Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 86 (Durazo) – As Amended June 11, 2019

SENATE VOTE: 38-0 (not applicable)

SUBJECT: Public health: pesticide: chlorpyrifos

SUMMARY: Prohibits the use of a pesticide that contains the active ingredient chlorpyrifos commencing June 1, 2021, and makes legislative findings about child development, the health risks to children as a result of chlorpyrifos exposure, and the Department of Pesticide Regulations (DPR's) recent initiation of the process to cancel registrations for pesticide products containing chlorpyrifos.

EXISTING LAW:

1) Regulates the use of pesticides and authorizes the director of DPR (director) to adopt regulations to govern the possession, sale, or use of specified pesticides, as prescribed. (Food and Agriculture Code (FAC) §11501, et. seq)

2) Requires the director to endeavor to eliminate from use in the state any pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. (FAC § 12824)

3) Authorizes, the director, after hearing, to cancel the registration of, or refuse to register, any pesticide that fulfills these, among other, criteria:
   a) That has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment;
   b) The use of which is of less public value or greater detriment to the environment than the benefit received by its use;
   c) For which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment; or,
   d) That, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety. (FAC § 12825)

4) Requires DPR to control and regulate restricted materials found to meet specified criteria, including, but not limited to, the danger of impairment to public health, hazard to applicators and farmworkers, and hazard to the environment. Authorizes DPR to adopt regulations that prohibit the use or possession of a restricted material that he or she finds and determines is injurious to the environment or to any person, animal, crop, or other property. (FAC § 14001, et. seq)

5) Defines a Toxic Air Contaminant (TAC) as an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or that may pose a present or potential hazard to human health. (FAC § 14021)

6) Requires the director, in consultation with the Office of Health Hazard Assessment (OEHHA) and the State Air Resources Control Board (ARB), to evaluate, as specified, the

health effects of pesticides that may be or are emitted into the ambient air of California and that may be determined to be a TAC that poses a present or potential threat to human health. (FAC § 14022)

7) Requires, upon completion of the evaluation and in consultation with OEHHA, the director to prepare a report, as specified, on the health effects of the pesticide that may be determined to be a TAC. Requires the report to be reviewed by the scientific review panel, as specified. Requires the director, following receipt of the findings of the scientific review panel, to conduct a public hearing and then list, by regulation, pesticides determined to be TACs. (FAC § 14023 (a) – (d))

8) Requires the director to determine, in consultation with OEHHA, the ARB, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide listed as a TAC. (FAC § 14023 (e))

9) Requires, for pesticides determined to need control measures, the director, in consultation with the agricultural commissioners, air pollution control districts and air quality management districts in the affected counties, to develop control measures designed to reduce emissions sufficiently so that the source will not expose the public to the levels of exposure that may cause or contribute to significant adverse health effects. (FAC § 14024 (a))

10) Requires, if no demonstrable safe level or threshold of significant adverse health effects has been established by the director, the control measures to be designed to adequately prevent an endangerment of public health through the application of best practicable control techniques, which include, but are not limited to, the following:
    a) Label amendments;
    b) Applicator training;
    c) Restrictions on use patterns or locations;
    d) Changes in application procedures;
    e) Reclassification as a restricted material; and,
    f) Cancellation. (FAC § 14024 (a) – (b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 86 would prohibit the use of chlorpyrifos starting on June 1, 2021, which aligns with [the California Environmental Protection Agency's (CalEPA's)] announcement to prohibit the use of chlorpyrifos in California in two years or less… This bill highlights what I believe is an important consensus among the Newsom Administration, CalEPA, DPR and the legislature on two very important points. First, there is agreement on the science on chlorpyrifos. We agree that chlorpyrifos harms the brain-development of babies and young children and we agree that the harm must stop. Second, there is agreement that we must and will cancel the registration of chlorpyrifos in California to prohibit its use as quickly as possible as and no later than in two years' time. SB 86 provides certainty and accountability to pregnant mothers and families that our state will protect them from the harms of chlorpyrifos. Federal action and inaction on chlorpyrifos requires codification

of the promise we are making in California on chlorpyrifos. Every day and every additional day chlorpyrifos continues to be used in California; it poses a serious threat and danger of brain damage to babies and young children."

Chlorpyrifos uses: According to the United States Environmental Protection Agency (US EPA), chlorpyrifos is an organophosphate insecticide, acaricide, and miticide used primarily to control foliage and soil-borne insect pests on a variety of food and feed crops. Chlorpyrifos has been used as a pesticide since 1965 in both agricultural and non-agricultural areas. Nationwide, the largest agricultural market for chlorpyrifos in terms of total pounds of active ingredient is corn. It is also used on soybeans, fruit and nut trees, Brussels sprouts, cranberries, broccoli, and cauliflower, as well as other row crops. Non-agricultural uses include golf courses, turf, green houses, and on non-structural wood treatments such as utility poles and fence posts. Chlorpyrifos is also registered for use as a mosquito adulticide, and for use in roach and ant bait stations. Products are sold as liquids, granules, water dispersible granules, wettable powders, and water soluble packets, and may be applied by either ground or aerial equipment.

DPR notes that several dozen chlorpyrifos products are registered in California by approximately 20 different companies. The major uses for chlorpyrifos in California include nut trees, alfalfa, citrus, cotton, and several other food crops. Although the use of chlorpyrifos in California has declined by approximately 50% since 2005, growers used nearly one million pounds of chlorpyrifos on agricultural crops in 2017. In California, methods of application have included aircraft, orchard and vineyard tractor airblast sprayers; tractor ground boom; granular; application using irrigation systems; and, others. The major use areas for chlorpyrifos include the Central Valley, Central Coast region, and Imperial County.

Chlorpyrifos concerns: Chlorpyrifos is an organophosphate that inhibits the functioning of the nervous system (acetylcholinesterase inhibition). This is how it kills insects. According to DPR, acute exposure can have similar effects on humans (sweating, salivation, vomiting, low blood pressure and heart rate, seizures, and death). DPR affirms that recent research has shown that chlorpyrifos is also a developmental neurotoxin in children and sensitive populations, and that the threshold for chlorpyrifos-induced neurodevelopmental effects is approximately 10-fold lower than the threshold for acetylcholinesterase inhibition. According to the American Academy of Pediatrics, California, "Chlorpyrifos is highly toxic, with demonstrated severe health effects far below current average exposure levels."

In 2015, DPR designated chlorpyrifos as a restricted material. Restricted materials are pesticides deemed to have a higher potential to cause harm to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or other crops compared to other pesticides. Only trained, licensed professionals with a permit from a local county agricultural commissioner may use products containing a restricted material.

In 2017, OEHHA listed chlorpyrifos as a chemical known to cause developmental toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), which requires the State of California to publish a list of chemicals known to cause cancer or reproductive toxicity (Health and Safety Code § 25249.8).

California's pesticide program: DPR is vested with the authority to regulate the registration, sale, and use of pesticides in California and has a mission of protecting public health and the environment. DPR notes that this authority is derived from several laws that cover all aspects of

pesticide use in all media: air; ground and surface water; food; and, in agricultural, industrial, institutional, occupational and home-and-garden settings. Statutory regulatory authority allows DPR to regulate application rates; ensure pesticide efficacy; designate pesticides as restricted materials; develop criteria to prevent unacceptable pesticide residues in food and water; license applicators and dealers; and, adopt rules to protect workers and the public from overexposure. This full exercise of DPR's authority extends to the suspension or cancellation of a pesticide's registration. Cancellation prohibits use of a pesticide after an administrative adjudicatory hearing.

DPR's Toxic Air Contaminant (TAC) program: DPR's TAC program is one of several options DPR can use to control exposure to potentially hazardous airborne pesticides. The Legislature created the statutory framework for the evaluation and control of chemicals as TACs with the enactment of California's Toxic Air Contaminant Act (AB 1807, Tanner, Chapter 1047, Statutes of 1983). The statute defines TACs as air pollutants that may cause or contribute to increases in serious illness or death, or that may pose a present or potential hazard to human health. DPR is responsible for the evaluation of pesticides as TACs.

According to DPR, the TAC process consists of two phases: risk assessment (evaluation and identification) and risk management (control). The program's first phase involves an extensive evaluation of the candidate pesticide to assess potential adverse health effects and to estimate levels of exposure associated with its use. Following the evaluation, the law requires the preparation of a report for each pesticide that includes: an assessment of exposure of the public to ambient concentrations of the pesticide; a risk assessment; an overview of the environmental fate and use of the pesticide; and the results of air monitoring studies to measure the levels of the candidate pesticide present in ambient air. The report is reviewed by OEHHA and the ARB, and is made available for public review. The draft then undergoes peer review for scientific soundness by the Scientific Review Panel, a panel of experts representing a range of scientific disciplines. Based on the results of this comprehensive evaluation, the director of DPR determines whether the candidate pesticide is a TAC. If the director determines the pesticide meets the criteria to be a TAC, DPR declares the pesticide a TAC in regulation, and adds it to the TAC list.

Once a candidate pesticide has been declared a TAC, it enters phase two of the program—the mitigation, or control, phase. In the mitigation phase, DPR determines, in consultation with OEHHA, the ARB, and air pollution control districts or air quality management districts, the need for, and appropriate degree of, control for the TAC. If reductions in exposure are needed, DPR must develop control measures to reduce emissions to levels that adequately protect public health. In developing control measures, DPR is required to consult with the agricultural commissioners, air pollution control districts, and air quality management districts in the counties where the pesticide is used. Control measures may be implemented by several methods, including regulatory actions, local permit conditions, and product cancellation.

Recent state action on chlorpyrifos: In September 2018, following extensive scientific review and public comment, DPR proposed designating chlorpyrifos as a TAC. In November 2018, DPR recommended that, while it completes the formal regulatory process to list chlorpyrifos as a TAC, county agricultural commissioners begin implementing interim measures on January 1, 2019. The interim measures included: prohibiting all aerial applications of chlorpyrifos; discontinuing its use on most crops; requiring a quarter-mile buffer zone during all allowed applications of the pesticide and for 24 hours afterwards; and, requiring a 150-foot setback from

houses, businesses, schools and other sensitive sites at all times, regardless of whether the site is occupied at the time of application. DPR notes that they believe that all California counties are following these recommendations.

Following the interim recommendation, DPR finalized the listing of chlorpyrifos as a TAC, effective on April 1, 2019.

DPR's cancellation of the registration of products containing chlorpyrifos: On May 8, 2019, CalEPA announced that DPR, "Is acting to prohibit the use of the pesticide and TAC chlorpyrifos in California by initiating cancellation of the pesticide." According to CalEPA, "The decision to prohibit chlorpyrifos follows mounting evidence, including recent findings by the state's independent Scientific Review Panel on [TACs], that the pesticide causes serious health effects in children and other sensitive populations at lower levels of exposure than previously understood. These effects include impaired brain and neurological development."

As mentioned in the previous section on the TAC program, listing chlorpyrifos as a TAC requires DPR, in consultation with the OEHHA, the ARB, and the air pollution control districts or air quality management districts in the affected counties, to determine the need for, and develop the appropriate degree of control measures for, chlorpyrifos. As a result, DPR determined that sufficient additional control measures are not feasible. CalEPA announced that DPR intends to move forward in a responsible manner by beginning the process of canceling the registrations for products containing chlorpyrifos, and at the same time, convening a cross-sector working group to identify safer alternatives to avoid replacing chlorpyrifos with an equally harmful pesticide. DPR also will consult with county agricultural commissioners and local air pollution control districts before filing for cancellation. CalEPA notes that the cancellation process could take up to two years. During the cancellation process, DPR's recommendation to county agricultural commissioners for tighter interim permit restrictions on the use of chlorpyrifos will remain in place.

Funding for safer alternatives: When CalEPA announced the intention to cancel the registration of chlorpyrifos, it, and California Department of Food and Agriculture (CDFA), announced that, "The Governor will propose $5.7 million in new funding in the May Revision budget proposal to support the transition to safer, more sustainable alternatives, and plans to convene a working group to identify, evaluate and recommend alternative pest management solutions."

These proposals appear in the 2019 Budget Act (AB 74, Ting, Budget Act of 2019) as Item 3930-001-0001, which appropriates $2,225,000 to DPR, $2,100,000 of which is available to fund pest management research grants (available for encumbrance or expenditure until June 30, 2022), and Item 8570-001-0001, which appropriates $3,500,000 to CDFA to fund pesticide alternatives grants and biologically integrated farming projects (available for encumbrance or expenditure until June 30, 2022).

According to DPR's Budget Change Proposal (BCP), the funding request breaks down as follows. DPR requests $125,000 to convene a cross-sector work group that will identify, evaluate, and develop safer, practical, more sustainable alternative pest management tools for California growers, and $2,100,000 million to provide funding for projects that develop and implement integrated pest management practices that reduce pesticide risks to human health and the environment. The funds will be used specifically to seek alternatives to chlorpyrifos that advance safer, more sustainable pest management solutions.

Also in the BCP, CDFA requests $1.5 million to supplement the CDFA's Pesticide Alternatives Grant program to support the registration of pest management tools on specialty crops and to focus on funding alternatives to chlorpyrifos that advance safer, more sustainable pest management solutions. CDFA also requests a one-time appropriation of $2 million to revitalize the Biologically Integrated Farming Systems program to provide training and demonstration projects for integrated pest management.

CalEPA asserts that in combination, the working group and funding for alternatives will produce short-term solutions and prioritize the development of long-term solutions to support healthy communities and a thriving agricultural sector.

At the time of the printing of this analysis, AB 74 was enrolled and awaiting the Governor's signature.

Federal action on chlorpyrifos: Federal regulatory action on chlorpyrifos stretches back about two decades, when, in 2000, US EPA finalized chlorpyrifos risk assessments for reregistration and identified the need to address health and environmental risks from chlorpyrifos exposure. At that time, the registrants of chlorpyrifos voluntarily entered into an agreement with US EPA to eliminate, phase out, and modify certain uses. The agreement included eliminating most homeowner uses of chlorpyrifos, except ant and roach baits in child resistant packaging and fire ant mound treatments.

While US EPA made label changes and took other actions on chlorpyrifos over the years, most recently, in October 2015, under the Obama administration, the US EPA proposed to revoke all food residue tolerances for chlorpyrifos. Because tolerances are the maximum residue of a pesticide that can be in or on food, the proposed rule revoking all chlorpyrifos tolerances means that if this approach had been finalized, all agricultural uses of chlorpyrifos would cease. In November 2016, US EPA revised its human health risk assessment to show risks from dietary exposure (i.e., residues of chlorpyrifos on food crops) and drinking water. It did not result in a change to the proposal, but after considering the advice of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, US EPA modified the methods used to support that finding.

In March 2017, under the Trump administration, Scott Pruitt, the head of US EPA at the time, rejected the above scientific conclusion of US EPA's chemical safety experts and rejected a petition filed a decade prior by the Pesticide Action Network and the Natural Resources Defense Council asking that the agency revoke all pesticide tolerances for chlorpyrifos and cancel all chlorpyrifos registrations. In rejecting the petition, Pruitt took what is known as a "final agency action" on the question of the safety and use of chlorpyrifos, suggesting that the matter would not likely be revisited until 2022 when US EPA is formally required to re-evaluate the safety of the pesticide.

Judicial action on chlorpyrifos: In a long running court case on chlorpyrifos that dates back to 2007, on August 9, 2018, three appellate judges of the U.S. Ninth Circuit Court of Appeals ordered US EPA to prohibit the use of chlorpyrifos within 60 days. The court ruled that there was, "no justification for [US EPA's] decision in its 2017 order to maintain a tolerance for chlorpyrifos in the face of scientific evidence that its residue on food causes neurodevelopmental damage to children." Following the ruling, US EPA sought a rehearing, saying that the appeals

court lacked jurisdiction to review Pruitt's March 2017 ruling. The US EPA stated that the court should have simply directed him to reconsider the evidence rather than order a ban. As a result, the Ninth Circuit took the rare step of granting US EPA's request to have the full panel of the appeals court rehear oral arguments. On April 17, 2019, the 11-judge appeals court panel ruled that US EPA must, within 90 days, review its 2017 decision to reverse its previous decision to prohibit the use of chlorpyrifos on food crops.

This bill prohibits the use of a pesticide that contains the active ingredient chlorpyrifos commencing June 1, 2021.

Arguments in support: The United Farm Workers argues, "SB 86 is aligned with the Newsom Administration's recent announcement to cancel the use of chlorpyrifos, which the Administration states could take anywhere from 6 months to two years… Because the executive branch of our state government cannot guarantee an end date to end the use of the brain-damaging chemical and there is no guarantee the cancellation process will lead to a ban, as it was reported in the media, SB 86 is needed… The science is conclusive. Leading scientific and medical authorities have concluded that chlorpyrifos harms children's brain development, reduces children's IQ, and puts children at risk of learning disabilities. Upon review of the science, the U.S. EPA, under the Obama administration, concluded there is no safe level of exposure and acted to ban its use. However, under the Trump administration, this ban was overturned… The American Academy of Pediatrics reported, "There is a wealth of evidence demonstrating the detrimental effects of chlorpyrifos exposure to developing fetuses, infants, children, and pregnant women.""

Arguments in opposition: A coalition of opponents, including the American Chemistry Council, the California Farm Bureau Federation, the Agricultural Council of California, and the California Chamber of Commerce, argues, "This bill is unnecessary and undermines the science done by California's regulatory agencies. SB 458 (Durazo), which similarly would have banned the use of chlorpyrifos, was already held this year in the Senate Appropriations Committee. Further, on May 8, 2019, the Governor, along with [Cal EPA], initiated the regulatory process to cancel the registration of chlorpyrifos in California. To assist in this process, the California Budget for fiscal year 2019-2020 appropriates $5.7 million from the General Fund for a stakeholder process at the Department of Pesticide Regulation (DPR) and $5.6 million from the General Fund to develop alternatives to chlorpyrifos. This is the proper venue for this action, provides due process and scientific analysis in decision making, and makes this bill moot. The passage of this bill would only serve to waste taxpayer resources invested in the regulatory process."

Related legislation: SB 458 (Durazo) would have established the Protect Children from Brain-Damaging Chlorpyrifos Act of 2019, which would have prohibited the use of pesticides that contain chlorpyrifos in California until the Director of DPR adopts specified control measures for chlorpyrifos. This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Earthjustice (Co-sponsor)
United Farm Workers (Co-sponsor)

American Academy of Pediatrics, California
Californians for Pesticide Reform
Center for Food Safety; The
Center on Race, Poverty & The Environment
Central California Environmental Justice Coalition
Central California Environmental Justice Network
Natural Resources Defense Council (NRDC)
Pesticide Action Network

Opposition

African American Farmers of California
Agricultural Council of California
Almond Alliance of California
American Chemistry Council
American Pistachio Growers
California Agricultural Aircraft Association
California Association of Pest Control Advisers
California Association of Winegrape Growers
California Bean Shippers Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners & Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Manufacturers and Technology Association
California Pear Growers
California Seed Association
Far West Equipment Dealers Association
Nisei Farmers League
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 166 (Wiener) – As Amended June 25, 2019

SENATE VOTE: 38-0

SUBJECT: Process water treatment systems: breweries.

