California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

BILL QUIRK
CHAIR

AGENDA

Thursday, May 14, 2020
11:30 a.m. -- State Capitol, Room 4202

HEARD IN FILE ORDER

Chu	AB 2882	Hazardous emissions and substances: schoolsites: private and charter schools.
Cristina Garcia	AB 1989	Menstrual Products Right to Know Act of 2020.
Quirk	AB 2296	State Water Resources Control Board: local primacy delegation: funding stabilization program.
Quirk	AB 2333	Waste: releases: remedial action: local oversight.
Quirk	AB 3039	Underground storage tanks: small business loan and grant program.
Muratsuchi	AB 2762	Cosmetics: safety.

PROPOSED CONSENT

Quirk	AB 2560	Water quality: notification and response levels: procedures.
Chau	AB 2849	Proposition 65: enforcement.
Obernolte	AB 2920	Hazardous waste: transportation: consolidated manifesting procedures.
Environmental Safety and Toxic Materials	AB 3220	Pesticide poisoning.
Environmental Safety and Toxic Materials	AB 3261	Hazardous waste: small quantity generator.

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2882 (Chu) – As Introduced February 21, 2020

SUBJECT: Hazardous emissions and substances: schoolsites: private and charter schools

SUMMARY: Requires charter schools and private schools to follow the same siting requirements as public schools for evaluating a schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste. Requires the evaluation of a potential charter schoolsite under the California Environmental Quality Act (CEQA) to follow the same process as public schools under CEQA.

EXISTING LAW:

1) Prohibits the governing board of a school district from approving a project involving the acquisition of a school site unless the school district, as the lead agency, determines that the property to be built upon is not a current or former hazardous waste site or a hazardous substances release site and the school district, as the lead agency, has consulted with state and local agencies and made a finding that the health risks or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school. (Education Code (EDC) § 17213)

2) Requires the governing board of a school district, as a condition of receiving state funding, prior to the acquisition of a schoolsite to conduct a Phase I environmental assessment or a preliminary endangerment assessment of the proposed schoolsite. (EDC § 17213.1)

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

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

5) Requires DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under the HSAA. (HSC § 25356)

6) Creates CEQA which provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. (Public Resources Code (PRC) § 21050)

7) Defines "lead agency" as the public agency that has the principal responsibility for carrying out or approving a project that may have a significant effect upon the environment. (Public Resources Code (PRC) § 21067)

8) Prohibits an environmental impact report (EIR) from being certified or a negative declaration from being approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless certain conditions are met. (PRC § 21151.8)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Private schools and charter schools need to meet the same health and safety requirements as public schools to prevent schools from being built at unsafe locations. With AB 2882, we will ensure the health and safety of all students and school employees in California by requiring proper assessments and evaluations of potential private and charter school sites."

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

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

Evaluation of proposed schoolsites for potential hazardous substance contamination: All proposed school sites that will receive State funding for acquisition or construction are required to go through a rigorous environmental review and cleanup process under DTSC's oversight. School districts conduct environmental assessments to provide basic information for determining if there has been a release of hazardous material at the sites, or if a naturally occurring hazardous material that presents a risk to human health or the environment may be present. Outreach activities integrated into the process allow a more active role for stakeholders in the selection process for school sites.

California Environmental Quality Act (CEQA): CEQA generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project subject to CEQA will not cause any adverse environmental impacts, a public agency may adopt a brief document known as a negative declaration. If the project may cause adverse environmental impacts, the public agency must prepare a more detailed study called an Environmental Impact Report (EIR). An EIR contains in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. A key

feature of the CEQA process is the opportunity for the public to review and provide input on both negative declarations and EIRs.

