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Assembly
California Legislature

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

AGENDA

Tuesday, June 18, 2019
1:30 p.m. -- State Capitol, Room 444

1.	SB 1	Atkins	California Environmental, Public Health, and Workers Defense Act of 2019.
2.	SB 68	Galgiani	Hazardous waste: treated wood waste. (Proposed Consent)
3.	SB 205	Hertzberg	Business licenses: stormwater discharge compliance.
4.	SB 317	Caballero	Hazardous waste: waste facilities: prohibited chemicals.
5.	SB 392	Allen	Hazardous materials: green chemistry: consumer products.
6.	SB 647	Mitchell	Hazardous substances: metal-containing jewelry.

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 1 (Atkins) – As Amended May 21, 2019

SENATE VOTE: 28-10

SUBJECT: California Environmental, Public Health, and Workers Defense Act of 2019

SUMMARY: Enacts the California Environmental, Public Health, and Workers Defense Act of 2019 (Act) with the purpose of ensuring that protections afforded to Californians under federal environmental and labor laws and regulations as of January 2017, remain in place in the event that President Trump weakens or repeals any of these federal laws or regulations. Specifically, **this bill**:

1) States that it is unlawful for a person in this state to transport, sell, receive, acquire, or purchase any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States in effect on January 19, 2019; in violation of any law or regulation of any other state in effect on January 1, 2020; or, in violation of any foreign law in effect on January 1, 2020.

2) Enacts the Act to ensure the continued protection of the environment, natural resources, and public health and safety in the state even if federal law is undermined, amended, or repealed.

3) Provides that the purposes of the Act are to retain protections afforded under federal laws and regulations as of January 19, 2017; to protect public health, safety, and welfare from any actual or potential adverse effects that could occur from hazards and pollution; preserve, protect, and enhance the environment and natural resources in California; to prevent work-related and environmental illness and injury; and, to ensure that economic growth will occur in a manner consistent with the protection of public health and safety and the environment.

4) Authorizes a state agency to adopt standards or requirements to implement the Act, including by adopting emergency regulations.

5) Defines "baseline federal standards" as the federal standards in effect as of January 1, 2017 or January 19, 2017, that were not otherwise permanently enjoined by a federal court as of that date; or the federal Endangered Species Act of 1973 in effect as of January 19, 2017.

6) Defines "federal standards" as the federal Clean Air Act; the federal Safe Drinking Water Act; the federal Water Pollution Control Act; the federal Fair Labor Standards Act of 1938; the federal Occupational Safety and Health Act of 1970; or the Federal Coal Mine Health and Safety Act of 1969.

7) Defines "state analogue statute" as the California Global Warming Solutions Act of 2006; the Porter-Cologne Water Quality Control Act; the California Safe Drinking Water Act; or the Labor Code, including the California Occupational Safety and Health Act of 1973.

8) Requires the State Air Resources Board (Air Board) to regularly assess proposed and final changes to the federal standards; to at least quarterly publish on its internet website a list of

changes made to the federal standards and to provide an assessment on whether those changes are more or less protective of public health and safety.

9) Requires the Air Board, if it determines that the change to the federal standards is less protective of public health and safety, to consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protection as at least as stringent as the baseline federal standards.

10) Requires the Air Board, if it decides to adopt a measure as a result of a change to federal standards, to adopt the measure by either an emergency regulation or promulgation or amendment of a state policy plan or regulation.

11) Authorizes a person to bring an action in the public interest exclusively to enforce baseline federal standards, except for enforcement of the federal Endangered Species Act, as a measure by the appropriate state agency if the person provides a written notice to the Attorney General at least 60 days before initiating the action.

12) Requires the State Water Resources Control Board (Water Board) to regularly assess proposed and final changes to the federal standards; to at least quarterly publish on its internet website a list of changes made to the federal standards; and, to provide an assessment on whether those changes are more or less protective of public health and safety.

13) Requires the Water Board, if it determines that the change to the federal standards is less protective of public health and safety, to consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protection to be at least as stringent as the baseline federal standards.

14) Requires the Water Board, if it decides to adopt a measure as a result of a change to federal standards, to adopt the measure by either an emergency regulation or promulgation or by amendment of a state policy plan or regulation.

15) Provides that the Act does not affect the process by which voluntary agreements are entered into to assist in the implementation of new water quality standards lawfully adopted by the State Water Board.

16) Requires the Fish and Game Commission (Commission) to determine whether to list a species, subspecies, or distinct population segment under the California Endangered Species Act (CESA) in the event either of the following occurs:

    a) The federal delisting of the species, subspecies, or distinct population segment that is eligible for protection under CESA and that is listed as endangered or threatened pursuant to the federal Endangered Species Act (FESA) as of January 19, 2019; or,

    b) A change in the legally protected status of the species, subspecies, or distinct population segment through a change to the FESA or federal baseline standard.

17) Requires the Occupational Safety and Health Standards Board (Board) and the Department of Industrial Relations (DIR) to regularly assess proposed and final changes to the federal standards; to at least quarterly publish on its internet website a list of changes made to the

federal standards; and, to provide an assessment on whether those changes are more or less protective of public health and safety.

18) Requires the Board or DIR, if either determines that the change to the federal standards is less protective of public health and safety, to consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protection to be at least as stringent as the baseline federal standards.

19) Requires the Board or DIR, if either decides to adopt a measure as a result of a change to federal standards, to adopt the measure by either an emergency regulation or promulgation or amendment of a state policy plan or regulation.

20) States that the provisions of the Act are severable and if any provision of the Act or its application is held invalid that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

21) Provides that the Act shall become inoperative on January 20, 2025, and as of January 1, 2026 the Act is repealed.

EXISTING LAW:

1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)

2) Establishes the federal Safe Drinking Water Act (SDWA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 U.S.C. § 300 (f) et. seq.)

3) Establishes the federal Endangered Species Act (ESA) to protect and recover imperiled species and the ecosystems upon which they depend. (16 U.S.C. § 1531 et. seq.)

4) Establishes the federal Clean Air Act to regulate air emissions from stationary and mobile sources. Requires United States Environmental Protection Agency (US EPA) to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants. (42 U.S.C. § 7401 et seq.)

5) Establishes the California Safe Drinking Water Act (California SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) § 116270, et seq.)

6) Establishes the Porter-Cologne Water Quality Control Act, which 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.)

7) Establishes the Fair Labor Standards Act of 1938 to provide for the establishment of fair labor standards in employments in and affecting interstate commerce. (29 U.S.C. § 201, et seq.)

8) Establishes the federal Occupational Safety and Health Act (OSH Act) of 1970 to assure safe and healthful working conditions for working men and women; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes. (29 U.S.C. § 651 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 1 makes federal baseline standards for environmental and worker protection enforceable as a matter of state law, where the current administration in Washington DC rolls them back. It has been roughly three years and two months since the new administration took office in Washington DC. During that time, according to the New York Times and numerous other authorities: Over 34 different key clean air, clean water, and endangered species standards have been weakened or eliminated. In addition, and for the third year in a row, the federal administration has proposed a budget blueprint that would reduce the budget of the US EPA to a point where the agency would no longer be able to meaningfully enforce clean air and water laws. SB 1 simply provides that, whatever actions the new federal regime may take, California will continue to enforce the same environmental and public health protections that have been in effect for years, as a matter of state law."

Federal Clean Water Act (CWA): The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972, and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the US EPA has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.

Federal Safe Drinking Water Act (SDWA): The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. The US EPA enforces the federal SDWA at the national level. The federal SDWA authorizes the US EPA to set national health-based standards for drinking water to protect against both naturally-occurring and anthropogenic contaminants that may be found in drinking water. There are a number of threats to drinking water: improperly disposed of chemicals; animal wastes; pesticides; human wastes; wastes injected underground; and, naturally-occurring substances. Likewise, drinking water that is not properly treated or disinfected, or which travels through an improperly maintained distribution system, may also pose a health risk.

The SDWA applies to every public water system in the United States. There are currently more than 170,000 public water systems providing water to almost all Americans at some time in their lives. The responsibility for making sure these public water systems provide safe drinking water is divided among US EPA, states, tribes, water systems, and the public. The SDWA provides a framework in which these parties work together to protect this valuable resource.

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. California has enacted its own safe drinking water act to implement the federal law and establish state standards.

Federal Endangered Species Act (ESA): The purpose of the federal ESA is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the US Fish and Wildlife Service and the National Marine Fisheries Service. Under the federal ESA, species may be listed as either endangered or threatened. "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened.

Federal Clean Air Act (CAA): The federal Clean Air Act (CAA) is the federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes US EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants. One of the goals of the CAA was to set and achieve NAAQS in every state by 1975 in order to address the public health and welfare risks posed by certain widespread air pollutants. The setting of these pollutant standards was coupled with directing the states to develop state implementation plans, applicable to appropriate industrial sources in the state, in order to achieve these standards. The CAA was amended in 1977 and 1990 to set new goals (dates) for achieving attainment of NAAQS since many areas of the country had failed to meet the deadlines.

Federal Occupational Safety and Health Act of 1970 (OSH Act): On December 29, 1970, President Nixon signed the OSH Act into law, which established federal Occupational Safety and Health Administration (OSHA). OSHA's safety and health standards, including those for asbestos, fall protection, cotton dust, trenching, machine guarding, benzene, lead and bloodborne pathogens, have prevented countless work-related injuries, illnesses and deaths. Significant hazards and unsafe conditions still exist in U.S. workplaces; each year more than 3.3 million working men and women suffer a serious job-related injury or illness. Millions more are exposed to toxic chemicals in the workplace that may cause illnesses years from now. Under federal OSHA, employers are required to provide their workers with a workplace that does not have serious hazards and must follow all OSHA safety and health standards. OSHA requires employers to eliminate or reduce hazards by making feasible changes in working conditions rather than relying on personal protective equipment such as masks, gloves, or earplugs. Switching to safer chemicals, enclosing processes to trap harmful fumes, or using ventilation systems to clean the air are examples of effective ways to eliminate or reduce risks.

Global Warming Solutions Act: The California Global Warming Solutions Act of 2006 (AB 32 Núñez/Pavley, Chapter 488, Statutes of 2006), marked a watershed moment in California's history. It required a sharp reduction of greenhouse gas (GHG) emissions, and set the stage for California's transition to a sustainable, low-carbon future. AB 32 was the first program in the country to take a comprehensive, long-term approach to addressing climate change, and does so in a way that aims to improve the environment and natural resources while maintaining a robust economy. AB 32 requires California to reduce its GHG emissions to 1990 levels by 2020, which is a reduction of approximately 15 percent below emissions expected under a business as usual scenario.

Pursuant to AB 32, the Air Board must adopt regulations to achieve the maximum

technologically feasible and cost-effective GHG emission reductions. The full implementation of AB 32 will help mitigate risks associated with climate change, while improving energy efficiency, expanding the use of renewable energy resources, cleaner transportation, and reducing waste.

California Endangered Species Act (CESA): The CESA states that all native species of fishes, amphibians, reptiles, birds, mammals, invertebrates, and plants, and their habitats, threatened with extinction and those experiencing a significant decline which, if not halted, would lead to a threatened or endangered designation, will be protected or preserved. The California Department of Fish and Wildlife (CDFW) works with all interested persons, agencies and organizations to protect and preserve such sensitive resources and their habitats. CESA prohibits the take of any species of wildlife designated by the California Fish and Game Commission as endangered, threatened, or candidate species. CDFW may authorize the take of any such species if certain conditions are met.