SUMMARY: Requires the State to adopt regulations regarding voluntary onsite treatment and water reuse in breweries. Specifically, **this bill**:

1) Makes findings and declarations that clear, consistent, statewide standards are needed to further enable the voluntary reuse of process water at breweries of all sizes.

2) Requires, on or before December 1, 2025, the State Water Resources Control Board (State Water Board), in consultation with the State Department of Public Health – Food and Drug Branch (CDPH-FDB), to adopt regulations for microbiological, chemical, and physical water quality and treatment requirements for the voluntary onsite treatment and reuse of process water in breweries that are required to obtain a processed food registration license from CDPH-FDB.

3) Requires the State Water Board to address in those regulations, at a minimum, all of the following:

   a) Microbiological, chemical, and physical water quality and treatment requirements for the use of process water in breweries from sources such as filtration, production, and packing for nonpotable applications, such as tank rinses, bottle rinses, packaging, clean-in-place, production, and potable applications, such as producing a source water for beer made and consumed onsite, and packaged products for sale;

   b) Water quality monitoring requirements;

   c) Reporting requirements for the water quality monitoring results;

   d) Notification and public information requirements; and,

   e) Cross-connection controls.

4) Requires an entity that implements a process water treatment system in a brewery to do both of the following:

   a) Provide a report, at the time that onsite treatment and reuse of process water begins in a brewery, and annually thereafter with the renewal of the processed food registration license, to the State Water Board and CDPH-FDB that includes the sources of the process water, the end uses of the treated process water, description of the treatment process used, water quality monitoring data, and the address and telephone number at which the entity can be reached for additional information on the water quality of the process water; and,

b) Terminate the operation of, and modify to render inoperable, any process water treatment system in a brewery at the direction of CDPH-FDB. Requires CDPH-FDB to provide the entity that implements a process water treatment system in a brewery with information as to why termination of operation is required and, as warranted, grant the entity that implements a process water treatment system in a brewery an opportunity to come into compliance with relevant regulations rather than terminate the operation of a process water treatment system.

5) Requires a process water treatment system in a brewery in operation before the effective date of the regulations adopted to comply with the regulations within two years of the effective date of the regulations.

6) Authorizes, if an entity is working to come into compliance with the regulations, but, due to extenuating circumstances related to the engineering, repair, or replacement of the system, a further extension is warranted, the State Water Board to grant an extension to comply with the regulations, not to exceed five years after the effective date of the regulations.

7) Authorizes the State Water Board to contract with public or private entities to advise the state board on public health issues and scientific and technical matters regarding the content of the regulations adopted.

8) Requires a brewer, before beginning onsite process water reuse, to consult with the water and wastewater service providers in its service area that would potentially be impacted by operation of the process water treatment system.

9) States that this bill does not apply to water treatment systems that treat water that is not reused at the brewery or in the brewing process, such as pretreatment water systems that pretreat water before delivery to sanitation or other water agencies.

10) Authorizes a brewery to install and operate an onsite process water treatment system pursuant to this bill.

EXISTING LAW:

1) Establishes the Water Recycling Act of 1991, creating a statewide goal to recycle a total of 700,000 acre-feet of water per year (afy) by the year 2000 and 1,000,000 afy by the year 2010. (Water Code (WC) § 13577)

2) Makes findings regarding the State Water Board's updated water recycling goals adopted by resolution, which update the above goals to 1,000,000 afy in exceedance of 2002 levels by 2020 and by at least 2,000,000 afy by 2030. (State Water Board Resolution 2013-0003, January 22, 2013)

3) Requires the State Water Board to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health. (WC § 13521)

4) States that no person shall recycle water or use recycled water for any purpose for which recycling criteria have been established until water recycling requirements have been established or a regional water quality control board determines that no requirements are necessary. (WC § 13524)

5) Makes legislative findings that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water within the California Constitution if recycled water is available which meets certain conditions, as determined by the State Water Board, after notice, and a hearing is provided to any person or entity who may be ordered to use recycled water or to cease using potable water. (WC § 13550)

6) Makes legislative findings that a substantial portion of the future water requirements of this state may be economically met by beneficial use of recycled water. Finds that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety, and welfare of the people of the state. States that the use of recycled water constitutes the development of "new basic water supplies," as defined. (WC § 13511)

7) Declares that it is the intent of the Legislature that the state undertake all possible steps to encourage the development of water recycling facilities so that recycled water may be made available to help meet the growing water requirements of the state. (WC § 13512)

8) Requires beer that is subject to the Alcoholic Beverage Control Act, to only be subject to the provisions of the Sherman Food Drug and Cosmetic Act (Sherman Act) as it relates to adulteration and misbranding. (Health & Safety Code §110425)

9) Requires, under the Alcoholic Beverage Control Act, persons manufacturing alcoholic beverages, including beer manufacturers and winegrowers, to obtain a license from the Department of Alcoholic Beverage Control. (Business & Professions §23300, et seq)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Current law is unclear on how onsite systems are to be regulated, if at all, hindering deployment of these technologies. Clear water quality standards are needed to facilitate onsite reuse, allow for a simple and straightforward oversight process, and foster the development of more cost-effective technologies … The objective of this bill is to create microbiological, chemical, and physical water quality and treatment standards, as well as associated rules and regulations, for the onsite reuse of "process water" in breweries. Process water is the water used by a facility for tank rinses, steam generation, and the like that has not yet become wastewater because it has not gone down the sewer pipe. The conservation benefits would not be insignificant, as California breweries typically use 5-7 gallons of water to produce one gallon of beer. Onsite process water reuse has been demonstrated to cut that water consumption by as much as half."

Water sources in California: The drought that spanned 2012 through 2016 included the driest four-year statewide precipitation on record and the smallest Sierra-Cascades snowpack on record. Due to the severity of water deficits over those years, many of California's reservoirs and groundwater basins were depleted, and the need for water conservation and efficiency became ever more critical.

In January 2014, Governor Jerry Brown declared the drought a State of Emergency and directed state officials to take all necessary actions to prepare for water shortages. In April 2015, Governor Brown announced the first-ever 25 percent statewide mandatory water reduction requirements and a series of actions to help reduce water use. Subsequently, the State Water Board adopted emergency regulations mandating urban water conservation through 2016.

Due to a high precipitation year in 2017, Governor Brown issued Executive Order B-40-17 rescinding those mandated water use cuts, but acknowledging, "increasing long-term water conservation among Californians, improving water use efficiency within the state's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change."

Despite California's El Niño in 2017, unpredictable weather conditions are forecast for the foreseeable future, which are forcing Californians to move beyond temporary emergency drought measures and adopt permanent changes to use water more efficiently and prepare for more frequent and persistent periods of limited water supply.

Sufficient water sources to serve California's population and business needs are essential to the long-term growth of the state. Recycled water and other alternative water supplies will become a more important factor in the growth of the economy as the population of the state grows and as the drought threatens the reliability of California's traditional water supplies.

Recycled water in California: Water recycling, also known as reclamation or reuse, is an umbrella term encompassing the process of treating wastewater and storing, distributing, and/or using recycled water. Recycled water means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur, and is therefore considered a valuable resource.

Recycled water is most commonly used for nonpotable (not for drinking) purposes, such as agriculture, landscape, public parks, and golf course irrigation. Other nonpotable applications include cooling water for power plants and oil refineries, industrial process water for such facilities as paper mills and carpet dyers, toilet flushing, dust control, construction activities, concrete mixing, and artificial lakes.

Recycled water policy: The recycled water policy was first adopted by the State Water Board in 2009, and was amended in 2013 to specify monitoring requirements for constituents of emerging concern (CEC's) in recycled water for groundwater recharge projects based on recommendations from a 2010 Science Advisory Panel on CECs in recycled water. The recycled water policy provides goals for recycled water use in California, guidance for use of recycled water that considers protection of water quality, criteria for streamlined permitting of recycled water projects, and requirements for monitoring recycled water for CECs. On December 11, 2018, the State Water Board adopted Resolution No. 2018-0057, amending the Recycled Water Policy.

The recycled water policy is an important element of the overall effort to encourage the safe use of recycled water in a manner that is protective of public health and the environment. The purpose of the recycled water policy is to increase the use of recycled water from municipal wastewater sources in a manner that implements state and federal water quality laws.

As technology advances and population grows, the uses of recycled water have expanded in type and in scale. More often recycled water is being looked at as an option to provide additional drinking water. Many water agencies are using recycled water to recharge groundwater aquifers as a source of drinking water. Eventually, as science and safeguards allow, many see the ultimate use of recycled water as a direct use for drinking.

Current law governing onsite water treatment and reuse: Last year, the Legislature enacted SB 966 (Wiener, Chapter 890, Statutes of 2018) to require the State Water Board to adopt regulations for water quality standards for the onsite treatment and reuse of nonpotable water for nonpotable end uses in multifamily residential, commercial, and mixed-use buildings. It also authorized local jurisdictions to adopt programs to permit onsite nonpotable water treatment and reuse, using those standards.

Onsite, nonpotable reuse involves using a nonpotable source of water (i.e. graywater or rainwater) for a non-potable end purpose (i.e. flushing toilets or irrigation), without needing to make the water potable at any point during the process. Such practices can significantly reduce water consumption in buildings and help conserve during water shortages.

The Governor's budget for Fiscal Year 2019-20 requests $924,000 General Fund funds to implement SB 966 by way of forming an expert panel to develop risk-based log reduction targets for removal of pathogens, and hiring two senior water control positions to assist local jurisdictions and conduct enforcement actions statewide.

Local efforts to encourage water reuse: The San Francisco Public Utilities Commission (SF PUC) Non-potable Grant Program encourages retail water users to collect, treat, and use alternative water sources including rainwater, stormwater, graywater, foundation drainage, blackwater, and brewery process water for non-potable uses.

In 2018, the SF PUC adopted the Grant Rules for Brewery Process Water Treatment Systems as a part of the grant program. The rules allow eligible breweries (those that propose replacing at least 450,000 gallons of potable water per year with reused water) to collect, treat, and use brewery process water for non-potable applications, and to install onsite process water reuse in breweries for applications that may come in to contact with the product, such as final tank rinses and interior bottle rinses, and producing a source water for beer.

To-date, one brewery has applied for grant funding; the project is in the early design phase and is expected to be constructed later this year. The rough idea is that the SF PUC's Non-potable Grant Program and rules for breweries can potentially provide a road map for the State Water Board and CDPH to develop regulations statewide for onsite potable reuse pursuant to SB 166.

Brewery water use: The standard can of beer is comprised of about 92% water; however, the amount of water used to produce a container of beer is far greater than the amount of water contained in the beer. Making one gallon of beer uses, on average, 3½ gallons to 6 gallons of water, according to the California Craft Brewers Association.

In 2017, 3,285,525 barrels of beer were produced by more than 900 craft breweries in California. Those craft brewers use an estimated 558 million gallons of water in processing, and another 93 million gallons that gets converted into beer annually. In total, California brewers use an estimated 651 million gallons of water to make craft beer, according to estimates in a report by the Public Policy Institute of California and available on the California Craft Brewers Association website. That is the equivalent annual usage, the report says, of 12,000 people, or a 640-acre almond orchard. In addition to craft brewers, industrial beer production adds more to those figures. In California, MillerCoors has one facility and Anheuser Busch has two Budsweiser facilities.

Beer production also generates a large amount of wastewater, which is usually given to a municipal treatment center. Some breweries have a dedicated onsite wastewater treatment system. Bear Republic Brewing Company and Lagunitas Brewing Company, both located in Sonoma County, have installed technology to reduce total water use through onsite reuse and recycling. Breweries like these may be well-suited to use recycled water because many have technology in place to monitor the content of the water they are using.

Use of recycled water in breweries is already happening in other states. The Pure Water Brew competition is a competition for brewed beer using recycled water. It started with wastewater that was cleaned by Clean Water Services at its treatment plant in Washington County, Oregon, and now is an annual competition for beers made with recycled water.

Which brings us to this bill: The magnitude of water usage amongst the beer industry is not insignificant. According to the Brewers Association, a trade association representing craft brewers nationwide, water consumption and wastewater disposal remain environmental and economic hurdles that directly affect breweries and the brewing process. Most breweries discharge 70% of their incoming water as effluent. In addition to the water used in production, wastewater generation and disposal presents an opportunity for brewers. SB 166 is intended to help brewers seize that opportunity.

SB 166 would require the State Water Board, in consultation with the CDPH-FDB, to adopt regulations for microbiological, chemical, and physical water quality and treatment requirements for the onsite treatment and reuse of process water in breweries. The regulations would be voluntary; any brewery that is licensed by the CDPH-FDB that wanted to use onsite water treatment and reuse could opt in to using those regulations.

The author believes the bill will allow onsite reuse for potable applications that are not currently permitted, and could provide brewers options for more efficient water management onsite until direct potable regulations are promulgated. It is important to note that any brewery that elected to install an onsite water treatment system could choose to use the recycled water exclusively for nonpotable, operational uses.

A brewery that implements a process water treatment system would have to annually report to the State Water Board and CDPH-FDB on the sources of the process water, the end uses of the treated process water, description of the treatment process used, water quality monitoring data, and the address and telephone number at which the entity can be reached for additional information on the water quality of the process water.

Anheuser-Busch and Anchor Brewing both write in support of the bill that "By making process water reuse more straightforward, it will save money, encourage water efficiency, and enable promising water reuse technologies to increase their impact."

Food for thought: SB 166 would usher in a new area of water recycling regulation; there are currently no statewide standards for reuse of process water from food or beverage manufacture in California. This bill singles out beer production for voluntary onsite water treatment and reuse because both its fermentation process and overall water use makes it a good guinea pig. Additionally, alcohol is a well-known disinfectant and alcoholic beverages like beer are generally understood to have anti-microbial properties. Beer is good candidate for the first of these standards because the additional cleaning required for equipment in the beer manufacturing process, along with the disinfectant properties of alcohol, will help in the treatment process and help prevent microbial contamination.

By 2025, Anheuser-Busch's goal is to reduce water usage across its facilities nationwide, including the two in California, by an additional 9%. SB 166 would provide an opportunity to breweries with similar goals, should they want to embark on onsite water treatment and reuse.

If breweries opt-in to using onsite treatment and water reuse and successfully implement the treatment technologies, CDPH-FDB and the State Water Board could conceivably extend the regulations to benefit other beverage manufacturers, such as distilled alcohol and other fermented beverages makers, like kombucha.

The "yuck" factor: There is a worldwide and increasing shortage of safe and clean drinking water, and water recycling is an exciting answer to that quandary. The court of public opinion, though, has historically been less enthusiastic. According to a 2015 poll published in the journal Judgment and Decision Making, *Psychological aspects of the rejection of recycled water: Contamination, purification and disgust*, results from a sample of 2,000 Americans found that 13% of adults definitely refuse to try recycled water, while 49% are willing to try it, with 38% uncertain.

In an attempt to dispel notions surrounding the so-called yuck factor, organizers of the Meeting of the Minds sustainability conference, held in 2015 in San Francisco, held a blind taste test including a beer made from recycled wastewater supplied by NASA and brewed by Mavericks Brewing Co., an affiliate of Half Moon Bay Brewing Co. The San Francisco Chronicle reported that the beer received positive reviews from the judges.

There are legitimate safety concerns with recycled water that first need to be understood and scientifically addressed. Those issues will be addressed in the State Water Board's feasibility study on direct potable use, which the State Water Board is currently working on, as well as the regulations promulgated pursuant to this bill. Addressing safety concerns should also assuage yuck factor concerns. Given the growing demand for clean, safe, and affordable water alongside a diminishing supply of clean, safe, and affordable drinking water, safety of potable recycled water will simply have to trump the ick factor.

Beer processing licensure: The Sherman Act, which provides CDPH authority to regulate food, drug, and cosmetic safety, defines food as "Any article used or intended for use for food, drink, confection, condiment, or chewing gum by man or other animal" (HSC § 109935 (a)), which CDPH interprets to include beer. The Sherman Act further provides that beer that is subject to

the Alcoholic Beverage Control Act is only subject to the provisions of the Sherman Act that relate to adulteration and misbranding, but does not explicitly require beer processors to be licensed. That has led to mixed interpretations amongst beer processors as to whether they are required to register/be licensed by CDPH. Underscoring that confusion, according to CDPH, only 41 of more than 1,000 beer processors are registered as food processors.
Legislation pending before the Legislature, AB 746 (Wood), would amend the Sherman Act to make an explicit exemption for beer processors. Should both SB 166 and AB 746 be enacted as they are currently drafted, there would be a conflict with the two policies. The author may wish to consider reconciling the inherent conflict with the other bill.

Technical amendments: The State Water Board, as the state's water quality regulator, will be leading the development of the regulations regarding voluntary onsite treatment and water reuse in breweries. The bill, pursuant to sec. 13559 (b), requires CDPH-FDB to determine a brewery's eligibility to operate an onsite water treatment and reuse process, but CDPH-FDB does not have the in-house expertise to determine whether the recycled water meets water quality standards as an ingredient for use in beer production. To clarify the two state entities roles based on their respective jurisdictions and ensure coordination between the two, the Committee may wish to consider amending the bill as follows:

Sec. 13559

(b) (2) Terminate the operation of, and modify to render inoperable, process water treatment systems operating under this section in a brewery at the direction of the food and drug branch. The food and drug branch shall consult with the state board regarding the process water treatment system's compliance with the regulations adopted pursuant to subdivision (a) before taking action to require termination. The food and drug branch shall provide information to the entity that implements a process water treatment system in a brewery explaining why ~~termination of operation is required and,~~ use of treated water from the process water treatment system is being prohibited, and, as warranted, shall grant that entity a reasonable opportunity to come into compliance with the relevant regulations instead of requiring termination of the process water treatment system.

(c) A process water treatment system in a brewery in operation before the effective date of the regulations adopted pursuant to subdivision (a) shall be in full compliance ~~comply~~ with those regulations within two years of the effective date of those regulations, and may continue to operate prior to that compliance deadline so long as the water produced by the process water treatment system for use in brewery operations is and remains of safe and sanitary quality during any such interim period. If an entity is working to come into compliance with the regulations, but due to extenuating circumstances related to the engineering, repair, or replacement of the system a further extension is warranted, the food and drug branch may grant an extension to comply with the regulations not to exceed five years after the effective date of the regulations as long as the water produced by the process water treatment system for use in brewery operations is and remains of safe and sanitary quality. If such water is found to be of unsafe or unsanitary quality, the food and drug branch shall provide information to the entity operating the process water treatment system explaining why use of the water is being prohibited.

