California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

BILL QUIRK
CHAIR

AGENDA

Wednesday, April 21, 2021
9 a.m. -- State Capitol, Room 4202

REGULAR ORDER OF BUSINESS

BILLS HEARD IN FILE ORDER

TESTIMONY MAY BE LIMITED

1.	AB 1066	Bloom	Freshwater recreation sites: water quality monitoring.
2.	AB 753	Grayson	Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989: brownfields remediation and redevelopment.
3.	AB 318	Levine	Hazardous waste: classification: green waste.
4.	AB 377	Robert Rivas	Water quality: impaired waters.
5.	AB 1195	Cristina Garcia	Drinking water.
6.	AB 707	Quirk	Mercury Thermostat Collection Act of 2021.
7.	AJR 2	O'Donnell	Coastal and marine waters: Santa Catalina Island: dichloro-diphenyl-trichloroethane.

PROPOSED CONSENT

8.	AB 1428	Quirk	Safe Drinking Water Act: applicability.

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1066 (Bloom) – As Amended April 14, 2021

SUBJECT: Freshwater recreation sites: water quality monitoring

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to require the owner or operator of a monitored freshwater recreation site to monitor for E. coli and Enterococcus freshwater bacteria and to provide, if the site fails to meets specified bacteria standards, public notification online and signage onsite. Specifically, **this bill**:

1) Requires, on or before December 31, 2022, the California Water Quality Monitoring Council (Council), in consultation with the California Department of Public Health (CDPH), local health officers, and the public, to propose to the State Water Board a definition of a monitored freshwater recreation site.

2) Requires the Council, in developing the proposed definition of a monitored freshwater recreation site, to consider, at a minimum, a freshwater body that is any of the following:

   a) Used for organized recreational events with water contact;

   b) Used for commercial purposes with water contact;

   c) Accessed through a required fee area and used for water contact;

   d) Used by 1,000 or more people per month for water contact recreation; and,

   e) Designated by the State Water Board or a Regional Water Quality Control Board (regional water board) for water contact recreation (REC-1) beneficial use.

3) Requires the State Water Board to adopt, by regulation or by a resolution exempt from the Administrative Procedure Act, a definition of a monitored freshwater recreation site informed by the definition proposed by the Council.

4) Requires the State Water Board, upon adoption of a definition of a monitored freshwater recreation site, to do both of the following:

   a) Identify and post to an appropriate publicly accessible internet website all monitored freshwater recreation sites in the state; and,

   b) Require the owner or operator of a monitored freshwater recreation site to do all of the following:
      i) Monitor the site for whether the site complies with E. coli and Enterococcus freshwater bacteria standards recommended by the United States Environmental Protection Agency (US EPA) in the 2012 Recreational Water Quality Criteria, or subsequently adopted criteria;

ii) Monitor the site once per week from Memorial Day to Labor Day, inclusive, annually. Any additional monitoring shall be at the discretion of the owner or operator;
iii) Provide, if the site fails to meet the bacteria standards, public notifications online and through signage onsite once per week, or as otherwise determined by the State Water Board;
iv) Submit all monitoring data to the State Water Board once per week; and,
v) Collect and report to the State Water Board a sufficient number of monitoring samples taken per site, as recommended by the Council and approved by the State Water Board, to ensure that the monitoring is representative of the conditions where water contact occurs.

5) Requires the State Water Board to host the monitoring data it receives on an appropriate publicly accessible internet website.

EXISTING LAW:

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

2) Provides, under the Porter-Cologne Water Quality Control Act, that the State Water Board and the regional water boards are the principal state agencies with regulatory authority over water quality. (Water Code (WC) § 13000 et seq.)

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

4) Requires the CDPH to, by regulation and in consultation with the State Water Board, local health officers, and the public, establish, maintain, and amend as necessary, minimum standards for the sanitation of public beaches as it determines are reasonably necessary for the protection of the public health and safety (this jurisdiction was later transferred to the State Water Board, see HSC § 115881). (HSC § 115880 (a))

5) Requires the beach regulations to include the testing of the waters adjacent to all public beaches for microbiological contaminants, including, but not limited to, total coliform, fecal coliform, and enterococci bacteria. (HSC § 115880 (c)(1))

6) Requires the beach regulations to include establishing protective minimum standards for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that CDPH determines are appropriate for testing. (HSC § 115880 (c)(2))

7) Requires the local health officer to be responsible for testing the waters adjacent to, and coordinating the testing of, all public beaches within the officer's jurisdiction. (HSC § 115880 (f))

8) Provides, commencing January 1, 2012, that the State Water Board is responsible for all of the beach program requirements, including directing the required monitoring of beaches;

establishing and reviewing monitoring protocols, site locations, and monitoring frequencies (in consultation with CDPH and local health officers); and, identifying options for funding beach monitoring. (HSC § 115881)

9) Requires the health officer having jurisdiction over the area in which a public beach is created to inspect the beach for compliance with bacterial standards; investigate complaints of violations; and, perform other outreach and reporting duties. (HSC § 115885(a))

10) Requires each health officer to monthly submit to the State Water Board a survey documenting all beach postings and closures that occurred during the preceding month. (HSC § 115910 (a))

11) Requires the State Water Board to monthly make available to the public the information provided by the health officers, including the location and duration of each beach closure and the suspected sources of the contamination that caused the closure, if known. (HSC § 115910 (c))

12) Requires the State Water Board to continuously, but at a minimum annually, post and update on its website information documenting the beach posting and closure data provided to the State Water Board by the health officers, including the location and duration of each beach closure and the suspected sources of the contamination that caused the closure, if known. (HSC § 115910 (d))

13) Requires, whenever any public beach fails to meet the bacteriological standards, the health officer to, at a minimum, post the public beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to public health. (HSC § 115915)

14) Requires the State Water Board, with the assistance of the regional water boards, to prepare and implement a statewide water quality information storage and retrieval program. Requires the program to be coordinated and integrated to the maximum extent practicable with data storage and retrieval programs of other agencies. (WC § 13166)

15) Requires the State Water Board to implement, with the assistance of the regional water boards, a public information program on matters involving water quality, and place and maintain on its internet website, in a format accessible to the general public, an information file on water quality monitoring, assessment, research, standards, regulation, enforcement, and other pertinent matters. (WC § 13167)

16) Requires the California Environmental Protection Agency (CalEPA) and the Natural Resources Agency to enter into a memorandum of understanding for the purposes of establishing the California Water Quality Monitoring Council (Council). (WC § 13181 (a))

17) Requires the Council to be administered by the State Water Board and to review existing water quality monitoring, assessment, and reporting efforts, and recommend specific actions and funding needs necessary to coordinate and enhance those efforts. (WC § 13181 (a))

18) Requires the State Water Board to develop, in coordination with the Council, a comprehensive monitoring program strategy that utilizes and expands upon the state's

existing statewide, regional, and other monitoring capabilities and describes how the state will develop an integrated monitoring program that will serve all of the state's water quality monitoring needs and address all of the state's waters over time. (WC § 13181(e))

19) Requires the State Water Board to convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of Section 303(d) of the Clean Water Act, which requires states to identify waters where current pollution control technologies alone cannot meet the water quality standards set for that waterbody, and other applicable federal regulations and monitoring and assessment programs. (WC § 13191)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1066 will address a key public health challenge that many Californians face in outdoor recreation– ensuring there are science and health based bacterial standards, ongoing water quality monitoring, and public notification for freshwater recreation where needed.

California is a magnificent state and one that affords all our communities with opportunities to recreate outdoors. Our lakes, rivers and streams should be enjoyed by residents throughout the state, but we need to ensure that their public health is protected while doing so."

Recreation in California's waters: In addition to its iconic coastal beaches and 1,400 miles of coastline, California has nearly 190,000 miles of rivers and more than 3,000 named freshwater lakes and reservoirs that support recreational use. As a booming state population increasingly seeks the outdoors to recreate, California's water-based recreational activities have grown more popular and diverse. Water recreation in California, which includes swimming, wading, boating, fishing, surfing, diving, and water skiing, among other activities, occurs in a multitude of venues: swimming pools and spas, and ocean waters, beaches, reservoirs, natural lakes, streams, and rivers. Public water supply projects, such as the State Water Project, provide additional recreational opportunities for Californians.

Potential contamination of recreational waters: Untreated recreational water–associated outbreaks can be caused by pathogens or chemicals, including toxins, in freshwater or marine water. Enteric pathogens can be transmitted when people ingest untreated recreational water contaminated with feces or vomit. Swimmers can contaminate water in untreated recreational water venues if they have a fecal or vomit incident in the water. Infants and young children especially contribute to microbiological contamination by accidental fecal releases. Others may cause contamination by intentional fecal releases due to a lack of proper sanitary facilities at or near the recreational area, or because such facilities, though present, are not used.

Enteric pathogens can also be introduced into untreated recreational water venues by stormwater runoff and sewage system overflows and discharges. Other potential sources of fecal contamination and enteric pathogens include leaks from septic or municipal wastewater systems, dumped boating waste, and animal waste in or near swim areas.

According to Heal the Bay, annually there are more than 90 million illnesses related to untreated recreational waters, both fresh and marine, in the United States resulting in $3 billion in healthcare costs.

California's beach water quality: According to the State Water Board, California has some of the most popular beaches in the country. More than 150 million day visits are generated annually by tourists and residents who use beaches annually to recreate. Beach water quality monitoring and strong pollution prevention measures are critical for protecting beach goers from waterborne diseases.

The State Water Board notes that California has the most extensive and comprehensive monitoring and regulatory program for beaches in the nation. Monitoring is performed by county health agencies in seventeen different coastal and San Francisco Bay Area counties; publicly owned sewage treatment plants and other dischargers along the coastal zone; environmental groups; and, numerous citizen-monitoring groups.

The vast majority of the time, California beaches are open and available for the recreation their visitors enjoy. Unfortunately, there are times when it is not advisable to go in the coastal waters due to bacterial contamination. Local health agencies are responsible for issuing advisories (postings) and closures when the results of testing indicate that one or more bacterial levels exceed water quality standards.

California's beach water quality efforts: California's statewide beach program includes several components aimed at ocean water quality, including those listed below.

Established by Assembly Bill (AB) 411 (Wayne, Chapter 765, Statutes of 1997), the California Clean Beaches Program is the state's coastal beach monitoring, reporting, posting, and closing program. AB 411 requires CDPH (the program has since been transferred to the State Water Board) to promulgate regulations that require the monitoring of water adjacent to public beaches (those with storm drains that discharge during dry weather and are visited by more than 50,000 people per year) at least weekly during the dry season (historically April through October), for microbiological contaminations, including total coliform, fecal coliform, and enterococci bacteria. AB 411 also requires the regulations to establish protocols for determining the location of monitoring sites and monitoring frequency based on risks to public health, and for public notification of health hazards, including posting, closing, and reopening of public beaches. This program is implemented by the local health officer or environmental health agency of a coastal county or city, and is limited by statute to ocean beaches. As of 2018, coastal cities and counties spent around $10 million annually on AB 411-required monitoring. The state allocates around $1.5 million a year to counties based on program size, including $500,000 annually from the US EPA's beach grant program. The state allocation only covers a small portion of monitoring program costs. The State Water Board's Division of Financial Assistance also runs a Clean Beaches Initiative Grant Program oriented towards "multi-benefit storm water projects addressing discharge to coastal waters" as a condition of the bonds that fund the program.

"Safe to Swim" is a term used to describe a collection of efforts, including those led by the California Water Quality Monitoring Council (Council, see more below), as well as by the Surface Water Ambient Monitoring Program (SWAMP, see more below) in the State Water Board's Office of Information Management and Analysis (OIMA). These efforts aim to communicate information to stakeholders from existing data, and overall have no dedicated

funding. For example, the Council has a *Can I Swim at My Coastal Beach* webpage that connects the public to county health agency sites and score cards and other guides from the non-profit organizations Heal the Bay and Waterkeeper Alliance. This is more of a directory than a single source of information for recreational water quality in the state. The Council also has a *Is It Safe to Swim In Our Waters?* webpage, which includes a Safe to Swim map that displays bacterial sampling data for both coastal and inland monitoring locations over time; a Coastal Information Map, which graphs bacterial sampling data for coastal monitoring locations; and, a California Swim Guide Map, which is a regional snapshot of the work and information collected and displayed by Canada's Swim Guide program. Some of these pages, such as the Safe to Swim map, currently contain dated data that make their utility to the pubic questionable.

The Water Board maintains other webpages related to beach water quality, including the *Beach Surveys - Warnings, Closures, and Rain Advisories* and the *California Beach Water Quality Information* pages, which contain interesting information and links, but not easily accessible information that would assist members of the public in making informed decisions about safe recreational opportunities.

Other state water quality efforts: The Council states in its 2019 *Draft Safe to Swim Network Charter*, "There are currently no requirements to monitor freshwater areas nor is there statewide guidance for posting water quality advisories or closures at these inland waters." However, California does have several other statewide water quality programs that could be utilized, or contribute to, the goals of this bill, including those below.

According to the State Water Board, SWAMP was created in response to the need for a comprehensive surface water monitoring and assessment program in California. Prior to the creation of SWAMP, the State and regional water boards for decades conducted mostly discharge-focused, compliance-based water quality monitoring. This left most of California's water resources unmonitored. In 1999, the Legislature directed, by passage of AB 982 (Ducheny, Chapter 495, Statutes of 1999), the State Water Board to prepare a proposal for a comprehensive monitoring program for all of California's surface waters, and it provided funding for such a program beginning in 2000. At this direction, SWAMP was established.

SWAMP is an ambient monitoring program. Ambient monitoring considers all waters of the State, while compliance-based monitoring is limited to determining compliance with permit limits or other specific regulatory requirements. Compliance-based monitoring, by itself, produces fragmented and inconsistent monitoring data, making broad synthesis and analysis difficult or impossible. In contrast, SWAMP's more comprehensive monitoring programs evaluate the overall condition of surface waters throughout the State, the goal of which is to provide information needed by state and regional water board staff, water managers, the Legislature, and the public to help understand and better manage California's water resources.

