2014, also known as Proposition 1 (AB 1471, Rendon, Chapter 188, Statutes of 2014), approved by the voters on November 4, 2014, authorized \$200 million to the State Water Board for providing matching grants to public agencies, nonprofit organizations, public utilities, state and federally recognized Indian tribes, and mutual water companies for multi-benefit storm water projects.

Green Chemistry: The California legislature passed the Green Chemistry Law in 2008. The law authorizes and requires DTSC to adopt regulations to identify and prioritize chemicals in consumer products. When ingredient toxicity is considered in the product development stage, concerns can be addressed more effectively. This approach results in safer ingredients and designs, and provides opportunities for California industry to once again demonstrate its innovative spirit by making safer products that meet consumer demand throughout the world. In compliance with the Green Chemistry Law, DTSC adopted the Safer Consumer Products regulations, October 1, 2013. The goals of the regulatory program are to: reduce toxic chemicals in consumer products; create new business opportunities in the emerging safer consumer products industry; and help consumers and businesses identify what is in the products they buy for their families and customers.

Why additional resources are still needed: Despite the Proposition 1 funding, local governments need more assistance to comply with storm water requirements. Many jurisdictions in Southern California are struggling to comply with new standards and upcoming enforcement of MS4 permits. While Proposition 1 offered limited funds to help, the cost remains prohibitive. AB 1180 will provide millions of dollars per year in grant assistance for municipalities to be able to comply with their stormwater permits.

Related legislation:

- 1) AB 509 (Frazier). Establishes the Tire Recycling Incentive Program (TRIP) Act to provide incentives for tire recycling activities in California. Establishes a new tire regulatory fee, set by CalRecycle, to cover its regulatory costs associated with waste and used tire management. This bill passed the Assembly Natural Resources Committee on April 17 and is pending action in the Assembly Appropriations Committee.
- 2) SB 1260 (Allen, Chapter 153, Statutes of 2016). Requires the State Water Board to make information available online for compliance with municipal storm water permit requirements.
- 3) AJR 44 (Holden, Resolution Chapter 145, Statutes of 2016). Urges the federal government to provide greater financial support for local agencies implementing a federal mandate to improve storm water quality, including, but not limited to, by passing legislation strengthening the Clean Water State Revolving Fund and creating new grant programs to assist in funding storm water projects.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Arcadia
City of Azusa
City of Carson
City of Claremont
City of Glendora
City of Hermosa Beach
City of Inglewood
City of Lakewood
City of La Mirada
City of Norwalk
City of Pasadena
City of Signal Hill
League of California Cities
Los Angeles Division of the League of California Cities
San Gabriel Valley Council of Governments
Sierra Club California

Opposition

California New Car Dealers Association

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1490 (Gray) – As Amended April 17, 2017

SUBJECT: State Water Resources Control Board: school drinking water

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to, no later than July 1, 2018, prepare and submit to the Legislature a report evaluating potential adverse impacts resulting from the implementation of the Bay-Delta Water Quality Control Plan on the quality and supply of drinking water provided to schools in disadvantaged communities. Specifically, **this bill:**

- 1) Requires the State Water Board to, no later than July 1, 2018, prepare and submit to the Legislature a report evaluating potential adverse impacts resulting from the implementation of the Bay-Delta Water Quality Control Plan on the quality and supply of drinking water provided to schools in disadvantaged communities, including a summary describing any measures that may be implemented to address any adverse impacts identified by the State Water Board.
- 2) Requires the State Water Board, to the extent that funds are available, to provide financial assistance to schools in disadvantaged communities to address any adverse impacts on the supply and quality of drinking water provided to schools identified by the State Water Board.

EXISTING LAW:

- 1) Establishes the California Safe Drinking Water Act (SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) § 116270, *et seq.*)
- 2) Defines a public water system as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275)
- 3) Establishes the Safe Drinking Water State Revolving Fund (SDWSRF) to provide financial assistance for community water systems to achieve compliance with the SWDA. (HSC §116760 *et seq.*)
- 4) Allows costs incurred by a community and not-for-profit noncommunity public water system for planning and preliminary engineering studies, project design, and construction to be funded from the SDWSRF by loans or other repayable financing. (HSC § 116761.20 (a))
- 5) 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)

- 6) Requires the State Water Board to establish a program, in consultation with the State Department of Education, to award grants to local educational agencies for the purposes of improving access to, and the quality of, drinking water in public schools. (HSC § 116276)
- 7) 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. (Education Code § 38086)
- 8) States that it is the policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts. (Water Code (WC) § 85021)
- 9) Requires the State Water Board to, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. Requires the State Water Board to review existing water quality objectives and use the best available scientific information. Requires the flow criteria for the Delta ecosystem to include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. Requires the flow criteria to be developed in a public process by the State Water Board. (WC § 85086)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"The State Water Resources Control Board has proposed a revision to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to double unimpaired river flows along the Stanislaus, Tuolumne, and Merced rivers. If implemented, the plan calls for a reduction in surface water deliveries to impacted communities of approximately 350,000 acre-feet – equivalent to the entire storage capacity of the Hetch Hetchy Reservoir...

Particularly in Merced County, local schools have already received notices from the Division of Drinking Water that require them to develop drought contingency plans, because they have only a single source of water. Some schools have also received notices regarding the safety and adequacy of their water supplies. These schools are predominantly located in disadvantaged communities with few resources to address an elimination of their existing water supplies...

For example, 100 severely disabled students attend Floyd A. Shelby School in Livingston which receives drinking water and water for restrooms from a single well on campus... The

water level in this well is rapidly dropping and the school is 10 miles from the city water supply. The reduction of surface water recharge proposed in the revised Bay-Delta Plan would likely eliminate the school's only water source...

The State Water Board has failed to identify drinking water impacts to schools, and proposes no form of mitigation to assist drinking water supplies compromised by the proposed Bay-Delta Plan update. AB 1490 requires the State Water Board to identify drinking water impacts to schools when evaluating water quality control plans."

Human right to water: On September 12, 2012, Governor Edmund G. Brown Jr. signed AB 685, making California the first state in the nation to legislatively recognize the human right to water. The bill statutorily recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas.

Bay Delta Plan: The Bay Delta Plan identifies beneficial uses of water in the Bay Delta, water quality objectives for the reasonable protection of those beneficial uses, and a program of implementation for achieving the water quality objectives.

The State Water Board is responsible for developing and modifying the Bay Delta Water Quality Control Plan, which establishes water quality control measures needed to provide reasonable protection of beneficial uses of water in the Bay Delta Watershed. The State Water Board also implements the Bay Delta Plan through water rights and other measures and otherwise administers water rights in the Bay Delta Watershed.

The State Water Board is in the process of developing and implementing updates to the Bay Delta Plan and flow objectives for priority tributaries to the Delta to protect beneficial uses in the Bay Delta watershed. Phase 1 of this work involves updating San Joaquin River flow and southern Delta water quality requirements included in the Bay Delta Plan. Phase 2 involves other comprehensive changes to the Bay Delta Plan to protect beneficial uses not addressed in Phase 1 (Delta outflows, Sacramento River inflows, Suisun Marsh salinity, Delta Cross Channel Gate closure, export limits, reverse flows). Phase 3 involves changes to water rights and other measures to implement changes to the Bay Delta Plan from Phases 1 and 2. Phase 4 involves developing and implementing flow objectives for priority Delta tributaries outside of the Bay Delta Plan updates.

Need for flow objectives in the Bay Delta Plan: There are several reasons why revised flow objectives are needed to reasonably protect fish and wildlife in the three eastside, salmon-bearing tributaries and the Lower San Joaquin River. The Bay Delta is in ecological crisis, resulting in conflicts over the competing uses of water. Fish species have not shown signs of recovery since adoption of the 1995 Bay Delta Plan objectives intended to protect fish and wildlife. Several species of fish have been listed as protected species under the California Endangered Species Act and the Federal Endangered Species Act. These two laws and other regulatory constraints have restricted water diversions from the Delta in an effort to prevent further harm to the protected species.

The California Legislature acknowledged the crisis in the Delta Watershed in adopting the

Sacramento-San Joaquin Reform Act of 2009 (2009 Delta Reform Act). The 2009 Delta Reform Act established "coequal goals" for the Delta—"two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." The Delta Stewardship Council, established under the 2009 Delta Reform Act, has identified updating the water quality objectives as an important element of protecting the Delta ecosystem and the reliability of the Delta's water supplies. In addition, the California Water Action Plan, which establishes actions to sustainably manage California's water resources, identifies completion of the Bay Delta Plan update as a key element to achieve the coequal goals for the Delta.

The current drought has highlighted the need to establish flows that, in conjunction with nonflow actions, provide reasonable protection for fish and wildlife during dry periods, while also illuminating the competing critical water supply needs exacerbated by the drought. Reservoirs in the plan area are at historic low levels, and there have been large surface water supply deficits. Surface water supply deficits resulting from the drought have led to potentially unsustainable levels of groundwater pumping in the plan area and adjacent areas served by the same groundwater sources. The drought, and the water supply responses to the drought, has also provided greater insight into how the area responds to reduced water supply. This new information, incorporated into the analyses, is useful in informing consideration of the plan amendments.

Safe Drinking Water Act: The federal Safe Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards. The United States Environmental Protection Agency (US EPA) enforces the federal SDWA at the national level. Most states, including California, have been granted "primacy" by the US EPA, giving them the authority to implement and enforce the federal SDWA at the state level. In accordance with the federal SDWA, the US EPA provides funds to states for their drinking water loan programs, conducts an annual oversight review of each state's SDWSRF program, and issues an annual program evaluation report.

Safe Drinking Water State Revolving Fund (SDWSRF): The SDWSRF provides low-interest loans, zero-interest loans, debt refinancing, principal forgiveness, and grants to public water systems for infrastructure improvements to correct system deficiencies and improve drinking water quality. Eligible projects include the planning, design, and construction of drinking water projects such as water treatment systems, distribution systems, and consolidations of two or more water systems. Eligible applicants for SDWSRF monies include publicly owned community water systems (counties, cities, and districts), privately owned community water systems (for-profit water utilities, nonprofit mutual water companies), and nonprofit or publicly owned noncommunity water systems (public school districts). The school districts identified by the author could be eligible for funds under the SDWSRF.

Drinking water grant program for schools: The State Water Board created the Drinking Water For Schools Grant Program to provide \$9.5 million in funding to improve access to, and the quality of, drinking water in public schools. The grant program awards grants to local educational agencies for the purpose of improving access to, and the quality of drinking water in public schools. The grant program gives priority to projects for schools within or serving pupils from a small disadvantaged community and projects that have a high effectiveness in increasing access to safe drinking water at schools. The school districts identified by the author could be eligible for funds under the State Water Board's schools grant program.

Ensuring that all Californians have access to safe, clean, affordable drinking water has been a priority of the Legislature for many years and will likely continue to be a top priority. There are many factors that contribute to the degradation of a community's water supply including contamination, over pumping of groundwater, and the recent drought, which reduced many communities' water supplies. AB 1490 requires the State Water Board to evaluate potential impacts of the Bay Delta Plan on the drinking water supplied to schools in disadvantaged communities. The State Water Board is the ideal agency to make such an evaluation as it has responsibility over the state's drinking water program as well as authority regarding water rights, which is a key component of implementing the Bay Delta Plan.

Related legislation:

SB 1 7th Extraordinary Session (Simitian and Steinberg, Chapter 5, Statutes of 2009). Enacted the Sacramento-San Joaquin Delta Reform Act of 2009. Required the State Water Board to develop new flow criteria for the Delta ecosystem. Established coequal goals for the Delta by providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Clean Water Action
Community Water Center
Natural Resources Defense Council
Sierra Club California

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1529 (Thurmond) – As Amended April 19, 2017

SUBJECT: Cross-connection or backflow prevention device inspectors: certification

SUMMARY: Requires certifications for cross-connection or backflow prevention device testing and maintenance that were determined by the State Department of Public Health (CDPH) to demonstrate competency to be approved California-specific certifications, and prohibits, under certain conditions, a water supplier from refusing to recognize statewide certifications that meet standards set by the State Water Resources Control Board (State Water Board). Specifically, **this bill:**

- 1) Provides that valid and current certifications for cross-connection inspection and testing or backflow prevention device inspection, testing, and maintenance that were determined by CDPH to demonstrate competency in cross-connection inspection and testing or backflow prevention device inspection, testing, and maintenance before January 1, 2016, shall be approved California-specific certifications either until the State Water Board promulgates regulations for cross-connection inspection and testing and backflow prevention device inspection, testing, and maintenance, or until January 1, 2020, whichever comes first.
- 2) Prohibits a water supplier, if contractors, building operators, building owners, or property owners are required to employ, contract with, or subcontract with a certified backflow prevention device tester or a certified cross-connection control specialist to receive water service, from refusing to recognize statewide certifications that meet standards set by regulations of the State Water Board.
- 3) Provides that nothing in the bill prohibits an agency or regulated public utility from rejecting the adequacy of a specific cross-connection or backflow prevention device inspection, test, or maintenance activity for reasons other than the identity of the certification provider.

EXISTING LAW:

- 1) Provides that the State Water Board succeeds to and is vested with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of CDPH, its predecessors, and its director for purposes of administering a drinking water program, including Cross-Connection Control by Water Users law. (Health and Safety Code (HSC) §116271 (a))
- 2) Requires the State Water Board to maintain a drinking water program. (HSC §116271 (b))
- 3) Provides that regulations adopted, orders issued, and all other administrative actions taken by CDPH, any of its predecessors, or its director, pursuant to the authorities now vested in the State Water Board shall remain in effect and are fully enforceable unless and until readopted, amended, or repealed, or until they expire by their own terms. (HSC §116271 (d))
- 4) Requires, under the California Safe Drinking Water Act, any person who owns a public water system to ensure that the system will not be subject to backflow under normal operating conditions. (Health and Safety Code (HSC) § 116555(a)(2))

- 5) Authorizes local health officers to maintain programs for the control of cross-connections by water users, within the users' premises, where public exposure to drinking water contaminated by backflow may occur. (HSC § 116800)
- 6) Authorizes local health officers to maintain programs, in cooperation with water suppliers, to protect against backflow through service connections into the public water supply, and, with the consent of the water supplier, to collect fees from the water supplier to offset the costs of implementing these programs. (HSC § 116805)
- 7) Requires that local backflow prevention programs be conducted in accordance with backflow protection regulations adopted by CDPH (now the State Water Board). (HSC § 116805) (c)
- 8) Authorizes local health officers, to assure that testing and maintenance of backflow prevention devices are performed by qualified persons, to maintain programs for certification of backflow prevention device testers. (HSC § 116810)
- 9) Authorizes the local health officer to suspend, revoke, or refuse to renew the certificate of a certification of backflow prevention device tester, if, after a hearing, the local health officer or his or her designee finds that the tester has practiced fraud or deception or has displayed gross negligence or misconduct in the performance of his or her duties as a certified backflow prevention device tester. (HSC § 116810)
- 10) Authorizes the local health officer to collect fees from certified backflow prevention device testers to offset the cost of the certification program. (HSC § 116810)
- 11) Requires the backflow prevention device tester certification standards to be consistent with the backflow protection regulations adopted by CDPH (now the State Water Board). (HSC § 116810)
- 12) Requires the water supplier to protect the public water supply from contamination by implementation of a cross-connection control program. Provides that the cross-connection control program, or any portion thereof, may be implemented directly by the water supplier or by means of a contract with the local health agency, or with another agency approved by the health agency. (California Code of Regulations (CCR), Title 17, §7584)
- 13) Requires the water supplier's cross-connection control program to include, but not be limited to, several elements including the establishment of a procedure or system for testing backflow preventers. (CCR, Title 17 §7584 (e))
- 14) Requires backflow preventers to be tested by persons who have demonstrated their competency in the testing of these devices to the water supplier or health agency. (California Code of Regulations (CCR, Title 17, § 7605(b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author's office, "The lack of guidance on acceptable private statewide certification of backflow prevention device testers has resulted in inconsistent requirements throughout the state and increased customer costs. As a result, backflow protection testers must maintain two or three separate certifications to work in California. Statewide consistency is needed regarding what certifications are acceptable. Until such time as there is a

statewide standard for cross-connection inspection and testing and backflow prevention device inspection, testing and maintenance, it is critical that we provide guidance as to which certifications are valid and recognized statewide."

Backflow: Drinking water distribution systems contain points called cross-connections where nonpotable water can be connected to potable sources. These cross-connections can provide a pathway for backflow of nonpotable water into potable sources.