Related legislation:

1) AB 746 (Wood) proposes to exempt beer manufacturers that are licensed by the Department of Alcoholic Beverage Control from the requirement to register with CDPH as a food processing facility. Referred to the Senate Health Committee.

2) SB 966 (Wiener, Chapter 890, Statutes of 2018) requires the State Water Board to develop standards for onsite nonpotable water treatment and reuse and authorizes local jurisdictions to adopt programs to permit onsite nonpotable water treatment and reuse using those standards.

3) AB 574 (Quirk, Chapter 528, Statutes of 2017) requires the State Water Board to, on or before December 31, 2023, adopt uniform water recycling criteria for potable reuse through raw water augmentation.

4) AB 2076 (C. Garcia and Eggman, 2016) would have required the State Water Board to adopt uniform water recycling criteria for the use of recycled water in the manufacture of beer and wine. It was held at the request of the author in the Assembly Water, Parks, and Wildlife Committee after it was amended with unrelated language.

5) SB 918 (Pavley, Chapter 700, Statutes of 2010) requires CDPH to establish standards for various types of water recycling.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Public Utilities Commission (Sponsor)
Anchor Brewing
Anheuser-Busch Companies
San Diego Regional Chamber of Commerce
Waternow Alliance

Opposition

None received

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 200 (Monning) – As Amended June 27, 2019

SENATE VOTE: 37-1

SUBJECT: Drinking water

SUMMARY: Creates the Safe and Affordable Drinking Water Fund (Fund) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long-term. Requires the State Water Resources Control Board (State Water Board) to develop a fund expenditure plan and provide funding according to that expenditure plan to identify failing water systems and provide safe and affordable drinking water in the short- and long-term to those who rely on drinking water from those failing water systems. Specifically, **this bill**:

1) Transfers, beginning in the 2020-2021 fiscal year, and up until June 2030, five percent of the annual proceeds of the Greenhouse Gas Reduction Fund (GGRF), up to the sum of one hundred thirty million dollars, to the Safe and Affordable Drinking Water Fund (Fund).

2) Requires moneys transferred from the GGRF to the Fund to be used for the purpose of facilitating the achievement of reductions of greenhouse gas emissions in this state or to improve climate change adaptation and resiliency of disadvantaged communities or low-income households or communities.

3) Creates the Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near- and long-term.

4) Provides that all money in the Fund is continuously appropriated to the State Water Board to fund the following:

   a) Operation and maintenance costs to help deliver an adequate supply of safe drinking water in both the near- and long-term;

   b) Consolidating water systems, or extending drinking water services to other public water systems, domestic wells, and state small water systems;

   c) The provision of replacement water, as needed, to ensure immediate protection of health and safety as a short-term solution;

   d) The development, implementation, and sustainability of long-term drinking water solutions; and,

   e) State Water Board costs associated with the implementation and administration of programs pursuant to this bill.

5) Authorizes the State Water Board to expend moneys in the Fund for grants, loans, contracts, or services to assist eligible recipients.

6) Provides that eligible recipients of funding are public agencies, nonprofit organizations, public utilities, mutual water companies, federally recognized California Native American tribes, nonfederally recognized Native American tribes on the contact list maintained by the Native American Heritage Commission, administrators, and groundwater sustainability agencies.

7) Requires the State Water Board, in administering the Fund, to make reasonable efforts to ensure that funds are used to secure the long-term sustainability of drinking water service and infrastructure, including, but not limited to, requiring adequate technical, managerial, and financial capacity of eligible applicants as part of funding agreement outcomes.

8) Requires the State Controller, beginning in the 2023-2024 fiscal year and each fiscal year thereafter until June 30, 2030, to transfer from the state General Fund to the Fund the amount, as calculated by the Department of Finance that ensures that up to one hundred and thirty million dollars is transferred to the Fund.

9) Provides that the purposes of the Fund expenditure plan are:

   a) To identify public water systems, community water systems, and state small water systems that consistently fail to provide an adequate supply of safe drinking water;

   b) To determine the amount and type of funding necessary to implement appropriate measures to remedy a failure to provide an adequate supply of safe drinking water;

   c) To identify public water systems, community water systems, and state small water systems that are at significant risk of failing to provide an adequate supply of safe drinking water;

   d) To determine the amount and type of funding necessary to implement appropriate measures to eliminate the risk of failing to provide an adequate supply of safe drinking water; and,

   e) To identify gaps in the provision of safe drinking water and to determine the amount and type of funding necessary to minimize or eliminate those gaps.

10) Requires the State Water Board, on or before July 1, 2020, to develop and adopt a policy for developing the Fund expenditure plan that includes all of the following elements:

   a) A requirement that the State Water Board consult with an advisory group to aid in meeting the purposes of the Fund expenditure plan;

   b) Identification of key terms, criteria, and metrics, and their definitions;

   c) A description of how proposed remedies will be identified, evaluated, prioritized, and included in the Fund expenditure plan;

   d) The establishment of a process by which members of a disadvantaged community may petition the State Water Board to consider ordering consolidation; and,

   e) A requirement that the State Water Board hold at least one public hearing before adopting a Fund expenditure plan.

11) Requires the State Water Board, in consultation with the Department of Finance, to annually adopt a Fund expenditure plan.

12) States that it is the intent of the Legislature that the State Water Board, in developing the Fund expenditure plan, to strive to ensure all regions of the state receive the same level of consideration for funding, to the extent practicable.

13) Requires the State Water Board, on or before March 1, 2021, and every March 1 thereafter, to provide to the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of each house of the Legislature the most recently adopted Fund expenditure plan.

14) Requires the Fund expenditure plan to contain:

a) A report of expenditures from the Fund for the prior fiscal year and planned expenditures for the current fiscal year;

b) A list of public water systems that consistently fail to provide an adequate supply of safe drinking water;

c) A list of public water systems, community water systems, and state small water systems that may be at risk of failing to provide an adequate supply of safe drinking water;

d) An estimate of the number of households that are served by domestic wells or state small water systems in high-risk areas;

e) An estimate of the funding needed for the next fiscal year based on the amount available in the Fund, anticipated funding needs, other existing funding sources, and other relevant data and information;

f) A list of programs to be funded that assist or will assist households supplied by a domestic well that consistently fails to provide an adequate supply of safe drinking water; and,

g) A list of programs to be funded that assist or will assist households and schools whose tap water contains contaminants, such as lead or secondary contaminants, at levels that exceed recommended standards.

15) Requires the Fund expenditure plan to be based on data and analysis from the drinking water needs assessment funded by the 2018 Budget Act, and as that assessment may be updated.

16) Requires the Fund expenditure plan to prioritize funding for all of the following:

a) Assisting disadvantaged communities served by a public water system, and low-income households served by a state small water system or a domestic well;

b) The consolidation or extension of service, when feasible; and,

c) Funding costs other than those related to capital construction costs, except for capital construction costs associated with consolidation and service extension to reduce the

ongoing unit cost of service and to increase sustainability of drinking water infrastructure and service delivery.

17) Authorizes the Fund expenditure plan to include expenditures for the following:

a) The provision of replacement water, as needed, to ensure immediate protection of health and safety as a short-term solution;

b) The development, implementation, and sustainability of long-term drinking water solutions;

c) Identifying and providing outreach to persons who are eligible to receive assistance from the Fund; and,

d) Testing the drinking water quality of domestic wells serving low-income households, prioritizing those in high-risk areas as identified.

18) Requires the State Water Board, by January 1, 2021, in consultation with local health officers and other relevant stakeholders, to use available data to make available a map of aquifers that are at high risk of containing contaminants that exceed primary federal and state drinking water standards and, that are used or likely to be used as a source of drinking water for a state small water system or a domestic well. Requires the State Water Board to update the map at least annually based on any newly available data and to make the map available on its internet website.

EXISTING LAW:

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

2) Requires the State Water Board to submit to the Legislature a comprehensive Safe Drinking Water Plan for California every five years. (HSC § 116355 (a))

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

4) Authorizes the State Water Board, in order to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to:

a) Contract with an administrator to provide administrative and managerial services to a designated public water system to assist the designated public water system with the provision of an adequate and affordable supply of safe drinking water; and,

b) Order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board. (HSC § 116686 (a))

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "In 2012, the Legislature took action to officially establish access to safe drinking water as a fundamental human right and declared that every Californian has the right to sufficient clean, safe, and affordable water that is adequate for human consumption, cooking, and sanitary purposes.
>
> Despite this declaration, experts on safe drinking water estimate that over 1 million Californians are exposed to unsafe drinking water each year, with low-income communities and communities of color experiencing the greatest impact. Recent data gathered by the State Water Board identified roughly 300 public water systems serving communities and schools in California that are currently out of compliance with drinking water standards, some of which have been unable to provide safe drinking water for years.
>
> The principal barrier to a comprehensive solution for clean and safe drinking water is the lack of a long-term and sustainable funding source to cover the cost of delivering safe water. These costs typically include expensive capital projects such as connections to neighboring water sources or water treatment facilities that can be built with bond funds, but that result in exorbitant operations and maintenance costs.
>
> Without a sustainable funding source, communities have no outside support to draw upon, forcing their typically small, rural and/or socioeconomically disadvantaged ratepayer bases to bear the entire ongoing cost of drinking water treatment. T hese communities face unreasonable drinking water rates and are often forced to purchase bottled water in addition to paying a monthly water bill.
>
> SB 200 will fix the safe drinking water funding gap, by establishing the Safe and Affordable Drinking Water Fund and creating a framework for the State Water Board to receive, administer, and distribute funding in a responsible, cost-effective manner that prioritizes solutions for those most impacted by unsafe and unaffordable drinking water.
>
> To fund SB 200 for the 2019-20 fiscal year, the Budget Act of 2019 appropriated $100,000,000 from the Greenhouse Gas Reduction Fund, and $30,000,000 from the General Fund. Beginning in 2020-2021, SB 200 will continuously appropriate 5% of the annual proceeds of the Greenhouse Gas Reduction Fund, up to the sum of $130,000,000, into the Safe and Affordable Drinking Water Fund. Beginning in the 2023-24 fiscal year, SB 200 will require the General Fund the cover the difference in funding until 2030, should the amount transferred from the GGRF dip below $130,000,000.

SB 200 additionally requires the State Water Board, in consultation with the Department of Finance, to develop a fund expenditure plan and ensure that all expenditures from the Fund are consistent with that plan."

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

Regulation of drinking water: The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own SDWA to implement the federal law and establish state standards. The United State Environmental Protection Agency (U.S. EPA) enforces the federal SDWA at the national level. However, most states, including California, have been granted "primacy" by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

Maximum Contaminant Levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies, such as the State Water Board, responsible for regulating water quality enforce these standards.

The State Water Board regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee those systems. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the State Water Board or LPAs share water quality regulatory authority with CPUC.

The State Water Board regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

Multiple causes of unsafe drinking water: The causes of unsafe drinking water can generally be separated into two categories: (1) contamination caused by human action, and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

Three of the most commonly detected pollutants in contaminated water in California are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure),

animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater.

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

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

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

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

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

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

The aforementioned 2012 UC Davis report indicated that about 2.6 million people in the four-county Tulare Lake Basin and the Monterey County portion of the Salinas Valley rely on groundwater for drinking water, including those in some of the poorest communities in California. The report found that nitrate contamination is increasing and currently poses public

health concerns for about 254,000 people in the study area. Again these numbers could be even greater today.

Lack of clean safe drinking water: Although most of the state's residents receive drinking water that meets federal and state drinking water standards, many drinking water systems in the state consistently fail to provide safe drinking water to their customers. Lack of safe drinking water is a problem that disproportionately affects residents of California's disadvantaged communities.

Disadvantaged communities often lack the rate base, as well as the technical, managerial, and financial capacity to show they can afford and effectively manage operations and maintenance costs related to water treatment. Without being able to pay for maintenance, these communities are effectively barred from accessing capital improvement funding. In contrast, larger water systems have the financial capacity both to pay treatment costs and to provide for a well-trained and technically competent workforce of water system operators.

Current sources of financial assistance, such as Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Rendon, Chapter 188, Statutes of 2014), and the safe drinking water state revolving fund (SDWSRF), do not provide financial assistance for the long-term operation and maintenance costs of drinking water systems, which the community must provide in order to qualify for the capital improvement funding that is available from those sources. Because disadvantaged communities often lack the rate base to pay for operation and maintenance costs, they are effectively prohibited from accessing capital improvement funding.

Urban disadvantaged water systems: A March 15, 2019 briefing paper (Paper) from the University of California, Los Angeles Water Resources Group noted that the legislature and Governor have made a strong commitment to rural water systems, but have not provided as much information about urban disadvantaged water systems. The Paper noted that Los Angeles County (LA County) has 210 community water systems, with 64 water systems serving either disadvantaged or severely disadvantaged communities. It estimates that these 64 disadvantaged urban water systems could be serving close to one million people. One of the key points of the Paper is that there is very little information about these urban water systems, and whether or not they have the technical and managerial expertise to provide clean safe drinking water to their customers. In one recent example in Compton, the State Water Board appointed LA County to take over the administration of the Sativa Water District (District). LA County discovered that the water system operated by the District was failing and that the District had a compliance order that would take 12 years of its revenues for compliance costs.

Consolidation of water systems: According to the U.S. EPA, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating public water systems and extending service from existing public water systems to communities and areas that currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidation does this by extending costs to a larger pool of ratepayers.

Authority to require consolidation and the appointment of an administrator: Effective June 24, 2015, SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe

drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system). While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate.

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

Recent approaches to address lack of funding to provide safe drinking water to disadvantaged communities: SB 623 (Monning, 2017) would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, and sought to impose water, fertilizer and dairy fees to fund safe drinking water programs. The bill would have imposed a Safe and Affordable Drinking Water Fee (water fee) on each customer of a public water system. Additionally, it would have required the State Water Board, in consultation with local health officers and other relevant stakeholders, to develop and annually update a map of aquifers at high risk of containing contaminants that exceed state and federal primary drinking water standards. SB 623 would have prohibited the State Water Board or regional water quality control board from specified enforcement actions against agricultural operations for exceeding nitrate groundwater objectives or other groundwater pollution standards if the operation demonstrates certain mitigation requirements are met, including the timely payment of the fertilizer or dairy fee. SB 623 was held in the Assembly Rules Committee.

The proposal by Governor Newsom as part of his 2019-2020 proposed budget is substantially similar to SB 623 (Monning). It also proposed the imposition of a water fee and similar agriculture related fees. The proposal also provides similar enforcement protections for agricultural operations that exceeded nitrate groundwater objectives.

AB 217 (E. Garcia), introduced in 2019, was similar to both SB 623 and Governor Newsom's proposal in that it also imposed fees on agricultural activities. However, AB 217 did not provide the agricultural enforcement protections contained in SB 623 or the Governor's proposal. AB 217 also sought to take a regional approach by acknowledging the fact that disadvantaged communities reside in urban communities, as well as rural communities. AB 217 was amended into another subject and no longer contains these drinking water provisions.

AB 134 (Bloom), introduced in 2019, would require that the Governor's annual budget show expenditures from the Fund and require the Legislative Analysist's Office (LAO) review the effectiveness of expenditures from the Fund. AB 134 is pending before the Senate Environmental Quality Committee.

Safe and Affordable Drinking Water Fund. SB 200, as recently amended, implements the recent budget agreement to continuously appropriate $130 million from the GGRF to restore safe drinking water supplies to disadvantaged communities. This bill, therefore, concentrates on the creation and operation of the Fund, and related requirements for an expenditure plan for money

deposited in the Fund. It does not address the *program and priorities for how* the State Water Board would resolve the unsafe drinking water in the 300 communities currently identified or other communities that may be identified in the years ahead, as AB 134 (Bloom) proposes to outline.

No Limits on Enforcement? One of the prior bills, SB 623 (Monning) and Governor Newsom's 2019-2020 budget proposal included provisions that limit the State Water Board's authority to enforce water quality requirements against agricultural operations under certain conditions. Those limitations were connected to agricultural fees that would be deposited in the Fund. SB 200 has not proposed any fees on agriculture and had been connected to the Senate budget action appropriating General Fund money for safe drinking water. As the budget agreement on GGRF funding did not include any fees on agriculture, this bill, SB 200, includes no such limit on water quality enforcement. Because the amount of money appropriated to the Fund reflects the approximate amount estimated to be needed to address nitrate contamination in agricultural communities, some have suggested that the GGRF funding will relieve the State Water Board of the need to enforce water quality laws against agriculture for nitrate contamination. The Committee may wish to clarify that issue with the author, as to his intent to limit enforcement against agriculture.

Scope of Expenditure Plan. The currently identified public water systems with unsafe drinking water largely violate primary contaminant standards, such as the drinking water standard for nitrate. This bill's definition of "safe drinking water" includes compliance with both primary and secondary contaminants, such as manganese, which creates brown and smelly water in communities in Los Angeles County. The bill's legislative findings specifically identify manganese as a problem for drinking water systems. In addition, this bill's requirements for an expenditure plan include identification of public water systems at "significant risk of failing to provide an adequate supply of safe drinking water." The expenditure plan may, therefore, identify additional public water systems in disadvantaged communities across California in the future.

Given that almost one million Californians lack access to clean drinking water, one thing is very clear: waiting is not an option. The problem is known and it is real. SB 200 develops a sustainable approach to address the lack of clean drinking water facing way too many Californians. This bill requires the State Water Board to develop, with public input, an expenditure plan to identify failing public water systems and use the resources in the Fund to address the short-term and long-term issues with these public water systems with an overall goal of creating and supporting sustainable public water systems. This bill takes a very comprehensive approach by providing the State Water Board with funding for a variety of solutions including consolidating failing water systems with other public water systems or providing managerial consolidation, as well as looking at the state as a whole to ensure that all Californians have access to safe and affordable drinking water.

Related legislation:

1) AB 134 (Bloom, 2019). Requires that the Governor's annual budget show expenditures from Safe and Affordable Drinking Water Fund (Fund) and that the LAO review the effectiveness of expenditures from the Fund. This bill is set to be heard in the Senate Environmental Quality Committee on July 3, 2019.

2) AB 217 (E. Garcia, 2019). Would have created the Safe Drinking Water for All Act (Act), which would have established the Safe and Affordable Drinking Water Fund (Fund) to provide a source of funding for safe drinking water for all Californians, and long-term sustainability of drinking water systems. Would have imposed several fees on agricultural activities and a charge on retail water systems that together would provide the source of revenue to the Fund. This bill was subsequently amended into another subject.