The California Environmental Data Exchange Network (CEDEN) was created by the State Water Board with support from the SWAMP Program, and is a collaborative effort among federal, state, and local agencies meant to provide a central location for sharing information about California's water bodies, including streams, lakes, rivers, and the coastal ocean. Many groups in California monitor water quality, aquatic habitat, and wildlife health to ensure good stewardship of our ecological resources. CEDEN aggregates these data and makes them accessible to environmental managers and the public. OIMA manages the CEDEN database, the structure of

which appears to be oriented towards use by individuals fluent with water quality science and technology.

Senate Bill (SB) 1070 (Kehoe, Chapter 750, Statutes of 2006) required the CalEPA and the California Natural Resources Agency to, on or before December 1, 2007, enter into a memorandum of understanding (MOU) to establish the Council, which the State Water Board is required to administer. Statute and the MOU require that the Council develop specific recommendations to improve the coordination and cost-effectiveness of water quality and ecosystem monitoring and assessment, enhance the integration of monitoring data across departments and agencies, and increase public accessibility to monitoring data and assessment information. The Council published its initial recommendations in December 2008, and its recommendations for *A Comprehensive Monitoring Program Strategy for California* in December 2010.

On July 1, 2020, the Council approved a Strategic Plan to help visualize and describe the overall vision and mission of the Council and its workgroups, and on December 22, 2020, the Secretaries of CalEPA and the California Natural Resources Agency signed a new MOU supporting the formation and work of the Council. This new MOU replaces the original MOU signed in 2007, and recognizes the continued need for collaboration and coordination across the two agencies and the sectors contributing to collection and use of water quality and ecosystem health data.

According to the Council's *Draft Safe to Swim Network Charter 2019,* the Council convened a Safe to Swim Work Group in 2010, which was tasked with coordinating the monitoring and assessment of swimming safety statewide. The Safe to Swim Work Group was also tasked to manage and enhance the *My Water Quality* web portal. Originally focused primarily on coastal beaches, the Work Group expanded in 2018 to more formally address inland beaches and effectively address all waters in California that support water recreation.

This bill: This bill requires the State Water Board to adopt a definition of a monitored freshwater recreation site informed by a definition proposed by the Council. It also requires the State Water Board, upon adoption of the definition, to identify and post to an appropriate publicly accessible internet website all monitored freshwater recreation sites in the state; and, to require the owner or operator of a monitored freshwater recreation site to perform a series of water quality activities. These required activities include monitoring the site for whether the site complies with E. coli and Enterococcus freshwater bacteria standards recommended by the US EPA; providing, if the site fails to meet the bacteria standards, public notifications online and through signage onsite once per week, or as otherwise determined by the State Water Board; and, submitting all monitoring data to the State Water Board once per week. This bill additionally requires the State Water Board to host the monitoring data it receives from the owners and operators on an appropriate publicly accessible internet website.

Heal the Bay, the sponsor of the bill, argues,

> "While California has a robust and extensive water quality monitoring and posting system for its coastal beaches, it has no such testing system in place for the thousands of freshwater bodies used for body-contact recreation. For Californians who do not live near the coast or for whom the coast is not easily accessible, these are the areas where they go to cool off,

especially during the hot summer months, and they should be provided with the same protections that ocean beachgoers are given.

Although the public can today view freshwater water quality data on some websites like Beach Watch or Safe to Swim, much of this data is irrelevant and/or outdated. This gives the public an inaccurate picture of the freshwater bathing recreation site water quality.

AB 1066 will help ensure that the thousands of children and their families that enjoy swimming and playing in the popular dams, streams, rivers, and lakes across California are informed about the water quality of those inland water bodies. This measure will create a uniform set of statewide monitoring standards and protocols that require testing for all freshwater bodies that have a high volume of usage by the general public. Hazardous water quality advisories will be made public through signage or on monitoring agency websites, and monitoring data will be posted in a single, publicly available database."

This bill is intended to be the first step toward establishing a comprehensive and coordinated freshwater program similar to California's beach water quality programs.

As this bill moves forward: California has passed dozens of legislative mandates related to coastal and other surface water quality requirements; has established many water quality monitoring and assessment programs; and, hosts a dizzying array of water quality webpages, many of which were created to implement statutory requirements. The State Water Board, in its 2014 *Review of the Surface Water Ambient Monitoring Program (SWAMP)* states that, "Millions of dollars are spent each year on surface water monitoring for Water Board and other agency programs, but the monitoring is not fully coordinated among programs. Better coordination could provide multiple benefits, but effective coordination is time-consuming and resource intensive. Coordination of all Water Board (and external) monitoring efforts is a laudable goal...." Progress may have been, perhaps marginally, made on working toward coordination since 2014, such as the 2018 expansion of the Safe to Swim Workgroup to include inland waters, but the statement above highlights a real need, as this bill moves through the Legislative process, for a comprehensive assessment of the state's water quality efforts to ascertain how the requirements of the bill can best build upon, enhance, and perhaps better coordinate, current state efforts and whether these efforts, as currently managed, provide a public benefit.

This bill is a work in progress, and other questions need to be answered as this bill moves forward, such as: How will the provisions of the bill be enforced? Is the authority granted to the State Water Board in this bill sufficient for it to set up an effective program? Are the requirements of this bill on the State Water Board clear? How will the program established by this bill be funded? How will implementation of the provisions of this bill impact other State Water Board priorities?

REGISTERED SUPPORT / OPPOSITION:

Support

Heal the Bay (SPONSOR)
Active San Gabriel Valley
Alliance of Nurses for Healthy Environments
Asian Pacific Islander Forward Movement

California Alliance of Nurses for Healthy Environments
California Coastkeeper Alliance
Climate Resolve
Coachella Valley Waterkeeper
East Yard Communities for Environmental Justice
Environmental Action Committee of West Marin
Friends of Ballona Wetlands
Friends of The Los Angeles River
Inland Empire Waterkeeper
Los Angeles Alliance for a New Economy
Los Angeles Waterkeeper
Monterey Coastkeeper
Nature for All
Orange County Coastkeeper
OurWaterLA Coalition
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Seventh Generation Advisors
Sierra Club California
Social Justice Learning Institute
The Last Plastic Straw
TreePeople
Yuba River Waterkeeper

Opposition

None on file.

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 753 (Grayson) – As Amended April 15, 2021

SUBJECT: Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989: brownfields remediation and redevelopment

SUMMARY: Extends the Underground Storage Tank Cleanup Trust Fund (USTCTF) to January 1, 2031. Requires the State Water Resources Control Board (State Water Board) to, on or before January 1, 2024, report to the Legislature, at the conclusion of a stakeholder study, with recommendations for revising the eligibility criteria and funding priorities of the USTCTF in order to clean-up contaminated properties that could be used for affordable housing. Specifically, **this bill**:

1) States the intent of the Legislature that all appropriate resources be directed to action promoting the development of housing, particularly affordable housing, and amenities, including, but not limited to, parks and recreational space in proximity to new housing projects, for purposes of alleviating the state's housing challenges and furthering attainment of the state's climate change mitigation objectives.

2) Requires, on or before January 1, 2026, the State Water Board to, in accordance with the recommendations of the study (Study) required by this bill, revise the eligibility criteria for claim applicants, under the USTCTF, to facilitate the assessment and remediation of property.

3) Requires, on or before July 1, 2022, the State Water Board to convene a stakeholder group for purposes of conducting a Study of the USTCTF's existing eligibility criteria and possible alternative fund eligibility criteria to be implemented on or before January 1, 2026, that would further the legislative intent and housing and climate change mitigation objectives. Provides that the timely reimbursement for existing claimants shall remain a programmatic priority.

4) Requires, at a minimum, the stakeholder group convened by the State Water Board, to include at least one representative from the State Water Board; two existing claimant representatives, one from priority Class C and one from priority Class D; a housing developer; a brownfields practitioner; and, any other industry or nonprofit representatives whom the State Water Board deems qualified and beneficial to the Study.

5) Requires the Study to include but not be limited to, the creation of a fund eligibility scoring matrix pursuant to which property and community attributes are prioritized, evaluated, and scored to allow for the assessment, remediation, and redevelopment of properties in a manner that furthers the legislative intent and housing and climate change mitigation objectives.

6) Requires the recommendations in the Study to include changes to statute and regulations required to implement the findings of the Study.

7) Requires, on or before July 1, 2024, the State Water Board to prepare and post on its internet website a report presenting the results of the Study and submit the report to the Legislature.

8) Extends the sunset for the Underground Storage Tank Cleanup Program and USTCTF from January 1, 2026, to January 1, 2031.

EXISTING LAW:

1) Requires, by December 31, 2025, the owner or operator of an underground storage tank (UST) to permanently close that UST if the UST does not meet certain requirements in state law and regulation. (Health and Safety Code (HSC) § 25292.05)

2) The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program, until January 1, 2026, to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. (HSC § 25299.10)

3) Requires every owner and operator of a UST to establish and maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank. (HSC § 25299.31)

4) Authorizes a claimant under the USTCTF, who meets specified requirements, to use the USTCTF to establish and maintain evidence of financial responsibility. (HSC § 25299.32)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 753 will extend the sunset of the Underground Storage Tank Cleanup Fund to 2030 and create a task force to examine expanding the program to offer funding opportunities to urban infill clean-up projects. This task force will provide the state with the opportunity to address stakeholder concerns and questions and create safeguards against fraud or abuse. Through AB 753, the state will explore a promising pathway towards remediating Brownfield sites in job- and transit-rich areas to support the state's goals of reducing carbon emissions and building urban infill housing."

UST program: The purpose of the UST program, administered by the State Water Board, is to protect public health and safety and the environment from releases of petroleum and other hazardous substances from USTs. An underground storage tank (UST) is defined by law as "any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground" (certain exceptions apply). Existing law requires single-walled USTs to be removed by December 31, 2025.

UST Cleanup Fund Program: The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. The Cleanup Fund Program is available to assist petroleum UST owners and operators with the costs of cleaning up contaminated soil and groundwater caused by leakage from petroleum USTs. The federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs. The Cleanup Fund Program receives funding from fees paid by UST owners for every gallon of fuel that is placed into a UST. The Cleanup

Fund Program has been a critical resource for both cleaning up immediate impacts of UST releases, and preventing significant migration of petroleum products in groundwater and soil.

UST owners and operators who have leaking USTs are required to pay for the costs of soil and groundwater contamination that results from the leak. Under the Cleanup Fund Program, the owners and operators submit claims to the State Water Board for reimbursement of the costs of cleanup, and the State Water Board reimburses them for their cleanup costs.

The Cleanup Fund Program benefits numerous small, medium, large businesses, and individuals by providing reimbursement for expenses associated with the cleanup of leakage from petroleum USTs.

State Water Board's 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 plentiful and diverse and include solvents, pesticides, heavy metals, and fuel constituents to name a few.

AB 753: This bill extends the UST Cleanup Program and USTCTF an additional five years until January 1, 2031. As this program continues to clean-up USTs, there will likely be fewer and fewer USTs to clean-up. However, it is important to continue this program for a couple of reasons: 1) federal law requires UST owners and operators to maintain financial responsibility for the USTs and any potential contamination and state law allows UST owners and operators to use the USTCTF as their financial responsibility; 2) California is looking to reduce emissions from transportation, including looking at a potential zero emission transportations system by 2045; however, if this is accomplished without the use of petroleum powered vehicles then many of the USTs will likely need to be removed and could lack the resources to properly remove them.

Additionally, AB 753 seeks to use revenue from the USTCTF to clean-up contaminated sites, something that is currently being done with the fund. However, the bill is also looking at prioritizing the cleanup of contaminated sites that could be used for housing, especially affordable housing. California has tens of thousands if not hundreds of thousands of contaminated sites and very limited funding to clean those up. Using the USTCTF to clean-up contaminated sites is a current and appropriate use of the funds.

Arguments in Support: According to the Center for Creative Land Recycling, "We write at this critical time to sponsor AB 753 (Grayson), in support of studying the expansion of one of the most effective environmental protection and urban property rehabilitation programs in California's history. The California Underground Storage Tank Cleanup Fund (the Fund) has disbursed billions of dollars over its 30-year tenure for remediating land polluted by fuel leaks from underground storage tanks. Thanks to the efforts of the Legislature, the number of leaks today are far fewer than in previous years. As a result, the number of new applicants to the Fund has declined dramatically. The Fund is scheduled to sunset at the end of 2025. Through AB 753, the state will explore a promising pathway towards remediating Brownfield sites in job- and

transit-rich areas to support the state's goals of reducing carbon emissions and building more housing and ensure that the Fund remains a valuable resource for environmental cleanup in California."

Double Referral: Should this bill by approved by this committee it will be re-referred to the Assembly Housing and Community Development Committee.

Related legislation:

1) SB 445 (Hill, Chapter 547, Statutes of 2014). Extended the State Water Board program for the clean-up of USTs from 2016 to 2020.

2) AB 282 (Wieckowski, 2014). Would have extended the sunset date of the UST Cleanup Program from 2016 until 2018, and extend the sunset of a $0.006 surcharge on petroleum stored in an UST from 2014 until 2016. Held in the Senate Appropriations Committee.

3) AB 120 (Committee on Environmental Safety and Toxic Materials, Chapter 635, Statutes of 2013). Required the State Water Board to waive a provision in existing law that requires a school district to have continuously maintained a permit for their underground storage tanks in order to qualify for funding from the Underground Storage Tank Cleanup Fund School District Account, if the school district meets certain conditions.

4) AB 291 (Wieckowski, Chapter 569, Statutes of 2011). Extended for two years a temporary fee paid per gallon on motor vehicle fuel that the owner of an underground storage tank must pay from 1.4 mils to 2 mils per gallon through January 1, 2014.

5) AB 358 (Smyth, Chapter 571, Statutes of 2011). Streamlined the State Water Board process for completing the clean-up of USTs by establishing authority for the State Water Board to close sites overseen by local government as part of the State Water Board existing five-year review process.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Creative Land Recycling (CO-SPONSOR)
Trust for Public Land (CO-SPONSOR)
Community Housing Development Corporation
Council of Industries
Greenbelt Alliance
Habitat for Humanity Greater San Francisco
Los Angeles Neighborhood Land Trust
Mercy Housing California
Redeemer Community Partnership

Opposition

None on file.