Backflow is the undesirable reversal of the flow of liquid, gas, or solid into the potable water supply. Water supply systems are maintained at a pressure significant enough to enable water to flow from the tap. However, when pressure fails or is reduced, which may happen if a water main bursts, pipes freeze, or there is unexpectedly high demand on the water system such as an emergency firefighting water drawdown, water or substances from the ground, storage, or other sources may be drawn up into the system. Additionally, non-potable substances may be pushed into a potable water supply if the pressure in the downstream piping system exceeds the pressure in the potable water system. Either of these backflow conditions can enable contaminated water or substances to enter the potable water distribution system, potentially risking public health and safety.

Health risks associated with backflow: According to the United States Environmental Protection Agency (US EPA), a variety of biological and chemical contaminants have been introduced into drinking water distribution systems by cross-connections and backflow. The likelihood and severity of illness and number of people affected depend on various factors including how much of the contaminant enters the system, the dilution factor, the type of contaminant, the number of users exposed, and the health status of each person at the time of exposure. Contamination from cross-connections and backflow can occur not only where the cross-connection is located, but at sites upstream and downstream, as contaminants spread. US EPA describes the contaminants that have entered drinking water systems through backflow as including pathogenic microorganisms, pesticides, metals, synthetic and volatile organic compounds, nitrates, and nitrites.

Backflow prevention: Backflow preventers are mechanical assemblies used to prevent contaminated fluids from entering the water supply system. US EPA discusses that a wide variety of devices exists that can be used to prevent backflow from adding contaminated fluids or gases into a potable water supply system. These include air gaps, barometric loops, vacuum breakers—both atmospheric and pressure type, double check with intermediate atmospheric vent, double check valve assemblies, and reduced pressure principle devices. US EPA relates that, generally, the selection of the proper device is based upon the degree of hazard posed by the cross-connection. Additional considerations are based upon piping size, location, and the potential need to periodically test the devices to insure proper operation.

Cross-connection control and backflow regulation in California: The California Code of Regulations (CCR), Title 17, contains the fundamental components of California's regulatory requirements for cross-connections and backflow prevention. The Department of Health Services promulgated the existing cross-connection and backflow regulations in Title 17 in 1987, when that department administered the state's drinking water program. When CDPH became a stand-alone department (it had previously been under the umbrella of the Department of Health Services), it assumed responsibility for administering the drinking water, and thus the backflow prevention, programs. On July 1, 2014, the Legislature transferred the administration of the

drinking water and backflow prevention programs from CDPH to the State Water Board. The cross-connection and backflow regulations have not been updated since 1987.

Since it received responsibility for administering the drinking water program (now called the Division of Drinking Water, or DDW), the State Water Board has made great progress in updating and advancing its many programs and regulations, but it is contending with a backlog of programs and regulations that were not revised for many years. One of those outdated programs is the cross-connection control and backflow prevention regulation.

In order to better prioritize its many drinking water programs in need of updating, the State Water Board, at its February 22, 2017, meeting, discussed the consideration of a resolution to adopt a proposed prioritization list of drinking water regulations for 2017. As a result, the State Water Board adopted the prioritization of drinking water regulations and directed DDW staff to prioritize their work on drinking water regulations for calendar year 2017, including Cross-Connection Control Regulations as the sixth highest regulatory priority for the year. The Water Board predicts the rule-making process for Cross-Connection Control Regulations to begin this fall.

Certification of backflow prevention device testers: The proper testing of backflow prevention assemblies is critical to maintaining a protective cross-connection control program, preventing backflow, and properly administering safe drinking water systems. In California, regulation requires water suppliers to protect the public water supply from contamination by the implementation of a cross-connection control program. In order to ensure that qualified persons perform the testing and maintenance of backflow prevention devices, statute authorizes local health officers to maintain programs for the certification of backflow prevention device testers. Regulation also provides that the cross-connection control program, including testing backflow preventers, may be implemented directly by the water supplier or by means of a contract with the local health agency, or with another agency approved by the health agency. Per regulation, backflow preventers must be tested by persons who have "demonstrated their competency" in testing of these devices to the water supplier or health agency. All of this can be taken together to say that statute and regulation have set up a fragmented situation in which some local jurisdictions maintain a backflow prevention assembly tester certification program, but others do not.

This bill requires certifications for cross-connection or backflow prevention device testing and maintenance that were determined by CDPH, prior to January 1, 2016, to demonstrate competency to be approved California-specific certifications.

Certifying entities that have demonstrated competency: In relation to the above provision of the bill, the Committee has only been able to identify one action, which is a letter from CDPH to a certifying entity, which appears to discuss demonstrated competency. The letter, drafted by CDPH on November 8, 2011, to the American Society of Sanitary Engineering (ASSE), says the following, "The Division of Drinking Water and Environmental Management's Drinking Water Program, within the Department of Public Health (Department) has completed a review of the American Society of Sanitary Engineering's (ASSE's) proposed revisions to its document titled, *ASSE Guidelines for Cross-Connection Control Certification*. The proposed revisions... adequately address the Department's concerns described in our October 2011 letter... As a result, the Department would consider an individual having successfully completed ASSE's California-specific certification process for the testing of backflow prevention assemblies, to have demonstrated their competency in such testing to the Department."

While the Committee does not have a copy of the October 2011 letter from ASSE explaining the changes made to its program, it does have a few other letters, dated in the year 2011, from CDPH to certifying entities (ie. Northern California Backflow Prevention Association, California Rural Water Association, and ASSE) delineating the components of a certification program that would need to be included for an individual holding the certification to have "demonstrated competency." Therefore, one can ascertain which components CDPH thought necessary to include in a certification program, but the process by which CDPH evaluated the programs and which components, standards, and protocols ASSE included in the program, then and now, are unclear.

The letters do, however, state the following, "It's important to understand that the Department's position on this issue would not necessarily be binding throughout California's cross connection control industry. For example, a tester may demonstrate their competency to other agencies or the water supplier for which they'd be performing testing, or they may be testing backflow prevention assemblies for reasons unrelated to the requirements set forth by the Department for public water systems. Public water systems may impose conditions or restrictions on testers that are beyond the Department's authority or control."

It is important to note that the Legislature, through SB 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the administration of the Drinking Water Program (now DDW), including administration of the Cross-Connection Control by Water Users law, from CDPH to the State Water Board, effective July 1, 2014.

This bill additionally prohibits, under certain conditions, a water supplier from refusing to recognize statewide certifications that meet standards set by a regulation of the State Water Board.

Arguments in support: The California State Pipes Trades Council and the International Association of Plumbing and Mechanical Officials argue, "Statewide consistency is needed regarding what certifications are acceptable for cross-connection and back flow prevention device testers. This lack of guidance has resulted in inconsistent requirements throughout the state, burdening plumbers, installers, stifling competition and increasing customer costs..."

Section 60316(a) of Title 22, California Code of Regulations requires cross-connection testing and inspection be performed "by a cross-connection control specialist certified by the California-Nevada section of the American Water Works Association ["AWWA"] or an organization with equivalent certification requirements." This language is out of date because, at the time it was enacted, AWWA was the only organization providing this certification in California. There are now other organizations providing this certification, including the American Society of Safety Engineering which is the only certificate to have been reviewed and expressly recognized by the California Department of Public Health to demonstrate competency in backflow prevention testing."

Arguments in opposition: According to the Association of California Water Agencies, the California Municipal Utilities Association, the California Water Association, and the California-Nevada Section of the American Water Works Association, argue, "The only way a water system or the local health officer becomes aware of a broken or failed backflow system is when an incident has occurred that results in the contamination of the water supply leading to a public health incident or the risk of a public health incident. Thus, the proper testing of backflow

prevention assemblies is crucial to the prevention of backflow and is a cornerstone of a properly managed cross-connection control program...

Because this issue is at the heart of public health and safety with respect to drinking water systems, the decision on the selection of backflow prevention assembly testers, and the certification regulations and protocols to which they must adhere, must necessarily remain with the State Board, the local county health officer or the local public water supplier. With respect to AB 1529, the emphasis is on listing "approved" statewide certification providers (for those areas of the state where the local health officer does not maintain a local certification program), rather than statewide regulations that would encompass all certification programs and upon which those approvals will be granted."

Related legislation:

- 1) AB 1671 (Caballero). Requires the State Water Board to update its backflow protection and cross-connection control regulations on or before January 1, 2020. This bill is scheduled to be heard in the Assembly Environmental Safety and Toxic Materials Committee on April 25, 2017.
- 2) AB 1173 (Williams, 2016). Would have required, if a local health officer does not maintain a program for certification of backflow prevention device testers, the testing and maintenance of a backflow prevention device be performed by a person who has received a California-specific certification for testing backflow prevention devices from one of three listed entities or a similar certification provider deemed acceptable by the State Water Board or the local health officer. This bill was held in the Senate Environmental Quality and Committee.

Potential amendment: To clarify that water suppliers are also able to reject the adequacy of a test, the Committee may wish to amend the bills as follows:

116812 (b) ...Nothing in this section prohibits an agency, *water supplier*, or regulated public utility from rejecting the adequacy of a specific cross-connection or backflow prevention device inspection, test, or maintenance activity for reasons other than the identity of the certification provider.

REGISTERED SUPPORT / OPPOSITION:

Support

California Legislative Conference of the Plumbing, Heating, and Piping Industry
California State Pipes Trades Council
International Association of Plumbing and Mechanical Officials

Opposition

Association of California Water Agencies
California Municipal Utilities Association
California Water Association
California-Nevada Section of the American Water Works Association

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1575 (Kalra) – As Amended April 20, 2017

SUBJECT: Professional cosmetics: labeling requirements

SUMMARY: Requires ingredient disclosure on professional cosmetics. Specifically, **this bill:**

- 1) Requires, on or after January 1, 2019, a manufacturer of a professional cosmetic sold or manufactured in this state to do all of the following:
 - a) Declare the ingredients on the container label by the common or usual name of each ingredient and list in order of decreasing predominance by weight; and,
 - b) Provides its Internet Web site address on the container label with a statement directing product users to the manufacturer's Internet Web site, and post on its Internet Web site the ingredients in a standard format that is readable in an electronic format. Excludes manufacturers without a website from this requirement.
- 2) Requires the manufacturer, if one or more of the ingredients in the professional cosmetic are hazardous chemicals and are listed in the California Environmental Protection Agency (CalEPA) Department of Toxic Substances Control (DTSC) Candidate Chemical lists, to provide the following statement on the container label: "Some of these chemical ingredients may be harmful to your health. Go to the DTSC Candidate Chemical Web site at dtsc.ca.gov/SCP/CandidateChemicals.cfm for more information."
- 3) Defines "ingredient" as a chemical that has a functional or technical effect on the product, including coloring agents, but not including fragrance.
- 4) Defines "professional" as a person that has been granted a license by a state board, legal agency, or legal authority to practice in the field of cosmetology, nail care, barbering, or esthetics.
- 5) Defines "professional cosmetic" as a cosmetic product that is intended or marketed to be used only by a professional on account of a specific ingredient, increased concentration of an ingredient, or other quality that requires safe handling, or is otherwise used by a professional.

EXISTING LAW:

- 1) Considers, pursuant to the Sherman, Food Drug & Cosmetic Act (Sherman Act):
 - a) Any cosmetic to be adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to users under the conditions of use prescribed in the labeling or advertisement of the cosmetic, or under conditions of use as are customary or usual. (Health & Safety Code (HSC) § 111670)
 - b) Any cosmetic misbranded if its package form does not bear a label containing all of the following information: the name and place of business of the manufacturer, packer, or

distributor; and, an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. (HSC § 111740)

- 2) Requires, pursuant to the Safe Consumer Cosmetic Act (Cosmetics Act), a manufacturers of a cosmetic subject to regulation by the federal Food and Drug Administration to submit to (California Department of Public Health (CDPH) a list of its cosmetic products sold in California that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. (HSC § 111792)
- 3) Requires, pursuant to the federal Food, Drug & Cosmetic Act (FD&C Act), cosmetics produced or distributed for retail sale to consumers for their personal care to bear an ingredient declaration. (21 Code of Federal Regulations (CFR) 701.3)
- 4) Requires, pursuant to the federal Fair Packaging and Labeling Act , each package of household "consumer commodities" to bear a label on which there is a statement identifying the commodity, e.g., detergent, sponges, etc.; the name and place of business of the manufacturer, packer, or distributor; and, the net quantity of contents in terms of weight, measure, or numerical count. (16 CFR Parts 500, 501, 502, 503)
- 5) Establishes the Toxic Substances Control Act (TSCA) which granted the Federal Environmental Protection Agency the authority to create a regulatory framework to collect data on chemicals in order to evaluate, assess, mitigate, and control risks that may be posed by their manufacture, processing, and use. (15 United States Code § 2601 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

"According to the State Board of Barbering and Cosmetology, there are more than 129,000 licensed manicurists, and almost 53,000 licensed salon businesses, many of which provide manicure services. There are more than 312,000 licensed cosmetologists who are licensed to provide nail and hair services.

On a daily basis, for long hours, nail and hair salon professionals handle beauty care products containing potentially harmful chemicals. Many are known or suspected to cause cancer, allergies, respiratory, neurological and reproductive harm. Most cosmetologists and manicurists are of reproductive age, and therefore, are particularly vulnerable to chemical exposures.

Chemical ingredients in professional cosmetics do not have to be listed on product labels. This is in stark contrast to federal law which does require that retail cosmetics have ingredients listed on the label. This lack of transparency hampers beauty professionals' and establishment owners' ability to make informed choices about the products they use and how to protect their health. It also obstructs their ability to inform customers about ingredients used in these products. Moreover, it leaves those who suffer an allergic or other negative reaction in the dark when it comes to figuring out the culprit and the antidote to such a reaction.

Ensuring that all professional cosmetics have ingredient labels will support local, voluntary Healthy Nail Salon Recognition Programs (HNSRPs)."

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

Some potentially hazardous chemicals, the types of products they can be found in, and how they can affect a worker include:

- Acetone (nail polish remover): headaches; dizziness; and, irritated eyes, skin, and throat.
- Acetonitrile (fingernail glue remover): irritated nose and throat; breathing problems; nausea, vomiting; weakness; and, exhaustion.
- Butyl acetate (nail polish, nail polish remover): headaches; and, irritated eyes, skin, nose, mouth, and throat.
- Dibutyl Phthalate (DPB) (nail polish): nausea; irritated eyes, skin, nose, mouth, and throat. Long-term exposures to high concentrations may cause other serious effects.
- Ethyl Acetate (nail polish, nail polish remover, fingernail glue): irritated eyes, stomach, skin, nose, mouth, and throat; high levels can cause fatigue.
- Ethyl methacrylate (EMA) (artificial nail liquid): asthma; irritated eyes, skin, nose, and mouth; difficulty concentrating. Exposures while pregnant may affect fetus.
- Formaldehyde (nail polish): difficulty breathing, including coughing, asthma-like attacks, and wheezing; allergic reactions; irritated eyes, skin, and throat. Formaldehyde is also a known carcinogen on California's Proposition 65 list.
- Isopropyl Acetate (nail polish, nail polish remover): sleepiness; irritated eyes, nose, and throat.
- Methacrylic Acid (nail primer): skin burns; irritated eyes, skin, nose, mouth, and throat. At higher concentrations, this chemical can cause difficulty breathing.
- Methylene glycol (hair straighteners, nail polish): respiratory harm; allergic dermatitis; reproductive toxicant; and, irritated eyes, nose, throat, and skin.
- Quaternary ammonium compounds (disinfectant): irritated skin and nose; may cause asthma.
- Sodium hydroxide (lye) (used in various cosmetics): corrosive; causes pain, redness, burns, and blistering; can result in permanent scarring; causes eye damage; and, has also been linked to uterine fibroids.
- Toluene (nail polish, fingernail glue): dry or cracked skins; headaches; dizziness; and, numbness; irritated eyes, nose, throat, and lungs; damage to liver and kidneys; and, harm to unborn children during pregnant.
- Triphenyl phosphate (TPhP) (plasticizer in nail products): suspected endocrine disruptor.

Toluene, Formaldehyde, and DPB are sometimes referred to in the industry as the "toxic trio."