Siting of schools is a complicated process: Siting schools is not an easy process. Existing law and state regulations prohibit school districts seeking state bond funds from being located on land that was previously a hazardous waste disposal site, that contains pipelines that carry hazardous substances, or that is near a freeway and other busy traffic corridors and railyards that have the potential to expose students and school staff to hazardous air emissions. Existing law also requires school districts to comply with CEQA requirements, review by DTSC, and approval by the California Department of Education (CDE) to ensure the design plans meet the academic need of the school. School districts must also comply with the Field Act, which ensures that school buildings can withstand earthquakes. School districts must submit all school design plans to the Division of State Architect to ensure that the architectural design plans meet fire, life, and safety requirements, Field Act requirements, and access requirements under the Americans with Disability Act. Charter schools are not required to comply with school siting requirements unless they receive state school bond funds. Private schools are not subject to the requirements in the Education Code unless specified, typically related to health and safety issues.

Charter schools: Charter schools are authorized by school district boards and county boards of education. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the authorizing board and charter organizers. According to the CDE, in the 2018-19 academic year, there were 1,317 charter schools in California, with an enrollment of over 630,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. A charter school is usually created or organized by a group of teachers, parents, community leaders, a community-based organization, or an education management organization.

AB 2882 amends existing law to require charter schools and private schools to perform the same evaluation for a proposed schoolsite as is required for public schools. It seems very reasonable to provide the students of charter schools and private schools with the same protections from potential hazardous chemicals at a potential schoolsite that is afforded to students who attend public schools. In addition, AB 2882 is requiring the lead agency, under CEQA, over a charter school, to complete the same evaluations as is required for a lead agency of a public school. There are thousands of known contaminated sites in California, however, there are estimates of tens of thousands of unknown contaminated sites in the state. A site may have been an industrial site in the early 1900's and been vacant for decades, and it's potential of containing hazardous substances is unknown until there is an environmental assessment of the property. It is important that potential schoolsites, regardless of whether the school is a public school, private school, or charter school, be properly evaluated in order to protect the health and well-being of the future students who will attend that school.

Options for the author to consider: The bill is amending Education Code 17213 to include charter schools, however section's 17213.1 and 17213.2 of the Education Code also include requirements for school districts when acquiring or evaluating a proposed schoolsite. The author may wish to consider updating these two code sections to include charter schools as well.

Arguments in Support:

According to the Bay Area Air Quality Management District, "Existing law requires public schools to follow certain requirements before approving and building a new school. These requirements include that the public school district determines that the proposed schoolsite is not hazardous and that the public school district consults with its local air district to identify sources of air pollution that may affect the health of the children and employees at the proposed school. In order to ensure the public health and safety of all students and school employees in California, the potential location for a new private school or charter school needs to be properly evaluated. AB 2882 will achieve this by requiring that private schools and charter schools meet the same siting requirements as public schools."

Related legislation:

1) AB 2825 (Ruskin, 2006). Would have required a school district, in preparing the EIR on a proposed schoolsite, to identify any proposed facilities that emit hazardous air emissions or handle specified hazardous substances within a one-fourth mile of the proposed site. This bill was vetoed by the Governor.

2) SB 1224 (Ortiz, 2004). Would have required school districts to contact DTSC if a potential health risk to students caused by a hazardous material is discovered. Would have allowed DTSC to oversee, review, and approve a site investigation and remediation for such a risk, and allowed deferred maintenance funding to be used for the investigation, mitigation, and removal of hazardous materials. This bill was held in the Senate Education Committee.

3) SB 352 (Escutia, Chapter 668, Statutes of 2003). Prohibits a local educational agency from approving the acquisition of a schoolsite within 500 feet of a busy roadway unless the air quality at the site does not pose a health risk to pupils or staff.

Referral: This bill, under normal circumstances, would likely have been referred to the Assembly Education Committee, the Assembly Environmental Safety and Toxic Materials Committee, and the Assembly Natural Resources Committee, however, given the unique circumstances surrounding the COVID-19 pandemic, this bill was only referred to the Assembly Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Air Quality Management District (Sponsor)
California Air Pollution Control Officers Association
California Association of Private School Organizations (CAPSO)
California Teachers Association (CTA)

Opposition

None on file.

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1989 (Cristina Garcia) – As Introduced January 27, 2020

SUBJECT: Menstrual Products Right to Know Act of 2020.