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 318 (Levine) – As Amended April 20, 2021

SUBJECT: Hazardous waste: classification: green waste

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to provide guidance to the Certified Unified Program Agencies (CUPAs) on how to characterize green waste under Chapter 6.5 of the Health and Safety Code and associated regulations. Specifically, **this bill**:

1) Defines green waste as plant waste consisting of leaves, grass clippings, weeds, plant trimmings, agricultural plant waste, branches, stumps, and other plant material; and,

2) Requires DTSC, in consultation with the Department of Resources, Recycling and Recovery (CalRecycle) and the Department of Food and Agriculture (DFA), to provide guidance to the CUPAs on how to characterize green waste under Chapter 6.5 of the Health and Safety Code and regulations adopted pursuant to this chapter by January 1, 2023.

EXISTING LAW:

Under Federal Law:

3) Creates the framework for management of hazardous and non-hazardous solid waste under The Resource Conservation and Recovery Act (RCRA). (42 United States Code §6901)

Under State Law:

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

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

6) Requires DTSC to develop and adopt regulatory criteria and guidelines for the identification of hazardous wastes and extremely hazardous wastes. Specifies that if, because of its quantity, concentration, physical, chemical, or infectious characteristics a waste is either of the following, the criteria and guidelines shall identify this waste as a hazardous waste:

    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, bioaccumulative properties, or persistence in the environment, when improperly treated, stored, transported, or disposed of, or otherwise managed. (HSC § 25141)

7) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)

8) Specifies that a waste is a toxic hazardous waste if it meets one or more of several criteria, including if it is characterized as having a high acute aquatic toxicity as measured by the prescribed test. (22 California Code of Regulation (CCR) § 66261.24)

9) Establishes the California Global Warming Solutions Act of 2006 (AB 32), which requires the California Air Resources Board (ARB) to:

    a) Adopt regulations requiring the reporting and verification of statewide greenhouse gas (GHG) emissions.

    b) Adopt a statewide GHG emissions limit equivalent to 1990 emissions levels by 2020. (HSC §38500 et seq.).

10) Under the California Integrated Waste Management Act,

    a) Specifies a state policy goal that 75% of solid waste generated be diverted from landfill disposal by 2020 through source reduction, recycling, and composting;

    b) Requires generators of specified amounts of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material;

    c) Establishes methane emission reduction goals that include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level; and,

    d) Requires the CalRecycle, in consultation with the Air Resources Board (ARB), to adopt regulations to achieve the organics reduction targets, which go into effect in 2022. (Public Resources Code §40000 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Local waste management officials from across the state are requesting guidance from the Department of Toxic Substances Control (DTSC) on how to dispose of plant waste that fails a hazardous waste test, not because of any pesticide or substance applied to the plant, but because of poisons intrinsic to the plant itself. Some counties have started shipping this plant waste, including cannabis and hemp waste, out of state for hazmat disposal. Other counties have decided not to enforce the law and continue to compost naturally poisonous plants pursuant to CalRecycle guidelines.

This bill would require DTSC to provide guidance for how this waste should be treated, thereby resolving regulatory ambiguity and potentially saving businesses from costly disposal standards that may be unnecessary."

Green waste: Green waste is plant waste consisting of leaves, grass clippings, weeds, plant trimmings, agricultural plant waste, branches, stumps, and other plant material. For purposes of the author's intent, green waste would include "unprocessed cannabis wastes" including plant materials (stalks, leaves, and stems) that have not undergone any chemical processing (i.e., with hazardous materials or other chemicals). As the bill moves through the process, the author may wish to consider using the definition of green materials as defined in California Code of Regulations, title 14, section 17852.

Hazardous waste identification: There are more than 100,000 businesses that generate hazardous waste in California. Waste generators are responsible for determining whether a waste is hazardous or non-hazardous and for disposing of the waste accordingly. In California, a hazardous waste is any waste on a federally maintained RCRA list of hazardous wastes, that is derived from those wastes, or that is ignitable, corrosive, reactive, or toxic. In order to list a waste, the United State Environmental Protection Agency (US EPA) assesses whether the waste:

1. Exhibits any of the characteristics, i.e., ignitability, corrosivity, reactivity, or toxicity;
2. Is fatal to humans or animals at low doses i.e. is acutely toxic; or,
3. Is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

Defining a waste's toxicity in California: In California, a waste is classified as hazardous due to toxic properties if it is identified as having one or more of eight types of toxicity, including acute oral toxicity, acute dermal toxicity, acute inhalation toxicity, acute aquatic toxicity, or carcinogenicity. (22 CCR 66261.24). All of these types of toxicity can be determined using knowledge about the toxicity of constituent components of the waste except for acute aquatic toxicity.

Defining acute aquatic toxicity: Under current state regulations, acute aquatic toxicity is determined via the acute aquatic bioassay test by measuring a waste's toxicity to one of three types of fish- minnows, shiners, or trout. It is most commonly performed on minnows (*pimephales promelas*) and colloquially referred to as the "minnow test." This species of minnow is native to North America, but not to California. According to DTSC's final statement of reasons justifying its criteria for hazardous waste identification (statement of reasons), issued in 1984, "none of the acute toxicity criteria is to be interpreted as predictive possible hazards of wastes only to specific organisms or in specific environments." Washington State also uses acute aquatic toxicity testing as part of its hazardous waste determination.

According to the statement of reasons, the acute aquatic bioassay test was selected to test acute aquatic toxicity because it was based on well-established methods and performed on common test organisms; would be useful for protecting the environment; and, would be reflective of general toxicity. DTSC reasoned that testing on live organisms detects toxic characteristics of wastes that may not be captured in lists either because toxicity of constituent substances is unknown or because of synergistic toxicity of multiple constituent substances. For example, in one case, a printing company dumped waste ink sludge at a municipal landfill not authorized to receive hazardous wastes. Analysis of the waste did not establish the presence of toxic materials; however, the acute aquatic bioassay test showed the sludge was highly toxic to fish. It was speculated that the ink contained a fungicide to prevent mildew. In several cases, DTSC noted that accidental or illegal discharge of hazardous waste resulted in fish kills. The statement of

reasons also noted that the fish test may serve as an indicator of general toxicity of a waste, including to humans, in the view that fish are generally more sensitive to toxic substances than mammals.

Acute aquatic bioassay test protocol and results: The acute aquatic bioassay test is based on methods for examining wastewater and special protocols were developed for "materials that do not readily lend themselves to standard toxicity testing" including oily samples and samples containing sediment. In concept, a waste fails the acute aquatic bioassay test if, in a tank containing fish and 500 mg of waste/L, 50% of the fish in the tank are dead after 96-hours.

Along with wastes containing intuitively toxic substances, such as arsenic, many household products fail this test as well. Based on a retail waste aquatic toxicity testing project, these include ginkgo, ginger, zinc, and many soaps and shampoos. Given the broad range of products that fail the acute aquatic bioassay test and concerns about animal testing, previous legislative efforts including AB 733 (Quirk, 2019) and AB 2474 (Quirk, 2018) have sought to compel DTSC to evaluate alternative testing procedures to determine aquatic toxicity.

Consumer concern and over-classification of hazardous waste: SB 423 (Bates, Chapter 771, Statutes of 2016) required DTSC to convene a Retail Waste Workgroup (Workgroup) tasked with identifying regulatory and policy directives that need clarification for managing consumer products. Over an eight-month period (October 2016 through May 2017), the Workgroup identified problems faced by the retail industry in applying the hazardous waste management standards in California and worked to identify possible solutions. In the Workgroup's final report to the legislature, the regulated community estimated that, "About 30% of the total hazardous waste generated in California is 'California-only' hazardous waste [i.e. waste that is only classified as hazardous because of the fish test] that could fail the [acute aquatic bioassay test]. The percentages for retailer waste can be much higher, with some retailers managing up to 67% of their hazardous waste as 'California-only' hazardous waste. The regulated community noted that managing this waste as hazardous is costly and reduces opportunities for recycling.

Recycling and disposal of cannabis waste or green waste: One of the problems stated by the author and the sponsor is that cannabis and other plants that might fail the acute aquatic bioassay test face regulatory ambiguity. CalRecycle has advised that uncontaminated plant residual (green waste) from cannabis and hemp may be treated like any other organic waste and composted. However, DTSC has advised that cannabis waste is only regulated as an organic waste when it does not meet the definition of hazardous waste.

It is the responsibility of the waste generators (including cannabis licensees) to properly evaluate waste to determine if it should be designated and handled as a hazardous waste, as defined in section 40141 of the Public Resources Code. This means that there is little publicly available data with testing results for cannabis waste or other green waste.

The author and sponsor report that in a dozen cases, raw cannabis waste has failed the aquatic acute toxicity test and must be treated as a hazardous waste. Local solid waste enforcement and local hazardous waste enforcement officers are unsure whether to continue composting cannabis waste in accordance with state guidelines or to stop composting operations for cannabis, hemp, and/or certain other plants that are known to be toxic that may fail the acute aquatic bioassay test. Handling and disposing of cannabis and other green waste as a hazardous waste would increase

costs for the cannabis industry and would result in more waste going to landfills, which could undermine organic waste diversion goals.

Aquatic toxicity of cannabis waste: A review article in *Environmental Science & Technology Letters* by Wartenberg et al. from January 2021 highlighted that the environmental impacts of cannabis cultivation, including the consequences of wildlife exposure to cannabis-related chemicals, are largely unknown. Experimental data from exposing zebra mussels to tetrahydrocannabinol (THC) and a metabolite showed that demonstrated prolonged exposure could cause damage at the cellular level. Experimental data showed that exposure to cannabis extracts can lead to negative physiological or behavioral impacts in carp, tilapia, and zebrafish and induced high mortality rates in mosquitoes and snails. Cannabis contains a complex mixture of chemicals including THC, cannabidiol (CBD), and terpenes. Little is known about the fate of cannabis chemicals in the environment, the effects of cannabis chemicals on aquatic life in the environment, and whether any chemicals causing impacts are fully treated in the composting process or contained in disposal methods like landfilling at a solid waste landfill.

Waste diversion goals: SB 1383 (Lara, Chapter 395, Statutes of 2016) established targets to achieve a 50 percent reduction in the level of statewide disposal of organic waste (which includes green waste) from the 2014 level by 2020 and a 75 percent reduction by 2025. This reduction is necessary to reduce greenhouse gas emissions from landfilling waste. Organic materials make up one-third of the waste stream, with green waste making up 6-7% of the overall waste stream. California currently landfills approximately 20-23 million tons of organic waste every year. Starting in 2020, California will have a goal of disposing no more than 11.5 million tons of organic waste in landfills. After 2025, that goal drops to 5.7 million tons of organic waste disposed in landfills.

Composting and anaerobic digestion are the two main alternatives for recycling green waste into beneficial products. Compost, as well as other soil amendments that can be produced from organic materials, has been shown to improve soil health by incorporating organic matter, beneficial micro-organisms, and nutrients and to reduce the need for chemical pesticides and fertilizers. These products also conserve water by allowing water to penetrate the soil more quickly and decreasing runoff. California compost is used by farmers to increase the nutrients, water-holding capacity, and carbon content in soil, which helps grow stronger, healthier crops. In addition, anaerobic digestion can be used to produce renewable natural gas, an environmentally preferable alternative to fossil fuel.

Striking the balance between climate goals and protecting public and environmental health: Over classification of waste as hazardous results in more landfilling of waste, which is in conflict with the waste diversion goals set to reduce greenhouse gas emissions in SB 1383. However, more information is needed to determine that alternative methods of disposal or recycling, like composting and anaerobic digestion, do not release chemicals that harm wildlife or human health.

AB 2993 (Levine, 2020) sought to address these issues and remove barriers to composting cannabis and other green waste by excluding green waste from classification as a hazardous waste. Once classified as non-hazardous, the requirements for waste disposal under existing laws and regulations are far less stringent. Historically, hazardous waste that requires management options outside of disposal in a class I hazardous waste landfill or transport out of state has not been re-classified as non-hazardous. Instead, the hazardous waste has been

granted alternative management standards (AMS). For example, AB 1353 (Matthews, Chapter 597, Statutes of 2004) provided DTSC with the statutory authority to develop, through regulations, AMS for treated wood waste that were based upon hazardous waste requirements, but were adjusted for the unique circumstances associated with treated wood waste. However, the AMS approach relies heavily on data to determine if disposal methods provide adequate protection for public health, reporting requirements to assess the impacts of the standards, and sunsets to provide for regular legislative oversight.

This bill: AB 318 seeks to provide regulatory clarity for stakeholders and to eliminate a barrier to achieving waste diversion goals by requiring DTSC to provide guidance to CUPAs on how to characterize green waste. If cannabis waste or other green waste poses risks to aquatic ecosystems, the environment, or human health, these wastes need to be treated or disposed of in a manner that mitigates these risks. However, the over classification of waste as hazardous leads to higher disposal costs and is in conflict with organic waste diversion goals that are necessary for reducing greenhouse gas emissions to address the risks of climate change. More coordination is necessary between stakeholders, DTSC, CalRecycle, and DFA in order to strike a balance between protecting the public from exposure to chemical contaminants and achieving waste diversion goals.

Arguments in Support: The sponsor of this bill, the California Association of Environmental Health Administrators (CAEHA) writes in support, "CAEHA represents both Local Enforcement Agencies (LEAs) responsible with solid waste management and Unified Program Agencies (CUPAs) tasked with hazardous materials and waste oversight. Under DTSC laws, if any of this material fails their bioassay test, it must be characterized and handled as hazardous waste – thus shipped out of state or disposed of in a Class 1 landfill. Local Environmental Health departments have been in a regulatory bind with respect to handling cannabis and hemp waste because CalRecycle and Department of Food and Agriculture encourage recycling of this organic material, but DTSC rules characterize much of this material as hazardous waste. Over the past several years batches of cannabis waste have been subjected to a bioassay test and have failed it, forcing this material to meet very costly and - from our perspective - unnecessary hazardous waste disposal requirements."