Concerns that the Trump Administration could weaken federal environmental protections: On February 24, 2017, President Trump issued an Executive Order on Enforcing the Regulatory Reform Agency, which creates a regulatory reform task force and requires the task force to evaluate existing regulations and make recommendations for their repeal. The task force is required to identify regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; and create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies. Missing from this Executive Order is an evaluation of the benefits of a regulation on protecting human health and the environment, including the potential reduction in health care costs, or of increased productivity by having certain environmental regulations in place. Some additional examples of President Trump's actions as President, that could harm California's economy, public health, or environment:

a) Called the concept of man-made climate change a "hoax created by and for the Chinese to make American manufacturing non-competitive."

b) Purged, a week after taking office, the US EPA of any mention of climate change.

c) Withdrew the final determination on strict vehicle fuel-efficiency standards, and eventually ended negotiations with California over plans to roll back fuel economy rules designed to reduce greenhouse gases (GHG) emissions.

d) Signed an executive order to undo the Waters of the United States Rule that extended federal protections to smaller rivers and streams.

e) Signed House Joint Resolution 38 (Johnson, R–OH), nullifying the Department of Interior's Stream Protection Rule. The Stream Protection Rule targets coal-mining industry practices to protect waterways by requiring companies to avoid mining practices that permanently pollute streams, destroy drinking water sources, increase flood risk, and threaten forests.

f) Announced his intention to abandon the Paris climate accords, making the USA the only country in the world not to support the framework deal to combat GHG emissions.

g) Opened oil drilling in the Artic when the Bureau of Ocean Energy Management issued a conditional permit to Houston-based Hilcorp to begin drilling from an artificial island in the Beaufort Sea.

h) Disbanded a scientific review panel that advises the US EPA about safe levels of pollution in the air.

i) Initiated a plan to reverse Obama-Administration rules designed to curtail coal power plant emissions of carbon dioxide and methane that contribute to climate change.

j) Ended the National Aeronautics and Space Administration's Carbon Monitoring System, a $10-million-per-year effort to fund pilot programs intended to improve the monitoring of global carbon emissions.

k) Eliminated a Clinton-era rule that forced large sources of air pollution to remain subject to stricter regulations if they ever exceeded specified levels.

l) Signed an executive order revoking federal flood-risk standards that incorporated rising sea levels predicted by climate science.

Response to President Trump's anti-environmental policies: SB 1 was introduced to respond to the Trump Administration's attack on laws and regulations that protect public health and the environment. It is clear that the new federal administration is interested in easing compliance with laws and regulations for multi-billion dollar corporations; however, it is unclear exactly what environmental laws or regulations could become a target for weakening or repealing and what the economic, public health, and environmental impacts the actions might have on California. SB 1 simply sets a floor for the federal environmental laws currently in place in order to ensure that the economic, environmental, and public health benefits of these laws are maintained in California. The public health and environmental protections provided by the federal Clean Air Act, federal Clean Water Act, and all of the environmental laws and regulations in place, provide very important and very real benefits to everyone in this country. Loosening these federal requirements, such as allowing businesses to release toxic wastes into rivers, lakes, and streams, near schools and homes, or allow entities to emit toxic chemicals into the air, could set us back decades in terms of the environmental protections that have been achieved.

California is the fifth largest economy in the world and has some of the most, if not the most, protective public health and environmental laws in the country. Protecting human health and the environment and promoting economic growth are not mutually exclusive. There is a balance, and early indications from the Trump Administration are that the President does not see the balance and only sees the side of the equation that does not include protecting human health and the environment or the economic benefits from those protections. SB 1 is intended to ensure that the strong environmental protections, coupled with the strong economic performance that California has achieved is not un-done by the Trump Administration. SB 1 is substantially similar to SB 49 (De León), from 2017, which passed this committee on a 4 to 2 vote.

Arguments in support: A number of environmental organizations, including the Natural Resources Defense Council, "California has long been a leader in ensuring a healthy environment and workplace for its citizens. For many years, the state has enforced its laws

protecting the air that Californians breathe, the water that Californians drink, and the wildlife and natural resources that our citizens prize, in tandem with federal agency partners. But the Trump administration now threatens that long-standing partnership with ongoing and persistent efforts to weaken or eliminate critical public health and environmental protections. SB 1 protects our citizens and our environment by ensuring that protections in existence prior to January 19, 2017 under the federal Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, and workplace safety laws are not weakened, and gives California state agencies streamlined authority to enforce these protections under state law. SB 1 adopts common-sense measures to allow California to continue on a path to economic and environmental sustainability – and reject the false choice that economic progress must come at the expense of public health, the vitality of our natural surroundings, and a healthy environment for all. For these reasons, we strongly support SB 1."

Arguments in opposition: On behalf of a number of business organizations, including the California Chamber of Commerce argue, "The California Chamber of Commerce and listed organizations must respectfully oppose SB 1 (Atkins) which the California Chamber of Commerce has labeled as a job killer. Our opposition to the bill is not with the author's intent to protect California's air, water, biodiversity and workers from any federal changes that undermine the state's existing standards. Our concern with the bill stems from the significant negative consequences of the bill, including regulatory uncertainty, lack of due process, and unnecessary litigation that would result if the bill were passed and as currently amended [April 11, 2019]. SB 1 joins numerous unrelated labor laws and regulations with environmental laws and regulations under the same excessively general guise of "public welfare" merely because they relate to a "state prerogative." For these reasons, we must oppose SB 1 (Atkins)."

Triple referral: SB 1 has been referred to the Assembly Environmental Safety and Toxic Materials Committee, the Assembly Natural Resources Committee, and the Assembly Judiciary Committee. Should SB 1 pass out of this committee, it will be re-referred to the Assembly Natural Resources Committee.

Related legislation:

1) SB 49 (De León, 2017). Would have enacted the California Environmental, Public Health, and Workers Defense Act (Act) of 2017, to prohibit a state or local agency from amending or revising its rules to be less stringent than the federal baseline standards pertaining to environmental protection. This bill was not heard on the Assembly Floor.

2) SB 288 (Sher, Chapter 476, Statutes of 2003). Established the Protect California Air Act of 2003, prohibiting air quality management districts in California from amending or revising the Federal Clean Air Act (FCAA) related rules or regulations to be less stringent than those federal rules or regulations that existed on December 30, 2002, except under certain circumstances. This bill was a response to federal action on December 31, 2002, to reduce standards associated with the FCAA.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Bay Area Action
350 Sacramento
350 South Bay Los Angeles
American Sportfishing Association
Audubon California
AZUL
Breast Cancer Prevention Partners
California Association of Local Conservation Corps
California Association of Professional Scientists
California Coastal Protection Network
California Coastkeeper Alliance
California Environmental Justice Alliance
California Interfaith Power & Light
California Labor Federation, AFL-CIO
California League of Conservation Voters
California Professional Firefighters
California ReLEAF
California State Association of Electrical Workers
California State Parks Foundation
California State Pipe Trades Council
Californians Against Waste
Central Valley Air Quality Coalition
Clean Water Action
Coachella Valley Waterkeeper
Coalition for Clean Air
Community Action to Fight Asthma
Defenders of Wildlife
East Bay Municipal Utility District
Environment California
Environmental Defense Center
Environmental Defense Fund
Environmental Water Caucus
Environmental Working Group
Eric Garcetti, Mayor of Los Angeles
Fossil Free California
Friends Committee on Legislation of California
Heal the Bay
Humboldt Baykeeper
Latino Outdoors
League of Women Voters of California
Los Angeles Waterkeeper
Midpeninsula Regional Open Space District
Mono Lake Committee
Monterey Bay Aquarium
Monterey Coastkeeper
Natural Resources Defense Council
Nextgen California
Orange County Coastkeeper
Planning and Conservation League

Protect American River Canyons
Restore The Delta
Russian Riverkeeper
San Diego 350
San Diego Coastkeeper
Santa Barbara Channelkeeper
Save Our Shores
Save The Bay
Seventh Generation Advisors
Sierra Club California
South Coast Air Quality Management District
State Building & Construction Trades Council of California
Surfrider Foundation
The 5 Gyres Institute
The Nature Conservancy
The Otter Project
The Trust for Public Land
UDW/AFSCME Local 3930
Voices for Progress
Western States Council Sheet Metal, Air, Rail and Transportation
Wildcoast
Yuba River Waterkeeper
Zero Waste USA

Opposition

Almond Alliance of California
Antelope Valley East Kern Water Agency
Association of California Water Agencies
Bizfed Central Valley
Byron-Bethany Irrigation District
California Chamber of Commerce
California Poultry Federation
Central Coast Water Authority
Coachella Valley Water District
Desert Water Agency
Dudley Ridge Water District
El Dorado County Chamber of Commerce
El Dorado Irrigation District
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Fresno; County of
Friant Water Authority
Kern County Water Agency
Kings; County of
Madera; County of
Merced; County of
Mojave Water Agency
Northern California Water Association

Palmdale Water District
Rancho Cordova Chamber of Commerce
Regional Water Authority
Roseville Chamber of Commerce
Rowland Water District
San Bernardino Valley Municipal Water District
San Gabriel Valley Municipal Water District
San Joaquin; County of
San Joaquin River Exchange Contractors Water Authority
San Luis Delta-Mendota Water Authority
Santa Clarita Valley Water Agency
Stanislaus; County of
State Water Contractors, Inc.
The Metropolitan Water District of Southern California
Tulare; County of
United Water Conservation District
Valley Ag Water Coalition
Valley Industry and Commerce Association
Walnut Valley Water District
Western Growers Association
Westlands Water District

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

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 68 (Galgiani) – As Amended June 10, 2019

SENATE VOTE: 37-0

SUBJECT: Hazardous waste: treated wood waste

SUMMARY: Deletes the December 31, 2020, sunset on treated wood waste (TWW) statute and requires the wood preserving industry to prepare training materials on how to best handle, dispose of, and otherwise manage TWW. Specifically, **this bill**:

1) Provides that TWW may be reused only if all of the following apply:
   a) The reuse occurs onsite at the facility at which the TWW was generated;
   b) At the time of reuse, the reuse is consistent with a use approved pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the preservative with which the TWW was treated; and,
   c) Before reuse, the TWW is handled in compliance with all applicable management standards in regulation.

2) Adds point of sale to the locations where wholesalers and retailers of treated wood and treated wood-like products must conspicuously post warning information about TWW.

3) Updates requirements for information that must be included on the warning sign that wholesalers and retailers of treated wood and treated wood-like products must conspicuously post as follows: updates the TWW informational website address, adds the Department of Toxic Substances Control's (DTSC's) website address, and adds an explanation that DTSC's website is where one can find a list of approved landfills that accept TWW.

4) Requires the wood preserving industry to jointly prepare and submit to DTSC for approval training materials on how to best handle, dispose of, and otherwise manage TWW.
   a) Requires that the training materials include information on how to identify treated wood compared to other wood and how to properly dispose of and store treated wood waste; instructions for filling out required forms; information on the proper use of personal protective equipment and field treating; and, other information for consumer and construction uses.
   b) Requires the wood preserving industry to annually update and renew the training materials, as appropriate.
   c) Requires that the training materials also be provided to the Contractors' State License Board.

5) Deletes statute that requires DTSC, on or before July 1, 2018, to prepare, post on its website, and provide to the appropriate policy committees of the Legislature, a comprehensive report on the compliance with, and implementation of, TWW law and regulation.

6) Requires DTSC to, on or before March 31 of each year, produce a list using data received, pursuant to regulation, which includes the generators that generated more than 10,000 pounds

of TWW in the previous calendar year. Requires DTSC to provide the list to a unified program agency that has in its jurisdiction a generator that is on the list.

7) Deletes the December 31, 2020, sunset on TWW statute.

8) Makes other technical and conforming changes to TWW statute.