SUMMARY: Requires a packaged menstrual products to conspicuously disclose all ingredients in the product. Specifically, **this bill**:

1) Establishes the Menstrual Products Right to Know Act of 2020 (Act).

2) Defines "confidential business information"(CBI) as an intentionally added ingredient or combination of ingredients for which a claim has been approved by the federal Environmental Protection Agency for inclusion on the Toxic Substances Control Act Confidential Inventory or for which the manufacturer or its supplier claim protection under the Uniform Trade Secrets Act.

3) Provides that CBI does not apply to any ingredient that is included on a designated list.

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

5) Defines "fragrance ingredient" as an intentionally added substance or complex mixture of aroma chemicals, natural essential oils, and other functional ingredients present in a menstrual product for which the sole purpose is to impart an odor or scent, or to counteract odor, and that is any of the following: present in a menstrual product at a concentration at or above 0.01 percent (100 parts per million), unless the substance is CBI; included on a designated list; and, is a fragrance allergen included in Annex III to European Union (EU) Cosmetics Regulation No. 1223/2009, as required to be labeled pursuant to EU Detergents Regulation No. 648/2004 or subsequent updates to those regulations when present in the menstrual product in a concentration at or above 0.01 percent.

6) Requires a manufacturer to determine the total concentration of each fragrance ingredient in the menstrual product by calculating the total amount of the fragrance ingredient as a percentage of the total weight of the menstrual product.

7) Defines "ingredient" as a fragrance ingredient or other intentionally added substance present in the menstrual product, unless the intentionally added substance is CBI.

8) Defines "intentionally added" as a substance that the manufacturer has intentionally added to the menstrual product.

9) Defines "manufacturer" as either of the following: a person or entity that manufactures the menstrual product and whose name appears on the product label; or, a person or entity for whom the product is manufactured or distributed, as identified on the product label pursuant to the federal Fair Packaging and Labeling Act.

10) Defines "menstrual product" as a product used to collect menstruation and vaginal discharge, including, but not limited to, tampons, pads, sponges, menstruation underwear, disks, and menstrual cups, whether disposable or reusable.

11) Requires a package or box containing menstrual products that was manufactured for sale or distribution in this state on or after January 1, 2023, to have printed on the label a plain and conspicuous list of all ingredients in the product.

12) Requires the ingredients to be listed in order of predominance by weight in the menstrual product, except that ingredients present at a weight below one percent may be listed in any order following the other ingredients. Requires ingredients to be identified using a standardized nomenclature, including, but not limited to, the International Nomenclature of Cosmetic Ingredients (INCI), the Household Commercial Products Association's Consumer Product Ingredient Dictionary (HCPA Dictionary), or common chemical name. Authorizes, if a standardized nomenclature does not otherwise exist for an ingredient, a name established by the Center for Baby and Adult Hygiene Products (BAHP) to be used by all menstrual product manufacturers.

13) Provides that the requirements in this bill does not prohibit a manufacturer from using technologies, including, but not limited to, digital link, to communicate the information required by this section.

14) Requires a manufacturer, when it is required to change the label on a menstrual product because of a change in a designated list or a change to an ingredient designated as a fragrance ingredient, to make the change within 18-months of the designated list or regulation being adopted by the relevant authoritative body, unless a later effective date is imposed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6) or Annex III to EU Cosmetics Regulation No. 1223/2009, as required to be labeled pursuant to EU Detergents Regulation No. 648/2004.

15) States that the requirements in this bill apply in addition to other labeling requirements established in law.