Arguments in Opposition: Specialized Waste Solutions, Inc. listed the following reasons to oppose this bill: "1. Cannabis plant waste may appear to be a simple waste to manage. However, most plant waste whether raw material or processed has Toxic and/or Flammable characteristics that would qualify the waste material to RCRA regulations. 2. As an asset-based service provider in the industry we have "boots on the ground" experience from cannabis plant waste material. The plant waste material, raw and processed, causes an extremely uncomfortable irritative skin reaction. One of our field technicians has had an irritation scar from scratching for more than 90 days ago. 3. Traceability of waste material will become an important factor in Illicit Market diversion as the industry matures. Subjecting generators to a Hazardous Waste Manifest (Form 8700-12) allows for a more transparent supply chain for regulators and industry..."

Related legislation:

1) AB 1086 (Aguiar-Curry, 2021). Requires, on or before January 1, 2023, the Natural Resources Agency (NRA) to create an implementation strategy for the state to meet its

organic waste management mandates, goals, and targets. This bill is currently on suspense in the Assembly Appropriations Committee.

2) AB 2993 (Levine, 2020). Would have excluded green waste, as defined, from classification as a hazardous waste. This bill was held in the Assembly Environmental Safety & Toxic Materials Committee.

3) AB 144 (Aguiar-Curry, 2019) would have required, on or before December 31, 2020, the Strategic Growth Council to create a scoping plan for the state to meet its organic waste management mandates, goals, and targets. This bill was held in the Assembly Appropriations Committee.

4) SB 1383 (Lara, Chapter 395, Statutes of 2016). Required the ARB to approve and implement the comprehensive short-lived climate pollutant strategy to achieve a 40% reduction in methane and reductions in other short-lived greenhouse gases from 2013 levels. Established a target of 50% reduction in the statewide disposal of organic waste from the 2014 level by 2020 and a 75% reduction by 2025, and requires CalRecycle and ARB to adopt regulations to achieve the organic waste reduction targets.

5) AB 1045 (Irwin, Chapter 596, Statutes of 2015). Requires the California Environmental Protection Agency to establish policies to encourage recycling of organic waste and coordinate the oversight and regulation of organic waste recycling facilities.

6) AB 1826 (Chesbro, Chapter 727, Statutes of 2014). Requires generators of specified amounts of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material.

REGISTERED SUPPORT / OPPOSITION (on version of bill in print):

Support

California Association of Environmental Health Administrators (CAEHA) (SPONSOR)
California Cannabis Industry Association
Consortium Management Group
Eden Enterprises, Inc.
Los Angeles County Fire Department

Opposition

El Segundo, City of
Specialized Waste Solutions, Inc.

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 377 (Robert Rivas) – As Amended April 13, 2021

SUBJECT: Water quality: impaired waters

SUMMARY: Requires, by January 1, 2025, the State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Boards) to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. Requires, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state. Specifically, **this bill**:

1) Requires, by January 1, 2025, the State Water Board and Regional Boards to evaluate impaired state surface waters using the most current integrated report, and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050.

2) Requires the report to be submitted to the Legislature by the State Water Board to include existing total maximum daily load compliance schedules as of January 1, 2021.

3) Requires the State Water Board and Regional Water Boards to update the report to the Legislature every five years with a progress summary to the Legislature.

4) Creates the Waterway Recovery Account in the Waste Discharge Permit Fund. Authorizes funds within the Waterway Recovery Account to be available for the State Water Board to expend, upon appropriation by the Legislature, to bring impaired water segments into attainment.

5) Requires, by January 1, 2026, and subject to a future legislative act, 50 percent of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to be annually transferred to the Waterway Recovery Account.

6) Authorizes funds in the Waterway Recovery Account to be expended by the State Water Board only for the following:

   a) Restoration projects, including supplemental environmental projects, that improve water quality;

   b) Best management practice research innovation and incentives to encourage innovative best management practice implementation;

   c) Source control programs;

   d) Identifying nonfilers;

   e) Source identification of unknown sources of impairment;

f) Competitive grants to fund projects and programs for municipal separate storm sewer system permit compliance requirements that would prevent or remediate pollutants, including zinc, caused by tires in the state. Priority shall be given to applicants that discharge to receiving waters with zinc levels that exceed the established total maximum daily loads and to projects that provide multiple benefits; and,

g) Costs of investigation, enforcement, and attorney staff and other staff associated with preparing for or attending a hearing in an administrative enforcement action.

7) Requires, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state.

8) Requires an enforcement action taken pursuant to this bill to result in sufficient penalties, conditions, and orders to ensure the person subject to the enforcement action is no longer causing or contributing to the exceedance in a surface water quality standard in a surface water of the state.

9) Requires a discharger to remain liable for ongoing water quality violations until sampling demonstrates that the discharge is no longer causing or contributing to the exceedance in a surface water of the state.

10) Requires penalties obtained pursuant to the prioritization of water quality standards to be deposited into the Waterway Recovery Account.

11) Requires the State Water Board and Regional Water Boards to include in the penalty recovery all costs of investigation, enforcement, and attorney staff and other staff associated with preparing for or attending a hearing in an administrative enforcement action.

12) Requires costs recovered pursuant to prioritization of water quality standards to be available, upon appropriation by the Legislature, for the State Water Board to expend only for additional enforcement.

EXISTING LAW:

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

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

3) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code (WC) § 13000 et seq.)

4) Requires the State Water Board to develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs and permits. (WC § 13383.9)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill*: According to the author:

> "In 1972, Congress passed the Clean Water Act, which set a goal of restoring and maintaining clean water in all of the nation's rivers, lakes, wetlands, and other waterways by 1985. Unfortunately, five decades later, 95% of waterways in California are still polluted, or "impaired," by discharges of chemicals, sediment, or other materials into those waterways. The causes of impairment can vary greatly. A stream in the Sierra Nevada, for example, might be impaired by arsenic pollution from an abandoned mine upstream. Disadvantaged communities in the Fresno area, meanwhile, are forced to get a significant portion of their drinking water from a reservoir contaminated with mercury because the nearby San Joaquin River – which many residents also rely on for subsistence fishing – is even more polluted with mercury, pesticides, and hazardous levels of nutrients.
>
> AB 377, the California Clean Water Act, will put the state back on track to eliminate impaired waterways and make all waters statewide suitable for conversion to drinking water, swimmable, and fishable by 2050. Specifically, the California Clean Water Act will require the State and Regional Water Boards to close permit loopholes, ensure that all dischargers are in compliance with water quality standards, and direct a larger proportion of existing funding toward cleaning up impaired waterways. The effects of this bill will be especially significant in disadvantaged communities, where water is disproportionately likely to be polluted or even undrinkable."

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

National Pollution Discharge Elimination System (NPDES): As authorized by the CWA, the NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste discharged into waters of the United States. The NPDES Program is a federal program which has been delegated to the State of California for implementation through the State Water Board and the Regional Water Boards.

Stormwater: Stormwater is water from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways, or parking lots and can carry with it pollutants such as oil, pesticides,

herbicides, sediment, trash, bacteria, and metals. The runoff can then drain directly into a local stream, lake, or bay. Often, the runoff drains into storm drains that eventually drain untreated into a local body of water. Pollution often contaminates stormwater runoff, resulting in a toxic soup of runoff entering California's water ways. Both the United States Environmental Protection Agency and the Regional Water Boards have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health. However, stormwater may also act as a resource and recharge groundwater when properly managed.

Stormwater pollution in California's water bodies: In Los Angeles County, approximately 100 million gallons of contaminated water and debris drain through the storm drain system each dry day. On rainy days the daily flow can increase to 10 billion gallons per day. Because stormwater drains directly into local water bodies, water bodies throughout the state are continually contaminated by various pollutants. According to the State Water Board, 1,357 of the 2,623 segments of water bodies in California contain harmful levels of one or more types of pollutants, such as bacteria, metals, and pesticides. Excessive amounts of these pollutants can detrimentally affect the environment, including the health of humans and aquatic life. For example, high levels of certain types of bacteria in a water body can cause serious illnesses, such as gastrointestinal illnesses, respiratory illnesses, and skin infections in people who come into contact with the water body.

State Water Board enforcement: The State Water Board and Regional Water Boards enforce the pollution control and cleanup requirements that are established for discharges and contaminated sites. Where violations of regulatory requirements are detected, enforcement actions of varying types and levels of stringency are taken. For the most serious violations, penalties are often imposed. The State Water Board also collaborates with federal, state, and local law enforcement, as well as other environmental agencies, to address violations. In all cases, the principal goal of enforcement is to encourage compliance with requirements so that water quality is protected. According to the State Water Board during Fiscal Year 2019-2020, there were approximately 3,820 enforcement actions, with approximately $12 million in penalties assessed. Of this amount, approximately $3.6 million in penalties were for NPDES wastewater or NPDES stormwater violations.

AB 377: Sets a goal for achieving state water quality standards by 2050. Instead of prescribing how to reach this goal, the bill requires the State Water Board to develop a plan by 2023 for achieving this goal. While this Plan leaves the implementation up to the State Water Board, it may also want to include options on how to meet the potential funding needs of meeting the Plan. Additionally, this bill creates a new account to fund a variety of projects to improve water quality. The new account is funded by a re-prioritization in enforcement actions that this bill also creates. It remains to be seen just how much revenue can be generated by this new enforcement effort, given that penalties totaled approximately $3.6 million for NPDES permit violations in fiscal year 2019-2020. AB 377 requires the penalties for water quality violations to include the State Water Board's cost of bringing the enforcement action and requires that these costs be re-invested into enforcing water quality standards. This could cause there to be a perception of the state increasing staffing by aggressively enforcing water quality standards. There may be some consideration for achieving effective enforcement without causing this perception.

Arguments in Support: According to numerous organizations including the California Coast Keeper Alliance, Clean Water Action, and the Natural Resources Defense Council,

"The undersigned organizations advocate for the protection of environmental and public health, water quality, and a resilient water future. On behalf of the undersigned organizations, we write in support of the Assembly Bill 377, the California Clean Water Act to put California back on track to restore all of its waterways by 2050.

California has long been a leader in environmental protection, yet 95% of all assessed rivers, lakes, bays, and wetlands are plagued by a wide range of pollutants including pesticides, metals, pathogens, trash, sediment, or are otherwise impaired by excess diversions and modifications of our waterways. California's communities are left to feel the brunt and shoulder the cost of this ongoing pollution with water that is unsafe to recreate in and expensive to treat. Our state cannot ensure a resilient climate future without clean rivers, streams, and a healthy coast. Action is needed to protect California's foundational ecosystems, help prevent the undue and preventable loss of native and endemic species, and prevent families from getting sick from toxic chemicals and bacteria when they visit California's rivers, lakes, and beaches. Californians have waited fifty years for the state to fulfill its mandate to restore our waters – thirty-six years past the original deadline imposed by the federal Clean Water Act. The time is now for California to act. AB 377 will help California realize its water quality objectives and prevent our clean water laws and regulations from being mere words on a page."

Arguments in Opposition: According to numerous organizations including the California Farm Bureau, California Chamber of Commerce, and the Wine Institute,

"While we appreciate the intent of recent amendments to resolve concerns in opposition, we remain opposed because this bill would dramatically and fundamentally change current State and regional water board authority with respect to how they regulate discharges under the Porter-Cologne Water Quality Control Act (Porter-Cologne) to protect water quality. We share the concern of the author and the sponsor for protecting water quality and the beneficial uses it supports. This must include ensuring that water quality is suitable for agricultural uses, available for clean affordable drinking water to all Californians and protects aquatic species. This occurs by balancing all the needs placed on California's waters, which is the approach taken by the California Legislature when it adopted the Porter-Cologne Act. This bill would ignore that balance and would significantly impact the ability of those in agriculture to comply with water board requirements and programs, which would result in significantly increasing costs of compliance (if compliance is even possible) that would provide little or no benefit to the environment or the public. This bill is so broad based that the unintended, yet monumental, consequences hamper any realistic effort to achieve the stated goals of the sponsors and proponents. In short, we are very concerned with the substantial practical and costly impacts that could result from AB 377. Nonetheless, we appreciate your willingness to meet with us to discuss and resolve these concerns and we look forward to a productive dialogue in the weeks and months ahead."

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance (SPONSOR)
All Good LLC

American Rivers
Amigos De Los Rios
Azul
Battle Creek Alliance
Belong Wine Co.
California Alliance of Nurses for Healthy Environments
California Coastal Protection Network
California League of Conservation Voters
California Marine Sanctuary Foundation
California Native Plant Society
California Outdoor Recreation Partnership
California Sportfishing Protection Alliance
California Wilderness Coalition (CALWILD)
Californians Against Waste
Campovida
Carmel River Steelhead Association (CRSA)
Center for Biological Diversity
Channel Islands Surfboards
Chico Bag
Citizens Committee to Complete the Refuge
Clean Water Action
Coachella Valley Waterkeeper
Coast Action Group
Coastal Environmental Rights Foundation
Communitiy Water Center
Defenders of Wildlife
Desal Response Group
Earth Friendly Products
Earth Law Center
Endangered Habitats League
Environmental Action Committee of West Marin
Environmental Defense Center
Environmental Justice Coalition for Water
Fly Fishers International
Food & Water Watch
Friends of Ballona Wetlands
Friends of Gualala River
Friends of Harbors, Beaches and Parks
Half Moon Bay Brewing
Heal the Bay
Hog Island Oyster Company, Inc.
Humboldt Baykeeper
Humboldt Distillery
Inland Empire Waterkeeper
Johnson's Beach Resort
Karuk Tribe
Klean Kanteen
Leadership Counsel for Justice & Accountability
Lisa Kaas Boyle, Esq.