In 2016, CDPH published "Cosmetics Containing Ingredients Linked to Cancer or Reproductive Harm; Data Reported to CSCP 2009-2015," which found:

- 1) Seventy-seven unique ingredients have been reported in more than 57,000 products by almost 500 companies;

- 2) The majority of products reported (63%) were makeup. Nail products comprised 13%; skin care products 8%; and, unrelated products 6%;
- 3) Titanium dioxide, a common ingredient in pigmented products, is by far the most frequently reported ingredient (83%), followed by the anti-aging ingredient retinol/retinyl esters (5.7%), the surfactant cocamide diethanolamine (2.2%), and the preservative butylated hydroxyanisole (1.8%);
- 4) Titanium dioxide was listed by the International Agency for Research on Cancer as a possible human carcinogen based on sufficient evidence of lung cancer in rats that inhaled airborne particles of titanium dioxide;
- 5) Heavy metals (lead, arsenic, cadmium, mercury) are among the hazardous ingredients that have been reported in cosmetics products;
- 6) Not all companies are complying with reporting requirements. However, the extent of noncompliance is difficult to assess;
- 7) Fourteen companies asked to have reportable ingredients publicly listed as a "trade secret;" and,
- 8) Some cosmetics companies have reported removing ingredients from products since they began reporting pursuant to the Cosmetics Act, although CDPH has not verified the reason for removal. Among companies reporting data, 151 companies have removed at least one chemical from a total of 1,784 products.

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

Disclosing ingredients: Many employers can get information from product Safety Data Sheets (SDS). The California Division of Occupational Safety and Health's (CalOSHA) Hazard Communication Standard requires product manufacturers to provide salon owners with an SDS for each product used in the salon that may contain a hazardous chemical at 1% or more (or at 0.1% or more for chemicals that may cause cancer) or that could be released into the air above limits set by CalOSHA or the American Conference of Governmental Industrial Hygienists. The SDS explains the health risks of the product and lists precautions for worker protection. In general, the SDS must provide information about the hazards of chemicals in the product.

The challenge is that employees may request SDSs from their employer, but they are difficult to obtain and do not necessarily have all the ingredients listed. Additionally, many workers are characterized as "independent contractors" and therefore do not have the same rights under occupational safety and health law as "employees" to demand those from the salon owner.

Requiring ingredients to be listed directly on a product's label would be more efficient for providing salon workers product information, but disclosure requirements have been long fraught with opposition from the manufacturing and chemical industries. Those stakeholders have

argued on past legislative ingredient disclosure bills that consumers will be confused by long chemical names; that listing chemical names can scare consumers away from a product; and that disclosure publicizes trade secret formulas and intellectual property.

Accurate disclosure, however, is critical to knowing what is in a product, and what impacts that product can have on a professional using the product based on those ingredients.

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

Federal cosmetic regulatory requirements: Neither the federal Food and Drug Administration (FDA) nor CDPH require premarket safety testing, review, or approval of cosmetic products.

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

As it relates to labeling, cosmetics marketed in the United States, whether manufactured here or imported from abroad, must be in compliance with the provisions of the federal FD&C Act and the Fair Packaging and Labeling Act.

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

The FD&C Act requires ingredients to be identified by the names established or adopted by regulation; those accepted by the FDA as exempt from public disclosure may be stated as "and other ingredients" (21 CFR 701.3(a)). The FD&C Act exempts chemicals used as fragrances or flavoring from being identified as ingredients on the labels of cosmetic products. In recognition of that exemption, AB 1575 would not require any ingredients inside the parenthetical "fragrance" to be disclosed.

State cosmetic regulatory requirements: California has several laws governing cosmetic regulation:

California's Cosmetics Act (SB 484 (Migden), Chapter 729, Statutes of 2005) requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients

known or suspected to cause cancer, birth defects, or other reproductive harm. CDPH maintains an active, searchable database on its website available to the public which organizes all of the data collected from manufacturers under the Cosmetics Act. Anyone can search the database for a type of product; a specific product name; or, a brand or company name to get more information.

The challenge with the ingredients being disclosed to the state and not directly to the consumers is that there is a general lack of knowledge about the existence of the database, and it is unknown how widely it is used or helpful to consumers and employers and anyone else interested in ascertaining the toxicity of a cosmetic product. In addition, the database includes some carcinogenic and reproductive toxicants, but not all ingredients that could cause harm, such as skin and respiratory irritants. It is also unknown how much overlap there is with the cosmetics represented in the database and those covered under this bill.

The Sherman Act, administered by CDPH, establishes specific labeling requirements consistent with federal labeling requirements, and considers any cosmetic to be "adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to users."

It is unclear how CDPH defines "poisonous" and "deleterious" and "injurious." Generally the terms are used in reference to a substance that causes injury, illness, or death and something that is damaging or harmful. In theory, any cosmetic that contains one of the ingredients on the Candidate Chemical list— depending on dosage and how and how much is applied per the label's instructions – could be considered "adulterated" under the Sherman Act, if enforced.

Lastly, California's "Green Chemistry" law (AB 1879 (Feuer and Huffman), Chapter 559, Statutes of 2008) authorizes and requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals in consumer products and to establish a process for evaluating chemicals of concern in consumer products and their potential alternatives. Those regulations, the Safer Consumer Product regulations, are intended to evaluate certain chemicals within consumer products that are known to be of concern and for DTSC to provide input and make recommendations for safer alternatives.

DTSC developed an informational list of Candidate Chemicals based on 23 established authoritative lists, including, but not limited to, Proposition 65, the United States Environmental Protection Agency's Integrated Risk Information System, and the European Commission's candidate list of Substances of Very High Concern. A Candidate Chemical must appear on one or more of these lists and must exhibit a hazard trait and/or environmental or toxicological endpoint.

AB 1575 requires the manufacturer to disclose the ingredients of the product on the product label and on the manufacturer's website, and if one or more of the ingredients in the professional cosmetic are listed on DTSC's Candidate Chemical lists, requires the manufacturer to provide the following statement on the container label: "Some of these chemical ingredients may be harmful to your health. Go to the DTSC Candidate Chemical Web site at dtsc.ca.gov/SCP/CandidateChemicals.cfm for more information."

Who is covered under the bill?: What is unclear is how many professional cosmetic manufacturers would be covered under this bill. According to the California Safe Cosmetics Program, there are 592 cosmetic manufacturers selling cosmetic products in California, which is

based on information from the FDA's voluntary cosmetic registration system. Because the registration system is voluntary, there are likely to be more than are registered.

CDPH does not know the universe of how many manufacturers are required to comply with the Cosmetics Act. There are 488 reporting manufacturers covering 51,000 products, but there is no way of confirming all the manufacturers that should be complying and how many are actually submitting information. That is because manufacturers can claim federal trade secret status, which prevents disclosure in CDPH's database; also, CDPH lacks enforcement authority, so it cannot follow up on manufacturers who fail to submit their ingredient information.

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

The author may wish to consider requiring the labeling requirements of this bill to be consistent with those for retail products. While requiring a unique disclosure about ingredients on the Candidate Chemical list for professional cosmetics may enhance consumer awareness about a product, it deviates from the current requirements for retail product's labeling requirements. This can frustrate manufacturers of both retail and professional cosmetics that would have to comply with different mandates, and create an inconsistent standard for the same product that is simply sold in different contexts.

Healthy Nail Salon Recognition (HNSR) Program: AB 2125 (Chiu, Chapter 564, Statutes of 2016) created the HNSP by requiring DTSC, by January 1, 2018, to publish guidelines for HNSR programs voluntarily implemented by local cities and counties.

In 2010, San Francisco became the first city in the country to create a formal voluntary recognition program for salons which do not use products containing specific toxic chemicals. Created by a City ordinance, the voluntary HNSR Program is administered by the San Francisco Department of the Environment. Since 2010, Alameda, San Mateo, and Santa Clara counties and the city of Santa Monica have adopted and are implementing voluntary recognition programs that encourage salons to use less toxic nail polishes and other products. Nail salons are also required to improve ventilation and participate in trainings on best safety and health practices.

Arguably, AB 1575 would further the HNSR programs by providing critical information to salon workers about the safety of products used, which would enable those professionals using the products, and their salon managers/owners, to take steps to make their working environment safer.

Given the presence of substances in cosmetic products that cause cancer and reproductive toxicity, the heavy use of these products by women of childbearing age, the significant exposure to these products in occupational settings such as nail and beauty salons, the adverse impacts of these substances on human health, the inadequate information about the presence of these substances in products or the extent of their impacts, and the availability of alternatives to the use of these substances, it is in the best interest of professionals cosmetic consumers to have ingredient disclosure on the products they use.

Technical amendment: To address concerns about consistency between what is required for retail cosmetic products and what this bill would require for professional cosmetic products, the Committee may wish to consider striking subdivision (b) of Sec. 110371 that requires any ingredients listed on DTSC's candidate chemical list to be acknowledged with inclusion DTSC's website to the list.

Related legislation:

SB 258 (Lara, 2017). This bill requires a manufacturer of a cleaning product manufactured or sold in California on or after July 1, 2018, to disclose each ingredient contained in the product on the product label. It is pending in the Senate Labor and Industrial Relations Committee.

AB 708 (Jones Sawyer, 2016). This bill would have required a manufacturer of a designated consumer product manufactured after July 1, 2016, for retail sale in California, to disclose each ingredient contained in the product on the product label, and on the manufacturer's website. It failed on the Assembly floor.

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

ACCESS Women's Health Justice	California Latinas for Reproductive Justice
ACT for Women and Girls	California League of Conservation Voters
Adhikaar	California Product Stewardship Council
Alameda Health Consortium	Campaign for Safe Cosmetics
American Medical Women's Association	Cancer Prevention Institute of California
American Sustainable Business Council	Clean Water Action Coalition
Asian Americans Advancing Justice Los Angeles	Coalition for Clean Air
Asian Americans Advancing Justice California	Consumer Federation of California
Asian Health Services	Environmental Working Group
Black Women for Wellness	Friends of the Earth
Brandeis University	If/When/How
Breast Cancer Action	Immigrant Resettlement & Cultural Center, Inc.
Breast Cancer Prevention Partners	Korean Resource Center
California Healthy Nail Salon Collaborative	Latino Coalition for a Healthy California
California Labor Federation	Local Hazardous Waste Management Program, King County (Washington State)

Marin Asian Advocacy Project of
MarinLink
Mothering Justice
National Center for Health Research
National Employment Law Project
OCA East Bay
Physicians for Social Responsibility, Los
Angeles
Physicians for Social Responsibility, San
Francisco Bay Area
Politics Beauty, Inc.

Positive Women's Network
Progressive Vietnamese American
Organization
Restaurant Opportunities Center of Los
Angeles
Silent Spring Institute
Southeast Asia Resource Action Center
Women's Foundation of California
Women's Voices for the Earth
Worksafe

Opposition

American Chemistry Council
Association of Food, Beverage and Consumer Product Companies
California Chamber of Commerce
California Manufacturers and Technology Association
Personal Care Products Council

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1605 (Caballero) – As Amended April 18, 2017

SUBJECT: Maximum contaminant levels: nitrate: replacement water

SUMMARY: Provides legal relief for signatories participating in a state program to provide drinking water. Specifically, **this bill:**

- 1) Defines "replacement water" as water that has been provided to persons or communities that meets drinking water standards and may include, but is not limited to, bottled water, water treated by in-home treatment units, water treated by wellhead treatment units, or surface water supplies that are provided in exchange for groundwater supplies.
- 2) Exempts a person or entity who is providing replacement water to as a substitution for drinking water that exceeds the maximum contaminant level (MCL) for nitrate in groundwater from civil liability for causing pollution or a nuisance, public or private, to groundwater; liability for negligence; or, liability for trespass under common law if all of the following conditions are met:
 - a) The person or entity participates in an activity that has been authorized by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Board (Regional Water Board) pursuant to a replacement water settlement agreement and the State Water Board or Regional Water Board retains oversight and involvement;
 - b) The person or entity is subject to waste discharge requirements or a conditional waiver; and,
 - c) The person is a signatory to a replacement water settlement agreement with the State Water Board or Regional Water Board.
- 3) Considers a person or entity to be participating in an activity that has been authorized by the State Water Board or Regional Water Board pursuant to a replacement water settlement agreement if the person or entity is doing any one of the following actions:
 - a) Providing replacement water;
 - b) Contributing to the cost of providing replacement water into a mitigation fund; or,
 - c) Participating in an alternative compliance project or program that has been authorized by the State Water Board or Regional Water Board in its water quality control plan.
- 4) Applies the provisions of this bill for the duration of the applicable settlement agreement.

EXISTING LAW:

- 1) Establishes as the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)
- 2) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels, or MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health & Safety Code § 116270, et seq.)
- 3) Establishes MCLs for the various forms of nitrate. (California Code of Regulations § 63341)
- 4) Establishes legal responsibility for a person's willful acts, including an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person. (Civil Code § 1714)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"AB 1605 would assist those who voluntarily provide alternative drinking water, participate in an alternative compliance project or program, or contribute to a fund to pay for alternative drinking water for those whose maximum contaminant level (MCL) exceeds the drinking water standard for nitrate.

In order to address the issue, some growers and landowners have already voluntarily provided alternative drinking water, participated in an alternative compliance project or program, or contributed to a fund to pay for alternative drinking water for those whose MCL exceeds the drinking water standard for nitrate. However, their participation may expose them to potential litigation or enforcement actions. By providing liability coverage it will facilitate greater and timelier participation by growers and landowners who fear participation being viewed as an admission that they are responsible for exceedances which could open them to future litigation or enforcement actions.

AB 1605 would extend liability coverage to pollution and nuisance under the Water Code and the Civil Code, negligence under Civil Code section 1714, and common law trespass."

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

Nitrates: Nitrate is commonly used in fertilizers because plants need nitrates to live and grow. Nitrite comes from the same sources as nitrate. Once consumed, nitrate is converted into nitrite in the body. Nitrogen is applied to cropland in the form of synthetic fertilizers or as animal manure. The nitrogen in these fertilizers transforms to nitrate and is carried to groundwater by the percolation of water through the soil column, any time water from irrigation or rainfall percolates below the root zone.

The problem with nitrates is that nitrite can interfere with the ability of red blood cells to carry oxygen to the tissues of the body, producing a condition called methemoglobinemia. The greatest threat is to infants, whose immature stomach environment enables conversion of nitrate to nitrite, which is then absorbed into the blood stream. The effects of nitrite are often referred to as the "blue baby syndrome" because their bodies are not absorbing enough oxygen. High nitrate levels may also affect the oxygen-carrying ability of the blood of pregnant women.

Legal limits on nitrates: The current state MCLs for nitrates were adopted by the California Department of Health Services in 1994 based on the US EPA's MCLs promulgated in 1991.

The Office of Environmental Health Hazard Assessment (OEHHA) established its public health goals (PHGs) for nitrate and nitrite in 1997. The PHGs, based on methemoglobinemia in infants, are 45 parts per million (ppm) for nitrate (equivalent to 10 ppm nitrate-nitrogen), 1 ppm for nitrite-nitrogen and 10 ppm for joint nitrate/nitrite (expressed as nitrogen) in drinking water. The PHGs are the same as the drinking water MCLs. Typically PHGs inform the development of MCLs. In this case, the MCL predated the PHG.

Causes of nitrate contamination: High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be locally important.

Where is nitrate contamination?: Nitrate in drinking water is widespread in numerous areas of the state. PWSs, because they are regulated by the State Water Board (unlike private wells), are required to analyze drinking water sources for nitrates and report the results to the State Water Board's Division of Drinking Water. Among regulated contaminants detected at levels greater than their MCLs in California, nitrates rank high.

A 2012 University of California at Davis (UC Davis) report, "Addressing Nitrate in California's Drinking Water," indicated that about 2.6 million people in the four-county Tulare Lake Basin and the Monterey County portion of the Salinas Valley rely on groundwater for drinking water, including those in some of the poorest communities in California. The report found that nitrate contamination is increasing and currently poses public health concerns for about 254,000 people in the study area.

Assembly Bill 2222 (Caballero, Chapter 670, Statutes of 2008) required the State Water Board to submit to the Legislature a report that identified, among other things, communities that rely on contaminated groundwater as a primary source of drinking water. The resultant report, "Communities That Rely on a Contaminated Groundwater Source For Drinking Water," which was released in January 2013, identified 682 community PWSs that rely on contaminated groundwater as a primary source of drinking water. These community water systems serve nearly 21 million people.

According to this report, most of the community PWSs with violations of drinking water standards are located in the Southern California Inland Empire, the east side of San Joaquin Valley, the Salinas Valley, and the Santa Maria Valley. The findings from this report suggest that drinking water contamination in California disproportionately affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source.