EXISTING LAW:

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

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

3) Defines "treated wood" as wood that has been treated with a chemical preservative for the purposes of protecting the wood against attacks from insects, microorganisms, fungi, and other environmental conditions that can lead to decay of the wood and the chemical preservative is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). (HSC § 25150.7 (b)(1))

4) Defines "wood preserving industry" as business concerns, other than retailers, that manufacture or sell treated wood products in the state. (HSC § 25150.7 (b)(2))

5) Requires TWW to be disposed of in either a class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit that meets specified requirements. (HSC § 25150.7 (d)(1))

6) Requires each wholesaler and retailer of treated wood and treated wood-like products to conspicuously post specified warning information at or near the point of display or the customer selection area for treated wood and treated wood-like products used for fencing, decking, retaining walls, landscaping, outdoor structures, and similar uses. (HSC § 25150.7 (e)(1))

7) Requires DTSC, in consultation with the Department of Resources Recycling and Recovery, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, and, after consideration of any known health hazards associated with treated wood waste, to adopt regulations, as specified, establishing alternative management standards (AMS) for TWW. Authorizes DTSC to subsequently revise these regulations as necessary. (HSC § 25150.7 (f)(1)- (2))

8) Requires a person managing TWW, who is subject to TWW statute or regulation, to comply with either the AMS or TWW statute. (HSC § 25150.7 (g)(1))

9) Requires DTSC, on or before July 1, 2018, to prepare, post on its website, and provide to the appropriate policy committees of the Legislature, a comprehensive report on the compliance

with, and implementation of, TWW law and regulation. Requires the report to include, among other components:

a) Data, and evaluation of that data, on the rates of compliance and the injuries associated with handling TWW based on DTSC inspections of TWW generator sites and TWW disposal facilities;
b) An evaluation of the adequacy of protective measures taken in tracking, handling, and disposing of TWW;
c) Data regarding the unauthorized disposal of TWW at disposal facilities that have not been approved for that disposal;
d) Conclusions regarding the handling of TWW; and,
e) Recommendations for changes to the handling of TWW to ensure the protection of public health and the environment. (HSC § 25150.7 (j))

10) Sunsets the TWW requirements on December 31, 2020. (HSC § 25150.7 (k))

11) Defines TWW as wood waste that meets all of the following criteria:
a) Is a hazardous waste;
b) Is a hazardous waste solely due to the presence of a preservative that is registered in accordance with FIFRA for use as a wood preservative; and,
c) Is not subject to regulation under the federal Resource Conservation and Recovery Act (RCRA). (California Code of Regulations, Title 22, Division 4.5, Chapter 34, Section 67386.1 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Treated wood is a commonly used material in construction, infrastructure, agriculture, transportation, and aquatic applications where exposure to moisture, insects, or other elements compromise the wood's strength. Wood products are treated with preservatives reviewed and registered by the U.S. Environmental Protection Agency (EPA), and therefore disposing of treated wood waste correctly is an essential part of preserving California's environment. The wood preserving industry has consistently been a leader in promoting the proper handling and disposal of treated wood waste, and removing the sunset language to the treated wood waste program will allow generators to work more closely with the Department of Toxic Substances Control and provide a greater level of continuity and stability in wood waste disposal."

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

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

particulate (e.g., sawdust and smoke). If TWW is not properly disposed of, the chemicals in the waste can contaminate surface water and groundwater.

California's TWW program: California's regulatory authority and disposal guidelines for TWW were established in Health and Safety Code (HSC) pursuant to AB 1353 (Matthews, Chapter 597, Statutes of 2004). HSC § 25150.7(f) requires DTSC to adopt regulations establishing alternative management standards (AMS) for TWW, which it did in July, 2018. In addition, HSC § 25150 (d)(l) authorizes the disposal of TWW in either a class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit approved to accept TWW by the appropriate Regional Water Quality Control Board.

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

Should this bill fail to become enacted, HSC § 25150.7, which directs DTSC to adopt the AMS regulations, and other TWW provisions, will sunset on December 31, 2020. DTSC maintains, however, that pursuant to the law, the AMS regulations will remain operative after that date. Since the regulations restate the statutory requirements for managing TWW, these requirements will remain in effect. DTSC argues, though, that absent legislative action, the requirement for wholesalers and retailers of treated wood products to post specified precautions for customers will sunset with the TWW statute.

SB 68 deletes the December 31, 2020, statutory sunset for TWW law.

DTSC's TWW evaluations: AB 1353 also required DTSC to "prepare and post on its Web site a report that makes a determination regarding the successful compliance with, and implementation of" TWW law. In June 2011, DTSC published *"Treated Wood Waste Management in California; AB 1352 Implementation Report, June 2011."* The report contained some alarming findings, including that, "Based on a very limited number of inspections, TWW generators inspected by DTSC were found to have more—and more serious—violations, some of which posed potential threats to the environment and/or public health."

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

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

a) Data, and evaluation of that data, on the rates of compliance and the injuries associated with handling TWW based on DTSC inspections of TWW generator sites and TWW disposal facilities;

b) An evaluation of the adequacy of protective measures taken in tracking, handling, and disposing of treated wood waste;

c) Data regarding the unauthorized disposal of TWW at disposal facilities that have not been approved for that disposal;

d) Conclusions regarding the handling of TWW; and,

e) Recommendations for changes to the handling of TWW to ensure the protection of public health and the environment.

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

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

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

This bill requires the wood preserving industry to jointly prepare and submit to DTSC for approval training materials on how to best handle, dispose of, and otherwise manage TWW.

Proposed amendments: With a goal of increasing and improving outreach about, and thus hopefully compliance with, TWW management requirements, the Committee may wish to amend the bill as follows:

Amend § HSC 25150.7 (f)(3) to:

a. Require the wood preserving industry to, in consultation with DTSC, prepare outreach materials, for both generators of TWW and for facilities that may receive or handle TWW, on the appropriate handling of, disposal of, and otherwise management of TWW. Require the materials to include, but not be limited to, information on how to identify treated wood compared to other wood; instructions on how to properly handle, store, and dispose of treated wood; instructions on the required documentation for treated wood disposal; information on the appropriate use of protective equipment for handling treated wood and for field treating; and, other information on compliance with TWW law for treated wood waste generators and for facilities that may receive or handle TWW.

b. Require the wood preserving industry to annually update and renew the materials, as appropriate.

c. Require the wood preserving industry to, in consultation with DTSC, disseminate fact sheets and other outreach materials about the proper management and disposal TWW to generators; solid waste facilities, as defined in PRC 40195.1; household hazardous waste collection facilities, as defined in HSC 25218.1; and, other facilities that may receive or handle TWW.

d. Require the wood preserving industry to provide an annual update to DTSC, including providing a list of the names and addresses of the generators, household hazardous waste collection facilities, solid waste facilities, and, other facilities that may receive or handle TWW, that industry provided outreach materials to the previous year.

e. Require the wood preserving industry to provide the materials to the Contractor's State Licensing Board for distribution to contractors.

Previous related legislation:

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

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

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

4) AB 1353 (Matthews, Chapter 597, Statutes of 2004). Required TWW to be disposed

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

REGISTERED SUPPORT / OPPOSITION:

Support

Allweather Wood, LLC
American Forest & Paper Association
American Wood Council
Bay Planning Coalition
BB&S Treated Lumber of New England
BNSF Railway
Brooks Manufacturing Co.
Cal Chamber
California Association of Winegrape Growers
California Biomass Energy Alliance
California Building Industry Association
California Cascade
California Cattlemen's Association
California Forestry Association
California Manufacturers and Technology Association
California Short Line Railroad Association
Chemical Industry Council of California
Conrad Forest Products
Creosote Council III, Inc.
Exterior Wood / Taiga Building Products
Fontana Wholesale Lumber, Inc.
Gemini Forest Products
Genesee & Wyoming Railroad Services, Inc.
Hexion, Inc.
JH Baxter
Koppers, Inc.
Koppers Performance Chemicals
Lonza Wood Protection
Manke Lumber Company
Mcfarland Cascade Holdings, Inc.
Nisus Corporation
North American Wood Pole Council
Osmose Utilities Services, Inc.
Pacific States Treating
Princeton Wood Preservers Ltd.
Railway Tie Association
Rain Carbon Inc. - Ruetgers Canada
Republic Services - Western Region
Republic Services, Inc.
Rural County Representatives of California

Sierra Pacific Industries
Southeastern Lumber Manufacturers Association
Southern Pressure Treaters Association
Thunderbolt Wood Treating
Treated Wood Council
Union Pacific Railroad
Viance, LLC
West Coast Lumber & Building Material Association
Western Wood Preservers Institute
Wheeler Lumber, LLC
Wine Institute

Opposition

None received.

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

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 205 (Hertzberg) – As Amended May 17, 2019

SENATE VOTE: 38-0

SUBJECT: Business licenses: stormwater discharge compliance

SUMMARY: Requires a business operation in a regulated industry to demonstrate enrollment in the National Pollutant Discharge Elimination System (NPDES) permit program when applying for an initial business license or business license renewal. Specifically, **this bill**:

1) Finds and declares that the provisions of this measure address the health and safety of drinking water sources throughout the state, and that the provisions apply to charter cities and counties.

2) Requires a regulated industry business operation to demonstrate enrollment in the NPDES permit program by providing all of the following on an initial business license application or business license renewal application:

    a. Name and location of facilities;

    b. The Standard Industrial Classification (SIC) code for the business;

    c. For each facility, any of the following, issued by the State Water Resources Control Board (State Water Board):

        i. Stormwater permit number or Waste Discharger Identification (WDID) number;

        ii. WDID application number;

        iii. Notice of Non-Applicability (NONA) identification number; or,

        iv. No Exposure Certification (NEC).

3) Requires the city or county to confirm that the SIC code corresponds to the business, by using information posted on the State Water Board's website, prior to issuing or renewing the business license.

4) Requires the city or county to confirm that the WDID, WDID application number, NONA, or NEC corresponds to the business by keeping record of the applicable documents prior to issuing or renewing the business license.

5) Requires the city or county to transfer compliance information to the State Water Board, as requested.

6) Authorizes the city or county to develop a provisional license procedure that provides businesses three months to comply with the stormwater permit requirements.

7) Declares that a "city" includes a charter city and a charter city and county, and a "county" includes a charter county and a charter city and county.

8) Declares that these provisions apply to initial business licenses and business license renewals submitted on or after January 1, 2020.

9) Requires the State Water Board to post, and update annually, a list of all SIC codes applicable to the General Permit for Stormwater Discharges Associated with Industrial Activities Excluding Construction Activities (Industrial General Permit or IGP) on its internet website.

10) Declares that no reimbursement is required by the state because a local agency or school district has the authority to levy service charges, fees, or assessments to pay for the program mandated by this act.

EXISTING LAW:

1) Establishes the federal Clean Water Act to regulate discharges of pollutants into the waters of the United States (US) and regulate quality standards for surface waters. (33 United States Code (USC) §1251 et seq.)

2) Establishes the NPDES permit program requiring the State Water Board and the nine California Regional Water Boards to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 USC § 1342)

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) § 13000, et seq.)

4) Delegates to California's Regional Water Quality Control Boards (Regional Water Boards) the ability to adopt water quality standards within their region of jurisdiction. (WC § 13240)

5) Defines the categories of facilities considered to be engaging in industrial activity associated with stormwater discharge that require a NPDES permit. (40 Code of Federal Regulations (CFR) § 122.26(b)(14))

6) Defines municipal separate storm sewer systems (MS4s) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a state. (40 CFR § 122.26(b)(8))

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author,

> "The Stormwater Quality Improvement Act will diminish water pollution and improve the health and quality of California's lakes, bays, wetlands, and estuaries by requiring industrial

facilities to demonstrate compliance with a water quality permit when applying for their business license or renewal."

Stormwater: Stormwater is water from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways, or parking lots and can carry 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. Pollution often contaminates stormwater runoff, resulting in a toxic soup of runoff entering California's water ways. Motor oil, cigarette butts, metals, trash, animal feces, bacteria, and pesticides get swept up in stormwater drains and runoff, which lead to exceedances of total maximum daily loads and contamination of the water sources where the runoff flows. Both the United States Environmental Protection Agency (US EPA) and the Regional Water Boards have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health. However, stormwater may also act as a resource and recharge groundwater when properly managed.

Stormwater pollution in California's water bodies: In Los Angeles County, approximately 100 million gallons of contaminated water and debris drain through the storm drain system each dry day. On rainy days the daily flow can increase to 10 billion gallons per day. Because stormwater drains directly into local water bodies, water bodies throughout the state are continually contaminated by various pollutants. According to the State Water Board, 1,357 of the 2,623 segments of water bodies in California contain harmful levels of one or more types of pollutants, such as bacteria, metals, and pesticides. Excessive amounts of these pollutants can detrimentally affect the environment, including the health of humans and aquatic life. For example, high levels of certain types of bacteria in a water body can cause serious illnesses, such as gastrointestinal illnesses, respiratory illnesses, and skin infections in people who come into contact with the water body. As reported in the *National Water Quality Inventory 1996 Report to Congress*, urban runoff was the leading source of pollutants causing water quality impairment related to human activities in ocean shoreline waters and the second leading cause in estuaries across the nation.