Los Angeles Neighborhood Land Trust
Los Angeles Waterkeeper
Los Cerritos Wetlands Land Trust
Mara Hoffman
Mavericks Brewing
Mixte Communications
Monterey Coastkeeper
Natural Resources Defense Council (NRDC)
Orange County Coastkeeper
OurWaterLA Coalition
Paddle Sports Centers
Pashko
Patagonia Inc.
Peak Design
Planning and Conservation League
Plastic Pollution Coalition
Residents for Responsible Desalination
Restore the Delta
Roots of Change
Russian Riverkeeper
Samudra Skin & Sea
San Diego Coastkeeper
San Francisco Baykeeper
San Franpsyco
Sand Cloud
Santa Barbara Channelkeeper
Save Our Shores
Sea Forager
Seventh Generation Advisors
Shelter Company
Sierra Club California
Smiley's Saloon & Hotel
South Yuba River Citizens League
Southern California Watershed Alliance
Stewards of The Coast and Redwoods
Surfdurt
Surfrider Foundation
Surfrider Foundaton, Santa Barbara Chapter
The Last Plastic Straw
The Otter Project
Upstream
Waterkeeper Alliance
Wholly H2O
Wildcoast
Women's International League for Peace and Freedom
Yuba River Waterkeeper

Opposition

Agricultural Council of California
Alameda Countywide Clean Water Program
Almond Alliance of California
American Pistachio Growers
Association of California Cities-Orange County
Association of California Egg Farmers
Association of California Water Agencies (ACWA)
California Association of Sanitation Agencies
California Association of Winegrape Growers
California Building Industry Association (CBIA)
California Business Properties Association
California Chamber of Commerce
California Citrus Mutual
California Construction & Industrial Materials Association
California Cotton Ginners and Growers Association
California Council for Environmental & Economic Balance (CCEEB)
California Farm Bureau Federation
California Fresh Fruit Association
California Grain and Feed Association
California Independent Petroleum Association (CIPA)
California League of Food Processors
California League of Food Producers
California Manufacturers & Technology Association
California Municipal Utilities Association (CMUA)
California Pear Growers Association
California Poultry Federation
California Rice Commission
California Rice Industry Association
California Seed Association
California Special Districts Association
California State Association of Counties (CSAC)
California Stormwater Quality Association
California Strawberry Commission
California Walnut Commission
Calleguas Municipal Water District
Carlsbad; City of
Chemical Industry Council of California
City of Agoura Hills
City of Bell
City of Campbell
City of Del Mar
City of Hidden Hills
City of Menifee
City of Monte Sereno
City of Norco
City of Oceanside
City of Orinda

City of Rancho Palos Verdes
City of Roseville
City of San Jacinto
City of San Pablo
City of Santee
City of Signal Hill
City of Sunnyvale
City of Thousand Oaks
Community Water Systems Alliance
Corcoran Irrigation District
County of Napa
Cucamonga Valley Water District
Desert Water Agency
East Valley Water District
Eastern Municipal Water District
El Dorado Irrigation District
Family Winemakers of California
Fresno Irrigation District
Fresno Metropolitan Flood Control District
Gateway Water Management Authority
Grower Shipper Association of Santa Barbara & San Luis Obispo Counties
Grower-Shipper Association of Central California
Helix Water District
Indian Wells Valley Water District
Industrial Environmental Association
Inland Empire Utilities Agency
Irvine Ranch Water District
Kings River Conservation District
Lafayette; City of
League of California Cities
Los Angeles County Division, League of California Cities
Los Cerritos Channel Watershed Group
Lower Los Angeles River Watershed Management Group
Lower San Gabriel River Watershed Management Group
Marin Countywide Stormwater Program
Mesa Water District
Metropolitan Water District of Southern California
Milk Producers Council
Moldex-Metric, Inc.
Northern California Water Association
Oakdale Irrigation District
Olivenhain Municipal Water District
Orange County Water District
Pacific Egg & Poultry Association
Rancho California Water District
Regional Water Authority
Riverside County Flood Control & Water Conservation District
Russian River Watershed Association
San Bernardino; County of

San Gabriel Valley Council of Governments
San Joaquin River Exchange Contractors
Santa Ana Watershed Project Authority
Santa Clara Valley Urban Runoff Pollution Prevention Program
Southern California Water Coalition
Thousand Oaks; City of
Three Valleys Muncipal Water District
Torrance; City of
Town of Danville
U.S. Tire Manufacturers Association
Upper San Gabriel Valley Municipal Water District
Valley Ag Water Coalition
Valley Center Municipal Water District
Ventura Countywide Stormwater Quality Management Program
Vista Irrigation District
Walnut Creek; City of
Walnut Valley Water District
Waste Management
Western Agricultural Processors Association
Western Growers Association
Western Municipal Water District
Western Plant Health Association
Western States Petroleum Association
Wine Institute

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1195 (Cristina Garcia) – As Amended April 6, 2021

SUBJECT: Drinking water

SUMMARY: Creates the Southern Los Angeles County Human Right to Water Collaboration Act. Requires the State Water Resources Control Board (State Water Board) to appoint a Commissioner to implement the Safe and Affordable Funding for Equity and Resilience (SAFER) Program in southern Los Angeles County. Specifically, **this bill**:

1) Requires the State Water Board, to appoint a commissioner to implement the SAFER Program in southern Los Angeles County, within the jurisdictional boundaries of the Water Replenishment District of Southern California and in collaboration with the communities and operators of public water systems in the region.

2) Requires the Commissioner, appointed by the State Water Board, to expend moneys from the Safe and Affordable Drinking Water Fund, subject to the State Water Board's approval, for the purposes and to the eligible recipients identified in the SAFER Program. Requires the Commissioner 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.

3) Authorizes the Commissioner to assist operators of public water systems in operating and managing their public water systems, including, but not limited to, funding, technical assistance, and other collaboration that promotes economies of scale; and serve as an administrator or as a receiver of a public water system pursuant to a court order, for a public water system that serves a disadvantaged community or that consistently fails or is at risk of doing so, as determined by the Commissioner.

4) Requires the Commissioner to seek available funding from state and local sources to fund its activities.

5) Requires the Commissioner to, on or before December 31, 2024, develop and submit to the State Water Board a plan (Plan) for the long-term sustainability of public water systems in southern Los Angeles County. In preparing the Plan the Commissioner shall do all of the following:

    a) Oversee the work of the Water Replenishment District (WRD) of Southern California in assessing the condition of small public water systems in its jurisdiction;

    b) Review the assessment of small public water systems by WRD and evaluate public water systems and other water infrastructure in the region;

    c) Identify projects, processes, and systems that may assist public water systems that consistently fail or are at risk of failing as determined by the Commissioner;

d) Plan for the consolidation of public water systems that either consistently fail or are at risk of failing as determined by the Commissioner; and,

e) Consult with the Los Angeles County Local Agency Formation Commission (LAFCO) regarding effective public water system governance strategies in the region and how the LAFCO may facilitate consolidation of public water systems that consistently fail or are risk of failing as determined by the Commissioner.

6) Requires the Commissioner to oversee the operations of the Central Basin Municipal Water District (Central Basin) in selling drinking water and recycled water to public water systems in its jurisdiction. Requires the Central Basin to cooperate with the Commissioner in exercising the Commissioner's oversight responsibilities.

7) Requires the Commissioner to oversee, on behalf of the State Water Board, the expenditure of all state funding for groundwater cleanup in the region.

8) Requires the Commissioner to be advised by a technical advisory board of experts in water management or water policy consisting of an unspecified number of members.

9) Authorizes the technical advisory board to promote regional collaboration by developing alternatives for creating sustainable public water systems in the region, which the Commissioner may consider in preparing the Plan.

10) Provides that surface water rights or groundwater rights exercised by an operator of a public water system for the benefit of the public water system shall not be severed or otherwise separated from the public water system.

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) Creates the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. (HSC § 116766)

4) 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))

5) 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))

6) 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,

> "The people in southern Los Angeles County depend on a multitude of small water systems. These water systems are growing old, and the operator/owner may lack the funding to pay to rebuild the system or clean up water contamination. If the system fails, there is no public agency with the capacity to save them and the people's water supply. By contrast, other neighboring companies owned by outside investors charge higher water rates and they are not accountable to the public. In fact, some of the region's disadvantaged communities of color pay some of the highest water prices in the County, depending on which retailer sells them water.
>
> Some small water systems may be close to failure, but there is no public agency with the capacity to take them over to fix the problems. This may lead to privatization of these water systems, as investor-owned utilities, which generally charge higher water rates, have the capacity and the authority to increase water rates to pay for rebuilding the system. This bill will create a regional administrator identified by the State Water Board to help resolve the many water challenges facing the region and build regional collaboration, to keep water rates low, increase water quality, and keep management of southeast water public."

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 States 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.

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.

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.

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.

The Safe and Affordable Funding for Equity and Resilience (SAFER) program: SB 200 (Monning, Chapter 120, Statutes of 2019) created SAFER and the Safe and Affordable Drinking Water Fund (Fund). The SAFER program supports permanent and sustainable drinking water solutions that ensure all Californians have access to safe, affordable, and reliable drinking water. The Fund was established to address funding gaps and provide solutions to water systems, especially those serving disadvantaged communities, to address both their short- and long-term drinking water needs. SB 200 requires the annual transfer of 5 percent of the Greenhouse Gas Reduction Fund (GGRF) (up to $130 million) into the Fund until June 30, 2030. Money transferred into the Fund is continuously appropriated and must be expended consistent with the Expenditure Plan (Plan), which is adopted annually by the State Water Board. The Plan is based on a drinking water needs assessment and will document past and planned expenditures and prioritize projects for funding. Potential options for funding include consolidation with larger water systems, operations and maintenance costs, building local technical and managerial capacity, providing interim replacement water, and administrators to run the small systems. Additionally, SAFER funds will provide short-term operation and maintenance support as a bridge until long-term sustainable solutions are in place, and providing long-term operation and maintenance support when necessary.

Expenditure Plan (Plan): The Safe and Affordable Drinking Water Fund Expenditure Plan (Plan) is adopted annually by the State Water Board, and directs how money from the Fund can be spent. The Plan will be based on a drinking water needs assessment, documents past and planned expenditures, prioritizes projects for funding, and includes the following elements:

- Identify public water systems, community water systems, state small water systems and regions where domestic wells consistently fail or are at risk of failing to provide adequate safe drinking water, the causes of failure, and appropriate remedies,
- Determines the amounts and sources of funding needed to provide safe drinking water or eliminate the risk of failure to provide safe drinking water; and,
- Identify gaps in supplying safe and affordable drinking water and determine the amounts and potential sources of funding to eliminate those gaps.

Needs Assessment: The annual Drinking Water Needs Assessment (Needs Assessment) required to be carried out by the SAFER Program provides foundational information and recommendations to guide the Plan. The Needs Assessment is comprised of Risk Assessment, Affordability Assessment, and Cost Assessment components. Development of the 2021 Needs Assessment consisted of stages between September 2019 and March 2021.

The results from the 2021 Needs Assessment illustrate the breadth and depth of challenges to safe and affordable water supply provision across system types in California for the first time. The Needs Assessment identifies water systems that are failing and those that are at-risk of failing to provide safe and affordable drinking water. The 2021 Risk Assessment was conducted for 2,779 public water systems and evaluated their performance across 19 risk indicators within the following four categories: Water Quality, Accessibility, Affordability, and Technical,

Managerial, and Financial (TMF) Capacity. The results identified 326 water systems as failing; 617 water systems at-risk of failing, 552 water systems potentially at-risk of failing, and 1,284 water systems not at-risk of failing.

Water rights: A water right is a legal entitlement authorizing water to be diverted from a specified source and put to beneficial, nonwasteful use. Water rights are property rights, but their holders do not own the water itself. They possess the right to use it. The exercise of some water rights requires a permit or license from the State Water Board, whose objective is to ensure that the State's waters are put to the best possible use, and that the public interest is served. The State Water Board's duties are not limited to permits and licenses. It may be called upon to adjudicate water for entire systems or to act as a "referee" or fact-finder in court cases involving water rights. This bill seeks to make some changes to how water rights are or are not transferred from public water systems.

Perfluorooctanoic acid (PFOA) and Perfluorooctanesulfonic acid (PFOS): PFOA and PFOS are fluorinated organic chemicals that are part of a larger group of chemicals referred to as per- and poly-fluoroalkyl substances (PFASs). PFOS and PFOA have been extensively produced and studied in the United States. These manmade substances have been synthesized for water and lipid resistance. They have been used extensively in consumer products such as carpets, clothing, fabrics for furniture, paper packaging for food, and other materials (e.g., cookware) designed to be waterproof, stain-resistant, or non-stick. In addition, they have been used in fire-retarding foam and various industrial processes.

Exposure through drinking water has become an increasing concern due to the tendency of PFASs to accumulate in groundwater. Such contamination is typically localized and associated with a specific facility, for example, an industrial facility where these chemicals were manufactured or used in other products, or airfield which used the chemicals for firefighting. The State Water Board is also seeking to establish its first enforceable regulatory standards for PFOA and PFOS. In August 2020, the Board requested that OEHHA develop public health goals (PHGs) for the two chemicals as the next step in developing regulatory standards, known as maximum contaminant levels (MCLs). Other PFAS chemicals may be considered for PHG and MCL development later, as data permits.

This bill acknowledges the new emerging concerns of PFOA and PFOS and requires the Commissioner to oversee, on behalf of the State Water Board, funding for the cleanup of groundwater contamination in the region. This bill is designed to help coordinate the efforts of the myriad public water systems in southern Los Angeles County in addressing groundwater contamination, especially, the emerging contamination from PFAS.

Water Replenishment District of Southern California: The Water Replenishment District of Southern California (WRD) is the largest groundwater agency in the State of California, managing local groundwater resources for over four million residents. WRD's service area covers a 420-square-mile region of southern Los Angeles County, the most populated county in the United States. The 43 cities in the service area, including a portion of the City of Los Angeles, use about 250,000 acre-feet (82 billion gallons) of groundwater annually which accounts for approximately half of the region's water supply. WRD ensures that a reliable supply of high quality groundwater is available through the use of recycled water and stormwater capture. WRD is responsible for monitoring and testing groundwater throughout the region.

This bill requires the Commissioner to oversee the work of WRD in assessing the conditions of small public water systems in its jurisdiction.