In the Salinas Valley, 58% of raw groundwater has been found to be contaminated with nitrates, along with other contaminants including arsenic. Nitrate levels in the groundwater are particularly high south of Salinas, with levels as high as 690 ppm.

The Legislature recognized the need to address the nitrates in this region and included \$500,000 in the 2014-15 Budget Act for the Monterey County Regional Water Management Group to develop an integrated plan to address drinking water and wastewater needs of the disadvantaged communities in the Salinas Valley with a specific focus on nitrate contamination in drinking water. That project is ongoing.

An additional two million Californians rely on groundwater from either a private domestic well or a smaller groundwater-reliant system that is not regulated by the State. Most of these residents lack an assessment of their water because they are not required to test its quality.

Costs for nitrate cleanup: The 2012 UC Davis nitrate report calculated that up to \$36 million per year is needed for safe drinking water solutions to address nitrate contamination. The report elaborated that, "Costs for safe drinking water solutions to nitrate contamination in the Tulare Lake Basin and Salinas Valley are roughly \$20 and \$36 million per year for the short- and long-term solutions, respectively. About \$17 to \$34 million per year will be needed to provide safe drinking water for 85 identified community public and state small water systems in the study area that exceed the nitrate drinking water MCL (serving an estimated 220,000 people). The annualized cost of providing nitrate-compliant drinking water to an estimated 10,000 affected rural households (34,000 people) using private domestic wells or local small water systems is estimated to be at least \$2.5 million for point-of-use treatment for drinking use only. The total cost for alternative solutions translates to \$80 to \$142 per affected person per year, \$5 to \$9 per irrigated acre per year, or \$100 to \$180 per ton of fertilizer nitrogen applied in these groundwater basins."

Nitrate conundrum: Nitrate contamination is a long-recognized historic problem, and pinning responsibility for the historic contributions on the appropriate responsible parties is challenging. Because water flows, nitrates can move from one water table to another, and investigating the point source for the pollution, over time, and over changes in landowners and fertilizer uses, is very complicated. There have been numerous reports recommending solutions and legislative efforts to codify those and other ideas, but solutions are expensive, political, and controversial. AB 1605 is proposing one solution to protect California growers and is intended to shield the participants who willingly want to work out a solution to provide clean drinking water from legal constraints.

State Water Board settlement with Salinas Valley growers: On April 6, 2017, the State Water Board announced a temporary program to produce a replacement drinking water plan for Salinas Valley residents whose groundwater supplies are contaminated with unsafe levels of nitrate. The program will be organized and funded by the members of the Salinas Basin Agricultural

Stewardship Group, a coalition of local agricultural owners and operators, and it will run for up to two years while the parties work toward permanent solutions to respond to the challenges of nitrate accumulation in the Salinas basin groundwater. The temporary program, also known as the Interim Replacement Water Settlement Agreement (Agreement), covers small water systems and some domestic wells used by about 850 residents in the rural area.

The State Water Board's Office of Enforcement and the Central Coast Regional Water Quality Control Board are suspending their current replacement water enforcement actions against parties that join the stewardship group for as long as two years while this new Agreement is instituted. Landowners who wish to become a member of the stewardship group are still able to join. Furthermore, the goal of the Agreement is for the Salinas Basin Agricultural Stewardship Group and State Water Board to work cooperatively towards the development and implementation of a funding mechanism and solutions for the provision of long-term replacement water.

Goals of this bill: The Salinas Basin Agricultural Stewardship Group and its members deny any responsibility or liability for the nitrate contamination claims, but have been afforded the opportunity by the State Water Board to provide replacement drinking water to certain systems and to individual wells impacted by nitrate levels above the MCL, on the terms and conditions provided by the Agreement.

The goal of AB 1605 is to provide relief from third party lawsuits to encourage growers to come to the table and sign onto the Agreement.

The Committee may wish to amend the bill to clarify that the legal immunity provided by the bill is limited to the growers who are signatories to this specific Agreement.

It is important to note that legislation is not necessary to effectuate the terms of the Agreement.

Arguments in support: Valley Ag Water Coalition asserts that AB 1605 is a narrowly-written bill that addresses nitrate contamination of groundwater. AB 1605 would provide that whenever specified persons provide replacement water that meets or exceeds primary drinking water standards that they will not be subject to liability for negligence or trespass.

Arguments in opposition: The Center for Food Safety argues that the bill would "Shield polluters from liability for the effects of their pollution, rendering meaningless limits and waste discharge requirements set by the State Water Board. Further, they state that the bill simultaneously strips thousands of Californians of their legal rights to protect themselves, including those protected by statute."

Sierra Club California argues that as the Sustainable Groundwater Management Act (SGMA) will require agencies to address contamination issues, removing the ability for local agencies to sue may limit enforcement abilities for agencies under SGMA, and will make their jobs that much harder.

Technical amendments: The Committee may wish to amend the bill to specifically reference the Interim Replacement Water Settlement Agreement as follows:

HSC § 13366.5. (a) A person or entity providing replacement water in accordance with this chapter to address drinking water that exceeds the maximum contaminant level for nitrate in groundwater shall not be deemed to have caused pollution or a nuisance, public or private, to groundwater under Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or this division, be liable for negligence under Section 1714 of the Civil Code, or be liable for trespass under common law if all of the following apply:

~~(1) The person or entity participates in an activity that has been authorized by the state board or regional board pursuant to a replacement water settlement agreement and the state board or regional board retains oversight and involvement.~~

~~(2) The person or entity is subject to waste discharge requirements or a conditional waiver adopted pursuant to Section 13263 or 13269.~~

~~(3) (1) The person or entity is a signatory to a replacement water settlement agreement the Interim Replacement Water Settlement Agreement with the state board or regional board that became effective on March 29, 2017 and is doing one of the following actions, including, but not limited to:~~

~~(b) A person or entity is deemed to be participating in an activity that has been authorized by the state board or regional board pursuant to a replacement water settlement agreement for the purposes of this section through any one of the following actions:~~

~~(1) (A) Providing replacement water.~~

~~(2) (B) Contributing to the cost of providing replacement water into a mitigation fund.~~

~~(3) (C) Participating in an alternative compliance project or program that has been authorized by the state board or regional board in its water quality control plan.~~

~~(e) (b) This section applies for the duration of the Interim Replacement Water Settlement Agreement that became effective on March 29, 2017, but shall not exceed two years from the commencement date of the Interim Replacement Water Settlement Agreement.~~

Double referral: Should AB 1605 be approved by the Assembly Environmental Safety & Toxic Materials Committee, it will be referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Almond Alliance of California
 Association of California Egg Farmers
 California Association of Wheat Growers
 California Bean Shippers Association
 California Grain & Feed Association
 California Pear Growers Association
 California Seed Association
 Salinas Basin Agricultural Stewardship Group, LLC
 Valley Ag Water Coalition

Opposition

California Coastkeeper Alliance
California League of Conservation Voters
Center for Food Safety
Consumer Attorneys of California
Environmental Justice Coalition for Water
Natural Resources Defense Counsel
Sierra Club California
The Otter Project

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1645 (Muratsuchi) – As Amended April 17, 2017

SUBJECT: Hydrogen fluoride: notice of use: substitution

SUMMARY: Requires a refinery that handles, stores, or maintains more than 250 gallons of hydrogen fluoride to, if possible, convert to a known, significantly less hazardous substitute by January 1, 2020. Specifically, **this bill:**

- 1) Requires any refinery that, at any time, handles, maintains, or stores more than 250 gallons of hydrogen fluoride, including hydrofluoric acid and modified hydrofluoric acid, to, if possible, convert to a known, and significantly less hazardous substitute by January 1, 2020.
- 2) Prohibits a refinery that is located within 2 miles of a residential dwelling to cease handling, maintaining, or storing hydrogen fluoride, hydrofluoric acid, and modified hydrofluoric acid by January 1, 2020, if it is not possible for the refinery to convert to a known, significantly less hazardous substitute for hydrogen fluoride, hydrofluoric acid, and modified hydrofluoric acid.

EXISTING LAW:

- 1) Requires the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous waste in California. (Health and Safety Code (HSC) § 25100 et. seq.)
- 2) Requires DTSC to adopt regulations that 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 a chemical of concern. (HSC § 25253)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "In 1991, the South Coast Air Quality Management District (SCAQMD) adopted Rule 1410 in order to minimize the possibility of harm to the public due to an accidental release of hydrogen fluoride (HF). Rule 1410 banned the use of HF after 1998 at refineries within the SCAQMD jurisdiction and immediately put into place safeguards and measures to protect the public. However, the rule was successfully challenged and blocked by the courts in 1992, due to a lack of public notice.

Two years ago, an explosion at the Torrance refinery injured four workers and damaged equipment, forcing a shutdown of the refinery and raising the concerns of residents living in the surrounding area. AB 1645 was introduced at the request of the community in the South Bay and will restrict the use of Hydrofluoric Acid in California."

Hydrofluoric acid (HF): HF is an extremely hazardous material. Human contact with this acid can lead to severe burns of the skin or lungs (if inhaled), and death can result from significant exposure if not immediately and adequately treated. HF is a chemical compound used in

petroleum alkylation. The petroleum alkylation process, produces alkylate, which is used for high octane gasoline for “anti-knock” properties. Upon contact with moisture, HF converts to hydrofluoric acid, which is highly corrosive and toxic. Upon release, the acid vaporizes and forms a toxic cloud that can travel close to the ground with potentially lethal concentrations.

Hydrofluoric Acid Alkylation/Modified Hydrofluoric Acid Alkylation: HF alkylation was developed in the 1940’s and practiced worldwide for the manufacture of high octane alkylate for use in gasoline blending. There are a total of 48 HF alkylation units installed at refineries in the United States. Modified Hydrofluoric Acid (MHF) alkylation was developed as a safety enhancement for existing hydrofluoric acid alkylation units. Through the use of an additive, the volatility of HF is suppressed which increases the safety of these units and reduces the offsite impact from a potential leak. There are currently four units in the United States that employ MHF. Only two refineries in California use HF or MHF, they are the Torrance Refining Company in Torrance and the Valero Wilmington Refinery in Wilmington.

Alternatives to HF: In 2016, the SCAQMD released a study, by Norton Engineering Consultants, that reviewed and evaluated commercially available options for replacing current HF alkylation units. The study found that, "Sulfuric Acid Alkylation and Solid Acid Alkylation are the two options that have shown enough commercial development to support the conversion of an existing HF Alkylation Unit, although Solid Acid Alkylation technology is still in the early phases of commercial implementation, with less than one year of runtime achieved on a single operating plant in China (other units are currently in design). Sulfuric Acid Alkylation is a well-established technology with many years of operating experience and established technology providers. Changing an alkylation unit from HF to sulfuric acid will greatly reduce the potential for an acid vapor cloud to be formed upon release to the atmosphere. However, there will be a significant increase in acid transportation by rail or roadway to bring concentrated sulfuric acid into the refinery, and remove spent acid for off-site regeneration. Based on an extensive literature review and discussions with technology providers, there is no known reference for an HF or MHF Alkylation unit that has been converted to Sulfuric Acid Alkylation. The conversion of a HF or MHF to Sulfuric Acid or Solid Acid Alkylation unit will be an expensive undertaking, with an estimate for total installed cost in the \$100 million range."

SCAQMD Rule 1410: In 1991, the SCAQMD Governing Board adopted Rule 1410 to phase out HF by January 1, 1998, with interim control measures. Ultramar Refinery (Valero) filed a lawsuit challenging the SCAQMD’s authority to adopt the rule and compliance with the California Environmental Quality Act (CEQA). The SCAQMD’s authority to adopt the rule was upheld. A procedural error in circulating the CEQA document resulted in the court invalidating the Rule. The Rule was not further pursued because Mobile Refinery (Torrance Refinery) entered into a court consent decree that required the phase out of HF by 1997, but permitted the refinery to commit to modified HF by December 31, 1994, only if demonstrated that it would not form a dense vapor cloud upon release.

New action on SCAQMD Rule 1410: On, April 1, 2017, the SCAQMD’s Refinery Committee held an investigative hearing to help inform the SCAQMD’s effort to reduce air pollution and improve safety at the Torrance refinery. The SCAQMD announced it will develop or amend three refinery regulations this year to reduce air pollution in the region, specifically the regulations would: provide additional requirements to reduce planned and unplanned flaring; add requirements for refineries to monitor air quality at their fence line and/or in the nearby community to better assess potential exposure; and, add a requirement for the two refineries that

use modified hydrofluoric acid to phase out the highly toxic chemical. The SCAQMD held a workgroup meeting on proposed Rule 1410, hydrogen fluoride storage, and use at petroleum refineries, on April 19, 2017. The target goal is for the SCAQMD to have proposed Rule 1410 before its Governing Board by December 2017.

Green Chemistry: The California legislature passed the Green Chemistry Law in 2008. The law authorizes and requires DTSC to adopt regulations to identify and prioritize chemicals in consumer products. When ingredient toxicity is considered in the product development stage, concerns can be addressed more effectively. This approach results in safer ingredients and designs, and provides opportunities for California industry to once again demonstrate its innovative spirit by making safer products that meet consumer demand throughout the world. In compliance with the Green Chemistry Law, DTSC adopted the Safer Consumer Products regulations on October 1, 2013. The goals of the regulatory program are to: reduce toxic chemicals in consumer products; create new business opportunities in the emerging safer consumer products industry; and, help consumers and businesses identify what is in the products they buy for their families and customers.

Balancing the production from a petroleum refinery with hazards associated with operating a facility is a complex undertaking. The Legislature has taken an interest in finding safer alternatives to toxic ingredients with the passage of the Green Chemistry Law. AB 1645 seeks to enhance the safety of communities near refineries by requiring petroleum refineries to use a safer alternative to HF.

Related legislation:

AB 1759 (Bonta, 2016). Would have required businesses that use HF to use safer alternatives and would have required specific notification requirements for facilities within a specified zone of the business using HF. The bill was held in the Assembly Natural Resources Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Action Now
American Veterans (AMVETS)
Apostolic Faith Center
California Communities Against Toxics
California Kids IAQ
California Safe Schools
Coalition For A Safe Environment
Community Dreams
Del Amo Action Committee
EMERGE
NAACP- San Pedro-Wilmington Branch # 1069
San Pedro & Peninsula Homeowners Coalition
Sierra Club California
Society For Positive Action
St. Philomena Social Justice Ministry

Torrance Refinery Action Alliance
Wilmington Improvement Network
Five individuals

Opposition

American Chemistry Council
California Chamber of Commerce
California Independent Oil Marketers Association
California Independent Petroleum Association
California Manufacturers & Technology Association
California State Association of Electrical Workers
California State Pipe Trades Council
Chemical Industry Council of California
Industrial Environmental Association
International Brotherhood of Boilermakers
National Association of Chemical Distributors
State Building and Construction Trades Council, AFL-CIO
Western States Petroleum Association

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1646 (Muratsuchi) – As Introduced February 17, 2017

SUBJECT: Hazardous materials: risk management plans: petroleum refineries

SUMMARY: Requires the Risk Management Plan (RMP) of a petroleum refinery to be posted on the internet and include a system of automatic notification of residents living within 5 miles of a petroleum refinery. Specifically, **this bill:**

- 1) Requires the RMP of a petroleum refinery to post the RMP on the internet site of the Office of the Secretary of the California Environmental Protection Agency (CalEPA) or the Unified Program that has jurisdiction over the petroleum refinery.
- 2) Requires the RMP of a petroleum refinery, in addition to any other requirements under law or regulation, to include: a system of automatic notification for residents who live within a 5-mile radius of the petroleum refinery that uses modern communication processes; an audible alarm system that can be heard within a 10 mile radius of the petroleum refinery; and, an emergency alert system for schools, public facilities, hospitals, and residential care homes that are located within a 10 mile radius of a petroleum refinery.
- 3) Requires a petroleum refinery to implement the automatic notification systems for residents, schools, public facilities, hospitals, and residential care homes no later than January 1, 2019.