Regulation of stormwater pollution: To curb the harmful effects of pollution from stormwater runoff, federal law requires states to set restrictions on the pollutants that can be discharged into water bodies and requires local jurisdictions, including cities, counties, and other public entities, to obtain storm sewer permits. The federal Clean Water Act provides the State Water Board and Regional Water Boards with the authority and framework for regulating storm water discharges under the NPDES Permitting Program. The US EPA delegates its NPDES Permitting Program to the State of California. Cities and local jurisdictions that operate MS4s must obtain NPDES permit coverage for discharges of municipal storm water to waters of the US. Similarly, industry owners must have NPDES permit coverage for storm water from their industrial activity sites, and construction contractors must have NPDES permit coverage for storm water from constructions sites that disturb more than an acre of land. Hence, the NPDES stormwater program regulates stormwater discharges from three potential sources: (1) MS4s, (2) construction activities, and (3) industrial activities.

What industrial activities are regulated by NPDES? The State Water Board and Regional Water Boards implement and enforce the IGP, which regulates industrial storm water discharges and authorized non-storm water discharges from industrial facilities in California. The IGP is called a general permit because many industrial facilities are covered by the same permit, but comply

with its requirements at their individual industrial facilities. Industrial facilities that are typically required to obtain IGP coverage include manufacturers, landfills, mining, steam generating electricity, hazardous waste facilities, transportation with vehicle maintenance, larger sewage and wastewater plants, recycling facilities, and oil and gas facilities. A comprehensive description of industrial facilities that are required by US EPA regulations to obtain a storm water permit are provided in federal regulations. The State Water Board also maintains a list of industries, represented as SIC codes, that are regulated by the IGP. The SIC code is a four-digit code system established by the federal government in 1937 to classify industries, and was originally used to promote uniformity of data collected by various government agencies. Industry categories are divided into 11 divisions, which are divided into 83 2-digit major groups, which are further subdivided into 416 3-digit industry groups, and finally disaggregated into 1,005 4-digit SIC codes. The IGP is currently required for over 500 SIC codes.

Obtaining an Industrial General Permit: According to the State Water Board, an IGP is required if a facility is conducting an activity regulated under the IGP and is discharging stormwater contaminated or potentially contaminated by industrial pollutants to waters of the US. If both criteria are met, business owners are required to register with the State Water Board through the Stormwater Multiple Application and Report Tracking (SMART) electronic system, develop a Storm Water Pollution Prevention Plan (SWPPP), and submit a Notice of Intent application. Permit applications must be filed at least 7 days prior to the beginning of operations, and once processed, each industrial facility will be assigned a WDID number.

According to the State Water Board, business owners may apply for a NONA if a facility is conducting a regulated activity, but:

1) There is no discharge of stormwater contaminated or potentially contaminated by industrial pollutants to waters of the US; or,
2) The facility is intended for an activity covered by the IGP but there is no ongoing activity (for example, the site is being decommissioned or held for sale).

Alternatively, business owners may apply for an NEC if there is discharge of stormwater to a body of water in the US, but the discharge is not contaminated or potentially contaminated by industrial pollution. Most often, this is because the activity on-site is not covered by the IGP, but could also be because certain measures or conditions exist such that there is no possibility that industrial pollutants can impact waters of the US.

Industrial General Permit compliance: To comply with the IGP, dischargers are required to implement the best technology available to reduce pollutants in their storm water discharges and monitor it in accordance with regulatory levels specified in the permit. The IGP requires that all dischargers develop, implement, and retain a site-specific SWPPP. The SWPPP requirements generally follow US EPA's five-phase approach to developing SWPPPs: planning and organization, assessment, Best Management Practices (BMPs), implementation, and evaluation/monitoring. This approach provides the flexibility necessary to establish appropriate BMPs for different industrial activities and pollutant sources. The SWPPP must also include a site map, authorized Non-Storm Water Discharges at the facility, and an identification and assessment of potential pollutants sources resulting from exposure of industrial activities to stormwater.

Discharges are required to select an appropriate facility inspection frequency beyond the required monthly inspections if necessary, and determine if SWPPP revisions are necessary to address any

physical or operational changes at the facility or make changes to the existing BMPs. Facilities that are subject to multi-phased physical expansion or significant seasonal operational changes may require more frequent SWPPP updates and facility inspections. Facilities with very stable operations may require fewer SWPPP updates and facility inspections. Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the IGP. Failure to maintain the SWPPP on-site and have it available for inspection is also a violation of the IGP.

IGP compliance is critical for MS4 compliance: MS4s are also regulated by the NPDES permitting program, with permits issued by either the State Water Board or Regional Water Boards, depending on the size of the municipality. MS4 permits require compliance with standards through an iterative approach by following BMPs outlined in a Storm Water Management Program, evaluating the effectiveness of those BMPs, and modifying the management program accordingly in order to continuously achieve the discharge standard. Many local governments enforce compliance of their Storm Water Management Program with the use of local ordinances. Hence, in addition to the state-wide IGP, businesses must additionally comply with local stormwater ordinances. Because local governments are already required to manage stormwater in their jurisdictions, it is also in their best interest to be aware of all potential point sources of stormwater discharge.

Business owners are expected to know if they are operating in a regulated industry, and therefore, whether or not they should file for an IGP. There are over 10,000 regulated facilities that are currently enrolled in the IGP in California, but there is evidence suggesting that many are also not enrolling. Although perhaps outdated, a 1999 research study that evaluated compliance with industrial stormwater discharge regulations in Los Angeles found that only half of the facilities, required to file under the IGP, had done so after the new policy had been in effect for five years (Duke and Shaver, 1999). A recent report suggests that this may be due in part to a lack of guidance provided to business owners. The report examined a representative sample of 30 cities in Los Angeles County and found that less than 25% of city websites had stormwater permit information for business owners (*Industrial Stormwater Regulatory Compliance in Los Angeles County*, 2015). SB 205 addresses this issue by requiring all businesses to show enrollment in or exemption from the IGP on business license applications or renewal applications. This measure will, at the very least, encourage all businesses to check whether they are operating in a regulated industry. Nevertheless, there are concerns that SB 205 places an unnecessary burden on local governments to confirm IGP enrollment, especially because the business license application process differs greatly across local governments, with some granting business licenses with limited verification. Furthermore, according to the Senate Governance and Finance Committee analysis, business licenses are not required in unincorporated areas of some counties such as San Diego and Sonoma. SB 205 addresses many of these concerns by placing the responsibility of proving enrollment or exemption on the business owner, authorizing local governments to recoup costs by levying a fee, and requiring the State Water Board to develop resources to support local governments in the identification of regulated industries.

As the author continues to refine the technical implementation of SB 205, the author may wish to consider the following:

1) Provide clarification on the process for confirming that a SIC code corresponds to a business, specifically in regards to requirements of a city or county; and,

2) Provide clarification on the process for confirming the WDID, WDID application number, NONA, or NEC.

Arguments in support: The California Coastkeeper Alliance supports this measure, stating, "SB 205 addresses the pervasive issue of unenrolled industrial facilities by requiring applicable facilities to demonstrate compliance with the IGP when applying for or renewing a business license. This allows local municipalities and the Water Boards to readily identify industrial discharges and ensure these discharges are enrolled under the statewide permit." The West Coast Chapter of the Institute of Scrap Recycling Industries, the California Metals Coalition, and the State of California Auto Dismantlers Association state that their organizations represent regulated industries that have put in significant effort to comply with the IGP and thus, want to ensure that other regulated businesses are doing the same.

Arguments in opposition: The League of California Cities, which has an oppose unless amended position, states, "This bill could have significant costs for cities… The additional responsibility of confirming compliance with state stormwater permits would be an unfunded mandate and could negatively impact already stressed city resources." The California Construction and Industrial Materials Association argues, "The legislature is effectively expanding the permitting of stormwater discharge from those entities who discharge to every entity within the state of the applicable SIC code whether they discharge or not… This bill will in effect require every non discharger to prove their innocence and file those reports in order to renew their business license."

Related Legislation:

1) AB 1093 (Rubio, 2019). Would require the State Water Board to establish Financial Capability Analysis (FCA) guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions. Referred to the Senate Environmental Quality Committee and will be heard on June 19, 2019.

2) AB 2538 (Rubio, 2018). Would have required the State Water Board to establish FCA guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions. Would have required Los Angeles Regional Water Quality Control Board to use the guidelines in a pilot project. Vetoed by the Governor.

3) SB 541 (Allen, Chapter 811, Statutes of 2017). Requires the State Water Board, in consultation with the Regional Water Boards, and the Division of the State Architect within the Department of General Services, to recommend best design and use practices for stormwater and dry weather runoff capture practices that can be applied to new, reconstructed, or altered public schools, including school grounds.

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

REGISTERED SUPPORT / OPPOSITION:

Support

American Rivers
California Coastal Protection Network
California Coastkeeper Alliance
California Metals Coalition
Center for Biological Diversity
Coachella Valley Waterkeeper
Foothill Conservancy
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
Institute of Scrap Recycling Industries, West Coast Chapter
Los Angeles Waterkeeper
Monterey Coastkeeper
Natural Resources Defense Council
The Otter Project
Planning and Conservation League
Russian Riverkeeper
San Diego Coastkeeper
San Francisco Baykeeper
Santa Barbara Channelkeeper
Save the Bay
State of California Auto Dismantlers Association,
Surfrider Foundation
Wholly H2O
Yuba River Waterkeeper

Opposition

California Construction & Industrial Materials Association
League of California Cities
San Gabriel Valley Council of Governments

Analysis Prepared by: Pajau Vangay / E.S. & T.M. /

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 317 (Caballero) – As Amended June 12, 2019

SENATE VOTE: 38-0

SUBJECT: Hazardous waste: waste facilities: prohibited chemicals.

SUMMARY: Prohibits, on and after January 1, 2022, the sale, distribution, or use of a product used in recreational vehicle (RV) chemical toilet deodorizers that contains any of the fourteen specified chemicals. Specifically, **this bill**:

1) Provides that it is unlawful to sell or distribute in commerce a product that contains bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene in a container that indicates that the product is suitable for use in a holding tank or other portion of a waste facility of an RV.

2) Provides that it is unlawful to use a product that contains bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene in a holding tank or other portion of a waste facility of an RV or of a campground chemical toilet that discharges to a septic system, onsite wastewater treatment system, or subsurface disposal system.

3) Requires the State Water Resources Control Board (State Water Board), to the extent funds are available, to investigate methods to detect and quantify concentrations of chemical toilet deodorants, including bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene, in a septic system, onsite wastewater treatment system, or subsurface disposal system that may inhibit biological treatment processes or result in degradation of groundwater quality.

4) Requires an owner or operator of an RV park or campground that utilizes a septic system, onsite wastewater treatment system, or subsurface disposal system to dispose of RV wastewater to post in a conspicuous location a notice stating the following:

> "The State of California prohibits the use of products in RV holding tanks, including deodorizers, that contain bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene. These chemicals can inhibit biological activity in onsite wastewater treatment systems and threaten groundwater and drinking water wells, and are strictly forbidden.
>
> Please use bacteria- or enzyme-based products."

5) Provides that enforcement of these requirements is contingent on an appropriation by the Legislature.

6) Effectuates the provisions of this bill on January 1, 2022.

7) States that no reimbursement is required by this act because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction.