Central Basin Municipal Water District: The Central Basin Municipal Water District (district) was established by a vote of the people in 1952 under the Municipal Water District Law of 1911. The district currently serves a population of more than two million people in 24 cities in southeast Los Angeles County and in some unincorporated areas of the county. The district's mission includes acquiring, selling, and conserving imported water and other water that meets all required standards and furnishing it to customers in a planned, timely, and cost-effective manner that anticipates future needs. The district purchases the imported water from the Metropolitan Water District of Southern California and wholesales it to cities, mutual water companies, investor-owned utilities, and private companies. Additionally, the district supplies water for groundwater replenishment and provides the region with recycled water for municipal, commercial, and industrial use.

This bill requires the Commissioner to oversee the operations of the district in selling drinking water and recycled water to public water systems in its jurisdiction.

Audit of the Central Basin Municipal Water District: In 2015, the California State Auditor released an audit report concerning the Central Basin Municipal Water District's (district) planning, operations and management, long-term financial viability, and control environment. The audit report stated,

> "This report concludes that the district's board of directors (board) has failed to provide the leadership necessary for the district to effectively fulfill its responsibilities. For example, we found that the board failed to ensure that the district maintained stability in key executive management positions throughout our review period. Further, we found that the board failed to take basic steps to ensure the district's long-term financial viability, including engaging in long-term financial planning and performing the necessary study to ensure the district's water rate structure is appropriate and that it will collect sufficient revenues to meet its costs. Finally, the board's actions contributed to the district losing its insurance coverage, forcing the district to purchase insurance with higher premiums for considerably less coverage than in previous years.
>
> Although the district has recently taken some steps to address these issues, the magnitude of the problems we found suggests that the district could benefit from a different governance structure. The district's board is currently publicly elected, yet the board's customers, to which it should be held accountable, are those various entities the district wholesales water to which is, in turn, then sold throughout the district. If the Legislature chooses to change the governance structure, it could consider a structure in which the board would be composed of members appointed by the district's direct customers. Such a change would not be a novel approach—as we note, it is already used by certain other water agencies in the region—and it would enable the district's customers to hold the board accountable when it takes actions or makes decisions that are not in the best interests of the district."

Challenges for small water systems serving disadvantaged communities in Los Angeles County: In early 2021, "The Human Right To Water In Poor Communities of Color: Southern Los Angeles County, UCLA Institute of the Environment and Sustainability" was released. This report identified the 64 community water systems in Los Angeles County serving disadvantaged

or severely disadvantaged populations. These 64 water systems have 281,000 connections, serving approximately 1 million people, nearly 10% of the population of Los Angeles County in 2019. The largest population is concentrated in 29 disadvantaged community water systems in Southern Los Angeles County who largely serve communities of color. According to the report, "Disadvantaged communities concentrated in southern Los Angeles County lack fair options when it comes to water supply. When served by public utilities, aging infrastructure, water quality problems, and other complications can translate into sacrifices in quality or reliability. When supplied by investor-owned utilities, they receive reliable water supply but pay more than affluent communities."

Drinking water: multiple problems and multiple solutions: There are multiple factors impacting the ability of a public water system to provide safe, clean, affordable, drinking water. Additionally, the very nature of delivering water to millions of customers in Los Angeles County poses added complexities. While the State Water Board's implementation of SAFER has begun with early emphasis on the state's Central Valley, it is now time to address challenges facing urban water systems, especially in disadvantaged communities. However, where do you start? The problems facing urban water systems in this region are many and complex, including lack of resources, lack of sufficient infrastructure, challenges with contamination, and the reality that the number and size of these public water systems may not be sufficient to address today's problems. AB 1195 was introduced to further the dialogue with the State Water Board and all of those in the region with the goal of providing some type of bridge or foundation for how to use all of the state's resources collectively to bring safe, clean, affordable drinking water to the communities in southern Los Angeles County. There are likely other regions of the state that also face unique challenges specific to their region.

This bill, once more fully negotiated, could help provide a model of how to address the regional complexities of providing drinking water.

Issues for further discussion: AB 1195 raises many important issues; however, there are several issues that may warrant further consideration. The author may wish to continue a dialogue with the State Water Board and public water systems in southern Los Angeles County regarding the role of the Commissioner, including clarifying whether the Commissioner will be a separate entity or perhaps will be a new or existing staff person within the State Water Board who will act as a facilitator and collaborator between the different programs within the State Water Board and the many public water systems in southern Los Angeles County. The SAFER Program is statewide; however, this bill is focusing on one region of the state. Given that there may be other regions of the state that may also need specialized attention for their unique needs, the author may wish to work with the State Water Board to see if the processes identified in the bill could be used as a model approach for the State Water Board to work with different regions of the state. Also, AB 1195 makes a change to water rights as it relates to public water systems. The author may wish to consider continuing to work with stakeholders to refine this language. Lastly, the bill creates a technical advisory board to assist the Commissioner in carrying out its duties. The author may wish to look at some of the similar expert review panels that have been created under the State Water Board for other purposes as a model of how to structure an advisory board.

Arguments in Support: None received.

Arguments in Opposition: According to the district, "The district writes in opposition to AB 1195, which proposes to create the Southern Los Angeles County Human Right to Water Collaboration Act, which would require the state board to appoint a commissioner to, among other things, expend moneys from the Safe and Affordable Drinking Water Fund on behalf of the state board for eligible purposes and recipients in southern Los Angeles County, within the jurisdictional boundaries of the Water Replenishment District of Southern California. The proposed governance structure within AB 1195 doesn't respect existing local representation from diverse communities or disadvantaged communities. This act ostensibly seeks to improve water quality in areas that cannot endure substantial increases in water rates, but does not empower local representation from the region who are seeking relief. The result will be another well-intentioned government act that does not live up to its acclaim. AB 1195 authorizes the commissioner and the "unspecified advisory board" to develop a plan that could result in the acquisition, or consolidation of existing water systems, without assessing whether an existing agency can provide clean water at a lower cost to the current water system's ratepayers. We don't need a new layer of government and complexity added to our existing layers of government; we need the state to more aggressively fund projects that (1) improve the quality of drinking water and (2) create jobs in our communities, for the benefit of our communities."

Double Referral: Should this bill pass this committee it will be re-referred to the Assembly Local Government Committee.

Related Legislation:

1) SB 200 (Monning, Chapter 120, Statutes of 2019). Created SAFER and the Safe and Affordable Drinking Water 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 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.

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 the 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

None on file.

Opposition

Association of California Water Agencies (ACWA)
Central Basin Municipal Water District

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 707 (Quirk) – As Amended April 19, 2021

SUBJECT: Mercury Thermostat Collection Act of 2008

SUMMARY: Repeals the Mercury Thermostat Collection Act of 2008 and establishes the Mercury Thermostat Act of 2021. Specifically, **this bill**:

1) Finds and declares that a revised Mercury Thermostat Collection Program should be enacted to ensure that the maximum feasible mercury thermostats get collected for proper disposal as quickly and as cost effectively as possible.

2) Repeals the Mercury Thermostat Collection Act of 2008 and establishes the Mercury Thermostat Collection Act of 2021.

3) Defines "program" as a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed through the Mercury Thermostat Collection Fund. "Program" also includes educational outreach efforts to appropriate entities about the collection opportunities of the program.

4) Defines "qualified third party" as a certified 501(c) 3 non-profit that has employees who are trained, experienced and has a history of success with the collection, handling, and transport of hazardous materials.

5) Establishes the Mercury Thermostat Collection Fund (Fund) in the State Treasury.

6) Requires, beginning January 30, 2022, all mercury thermostat manufacturers to annually contribute to the Mercury Thermostat Collection Fund.

7) Requires, collectively, mercury thermostat manufacturers to contribute a total of $___ million (amount to be specified) to the Fund annually for a yet to be determined number of years. Requires the monies to be used to pay program administrative and operational costs, state oversight costs, and enforcement costs; to provide an incentive for every mercury thermostat collected, which shall be no less than $__(amount to be specified) per thermostat; and, to satisfy any penalties levied or penalties that could have been levied by the Department of Toxic Substances Control (DTSC) over the tenure of the existing Act that have not been settled. Establishes timetables for payments to be made.

8) Authorizes manufacturers to submit payments individually to the Fund or as a group of manufacturers. Requires, if a payment is made on behalf of various manufacturers, the names of the manufacturers making the payment to be submitted to DTSC so DTSC can determine each manufacturers' compliance.

9) Provides that if a manufacturer fails to make an annual payment, that manufacturer is subject to a sales ban and a penalty to be assessed by DTSC.

10) Requires, within sixty days of this Act becoming effective, DTSC to enter into new agreements with the manufacturers who are subject to a preexisting consent decree, statement of violation, or court order recognizing that the liability established in those consent decrees and court orders or alleged in those statements of violations is satisfied and discharged through making annual contributions to the Fund.

11) Authorizes moneys in the Mercury Thermostat Collection Fund to be used for the following:

    a) Administrative and operational costs of a statewide program, which includes, but is not limited to;
    b) Financial incentives for the collection of thermostats;
    c) Collection, processing, and recycling of mercury thermostats;
    d) Education and outreach; and,
    e) Administrative costs incurred by DTSC to oversee the implementation of the program, including oversight and enforcement. Provides that administrative costs shall not exceed 10% of the overall Fund balance.

12) Requires any penalties collected to be deposited into the Fund.

13) Prohibits any moneys deposited in the Fund from being loaned to, or borrowed by, any other special fund or the General Fund.

14) Requires DTSC to issue a request for proposal to a qualified third party to run a program. Requires DTSC to consider the following factors when selecting a qualified third party to run a program:

    a) History and success of operating product takeback collection programs;
    b) Ability to identify and provide information to consumers about collection locations;
    c) Ability to ensure transportation systems move waste safely and effectively;
    d) History of working with recycling experts, manufacturers, local and/or state governments, and retailers; and,
    e) Ability to implement effective education and outreach campaigns.

15) Requires a qualified third party to do all of the following:

    a) Collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with this article;
    b) Develop, on or before July 1, 2022, and update as necessary, an educational and outreach campaign sufficient to inform appropriate entities about the importance of thermostat collection and safe disposal opportunities and to coordinate on collection efforts, including, but not limited to:

        i) The California Contractors State Licensing Board;
        ii) Heating, ventilation, and air-conditioning contractors;
        iii) Demolition contractors, environmental contractors, and their associations;
        iv) Municipal utility districts;
        v) Household hazardous waste collection programs;
        vi) Apartment and property management associations and organizations;
        vii) Homeowners;

viii) Rural districts;
ix) Retailers;
x) Disadvantaged communities; and,
xi) The general public.

c) Create and distribute informational materials to be made available in languages consistent with DTSC's Civil Rights and Language Access policy, about the program and to be made available to participating retailers, all wholesalers, household hazardous waste programs, and local governments and utility districts.

16) Provides requirements for distributing informational materials, a public service announcement, and an internet website.

17) Provides requirements for developing outreach strategies to utilities, wholesalers, and retailers.

18) Requires, in addition to the current outreach efforts in state law, the qualified third party to make available collection incentives, at no less than $___ per mercury thermostat.

19) Requires manufacturers who have been required to comply with the Mercury Thermostat Collection Act of 2008, or a collection of manufacturers working together as part of an association, to coordinate with the qualified third party selected by DTSC to provide information on and connection to existing collection partners, existing state and local partners, and existing collection, transport, storage, and recycling facilities. Requires manufacturers to make themselves easily accessible and available to facilitate the transition of program administration to the greatest extent possible.

20) Requires, on or before July 1, and annually thereafter, the qualified third party to conduct a survey to the specified entities to evaluate the effectiveness of the education and outreach program and to obtain data on collection by each entity engaged in mercury thermostat collection. Requires the survey results to be transmitted to DTSC by September 1 of the same year.

21) Requires DTSC to post the results of the survey on its internet website and allow public comment on the survey for up to 30 days after it has been posted.

22) Requires the qualified third party to review the survey responses and public comments and adjust the program, as appropriate, for implementation the following year to ensure all collection locations are thoroughly informed about the program and its collection tools and provided any technical assistance that may be needed to increase the program's effectiveness at locations where warranted.

23) Requires the qualified third party to inform DTSC of any changes made in education, outreach, and collection strategies and requires DTSC to post that information, under the survey results, on its internet website.

24) Requires the qualified third party to report to DTSC no later than April 1 of each year of the program.

25) Requires, by January 1, 2025, DTSC to report to the Legislature on the status of the Program.

26) Requires DTSC to repeal regulations adopted and promulgated pursuant to the Mercury Thermostat Act of 2008.

27) Sunsets the provisions of this bill on December 31 of a year to be specified.

EXISTING LAW:

1) Bans the disposal of mercury-added thermostats in solid waste landfills. (California Code of Regulations, CCR, Title 22, Division 4.5, Chapter 18)

2) Prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat unless the mercury-added thermostat meets specified criteria. (Health & Safety Code (HSC) § 25214.8.2)

3) Pursuant to the Mercury Thermostat Collection Act (HSC § 25214.8.10, *et seq*):

   a) Requires a manufacturer that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006, to establish and maintain a collection and recycling program for out-of-service mercury-added thermostats.

   b) Authorizes a manufacturer to establish a collection and recycling program individually or with other manufacturers and requires manufacturers to meet certain requirements.

   c) Requires manufacturers to report annually to DTSC with specified information.

   d) Establishes requirements for wholesalers and retailers for managing mercury thermostats.

   e) Requires contractors and persons demolishing buildings to handle mercury thermostats appropriately and take the out-of-service mercury-added thermostat to a location with a collection bin.

   f) Requires DTSC to adopt regulations establishing performance requirements that specify recycling rates and a methodology for the calculation of the numbers of out-of-service mercury-added thermostats becoming waste annually.

   g) Prohibits a person from selling or offering for sale a thermostat that is manufactured by a manufacturer that is not in compliance with the law.

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Though mercury-containing thermostats have not been sold in this state since 2006, many buildings and homes still contain them, and given the volatility and toxicity of mercury, those antiquated thermostats need to be carefully collected and managed. The current Mercury Thermostat Collection Act of 2008 provided a statutory plan of action for collecting those thermostats before they could be mismanaged as solid waste and risk

mercury contamination. However, the success of the program has been paltry; collection efforts have failed to meet targets, and oversight and compliance has been less than sufficient. AB 707 represents more than a year of conversations with the thermostat manufacturers and the environmental community to rewrite the collection program and garner greater success with mercury thermostat collection."