EXISTING LAW:

- 1) Requires a business to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material if the business meets certain criteria. (Health and Safety Code (HSC) § 25507 (a))
- 2) Requires an administering agency, within 15 days of determining that an RMP is complete, to make the RMP available to the public for review and comment for at least 45 days. The administering agency shall distribute a notice of the public's right to review the RMP and place the notice in a local newspaper, on the administering agency's website, and to interested persons and organizations via the mail. (HSC § 25535.2)
- 3) Defines an "administering agency" as a unified program agency. (HSC § 25532 (b))
- 4) Requires the owner or operator of a stationary source that is required to develop and implement an RMP to review and update the RMP at least once every five years and submit it to the United States Environmental Protection Agency and to the Unified Program Agency. (CCR Title 19, Division 2, Chapter 4.5, Section 2745.10)
- 5) Requires an RMP to be made available to the public, except for offsite consequence analysis data. Requires the administering agency to insure that any member of the public has access, by appointment, to a copy of the offsite consequence analysis data. Allows a member of the public to read, but not remove, reproduce, print, scan, or image the documents relating to the offsite consequence analysis data. (CCR Title 19, Division 2, Chapter 4.5, Section 2775.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1646 will require the maintenance of a publicly accessible community alert plan which includes notification to residents for emergencies by various methods, including, but not limited to: reverse (9-1-1), text, e-mail and Public Service Announcements. Additionally, it requires the maintenance of a public alert system including, but not limited to, alarms and sirens to alert the public in the case of emergency. The alert plan also contains guidelines on how far those notifications must be heard. At this time, there is no requirement for community alerts by private industry or public entities (other than nuclear power plants). A number of locales are implementing alert systems of varying types. These systems are generally run by local enforcement or the local fire department.

It is generally held that the most comprehensive alert system in the nation is the Community Warning System in Contra Costa County. This system was developed and built by a non-profit group (Contra Costa County "CAER" Group, Inc.) and then gifted to the County of Contra Costa. This system was first developed for hazardous material releases and now is an all hazard alert and warning system. The system is designed so that if there is an incident at one of the four refineries in Contra Costa County: Dow Chemical, Eco Services, and K2 Pure, with a push of a button a number of mechanisms are activated to alert and warn the community. Some of the tools currently used within this warning system include: sirens, a telephone emergency notification system (Reverse 9-1-1) and cell phone registry, activation of the Emergency Alert System, the National Weather Service sending alerts over weather radios, text messages, e-mails, and Social Media. This system is operated by the Sheriff's Office, Emergency Services Division and is funded by fees from the Hazardous Materials Business Plan Program."

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

- 1) Hazardous Materials Release Response Plans and Inventories (Business Plans);
- 2) California Accidental Release Prevention (CalARP) Program;
- 3) Underground Storage Tank Program;
- 4) Aboveground Petroleum Storage Act;
- 5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; and,
- 6) California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

State agencies involved in the implementation of the Unified Program are responsible for setting program element standards, working with CalEPA to ensure program consistency, and providing technical assistance to the CUPAs. The following state agencies are involved with the Unified Program:

- 1) CalEPA: The Secretary of the CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying Unified Program Agencies (UPAs). CUPAs are accountable for carrying out responsibilities previously handled by approximately 1,300 different state and local agencies.

- 2) Governor's Office of Emergency Services (Cal OES): The Cal OES evaluates and provides technical assistance for the Hazardous Material Release Response Plan (Business Plan) and the Area Plan Programs.

Hazardous Materials Business Plan (HMBP) program: The HMBP was established in 1986. Its purpose is to prevent or minimize the damage to public health and safety and the environment from a release or threatened release of hazardous materials. It also satisfies community right-to-know laws. This is accomplished by requiring businesses that handle hazardous materials to inventory their hazardous materials, develop a site map, develop an emergency plan, and implement a training program for employees.

California Accidental Release Prevention (CalARP) program: CalARP was implemented on January 1, 1997 and replaced the California Risk Management and Prevention Program (RMPP). The purpose of the CalARP program is to prevent accidental releases of substances that can cause serious harm to the public and the environment, to minimize the damage if releases do occur, and to satisfy community right-to-know laws. This is accomplished by requiring businesses that handle more than a threshold quantity of a regulated substance listed in the regulations to develop a RMP. An RMP is a detailed engineering analysis of the potential accident factors present at a business and the mitigation measures that can be implemented to reduce this accident potential. The RMP contains safety information, a hazard review, operating procedures, training requirements, maintenance requirements, compliance audits, and incident investigation procedures.

The CalARP program is implemented at the local government level by CUPAs and is designed so that the CUPAs work directly with the regulated businesses. The CUPAs determine the level of detail in the RMPs, review the RMPs, conduct facility inspections, and provide public access to most of the information. Confidential or trade secret information may be restricted.

Current regulatory changes on refinery safety: Cal OES, in 2016, proposed regulations governing the CalARP Program for petroleum refineries. The regulatory proposal sets safety performance standards for refinery employers and ensures that those standards are met through improvements in transparency, accountability, worker participation, and enforcement.

Following a chemical release and fire at the Chevron refinery in Richmond, California, on August 6, 2012, the Governor's Interagency Working Group on Refinery Safety prepared a report (Governor's Report) raising concerns and recommendations about the safety of California's oil refineries. The Governor's Report recommended revisions to the CalARP Program regulations. The proposed regulations implements the recommendations of the Governor's Report and other CalARP Program elements that safety experts have learned over the past two decades are essential to the safe operation of a refinery and include: applying a hierarchy of controls to implement first- and second-order inherent safety measures; conducting damage mechanism reviews; applying rigorous safeguard protection analyses; integrating human factors and safety culture assessments into safety planning; involving front-line employees in decision-making; conducting root- cause analysis following significant incidents; and performing comprehensive process hazard analyses. Some refineries operating in California have adopted many of these practices over the past decade, with significant improvements in safety performance; however, the industry continues to experience significant upset events.

These regulations are still in the rulemaking process and are on target to be finalized in 2017. It is important to note, while these regulations regarding refinery safety are thorough, they do not contain any provisions for notifying the public in the event of an accident.

Public review of RMPs: This bill is requiring all petroleum refineries to post their RMPs on the internet. Since September 11, 2001, there has been concern about publicly releasing information about various infrastructure in this country including information regarding petroleum refineries. Current regulations require an administering agency to make the RMP available to the public. This information is not posted to the internet, instead the administering agency allows the public to view the RMP. This public review is generally done when an RMP is completed and has been reviewed by the administering agency. The statute could be clarified to provide better direction to the administering agencies to ensure that the public does have access to these RMPs, other than when an RMP is finalized.

The author and committee may wish to consider strengthening the statute regarding the administering agencies requirement to make the RMP available to the public instead of requiring the RMP to be posted on the internet.

California Emergency Alert System Plan (EAS Plan): The Emergency Alert System (EAS) is a national public warning system that requires TV and radio broadcasters, cable television systems, wireless cable systems, satellite digital audio radio service (SDARS) providers, direct broadcast satellite (DBS) service providers, and wireline video service providers to offer to the President the communications capability to address the American public during a national emergency. The system also may be used by state and local authorities to deliver important emergency information such as AMBER (missing children) alerts and emergency weather information targeted to a specific area. The State of California has adopted a state EAS Plan that serves three basic purposes: provides a framework of how the Governor, the National Weather Service (NWS), and authorized local government entities can provide emergency messages affecting a large area, multiple areas, or the entire area of the state; provides guidance for EAS participants in the use of the Emergency Alert System, both voluntarily for state and local emergencies and in the event of a national alert from the President of the United States (EAS Participants include broadcasters, cable TV operators, and public safety officials); and, provides a framework for how emergency warning centers and the broadcast community can work together to ensure that the residents of California can receive timely emergency information to take protective actions to save lives and property.

In California, the EAS can be used for warnings of an immediate emergency situation, such as severe thunderstorms or tornadoes, potential emergency situation (such as a weather forecast), evacuations of areas due to an incident (such as a hazardous spill), or instructions to shelter in place, and any other events requiring the public to take immediate protective actions. Law enforcement is permitted to issue AMBER Alerts to aid in the recovery of abducted children. The decision to activate the EAS is the responsibility of local governments in situations that are essentially local in nature, as contrasted to those that are state, regional (several states), or national in scope.

The California EAS Plan is not specific to petroleum refineries and it may not reach the system sensitive populations as contemplated within AB 1646. However, it is important to ensure that whatever notification and alarm system is developed for refineries is consistent with the California EAS Plan. The author and committee may wish to further clarify this.

Technical/clarifying amendments:

On page 2, delete lines 3-7 inclusive and insert:

25536.6 (a) An administering agency shall make the RMP of a petroleum refinery available to the public at the administering agency's office during normal business hours or by appointment, or both, consistent with Section 2775.5 of Title 19 of the California Code of Regulations, as it read on January 1, 2017.

On page 2, on lines 19 and 20, strike out "~~10-mile radius~~" and insert:

10-mile radius

On page 3, between lines 3 and 4, insert:

(d) An administering agency, in reviewing the RMP of a petroleum refinery, shall ensure that the system of automatic notification and the audible alarm system required pursuant to paragraphs (1) and (2) of subdivision (b) are consistent with the State of California Emergency Alert System Plan.

AB 1646 is in response to community concerns about the safety of refineries that operate in close proximity to homes, schools, businesses, hospitals, and other sensitive populations. This bill is intending to require a community alert system to all communities that live near refineries. There is a community alert system in Contra Costa County and this bill would ensure that all communities in the state are protected by a similar alert system.

REGISTERED SUPPORT / OPPOSITION:**Support**

Action Now
American Veterans (AMVETS)
Apostolic Faith Center
California Communities Against Toxics
California Kids IAQ
California Safe Schools
Coalition For A Safe Environment
Community Dreams
County of Los Angeles
Del Amo Action Committee
EMERGE
NAACP- San Pedro-Wilmington Branch # 1069
San Pedro & Peninsula Homeowners Coalition
Society For Positive Action
St. Philomena Social Justice Ministry
Wilmington Improvement Network

Opposition

American Chemistry Council

California Chamber of Commerce
California Manufacturers & Technology Association
Western States Petroleum Association

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1663 (Cristina Garcia) – As Amended April 18, 2017

SUBJECT: Lead-acid batteries

SUMMARY: Amends The Lead-Acid Battery Recycling Act of 2016 (AB 2153, Chapter 666, Statutes of 2016) to clarify provisions related to an out-of-state lead-acid battery manufacturer's financial responsibilities. Specifically, **this bill:**

- 1) Modifies the definition of "manufacturer" under the Lead-Acid Battery Recycling Act of 2016 (Act) to include a manufacturer, if there is not a person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state, who imports the lead-acid battery into the state for sale or distribution. Subjects that person to the jurisdiction of the state with respect to a lead-acid battery if the person is a retailer engaged in business in this state.
- 2) Authorizes a person who manufactures a lead-acid battery and is not subject to the jurisdiction of the state and who agrees in writing with the importer of that lead-acid battery to pay the manufacturer battery fee imposed on behalf of the importer.
- 3) Authorizes a person who manufactures lead-acid batteries and who pays the manufacturer battery fee on behalf of an importer to be credited for that payment if the person does all of the following:
 - a) The person submits to the jurisdiction of the state for purposes of the fees imposed under this article and registers with the Board of Equalization (BOE) to pay and remit the manufacturer battery fee; and,
 - b) The person provides to the purchaser a statement on the invoice, contract, or other record documenting the transaction that includes the following information:
 - i) The person's manufacturer account number with the BOE;
 - ii) An identification of the lead-acid battery or batteries sold that will be subject to the manufacturer battery fee; and,
 - iii) A statement that the person will pay the manufacturer battery fee to the state on behalf of the importer.
 - c) The person retains records sufficient to document that the lead-acid battery for which the person has elected to pay the manufacturer battery fee was delivered for retail sale in California; the identity of the purchaser of that battery; and, that the statement was provided to the purchaser of the battery in a timely manner. Requires the person to retain these records for a period of no less than three years and to make the records reasonably available to the BOE upon request.

- 4) Relieves a purchaser of a lead-acid battery who receives a timely statement from a manufacturer, and any subsequent purchaser of that battery, from afore described obligations on the sale of that battery, provided that the manufacturer remits payment of the manufacturer battery fee to the state for the sale of that battery. Requires a statement to be considered timely if it is issued before the manufacturer bills the purchaser for the lead-acid battery, within the manufacturer's normal billing and payment cycle, before delivery of the battery to the purchaser, or before the date on which a return would be due.
- 5) Authorizes an importer who has paid the manufacturer battery fee for a lead-acid battery and who subsequently receives an untimely statement that the fee has been paid for that battery to file a claim for a refund for any overpaid fees.
- 6) Authorizes the BOE to disclose the name, address, account number, and account status of a person registered with the BOE to pay the manufacturer battery fee.
- 7) Requires any manufacturer battery fees remitted pursuant to the Act to be credited to the account of the manufacturer remitting those fees to the BOE and shall be credited against amounts owed by the manufacturer to the state pursuant to a judgment or determination of liability or any other law for removal, remediation, or other response costs relating to a release of a hazardous substance from a lead-acid battery recycling facility.

EXISTING LAW:

Pursuant to the Act:

- 1) Requires manufacturers of lead-acid batteries to collect a refundable deposit on the sale of new batteries, depending on the weight of the new lead-acid batteries sold if a used battery is not exchanged for the new battery.
- 2) Requires a lead-acid battery manufacturers to charge a non-refundable \$1 California Battery Fee on each lead-acid battery sold to a person buying a replacement lead-acid battery, except as specified.
- 3) Requires a lead-acid battery manufacturer to collect the California Battery Fee at the time of sale and authorizes the manufacturer to retain 1.5% of the fee as reimbursement for any costs associated with the collection of the fee. Requires the remainder of the fee be remitted to the BOE.
- 4) Requires each manufacturer to remit to the BOE a \$1 Manufacturer Battery Fee for each lead-acid battery sold at retail to a person in California.
- 5) Requires all California Battery Fee and Manufacturer Battery Fee revenues be remitted to the BOE for administration of the fee and the remainder to be deposited into the Lead-Acid Battery Cleanup Fund.
- 6) Requires the balance of a judgment against any manufacturer who has remitted any amount of Manufacturer Battery Fees to be reduced by the amount the manufacturer has remitted to the state.

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"Last year AB 2153 was signed in to law by Governor Brown (Chapter 666, Statutes of 2016) , [which] reallocates a fee already imposed on all car batteries to fund the cleanup of contamination caused by lead-acid batteries throughout the state. At the point of sale, \$1 from the consumers' deposit will go to the cleanup fund. Manufacturers will also pay a \$1 fee on all batteries sold in the state. This measure will bring relief to these affected communities and ensure solutions to a major long-term problem.

Since the bill was signed in to law the Board of Equalization (BOE) has been working on regulations to implement the fee collection. Two technical problems were identified that this bill attempts to fix.

AB 1663 will clarify that out of state manufacturers can elect to register with the BOE to pay a \$1 fee on all batteries sold in the state. This bill will also allow the BOE to post who is a registered manufacture on their webpage, this is similar to other fee programs that the BOE administers."

Background on the Act: The monies paid annually pursuant to the Act are estimated to exceed \$16 million and will be deposited into the Lead-Acid Battery Cleanup Fund (Fund). The Fund is a dedicated source to pay for clean-up of the Exide battery recycling site in Vernon, California, and at other contaminated sites. The Act also provides that manufacturers paying the fee receive a one-time credit equal to the amount each has paid against any future judgement of legal responsibility for a share of those clean-up costs.

Specifically, beginning and after April 1, 2017, and until April 1, 2022, a \$1 fee is imposed on a manufacturer for each lead-acid battery sold at retail to a person in California, or that is sold to a dealer, wholesaler, distributor, or other person for retail sale in California. The manufacturer is required to remit the fees to the BOE at the time the return is required to be filed.

Any manufacturer battery fees paid are credited against amounts owed by the manufacturer to the state pursuant to a judgment or determination of liability or any other law for removal, remediation, or other response costs related to a lead-acid battery recycling facility hazardous waste release. A manufacturer is limited to one credit for the same fee amount.

The vast majority of lead-acid battery manufacturers are located out of state. There are four lead-acid battery manufacturers in California, while roughly 85% of all lead-acid batteries are made outside California.

The intent of AB 1663 is to ensure the manufacturer fee is paid for each lead-acid battery sold in California. In order to do that, the Act needs to clarify how the BOE can have jurisdiction over an out-of-state entity that is selling lead-acid batteries in California subject to the Act.

Proposed changes to the Act: This bill modifies current law under the Act to state that a manufacturer includes the person who imports the lead-acid battery into this state, and with respect to a lead-acid battery, that a person is subject to the jurisdiction of the state if that person is a retailer engaged in business in this state.