EXISTING LAW:

1) Requires, pursuant to the federal Food, Drug & Cosmetic Act (FD&C Act), the label of a medical device in package form to specify conspicuously the name and place of business of the manufacturer, packer, or distributor. (21 Code of Federal Regulations Part 801)

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

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

4) Codifies the Uniform Trade Secrets Act to prohibit the misappropriation of trade secrets and provide certain remedies. (Civil Code § 3426, et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1989 will protect people's health by requiring the disclosure of all ingredients in menstrual products including tampons, pads, cups, disks, sponges, and menstrual underwear. It is imperative that consumers have a right to know what is in the products they will be using for over 40 years of their life, in order to protect their health. My goal with this legislation is to increase the awareness of the toxic chemicals currently in our menstrual products. It was troubling at best to learn that products people rely on contain Phthalates, Bisphenols, Parabens, and [per- and polyfluoroalkyl substances], which all have been found to be harmful to human health. Periods are not a luxury and people should have the knowledge to make safer choices."

What are menstrual products? The products covered under this bill are those designed for women for when they are in menstruation. Menstrual products include, but are not limited to, tampons, sanitary napkins (pads), underwear liners, menstrual cups, and period underwear, which are intended to absorb or capture menstrual blood during a woman's menstrual cycle.

Menstrual products are used during menstrual periods on a monthly basis throughout the entire reproductive period in a woman's life. A single woman can use as many as 17,000 tampons or pads in her lifetime. These products come in direct contact with reproductive organs including vulvar skin and vaginal mucosa. The skin surrounding the genital area is thin and more permeable than skin covering the rest of the body.

Federal oversight of menstrual products: The FDA has broad authority to regulate medical devices for safety and effectiveness. Device classification depends on the *intended use* of the device and also upon *indications for use*. Menstrual products are considered medical devices because they are intended to affect the function of the body.

Menstrual products are not FDA approved; rather, they are registered and given clearance for marketing. Federal registration subjects these products to FDA oversight and consumer compliance tracking.

Unscented pads and scented/deodorized menstrual pads using materials that have been studied and previously cleared by the FDA are Class I medical devices; new studies are not required as long as the product is not materially different from what has previously been approved. The new product is simply registered and allowed to be marketed.

Scented pads using new materials and any device inserted vaginally (such as tampons and menstrual cups) are Class II medical devices. All tampon applications submitted to the FDA for approval must include a list of ingredients and a description of the manufacturing process. If the materials are similar to what is already approved, new studies are not required; only proof that the product is similar to what has already been approved is required. Menstrual cups have an expedited process and can go straight to market without approval from the FDA, but the product still has to be registered.

The FDA has developed a guidance document, *Menstrual Tampons and Pads: Information for Premarket Notification Submissions (510(k) - Guidance for Industry*, to assist industry in preparing premarket notification submissions (510(k)) for menstrual tampons and pads that are subject to 510(k) requirements for medical devices.

The FDA specifically states that tampons must be "free of 2,3,7,8- tetrachlorodibenzo-p-dioxin (TCDD)/2,3,7,8-tetrachlorofuran dioxin (TCDF) and any pesticide and herbicide residues" and that manufacturers must "describe any assurances that chemical residues are not present or, if residues are present, the level present and the method used to assess it." For any materials bleached during processing, the FDA recommends manufacturers identify the bleaching process used, e.g., Elemental Chlorine-Free (ECF) or Totally Chlorine-Free (TCF).

The FDA further recommends that for all component materials, including additives, present in a tampon, applicator, or pad, the manufacturer provide to the FDA for premarket approval:

- Detailed chemical identity and quantity (in µg per tampon or pad) for all components, and any additives or finishing (e.g., anti-wicking) agents;
- Chemical identity of each component of any fragrance or deodorants; and,
- References to any Device Master Files for component materials, whenever possible.

However, as mentioned, not all menstrual products are subject to premarket safety approvals. Generally, the FDA believes a material has an established safety profile if it has a history of safe use for similar intended uses and is physically and chemically well-characterized.

State oversight of feminine menstrual products: Menstrual products also meet the definition of medical device under the Sherman Food, Drug, and Cosmetic Act (Sherman Act). As such, CDPH has governance under the Sherman Act over feminine menstrual products as medical devices.

CDPH has responsibility to ensure that menstrual product manufacturers are licensed and inspected by CDPH; that the products are packaged, labeled, and advertised pursuant to the Sherman Act; and, that the products are not adulterated, misbranded, or falsely advertised.