Mercury: Elemental or metallic mercury is a shiny, silver-white metal, historically referred to as quicksilver, and is liquid at room temperature. It is used in older thermometers, fluorescent light bulbs, and some electrical switches. When dropped, elemental mercury breaks into smaller droplets which can become strongly attached to certain materials. At room temperature, exposed elemental mercury can evaporate to become an invisible, odorless toxic vapor. Mercury released into the atmosphere can settle in aquatic ecosystems, where it converts to methyl-mercury.

Mercury is a powerful neurotoxin which interferes with normal childhood development. The health concern it poses is well-known and severe.

According to the United States (U.S.) Environmental Protection Agency, when most exposures to metallic mercury occur, they occur because mercury is released from a container, or from a product or device that breaks. If the mercury is not immediately contained or cleaned up, it can evaporate, becoming an invisible, odorless, toxic vapor.

Mercury thermostats: Many thermostats sold prior to 2006 contain a mercury switch, which consists of a glass tube with mercury inside. Mercury's unique characteristics make it extremely effective as a switch in a thermostat. Because of its excellent conductivity and high surface tension, the mercury rolls freely inside the glass tube of a mercury switch. As it moves within the switch, the mercury opens and closes an electrical circuit, which turns on and off a furnace or air conditioner to maintain a desired room temperature.

Mercury thermostats were sold for use in residences, businesses, and industrial settings, including as stand-alone units and as components within heating and cooling equipment.

On January 1, 2006, the State of California banned the sale of new thermostats containing mercury.

Though mercury thermostats have not been sold in California in 15 years, it is estimated that tens of thousands of thermostats sold and installed before then are in use and will eventually need end of life management.

A 2009 mercury thermostat industry study estimated the number of mercury thermostats in California to be between 5.1 million and 10.5 million. At four grams of mercury per thermostat, these thermostats contain between 22.5 and 46.2 tons of mercury. The mercury in those thermostats—if improperly disposed—could enter our waterways, then our seafood, and ultimately our bodies.

The Thermostat Recycling Corporation (TRC), a consortium of mercury thermostat manufacturers, estimates that mercury-containing thermostats have a life expectancy of 30-50 years, though many are replaced before that time. Conservatively, this means that mercury thermostats in the U.S. should be out of service by the end of 2065. Collection and recycling of these end-of-life products will continue to be a priority for states in years to come.

Thermostat collection: Mercury-added thermostats fall into a category of wastes called "universal wastes." These wastes pose a lower threat than most other hazardous wastes and are generated by a wide range of sectors – thus are 'universally' generated. They cannot be disposed in solid waste landfills, but may, if handled in accordance to the universal waste regulations, be managed under less stringent management requirements than other hazardous wastes.

The burden to manage the universal waste stream falls almost entirely on local governments. Small batteries, fluorescent tubes, and electronic wastes are also universal wastes.

In 1998, the three largest thermostat manufacturers established the Thermostat Recycling Corporation (TRC) to run a voluntary collection program for mercury-added thermostats. According to the TRC, California was one of the top five states in terms of pounds of mercury recovered in 2006. In that same year, 5,110 thermostats containing 77.3 lbs of mercury were collected in the state by TRC. There were 129 TRC collection bins in the state during that year.

Mercury Thermostat Collection Act: In 2008, the Legislature enacted California's Mercury Thermostat Collection Act of 2008 (AB 2347 (Ruskin), Chapter 572, Statutes of 2008) to require manufacturers to establish a collection and recycling program for out-of-service mercury-added thermostats. Manufacturers can operate these programs individually or collaboratively. Current law requires manufacturers to meet certain requirements, including, but not limited to, undertaking education and outreach efforts; developing educational and outreach materials; providing adequate incentives and education to contractors, service technicians; and, homeowners to encourage return of out-of-service mercury-added thermostats to established collection locations.

Under performance: Since the inception of the Mercury Thermostat Collection Act, however, collection of thermostats has been lackluster; outreach by the thermostat industry has failed to properly inform appropriate entities that collection is available, and consumers and retailers alike are wholly unaware of the program—or that mercury thermostats even need to be managed as hazardous waste.

In 2014, manufacturers collected the equivalent of 22,178 mercury thermostats in California. The regulatory collection goal was 95,400. The following year, they collected almost 10 percent fewer thermostats—and only 16 percent of the 2015 collection goal of 113,850.

Room for improvement: One element of successful mercury thermostat collection programs in other states is an incentive provided per thermostat collected.

In order to boost collection rates, some states, including Maine and Vermont, require manufacturers to pay a financial incentive to persons delivering mercury thermostats for recycling. In 2013, Rhode Island conducted a pilot program that set performance goals and utilized a $5 financial incentive. For 2011 and 2012, 1,416 and 1,543 thermostats were collected, respectively. For 2013 and 2014, the State program recovered 2,618 and 2,720 units, respectively, which is an increase of over 76 percent. As a result of this success, Rhode Island set even more ambitious goals for future collections. While they did not choose to continue with a financial incentive, Rhode Island law allows the State to impose a financial bounty if the program is underperforming. New York also has the authority to require manufacturers to pay a financial incentive if collection goals are not met.

According to TRC, the states with financial incentives have much higher mercury-added thermostat collection and recycling rates than the states that do not.

This bill: AB 707 will rewrite the program to make six significant changes:

1) Shift the administration of the program to a qualified third party in lieu of TRC.

Provided TRC's general failure with collection efforts over the past decade, AB 707 proposes to hand administration and operation of collection and recycling program to a qualified third party that has history and success of operating product takeback collection programs; an ability to identify and provide information to consumers about collection locations; an ability to develop transportation systems to move waste safely and effectively; and, a history of working with recycling experts, local and/or state governments, and retailers.

An example of a potential qualified third party is Product Care, a federally incorporated not-for-profit organization in Canada that provides recycling services across nine Canadian provinces and some U.S. states. Product Care manages paint, household hazardous waste (pesticides, flammable liquids, corrosives, toxics, solvents and more), lighting products, and smoke detectors in response to extended producer responsibility (EPR) laws and regulation designating these products. Product Care set up and ran the paint collection program in Oregon, mercury-containing lighting product collection in Washington, and helped set up California's own PaintCare program.

2) Require TRC to fund the program at a specified amount.

To ensure an appropriate amount of funds are provided annually to sufficiently fund education and outreach, collection, and incentives for mercury thermostats, the bill will require manufacturers to each or collectively fund a specified amount to the Mercury Thermostat Collection Funds. The amount is to be determined as negotiations continue.

3) Require incentives at a specified amount to be provided for each thermostat collected.

As mentioned earlier, incentives under other state thermostat collection programs buoyed collection significantly. To propel greater success in California, AB 707 follows the lead of Maine and Rhode Island and requires incentives to be provided. The amount is to be determined as negotiations continue.

4) Require annual evaluations and program adjustments, as needed.

The bill will require the qualified third party to conduct a survey annually to all of the program partners engaged in collection and evaluate the effectiveness of each collection site. The survey results will be transmitted to DTSC, posted online, and available for public feedback. Based on the survey results and the public comments, the qualified third party will have flexibility to adjust their education and outreach to designated entities and determine where greater assistance is needed to augment collection efforts to the greatest extent possible.

5) Sunset the program after a designated period of time.

With a finite number of mercury thermostats to be collected, there will be a natural attrition in collection over time. Provided that, the program does not need to last indefinitely. Including a sunset and a reporting provision will enable the Legislature to review the program ahead of the sunset date and determine whether to extend the program or not.

Work in progress: As there are remaining issues represented as blanks in the bill, this bill needs be further fleshed out and refined, should it be approved by this committee. The author is committed to working with stakeholders, including, but not limited to, TRC, the National Stewardship Council, environmental organizations, and DTSC to ensure all the appropriate details are worked out and clearly included in the bill to ensure a more productive, successful, and cost efficient mercury thermostat collection program.

Arguments in support: The Thermostat Recycling Corporation (TRC) writes, "Under Chairman Quirk's leadership, stakeholders have been meeting for the past year to develop a consensus framework recasting the program. The measure before you contemplates manufacturers paying the state to contract with an experienced third-party group, with an exceptional track record of administering collection programs, to implement the state's mercury collection efforts. Among other things, the recast program assumes at minimum almost a doubling of the annual financial commitment by manufacturers, outreach in multiple languages and to diverse communities and ensures that previously levied penalties will be put directly into mercury thermostat collection. A TBD sunset date is also included to reflect intensified efforts over the next several years when it is anticipated most of the last remaining mercury-containing thermostats will be removed through remodels, upgrades, and demolition. TRC commends Chairman Quirk and his staff's leadership on this important issue and appreciates stakeholder's collective willingness to share their experience and perspectives and work collaboratively to develop a recast program that helps ensure the state's remaining mercury-containing thermostats will be collected in an equitable and responsible manner. We look forward to continuing this productive dialogue as the bill moves forward."

Related Legislation:

1) AB 2347 (Ruskin, Chapter 572, Statutes of 2008). Established California's Mercury Thermostat Collection Act of 2008 to require thermostat manufacturers to establish a collection and recycling program for out-of-service mercury-added thermostats.

2) AB 1193 (Ruskin, 2007). Would have created a thermometer collection program. That bill was held in the Assembly Appropriations Committee.

3) SB 633 (Sher, Chapter 656, Statutes of 2001). Established the California Mercury Reduction Act of 2001 to prohibit the sale of vehicles manufactured on or after January 1, 2005, that contain mercury light switches.

REGISTERED SUPPORT / OPPOSITION:

Support

Thermostat Recycling Corporation

Opposition

None on file.

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AJR 2 (O'Donnell) – As Introduced December 7, 2020

SUBJECT: Coastal and marine waters: Santa Catalina Island: dichloro-diphenyl-trichloroethane

SUMMARY: Requests that the Congress of the United States and the United States Environmental Protection Agency (US EPA) take all measures necessary to prevent further damage to California's citizens, wildlife, and natural resources by the dichloro-diphenyl-trichloroethane (DDT) waste dumped in the waters near Santa Catalina Island. Specifically, **this resolution**:

1) Makes the following Legislative findings:

   a) California's coastal and marine waters are among the state's most precious resources and their conservation is essential to the preservation of both marine wildlife and California's thriving ocean economy, including fishing, tourism, commerce, and recreation sectors;

   b) Santa Catalina Island and its surrounding waters provide habitats for a variety of marine creatures, including mantis shrimp, horn and leopard sharks, moray eels, and several species of sea birds

   c) Santa Catalina Island also serves as a key part of Southern California's ocean tourism economy, generating over one hundred sixty million dollars ($160,000,000) in economic activity in 2016 and receiving over 1,000,000 visitors in 2019;

   d) Despite critical protections provided by the federal Marine Protection, Research, and Sanctuaries Act of 1972 (Public Law 92-532), the dumping of hazardous material in ocean waters before the implementation of that act continues to threaten the health of California's citizens and wildlife to this day;

   e) The rediscovered DDT waste dumping site off the north coast of Santa Catalina Island represents a significant threat to the health of marine life in those waters and all animals in the food chain dependent on that marine life;

   f) The threat posed by these contaminants to the ecosystems on and around Santa Catalina Island also constitutes a threat to the ocean economy of the island and California, which depends on the continued health of marine life, and safety of those experiencing California's waters; and,

   g) It is incumbent upon both the state and federal government to ensure these precious natural resources are preserved for future generations and protected from further damage by past ecological mistakes.

2) Resolves, on behalf of the Senate and the Assembly of the State of California, jointly, that:

a) The Legislature requests that the Congress of the United States and US EPA take all measures necessary to prevent further damage to California's citizens, wildlife, and natural resources by the DDT waste dumped in the waters near Santa Catalina Island; and,

b) The Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to the Majority Leader of the United States Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

EXISTING LAW:

1) Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), also known as the federal Superfund law, provides the US EPA with authority over the remediation of uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. (42 U.S.C. § 9601, et seq.)

2) Under the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act), prohibits the dumping of material into the ocean that would unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. (33 U.S.C. § 1401 et seq).

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the resolution*: According to the author, "California's coastal and marine waters are among the state's most precious resources and their conservation is essential to the preservation of both marine wildlife and California's thriving ocean economy. While numerous actions have been taken to limit the dumping of hazardous waste in the waters off the California coast, waste sites created prior to modern environmental protections continue to pose a threat to oceanic wildlife and human health. The recently rediscovered DDT waste dumping site near Santa Catalina Island has likely done significant damage to our ocean's ecosystem and will continue to do so unless further action is taken. AJR 2 calls upon the Environmental Protection Agency and the United States Congress to take the necessary actions to protect our environment and the public health."

DDT: Dichloro-diphenyl-trichloroethane, commonly known as DDT, is a colorless, tasteless, and almost odorless insecticide. Starting in the late 1940s, DDT was extensively used to combat insect-borne diseases like malaria and typhus around the world. It was credited with eradicating malaria in the United States and was also widely used in agricultural and commercials settings for pest control.

However, the use of DDT in the United States was banned in 1972 due to concerns about carcinogenicity, bioaccumulation, and health effects on wildlife. DDT has been shown to cause liver cancer in laboratory animals. It is stored in fatty tissues which results in biomagnification, meaning that DDT levels in animals increase in concentration farther up the food chain. DDT is highly acutely toxic to fish and aquatic invertebrates. Even though DDT is only slightly acutely toxic to birds, it can cause significant reproductive problems. Notably, one of the breakdown products of DDT causes the eggshells of birds to become thinner. This makes the eggs of birds

crack under the weight of adult birds, interfering with birds' ability to reproduce and damaging bird populations.

According to the Centers for Disease Control and Prevention (CDC), human health effects of DDT at low levels in the environment are unknown. However, DDT is listed as a possible human carcinogen and a growing number of studies have linked it to endocrine disrupting effects like increased incidences of obesity and early onset of menstruation. It is possible that these effects could impact future generations (even if they are exposed to lower levels of DDT) as studies linked DDT levels in mothers during and just after pregnancy to impacts on those women and subsequent generations. These effects included breast cancer in the mothers themselves, obesity in their adult daughters, and obesity and early onset of menstruation in their granddaughters. Exposure to high doses of DDT can result in vomiting, tremors, and seizures.