EXISTING LAW:

1) Prohibits the use of a non-biodegradable toxic chemical in a chemical toilet, recreational vehicle, or waste facility. Prohibits the sale of a non-biodegradable toxic chemical in a container which indicates that the chemical could be used in a chemical toilet, a waste facility of a recreational vehicle, or a waste facility of a vessel as the term vessel is defined in the Harbors and Navigation Code. Requires the Department of Toxic Substances Control (DTSC) to develop and adopt regulations to define non-biodegradable toxic chemicals and limitations on the sale thereof. (Health and Safety Code (HSC) § 25210)

2) Requires DTSC to adopt regulations by January 1, 2011, to identify and prioritize chemicals of concern, to evaluate alternatives, and to specify regulatory responses to limit exposure or to reduce the level of hazard posed by a chemical of concern found in consumer products. (HSC § 25252)

3) Prohibits a person from manufacturing, formulating, packaging, importing or receiving from outside the state and selling or offering for sale a material for use as a chemical toilet additive, as indicated on a label on the container or by any other representation by said person, which contains a non-biodegradable toxic chemical substance. Prohibits a person from using, or causing to be used, a material as a chemical toilet additive that contains a non-biodegradable toxic chemical substance. (California Code of Regulations (CCR), Chapter 41, § 67410.1 - 67410.4)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Certain chemical deodorants used in RV wastewater tanks can contaminate ground water when hooked up to septic systems at RV Parks, as well as cause septic tank system failures. In an effort to keep groundwater clean for these rural communities, and because there are safe alternatives available, SB 317 bans the sale and use of certain toxic chemicals as well as requires RV parks to inform their customers of the ban with signage requirements. By restricting these products from use in RVs, not only is groundwater protected, but the worry and burden on small business owners, as well as the surrounding community, is relieved."

Chemical toilet additives: Chemical toilet additives are any chemical substances, biological agents, or other material or formulation thereof which is employed for the primary purpose of controlling waste decomposition and odors in a chemical toilet holding tank or any tank in which

chemical toilet wastes are held, collected, or transported. More simply put, the major functions of toilet treatments and deodorizers are to facilitate the liquefying of solid wastes and the reduction of odors in the holding tanks.

Large commercial septic systems of the type found at RV parks function by separating solids from liquid waste while promoting the partial breakdown of solid contaminants by bacterial microorganisms naturally found in sewage wastewater. RV plumbing systems reduce the amount of flush water to just three cups from the standard 1.6 gallons for low-flush toilets; therefore, septic tanks serving RV parks confront the specific challenge of processing a waste content that has a disproportionately high ratio of solid to liquid waste. Many RV facilities rely on onsite wastewater treatment systems or septic systems to treat sewage, and septic systems are particularly vulnerable to chemical contamination due to the use of chemical-based toilet additives.

RV toilet additive products may contain toxic chemicals, such as formaldehyde. When such treated RV wastewater is disposed into a septic system (or municipal wastewater treatment facility), it can kill the bacteria in the system and ultimately cause the treatment system to fail. Without bacteria, the treatment system cannot adequately treat the waste. That results in no, or very limited breakdown of organic matter. Inadequately treated wastewater allows solids to pass from the septic tank to the soil treatment area and clog the soil.

The 2010 report from the Harvard University Extension School Program in Sustainability & Environmental Management, *A Study of Sustainability at RV Parks*, explains that chemical-based additives are believed to cause the majority of unscheduled maintenance expenses and lead to more frequent replacement of corroded tanks and liners, and concluded that the absence of explicit bans on chemical-based RV holding tank cleaners is a major environmental challenge to RV parks.

Toxicity of listed chemicals: A long-standing *Alert for RV, Boat, Mobile Home Owners and Park Operators* (Alert), issued by the United States Environmental Protection Agency (US EPA) Region 9 Ground Water Office in July 1999, cautions against the use of chemical-based holding tank products that impose hazards on the safety of ground water drinking systems. Specifically, the alert cites formaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, methylene chloride, 1,1,1-trichloroethane, trichloroethylene, and perchloroethylene as specific agents known for their potential to corrode underground septic tanks, tank liners, and pipes. Acids and bases contained in these chemicals can destroy biological activity, inhibiting the decomposition of fecal material present in the holding tanks.

The University of Arizona College of Agriculture and Life Sciences published paper, *RV Holding-tank Treatments & Deodorizers in Septic System*, recognizes bronopol, dowicil, glutaraldehyde, paraformaldehyde, and para-dichlorobenzene as active ingredients to avoid because of their potential threat to onsite wastewater treatment systems. It identifies each chemicals' specific threat to public health and/or the environment (i.e. para-dichlorobenzene as a known carcinogen, or bronopol as a bacterial pesticide).

DTSC supported these findings with the following, abbreviated chart on its January 2009 fact sheet, *Chemical Toilet Products Advisory for Consumers*:

Table 1. Active ingredients you should avoid using in your RV holding tank deodorizers.

Active Ingredient	Threats to Human and Environmental Health
Bronopol: (chemical name: bromo-nitropropane-diol)	bacterial pesticide
Dowicil: (chemical name: 1-(3-chlorallyl)-3,4,7-triaza-1-azoniaadamantane chloride)	bacterial pesticide
Glutaraldehyde: (also known as embalming fluid)	Retards bacterial growth and covers sewage odor, eye/inhalation irritant
Paraformaldehyde: (polymerized formaldehyde)	very toxic to humans[1]
Para-dichlorobenzene: (common ingredient in mothballs, urinal cakes, and toilet bowl fresheners)	known carcinogen[2] and drinking water contaminant; moderately toxic to humans[3]

[1] lethal dose for 150 lb person is between 1 teaspoon to 1 ounce
[2] a carcinogen causes cancer
[3] lethal dose for 150 lb person is between 1 ounce to 1 pint

Furthermore, the State Water Resources Control Board's (State Water Board) general waste discharge requirement for small domestic wastewater treatment systems notes: "Discharges from RV holding tanks or portable toilets may contain chemicals that can pollute groundwater quality. Some commercially available products used to control holding tank/portable toilet odors may contain harmful chemicals such as formaldehyde, zinc, or phenol. The harmful chemicals can kill the bacteria in the wastewater treatment system and cause wastewater to be inadequately treated. Inadequately treated wastewater may cause additional problems such as leachfield/ seepage pit failure, surfacing wastewater, and potential exposure and health risks. Discharge of the harmful chemicals to groundwater that creates pollution may result in enforcement activities requiring groundwater remediation. The best and least expensive method to prevent groundwater pollution is to not use harmful chemicals by educating RV owners about the pollution hazard." In fact, the State Water Board requires any wastewater system that has accepted RV, portable toilet, or similar waste to perform quarterly monitoring for specified chemical contaminants.

Current state law: In 1979, the Prohibited Chemical Toilet Additives Law went into effect (AB 1953, Lockyer, Chapter 1039, Statutes of 1977) to ban the manufacture, sale, and use in California of non-biodegradable toxic chemicals in chemical toilets or waste facilities (toilets). This law was expanded in 1988 to include a similar ban on the sale and use of halocarbons in products used to clean or unclog a sewage disposal system. (HSC § 25210.1))

DTSC's regulations further clarify that a chemical substance is considered a nonbiodegradable, toxic chemical toilet additive if it contains one of 19 specified elements (including, but not limited to antimony, barium, nickel, selenium, thallium, zinc) or, under conditions of the Five-Day Biochemical Oxygen Demand test method, is degraded to a certain extent. (CCR, Title 22, Division 4.5, Chapter 41)

Furthermore, DTSC's regulations adopted pursuant to the Prohibited Chemical Toilet Additives Law require the seller of a chemical toilet additive, at the request of DTSC, to provide DTSC with the brand name, the list of ingredients, and the toxicological and biodegradability data which establish whether the material contains any ingredient which is a nonbiodegradable toxic chemical substance.

The Legislature tried to take it one step further in 2010 to ban the same chemicals listed in this bill. AB 1824 (Monning, 2010) proposed to prohibit a person from using or selling a chemical that is detrimental to a sewage disposal system in a chemical toilet, a recreational vehicle, or a

waste facility of a vessel. That bill defined a chemical that is detrimental to a sewage disposal system as: 2-bromo-2-nitropropane-1,3-diol, known as bronopol; 1-(3-chlorallyl)-3,5,7-triaza-1-azoniaadamantane chloride, known as dowicil; formaldehyde; glutaraldehyde; para-formaldehyde; para-dichlorobenzene; or, a chemical identified by DTSC as being detrimental to a sewage disposal system, in regulations that may be adopted by DTSC.

Governor Schwarzenegger vetoed the bill, stating that current law gives DTSC the ability to address the issue of chemical toilet products in recreational vehicles and to address this issue through the Green Chemistry process.

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

It is highly unlikely that these chemicals would be reviewed or regulated under the state's Green Chemistry Program. It has long been recognized that DTSC does not have the resources to evaluate all chemicals in every consumer product application. Not only does the SCP Program lack a dedicated funding source to fund DTSC's work, DTSC is currently operating under a structural deficit, leaving further constrained resources for that program. DTSC has had historic challenges due to resource constraints.

Additionally, when there is science to support a change in state policy to protect public health, the Legislature can respond to that science more expeditiously than DTSC. Since AB 1879 was enacted, the Legislature has enacted policies on various chemical-product applications, including labeling requirements on upholstered furniture that contains flame retardants SB 1019 (Leno, Chapter 862, Statutes of 2014); a ban on the sale of jewelry with cadmium at certain levels AB 929 (Pavley, Chapter 313, Statutes of 2010); and, a ban on the sale of brake pads containing copper in exceedances of certain levels SB 346 (Kehoe, Chapter 307, Statutes of 2010).

SB 317 takes that more expeditious step to ban the specified toxic chemicals in RV toilet additives based on both DTSC and the US EPA's science.

Alternatives on the market: Enactment of this bill would not preclude affordable consumer choices for RV toilet additives. There appear to be as many products on the market that would be compliant with this law as those that would not be compliant. Many of the toilet additive manufacturers make both chemical toilet additives and enzyme-based, biodegradable products.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of RV Parks and Campgrounds (Sponsor)

California Association of Professional Scientists
California Travel Association
Sierra Club

Opposition

None received.

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

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 392 (Allen) – As Amended May 17, 2019

SENATE VOTE: 23-9

SUBJECT: Hazardous materials: green chemistry: consumer products

SUMMARY: Updates and reforms California's Green Chemistry program, including creating a streamlined alternatives analysis process the Department of Toxic Substances Control (DTSC) can invoke in specified situations; requiring manufacturers to provide data on a consumer product's ingredients, use, and sale to DTSC upon request; and, expanding the list of authoritative references for candidate chemicals. Specifically, **this bill**:

1) Defines "product manufacturer" as a person who manufactures a consumer product or a person who controls the manufacturing process for, or specifies the use of a chemical to be included in, a consumer product.

2) Authorizes DTSC, in lieu of requiring an analysis of alternatives and, following public notice and an opportunity for all interested parties to comment, to instead rely on all or part of one or more publicly available analyses of alternatives to the chemical of concern under consideration, in existence at the time of consideration, and to proceed directly to a regulatory response.

3) Specifies that any analysis that DTSC relies on pursuant to the provisions in this bill shall be issued by a government agency or a credible institution with relevant expertise and without financial conflicts of interest, or published in peer-reviewed scientific literature.

4) Provides that if DTSC opts to rely on publicly available analyses of alternatives to the chemical of concern under consideration pursuant to the provisions in this bill, it shall address any relevant regulatory response selection factors listed in regulation before determining regulatory responses.

5) Provides that if DTSC provides public notice of a proposed regulation pursuant to the Green Chemistry statute and an opportunity to comment prior to the adoption of the regulation, the dispute resolution procedures specified in regulations shall not be available to a person who seeks to dispute the regulation.

6) Declares that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on vulnerable populations.

7) Requires a product manufacturer to provide to DTSC data and information on the ingredients and use of a consumer product upon DTSC's request within the time specified by DTSC, including, but not limited to, all of the following:
   a) Data on ingredient chemical identity, concentration, and functional use;

b) Existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations; and,
c) Data on national or state product sales.

8) Requires the product manufacturer, if it certifies in writing that it does not have the information DTSC requested and cannot obtain that information from the chemical manufacturer, to provide the identity and contact information of the chemical manufacturer to DTSC. Authorizes DTSC, in this circumstance, to request the unknown information from the chemical manufacturer.

9) Requires a chemical manufacturer, upon DTSC's request, to provide the information requested.

10) Provides that a person who violates the data provision requirements in this bill shall be liable for a civil penalty not to exceed $70,000 for each separate violation or, for continuing violations, for each day that violation continues. Provides that liability under this bill may be imposed in a civil action or may be imposed administratively.

11) Requires that a penalty collected pursuant to data provisions requirements be deposited in the Toxic Substances Control Account in the General Fund.

12) Requires DTSC, in imposing an administrative penalty for data provision violations, to take into consideration the nature, circumstances, extent, and gravity of the violation, the history of previous violations, the violator's ability to pay the penalty, and the deterrent effect of the penalty.