3) SB 669 (Caballero, 2019). Would have established the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant. Would have created Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund. This bill was held in the Senate Appropriations Committee.

4) SB 623 (Monning, 2017). Would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, and would have imposed water, fertilizer and dairy fees to fund safe drinking water programs. This bill was held in the Assembly Rules Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance of Child and Family Services
American Diabetes Association
American Heart Association
American Pistachio Growers
American Rivers
American Stroke Association
Arvin Community Services District
Asian Pacific Environment Network
Asociación de Gente Unida Por El Agua
Association of California Water Agencies (ACWA)
Audobon California
California Association of Professional Scientists
California Bicycle Coalition
California Catholic Conference
California Citrus Mutual
California Dairies, Inc.
California Environmental Justice Alliance
California Food Policy Advocates
California Fresh Fruit Association
California League of Conservation Voters
California Municipal Utilities Association
California Rice Commission
California Rural Legal Assistance Foundation
California School Employees Association
California State PTA
California Strawberry Commission
California Water Service

Carbon Cycle Institute
Central California Environmental Justice Network
Central Valley Air Quality Coalition
Ceres
City of Santa Rosa
Clean Water Action
Coalition for Humane Immigrant Rights (CHIRLA)
Community Alliance for Agroecology
Community Water Center
Cultiva La Salud
Desert Water Agency
Dolores Huerta Foundation
East Bay Municipal Utility District (EBMUD)
El Dorado Irrigation District
Elsinore Valley Municipal Water District
Environmental Defense Fund
Environmental Health Coalition
Environmental Working Group (EWG)
Esperanza Community Housing Corp.
Faith in the Valley
Far West Equipment Dealers Association
Friends Committee on Legislation of California
Friends of the LA River
Indivisible CA: Statestrong
Inland Empire Utilities Agency
Kern County Water Agency
Latino Coalition for a Healthy California
Leadership Counsel for Justice and Accountability
League of California Cities
Long Beach Water Department
Lutheran Office of Public Policy - California
Martin Luther King Jr. Freedom Center
Metropolitan Water District of Southern California
Mi Familia Vota
NextGen California
Northern California Water Association (NCWA)
Nutrition and Fitness Collaborative of The Central Coast
Orange County Water District
Palmdale Water District
Pesticide Action Network North America
Physicians for Social Responsibility - Los Angeles
Pico California
Planning and Conservation League
PODER
Policy Link
Professional Engineers In California Government (PECG)
Public Health Advocates
Pueblo Unido CDC
RCAC

Regional Water Authority (RWA)
Rowland Water District
Rural County Representatives of California (RCRC)
San Bernardino Valley Municipal Water District
Self Help Enterprises
Service Employees International Union (SEIU)
Sierra Club
Silicon Valley Leadership Group
The Nature Conservancy
Tulare County Board of Supervisors
Tulare; County of
Upper San Gabriel Valley Municipal Water District
Valley County Water District
Walnut Valley Water District
Water Foundation
Western Center on Law and Poverty
Western Growers Association
Western Plant Health Association

Opposition

None on file.

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 414 (Caballero) – As Amended June 25, 2019

SENATE VOTE: 37-0

SUBJECT: Small System Water Authority Act of 2019

SUMMARY: Creates the Small System Water Authority Act of 2019, which authorizes the creation of a small system water authority (Authority) that will have powers to absorb, improve, and competently operate noncompliant public water systems. Requires the State Water Resources Control Board (State Water Board) to send a notice to public water systems that are not in compliance with drinking water standards. Requires, if the system does not return to compliance in a timely manner, the State Water Board to consolidate the public water system with an existing water system; use existing funding sources and existing legal authority to return the public water system to compliance; or, force the dissolution of the public water system and merge that system into a new Authority. Specifically, **this bill**:

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

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

3) Requires the State Water Board, no later than March 1, 2020, to provide written notice to cure (Notice) to all public agencies, private water companies, or mutual water companies that meet both of the following criteria:

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

   (b) Are not in compliance with applicable drinking water standards based on a running average for the period of July 1, 2018, to December 31, 2019.

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

5) Gives the entity receiving the Notice that reports that it is still in violation of drinking water standards 180 days to prepare and submit a plan (Plan) to the State Water Board to permanently remedy a violation of drinking water standards within a reasonable time that is not later than January 1, 2025.

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

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

8) Requires the State Water Board, if it rejects the Plan, to do one of the following within 30 days:

   (a) Cause the formation of an Authority by the applicable local agency formation commission (LAFCO) to serve the customers of the public water system that submitted the Plan;

   (b) Exercise its authority to promptly cause the consolidation of the entity with a public water system or take other actions to remedy the failure to meet drinking water standards and bring the water system into full compliance with drinking water standards within two years; or,

   (c) Use existing funding sources and existing legal authority to remedy the failure to meet applicable drinking water standards.

9) Requires the State Water Board, no later than July 1, 2021, to provide written notice to each county, city, or water district located within a county where an entity receiving a Notice is located stating that the State Water Board may consider the formation of an Authority within that county and inviting other public water suppliers to consider consolidating with the Authority that may be formed. Requires an agency wishing to consolidate into a proposed Authority to provide a written statement opting into an Authority on or before December 31, 2019. Authorizes an agency, after formation of an Authority, and wishing to join an Authority to do so by means of a petition to the LAFCO.

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

11) Requires the State Water Board, no later than 60 days after determining that an Authority shall be formed to do both of the following: notify, if appropriate, the Public Utilities Commission of the public water systems that will be consolidated into an Authority and appoint an independent administrator (Administrator), who shall be responsible for preparing a plan for service and interim administration and management of the Authority.

12) Requires, on or before March 1, 2022, the Administrator, after consultation with the executive officer of the LAFCO, to submit to the State Water Board a conceptual formation plan.

13) Requires, on or before March 1, 2021, the State Water Board to establish and publish a list of individuals who meet the qualifications to serve as an Administrator.

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

15) Requires the State Water Board, no later than 240 days after it informs an entity that their Plan was rejected and that they will be consolidated into an Authority, to petition a court of

competent jurisdiction for an order dissolving any mutual water company, water corporation, or private corporation operating a public water system, and transferring the assets of the company or corporation to the Authority formed by the LAFCO.

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

17) Requires an application to form an Authority to include at least five public water systems, unless the Administrator determines that the authority would be financially and operationally viable with fewer than five public water systems.

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

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

20) Requires the State Controller (Controller), following the formation of an Authority to perform an audit of the fiscal and operational health of each Authority. Requires the Controller to prepare and submit the results of the audits to the Legislature no later than January 1, 2026.

21) Requires, no later than January 1, 2026, the State Water Board to prepare and submit to the Legislature a report specifying the number of public water systems that, at any time between July 1, 2018, and January 1, 2025, were out of compliance with state or federal primary drinking water standards and identify the public water systems that were brought into compliance through the creation of an Authority through existing enforcement authority of the State Water Board or remain out of compliance.

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

EXISTING LAW:

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

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

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 414 complements existing consolidation authorities by establishing a new process for the consolidation of chronically non-compliant small systems. Multiple struggling systems would be merged together to form a Small System Water Authority (SSWA), which would allow those communities to take advantage of managerial and financial economies of scale because the consolidation would result in a system that is large enough to be sustainable.

SB 414 also includes multiple levels of state and local oversight following the formation of the SSWA to ensure progress is made towards achieving safe drinking water compliance, including annual reporting to the State Board and the LAFCO post-formation for the first three years, which will then transfer to the standard municipal service review process at the LAFCO. The State Controller's office is required to perform an operational assessment of the financial health of the system, and the State Board is further required to complete a report to the Legislature on overall progress made towards achieving safe drinking water compliance."

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

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

Human right to water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Eng, Chapter 524, Statutes of 2012). Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate

for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

Multiple causes of unsafe drinking water: The causes of unsafe drinking water can generally be separated into two categories: (1) contamination caused by human action, and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

Three of the most commonly detected pollutants in contaminated water in California are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

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

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

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

Urban disadvantaged water systems: A March 15, 2019, briefing paper (Paper) from the UCLA Water Resources Group noted that the Legislature and Governor have made a strong commitment to rural water systems, but have not provided as much information about urban disadvantaged water systems. The Paper noted that Los Angeles County (LA County) has 210 community water systems, with 64 water systems serving either disadvantaged or severely disadvantaged communities. It estimates that these 64 disadvantaged urban water systems could be serving close to one million people. One of the key points of the Paper is that there is very little information about these urban water systems and whether or not they have the technical and managerial expertise to provide clean safe drinking water to their customers. In one recent example in Compton, the State Water Board appointed LA County to take over the administration of the Sativa Water District (District). LA County discovered that the water system operated by the District was failing and that the District had a compliance order that would take 12 years of its revenues for compliance costs.

Consolidation of water systems: According to the United States Environmental Protection Agency (US EPA), restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating a public water system and extending service from existing public water systems to communities and areas that currently rely on under-performing or failing small water systems, including private wells, reduces costs and improves reliability. Consolidation does this by extending costs to a larger pool of ratepayers.

How does consolidation of a public water system work? Consolidating or extending service from a public water system to a community otherwise served by unreliable systems or unregulated private wells advances the goal of a reliable, accessible supply of safe drinking water for all California residents. Public water systems experiencing chronic water quality failures or unreliable supplies are first provided technical assistance to analyze the problem and recommend a course of action. Enforcement may also be necessary to achieve compliance with SDWA requirements. Lacking progress, the State Water Board may initiate discussions with the system and neighboring/adjacent public water system(s) regarding consolidation.

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

Authority to require consolidation and the appointment of an administrator: Effective June 24, 2015, SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system). While for many years the state's drinking water program had encouraged

voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems, where appropriate.

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

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

Progress on providing clean drinking water: Ensuring that all Californians have access to clean, affordable drinking water is a goal the state has been vigorously pursuing, especially in the last several years. Legislatively, the state has enacted laws to give the State Water Board the authority to force failing water systems to consolidate, either physically, or managerially, as well as improving the permitting of new public water systems in order to avoid the proliferation of new unsustainable water systems.

While the State Water Board has been pursuing voluntary and forced consolidation, the ability to provide funding for this effort has fallen short. One major piece that has eluded the Legislature is an ongoing funding stream to provide clean drinking water for small, disadvantaged communities and ultimately set them on a path of sustainability.

SB 414 seeks to provide the State Water Board with another tool to address chronically failing public water systems. This bill sets up a series of new, local water systems that essentially take over five failing systems within a county, or less than five systems if the Administrator finds that fewer than five systems can be sustainable. While SB 414 does not address how these new water agencies will be funded, other than by the same ratepayers that were providing funding to the failing water system, the bill may be useful as the State Water Board evaluates failing water systems and pursues consolidation when necessary. The Legislature should continue the dialogue towards finding adequate funding to ensure that all Californians have access to clean, safe, affordable drinking water. To that end, at the same hearing for SB 414, this committee will be hearing SB 200 (Monning) to establish the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long terms.

Arguments in support: According to the Eastern Municipal Water District (EMWD), a co-sponsor of the bill, "This bill, which was designed with significant stakeholder input, offers a sustainable solution to the issue of failing water systems that are in violation of state and federal water quality standards and are chronically serving contaminated water. SB 414 seeks to

implement a fair and reasonable approach to addressing water quality and accessibility concerns by first providing failing systems with a means to develop a plan to self-correct. Lack of access to clean drinking water is a devastating public health crisis in [a] number of regions throughout the state. Our agency has worked to bring failing systems into compliance and has seen first-hand the relief that comes to families that can for the first time in years have access [to] reliable, high quality water from their taps. As a result, EMWD believes that SB 414 sets a pathway towards a sustainable solution and is proud to support and co-sponsor this bill."

Arguments in opposition: According to a number of groups including the Community Water Center and Clean Water Action, who are oppose unless amended, "We agree with the author that not every public water system can be consolidated with a larger water system, and that a regional authority could provide an alternative for some far-flung systems that lack other options. We continue, however, to have concerns that the processes identified in the legislation are costly, time-consuming, duplicative, and may not even lead to a sustainable and affordable drinking water solution. The authority as created by this legislation will be saddled with considerable fiscal challenges; unlike the Board's consolidation authority, this legislation does not provide limited liability relief for the new system; instead, it specifically requires the liabilities of the original system to be conveyed to the new authority. The authority also has requirement for professional staff and board member pay that, while desirable, may not be economically feasible. We would be happy to support a bill that simply gives the State [Water] Board the authority to create a regional authority in consultation with LAFCO, and are happy to work with the author to do so."

Double referral: Should this bill be approved by this Committee, it will be referred to the Assembly Local Government Committee.

Related legislation:

1) AB 2050 (Caballero, 2018). Creates the Small System Water Authority Act of 2018, which authorizes the creation of a small system water authority (Authority) that will have powers to absorb, improve, and competently operate noncompliant public water systems. Requires the State Water Board to send a notice to public water systems that are not in compliance with drinking water standards, and if the system does not return to compliance in a timely manner, the State Water Board shall first attempt to consolidate the public water system with an existing water system, and, if not, force the dissolution of the public water system and merge that system into a new Authority. This bill was vetoed by the Governor. The Governor's veto message stated:

   "I am returning Assembly Bill 2050 without my signature.

   This bill establishes the Small System Water Authority Act of 2018, which authorizes the creation of small system water authorities to operate small public water systems that can't afford to serve safe drinking water.

   While I appreciate the author's intent, this bill creates an expensive, bureaucratic process and does not address the most significant problem with providing safe drinking water - a stable funding source to pay for ongoing operations and maintenance costs.

   My administration remains committed to a comprehensive solution to address safe

drinking water issues based on shared responsibility between water users and water providers that will not result in ongoing costs to the General Fund. I urge the Legislature and stakeholders to work towards a stable funding solution in 2019."

2) SB 200 (Monning, 2019). Establishes the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long terms. This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee.

3) AB 217 (E. Garcia, 2019). Proposed the Safe Drinking Water for All Act (Act), to establish a Safe and Affordable Drinking Water Fund (Fund) to provide a source of funding to secure access to safe drinking water for all Californians, while also ensuring long-term sustainability of drinking water systems. Imposes several fees on agricultural activities and creates a trust fund using investments from the state General Fund that together would provide the source of revenue to the Fund. This bill was amended into a different subject.

4) SB 669 (Caballero, 2019). Proposed establishing the Safe Drinking Water Fund in the State Treasury and would have provided that moneys in the fund are continuously appropriated to assist community water systems in disadvantaged communities, as specified. Requires, by July 1, 2021, and by July 1 of each year thereafter, the State Water Board to adopt, after specified public processes, an annual fund implementation plan. This bill was held on the Senate Appropriations suspense file.

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

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

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

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

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

10) AB 685 (Eng, Chapter 524, Statutes of 2012). Declares that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate

for human consumption, cooking, and sanitary purposes and that relevant state agencies, including the Department of Water Resources, the State Water Board, and the CDPH shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association (Co-sponsor)
Eastern Municipal Water District (Co-sponsor)
Association of California Water Agencies (ACWA)
Cucamonga Valley Water District
Inland Empire Utilities Agency
Irvine Ranch Water District
Las Virgenes Municipal Water District
Mesa Water District
Northern California Water Association
Orange County Water District
Roseville; City of
San Diego County Water Authority
San Gabriel Valley Council of Governments
Santa Ana Watershed Project Authority
Santa Clara Valley Water District
The Metropolitan Water District of Southern California
Western Municipal Water District

Opposition

Clean Water Action
Community Water Center
Leadership Counsel For Justice & Accountability
RCAC
Self Help Enterprises

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 513 (Hurtado) – As Amended May 17, 2019

SENATE VOTE: 38-0

SUBJECT: State Water Resources Control Board: interim grants

SUMMARY: Authorizes the Office of Emergency Services (OES) to coordinate with the State Water Resources Control Board (State Water Board) to provide drinking water to communities affected by disasters, including drought. Authorizes the State Water Board to provide grants to provide relief to households in which a private water well has gone dry or has been destroyed due to drought, wildfire, or other natural disaster. Specifically, **this bill**:

EXISTING LAW:

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

2) Establishes the Safe Drinking Water State Revolving Fund (SDWSRF) to provide financial assistance for community water systems to achieve compliance with the SDWA. (HSC §116760 *et seq.*)

3) Establishes the Cleanup and Abatement Account (Account) within the State Water Quality Control Fund, which is administered by the State Water Board. (Water Code (WC) § 13440)

4) Authorizes the State Water Board to approve grants, from the Account, to any eligible entity to assist in cleaning up a waste, abating the effects of a waste on waters of the state, or addressing an urgent drinking water need. Eligible entities include: a public agency, a tribal government, a not-for-profit organization serving a disadvantaged community, or a community water system that serves a disadvantaged community. Sunsets some of these provisions on July 1, 2018. (WC § 13442)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "SB 513 will help provide relief for families without reliable access to water by providing a temporary alternative source of water supply. Community based organizations (CBOs) like Self-Help Enterprises offer financial assistance using state and federal funding to provide relief to families in the Central Valley by installing water tanks as a temporary solution for the duration of California's historic drought. During the drought, the installation of these tanks received funding from the California Disaster Assistance Act. The Act designated the California Office of Emergency Services (Cal OES) to administer the program and provide

critical funding. Post-drought, Self-Help Enterprises has relied on funds specifically allocated through the state budgeting process, and provided by Cal OES.

At the height of California's historic drought, about 1,200 water tanks were installed by Self-Help Enterprises through partnerships with county Offices of Emergency Services and other non-governmental organizations (NGOs). While NGOs such as Self-Help Enterprises have provided relief to a large swath of Central Valley families, about 70 families continue to suffer from the aftermath of the drought. Although the drought was declared over, water shortage is a chronic symptom in the Central Valley. Groundwater moves much more slowly than surface water, and it takes time for recharge to occur.

Until March 2019, OES contracts only allowed for the *continued filling of existing* tanks for existing clients, and the program was not being expanded to serve families whose wells went dry after April 2017. OES has since made assurances to the Legislature that funding is also available for homes that have gone dry outside of a drought declaration. However, while OES has since committed to disbursing funds to additional families, there is lack of clarity in the law regarding what will happen to the program once the initial funding runs out. Without clarity in the law that allows this program to allocate funds to homes outside of emergency situations, CBOs will remain unable to offer families the comfort of interim water tanks, while the state works toward a permanent solution."

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

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

The State Water Board maintains a comprehensive list of potentially eligible future projects on its internet website. A project must be on this list to be considered for financing. However, placement on the list does not guarantee a project will be funded. Priority is given to projects that address the most serious risk to human health; are necessary to ensure compliance with the requirements of the federal SDWA; and, assist systems most financially in need on a per household basis.