This bill adds new provisions, which allow a lead-acid battery manufacturer not subject to the jurisdiction of the state to enter into a written agreement with the California importer of that lead-acid battery to pay the manufacturer battery fee on behalf of the importer. That out-of-state manufacturer that enters into a written agreement with the importer and who pays the manufacturer battery fee on behalf of the importer will be credited against amounts owed to the state pursuant to a judgment or determination of liability, or any other law for removal, remediation, or other response costs related to hazardous substance release from a lead-acid battery recycling facility. The out-of-state manufacturer will then be credited for that payment if specified conditions are met.

The lead-acid battery purchaser, and any subsequent purchaser of that battery, that receives a timely statement from an out-of-state manufacturer is relieved from any obligation related to the manufacturer battery fee on the sales of that battery, provided the out-of-state manufacturer remits payment of the manufacturer fee to the state for the sale of that battery. Importers that have paid the manufacturer battery fee and then subsequently received an untimely statement from the out-of-state manufacturer may file a claim for refund for overpaid fees.

The bill amends the Act to allow an out of state manufacturer to be credited for manufacturer battery fees paid to the BOE on behalf of the importer. The credits are used toward a judgment or determination of liability, or any other law for removal, remediation, or other response costs of lead-acid battery recycling facility hazardous waste releases.

Since an out-of-state manufacturer conducting transactions wholly outside this state would not be subject to this state's taxing authority, AB 1663 creates a mechanism that allows the California importer to agree in writing with the out-of-state manufacturer to pay the manufacturer battery fee for those batteries imported in this state on behalf of the importer. The bill keeps intact the manufacturer and importer's ultimate responsibility for registration, reporting, and payment of the manufacturer battery fee.

Where the bill states that a "purchaser" is obligated to pay the manufacturer fee until the manufacturer remits it, it doesn't appear that the author intends to include a consumer purchasing a replacement battery. The author may wish to consider correcting that provision to clarify that it is the "importer" in that context.

Allowing another person to pay a tax or fee for another person is not unique: The BOE administers more than 30 different tax and fee programs and has experienced unique industry compliance issues that have necessitated allowing another person the ability to pay the tax or fee for another person. There have been other instances in which a clear policy issue has required a change in statute or regulation to allow another person to pay a tax or fee for another.

In the case of the Underground Storage Tank (UST) fee, an operator of a gas station can pay the UST fee for the owner of the tanks (generally the owner of the property, since the tanks are underground). In that program there were instances in which the owner of the tanks/property was responsible for payment, but had no knowledge of their responsibility, or had a lease agreement specifying the operator was responsible for payment of all taxes and fees.

BOE administration of the fee: The BOE wants to ensure that the importer, subject to the manufacturer battery fee, is still required to register with the BOE, even if the importer enters into an agreement with an out-of-state manufacturer, and the importer is ultimately liable for the

manufacturer battery fee. If the out-of-state manufacturer fails to report or pay the manufacturer battery fee, then the liability is on the importer.

The author may wish to work with the BOE on technical amendments to strengthen the language to ensure due process is provided to the importer.

Policy question: By deleting the word "already" regarding fees paid, this might allow an out-of-state manufacturer to issue an untimely statement to the importer, and then allow that importer to seek a refund from the BOE for fees paid. This could apply retroactively. The author may wish to clarify the intent of that amendment and correct or clarify that provision.

Arguments in support: According to Battery Council International (BCI), "AB 1663 includes critical clean up language to carry out the intent of AB 2153 that all manufacturers are able to pay the \$1 on every lead-acid battery sold in California. AB 1663 allows for manufacturers to elect to submit to the jurisdiction of the state for the purposes of paying the manufacturer fee. BCI has worked closely with the California Board of Equalization (BOE) and the author's office to address questions raised by the BOE. As a result, we support amendments worked through with BOE and proposed by the author's office to clarify the current version of the bill."

REGISTERED SUPPORT / OPPOSITION:

Support

Battery Council International

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1671 (Caballero) – As Amended April 19, 2017

SUBJECT: Backflow protection and cross-connection controls: regulations

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to update its backflow protection and cross-connection control regulations on or before January 1, 2020.

EXISTING LAW:

- 1) Provides that the State Water Board succeeds to and is vested with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Public Health, its predecessors, and its director for purposes of administering a drinking water program, including Cross-Connection Control by Water Users law. (Health and Safety Code (HSC) §116271 (a))
- 2) Requires the State Water Board to maintain a drinking water program. (HSC §116271 (b))
- 3) Provides that regulations adopted, orders issued, and all other administrative actions taken by the State Department of Public Health (CDPH), any of its predecessors, or its director, pursuant to the authorities now vested in the State Water Board shall remain in effect and are fully enforceable unless and until readopted, amended, or repealed, or until they expire by their own terms. (HSC §116271 (d))
- 4) Requires, under the California Safe Drinking Water Act, any person who owns a public water system to ensure that the system will not be subject to backflow under normal operating conditions. (Health and Safety Code (HSC) § 116555(a)(2))
- 5) Authorizes local health officers to maintain programs for the control of cross-connections by water users, within the users' premises, where public exposure to drinking water contaminated by backflow may occur. (HSC § 116800)
- 6) Authorizes local health officers to maintain programs, in cooperation with water suppliers, to protect against backflow through service connections into the public water supply, and, with the consent of the water supplier, to collect fees from the water supplier to offset the costs of implementing these programs. (HSC § 116805)
- 7) Requires that local backflow prevention programs be conducted in accordance with backflow protection regulations adopted by CDPH (now the State Water Board). (HSC § 116805) (c))
- 8) Authorizes local health officers, to assure that testing and maintenance of backflow prevention devices are performed by qualified persons, to maintain programs for certification of backflow prevention device testers. (HSC § 116810)
- 9) Authorizes the local health officer to suspend, revoke, or refuse to renew the certificate of a certification of backflow prevention device tester, if, after a hearing, the local health officer or his or her designee finds that the tester has practiced fraud or deception or has displayed gross negligence or misconduct in the performance of his or her duties as a certified backflow prevention device tester. (HSC § 116810)

- 10) Authorizes the local health officer to collect fees from certified backflow prevention device testers to offset the cost of the certification program. (HSC § 116810)
- 11) Requires the backflow prevention device tester certification standards to be consistent with the backflow protection regulations adopted by CDPH (now the State Water Board). (HSC § 116810)
- 12) Requires the water supplier to protect the public water supply from contamination by implementation of a cross-connection control program. Provides that the cross-connection control program, or any portion thereof, may be implemented directly by the water supplier or by means of a contract with the local health agency, or with another agency approved by the health agency. (California Code of Regulations (CCR), Title 17, §7584)
- 13) Requires the water supplier's cross-connection control program to include, but not be limited to, several elements including the establishment of a procedure or system for testing backflow preventers. (CCR, Title 17 §7584 (e))
- 14) Requires backflow preventers to be tested by persons who have demonstrated their competency in the testing of these devices to the water supplier or health agency. (California Code of Regulations (CCR), Title 17, § 7605(b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "This bill requires the State Water Resources Control Board to complete the revisions to the cross-connection control regulations contained in California Code of Regulations Title 17. In 2002, revisions were drafted and statewide stakeholder meetings were held but the revisions were never finalized. These outdated regulations have resulted in uncertainty for the backflow prevention assembly testers and those who hire them. Updating these regulations will result in current and comprehensive guidance for the protection of public health."

Backflow: Drinking water distribution systems contain points called cross-connections where nonpotable water can be connected to potable sources. These cross-connections can provide a pathway for backflow of nonpotable water into potable sources.

Backflow is the undesirable reversal of the flow of liquid, gas, or solid into the potable water supply. Water supply systems are maintained at a pressure significant enough to enable water to flow from the tap. However, when pressure fails or is reduced, which may happen if a water main bursts, pipes freeze, or there is unexpectedly high demand on the water system such as an emergency firefighting water drawdown, water or substances from the ground, storage, or other sources may be drawn up into the system. Additionally, non-potable substances may be pushed into a potable water supply if the pressure in the downstream piping system exceeds the pressure in the potable water system. Either of these backflow conditions can enable contaminated water or substances to enter the potable water distribution system, potentially risking public health and safety.

Health risks associated with backflow: According to the United States Environmental Protection Agency (US EPA), a variety of biological and chemical contaminants have been introduced into drinking water distribution systems by cross-connections and backflow. The likelihood and

severity of illness and number of people affected depend on various factors including how much of the contaminant enters the system, the dilution factor, the type of contaminant, the number of users exposed, and the health status of each person at the time of exposure. Contamination from cross-connections and backflow can occur not only where the cross-connection is located, but at sites upstream and downstream, as contaminants spread. US EPA describes the contaminants that have entered drinking water systems through backflow as including pathogenic microorganisms, pesticides, metals, synthetic and volatile organic compounds, nitrates, and nitrites.

Backflow prevention: Backflow preventers are mechanical assemblies used to prevent contaminated fluids from entering the water supply system. US EPA discusses that a wide variety of devices exists that can be used to prevent backflow from adding contaminated fluids or gases into a potable water supply system. These include air gaps, barometric loops, vacuum breakers—both atmospheric and pressure type, double check with intermediate atmospheric vent, double check valve assemblies, and reduced pressure principle devices. US EPA relates that, generally, the selection of the proper device is based upon the degree of hazard posed by the cross-connection. Additional considerations are based upon piping size, location, and the potential need to periodically test the devices to insure proper operation.

Cross-connection control and backflow regulation in California: The California Code of Regulations (CCR), Title 17, contains the fundamental components of California's regulatory requirements for cross-connections and backflow prevention. The Department of Health Services promulgated the existing cross-connection and backflow regulations in Title 17 in 1987, when that department administered the state's drinking water program. When CDPH became a stand-alone department (it had previously been under the umbrella of the Department of Health Services), it assumed responsibility for administering the drinking water, and thus the backflow prevention, programs. On July 1, 2014, the Legislature transferred the administration of the drinking water and backflow prevention programs from CDPH to the State Water Board. The cross-connection and backflow regulations have not been updated since 1987.

Since it received responsibility for administering the drinking water program (now called the Division of Drinking Water, or DDW), the State Water Board has made great progress in updating and advancing its many programs and regulations, but it is contending with a backlog of programs and regulations that were not revised for many years. One of those outdated programs is the cross-connection control and backflow prevention regulation.

In order to better prioritize its many drinking water programs in need of updating, the State Water Board, at its February 22, 2017, meeting, discussed the consideration of a resolution to adopt a proposed prioritization list of drinking water regulations for 2017. As a result, the State Water Board adopted the prioritization of drinking water regulations and directed DDW staff to prioritize their work on drinking water regulations for calendar year 2017, including Cross-Connection Control Regulations as the sixth highest regulatory priority for the year. The Water Board predicts the rule-making process for Cross-Connection Control Regulations to begin this fall.

This bill requires the State Water Board to update its backflow protection and cross-connection control regulations on or before January 1, 2020.

Related legislation:

- 1) AB 1529 (Thurmond). Requires valid and current certifications for cross-connection inspection and testing or backflow prevention device inspection, testing, and maintenance that were determined by the State Department of Public Health to demonstrate competency before January 1, 2016, to be approved California-specific certifications either until the State Water Board promulgates regulations for cross-connection inspection and testing and backflow prevention device inspection, testing, and maintenance, or until January 1, 2020, whichever comes first. Prohibits, under certain conditions, a water supplier from refusing to recognize statewide certifications that meet standards set by regulations of the State Water Board. This bill is scheduled to be heard in the Assembly Environmental Safety and Toxic Materials Committee on April 25, 2017.
- 2) AB 1173 (Williams, 2016). Would have required, if a local health officer does not maintain a program for certification of backflow prevention device testers, the testing and maintenance of a backflow prevention device be performed by a person who has received a California-specific certification for testing backflow prevention devices from one of three listed entities or a similar certification provider deemed acceptable by the State Water Board or the local health officer. This bill was held in the Senate Environmental Quality and Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies (ACWA)
California Municipal Utilities Association
California Water Association
California-Nevada Section of the American Water Works Association

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 166 (Salas) – As Amended March 23, 2017

SUBJECT: Safe drinking water: household filtration systems: rebate program

SUMMARY: Requires a study on the feasibility and financial stability of a statewide water filtration rebate program. Specifically, **this bill:**

- 1) Requires the State Water Resources Control Board (State Water Board), in collaboration with the State Energy Resources Conservation and Development Commission (CEC) and other relevant stakeholders, to conduct a study on the feasibility and financial stability of a rebate program, as developed by the State Water Board, that would provide a household that is served by a water system that does not meet primary drinking water standards with a rebate for the purchase of a household water filtration system.
- 2) Requires the study to include any recommendations for the Legislature to implement the rebate program.
- 3) Requires the State Water Board to conclude the study no later than January 1, 2019, and to submit a report on the study to the Legislature no later than March 1, 2019.

EXISTING LAW:

- 1) Establishes the California Safe Drinking Water Act (SDWA). (Health & Safety Code (HSC) § 116270, et seq.)
- 2) Establishes as the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)
- 3) Requires the California Department of Public Health to adopt emergency regulations for permitting the use of point-of-use and point-of-entry water treatment in lieu of centralized treatment for public water systems that that have fewer than 200 service connections. (HSC § 116380)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

"AB 166 would require State Water Resources Control Board to collaborate with specified entities to conduct a study on the feasibility and financial stability of a rebate program that would provide a household that is served by a water system that does not meet primary drinking water standards with a rebate for the purchase of a home water filtration system.

A study conducted by UC Berkeley examined 464 community water systems serving 1.1 million people in California's San Joaquin Valley, one of the poorest regions in the state, and found that 15 percent of the systems and 14 percent of the people had tap water with arsenic above the federal limit.

The 5 year drought is still having a devastating effect preventing communities in the San Joaquin Valley who heavily rely on groundwater from having access to safe and affordable drinking water. Unable to safely use their tap water has caused residents to have to rely on other means for safe drinking water. The water is so contaminated that residents are not able to cook and wash with it. To make matters worse, many low-income families have no choice but to spend up to 10 percent of their monthly income on bottled water.

The bill would also require the study to include any recommendations for the Legislature to implement the rebate program. The bill would require the State Water Resources Control Board to conclude the study no later than January 1, 2019, and to submit a report on the study to the Legislature no later than March 1, 2019."

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

Drinking water needs: According to the State Water Board, 98% of Californians are served by public water systems drinking water that meets federal and state drinking water standards, which leaves 2% of Californians with drinking water that fails to meet drinking water standards.

According to the 2013 State Water Board report, "Communities that Rely on Contaminated Groundwater," 682 community public water systems, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water.

Nitrates, hexavalent chromium, perchlorate, arsenic, and other contaminants are present in water supplies across the state, and water treatment can be very costly. It is estimated that more than 1 million California residents who live in mostly rural areas have unreliable access to safe drinking water. Findings from State Water Board report, and a 2012 University of California at Davis study, "Addressing Nitrate in California's Drinking Water," suggest that drinking water contamination in California disproportionately affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source.

Challenges to accessing clean water: According to the United States Environmental Protection Agency's (US EPA) *Small Drinking Water Systems research*, drinking water treatment plants are increasingly being challenged by changes in the quality of their source waters and by their aging treatment and distribution system infrastructure. Factors such as shrinking water due to the statewide drought, limited financial resources, climate change, agricultural runoff, harmful algal blooms, and industrial land use increase the probability that chemicals that have not previously been detected in water, or that are being detected at significantly different levels than expected.

This is likely to disproportionately affect small drinking water systems due to limited resources and treatment options, among other factors.

Funding availability for water filtration: The US EPA has estimated that California will need more than \$40 billion dollars in drinking water infrastructure improvements over the next 20 years. Consistent with that, based on the *2011 Drinking Water Infrastructure Needs Survey*, California drinking water needs are more than \$2.2 billion per year for the next 20 years.

Drinking water resources are limited, however, and cuts may be pending. The Trump Administration is proposing to cut the US EPA's budget by 31 percent from its current level of \$8.1 billion to \$5.7 billion. The President's budget proposal would maintain funding for "high priority" infrastructure investments, such as grants and low-cost financing to states for drinking water projects, but the severity of the cuts across the board could significantly impact federal funding California receives for drinking water programs in general.

Given the magnitude of California's water quality challenges to meeting the goals of AB 685, state resources are limited for investment in drinking water improvements, and state funds have to be spent carefully and thoughtfully.

Benefits of a rebate program: The built-in benefit of a rebate program is the incentive it creates to get consumers to participate. Rebates, also known as refunds, are a popular tool used by governments and businesses to promote products, services, and consumer behavior. By offering consumers cash back on the purchase price, rebates provide an incentive to buy a particular product.