CDPH has not taken any enforcement action or seen any violations related to menstrual products under the Sherman Act.

Current labeling requirements: Under the FDA regulations for medical devices, menstrual product components do not have to be disclosed on the package, but they are listed with the FDA under 501(k) submissions (premarket). The regulations define component as "any raw material, substance, piece, part, software, firmware, labeling, or assembly which is intended to be included as part of the finished, packaged, and labeled device." (21 CFR 820.3(c)) In contrast, the FDA defines "accessory" as a separate, finished device intended to "support, supplement, and/or augment the performance" of at least one parent device. For example, a tampon is considered a component, and the applicator would be considered an accessory. Accessory ingredients also do not have to be listed on the product package.

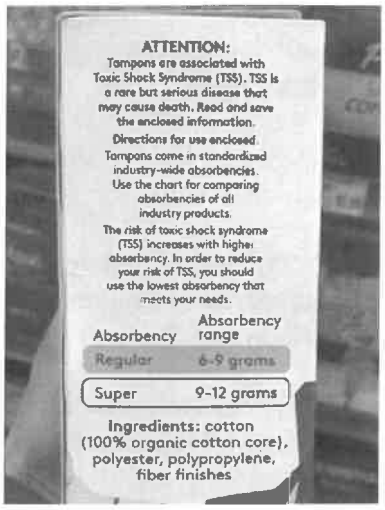
Specific labeling requirements require pad and tampon packages to have user instructions and manufacturer information. Unique to tampons, labels are required to include information on tampon size and absorbency; tampon insertion; how a tampon should be worn and wear-time;

and, tampon removal and disposal. Tampons are required to be labeled with information about Toxic Shock Syndrome. (21 CFR 801.430(a))

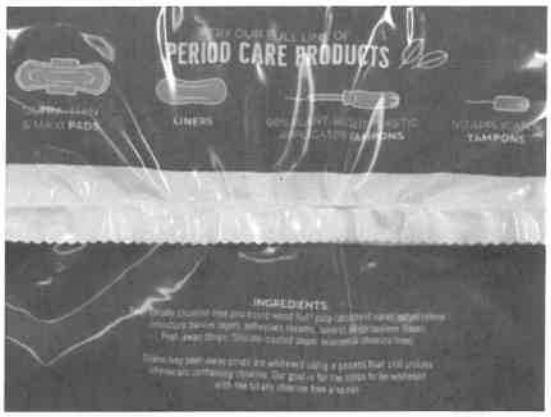
Menstrual products ingredients: Menstrual products can be made from a variety of materials. Generally, tampons are blends of cotton and rayon, along with synthetic fibers, but each manufacturer's products are different and considered proprietary. Pads are usually a combination of cotton, absorbent materials, polymers, and adhesives. Menstrual cups are often made of medical-grade silicone. Exact ingredients are unknown because laws and regulations do not require ingredient labeling, and many manufacturers, due to proprietary information or other reasons, do not elect to print ingredients on the package.

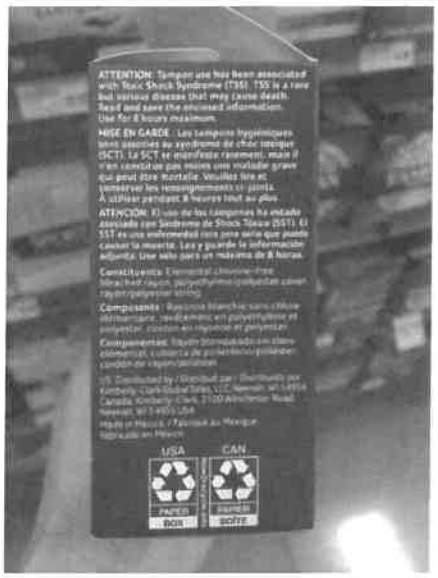
Some examples:

Tampax PURE tampon package has an ingredient statement, but does not elucidate what constitutes "fiber finishes."



Seventh Generation provides a more robust ingredient list, yet also declines to fully list the ingredient makeup of the menstrual pad.