DDT is highly persistent in the environment and has a half-life of 150 years in the aquatic environment, meaning that it will take hundreds of years to break down. Before it was banned for use in the United States by the US EPA, approximately 675,000 tons of DDT were applied domestically. Due to it widespread usage and persistence, DDT contamination is still a relevant environmental concern.

Santa Catalina Island (Island): The Island is a rocky island within the Catalina Island archipelago in the Gulf of Santa Catalina located about 29 miles off the coast southwest of Long Beach, California. Its total population in the 2010 census was 4,096 people, 90 percent of whom live in the island's only incorporated city, Avalon.

The Island and its surrounding waters provide habitats for a variety of marine creatures, including mantis shrimp, horn and leopard sharks, moray eels, and several species of sea birds. The Island also serves as a key part of Southern California's ocean tourism economy, generating more than $160 million in economic activity in 2016 and receiving more than one million visitors in 2019.

Legacy of DDT manufacturing: The Montrose Chemical Corporation of California was the largest producer of the insecticide DDT in the United States from 1947 until it stopped production in 1982. Even though DDT was banned for use in the United States after 1972, production continued in order to export DDT to other countries.

Between the late 1950s and early 1970s, the company was responsible for discharging an estimated 870-1450 tons of DDT into the ocean via the county's sewer system, which contaminated sediment on the ocean floor off the coast of Los Angeles on the Palos Verdes Shelf. The US EPA added the Montrose Chemical Corporation site to the Superfund National Priorities List in 1989. The site includes the former main plant near Torrance, California, stormwater pathways near the former plant, and a section of the Palos Verdes shelf. The cleanup of the Palos Verdes Shelf is still ongoing.

In the 1980s, it was discovered that Montrose Chemical Corporation contracted with California Salvage to dispose of acid waste from the DDT manufacturing process by dumping it off the coast of California. Records indicated that hundreds of thousands of barrels containing waste laced with DDT were dumped at a deep sea site located between the California coast and Santa Catalina Island between 1947 and 1961. Recently, researchers at UC Santa Barbara found these barrels using remote submersible technology. They estimate that between 384 and 1535 tons of DDT were dumped on the ocean floor, leaving areas of contamination that have as much as 40

times the concentration of DDT and related chemicals as the concentrations found at the Palos Verdes Shelf Superfund site. The researchers also found that the DDT escaped the waste containers, leading to regional scale contamination of the site. There is an ongoing mission led by the Scripps Institution of Oceanography at the University of California San Diego and the National Oceanic and Atmospheric Administration (NOAA) to map the dump site. This mission will provide key information about the distribution of the waste barrels on the site and inform next steps.

Impacts to wildlife of Southern California: The rediscovered DDT waste dumping site off the north coast of Santa Catalina Island represents a significant threat to the health of marine life in those waters and all animals in the food chain dependent on that marine life. DDT is highly persistent and moves from contaminated sediments into the water. So, although the dumping of DDT stopped in 1982, the Palos Verdes Shelf remains contaminated to date and the recently rediscovered dumping site is still contaminated as well.

Since 1985, fish consumption advisories and health warnings have been posted in Southern California because of elevated DDT and other contaminant levels. Bottom-feeding fish are particularly at risk for high levels of contamination. Consumption of white croaker, which has the highest contamination levels, should be avoided and commercial fishing of white croaker has been banned in the area since 1990. Other bottom-feeding fish, including kelp bass, rockfish, queenfish, black croaker, sheepshead, surfperches, and sculpin, are also highly contaminated.

The high DDT levels in fish are reflected in predators that eat fish as well, including dolphins and birds of prey. A study by researchers from San Diego State found that levels of DDT and related chemicals were an order of magnitude higher in dolphins in the waters near the Palos Verdes Shelf than they were in other regions of the world. The Institute for Wildlife Studies, a conservation organization on the Island, has worked to restore bald eagles to the island on Santa Catalina Island Conservancy land since the late 1970s. Bald eagles had been common on the island until the 1960s, when it is believed that the effects of dumping the pesticide DDT off the coast of Southern California made it impossible for eagles to successfully hatch their young. Until as recently as 2007, bald eagles on the Island were unable to reproduce.

Assembly Joint Resolution 2: This resolution would request that the United States Congress and US EPA take all measures necessary to ensure that the DDT waste dumped near Santa Catalina Island does not cause further harm to the citizens, wildlife, and natural resources of California. Additional investigation is necessary to determine the extent of the impacts of this contamination and remediation efforts may be necessary to ensure that the contamination does not continue to impact wildlife and citizens in the coming decades or even centuries. Investigations and remediation efforts for this site are complex due to the amount of waste present and the depth of the recently rediscovered site, which is roughly 3,000 feet below the ocean's surface. Any efforts to ensure that this waste does not cause further harm to California's citizens, wildlife, and natural resources will require significant technical expertise, staff resources, and financial resources, so requesting action by the U.S. Congress and US EPA is warranted.

Arguments in Support: The City of Rancho Palos Verdes writes in support, "While the City is pleased that efforts are underway to identify the precise location, condition and number of barrels of DDT-laden waste, this is only the first step in addressing the untold harm done to our ecosystem by this long-hidden hazard. We must hold the federal government accountable to make this issue a high priority and to identify and implement effective long-term solutions."

Related legislation:

1) AB 1511 (Bloom, 2019). Would have replaced the State Water Resources Control Board (SWRCB) with the State Coastal Conservancy (SCC) as the state agency that provides administrative services for the Santa Monica Bay Restoration Commission (Commission). Establishes the purposes of the Commission to promote, support, and achieve the restoration and enhancement of the Santa Monica Bay and its watershed. Vetoed by the Governor.

2) SB 1381 (Kuehl, Chapter 598, Statutes of 2002). Established the Santa Monica Bay Restoration Commission as an informational forum, planning body, and grant making agency, to assess the biological condition and state of the Santa Monica Bay.

3) AB 2872 (Shelley, Chapter 144, Statutes of 2000). Required the State Water Resources Control Board to develop a comprehensive coastal water resources monitoring and assessment program for fish and shellfish.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Rancho Palos Verdes

Opposition

None on file.

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

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1428 (Quirk) – As Introduced February 19, 2021

SUBJECT: Safe Drinking Water Act: applicability

SUMMARY: Removes the ability of certain water districts to self-certify that the water they provide achieves an equivalent level of public health protection as the protection provided by applicable drinking water regulations.

EXISTING LAW:

Under California Law:

1) Vests the State Water Resources Control Board (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) Requires any person who owns a public water system to ensure that the system does all of the following:
   a) Complies with primary and secondary drinking water standards;
   b) Will not be subject to backflow under normal operating conditions;
   c) Provides a reliable and adequate supply of pure, wholesome, healthful, and potable water;
   d) Employs or utilizes only water treatment operators or water treatment operators-in-training that have been certified by the State Water Board at the appropriate grade; and,
   e) Complies with the operator certification program. (HSC § 116555 (a))

3) 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)

4) Exempts water districts from being regulated as a public water system if the districts were in existence prior to May 18, 1994; primarily provide agricultural services and incidentally provide residential water; and, the systems self-certify that the water provided achieves the equivalent level of protection provided by primary drinking water regulations. (HSC § 116286 (a))

Under Federal Law:

5) Requires states to have drinking water regulations which are no less stringent than the National Primary Drinking Water Regulations (NPDWRs) promulgated by the United States Environmental Protection Agency (US EPA) as a condition of primary enforcement responsibility. (40 Code of Federal Regulations § 142.10)

6) Defines a public water system and exempts irrigation districts from being regulated as public water systems if the districts were in existence prior to May 18, 1994; provide primarily agricultural service through a piped water system with only incidental residential use; and, the US EPA Administrator or a State exercising primary enforcement responsibility determines that the water provided achieves an equivalent level of public health protection or is treated to achieve an equivalent level of protection. (42 United States Code § 300f (4))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1428 would amend the California Safe Drinking Water Act to preserve the State's primary enforcement responsibility (also known as "primacy") for public water systems in California. This bill would remove the option for agricultural water districts to self-certify that the drinking water they provide meets water quality standards. This self-certification allows agricultural water districts to exempt themselves from public water system classification without evaluation and confirmation by the State Water Resources Control Board. AB 1428 will ensure that the California Safe Drinking Water Act is at least as stringent as the requirements under the federal Safe Drinking Water Act, allowing for continued primary enforcement responsibility by the state and ensuring that residents served by agricultural water districts are being provided safe drinking water."

Federal Safe Drinking Water Act (SDWA): The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards under the state SDWA. The United States Environmental Protection Agency (US EPA) enforces the federal SDWA at the national level. Most states, including California, have been granted primary enforcement responsibility or "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 program, and issues an annual program evaluation report.

California's drinking water program: Senate Bill 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the drinking water program from 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 and adoption and administration of the drinking water program.

The State Water Board directly enforces the federal SDWA for all large water systems (those with 200 or more service connections), including those water systems regulated under the California Public Utilities Commission (CPUC), Division of Corporations (DOC), or Department of Housing and Community Development (DHCD). 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. Along with the regulation of drinking water, the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) are responsible for protecting the waters of the state, including drinking water sources, both surface water and groundwater supplies.

The State Water Board has adopted regulations for drinking water standards, monitoring requirements, cross-connections, design and operational standards, and operator certification. The implementation of the drinking water program involves: (1) establishment of drinking water standards, (2) certification of operators and point-of-use treatment devices, and (3) direct regulation of public water systems with the authority to delegate oversight responsibility of small water systems to local county health departments. The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures, (2) inspection of water systems, (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards, and (4) assuring notification is provided to consumers when standards are not being met.

What is a public water system? A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. According to the State Water Board, there are approximately 7,400 public water systems in the state. Many people think of public water systems as large city or regional water suppliers, but they also include small housing communities, businesses, and even schools and restaurants that provide water. A public water system is not necessarily a public entity, and most public water systems are privately owned. There are three legal distinctions between the types of public water systems: community, non-transient non-community, and transient. The type of water system is based on how often people consume the water. Drinking water regulations impose the most stringent monitoring requirements on community and non-transient non-community water systems because the people they serve obtain all or much of their water from that system each day. Community water systems are city, county, regulated utilities, regional water systems, and even small water companies and districts where people live. Non-community non-transient water systems are places like schools and businesses that provide their own water. The customers of non-community non-transient water systems have a regular opportunity to consume the water, but they do not reside there. Transient water systems include entities like rural gas stations, restaurants, and State and National parks that provide their own potable water. Most people that consume the water neither reside nor regularly spend time there.

Being a public water system means providing affordable, safe drinking water to customers 24 hours a day, 7 days a week, 365 day a year. This includes the associated legal, fiscal, and operational responsibilities, and future planning. Public water systems typically are run more efficiently when costs can be spread out over a large group of people to obtain good economies of scale. Small public water systems without a very high level of managerial, technical, and financial capacity tend to be unsustainable.

Water districts exempt from regulation as public water systems: Some water districts can be exempted from classification as public water systems if they meet certain requirements. For this purpose, a water district is defined as any district or other political subdivision (other than a city or county) that primarily functions to provide irrigation, reclamation, or drainage of land. According to the federal SDWA, these agricultural water districts can be exempted from regulation as public water systems if they existed prior to May 18, 1994; they primarily provide agricultural services and only incidentally provide drinking water; and, the US EPA Administrator or a state exercising primary enforcement responsibility determines that the water provided achieves an equivalent level of public health protection as that provided by primary drinking water regulations. Under the state SDWA, agricultural districts can be exempted from

regulation as public water systems if the district self-certifies that the water provided would meet drinking water standards.

US EPA review flags self-certification of water districts: In March 2019, US EPA completed its review of several California regulations and found that this discrepancy between the federal and state SDWAs makes the state SDWA less stringent than the federal SDWA. Allowing agricultural water districts to self-certify that the water meets drinking water standards eliminates the state's role in confirming that the criteria for exemption of agricultural districts is met. Agricultural water districts could have a conflict of interest in self-certifying the quality of the alternative water they provide because this certification allows them to avoid regulation.

If the state SDWA is not amended to reflect the more stringent language of the federal SDWA, the State Water Board could lose its approved primary enforcement responsibility to implement the federal SDWA in California. If this happens, public water systems in the state will be regulated both by the State Water Board under the California SDWA and the US EPA under the federal SDWA. This dual regulation could be inefficient and costly to public water systems.

Impacts to water districts: It is not clear how many agricultural water districts are exercising the self-certification authority to exempt themselves from regulation as public water systems. These agricultural water districts may still be able to obtain exemptions, but the State Water Board would need to certify that the water provided is equivalent to water that adheres to standards in primary drinking water regulations.

This bill: AB 1428 removes the ability of agricultural water districts to self-certify that the water they provide achieves a level of public health protection that is equivalent to the protection provided by drinking water that meets drinking water standards. This is necessary to align the state SDWA with the more stringent federal SDWA. Without this legislative correction, it is possible that the State Water Board could lose its primary enforcement responsibility of the federal SDWA, requiring public water systems to be regulated by both the State Water Board and US EPA.

Arguments in Support: The sponsor of the bill, the State Water Board, writes in support, "This bill is an important technical cleanup provision of the state Safe Drinking Water Act to align state and federal law, and to ensure California's continued ability to oversee drinking water quality at a time when the state is investing substantial resources to uphold the Constitutionally-mandated Human Right to Water…

Assembly Bill 1428 will maintain the State's primacy by removing the self-certification language in existing statute and instead require State Water Board certification that the agricultural districts are providing drinking water that meets safe drinking water standards. This change would have minimal impact on existing drinking water practices in the state, while preserving California's necessary authority to implement the federal Safe Drinking Water Act."

Related Legislation:

1) SB 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014). Transferred the drinking water program from 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 and adoption and administration of the drinking water program.

REGISTERED SUPPORT / OPPOSITION:

Support

State Water Resources Control Board (SPONSOR)

Opposition

None on file.

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