The SDWSRF is funded by annual grants from the US EPA and a federally required 20 percent match from the state. The federal and state funds are used to provide financial assistance for

eligible projects. The proceeds from these loans are then paid back, with interest, into the SDWSRF in later years, providing funding for new loans in the future.

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

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

Recent budget augmentations: A recent amendment to the 2018 Budget Act (AB 72, Committee on Budget, Chapter 1, 2019 (Item 3940-101-0001)) appropriated $10 million to the State Water Board to provide grants or contracts to address urgent drinking water needs in disadvantaged communities, local educational agencies in or serving disadvantaged communities, or not-for-profit organizations. The funds can be used for the provision of interim alternate drinking water supplies including bottled or hauled water, and emergency improvements or repairs to existing water systems.

Additionally, there is $2.5 million in the 2019 Budget Act (AB 74, Committee on Budget, Chapter 23, Statutes of 2019) for the State Water Board to continue funding the placement and filling of temporary water tanks for households that have lost their water supply because of a dry well.

Drought effects persist: Drought is a gradual phenomenon. Impacts of drought are typically felt first by those most dependent on annual rainfall, such as ranchers engaged in dryland grazing or rural residents relying on wells in low-yield rock formations. Drought impacts increase with the length of a drought, as carry-over supplies in reservoirs are depleted and water levels in ground water basins decline. From a water use perspective, drought is best defined by its impacts to a particular class of water users in a particular location. In this sense, drought is a very local circumstance. Hydrologic conditions constituting a drought for water users in one location may not constitute a drought for water users in a different part of the state or with a different water supply. California's water supply infrastructure provides a means to mitigate impacts for some water users, while other types of impacts (increased wildfire risk or stress on vegetation and wildlife) remain.

The majority of serious water supply problems during droughts, such as the inability to maintain fire flows or the need for truck haulage of water, are experienced by small water systems. Although small systems serve a low percentage of California's total population, they constitute

the majority of the state's public water systems. Small public water systems tend to be located outside of the state's major metropolitan areas, often in lightly populated rural areas where opportunities for interconnections with another system or water transfers are minimal. Small public water systems also have limited financial resources and rate bases that constrain their ability to undertake major capital improvements. Most small public water system drought problems stem from a dependence on an unreliable water source, which are commonly groundwater in fractured rock systems or in small coastal terrace groundwater basins.

While the state drought emergency is over for now, many communities, especially those that rely on small public water systems relying on groundwater as their source for drinking water, are still experiencing drought conditions. In addition to the drought conditions, wildfires have exacerbated their minimal water supplies.

SB 513 sets up a program under the State Water Board to administer funds to communities in need of temporary drinking water supplies consistent with the recently passed Budget Act of 2019. SB 513 is designed to provide direction to the State Water Board when spending the $2.5 million in the 2019-2020 Budget Act. While the statewide drought emergency may be over, there are still many communities throughout the state that have dry wells. SB 513 addresses this gap by allowing the State Water Board to continue providing grants to these communities until their drinking water wells can be fixed or replenished.

Amendments to be in print on the hearing date: The author has agreed to amend the bill to be more consistent with the recent budget action contained in AB 74. Specifically the amendments: remove OES from the bill by deleting section 1; add "community water system" as an eligible applicant; state that the State Water Board may provide up to 10 percent of the funds appropriated to eligible applicants for planning related to permanent solutions for private water wells that have gone dry; cap the State Water Board administrative costs at 5 percent; authorize the State Water Board to adopt guidelines to implement this grant program; and, exempt contracts awarded pursuant to this bill from the Public Contract Code.

Arguments in Support: According to the sponsor of the bill, Self-Help Enterprises, "We have worked closely with Senator Hurtado [on] this important legislation, which will give the State Water Resources Control Board the ability to provide an important interim solution to households who are experiencing dry wells as a result of drought, fire, or other climate-related impacts.

During the catastrophic drought of 2014-2017, thousands of private domestic wells dried up when the groundwater tables fell to levels that the wells could no longer reach. Although the drought has officially ended, the need persists due to the slow recovery of groundwater conditions post-drought.

Climate change predictions indicate that this is not a problem that will go away. Rural residents, many of them living below the poverty level, will continue to face this household crisis. The State Water Resources Control Board has been a steadfast partner in helping to resolve the crisis, household by household, and the authority granted by SB 513 will allow the Board to support families in the interim period between well failure and resolution."

Double-referral: This bill has been referred to the Assembly Environmental Safety Committee and the Assembly Government Organization Committee. The amendments mentioned

previously will likely remove the bill from the Assembly Government Organization Committee's jurisdiction.

Related Legislation:

1) AB 339 (Mathis, Chapter 439, Statutes of 2017). Extends the ability of the State Water Board to fund projects addressing an urgent drinking water need from the Account by deleting the sunset for this provision.

2) AB 91 (Budget Committee, Chapter 1, Statutes of 2015). Appropriated $15 million from the Account to the State Water Board to fund actions to address drought-related drinking water emergencies or threatened emergencies. Also appropriated $4 million from the Account to the State Water Board to provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies.

2) AB 92 (Budget Committee, Chapter 2, Statutes of 2015). Expanded the use of the Account for uses beyond mitigation of waste and unreasonable use to include urgent drinking water needs. Sunset these provisions on July 1, 2018.

3) SB 826 (Budget Committee, Chapter 23, Statutes of 2016). Appropriated $15 million from the Account to the State Water Board to fund actions to address drought-related drinking water emergencies or threatened emergencies.

REGISTERED SUPPORT / OPPOSITION:

Support

Self-Help Enterprises (Sponsor)
Armona Community Services District
Bubba's Water Truck Service, Inc.
California Coalition For Rural Housing
Madera County Water & Natural Resources
Mariposa County Health & Human Services Agency

Opposition

None received

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 519 (Bradford) – As Amended March 25, 2019

SENATE VOTE: 38-0

SUBJECT: Hazardous substances: underground storage tanks

SUMMARY: Authorizes the State Water Resources Control Board (State Water Board) to use funds in the Site Cleanup Subaccount of the Underground Storage Tank (UST) Cleanup Fund program to pay for expenditures incurred by a water replenishment district in identifying sources of, or remediating harm caused by, surface or groundwater contamination. Specifically, **this bill**:

1) Authorizes funds in the Site Cleanup Subaccount to additionally pay for reasonable and necessary expenditures incurred by:

    a. A water replenishment district for identifying surface or groundwater contamination sources, as specified; or,

    b. A water replenishment district, under the direction of the State Water Board, a regional water board, a local agency, or another appropriate regulatory agency, for remediating harm or threat of harm caused by surface or groundwater contamination, as specified.

2) Makes other clarifying technical changes.

EXISTING LAW:

1) Defines a "regional board" or "regional water board" as a California regional water quality control board. (Health and Safety Code (HSC) § 25281(b))

2) Defines a "local agency" as the unified program agency, or a city or county certified by the board, to implement the local oversight program. (HSC § 25281(i))

3) Authorizes a regional board to investigate the quality of any waters of the state within its region. (Water Code (WC) § 13267)

4) Requires any person who has discharged waste into waters of the state in violation of any waste discharge requirement to clean up the discharge and abate the effects thereof. (WC § 13304(a))

5) Authorizes the regional water board to expend available moneys to perform supervision of cleanup and abatement activities, to perform the cleanup, abatement, or remedial work itself or with the cooperation of any other governmental agency. (WC § 13304(b))

6) Authorizes a regional water board to contract with a water agency that draws groundwater from the affected aquifer, a metropolitan water district, or a local public agency responsible for water supply or water quality in a groundwater basin, to perform investigations of existing or threatened groundwater pollution or nuisance. (WC § 13304(b)(4))

7) Authorizes a water replenishment district to take any action to protect and preserve groundwater supplies, including:

    a. Preventing groundwater contamination;
    b. Removing contaminants in groundwater supplies;
    c. Determining existence, extent, and location of contaminants;
    d. Determining persons responsible for contaminants; and,
    e. Performing or obtaining engineering, hydrologic, and scientific studies. (WC § 60224 et seq.)

8) Authorizes the State Water Board to expend funds from the Site Cleanup Subaccount to:

    a. Pay for reasonable and necessary expenditures that the State Water Board, a regional board, or a local agency incurs to identify the source of surface or groundwater contamination;
    b. Pay for reasonable and necessary expenditures that the State Water Board, a regional board, or a local agency incurs to remediate harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination;
    c. Issue grants for the reasonable and necessary costs of actions to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination at specific locations; and,
    d. Pay for the actual, reasonable costs that the Attorney General incurs in an investigation or cleanup undertaken in a civil action. (WC § 25299.50.6 et seq.)

9) Requires the State Water Board to consider the following factors when approving remediation expenditures for specific locations:

    a. The degree to which human health, safety, and the environment are threatened by contamination at the location;
    b. Whether the location is located in a small or financially disadvantaged community;
    c. The cost and potential environmental benefit of the investigation or cleanup;
    d. Whether there are other potential sources of funding for the investigation or cleanup; and,
    e. Any other information the State Water Board identifies as necessary for consideration. (WC § 60224(b)(2))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "SB 519 allows the State Water Resources Control Board (SWRCB) to distribute funds from the Site Cleanup Subaccount Program (SCAP) to water replenishment districts when they are considered the best option for remediating groundwater contamination. The problem is existing law does not allow water replenishment districts to receive funds from this subaccount despite the fact that these grants fund surface or groundwater projects.

Water replenishment districts are well positioned to immediately prevent harm to public health, safety and the environment because their primary purpose is to store, purify, treat, and manage groundwater reservoirs. Furthermore, water replenishment districts are equipped to handle cases where there is a threat to groundwater because groundwater basins and aquifers are their only priority. Access to the funds in this subaccount are vital to making sure water replenishment districts have the means to address water contamination directly.

SB 519 will streamline the remediation process and help ensure that water replenishment districts can be considered and awarded this crucial funding related to groundwater cleanup when they are determined the right people for the job."

The Unified Program: The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring consistency throughout the state regarding the implementation of administrative requirements, permits, inspections, and enforcement at the local regulatory level. The California Environmental Protection Agency (CalEPA) oversees the statewide implementation of the Unified Program and its 81 certified local agencies, known as Certified Unified Program Agencies (CUPAs), which apply regulatory standards established by the Governor's Office of Emergency Services, the Department of Toxic Substances Control, the Office of the State Fire Marshal, the State Water Board, and CalEPA.

Site Cleanup Program: The Site Cleanup Program (SCP) regulates and oversees the investigation and cleanup of 'non-federally owned' sites where recent or historical unauthorized releases of pollutants to the environment, including soil, groundwater, surface water, and sediment, have occurred. Sites in the program are varied and include, but are not limited to, pesticide and fertilizer facilities, rail yards, ports, equipment supply facilities, metals facilities, industrial manufacturing and maintenance sites, dry cleaners, bulk transfer facilities, refineries, and some brownfields. These releases are generally not from strictly petroleum USTs. The types of pollutants encountered at the sites are diverse and include solvents, pesticides, heavy metals, and fuel constituents.

The State Water Board and regional boards have legal authority to regulate site cleanup via statutes, State Water Board plans and policies, and the Regional Water Quality Control Plans. The regional boards oversee the activities of the discharger or responsible party pertaining to the cleanup of pollution at sites to ensure that the dischargers clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. The State Water Board manages the program on a state-wide basis by overseeing the SCP budget, maximizing the collection of debt owed to the state, establishing contracts for special projects, and conducting SCP roundtables with the regional boards on a quarterly basis to share information, discuss ways to facilitate procedures and improve the program, and update the regions on any changes or additions to existing procedures. The State Water Board is also involved with petitions that are filed by an aggrieved person to review an action or failure to act by a regional board. Currently, the regional boards actively oversee 3,452 cleanup sites; there are an additional 1,616 sites in backlog that are awaiting regional board regulatory oversight.

Funding mechanisms for site cleanup: There are five main types of funding mechanisms for sites in the SCP: voluntary cleanups executed and funded by the discharger; "Cleanup and

Abatement Order" cleanups executed and funded by the discharger; cleanups executed by the regional board or another public agency, county, municipality, or city and funded by the state via the Cleanup and Abatement Account; the Site Cleanup Subaccount Program (SCAP); and, brownfield cleanup using available grants and loans.

Site Cleanup Subaccount: The Site Cleanup Subaccount Program (SCAP) is a non-competitive funding program established in 2014, which allows the State Water Board to issue grants or contracts for reasonable and necessary costs associated with projects that remediate the harm or threat of harm to human health, safety, or the environment caused by existing or threatened surface water or groundwater contamination. With an appropriation of $19.75 million through 2025, SCAP was primarily established to investigate and clean up contaminated sites without regard to the source of the contamination, particularly where there are no viable responsible parties. SCAP may also fund projects that are not eligible for other Division of Financial Assistance funding programs and projects that are focused on corrective action. SCAP requires that (1) project sites must be subject to a regulatory directive, order, or notification (unless it is infeasible to issue such an order), or (2) the responsible party lacks sufficient financial resources to perform the required work. Examples of the types of projects that have been funded by SCAP include:

a. Excavation and removal of soils contaminated with chlorinated solvents from former dry cleaners;
b. Identification of contaminant source areas;
c. Groundwater cleanups of chlorinated solvents using in-situ treatment or groundwater extraction;
d. Soil and groundwater cleanups of industrial metals plating shops;
e. Remedial investigation of potential contaminant source areas;
f. Installation, operation, and maintenance of soil vapor extraction or other remediation systems for the cleanup of volatile organic compounds; and,
g. Interim vapor intrusion mitigation and remedial action planning for soil vapor contaminants.

Water replenishment districts: Water replenishment districts are special districts established for the primary purpose of replenishing groundwater. They are authorized to buy and sell water; exchange water; distribute water; spread, sink, and inject water into the underground; store, transport, recapture, recycle, purify, treat or otherwise manage and control water; and, build the necessary works to achieve ground water replenishment. Water replenishment districts are also authorized to protect and preserve groundwater supplies, using a number of means necessary, which includes identifying contamination sources and remediation. According to the State Water Board, there is currently one water replenishment district in the state of California, which is likely a result of both the high demand for water and lack of available water resources in southern California.

The Water Replenishment District of Southern California (WRD), the sponsor of this bill, was formed in 1959 to manage the groundwater replenishment and groundwater quality activities for 43 cities that overlie the Central Basin and West Coast Basin (CBWCB) in southern Los Angeles County, which currently supply over 40 percent of the water used by region. WRD has been monitoring the CBWCB for nearly 60 years, performing extensive collection, analysis, and reporting of groundwater data to ensure proper resource management. For example, in 2017-2018, WRD collected over 550 groundwater samples from its monitoring well network and

analyzed them for more than 100 water quality constituents to produce over 55,000 individual data points to help track the water quality in the CBWCB (*Regional Groundwater Monitoring Report Water Year 2017-2018*, WRD).

Although WRD is well-equipped to identify contamination sources and remediate harm caused by threatened surface or groundwater contamination, it is currently not authorized to use the funds available in the SCAP. SB 519 addresses this by authorizing the State Water Board to expend funds in the SCAP to a water replenishment district, under the same statutory requirements that apply to the State Water Board, a regional board, or a local agency. While there may be a concern that expending funds to a water replenishment district may take away resources from other projects, existing law requires that the State Water Board consider all of the following factors when approving expenditures for specific locations: the degree of threat to human health, safety, and the environment; whether the location is a small or financially disadvantaged community; the cost and potential environmental benefit of the investigation or cleanup; other potential sources of funding; and, any other factor the State Water Board deems necessary. Because SCAP expenditures are subject to approval by the State Water Board, SB 519 essentially provides the State Water Board with another approach to investigate and clean up surface and ground water contamination.

Related Legislation:

1) SB 445 (Hill, Chapter 547, Statutes of 2014). Increased the fee assessed on petroleum stored in USTs from $.014 per gallon to $0.02 per gallon. Dedicated a portion of the fee to establish the SCAP for investigating and cleaning up contaminated sites without regard to the source of the contamination and reimbursing school districts for UST cleanups. Extended the State Water Board program for the cleanup of USTs from 2016 to 2026.

REGISTERED SUPPORT / OPPOSITION:

Support

Water Replenishment District of Southern California (Sponsor)
Association of California Water Agencies (ACWA)
California Association of Professional Scientists

Opposition

None received

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 574 (Leyva) – As Amended June 26, 2019

SENATE VOTE: 23-10

SUBJECT: Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2019.

SUMMARY: Establishes the Cosmetic Fragrance and Flavor Ingredient Right to Know Act (Act) of 2019. Specifically, **this bill**:

1) States that it is the intent of the Legislature to provide consumers and salon workers with ingredient information about cosmetic products that encourages informed purchasing decisions and reduces public health impacts from exposure to potentially harmful chemicals by requiring product manufacturers to provide a specific list of chemicals used in their fragrance and flavor formulations.

2) Defines "cosmetic product" as an article for retail sale or professional use intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance.

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

4) Defines "designated list" as any of the 22 authoritative lists identified in the Act, including any subsequent revisions to those lists when adopted by the authoritative body.

5) Requires, commencing January 1, 2021, a manufacturer of a cosmetic product sold in the state to disclose all of the following information to the Division of Environmental and Occupational Disease Control (Division) within the California Department of Public Health (CDPH):

    a) A list of each fragrance ingredient or flavor ingredient that is included on a designated list;

    b) A list of each fragrance allergen included in Annex III of the European Union (EU) Cosmetics Regulation No. 1223/2009, as required to be disclosed pursuant to the EU Detergents Regulation No. 21 648/2004, and subsequent updates to those regulations, that is present in a rinse-off cosmetic product at a concentration at or in exceedance of 0.01 percent (100 parts per million) or in a leave-on cosmetic product at a concentration at or in exceedance of 0.001 percent (10 parts per million). Requires those ingredients to appear in the database in a unique manner that distinguishes those ingredients from other reportable ingredients and indicates that they are hazardous only to individuals who suffer from fragrance allergies;

c) Whether the cosmetic product is intended for professional use or retail cosmetic use;

d) The Chemical Abstracts Service number for each ingredient or allergen that must be disclosed; and,

e) The corresponding Universal Product Code for the cosmetic product.

6) States that to protect trade secrets, the bill does not require a manufacturer to disclose the weight or amount of an ingredient that requires disclosure or to disclose the manner in which a cosmetic product or intentionally added fragrance ingredient or flavor ingredient is formulated. Authorizes a manufacturer to protect as a trade secret any ingredient or combination of ingredients that is not on a designated list or required to be disclosed. Provides that any fragrance ingredient or flavor ingredient that constitutes a trade secret is not subject to the California Public Records Act.