13) Requires DTSC to, subject to an appropriation by the Legislature and no later than January 1, 2021, revise its list of authoritative references for candidate chemicals to include:
a) Each fragrance allergen included by the European Union in Annex III of the Regulation (EC) 1223/2009 as required to be labeled by the European Union in Regulation (EC) 648/2004, and any subsequent updates to the list;
b) Each asthmagen for which the American Conference of Governmental Industrial Hygienists has established threshold limit values for asthma;
c) Each designated chemical identified under the California Environmental Contaminant Biomonitoring Program; and,
d) Each endocrine disrupting chemical identified by the Office of Environmental Health Hazard Assessment (OEHHA).

14) Requires DTSC to, subject to an appropriation by the Legislature, include in each Priority Product Work Plan, commencing with the 2021–23 Priority Product Work Plan, in addition to any other information that DTSC is required to include pursuant to regulation, all of the following information:
a) Information that DTSC has at the time the work plan is issued on the chemicals or chemical ingredients that may be chemicals of concern that are contained in consumer products within each product category or subcategory;
b) Any additional ingredient information that is needed for DTSC to evaluate the safety of those consumer products, including, but not limited to, the data requested from manufacturers.

c) Information specifying how DTSC plans to collect the additional ingredient information, if any, from manufacturers;
d) Timelines for completion, not to exceed five years from the date of issuance of the work plan, of all of the following with regard to at least five product categories or subcategories in each work plan:
   i) The collection of ingredient information from manufacturers; and,
   ii) All actions required pursuant to this bill for a consumer product that contains a chemical of concern, including, but not limited to, the listing of that product as a priority product, the completion of an alternatives analysis for the product, and the adoption of implementing regulations.

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

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

17) Deletes statutory provisions relating to the Toxics Information Clearinghouse, and instead requires that DTSC and OEHHA maintain and make available to the public on their internet websites the hazard trait and environmental and toxicological end-point data specified for inclusion in the Toxics Information Clearinghouse.

18) Makes other technical, clarifying, and conforming changes.

EXISTING LAW:

1) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals and chemical ingredients that may be considered chemicals of concern, as specified. (Health & Safety Code (HSC) § 25252)
   a) Identifies, pursuant to regulation, chemicals that are candidates for the above-described process that exhibit a hazard trait and/or an environmental or toxicological end-point and meet certain criteria. (22 California Code of Regulations (C.C.R.) § 69502.2)
   b) Requires, pursuant to regulation, DTSC to consider various factors when identifying and implementing regulatory responses for priority products, such as public health and environmental protection. (22 C.C.R. 69506)

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

3) Authorizes a person providing information to DTSC to identify information that is a trade secret and prohibits release of that information unless DTSC makes a determination that the information should be made public. (HSC § 25257.)

a) Requires DTSC, if it decides to release the information, to notify the person who submitted the information 30 days prior to releasing the information. (HSC § 25257(d)(1))
b) Prohibits DTSC from releasing the information if, prior to the end of the notice period, the person who submitted the information obtains declaratory judgment or a preliminary injunction from a court prohibiting the release of the information and promptly notifies DTSC. (HSC § 25257(d))

4) Requires DTSC to establish the Toxics Information Clearinghouse for the collection, maintenance, and distribution of specific chemical hazard trait and environmental toxicological end-point data, as specified. (HSC § 25256, 25256.1, 25256.2, & 25256.3)

5) Requires DTSC to revise its 2015-17 Priority Product Work Plan to include lead-acid batteries for consideration and evaluation as a potential priority product. (HSC § 25253.5.)

6) Authorizes an informal dispute resolution process by regulation for a manufacturer, importer, assembler, or retailer to dispute certain decisions made by DTSC, as specified. (22 C.C.R. § 69507.1)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "SB 392 updates the Green Chemistry Program in line with some of the recommendations from a recent independent report by Dr. Gina Solomon and the Public Health Institute. SB 509 and AB 1879, passed in 2008, envisioned a program that used the best available science to identify and find alternatives for toxic ingredients in consumer products; the updates proposed in SB 392 help realize that goal.
>
> The hallmark of the Green Chemistry Program is the four-step Safer Consumer Products (SCP) framework administered by the Department of Toxic Substances Control (DTSC). As designed, the SCP program lists hazardous chemicals, identifies products that may contain those chemicals, calls upon manufacturers to find alternatives, and then issues a regulatory response. In the 10 years since AB 1879 passed, DTSC has built the regulatory framework for the SCP process, but has not yet executed it for any listed chemicals.
>
> The Public Health Institute report made a number of recommendations to ensure appropriate and timely regulatory responses for dangerous product-chemical combinations. SB 392 makes several changes to the Green Chemistry Program to address these recommendations. This bill grants DTSC much-needed data call-in authority, which will enable them to acquire chemical ingredient data without collecting it in-house. The bill also creates a regulatory fast-track that, only when existing publically-available data firmly supports it, accelerates DTSC's ability to take regulatory action. After interviewees in the Public Health Institute report claimed nearly unanimously that the Toxics Information Clearinghouse had not been useful, SB 392 repeals the mandate for DTSC to maintain the clearinghouse. Beyond the above provisions and upon an appropriation from the Legislature, SB 392 will also shape

DTSC's five-year work plan timelines and add several new authoritative lists of candidate hazardous chemicals.

In the SCP program, DTSC has built a first-of-its-kind regulatory process to protect Californians and promote safer innovations. The adjustments made by SB 392 will ensure DTSC has the tools they need to efficiently identify and address unsafe chemical ingredients in everyday products."

Chemicals in products: Industrial chemicals have become a part of everyday life, contributing to improvements in medicine, technology, and infrastructure and touching just about everything people come into contact with. More than 84,000 chemicals have been registered for use in the United States, and more than 700 new chemicals enter the marketplace each year. As more and more chemicals enter our homes and workplaces, the need to better understand and prevent the potential adverse effects these chemicals may have on human health and on the environment becomes even more critical.

According to a 2014 article in *The Journal of Environmental Studies and Sciences,* as a consequence of weaknesses in federal chemicals policy, chemicals suspected of being hazardous are found in numerous consumer and commercial products, including some to which children likely are exposed. Downstream businesses that purchase and use chemicals shoulder the burden of identifying and managing potentially hazardous chemicals in their supply chains. Additionally, the Centers for Disease Control and Prevention have detected hundreds of industrial chemicals in the bodies of American children and adults. Many of these chemicals have been linked to adverse health effects, but for the majority, there is too little information to understand their potential for long-term harm. Experts estimate that the environmental contribution to disease may explain a quarter to a third of the global disease burden. In addition to human health effects, environmental contamination continues to erode biodiversity and ecosystem health worldwide.

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

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

Green Chemistry in California: In 2008, the California legislature recognized the principle of Green Chemistry by enacting two landmark pieces of legislation, AB 1879 (Feuer and Huffman,

Chapter 559, Statutes of 2008) and SB 509 (Simitian, Chapter 560, Statutes of 2008). These bills lay the statutory foundation for the state's Green Chemistry program and intend to establish a comprehensive approach to chemicals policy.

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

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

The Safer Consumer Products regulatory process: To implement the Green Chemistry statutes, DTSC created what it called a "four-step continuous, science-based, iterative" regulatory process, which it deemed the "Safer Consumer Products" (SCP) regulations, to identify safer consumer product alternatives. The SCP regulations were adopted October 2013. Per DTSC, the regulatory steps are listed below:

1) Candidate Chemicals – The regulations establish an immediate list of "candidate chemicals" (~1,200) based on the work already done by other authoritative organizations, and specify a process for DTSC to identify additional chemicals as candidate chemicals.

2) Priority Products – The regulations require DTSC to evaluate and prioritize product/candidate chemical combinations to develop a list of "priority products" for which alternatives analyses must be conducted. A candidate chemical that is the basis for a product being listed as a priority product is designated as a chemical of concern for that product and any alternative considered or selected to replace that product.

3) Alternatives Analysis – The regulations require responsible entities (manufacturers, importers, assemblers, and retailers) to notify DTSC when their product is listed as a priority product. DTSC will post this information on its website. Manufacturers (or other responsible entities) of a product listed as a priority product must perform an alternatives analysis for the product and the chemicals of concern in the product to determine how best to limit exposures to, or the level of adverse public health and environmental impacts posed by the chemicals of concern in the product.

4) Regulatory Responses – The regulations require DTSC to identify and implement regulatory responses designed to protect public health and/or the environment, and maximize the use of acceptable and feasible alternatives of least concern. DTSC may

require regulatory responses for a priority product (if the manufacturer decides to retain the priority product), or for an alternative product selected to replace the priority product.

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

In the more than 10 years after the passage of the original Green Chemistry legislation, DTSC has only adopted three priority products and proposed four more. The report points out that no products have yet undergone an alternatives analysis under this program and no regulatory responses have occurred.

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

1) The Legislature should authorize DTSC to take expedited action when safer alternatives are already available;

2) The Legislature should give DTSC clear authority to require manufacturers to disclose the function and use of chemicals in products, maintaining appropriate protections for confidential business information;

3) The Legislature should provide some flexibility in the AB 1879 alternatives analysis criteria to allow DTSC to use existing high-quality alternatives analysis. DTSC also needs authority to recoup costs from manufacturers to review analyses or to conduct independent analyses if necessary; and,

4) DTSC should restructure or repurpose the Toxics Information Clearinghouse.

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

This bill: According to the author, the intent of this bill is to update and reform Green Chemistry statute to reflect recommendations from the Public Health Institute's report. He points out that specifically, it:

1) Creates a "fast track" option for the alternatives analysis process when there is abundant information on safer alternatives publically available that leads to a regulatory response;

2) Provides DTSC with data call in authority to collect ingredient, customer use, and sales data as it exists from manufacturers;

3) Streamlines redundant informal resolution and appeals processes;

4) Repeals the mandate to maintain the Toxics Information Clearinghouse, but includes the requirement to maintain existing information in the Clearinghouse;

5) Adds, upon appropriation, new authoritative lists to the candidate chemical list; and,

6) Shapes, upon appropriation, DTSC's future work plan updates to identify needed information and commit to regulatory actions.

Continued conversations: The author indicates that he is continuing to work with both supporters and opponents to refine the language in the bill.

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

Arguments in support: A coalition of supporters writes, "SB 392 will address several key impediments that are slowing the [SCP] program's progress, as identified in the report. In order to ensure that the SCP has adequate information to prioritize product-chemical combinations for regulation, the bill clarifies that product and chemical manufacturers must provide chemical ingredient data when requested, while preserving existing confidential business information protections. It also allows the program to expedite action on chemicals in specific products when existing studies or analyses of alternatives to the chemical demonstrate that safer alternatives exist. In addition, it requires more detailed workplans with timelines and planned actions, while removing redundant administrative processes. Finally, the bill repeals the program's responsibility to update the TIC… SB 392 provides common sense solutions to ensure that the promising but slow-moving SCP will fulfill its potential to protect public health and the environment, while creating greener, more innovative economic opportunities for businesses."

Arguments in opposition: A coalition of opponents, including the American Chemistry Council, California Chamber of Commerce, and California Food Processors, among other signatories, writes, "The bill currently lacks sufficient opportunity for all stakeholders to comment on the quality and relevance of DTSC's use of "publicly available information." Amendments are needed to ensure DTSC's decisions are fully informed, based on current and sound scientific information, adhere to the criteria outlined in the implementing regulations, provide multiple opportunities for stakeholder input, and allow manufacturers to submit an alternatives analysis

for review by DTSC... We believe DTSC should be required to publicly notice a request for information first, to which trade associations or individual companies may respond. The data collected via this process, should help inform more specific data requests from specific manufacturers. Amendments are needed to ensure any data request is prioritized, focused on a specific ask (e.g. specific chemical/product combinations, etc), provides reasonable timeframes for industry to respond and protects any confidential business information. The current SCP program provides a petition process to allow anyone to request DTSC add additional chemicals to the candidate chemicals list. Expanding the list in statute is unnecessary and should be deleted."