Kotex regular unscented tampons lists the ingredients as "elemental chlorine-free bleached rayon, polyethylene/polyester cover, rayon/polyester string."

Other products list nothing by way of ingredient information. Always Ultra Thin pads, for example, does not include any ingredient statement.

Because menstrual products are regulated by the FDA as medical devices, there are no requirements for the disclosure of ingredients. This contributes to the inconsistency in labels amongst products available on the market today.

Labeling requirements proposed under this bill: By establishing labeling requirements for menstrual products, AB 1989 would create uniformity amongst ingredient labeling for all covered products.

California has established precedents for consumer product disclosure, and AB 1989 would require the disclosure of menstrual product ingredients based on those existing laws for other consumer products.

The Cleaning Products Right to Know Act (SB 258 (Lara, Chapter 830, Statutes of 2017) requires a manufacturer of a cleaning product to disclose on the product label and on the product's internet website information related to chemicals contained in the product. The law requires any chemical to be disclosed if it is included on any of the 22 authoritative lists of chemicals that exhibit hazardous traits and/or an environmental or toxicological endpoint, as identified by the United States Environmental Protection Agency, the state of California, the European Union, Canada, the International Agency on Cancer Research, the federal Agency for Toxic Substances and Disease Registry, among others. These are the same authoritative lists included in AB 1989.

Generally speaking, disclosure of ingredients in consumer products provides consumers greater information to make more informed choices. Other disclosure laws have compelled manufacturers to make changes in how products are manufactured. The Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65, provides a good example. According to the Office of the Attorney General, Proposition 65 has motivated some businesses to eliminate or reduce listed, or likely to be listed, toxic chemicals in numerous consumer products, such as ceramic tableware, jewelry, potato chips, and vitamin supplements. Thus,

Proposition 65 has prompted reformulation of products to be safer to avoid the warning label prescribed under the law.

While this bill is not asserting that menstrual products are unsafe, if any product contains an ingredient present on one of the designated lists, a manufacturer can disclose that ingredient(s) or elect to remanufacture a product without that ingredient.

Intentionally-added ingredients: There is debate amongst stakeholders over how the term "intentionally added" should be defined. As proposed, it would be defined as a substance that the manufacturer has intentionally added to the menstrual product. Under the Cleaning Products Right to Know Act, it is defined as "a chemical that a manufacturer has intentionally added to a designated product and that has a functional or technical effect in the designated product, including, but not limited to, the components of intentionally added fragrance ingredients and colorants and intentional breakdown products of an added chemical that also have a functional or technical effect in the designated product." The key difference between the two is the verbiage "and that has a functional or technical effect."

The Fragrance Creators Association (FCA) has requested that these definitions of ingredient in AB 1989 be amended to more closely mirror those in the Cleaning Products Right to Know Act, for consistency.

The FCA argues that definition in the Cleaning Products Right to Know Act more effectively furthers the intent of the statute by providing clear guidance on what manufacturers are required to disclose. They explain, "Absent clarity on this point, manufacturers could exploit the vague language and disclose only the bare minimum. Menstrual products are "assembled products," meaning manufacturers purchase multiple raw materials and effectively "assemble" the product by putting the layers together. As a result, the current language could have the effect of requiring that manufacturers only disclose the elements that they are assembling as a final step – for example, on a tampon, this would be the Cotton or Rayon Absorbent Core, Cover, Cord/String, and Fragrance, if applicable. Manufacturers wishing to go further to comply with the "spirit of the law" would alternatively be forced to draw their own arbitrary and inconsistent lines on where to stop the disclosure along their supply chain. In contrast, adding "functional or technical benefit" expands the materials included in the scope of disclosure, while providing manufacturers clear and actionable guidance on how far to go with their disclosures. Again, using the tampon example, this would require manufacturers to additionally disclose materials present in the finished products, such as fiber finishes, adhesives, colorants, pacifiers, and any other ingredients with a technical benefit in the product."