Given the challenges to providing access to clean drinking water, incentivizing residents to get a household water filtration system could provide a convenient way for those residents to obtain drinking water.

AB 166 would require the State Water Board, in collaboration with the CEC, to conduct a study on the feasibility and financial stability of a rebate program, as developed by the State Water Board, that would provide a household that is served by a water system that does not meet primary drinking water standards with a rebate for the purchase of a household water filtration system.

What is a household water filtration system: The bill does not define "household water filtration system," but there are various forms of water filtration systems.

The State Water Board maintains a Water Treatment Device Registration Program (Program) whereby the State Water Board approves a list of registered water filtration devices to ensure that devices sold in California have been independently evaluated and tested to reduce health-related contaminants as claimed by the packaging. Health related contaminants include nitrates, arsenic, bacteria, virus and cysts, and organic chemicals (such as by-products of chlorination). There are many water treatment devices approved under the Program; the list spans 19-pages.

The bill ostensibly leaves it to the State Water Board and the CEC to define in their study which water treatment filter devices would be included for a rebate.

Bang for the buck: There are challenges to investing in rebates for water treatment filters.

First, water filters require ongoing maintenance. A filter only lasts a finite amount of time, and then it needs to be cleaned or replaced. The State Water Board's Program website specifically states, "To ensure that your water treatment system performs as expected, you must replace the replaceable filter element after a certain number of gallons of usage. If you do not do this, the device will not continue to reduce contaminants. Check your product literature to find out how many gallons can be used before replacement. This information may be on the Performance Data Sheet that came with the device. Otherwise contact the manufacturer."

This puts the burden of responsibility on the homeowners or the tenants to understand the conditions of the filter's use, take the time to reach the product literature, and know when to change it. If a water treatment filter is not used properly, a person runs the risk of increasing exposure to contaminants that the filter is intended to reduce.

Therefore, a rebate program should include education and outreach about the appropriate use and life-span of a water treatment filter.

Second, water treatment filters may be seen as a bandage to a larger problem. Providing quality, potable water to all Californians is a constant challenge, and the four-year drought the state just experienced exacerbated the state's challenges by limiting water supplies.

The author may wish to consider if there is a more expeditious and efficient way to effectuate the goals of providing clean drinking water without mandating a study.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 339 (Mathis) – As Amended April 4, 2017

SUBJECT: State Water Pollution Cleanup and Abatement Account

SUMMARY: Extends the ability of the State Water Resources Control Board (State Water Board) to fund projects addressing an urgent drinking water need from the Cleanup and Abatement Account (Account) by deleting the sunset for this provision. Specifically, **this bill:**

- 1) Extends the ability of the State Water Board to fund projects addressing an urgent drinking water need from the Account by deleting the sunset for this provision.
- 2) Adds the following funds to be paid into the Account: funds collected as cost recovery from the cleanup or abatement of waste, pollution or contamination; repayment of principal, interest and fees on loans issued from the Account; and, any interest earned on funds in the Account.
- 3) Authorizes the State Water Board to issue loans from the Account to a public agency, a nonprofit organization, or community water system to assist in cleaning up a waste, abating the effects of a waste on waters of the state, or addressing an urgent drinking water need.

EXISTING LAW:

- 1) Establishes the Account within the State Water Quality Control Fund, which is administered by the State Water Board. (Water Code (WC) § 13440)
- 2) Designates half of all funds collected due to criminal penalties and all funds from civil penalties received under the Porter Cologne Water Quality Control Act to the Account. (WC § 13441)
- 3) Authorizes the State Water Board to approve grants, from the Account, to any eligible entity to assist in cleaning up a waste, abating the effects of a waste on waters of the state, or addressing an urgent drinking water need. Eligible entities include: a public agency, a tribal government, a not-for-profit organization serving a disadvantaged community, or a community water system that serves a disadvantaged community. Sunsets some of these provisions on July 1, 2018. (WC § 13442)
- 4) Beginning on July 1, 2018, authorizes the State Water Board to approve grants, from the Account, to a public agency, a tribal government, or a not-for-profit serving a disadvantaged community, to clean up a waste or abate the effects of a waste. (WC § 13442)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "This proposal would help provide funding for emergency drinking water projects by: (1) deleting the July 1, 2018 sunset date of provisions of existing law which authorizes the State Water Board to provide grants from the Cleanup and

Abatement Account to address urgent drinking water needs, even if the need is not related to a discharge of waste, (2) allowing the State Water Board to make loans from the Cleanup and Abatement Account to address urgent drinking water needs in communities that are not disadvantaged, and (3) making supporting technical changes to allow for more effective management of the Cleanup and Abatement Account.

In the past few years, many communities have experienced drought-related drinking water emergencies, ranging from wells running dry to the mobilization of contaminants into drinking water supplies. Despite increased rainfall this winter, drinking water problems related to the drought persist in some areas of the state and drinking water emergencies continue to arise as groundwater levels in many areas remain below normal. Additionally, drinking water emergencies occur periodically regardless of drought status, due to floods and other non-drought factors. Available funding sources to help communities address these expected drinking water emergencies are limited.

Additionally, the Cleanup and Abatement Account statute does not currently authorize loans or, with the notable exception of public agencies, payments of any kind to entities that are not serving disadvantaged communities. In several instances, non-disadvantaged communities experiencing water quality or drinking water emergencies have not had available reserves to pay for a project due to cash flow issues. AB 339 would provide the State Water Board with the authority to provide short-term loans from the Cleanup and Abatement Account to public agencies, not-for-profit organizations, and community water systems to enable these communities to be able to respond to water quality or emergency drinking water needs in a timely manner."

Cleanup and Abatement Account (Account): The Account was created to provide public agencies with grants for the cleanup or abatement of a condition of pollution when there are no viable responsible parties available to undertake the work. The Account is supported by court judgments and administrative civil liabilities assessed by the State Water Board and the Regional Water Quality Control Boards. Eligible entities that could apply for this funding include public agencies, as well as certain not-for-profit organizations and tribal governments that serve a disadvantaged community and that have the authority to clean up or abate the effects of a waste.

In 2015, the Legislature enacted AB 92 (Chapter 2, Statutes of 2015) to help provide grant funding to address emergency drinking water issues. Among its provisions, AB 92 expanded the types of projects that can be funded from the Account to include projects to address an urgent drinking water need, without regard to whether the need for drinking water is a result of the discharge of waste; expanded the pool of applicants eligible for funding from the Account to include community water systems that serve a disadvantaged community; exempted projects funded from the Account from state contracting and procurement requirements to the extent necessary to take immediate action to protect public health and safety; and, authorized the State Water Board to adopt guidelines for the allocation and administration of the Account funds.

Current law sunsets the changes made within AB 92 on June 30, 2018. Since the passage of AB 92, the State Water Board has funded 33 drinking water drought-related projects for a total funding amount of \$14 million and has funded 51 drinking water contamination-related projects for a total funding amount of \$5 million. If these provisions enacted under AB 92 sunset, the State Water Board will not have a funding source to assist public water systems in responding to drinking water emergencies.

AB 339 seeks to permanently delete the sunset within AB 92, thereby retaining the State Water Board's authority to provide funding to assist public water systems when responding to drinking water emergencies.

While the recent drought greatly diminished drinking water supplies for many communities throughout the state, many communities are currently without clean drinking water due to contamination of their drinking water supply. AB 339 ensures that the State Water Board has the authority to provide funds to various drinking water systems, especially those in disadvantaged communities, to deal with an urgent drinking water need.

Related Legislation:

- 1) AB 91 (Budget Committee, Chapter 1, Statutes of 2015). Appropriated \$15 million from the Cleanup and Abatement Account to the State Water Board to fund actions to address drought-related drinking water emergencies or threatened emergencies. Also, appropriated \$4 million from the Cleanup and Abatement Account to the State Water Board to provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies.
- 2) AB 92 (Budget Committee, Chapter 2, Statutes of 2015). Expanded the use of the Cleanup and Abatement Account for uses beyond mitigation of waste and unreasonable use to include urgent drinking water needs. Sunsets these provisions on July 1, 2018.
- 3) SB 826 (Budget Committee, Chapter 23, Statutes of 2016). Appropriated \$15 million from the Cleanup and Abatement Account to the State Water Board to fund actions to address drought-related drinking water emergencies or threatened emergencies.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 560 (Salas) – As Amended April 17, 2017

SUBJECT: Safe Drinking Water State Revolving Fund: project financing: severely disadvantaged communities

SUMMARY: Authorizes the State Water Resources Control Board (State Water Board) to provide principal forgiveness, grant funding, and zero percent financing to a water system serving a severely disadvantaged community if the water system demonstrates that repaying a Safe Drinking Water State Revolving Fund (DWSRF) loan would result in unaffordable water rates. Specifically, **this bill:**

- 1) Authorizes, under the DWSRF Law of 1997, the State Water Board, to the extent permitted by federal law, to provide principal forgiveness, grant funding, and zero percent financing to a project for a water system with a service area that qualifies as a severely disadvantaged community if the water system demonstrates that repaying a DWSRF loan would result in unaffordable water rates.
- 2) Defines "unaffordable water rates" as an average water bill that is greater than 1.5 percent of the median household income of the service area.
- 3) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Establishes, as the policy of the state, that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code (WC) § 106.3 (a))
- 2) Requires all relevant state agencies, including the Department of Water Resources, the State Water Board, and the State Department of Public Health, to consider the above "human right to water" state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water, as defined. (WC § 106.3 (b))
- 3) Provides that because the federal Safe Drinking Water Act (42 U.S.C. Sec. 300j et seq.) provides for the establishment of a perpetual drinking water revolving fund, which will be partially capitalized by federal contributions, it is in the interest of the people of the state, in order to ensure full participation by the state under the federal Safe Drinking Water Act, to enact DWSRF law to authorize the state to establish and implement a state drinking water revolving fund that will meet federal conditions for receipt of federal funds. (Health and Safety Code (HSC) § 116760.10 (a))
- 4) Creates in the State Treasury the DWSRF, and provides that moneys in the fund are continuously appropriated, without regard to fiscal years, to the State Water Board for expenditure in accordance with DWSRF law. (HSC § 116760.30 (a))

- 5) Defines "severely disadvantaged community" as a community with a median household income of less than 60 percent of the statewide average. (HSC § 116760.20 (n))
- 6) Requires, under the DWSRF law, the State Water Board to determine what portion of the full costs the water system is capable of repaying and authorizes funding in the form of a loan or other repayable financing for that amount. Authorizes the State Water Board to authorize a grant or principal forgiveness to a system, as defined, that serves a disadvantaged community only to the extent that the State Water Board finds the water system is unable to repay the full costs of the financing. (HSC § 116761.20 (b)(1))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"Unfortunately, the DWSRF's Intended Use Plans (IUP), to date, have excluded water systems that serve "disadvantaged communities" (DACs) or "severely disadvantaged communities" SDACs if they serve populations larger than 10,000 from certain types of assistance, including principal forgiveness/grant funding and zero percent financing for water infrastructure projects.

The water systems that are not eligible for grant funding or other types of State assistance often have no other option but to resort to loan funding to pay for infrastructure projects, such as treatment to remove contamination to meet drinking water standards. In anticipation of having to pay back loans, water systems tend to raise customers' water rates by going through a Proposition 218 process, which can push the existing water rates above the 1.5 percent of the medium household income (MHI) affordability threshold that the DWSRF already lists as an "affordability criteria."

AB 560 seeks to expand the eligibility for the Drinking Water State Revolving Fund (DWSRF) to allow larger, but still disadvantaged communities to access funds for water projects."

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

Safe Drinking Water State Revolving Fund (DWSRF): Congress established the DWSRF as part of the 1996 Safe Drinking Water Act Amendments to better enable public water systems to comply with national primary drinking water standards and to protect public health. The DWSRF provides financial assistance in the form of capitalization grants to states to provide low

interest loans and other assistance to public water systems. In order to receive these funds, states must provide a state match equal to 20 percent of the federal capitalization grants and must create a drinking water state revolving fund program for public water system infrastructure needs and other drinking water-related activities. In response, California established the DWSRF through SB 1307 (Chapter 734, Statutes of 1997) to help fund the state's drinking water needs. In California, the State Water Board's Division of Financial Assistance administers the DWSRF Program.

Based on USEPA's *2011 Drinking Water Infrastructure Needs Survey*, California drinking water needs are more than \$2.2 billion per year for the next 20 years. The 2016- 2017 Intended Use Plan (IUP) states that for the federal fiscal year 2016, California was eligible for an estimated \$78.215 million grant from the current \$855 million appropriated by Congress for the nation's DWSRF programs.

Intended Use Plan (IUP): According to the State Water Board, the IUP serves as part of the State Water Board's application for the capitalization grant from the United States Environmental Protection Agency. In establishing the terms of the IUP, the State Water Board considered statewide policy that declares it is the established policy of the state that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Water Code § 106.3 (a)). Water Code Section 106.3 (b) requires the State Water Board to consider this state policy when "revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water."

DWSRF funding prioritization: The IUP provides specific details on key aspects of the DWSRF program, including short and long-term goals, the priority setting process used to rank projects, and a list of projects considered eligible to receive available DWSRF funding. The 2016- 2017 IUP lays out as one of its short-term goals, "Prioritize all available DWSRF funding for [public water systems] serving fewer than 10,000 people to the maximum extent practicable and in consideration of all other federal and state authorities governing the prioritization of DWSRF funding." It also states that if the State Water Board has insufficient funds to finance all eligible projects with complete application packages, it will first fund eligible projects based on project categories, giving priority within a category to the small, disadvantaged community with the lowest median household income and to consolidation or extension of service projects. The 2016- 2017 IUP includes the prioritization of projects that serve small disadvantaged and small severely disadvantaged communities throughout the document.

This bill authorizes the State Water Board to provide principal forgiveness, grant funding, and zero percent financing to a water system serving a severely disadvantaged community, regardless of size, if the water system demonstrates that repaying a DWSRF loan would result in unaffordable water rates.

According to Community Water Center, "Advocates have worked with the State Water Board on the last few iterations of the DWSRF IUP to allow larger severely disadvantaged communities, like Arvin, CA, to qualify for grant funding. However, staff have continued to use the 10,000 population cap in the IUPs. AB 560 will provide the push to the Board to allow these larger, though still severely disadvantaged, systems to at least have their applications for grant funding considered for DWSRF grant funding. While there are many smaller systems also impacted by unsafe drinking water and are often in dire need of financial assistance, larger systems can also

be plagued by unsafe drinking water with no ratebase capable of funding the necessary solutions. AB 560 creates the opportunity to help a great number of people struggling to obtain safe, clean, and affordable drinking water."

Would increasing the community population size for eligibility for grants and principal forgiveness or zero percent financing on loans affect the health of the DWSRF?: Unlike loans that provide a return to the DWSRF in the form of interest repayment, grants and principal forgiveness and zero percent financing on loans from the DWSRF reduce the balance of the fund without contributing to it in the future. While expanding eligibility for grants and principal forgiveness and zero percent financing on loans through the DWSRF to larger communities will surely help those communities that receive the funding, expanding eligibility will reduce the overall balance of the fund and could prevent smaller communities, which may have additional challenges to affording infrastructure improvements, from receiving needed funding.

Proposed amendments:

- 1) To clarify that principal forgiveness and zero percent financing, as drafted in the bill, is referring to DWSRF loans, the Committee may wish to amend the bill as follows:
 - a) HSC § 116760.50 (b) To the extent permitted by federal law, the board may provide ~~principal forgiveness~~, grant funding, and 0 percent financing and principal forgiveness on loans from the Safe Drinking Water State Revolving Fund to a project for a water system with a service area that qualifies as a severely disadvantaged community if the water system demonstrates that repaying a Safe Drinking Water State Revolving Fund loan with interest would result in unaffordable water rates.

- 2) To provide the State Water Board with flexibility on determining an appropriate affordable water rate, the Committee may wish to amend the definition of "unaffordable water rates" as follows:
 - a) HSC § 116760.50 (c) For purposes of this section, "unaffordable water rates" means an average water bill that is greater than 1.5 percent of the median household income of the service area, or other percentage that the State Water Board determines is appropriate to reflect funding priorities.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Water Center

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1207 (Brough) – As Amended March 28, 2017

SUBJECT: Radioactive material: transportation

SUMMARY: Requires the State Energy Resources Conservation and Development Commission (Energy Commission) to conduct a study by January 1, 2019, to assess the efficacy of the regulations adopted by the California Department of Public Health in minimizing the risks to public health and safety resulting from the transportation of hazardous radioactive materials.