Double referral: Should the ESTM Committee approve this bill, it will be referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

7th Generation Advisors
Black Women for Wellness Action Project
Bluegreen Alliance
Breast Cancer Prevention Partners
California Association of Environmental Health Administrators (CAEHA)
California Association of Professional Scientists
California Environmental Justice Alliance
California Healthy Nail Salon Collaborative
California League of Conservation Voters
Center for Oceanic Awareness, Research, & Education
Center of Race, Poverty and The Environment
City and County of San Francisco
Clean Production Action
Clean Water Action
Coalition for Clean Air
Consumer Federation of California
Environmental Working Group
Health Care Without Harm
Los Angeles City Attorney
Nontoxic Certified
NRDC
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Plastic Pollution Coalition
Safer States
San Francisco Department of The Environment
SEIU California
Sheet Metal Occupational Health Institute Trust
Sierra Club California
The 5 Gyres Institute
United Steelworkers District 12
Upstream
Women's Voices for The Earth

Opposition

Alkylphenols & Ethoxylates Research Council
Alliance of Automobile Manufacturers
American Chemistry Council
American Cleaning Institute
American Coatings Association
California Chamber of Commerce
California Food Producers
California Manufacturers & Technology Association
California Paint Council
California Retailers Associaiton
Can Manufacturers Institute
Carpet & Rug Institute
Chemical Industry Council of California
Consumer Healthcare Products Association
Fragrance Creators Association
Grocery Manufacturers Association
Hasa, Inc.
Household and Commercial Products Association
Industrial Environmental Association
Juvenile Products Manufacturers Association
Motor and Equipment Manufacturers Association
National Shooting Sports Foundation
Personal Care Products Council
Plumbing Manufacturers International
The Toy Association
U.S. Tire Manufacturers Association

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

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 647 (Mitchell) – As Amended April 11, 2019

SENATE VOTE: 38-0

SUBJECT: Hazardous substances: metal-containing jewelry.

SUMMARY: Updates and restructures the Metal-Containing Jewelry Law, which sets limits on the amount of lead and cadmium that can be used in jewelry. Specifically, **this bill**:

1) Establishes the intent of the Legislature that this law protects the public health, safety, and welfare of Californians by preventing lead and cadmium exposure from jewelry that is sold in the state.

2) Revises the definition of "children" from children six years of age and younger to children 15 years of age and younger.

3) Defines "inaccessible" as not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product. Provides that paint, coatings, and electroplating do not render substrate material inaccessible to a child.

4) Lowers, in adult jewelry, the allowable lead for electroplated metal from 6% lead by weight to 0.05% lead by weight; lowers the allowable lead for unplated metal from 1.5% to 0.5%; and, lowers the allowable lead for dye or surface coating from 0.06% to 0.05%.

5) Updates the provisions prohibiting a person from manufacturing, shipping, selling, or offering for sale children's jewelry for retail sale or promotional purposes in the state, unless the children's jewelry:

   a) Contains no more than 0.01% (100 parts per million (ppm)) lead by weight, excluding inaccessible component parts; and,

   b) Has a surface coating that contains no more than 0.009% (90 ppm) lead by weight.

6) Deletes specified permissible lead levels for glass or crystal decorative materials for children's jewelry. Authorizes the Department of Toxic Substances Control (DTSC) to establish guidance on what component parts in children's jewelry should be considered to be inaccessible. Requires a determination of whether a component part of children's jewelry is inaccessible, in the absence of that guidance from DTSC, to be made in accordance with federal law (Section 1500.87 of Title 16 of the Code of Federal Regulations (CFR)).

7) Prohibits a person from manufacturing, shipping, selling, or offering for sale children's jewelry that meets either of the following descriptions:

a) The jewelry contains a component or is made of a material that is more than 0.03% (300 ppm) cadmium by weight; or,

b) The jewelry has a surface coating that contains more than 0.0075% (75 ppm) soluble cadmium by weight.

8) Provides that this law shall not apply to any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008 (CPSIA).

9) Requires a manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes to do all of the following when preparing a certification that attests that the jewelry does not contain a level of lead or cadmium that prohibits the jewelry from being sold or offered for sale pursuant to this law:

a) Identify the jewelry covered by the certificate, including a description of the jewelry that is sufficiently detailed to match the certificate to each product covered by the certificate and that could not be used to describe any jewelry that is not covered by the certificate;

b) Cite to each separate rule or standard for which the jewelry is being certified;

c) Identify the manufacturer or supplier certifying compliance of the jewelry, including the name, full mailing address, and telephone number of the manufacturer or supplier;

d) Include the contact information for the person maintaining records of the test results of jewelry tested for purposes of this article, including the name, full mailing address, email address, and telephone number of that person;

e) Include the date on which the jewelry was manufactured, including at least the month and year;

f) Include the location where the jewelry was manufactured, including at least the city or administrative region, state, if applicable, and country where the product was manufactured or finally assembled. If the same manufacturer operates more than one location in the same city, the street address of the factory shall be included;

g) Include the date or dates on which, and the location or locations where, the jewelry was tested for purposes of certification; and,

h) Identify any third-party laboratory that performed the testing for purposes of certification, including the name, full mailing address, and telephone number of the laboratory.

10) Provides that test methods for determining compliance include those permissible to demonstrate compliance with the CPSIA.

EXISTING LAW:

Pursuant to the CPSIA (Public Law 110-314):

1) Provides the Consumer Product Safety Commission (CPSC) with regulatory and enforcement authority over, among other things, children's products, as defined, and requires those products to comply with all applicable children's product safety rules; be tested for compliance by a CPSC-accepted accredited laboratory, unless subject to an exception; have a written Children's Product Certificate that provides evidence of the product's compliance; and, have permanent tracking information affixed to the product and its packaging where practicable.

2) Provides that, after August 14, 2009, products designed or intended primarily for children 12 years of age and younger cannot contain more than 300 ppm of lead. Provides that on August 14, 2011, the limit may be further reduced to 100 ppm after three years, unless the CPSC determines that it is not technologically feasible to have this lower limit.

3) Provides that the provisions of ASTM International Standard F963–07 Consumer Safety Specifications for Toy Safety (ASTM F963) shall be considered to be consumer product safety standards issued by the CPSC under section 9 of the CPSIA.

Pursuant to the Metal-Containing Jewelry Law (Health & Safety Code § 25214.1 - 25214.4.2):

1) Prohibits a person from manufacturing, shipping, selling, or offering for sale or promotional purposes jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials that do not exceed specified lead and cadmium content limits, and imposes separate material requirements for children's jewelry, as provided.

2) Provides that the content limits in adult jewelry for electroplated metal, unplated metal, plastic or rubber, and dye or surface coating are 6%, 1.5%, 0.02%, and 0.06% of lead by weight, respectively.

3) Provides that the content limit in children's jewelry for metal, glass, ceramic, or component parts ranges from 0.02% - 0.06% of lead by weight, as specified.

4) Provides that the content limit in children's jewelry for cadmium is .03% by weight.

5) Defines "children" to mean children six years of age and younger.

6) Requires a manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes to prepare a certification that attests that the jewelry does not contain a level of lead or cadmium in excess of the provided limits.

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

> "California's metal-containing jewelry law has been in place for 15 years. Since then, science has made significant strides in understanding the long term health risks associated with exposure to lead and cadmium commonly used in jewelry. Those strides are reflected in significantly stricter standards enforced by the US Federal government, Canada, the European Union and the World Health Organization. It is time to align California's jewelry

law with these higher standards that protect our families and are already familiar to the jewelry industry nationally and internationally.

The need to update our law is clearly documented in the heightened risks for women and children; but on a broader perspective, the population exposed to these materials are vulnerable based on their economic status. Lower income communities are already at greater environmental exposure, being more likely to live in older homes with lead paint and old pipes, among other risks. Combine that exposure with the fact that expensive jewelry (made with silver, gold and other nontoxic materials) is less accessible to low-income communities than cheaper jewelry, which commonly employs cadmium and lead to create comparable weight, brightness and "sparkle" at significant cost to public health. In the interest of protecting our families from the potent health risks of these metals prevalent in everyday jewelry, it is time to upgrade California's jewelry law."

Health impacts of lead: Lead has been listed under the Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65, since 1987, as a substance that can cause reproductive damage and birth defects, and has been listed as a chemical known to cause cancer since 1992. Lead exposure and lead poisoning are also associated with cognitive and other health impacts, especially to children, that appear irreversible. There is no level of lead that has been proven safe, either for children or for adults. Young children are particularly vulnerable to the toxic effects of lead and can suffer profound and permanent adverse health effects, particularly affecting the development of the brain and nervous system. As lead exposure increases, the range and severity of symptoms and effects also increase.

Lead is used in making some children's jewelry because it is inexpensive relative to other metals, is easily molded, and it makes jewelry heavier. It is also used as a stabilizer in some plastics, such as polyvinyl chloride (PVC), which is often incorporated into children's jewelry. It has a sweet taste that may encourage children to repeatedly chew or suck on lead-containing jewelry. Moreover, children's innate curiosity and their age-appropriate hand-to-mouth behavior result in mouthing and sometimes swallowing lead-containing or lead-coated objects.

Several cases of lead poisoning in children have been linked to children's jewelry containing lead.

Health impacts of cadmium: Cadmium has been listed under Proposition 65, since 1997, as a reproductive toxicant, and has been listed as a chemical known to cause cancer since 1987. Cadmium has been associated with harmful effects on the kidneys, liver, and blood, and on the cardiovascular, neurological, reproductive/developmental, and immune systems.

Cadmium is used to make the coating of jewelry shiny and to add weight and mass to each piece. Unlike lead, cadmium tastes very bitter and it is unlikely that children would repeatedly suck or chew items made with cadmium. However, due to children's hand-to-mouth tendencies, swallowing is considered the most likely route of exposure for cadmium from children's jewelry.

Metal-Containing Jewelry Law history: In June 2004, the California Attorney General's (AG) Office and two environmental groups filed a lawsuit under Proposition 65 against several major retailers for selling jewelry containing dangerous amounts of lead without providing the required warning. The lawsuit resulted in a consent judgment with a number of jewelry manufacturers, distributors, and retailers. The settlement, *People vs. Burlington Coat Factory Warehouse Corporation, et al.,* required these businesses to comply with restrictions on lead in jewelry.

In 2006, the Legislature enacted the Lead-Containing Jewelry Law AB 1681 (Pavley, Chapter 415, Statutes of 2006) to codify that settlement and establish a standard for the amount of lead allowed in jewelry that was equivalent to what was allowed in that settlement – 0.06%, or 600 ppm. The law prohibits a person to manufacture, ship, sell, or offer for retail sale, or offer for promotional purposes jewelry in California unless it is made entirely from one or more of the materials specified in the law. The law also mandates lead restrictions for other specified materials. There are separate provisions for children's jewelry, body-piercing jewelry, and all other jewelry.

AB 2901 (Brownley, Chapter 575, Statutes of 2008), among other things, amended the definition of jewelry, extended the restrictions to promotional items, required manufacturers to provide compliance certifications, and enhanced DTSC's enforcement authority.

After the Legislature enacted the Lead-Containing Jewelry Law to place limits on lead levels in jewelry, some manufacturers replaced lead with cadmium, which is also toxic. In response, the Legislature again modified the law, renamed it the Metal-Containing Jewelry Law, and included a restriction on cadmium in children's jewelry, effective January 1, 2012. SB 929 (Pavley, Chapter 313, Statutes of 2010) restricts cadmium in children's jewelry to 0.03% or 300 ppm.

Lead standards for children's jewelry: In 2008, Congress enacted the CPSIA, which established a comprehensive program to regulate, among other things, lead in children's products, including jewelry. The CPSIA directed the CPSC to phase-in the reduced levels for lead content over a three year period, starting with 600 ppm on February 10, 2009. The lead level lowered to 300 ppm on August 14, 2009. Finally, the CPSIA directed the total lead content limit be set at 0.01% (100 ppm), unless the CPSC determined it was not technologically feasible for a product or product category.

On July 15, 2011, the CPSC announced that the 100 ppm total lead limit is technically feasible; therefore, the new limit went into effect on August 14, 2011, for manufacturers, importers, retailers, and distributors of children's products.

California's Metal-Containing Jewelry Law allows metals to contain up to 0.06% of lead (600 ppm).