7) Requires, commencing July 1, 2021, the Division to post on the database created pursuant to the California Safe Cosmetics Act of 2005 (Safe Cosmetics Act), in an easily readable format, all of the following information related to a cosmetic product described in, and disclosed:

a) A list of all fragrance ingredients and flavor ingredients that are included on a designated list and all fragrance allergens required to be disclosed; and,

b) The health hazards associated with each fragrance ingredient or flavor ingredient.

8) Requires CDPH to create a voluntary electronic mailing list to provide covered manufacturers updates on changes to the designated lists.

9) Requires a manufacturer to report any fragrance or flavor ingredient within six months of a change in a designated list.

10) Requires the Division to identify whether an ingredient is a fragrance ingredient or a flavor ingredient.

11) Provides that provisions of this Act are severable.

EXISTING LAW:

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

2) Pursuant to the Sherman Food, Drug & Cosmetic Act:

a) Defines "cosmetic" as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering

the appearance. Provides that the term "cosmetic" does not include soap. (Health & Safety Code (HSC) § 10990)

b) Considers any cosmetic to be adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to users under the conditions of use prescribed in the labeling or advertisement of the cosmetic, or under conditions of use as are customary or usual. (HSC § 111670)

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

4) Requires a professional cosmetic for sale in this state manufactured on or after July 1, 2020, to have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to the Federal Food, Drug, and Cosmetic Act (21 United States Code (USC) Sec. 301, et seq.), and the federal Fair Packaging and Labeling Act (15 USC Sec. 1451, et seq.). (HSC § 110371)

5) Requires, pursuant to the Cleaning Products Right to Know Act, manufacturers of cleaning products to disclose specified chemical ingredients on a product label and on the manufacturer's website. (HSC § 108950)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "No federal law requires the disclosure of fragrance or flavor ingredients in personal care and beauty products to consumers, workers, manufacturers or even regulatory agencies. This loophole allows dozens – sometimes even hundreds – of chemicals to hide under the word "fragrance" on the labels of cosmetic products with no regulatory oversight of the safety of those ingredients. Fragrance chemicals can be found in more than 95% of shampoos, conditioners, hair styling products, antiperspirants and shaving products as well as fine fragrances, body spray and lotions and 1/3 of the fragrance chemicals currently in use have been linked to negative health impacts ranging from allergic reactions to reproductive harm and increased risk of breast cancer. The same loophole exists for chemicals used to flavor a product, which are appearing more and more frequently in lip gloss and chap sticks marketed to kids.

In California, we actually know more about the fragrance ingredients in products that we use to clean our homes than those that we put on our faces or bodies. Consumers have a right to know what ingredients are in the beauty and personal care products they bring home to their families and use daily on their bodies. The bottom line is that no toxic ingredients should be kept secret. SB 574 will empower consumers so that they can make educated decisions about which products to use with their kids and families."

Chemical exposure: Decades of studies indicate that serious health issues (including, but not limited to, asthma, cancer, and infertility) are on the rise and are due in some part to our ongoing

exposure to toxic chemicals—whether it is in the shower, on our commute, while we are at work, or when we clean our kitchens at home.

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. Many do not have any safety data. As more and more chemicals enter our homes and workplaces, the need for transparency of those chemicals becomes more critical.

Cosmetics: Cosmetic products are used as part of daily beauty and cleansing routines, often times on the skin's most sensitive areas, like the face, eyelids, and lips. Cosmetic products are most heavily used by women, including those of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to substances that can cause cancer and reproductive toxicity.

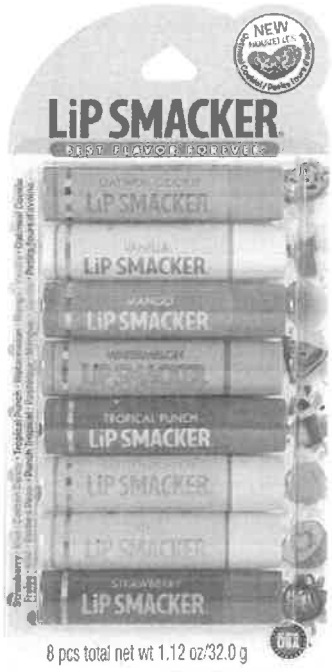
Cosmetic products contain a wide variety of chemical ingredients to which cosmetic users, both consumer and professional salon workers, are exposed to on a daily basis. The average consumer uses 12 different cosmetic products a day (including soaps and shampoos). According to the United States Department of Labor, "These exposures can "add up," especially when many products are being used at the same time [and] the products are used day after day."

Federal laws on fragrance disclosure: Pursuant to the FD&C Act, cosmetics and their ingredients are not required to be approved before they are sold to the public, and the FDA does not have the authority to require manufacturers to file health and safety data on cosmetic ingredients or to order a recall of a dangerous cosmetic product.

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

The 1966 Federal Fair Packaging and Labeling Act (FPLA) requires manufacturers to list all of the ingredients on a cosmetic product label; however, fragrance and flavoring are specifically exempt from the FPLA's labeling requirements.

The current practice for ingredient disclosure has been to identify fragrances as a separate category of product content, as a parenthetical "fragrance," without identifying the specific chemical composition used in the fragrances. Examples are provided below.



INGREDIENTS: Ricinus Communis (Castor) Seed Oil, Cetyl Acetate, Beeswax/Cire d'Abeille, Euphorbia Cerifera (Candelilla) Wax/Cire de Candelilla, **Flavor/Aroma**, Polybutene, Sesamum Indicum (Sesame) Seed Oil, Ozokerite, Copernicia Cerifera (Carnauba) Wax/Cire de Carnauba, Acetylated Lanolin Alcohol, Mineral Oil/Huile Minerale, Hydrogenated Soy Glycerides, Paraffin, Propylene Glycol , Triticum Vulgare (Wheat) Germ Oil, Stearic Acid, Propyl Gallate, Citric Acid, Sucralose, Stevia Rebaudiana Leaf/Stem Extract, Neotame, Benzyl Alcohol, Benzyl Benzoate, Citral, Amyl Cinnamal, Limonene, Linalool, Methyl 2-Octynoate. MAY CONTAIN/PEUT CONTENIR (+/-): Red 7 Lake (Cl 15850), Red 6 Lake (Cl 15850), Yellow 5 Lake (Cl 19140), Blue 1 Lake (Cl 42090), Red 28 (Cl 45410), Carmine (Cl 75470), Titanium Dioxide (Cl 77891).

ACTIVE INGREDIENTS: Aqua/Water; Glycerin; Alcohol Denat.; Butylene Glycol; Sodium Chloride; Sodium Citrate; Dipotassium Phosphate; Panthenol; PPG-26-Buteth-26; Potassium Phosphate; Citric Acid; Benzophenone-4; Disodium EDTA; PEG-40 Hydrogenated Castor Oil; Capryloyl Salicylic Acid; Rosa Centifolia Flower Water/Rosa Centifolia Flower Water; Diazolidinyl Urea; Cl 14700/Red 4; Cl 17200/Red 33; **Parfum/Fragrance**; Limonene; Linalool; Benzyl Benzoate; Alpha-Isomethyl Ionone; Hydroxycitronellal; Butylphenyl Methylpropional.

INGREDIENTS: Active: Sodium Monofluorophosphate 0.76% (0.14% W/V Fluoride Ion)...Purpose: Anticavity. Inactive: Glycerin, Water, Hydrated Silica, Calcium Carbonate, Xylitol, Sodium Lauryl Sulfate, Mentha Viridis (Spearmint) Leaf Oil **And Other Natural Flavors**, Chondrus Crispus (Carrageenan), Glycyrrhiza Uralensis (Licorice) Root Extract.

Why chemical disclosure in cosmetic products matters: Consumers may want or need to avoid certain chemical exposures for health reasons.

While a direct link between endocrine disrupting chemicals and cancer is not yet definitive, certain cancers are hormonally-driven, such as breast cancer, prostate cancer, ovarian cancer, and endometrial cancer. According to Dr. Lorenzo Cohen, Ph.D., MD, director of the Integrative Medicine Program at the University of Texas, even a low dose of endocrine disrupting chemicals could cause concern, especially if a product is used every day. He also notes some personal care products may contain endocrine disrupting chemicals and allergens under the guise of "fragrance." Because those fragrance ingredients are not disclosed, though, it is unknown which fragrances do and how many.

Several cosmetic manufacturers, including BeautyCounter, 100% Pure, HAN Skincare Cosmetics, EO Essential Oils, and others, state that, "It is perfectly legal for companies to hide chemicals that have documented negative impacts on public health under the word "fragrance" or "flavor" on product labels, because there is no federal or state law that requires the disclosure of these ingredients in retail cosmetics or professional salon products … Giving consumers product-specific fragrance ingredient information enables them to make value comparison between products, and thus the ability to avoid certain products that may contain chemicals of concern."

Safe Cosmetics Act: California's Safe Cosmetics Act (SB 484, Migden, Chapter 729, Statutes of 2005) requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients known or suspected to cause cancer, birth defects, or other reproductive harm, including any chemical that:

a) Is contained in the product for purposes of fragrance or flavoring; or,

b) Is identified by the phrase "and other ingredients" and determined to be a trade secret, as specified.

Keeping an eye on what chemicals are required for disclosure is the onus of the manufacturer. The Safe Cosmetics Act provides that, if an ingredient identified pursuant to this law subsequently is removed from the product in which it was contained, is removed from the list of chemicals known to cause cancer or reproductive toxicity, or is no longer a chemical identified as causing cancer or reproductive toxicity by an authoritative body, the manufacturer of the product containing the ingredient is required to submit the new information to the Division. The Safe Cosmetic Act further provides that, upon receipt of new information, the Division, after verifying the accuracy of that information, is required to revise the manufacturer's information on record with the Division to reflect the new information, and the manufacturer is not under obligation to submit subsequent information on the presence of the ingredient in the product unless subsequent changes require submittal of the information. (HSC § 111792 (c))

CDPH maintains an active, searchable database with all of the ingredient information collected from manufacturers under the Safe Cosmetics Act to make that data user-friendly and available to the public. It is called the California Safe Cosmetics Program Product Database. Anyone can search the database for a type of product; a specific product name; or, a brand or company name to get more information about whether a product contains a covered chemical.

Since the launch of the online program in 2009, a total of 77 unique ingredients that are carcinogens or developmental or reproductive toxins have been reported in more than 57,313 products by 481 companies. Sixty-three percent of the reported products are makeup, 13% are nail products, 8% are skin care products, and 6% are sun-related products. However, CDPH states that not all companies are complying with the reporting requirements and that the extent of non-compliance is difficult to assess.

In Fiscal Year 2018-19, the Legislature proposed including a $1.5 million General Fund appropriation for the Cosmetics Act in Fiscal Year (FY) 2018-19, plus $500,000 annually thereafter to CDPH to support one-time infrastructure (website) upgrades and additional enforcement and outreach staff to ensure full implementation of the Cosmetics Program requirements by manufacturers of covered products. Governor Jerry Brown line-item vetoed that funding.

On February 28, 2019, the Senate Budget Subcommittee #3 approved, 3-0, $1.5 million General Funds for FY 2019-20 and $500,00 annually thereafter to increase staffing for enforcement and program improvement activities in the Safe Cosmetics Program. The one-time funding was adopted in AB 74 (Ting, Budget Act of 2019) under CDPH's funding for the Safe Cosmetics Act (4265-001-0001). The Budget bill is pending before the Governor.

Cleaning Product Right to Know Act of 2017: SB 258 (Lara, Chapter 830, Statutes of 2017) requires a manufacturer of a cleaning product, including an air care product, general cleaning product, or janitorial floor cleaning product, to disclose on the product label and on the product's internet website information related to chemicals contained in the product. Manufacturers of those products are allowed to protect certain chemicals from disclosure by use of a generic name.

The law requires any chemical to be disclosed if it is included on any of the 22 authoritative lists of chemicals that exhibit hazardous traits and/or an environmental or toxicological endpoint, as identified by the United States Environmental Protection Agency, the state of California, the European Union, Canada, the International Agency on Cancer Research, the federal Agency for Toxic Substances and Disease Registry, among others.

The Cleaning Product Right to Know Act requires a manufacturer, within six months of a change to a designated trait list, to make a revision to the information disclosed online, and requires a manufacturer, within eighteen months of a change to a designated list, to make a revision to the information disclosed on the product label. (HSC § 108956 (e)-(g))

This bill: SB 574 would require cosmetic manufactures, beginning July 1, 2021, to disclose to the Division information related to cosmetic products that contain a fragrance or flavor ingredient that is included on one of the designated lists and a list of fragrance allergens that are present in specified concentrations. It would also require the Division to post in the Safe Cosmetics Act database a list of those intentionally added fragrance and flavor ingredients and fragrance allergens in the cosmetic product.

SB 574 would broaden the Safe Cosmetics Act by expanding the disclosure of flavor and fragrance ingredients beyond carcinogens and developmental toxicants to any chemical listed on any of 22 designated lists of chemical health hazards – the same lists included in the Cleaning

Product Right to Know Act and DTSC's candidate chemical lists, plus allergens listed in Annex III of the EU Cosmetics Regulation No. 1223/2009, when present at designated levels.

Disclosure provided under this bill would provide consumers greater information to make more informed choices, and it could potentially lead to safer products designed without hazardous chemicals.

The Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65, provides a good example. According to the Office of the Attorney General, Proposition 65 has motivated some businesses to eliminate or reduce listed, or likely to be listed, toxic chemicals in numerous consumer products, such as ceramic tableware, jewelry, potato chips, and vitamin supplements. Thus, Proposition 65 has prompted reformulation of products to be safer to avoid the warning label prescribed under the law. Similarly, SB 574 could inspire some cosmetic manufactures to reformulate a product to obviate the need for disclosure in the Safe Cosmetics Program Product Database.

Facilitating compliance: Manufacturers and CDPH alike will need to track the designated lists of chemicals for changes for purposes of complying or tracking compliance, respectively. Given the magnitude of chemicals covered and the scope of disclosure, to facilitate compliance, the bill would require CDPH to create a voluntary listserv for manufacturers to opt-into to provide updates on the inclusion of fragrance ingredients and flavor ingredients on the designated lists. The bill also provides manufacturers up to six months to disclose any chemical that is added to one of the lists.

Public disclosure: SB 574 requires covered fragrance and favoring information to be submitted to the Safe Cosmetics Act database. That database is and would be a central hub for all cosmetics ingredient information covered under the Safe Cosmetics Act and the Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2019. Having all of the information in one publicly-facing portal provides a one-stop shop for professionals and consumers wanting information on myriad products. It also simplifies enforcement: CDPH will know who is in compliance based on who has submitted information or not.

Implementation timing: Manufacturers purchase their flavor and fragrance ingredients from fragrance houses, who keep their ingredients propriety for protection of their intellectual property. SB 574 is arguably much more expansive in scope than the Cleaning Products Right to Know Act, which means manufacturers will have to obtain the fragrance and flavoring ingredient information for many more products, and simply getting that information and reporting it will take time.

The Safe Cosmetics Act, which went into effect January 1, 2006, provided manufacturers one-year to comply by providing the specified ingredient information to the Division (January 1, 2007).

The Cleaning Products Right to Know Act, which went into effect January 1, 2018, provides manufacturers two years (until January 1, 2020) to comply with the online disclosure requirements and three years (until January 1, 2021) to comply with the product label disclosure requirements.

Should this bill be enacted, it provides manufacturers with one year (until January 1, 2021) to review the designated lists; identify all ingredients used in their products on those lists; and, comply with the Act.

Related legislation:

1) AB 2775 (Kalra, Chapter 3936, Statutes of 2018). Requires a professional cosmetic manufactured on or after July 1, 2020, for sale in this state to have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to the federal FD&C Act and FPLA.

2) SB 258 (Lara, Chapter 830, Statutes of 2017). Requires a manufacturer of a cleaning product manufactured or sold in California on or after July 1, 2020, to disclose each ingredient contained in the product on the product label.

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Black Women for Wellness (Co-sponsor)
Breast Cancer Prevention Partners (Co-sponsor)
Women's Voices For The Earth (Co-sponsor)
A Voice For Choice Advocacy
Able Differently
Act For Women And Girls
Alaska Community Action On Toxics
Alliance Of Nurses For Healthy Environments
American Academy Of Pediatrics, California
American Cancer Society Cancer Action Network, Inc.
American Congress Of Obstetricians & Gynecologists - District IX
As You Sow
Breast Cancer Action
Breast Cancer Over Time
Business And Professional Women Of Nevada County
CA Coalition For Clean Air
California Association For Micro Enterprise Opportunity
California Communities Against Toxics
California Environmental Justice Alliance (CEJA)

California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California Labor Federation, AFL-CIO
California League Of Conservation Voters
California Pan-Ethnic Health Network
California Product Stewardship Council
California Public Interest Research Group (CALPIRG)
Campaign For Healthier Solutions
Center For Environmental Health
Center For Oceanic Awareness, Research, & Education
Center On Reproductive Rights And Justice (CRRJ)
Central California Asthma Collaborative
Change Californians For A Healthy And Green Economy
Citizens For Choice
City and County of San Francisco
Clean Water Action
Coming Clean
Communities For A Better Environment
Community Action To Fight Asthma
Consumer Federation Of California
Courage Campaign
Ecology Center
Educate. Advocate.
Empower Family California
Environmental Health Strategy Center
Environmental Working Group (EWG)
Friends Committee On Legislation Of California
Friends Of The Earth U.S.
Green Science Policy Institute
Healthcare Without Harm
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Just Transition Alliance
Keep A Breast
Learning Disabilities Association Of Arkansas
Learning Disabilities Association Of Georgia
Learning Disabilities Association Of Illinois
Learning Disabilities Association Of Iowa
Learning Disabilities Association Of Maine
Learning Disabilities Association Of Maryland
Learning Disabilities Association Of New Jersey
Learning Disabilities Association Of Oklahoma
Learning Disabilities Association Of South Carolina
Learning Disabilities Association Of Tennessee
Learning Disabilities Association Of Texas
Learning Disabilities Association Of Utah
Lutheran Office Of Public Policy - California
National Stewardship Action Council

Natural Resources Defense Council (NRDC)
Non Toxic Revolution
Oregon Environmental Council
Physicians For Social Responsibility - Los Angeles
Physicians For Social Responsibility - San Francisco Bay Area Chapter
Plastic Pollution Coalition
Regional Asthma Management & Prevention (RAMP)
Safer States
Savvy Women's Alliance
Science And Environmental Health Network
Seventh Generation Advisors
Sierra Club California
Southern California Coalition For Occupational Health And Safety
The 5 Gyres Institute
UCLA Center For Study Of Women
US PIRG
Woodland Coalition For Green Schools
Worksafe

Opposition

Consumer Healthcare Products Association
Flavor & Extract Manufacturers Association

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 633 (Stern) – As Introduced February 22, 2019

SENATE VOTE: 38-0

SUBJECT: Santa Susana Field Laboratory: monitoring program

SUMMARY: Requires, by July 1, 2020, the Office of Environmental Health Hazard Assessment (OEHHA), in coordination with the State Water Resources Control Board, the South Coast Air Quality Management District, and the Department of Toxic Substances Control (DTSC), to develop and implement a monitoring program to collect data on contaminants from the Santa Susana Field Laboratory (SSFL) that could migrate to and pollute surrounding areas.