EXISTING LAW:

UNDER FEDERAL LAW: Nuclear Waste Policy Act of 1982 (NWPA) (42 U.S.C. § 10101, *et seq.*):

- 1) Supports the use of deep geologic repositories for the safe storage and/or disposal of radioactive waste. Establishes procedures to evaluate and select sites for geologic repositories and for the interaction of state and federal governments.
- 2) Directs the United States Department of Energy (US DOE) to consider Yucca Mountain as the primary site for the first geologic repository.
- 3) Prohibits the US DOE from conducting site specific activities at a second site unless authorized by Congress.
- 4) Establishes a commission to study the need and feasibility of a monitored retrievable storage facility.

UNDER STATE LAW:

- 1) Prohibits any nuclear fission thermal power plant requiring the reprocessing of fuel rods from being permitted unless the federal government has identified and approved, and there exists a technology for the construction and operation of, nuclear fuel rod reprocessing plants. (Public Resources Code (PRC) § 25524.1 – 25524.3)
- 2) States, pursuant to the California Nuclear Facility Decommissioning Act of 1985, that the citizens of California should be protected from exposure to radiation from nuclear facilities. (Public Utilities Code § 8321, *et seq.*)
- 3) Requires the California Energy Commission (CEC) to assess existing scientific studies to determine the vulnerability of very large generation facilities (1700 megawatts) to major disruptions due to aging or major earthquake and the resulting impacts on reliability, public safety, and the economy. Requires the CEC, in the absence of a long-term nuclear waste storage facility, assess the potential state and local costs and impacts associated with accumulating waste at California's nuclear power plants. (PRC § 25303)

- 4) Requires the Department of Public Health, in cooperation with the Department of the California Highway Patrol, to adopt reasonable regulations that promote the safe transportation of radioactive materials. (Health and Safety Code (HSC) § 114820 (c))
- 5) Requires the Department of the California Highway Patrol, after consulting with the Department of Public Health, to adopt regulations specifying the time at which shipments may occur and the routes that are to be used in the transportation of cargoes of hazardous radioactive materials. (HSC § 114820 (d))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The intent of the bill is to have a collaboration of stakeholders coordinated by CEC to undertake the necessary review of state regulations and statutes of nuclear fuel transport, and any needed state action to best prepare for the eventual commercial transport of nuclear waste from California's 4 Nuclear power plants and the nearly 2800 metric tons of spent fuel. While many standards and protocols will default to our federal partners, the State of California has a primary responsibility for protecting the health and safety of all its citizens. Establishing best practices and identifying any issues beforehand will be instrumental to protecting the communities and natural resources of California."

Federal Nuclear Waste Policy: Under the provisions of the NWPA, the federal government has the responsibility for managing spent nuclear fuel produced by commercial reactors, and generators are responsible for bearing the costs of permanent disposal. The NWPA authorizes and requires the US DOE to locate and build a permanent repository and an interim storage facility, and to develop a system to safely transport spent fuel from nuclear power plants to the repository and interim storage facility.

In 1987, Congress designated Yucca Mountain, a complex of underground tunnels in Nevada, as a federal long-term geological repository for nuclear waste. However, the Obama Administration decided not to use the site and appointed a Blue Ribbon Commission on America's Nuclear Future (Commission) to find a solution for permanent storage. The Commission recommended that efforts be made to develop a permanent disposal site for spent nuclear fuel and high-level radioactive waste.

Without a centralized repository for spent nuclear fuel, nuclear rods are exponentially accumulating at reactor sites across the country. In 2009, the United States had more than 60,000 tons of nuclear waste at more than 100 temporary sites (primarily nuclear power plants) around the country. Plant owners thus continue to be responsible for the safe storage of their spent fuel.

Nuclear power in California: There are four nuclear power plants in California, three of which have been closed or decommissioned, including:

1. The Humboldt Bay Nuclear Power Plant, located near Eureka, which was closed in 1976 due to seismic concerns. In December 2008, PG&E finished moving the spent nuclear fuel into dry cask storage on site.

2. The Rancho Seco Nuclear Power Plant, located about 25 miles south of Sacramento, was in operation until 1989 when it was closed by public referendum. In 1996, the Nuclear Regulatory Commission approved a decommissioning plan for the plant. Remaining onsite are 493 spent fuel assemblies. Since no suitable disposal facility exists for any of the material, the Sacramento Municipal Utility District spends \$6 million per year to safely manage the waste.
3. The San Onofre Nuclear Generating Station (SONGS), located midway between Los Angeles and San Diego, went offline in January 2012 and was ordered by the NRC to stay offline while tubing wear issues were investigated. Subsequently, plant owners announced in June 2013 that remaining Units 2 and 3 would be permanently retired (Unit 1 was closed in 1992). The storage canisters used in SONGS are designed for a lifetime of 40 years. As of 2011, SONGS had an estimated 1,430 tons of spent nuclear waste on-site.

The remaining operating nuclear power plant in California is Diablo Canyon Power Plant in San Luis Obispo County. Licenses for the two reactors expire in 2024 and 2025, respectively. The storage canisters used at Diablo Canyon are designed for a lifetime of 50 years. As of 2011, Diablo Canyon had approximately 1,126 tons of spent fuel located at its facility.

Since 1976, California has banned the construction of new nuclear plants until a federal long-term waste disposal repository is operating.

AB 1632 report: AB 1632 (Blakeslee, Chapter 722, Statutes of 2006), required the CEC to use existing scientific studies to assess the potential vulnerability of California baseload energy generating plants, Diablo Canyon and SONGS, to a considerable interruption due to a major seismic event or plant aging. In November 2008, CEC issued the study, "An Assessment of California's Nuclear Power Plants: AB 1632 Report," which recommended advanced 3-D and other seismologic techniques to be used for updated studies on all faulting in the vicinity of Diablo Canyon and SONGS.

Review of nuclear power in California: In October 2007, the California Energy Commission released a report, "Nuclear Power in California: 2007 Status Report," providing an update on nuclear power generation in California. According to the report, "A repository at Yucca Mountain is still at least a decade away from being opened, and the opening date continues to slip. Alternatives to Yucca Mountain are being considered because of concerns about the viability of the repository. California utilities should therefore continue to plan for indefinite storage of spent fuel at power plant sites and should continue to move spent fuel to on-site dry cask storage facilities.

Nuclear waste can be transported safely with manageable risks to the public if shipments are conducted in strict compliance with existing regulations, but constant vigilance is required. Although extreme accidents are unlikely, their probability can be reduced through route-specific analyses to identify and diminish potential hazards. Greater information sharing by the US DOE regarding spent fuel transport routes and plans is needed to allow state and local input and to gain public confidence in these shipments. California could be strongly affected by repository shipments, since many spent fuel and high-level waste shipments could be routed through the state en-route to Yucca Mountain."

Interim Consolidated Storage Act of 2015: H.R. 3643, also known as the "Interim Consolidated Storage Act of 2015," (introduced in the United States House of Representatives in 2015) would amend the Nuclear Waste Policy Act of 1982 to authorize the secretary of the DOE to enter into contracts for the storage of certain high-level radioactive waste and spent nuclear fuel, take title to the material, and use interest from the Nuclear Waste Fund to move forward with interim storage sites.

H.R. 3643 would have allowed nuclear waste from SONGS to be temporarily stored off-site. Much of SONGS's nuclear waste is currently in cooling pools. The federal bill would have allowed waste to be moved off-site within a few years, when it is cool enough for transport. A proposed interim storage site northeast of El Paso, Texas, has been identified as a potential home for SONGS's nuclear waste. H.R. 3643 would have allowed nuclear waste to be moved from SONGS, as well as from Diablo Canyon Power Plant and Rancho Seco Nuclear plant in California, and other sites nationwide. H.R. 3643 was not passed by the House of Representatives and as of April 2017, a similar measure has not been introduced in Congress this year.

Recent developments at SONGS: On April 7, 2017, Southern California Edison, the owners of SONGS, announced that they will begin negotiations aimed at relocating tons of radioactive waste from their SONGS facility. This announcement was made as part of settlement discussions regarding a lawsuit that was filed against Edison. Additionally, a motion was filed in court asking that an upcoming hearing on the lawsuit be postponed until July 2017, so that parties can work out details of the settlement.

Given the recent developments at SONGS, and the renewed efforts of the Trump Administration to identify and build a nuclear waste storage site, it is prudent for California to review its existing regulations and policies governing the transporting of hazardous radioactive waste on California's roads and highways.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1343 (Chen) – As Amended April 4, 2017

SUBJECT: Water conservation: school districts: Go Low Flow Water Conservation Partnerships

SUMMARY: Authorizes the governing board of a school district to enter into a Go Low Flow Water Conservation Partnership with a public water system. Specifically, **this bill:**

- 1) Authorizes the governing board of a school district to enter into a Go Low Flow Water Conservation Partnership with a public water system that provides water to the school district for purposes of reducing water use at schools; reducing stormwater and dry weather runoff at schools; reducing schoolsite water pollution; and, establishing the basis for educational opportunities in water conservation.
- 2) Requires a partnership agreement to outline the terms of the partnership; include a survey of water use at the school; list opportunities for implementing water conservation measures; and, establish protocols for sharing information from the public water system to school information platforms, including, but not limited to, Internet Web sites, classroom handouts, and events.
- 3) Authorizes a public water system to offer, as part of a partnership, a rebate for a school that implements water-saving measures.

EXISTING LAW:

- 1) Requires the governing board of a school district to adopt a local control and accountability plan and specifies state priorities, including the priority for school facilities to be maintained in good repair. (Education Code (EC) § 52060)
- 2) Provides that a school district is eligible to receive an apportionment for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old. Provides that a school district is eligible to receive an additional apportionment for modernization of a permanent school building every 25 years after the date of the previous apportionment or a portable classroom every 20 years after the previous apportionment. (EC § 17073.15)
- 3) Requires the state to achieve a 20-percent reduction in urban per capita water use in California on or before December 31, 2020. (Water Code (WC) § 10608.16 (a))
- 4) Defines "urban retail water supplier" as a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes. (WC § 10608.12. (p))

- 5) Requires each urban retail water supplier to develop urban water use targets and an interim urban water use target by July 1, 2011. (WC § 10608.20 (a)(1))
- 6) Provides that it is the intent of the Legislature that the urban water use targets developed by the urban retail water suppliers cumulatively result in a 20-percent reduction from the baseline daily per capita water use by December 31, 2020. (WC § 10608.20 (a)(2))
- 7) Requires each urban retail water supplier to meet its interim urban water use target by December 31, 2015. (WC § 10608.24 (a))
- 8) Requires each urban retail water supplier to meet its urban water use target by December 31, 2020. (WC § 10608.24 (b))
- 9) Requires the Department of Water Resources (DWR) to review the 2015 urban water management plans and report to the Legislature by July 1, 2017, on progress towards achieving a 20-percent reduction in urban water use by December 31, 2020. Requires the report to include recommendations on changes to water efficiency standards or urban water use targets to achieve the 20-percent reduction and to reflect updated efficiency information and technology changes. (WC § 10608.42 (a))

FISCAL EFFECT: This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

Need for the bill: According to the author, "AB 1343 will authorize school boards to enter into partnership agreements with public water system to encourage and implement water conservation measures, known as Go Low Flow Partnerships. These conservation measures would include low-flow toilets, water-efficient landscaping, and other measures that would achieve water conservation targets. The agreements must contain information that outline the terms of the partnership to include a survey of water use at the school, opportunities for implementing water conservation measures, and establish protocols for sharing information from water suppliers to school platforms, such as websites, classroom handouts and events...AB 1343 would also permit the public water suppliers, such as water districts and agencies, to offer rebates to school districts in order to help with the cost of installing water-efficient remedies."

As climate change triggers warmer winter temperatures, which will likely reduce water retention in the Sierra Nevada snowpack and cause drier soil conditions, California droughts are predicted to become more frequent and persistent. Because of these new environmental conditions, long-term wise and efficient water use policy, and preparation for more frequent, persistent periods of limited water supply, is even more critical.

Legislative action on water conservation in California: Recent legislative and executive action illustrates the state's commitment to reducing water consumption. Senate Bill (SB) X7-7 (Steinberg, Chapter 4, Statutes of 2009) requires all water suppliers to increase water use efficiency. SB X7-7 sets an overall goal of reducing per capita urban water use by 20% by December 31, 2020, and required the state to make incremental progress towards this goal by reducing per capita water use by at least 10% by December 31, 2015. As required by the bill, urban water suppliers, defined as a water supplier that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually

at retail for municipal purposes, reported urban water conservation levels in their 2015 Urban Water Management Plans submitted to DWR by July 1, 2016. DWR is currently reviewing these documents and is drafting a report to submit to the Legislature by July 1, 2017.

Executive action on water conservation in California: After the passage of SB X7-7, in 2012, California headed into a 5 year drought that prompted Governor Edmund G. Brown, on January 17, 2014, to proclaim a Drought State of Emergency. Key measures in the proclamation included asking all Californians to reduce water consumption by 20 percent. Since then, California's ongoing response to the drought has been guided by a series of executive orders issued by the Governor. These included Executive Order B-29-15, which was issued April 1, 2015, and required the State Water Resources Control Board (State Water Board) to impose restrictions to achieve a statewide 25% reduction in potable urban water usage until February 2016.

On May 9, 2016, the Governor signed Executive Order B-37-16 to make water conservation a way of life in California. The Executive Order builds on the temporary statewide emergency water restrictions to establish longer-term water conservation measures, including making permanent monthly water use reporting; water use standards in California communities; and, bans on clearly wasteful practices such as hosing off sidewalks, driveways, and other hardscapes

Following unprecedented water conservation efforts and plentiful winter rain and snow, on April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the Drought State of Emergency in all California counties except Fresno, Kings, Tulare, and Tuolumne, where emergency drinking water projects will continue to help address diminished groundwater supplies. The executive order maintains water reporting requirements and prohibitions on wasteful practices. Even though the drought state of emergency is all but over, the preceding years of drought conditions illustrated the importance of establishing long-term water conservation measures and improved planning for more frequent and severe droughts.

Drought Response Outreach Program for Schools (DROPS): In response to the Governor's declaration of the Drought State of Emergency, the State Water Board developed its DROPS Grant Program, which was capitalized with \$30.2 million from Propositions 13, 40, and 50. DROPS provides funds to local educational agencies to implement low impact development strategies designed to maintain predevelopment hydrology on school campuses. The projects will reduce stormwater pollution, increase stormwater retention, and recharge groundwater aquifers while creating multiple benefits, such as water conservation, water supply augmentation, and reduced dry weather runoff. Funded projects include an education and outreach component that is designed to increase student and public understanding of the project's environmental benefits and the sustainability of California's water resources directly related to the project. While it appears that the State Water Board has disbursed the available funds in the DROPS program, this program highlights the state's interest in implementing conservation programs at schools.

Water suppliers and water conservation: In response to the drought; legislative, executive, and other conservation requirements; and, internal conservation goals and priorities, the Association of California Water Agencies (ACWA) asserts that California's local water agencies are focused on long-term conservation and water efficiency. Local agencies continue to promote conservation programs and rebates, enforce water use restrictions, and make critical infrastructure investments. ACWA's website lists dozens of links to water suppliers' water

conservation programs, which include various educational and incentive components such as rebates for high efficiency toilets and urinals, smart irrigation controllers, rotating sprinkler nozzles, and turf replacement; free water use evaluations; and, sustainable landscape programs. Many water suppliers have programs for both commercial and residential customers. Water suppliers, such as California Water Service, have relayed to the Committee that they currently work with schools and school districts on water conservation efforts, often through their commercial programs, through which schools are eligible for rebates, water use evaluations, and other conservation tools.

This bill authorizes school districts and public water systems to enter into a Go Low Flow Water Conservation Partnership for the purpose of devising strategies to reduce water use at schools, reduce stormwater and dry weather runoff, and reduce schoolsite water pollution.

While the author's office acknowledges that water suppliers can and do implement outreach efforts and programs for water use conservation to commercial entities, including rebates and other offers, the author is concerned that suppliers often do not specifically target outreach efforts to, and programs for, schools and school districts. The purpose of this bill is to encourage water suppliers to directly outreach to and partner with school districts about water conservation programs and incentives, with a goal of both reducing water use and providing schools with resources to upgrade facilities.

Double referral: This bill was double referred to the Assembly Committee on Education, where it passed on April 19, 2017, on a 7 – 0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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