To align state law with the CPSIA's lead standards, SB 647 proposes to lower the level to 0.01% (100 ppm) lead by weight.

Cadmium in children's jewelry: Current state law, pursuant to SB 929 (Pavley), restricts cadmium in children's jewelry to 0.03% or 300 ppm.

While the CPSIA did not establish cadmium standards for children's jewelry, it did enact cadmium standards for toys. Specifically, Section 106(a) of the CPSIA incorporates by reference the ASTM International Standard F963–07, which limits the soluble amount of cadmium in surface materials to .0075% (75 ppm).

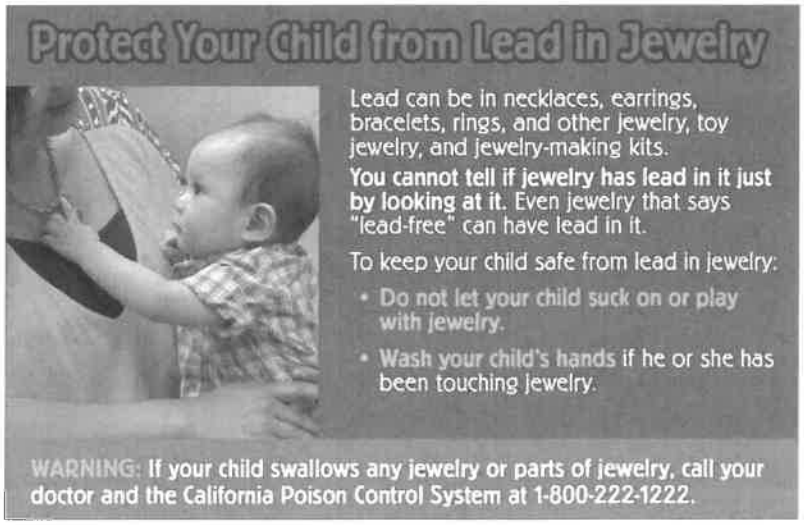
SB 647 would conform California's cadmium standard for children's jewelry to the CPSIA by limiting paint and surface coating of children's jewelry to .0075% (75 ppm) while maintaining the existing concentration-based limit of .03% cadmium under current state law.

Lead in adult jewelry: Lead cannot be absorbed appreciably through intact skin; the greatest risk of lead exposure is through ingestion (directly chewing on and/or swallowing). Because of the behavioral differences between adults and children, the lead limits for adult jewelry have historically been higher than what is allowed in children's jewelry.

Under current law, all other jewelry (jewelry other than what is marketed for children) restricts lead to 6% lead by weight. SB 647 proposes to lower that threshold to 0.05% (500 ppm) in acknowledgement that children may play with jewelry not necessarily marketed to their age demographic and be exposed to dangerously high levels of lead.

The San Francisco Bay Area Physicians for Social Responsibility states that, "Parents well know that young children enjoy rummaging through jewelry boxes and wearing the items they find. Even the most diligent parents are not aware of their jewelry's lead or cadmium content, and they struggle to prevent their children from touching jewelry items that the parent wears or stores around the house. Any effort to reduce the lead or cadmium content of common household items, whether intended for adult or child use, is well spent."

The California Department of Public Health's (CDPH) *Standard of Care Guidelines on Childhood Lead Poisoning for California Health Care Providers* lists children's access to any costume jewelry as a risk factor for childhood lead exposure and potential lead poisoning. This risk factor is not limited to a type of jewelry marketed to a specific age group. CDPH's warning for jewelry or amulets is: "Do not allow children to play with or touch these items." In furtherance of that guidance, CDPH's Childhood Lead Poisoning Prevention Branch's educational materials (brochures) for parents state, "**You cannot tell if jewelry has lead in it just by looking at it**," and, "To keep your child safe from lead in jewelry: do not let your child suck on or play with jewelry."



In 2012, the European Union (EU) adopted a 0.05% lead standard for all jewelry. This standard is based on the European Chemicals Agency report, *Background document to the opinions on the Annex XV dossier proposing restrictions on lead and its compounds in jewelry*, which established the lead restriction to apply to all jewelry, whether they are intended for children or not, noting that "children can come into contact with adult jewelry."

The EU report looks at various children mouthing scenarios. For more common mouthing scenarios, the study shows that jewelry meeting California's adult jewelry standard would create

appreciable risks to a child's cognitive development. Under a chronic mouthing scenario, the study concludes that a 0.05% lead jewelry standard would not create appreciable risks to the child. Specifically, it states that based on a conservative mouthing duration of one hour per day, which occasionally may occur, the report found that "a limit value of 5% would protect against exposure above the tolerable daily intake of 0.05 µg Pb/kg bodyweight per day."

Adult jewelry that contains as much as 6% lead is a lead exposure risk factor for young children who like to seek out and play with an adult's jewelry. Therefore, SB 647 proposed to adopt the EU lead standard of 0.05% for adult jewelry.

Enforcement of the law: In addition to marketplace surveillance, DTSC responds to complaints of jewelry suspected of non-compliance with the law. DTSC has uncovered jewelry for adults and children containing dangerously high amounts of lead in one or more components of the jewelry items.

In 2012, the state AG's Office filed a complaint against 16 businesses that had been supplying retailers or directly selling Californians jewelry containing high levels of lead. Some of the toxic jewelry had labels claiming to be "lead free." A total of 343 tainted jewelry items, some of which were imported from Asia, were discovered as part of DTSC's ongoing efforts to protect consumers from unnecessary toxic chemicals in everyday products.

In 2017, DTSC pursued enforcement actions against 11 retailers and suppliers for allegedly selling costume jewelry for children and adults containing dangerous levels of lead and cadmium. Some of the items had labels falsely claiming to be "lead free" or "lead compliant." The example of seized children's jewelry below contained 6,270 ppm lead – a far cry from being compliant with the Metal-Containing Jewelry Law.

DTSC has found several examples of children's jewelry that is compliant with state law for lead, but not the more stringent, federal lead standard. Under the CPSIA, the state AG's Office has enforcement authority for these violations of the lower federal standards, but it is limited to injunctive relief only, not monetary penalties. By aligning state law with federal law, SB 647 will enable DTSC and the AG to pursue greater enforcement over noncompliant jewelry makers who are not meeting the lower lead limits.

Trust, but verify: Current law requires a jewelry manufacturer to attest that the jewelry does not contain any unlawful levels of level of lead or cadmium.

SB 647 augments that certification by requiring the manufacturer to additionally:

1) Clearly identify the piece of jewelry being certified;
2) Cite each separate rule or standard for which the jewelry is being certified;
3) Identify the manufacturer or supplier certifying compliance of the jewelry;
4) Provide contact information for the person maintaining records of the test results of jewelry tested;
5) Provide specific information on the jewelry being certified, including detailed description, date of manufacture, and the location of manufacture; and,
6) Identify any third-party laboratory that performed the testing for purposes of certification.

Testing jewelry for contaminants: The federal Resource Conservation and Recovery Act (RCRA) governs waste management and materials recovery and reuse. In support of RCRA, the United States Environmental Protection Agency (US EPA) developed test methods for the analysis of various environmental media. These test methods can be found in the EPA publication, *Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, also known as SW-846.*

The Metal-Containing Jewelry Law specifies that testing methods for determining compliance shall be conducted using the US EPA reference methods 3050B, 3051A, and 3052, as specified in the SW-846. (HSC § 25214.4) Current law additionally authorizes DTSC to adopt regulations that modify these testing protocols in the future, if necessary.

Some groups believe that the current testing methodologies need to be removed from the law in order to ensure appropriate tests are used to accurately measure the restricted heavy metals.

The Fashion Jewelry & Accessories Trade Association argues that "the CPSC has the correct tests as part of the Children's Jewelry Safety Improvement Act. They require separate tests for each component and if any one fails, the whole piece fails."

The CPSC developed Test Method CPSC-CH-E1001-08.2 and Test Method CPSC-CHE1002-08.2 for measuring lead in metal and non-metal products using microwave digestion for sample preparation.

SB 647 does not change the testing methodologies prescribed for determining compliance under current law, but additionally provides that test methods for determining compliance include those permissible to demonstrate compliance with CPSIA.

California law regulates lead and cadmium. CPSC methods are designed only for lead. Therefore, SB 647 appropriately recognizes use of both federal standards (EPA and CPSC) for testing jewelry.

How old is a child for purposes of regulating the safety of children's jewelry? The CPSC defines "children" as 12 years of age or younger as it relates to children's jewelry.

In Canada, children's jewelry manufactured, imported, advertised, or sold in Canada is subject to the Canada Consumer Product Safety Act and Children's Jewelry Regulations, which define

children's jewelry as "jewelry that is manufactured, sized, decorated, packaged, advertised or sold in a manner that appeals primarily to children under 15 years of age." The intent was to capture "tweens" as the products marketed to that age bracket of children.

Unlike the CPSIA definition for children, Canada applied their lead in jewelry restrictions to a broader age limit because "it is more reflective of industry marketing practices, which target the 10-14 year old "tweens-young teens" age range as a single group."

This standard appears to be current industry practice, as shown by this example of fashion jewelry on sale today at a major retailer in California:

NOTE: The label states: "Not intended for children 12 and under in US and 15 and under in Canada."

SB 647 proposes to revise the definition of children from six years of age and younger to 15 years of age and younger.

Arguments in support: Environmental Working Group and Center for Environmental Health, co-sponsors of the bill, state, "[No] level of lead exposure is safe, and even low blood lead levels can cause children to have learning and behavioral problems …The bill would lower, from as much as 600 ppm to 100 ppm, the allowable lead level in jewelry intended to be used by children, and would also lower, from as much as 60,000 ppm to 500 ppm, the allowable lead level in jewelry used by adults. The bill will also apply the children's jewelry standard, which limits jewelry's lead and cadmium content, to children aged 15 and [younger], instead of the current age range of six years and [younger]."

Arguments in opposition: The Fashion Jewelry & Accessories Trade Association argues, "As we recognize that there are some positive attributes to this amendment to the Metal Containing Jewelry Law, we need to oppose it for several important reasons. The revision does update the Law to agree with federally mandated lead limits in children's products, however it has chosen not to align with the Consumer Product Safety Commission's identifying a child as 12 and younger. The CPSC does not believe that adolescents 12 and older are at risk based on scientific evidence, human behavior and body weight and absorption factors. Harmonization of standards is essential to avoid consumer confusion and allow the public to have confidence in the regulatory process."

Technical amendments: SB 647 is proposing to restructure much of the Metal-Containing Jewelry Law. Some of the provisions, however, could use some further organizing and clarification to make the revised metal standards clear for each category of covered jewelry. The Committee may wish to consider the following amendments:

1) Implementation timing: The current federal standards for lead and cadmium in children's jewelry went into effect in 2011 and 2008, respectively, so California is already behind schedule in conforming to federal law. SB 647 would provide that catch up. As it relates to adult jewelry, however, SB 647 would be creating a new standard for the jewelry industry. Section 25214.2 (a) should be amended to provide a 6-month delayed effective date, June 1, 2020, for the lowered adult jewelry lead standard.

2) Improved organization: For each adult jewelry standard, the provisions should begin with "For jewelry that is not children's jewelry…" With each children's jewelry standard, the provisions should begin with "For children's jewelry…" The subdivisions of Section 25214.2 should be regrouped so the adult jewelry standards are together and the children's jewelry standards are together.

3) The federal children's jewelry standards applies to "any part" of the jewelry. To thoroughly conform to the federal law, the children's jewelry lead provision should similarly include "any part of the jewelry."

4) Testing Standard: Clarify that the same testing method for cadmium used for children's toys pursuant to the federal law should apply to cadmium in children's jewelry.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General (Sponsor)
Center for Environmental Health (Cosponsor)
Environmental Working Group (Cosponsor)
Breast Cancer Prevention Partners
California Association of Environmental Health Administrators (CAEHA)
CALPIRG
Clean Water Action
Coalition of California Welfare Rights Organizations
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
Natural Resources Defense Council
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Sierra Club California
Wholly H2O

Opposition

Citizens for Safe Consumer Products
Fashion Jewelry & Accessories Trade Association (FJATA)
Scientific Health Center

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