EXISTING LAW:

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

2) Authorizes DTSC to regulate hazardous waste management pursuant to the Hazardous Waste Control Law (HWCL). (HSC § 25200 (a))

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

4) Establishes the national hazardous waste management program under Subtitle C of the Resources Conservation and Recovery Act (RCRA). (42 U.S.C. § 6901 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "There is a history of various agencies manipulating data and minimizing public health risks from the SSFL. There is little if any public confidence in announcements made about cancer or other health risks or the potential for off-site migration of contaminants from SSFL. This bill vests in the Office of Environmental Health Hazard Assessment (OEHHA), in coordination with the State Water Resources Control Board and the South Coast Air Quality Management District as well as the Department of Toxics Substances Control, a monitoring program to collect data on contaminants from SSFL that could migrate to and pollute surrounding areas.

OEHHA and the State Water Board and the South Coast Air Quality Management District are considered science-based and neutral agencies whose information can be relied upon by the public."

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA, or Superfund, provides a federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the US EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup.

The US EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act. Through various enforcement tools, the US EPA obtains private party cleanup through orders, consent decrees, and other small party settlements. The US EPA also recovers costs from financially viable individuals and companies once a response action has been completed. Superfund site identification, monitoring, and response activities in states are coordinated through the states' environmental protection or waste management agencies.

CERCLA defines liable parties as current owners and operators of a facility, former owners and operators of a facility at the time of disposal, persons who arranged for treatment or disposal of hazardous substances, and transporters of hazardous substances who selected the disposal site. A person who falls within the definition of one of these classes may be held liable under CERCLA.

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

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

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

Santa Susana Field Laboratory (SSFL): The SSFL is located 30 miles northwest of downtown Los Angeles in southeastern Ventura County, near the crest of the Simi Hills at the western border of the San Fernando Valley. A former rocket engine test and nuclear research facility, the 2,849-acre field laboratory is currently the focus of a comprehensive environmental investigation and cleanup program conducted by the responsible parties, Boeing, the United States Department of Energy (DOE), and the National Aeronautics and Space Administration (NASA), and overseen by DTSC.

SSFL Site Operations and History: Operational activities at SSFL began in 1948 and primarily included research, development, and testing of liquid-propellant rocket engines, water jet pumps, lasers, liquid-metal heat exchanger components, nuclear energy, and related technologies. The principal activity was large rocket engine testing by Boeing (and its predecessors North American Aviation and Rockwell International), the U.S. Air Force (USAF), and NASA. The majority of the project site was acquired in 1954 and 1958, and development of the western portion of the site began soon after.

From 1954 to 2001, DOE and its predecessor agency, the Atomic Energy Commission, sponsored nuclear and non-nuclear energy research and development projects at the site. The research and energy development activities included nuclear energy operations (development, fabrication, disassembly, and examination of 10 nuclear research reactors, reactor fuel, and other radioactive materials) and large-scale liquid sodium metal experiments for testing liquid-metal fast-breeder reactor components. The last of the nuclear reactors was shut down by 1974 and the remaining nuclear energy research and handling of nuclear materials ended by 1988.

The past operational activities at SSFL resulted in the release of chemicals of concern to both soil and groundwater. Engine testing in the six rocket engine test areas primarily used petroleum-based compounds as fuel and liquid oxygen as the oxidizer. Solvents, primarily trichloroethene (TCE), were used to clean engine components as well as for other equipment degreasing operations at SSFL. Petroleum fuel hydrocarbons and chlorinated solvents were used at SSFL in the largest volumes. Another solvent, used in lesser quantities, 1,1,1-trichloroethane (TCA), contained 1,4-dioxane as a stabilizer to increase the longevity and usefulness of the solvent. Solid propellants, including perchlorate compounds, were used at SSFL for research and testing operations. Polychlorinated biphenyls (PCBs) were present in some waste oils as well as oils within pre-1980 electrical transformers at various sites within SSFL.

The nuclear research conducted in Area IV also resulted in the accidental release of radioactive elements to the environment. Radionuclides that have been detected at more than one sample location include cesium-137, strontium-90, plutonium-239/240, cobalt-60, europium-152, plutonium-238, americium-241, and curium-243/244.

Three landfills were used at SSFL primarily for disposal of non-hazardous, inert construction debris (concrete, asphalt, rock, soil, etc.). Liquid wastes from engine testing were managed until the 1980s in a series of both flow-through and retention ponds. Ten of these ponds (impoundments) have undergone closure: one was clean-closed and nine were closed as RCRA-regulated units. Radioactive and mixed wastes were managed for offsite disposal at the onsite Radioactive Materials Handling Facility; non-radioactive, alkaline, and liquid-metal wastes were managed and treated at the onsite Hazardous Waste Management Facility. The onsite Thermal Treatment Facility was used for open burn/open detonation of hypergolic, reactive, and explosive

wastes. Operational programs are no longer active since all research and development ceased as of 2006.

Cleanup of SSFL: Cleanup of soil, groundwater, and related media at SSFL will be conducted under the Corrective Action Program of RCRA. In addition, the cleanup of soil by the federal agencies, DOE, and NASA is being conducted under the HSAA. Because of their role in causing the contamination at the project site, NASA, DOE, and Boeing are referred to as "Responsible Parties" (RPs), which means they are responsible for conducting required investigations and cleanups of contaminants released from past activities at the project site.

Investigation and cleanup requirements at the project site are further defined in the 2007 Consent Order for Corrective Action (2007 Consent Order) and the 2010 Administrative Orders on Consent (AOCs) for remedial action. The 2007 Consent Order and the 2010 AOCs establish the requirements for the investigation and cleanup of soil and groundwater at the project site. The RPs are required to prepare draft, project-specific cleanup documents for each area requiring cleanup. The public will have an opportunity to review and comment on these draft documents. Thereafter, DTSC will issue final cleanup decision documents that describe each RP's project specific cleanup requirements for each area requiring a cleanup.

The 2007 Consent Order is the initial agreement that DTSC and the three RPs entered into to define the requirements for investigating contaminated soil and groundwater, and to implement the cleanup at SSFL. However, in 2010, NASA and DOE entered into subsequent, separate AOCs with DTSC. The 2010 AOCs establish the process to investigate and cleanup soil within NASA's and DOE's administrative areas. The 2007 Consent Order continues to define the groundwater investigation and cleanup requirements for all of SSFL, and soil investigation and cleanup requirements within Boeing's administrative areas. As a result of these separate orders, the soil cleanup requirements for Boeing areas are less stringent than the soil cleanup requirements for DOE and NASA areas.

Draft Environmental Impact Report (EIR) for SSFL: In September 2017, DTSC released the draft EIR for the cleanup of SSFL for 90 day public comment. The draft EIR explains the environmental impacts that could result from SSFL cleanup activities, and identifies alternatives to avoid or reduce those impacts.

The draft EIR evaluates potential impacts of the SSFL cleanup project described in two types of administrative cleanup documents: The 2007 Consent Order, which applies to the cleanup of groundwater and contaminated soil in Boeing's area, and the 2010 AOCs that apply to the cleanup of contaminated soil in areas controlled by DOE and NASA. As required by the California Environmental Quality Act (CEQA), the draft EIR also evaluates several alternatives to the proposed project.

SSFL Draft Program Management Plan (PMP): The draft PMP, prepared by DTSC, establishes the framework for investigation and cleanup decisions at SSFL. The draft PMP describes how the cleanup will be undertaken in accordance with all applicable laws, including California state law, the 2007 Consent Order for Corrective Action, and the 2010 AOCs.

The PMP will serve as a roadmap for how DTSC and the three RP's (Boeing, NASA, and DOE) will complete the SSFL cleanup. Additionally, the PMP will assist in managing the complex nature of cleanup projects, the responsible parties' schedules, and multiple regulatory agencies'

involvement at the site. The PMP will be updated annually to incorporate new information, especially as it relates to schedule and the roles of supporting agencies.

DTSC will determine the final framework for the PMP after reviewing and considering all public comments submitted during the public comment period. Subsequent decision documents, which will include individual public comment periods, will be prepared consistent with the framework for each discrete cleanup project at SSFL.

SSFL project schedule: The schedule goal was for DTSC to finalize the EIR in 2018 and for all three RPs to have draft cleanup decision documents to DTSC in late 2018 to early 2019; however, those target goals have been missed. It is unclear as of the writing of this analysis when the EIR will be finalized and when the cleanup can actually begin. Cleanup activities were anticipated to begin in 2019, but are now uncertain due to the delays with finalizing the EIR.

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

Legislative Oversight: Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. Numerous statutory changes have been made to clarify and strengthen the statute to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC the resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain.

The Independent Review Panel: With the aim of identifying and addressing the continued failings of DTSC to meet its public health and environmental protection mandates, SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2015) established an Independent Review Panel (IRP) to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management, with the goal of resolving the outstanding operational problems within DTSC and creating strong statutory mandates and accountability in the long term. Pursuant to SB 83, the IRP was authorized until January 1, 2018.

On January 1, 2018, the IRP completed its term and on January 8, 2018 released its final report and recommendations concluding, in part:

"DTSC made considerable progress since the IRP began meeting in November 2015. However, there is more work to be done. The Department is only beginning to consider and implement its organizational culture plans, and several cannot be implemented without additional resources. Structural deficits in DTSC's two major accounts require immediate attention. DTSC must find a better balance between work product quality and timeliness."

The Office of Environmental Health Hazard Assessment (OEHHA): OEHHA is the lead state agency for the assessment of health risks posed by environmental contaminants. OEHHA's mission is to protect human health and the environment through scientific evaluation of risks posed by hazardous substances. OEHHA implements the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65, and compiles the state's list of substances that cause cancer or reproductive harm. OEHHA also develops health-protective exposure levels for contaminants in air, water, and soil as guidance for regulatory agencies and the public. These include public health goals for contaminants in drinking water and both cancer potency factors and non-cancer reference exposure levels for the Air Toxics Hot Spots Program. SB 633 requires OEHHA to develop and implement a monitoring program to collect data on contaminants from the SSFL that could migrate to and pollute surrounding areas.

The investigation and planning for the cleanup of the SSFL has been going on for more than a decade and is almost two years past a 2017 goal for completing the cleanup. The current draft EIR is almost two years old and there has been no announced timeframe when DTSC will release the final EIR. The investigation and cleanup of SSFL has been complex and has involved multiple stakeholders. Given the numerous delays associated with this cleanup and with the concerns with DTSC's credibility, SB 633 is designed to ensure that the cleanup is done safely and correctly. The bill adds OEHHA's expertise and impartiality to ensure that the communities near SSFL are protected during and after the cleanup.

Related legislation:

1) SB 1054 (Hertzberg, Chapter 980, Statutes 2018). As heard in the Assembly Environmental Safety and Toxic Materials Committee, would have required the Department of Toxic Substances Control (DTSC) to provide the public with a monthly status report on the cleanup for the Santa Susana Field Laboratory, including projected completion dates for all environmental documents prepared under the California Environmental Quality Act (CEQA) and all approved soil or groundwater cleanup plans. This bill was later amended to an unrelated subject and signed by the Governor.

2) SB 990 (Kuehl, Chapter 729, Statutes of 2007). Authorized DTSC to compel a responsible party or parties to take or pay for appropriate removal or remediation action, as prescribed, necessary to protect public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

REGISTERED SUPPORT / OPPOSITION:

Support

South Coast Air Quality Management District
Ventura, County of

Opposition

None received

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 690 (Hueso) – As Amended June 25, 2019

SENATE VOTE: 38-0

SUBJECT: Coastal resources: Tijuana River Valley: funding prioritization

SUMMARY: Encourages the State Coastal Conservancy, when expending any funds for the purposes of addressing transboundary flows and pollution in the Tijuana River Valley, to, to the extent feasible, prioritize those projects identified in studies on the Tijuana River Valley that are required by statute.

EXISTING LAW:

1) Makes funds, appropriated in the 2014 Budget Act and reappropriated in the 2017 Budget Act to the Department of Parks and Recreation, available to the County of San Diego for the development, improvement, rehabilitation, protection, and restoration of natural and park lands in the Tijuana River Valley; for the studies described below; and, for the development of a campground planned for the Tijuana River Valley, as described in the "*Tijuana River Valley Regional Park Public Use Feasibility Study*." (Public Resources Code (PRC) § 5907.5 (a))

2) Requires that up to $500,000 of the moneys appropriated to the Department of Parks and Recreation through the 2014 and 2017 Budget Acts and available to the County of San Diego be used to update or conduct, as the case may be, the following studies:

3) An update to the Tijuana River Valley Recovery Team's "*Recovery Strategy: Living with the Water*," January 2012, to include issues related to wastewater and runoff; and,

4) A study focused on the improvement and protection of natural lands, including the main river channel, in the Tijuana River Valley. (PRC § 5907.5 (b))

5) Appropriates $2,090,000 to the Department of Parks and Recreation from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 to be available for expenditure, until June 30, 2017, to the County of San Diego for the acquisition of natural lands in the Tijuana River Valley. (Budget Act of 2014, Chapter 25, Item 3790-101-0786)

6) Reappropriates the balance of $2,090,000 to the Department of Parks and Recreation from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 to be available for expenditure, until June 30, 2018, to the County of San Diego for the acquisition of natural lands in the Tijuana River Valley. (Budget Act of 2017, Chapter 14, Item 3790-490)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "In 2017, I authored SB 507, a bill that sought to find tangible solutions to pollution at the Tijuana River Valley by authorizing the use of funds for a "Needs and Opportunities Assessment." That assessment is nearly complete and a preliminary report and project list is available with input from federal, state, and local stakeholders. As such, I requested $15 million dollars from the state to address transboundary flows coming from Mexico. SB 690 will ensure that funds made available for the purposes of addressing these flows are used, to the extent feasible, on projects that address water quality, sediment, trash, and flood control."

Tijuana River Watershed: The Tijuana River Watershed is an approximately 1,700-square mile complex ecological system that straddles the United States (U.S.) / Mexico border. While nearly three-quarters of the watershed is located in Mexico, it drains through a vibrant, urban environment to the Pacific Ocean through the 8-square mile Tijuana River Valley (Valley) north of the border.

The Valley is a unique resource and is the home to tidally flushed wetland, riparian, and upland habitats supporting a broad range of organisms, including threatened and endangered species. It also encompasses a number of federally-listed historic and archaeologic sites. Moreover, the Valley is an important recreational resource, with more than 35 miles of multi-use trails for hiking, biking, equestrian, and other uses. The surf offshore of the estuary is considered one of the best surf spots in southern California. Several federal and international agencies also have significant infrastructure investments in the Valley, and agriculture has had a long historical presence in the Valley, including sustainable, organic farms that serve as a local source of fresh produce. Finally, there are many programs that utilize Valley resources for hands-on environmental education programs.

Impacts on the Tijuana River Valley: Unfortunately, according to *"Recovery Strategy, Living with the Water 2012,"* the Valley is increasingly threatened by stormwater flows that contain trash and high concentrations of other urban, agricultural, and industrial pollutants in the Tijuana River and its tributaries. Additionally, the soils in the watershed are highly susceptible to erosion, especially when disturbed. Due to urbanization, even moderate storms can bring significant flows of sediment downstream. As stormwater flows to the ocean, the intermixed sediment, trash, and other debris are deposited in channels, trapped in vegetation in the Valley floodplain, and in the estuary. These conditions create an environment where mosquitoes and other vectors can impact human health and the environment. Also, storm flows transport exotic invasive plant species that threaten native plant communities and negatively affect habitat for native wildlife. The sediment and trash pollutants cause water quality impairments, threaten life and property from flooding, degrade valuable habitats, and impact recreational opportunities for residents and visitors.

Tijuana River Recovery Team: The Tijuana River Recovery Team (Recovery Team) is a collaboration of more than 30 federal, state, and local agencies and other interested parties from both sides of the U.S./Mexico border focused on addressing sediment, trash, and associated environmental issues. The mission of the Recovery Team is to bring together the governmental, administrative, regulatory, and funding agencies with the scientific community, the environmental community, and affected stakeholders to protect the Valley from future accumulations of trash and sediment; to identify, remove, recycle or dispose of existing trash and sediment; and, to restore the Tijuana River floodplain to a balanced wetland ecosystem.

Tijuana River Recovery Strategy: The *"Recovery Strategy, Living with the Water 2012"* (Recovery Strategy) is a collaborative recovery plan for the Valley spearheaded by the San Diego Regional Water Quality Control Board and drafted by the Recovery Team. The Recovery Strategy summarizes the first phase of actions for Tijuana River recovery and acknowledges that resolution to the sediment and trash problems will require partnerships between the U.S. and Mexico to provide watershed-based solutions. The Recovery Strategy asserts that source control and pollution prevention activities are often the best and most economically feasible long-term solutions to sediment, trash, and other water quality problems.

SB 507: In 2017, Senator Hueso, the author of SB 690, authored SB 507 (Hueso, Chapter 542, Statutes of 2017), which made funds, appropriated in the 2014 Budget Act and reappropriated in the 2017 Budget Act to the Department of Parks and Recreation, available to the County of San Diego for the development, improvement, rehabilitation, protection, and restoration of natural and park lands in the Tijuana River Valley and for the development of a campground planned for the Tijuana River Valley. Additionally, the bill required that up to $500,000 of the moneys appropriated be used to update or conduct, as the case may be, the following studies:

1) An update to the Tijuana River Valley Recovery Team's *"Recovery Strategy: Living with the Water,"* January 2012, to include issues related to wastewater and runoff; and,

2) A study focused on the improvement and protection of natural lands, including the main river channel, in the Tijuana River Valley.

In May 2019, the County of San Diego released, *"SB 507 Needs and Opportunities Assessment (NOA), Preliminary List of Potential Projects,"* which describes and provides an estimated cost for remediation projects for the Tijuana River Valley. This report was produced to fulfill the statutory reporting requirements of SB 507. A final update of the NOA list, which will be included in an updated *"Recovery Strategy: Living with the Water"* report, is anticipated to be released in March, 2020.

Current budget item: Item 3760-101-6088 in the 2019 Budget Act (AB 74, Ting, Budget Act of 2019) appropriates $15,000,000 for the Tijuana River Border Pollution Control Project, to the State Coastal Conservancy, payable from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Fund. AB 74 specifies that of this amount, not more than $1,500,000 may be used for program delivery costs, and not more than $750,000 may be used for planning and monitoring costs. At the time of print of this analysis, AB 74 is currently enrolled and awaiting the Governor's signature.

This bill: SB 690 encourages the State Coastal Conservancy, when expending any funds for the purposes of addressing transboundary flows and pollution in the Tijuana River Valley, to, to the extent feasible, prioritize those projects identified in studies on the Tijuana River Valley that are required by statute. The author indicates that the intent of SB 690 is, should AB 74 be signed into law, to guide prioritization for the spending of the $15 million dollar appropriation for the Tijuana River Border Pollution Control Project and to guide the spending of any future funding for the project.

Assembly Environmental Safety and Toxic Materials Committee hearing: On March 19, 2015, the Assembly Environmental Safety and Toxic Materials Committee held an oversight hearing on Border River Water Quality in Imperial Beach, California. At the hearing, the Committee

examined the progress on, and challenges facing, action on the Recovery Strategy and sought recommendations for actions the state could take to directly improve the environmental quality and public health and safety of the communities impacted by bi-national environmental issues, especially in relation to the Tijuana River.

Related legislation:

1) AB 97 (Ting, Chapter 14, Statues of 2017). Reappropriated the balance of $2,090,000 to the Department of Parks and Recreation from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 to be available for expenditure, until June 30, 2018, to the County of San Diego for the acquisition of natural lands in the Tijuana River Valley. (Budget Act of 2017, Chapter 14, Item 3790-490)

2) SB 570 (Hueso, Chapter 542, Statutes of 2017). Made funds, granted to the County of San Diego in the 2014 Budget Act and reappropriated in the 2017 Budget Act, available for the development, improvement, rehabilitation, protection, and restoration of natural and park lands in the Tijuana River Valley; for the studies of the area; and, for the development of a campground planned for the Tijuana River Valley.

3) SB 852 (Leno, Chapter 25, Statutes of 2014). Appropriated $2,090,000 to the Department of Parks and Recreation from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 to be available for expenditure, until June 30, 2017, to the County of San Diego for the acquisition of natural lands in the Tijuana River Valley. (Budget Act of 2014, Chapter 25, Item 3790-101-0786)

4) SCR 90 (Hueso, Chapter 80, 2014). Declared the Legislature's intent to work with the Tijuana River Valley Recovery Team to take various actions to protect and preserve the Tijuana River Valley; to encourage collaboration to protect and enhance natural resources through improved management of sediment and trash, flood control, ecosystem management, and recreation and education; and, to promote bilateral ties with Mexico that will be beneficial to the enhancement of one of California's most resilient ecosystems.

5) SB 167 (Ducheny, Chapter 333, Statutes of 2009). Required the California Integrated Waste Management Board (now the California Department of Resources Recycling and Recovery) to include additional information relating to the five-year plan establishing goals and priorities for the waste tire program as it relates to waste tires in the California-Mexico Border Region, and authorized funds generated by the California tire fee to be used for related border activities.

REGISTERED SUPPORT / OPPOSITION:

Support

County of San Diego

Opposition

None received

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

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 726 (Caballero) – As Amended June 25, 2019

SENATE VOTE: 38-0

SUBJECT: Hazardous waste: public agencies: materials exchange program

SUMMARY: Authorizes a contractor of a public agency to conduct a materials exchange program at a household hazardous waste (HHW) collection facility for reusable household hazardous products and materials. Specifically, **this bill**:

1) Defines "materials exchange program" as a program conducted at any HHW collection facility that makes reusable household hazardous products and materials available to recipients.

2) Adds a public agency contractor as an authorized preparer of a quality assurance plan.

3) Revises the definition of "quality assurance plan" to be a written protocol designed to ensure that reusable household hazardous products or materials are evaluated in order to be made available through a materials exchange program operated by a HHW collection facility.

4) Adds to the definition of "recipient" that the person may include a commercial entity that accepts a reusable household hazardous product or material from a public agency or its contractor.

5) Revises the definition of "reusable household hazardous product or material" as a container of household hazardous material received at a HHW collection facility, instead of a container of hazardous material generated by a conditionally exempt small quantity generator (CESQG), that is determined to be suitable and acceptable, in accordance with a quality assurance plan, for distribution in a materials exchange program.

6) Authorizes a permanent HHW collection facility to transport HHW.

7) Requires a quality assurance plan, prepared and implemented by a public agency or its contractor, to:

    a. Be designed to ensure that products selected for distribution have labels that are intact and legible, are not contaminated, are not broken or leaking, and appear to be as they originated from the product manufacturer. Clarifies that products selected for distribution may be in containers with dents or scratches, but contents must appear not compromised or impaired;

    b. Identify specific procedures for evaluating each container placed in the materials exchange program;

    c. Identify products that shall not be accepted for distribution in the materials exchange program, which may include, but are not limited to, products that are not legal for use or sale in California;

d. Be implemented at a HHW collection facility at which a materials program exchange program is operated; and,

e. Identify when a reusable household hazardous product or material no longer meets the condition in the protocol and becomes a waste, and is managed according to applicable hazardous waste requirements.

8) Authorizes a public agency or its contractor to conduct a materials exchange program if a public agency or its contractor does all of the following:

a. Determines which reusable household hazardous products or materials are suitable and acceptable for distribution to a recipient in accordance to the quality assurance plan prepared by the public agency or its contractor; and,

b. Instructs a recipient to use the product or materials in a manner consistent with instructions on the label.

9) Requires a public agency or its contractor, when authorizing a recipient that is a commercial entity to distribute a reusable household hazardous product or material to another recipient or end user, to:

a. Require a commercial entity to sign a statement certifying the accuracy of the following information under penalty of perjury:

i. Its legal name, address, and phone number;

ii. Documentation supporting that the commercial entity has a known market or disposition for any products or materials received, including detailed descriptions of the known market or disposition;

iii. A declaration to distribute reusable household hazardous products or materials for their original intended purpose; and,

iv. An explanation of how unused household hazardous products or materials is intended to be disposed of;

b. Require the commercial entity to provide a report by September 1 of each year, for the period of July 1 of the prior year to June 30 of the current year, providing detailed accounting of amounts, types, and recipients of materials; amounts and types of materials awaiting distribution; and, amounts, types, and dispositions of materials that were unable to be sold or donated; and,

c. Immediately discontinue providing reusable household hazardous products or materials to the commercial entity if compliance with these provisions cannot be verified.

10) Requires all recipients of a reusable household hazardous product or material to use the product or material in conformance with its label and with appropriate personal protection, and manage unused household hazardous products or materials as required by California law or as required by the applicable law in the state that it is discarded.

11) Requires transportation of reusable household hazardous product or material by a public agency, a public agency contractor, or recipients to comply with all applicable shipping requirements of the United States Department of Transportation.

12) Makes other clarifying technical changes.

EXISTING LAW:

1) Establishes the federal Resource Conservation and Recovery Act (RCRA) to authorize the United States Environmental Protection Agency (US EPA) to manage hazardous and non-hazardous wastes throughout its life cycle. (42 United States Code (U.S.C.) § 6901 et seq.)

2) Establishes the Hazardous Waste Control Law (HWCL) to authorize DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

3) Defines "waste" as any solid, liquid, semisolid, or contained gaseous discarded material. (HSC § 25124)

4) Defines a "hazardous waste" as waste, that because of its quantity, concentration, or physical, chemical, or infectious characteristics:

    a. Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or,

    b. Poses a substantial present or potential hazard to human health or the environment, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bio accumulative properties, or persistence in the environment, when improperly treated, stored, transported, disposed of, or otherwise managed. (HSC § 25141(b))

5) Defines a "household hazardous waste" as hazardous waste generated incidental to owning or maintaining a place of residence, but does not include waste generated in the course of operating a business concern at a residence. (HSC § 25218.1(e))

6) Defines a "household hazardous waste collection facility" as a facility operated by a public agency, or its contractor, for the purpose of collecting, handling, treating, storing, recycling, or disposing of HHW, and its operation may include accepting hazardous waste from conditionally exempt small quantity generators. (HSC § 25218.1(f))

7) Establishes that counties and cities will provide services for the collection of HHW and that the state will provide an expedited and streamlined regulatory structure to facilitate the collection of HHW. (HSC § 25218)

8) Authorizes a specified list of transporters for that hazardous waste that are transported to a HHW collection facility. (HSC § 25218.5)

9) Authorizes an individual or CESQG to transport up to a total liquid volume of five gallons or a total dry weight of 50 pounds of HHW to a HHW collection facility. (HSC § 25218.5(b)(1)(A))

10) Authorizes a public agency to conduct a materials exchange program for reusable household hazardous products or materials in accordance with a quality assurance plan.

11) Requires a public agency to instruct the recipient to use reusable household hazardous products or materials consistent with the label. (HSC § 25218.12(a)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "California's waste regulations set a clear goal of reducing and reusing Household Hazardous Waste in an environmentally responsible manner. However, unclear existing regulations have stifled local governments from implementing effective reuse programs. Thanks to the advent of modern technologies, we can now identify which hazardous household waste products can be reused. These reusable items, like deck sealers and paint thinners, can often be diverted from out-of-state landfills or incineration and reused by consumers or non-profits like Habitat for Humanity. SB 726 gives California the opportunity to reduce hazardous household waste by updating current law to enable reuse programs to improve and expand their current operations."

Household hazardous waste: Hazardous waste is a waste with properties that make it potentially dangerous or harmful to human health or the environment. In regulatory terms, a waste is hazardous if it appears on a RCRA hazardous wastes list or exhibits one of the four characteristics of a hazardous waste: ignitability, corrosivity, reactivity, or toxicity. However, materials can be hazardous wastes even if they are not specifically listed or do not exhibit any characteristic of a hazardous waste. For example, the term "used oil" is a legal term which means any oil that has been refined from crude oil, or any synthetic oil that has been used and, as a result of use, is contaminated with physical or chemical impurities (Title 40, Code of Federal Regulations (CFR) § 279.1). Hazardous wastes are prohibited from being disposed of in the trash, and must be properly managed and transported to a permitted treatment, storage, or disposal facilities.

Many common household products are also hazardous, and when these products are discarded, they become "household hazardous waste." Common HHW includes, but is not limited to, antifreeze, glue and adhesives, pesticides, used oil, electronic wastes, and household cleaners. In California, HHW is prohibited from being disposed of in the trash, down the drain, or by abandonment, and must be disposed of through a Household Hazardous Waste Collection Program.

Haz-Waste Reduction Initiative: The Department of Toxic Substances Control's (DTSC) Community Protection and Hazardous Waste Reduction Initiative (Haz-Waste Reduction Initiative) is a project designed to evaluate methods that have the potential to significantly reduce the generation and disposal of hazardous wastes that are managed in communities

disproportionately burdened by multiple sources of pollution. The goal of the Haz-Waste Initiative is to select up to three pilot scale projects which have the potential to accomplish the following:

1) Reduce hazardous wastes that are generated, treated, and disposed in significant quantities in California;
2) Identify hazardous wastes generated in California that can pose substantial risks or hazards to human health or the environment; and,
3) Identify hazardous wastes that are generated, treated, or disposed in California communities that are disproportionately burdened by multiple sources of pollution.

Household hazardous waste management: The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring consistency throughout the state regarding the implementation of administrative requirements, permits, inspections, and enforcement at the local regulatory level. California Environmental Protection Agency (CalEPA) oversees the statewide implementation of the Unified Program and its 81 certified local agencies, known as Certified Unified Program Agencies (CUPAs), which apply regulatory standards established by the Governor's Office of Emergency Services (Cal OES), the Department of Toxic Substances Control (DTSC), the Office of the State Fire Marshal (OSFM), the State Water Resources Control Board (State Water Board), and the California Environmental Protection Agency. California Hazardous Waste Law provides several management requirements for HHW generators and establishes a streamlined permitting process for HHW collection facilities. Local agencies may also offer a number of services to ensure proper disposal of HHW, such as door-to-door HHW collection services, or may offer programs to encourage recycling or reuse of HHW. Many services, such as HHW collection and transportation, are provided by contractors of public agencies.

Methods to reduce disposal of HHW: Recyclable HHW are defined by law as latex paint, used oil, used oil filters, antifreeze, spent lead-acid batteries, or universal wastes capable of being recycled. HHW collection facilities may accept both non-recyclable HHW and recyclable HHW, or may be designated as recycle-only facilities. Recycled HHW has consistently been the largest disposition method of HHW over the past 14 years (Figure 1), with 57% of HHW collected in 2017-2018 categorized as recycled. The California Paint Stewardship Law established an industry-led, statewide program to manage the reuse, recycling, and proper disposal of leftover paint in 2012. Figure 1 clearly shows the success of the PaintCare stewardship program, with paints and paint products becoming the second largest category of HHW.

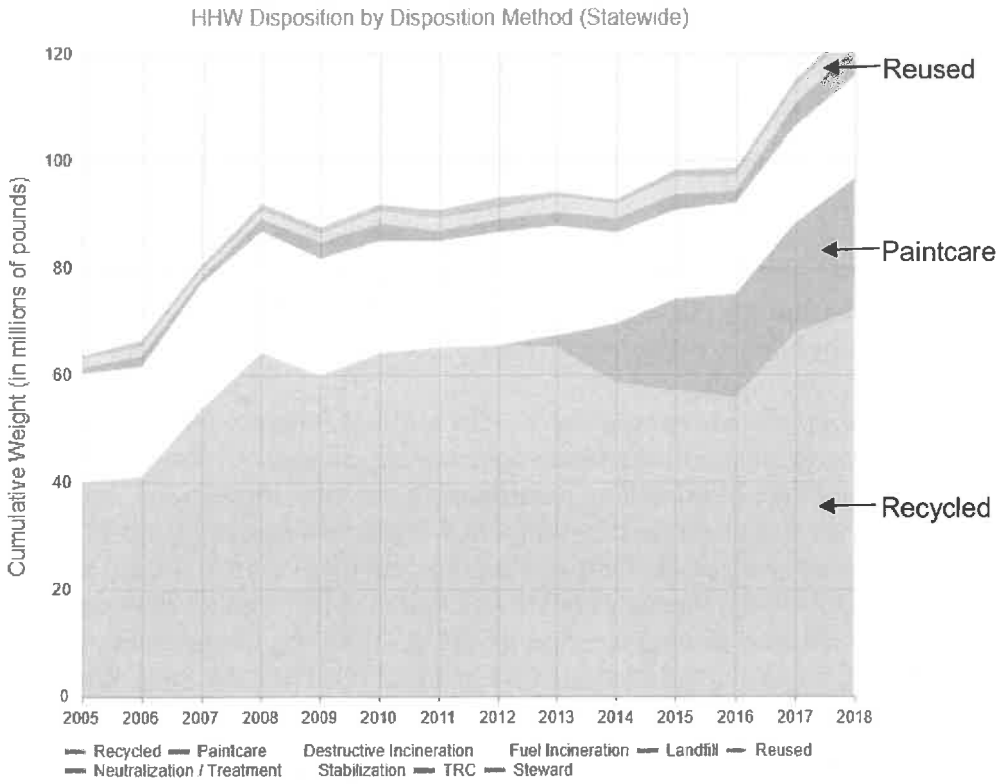


Figure 1. HHW Disposition by Disposition Method in California

In addition to recycling, household hazardous products or materials that meet specified quality assurances may be distributed for reuse. The materials exchange program was established to allow products that are "appropriately labeled, uncontaminated, and appear to be as they originated from the product manufacturers" to be distributed to recipients for reuse. Common reusable household hazardous products or materials include unopened and unadulterated containers of paint, adhesives and glues, cleaners, polishes, flammable solvents, fertilizers, and pesticides. According to a CalRecycle survey in March of 2015, only 46% of HHW programs that responded had reuse programs in place, which may explain why only 2.4% of the total collected HHW were distributed for reuse in 2017-2018 (Form 303 HHW Aggregate Statewide Data, CalRecycle). According to the author, up to 15% of all HHW has the potential to be reused.

While existing law authorizes public agency contractors to transport HHW and operate HHW collection facilities, public agency contractors are not explicitly authorized to conduct a materials exchange program with reusable household hazardous products or materials, or prepare a quality assurance plan for the management of reusable household hazardous products or materials. For example, on July 27, 2018, the Environmental Health Department of San Mateo County received a citation from DTSC for the unauthorized use of services provided by a contractor, Smarter Sorting, which uses barcode scanning technology to determine reusability of HHW. The author argues that existing law is too narrow and limits reuse programs from taking advantage of modern technologies, such as those offered by Smarter Sorting. Furthermore, existing law does not explicitly authorize commercial entities to receive and distribute reused household hazardous products or materials. SB 726 addresses these hurdles by authorizing public agency contractors, under the same statutory requirements and regulations that apply to public agencies, to conduct materials exchange programs for reusable household hazardous products and materials. While it

is not known how many public agencies want to use contractors to offer a materials exchange program, SB 726, at least, will provide more options for the expansion of reuse programs at HHW collection facilities. This measure also updates the definition of "recipient" to include a commercial entity as a means to encourage distribution of reusable household hazardous products and materials, while putting into place important safeguards to ensure that reusable household hazardous products and materials are safely distributed, are tracked and accounted for, and continue to be properly managed and disposed of.

Related Legislation:

1) SB 552 (Archuleta, 2019). Would authorize the use of consolidated manifests in the transportation of HHW in door-to-door HHW collection programs indefinitely. This bill is pending in the Assembly Appropriations Committee.

2) SB 456 (Huff, Chapter 602, Statutes of 2011). Allows HHW gathered by a door-to-door HHW collection program to be transported using a consolidated manifest and to be taken to a HHW collection facility or a hazardous waste facility. This bill sunsets on January 1, 2020.

REGISTERED SUPPORT / OPPOSITION:

Support

National Stewardship Action Council (Sponsor)
7th Generation Advisors
ACR Solar International Corp.
Alameda County Supervisor, Nate Miley
California Association of Environmental Health Administrators (CAEHA)
California Chapters of The Solid Waste Association of North America's Legislative Task Force
California Product Stewardship Council
California Resource Recovery Association
California State Association Of Counties
City of Thousand Oaks
City of Torrance
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Rethinkwaste
Rural County Representatives of California (RCRC)
Sea Hugger
Solid Waste Association of North America, California Chapters
Stopwaste
The Offset Project
Zero Waste Sonoma

Opposition

None received

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