Therefore, the Committee may wish to consider the merits of aligning AB 1989 more closely with the Cleaning Products Right to Know Act as follows as it relates to the definition of "intentionally added" to provide consistency with other disclosure laws and provide clarity as to how manufacturers should comply.

> Sec. 111822 (e) "Intentionally added" means a substance that ~~the manufacturer has intentionally added to~~ *serves a technical or functional purpose in the finished* menstrual product.

Protection of trade secrets: Under the Sherman Act, CDPH is authorized to require that the label on each package of a food, drug, device, or cosmetic bear the common or usual name of the

article (product), and in case the article consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance by weight. This provision does not require that any trade secret be divulged.

While this provision provides protections for proprietary information, it does not extend to any other provisions of the Sherman Act; therefore, it would not apply to the provisions of AB 1989 that would be added to the Sherman Act. Provided that, AB 1989 includes language to protect CBI from being disclosed, which would include an intentionally added ingredient or combination of ingredients for which a claim has been approved by the U.S. Environmental Protection Agency (US EPA) for inclusion on the Toxic Substances Control Act Confidential Inventory or for which the manufacturer or its supplier claim protection under the Uniform Trade Secrets Act. AB 1989 explicitly precludes any ingredient included on one of the 22 designated lists from that CBI protection.

Concerns with requiring disclosure for menstrual products commensurate with other product disclosure laws: AB 1989 is drafted to closely resemble other disclosure laws for cleaning products, cosmetics, and fragrances, and that is intentional – to follow the precedent set by the California Legislature that has been negotiated, analyzed, implemented, and eligible to be litigated.

Breast Cancer Prevention Partners (BCPP), which sponsored the Cleaning Products Right to Know Act, does not view that law as an appropriate "one size fits all" solution for all product categories. BCPP states that because many menstrual products are used internally, such as tampons, the absorption of chemicals from those products serves as a direct route to the bloodstream. Furthermore, although AB 1989 does not allow for CBI protections for ingredients on certain designated lists of chemicals of concern, BCPP is concerned there may be many chemicals present in menstrual products that are not on designated lists yet may still present a risk to women's health and should be disclosed.

Women's Voices for the Earth (WVE) shares that concern. WVE states, "There are numerous allergens that are not currently on any authoritative lists. A few examples of these fragrance allergens are linalyl acetate, acetyl cedrane, and tetramethyl acetyloctahydronaphthalenes. Linalyl acetate and acetyl cedrane can be found in Always pads, and tetramethyl acetyloctahydronaphthalenes can be found in Tampax tampons according to voluntary public disclosures by Procter & Gamble. These allergens would not currently be required to be disclosed by AB 1989."

While AB 1989 does require a manufacturer to monitor the designated lists for changes and update its product labels within a specific timeframe, the Committee may wish to consider including the following amendment to explicitly allow manufacturers to disclose CBI using an ingredient's common name.

> Sec. 111822.2. (b) The ingredients shall be listed in order of predominance by weight in the menstrual product, except that ingredients present at a weight below one percent may be listed in any order following the other ingredients. Ingredients shall be identified using a standardized nomenclature, including, but not limited to, the International Nomenclature of Cosmetic Ingredients (INCI), the Household Commercial Products Association's Consumer Product Ingredient Dictionary (HCPA Dictionary), or common chemical name. If a standardized nomenclature does not otherwise exist for an ingredient, a name established by the Center for Baby and Adult Hygiene Products (BAHP) shall be used by all menstrual

product manufacturers. *A manufacturer may identify any ingredient that is confidential business information by its common name to protect its confidential identity.*

In addition, the author may wish to consider working with stakeholders to consider how to address these concerns about known chemicals of concern that are not currently listed on the designated lists

As far as the threshold for ingredient disclosure, Black Women for Wellness advocates that fragrance disclosure in menstrual products should be disclosed when there is less than 100 parts per million (ppm) in a product, which would be a deviation from other ingredient disclosure laws that require fragrance disclosure at or in exceedance of 100 ppm. The author may wish to consider working with stakeholders that share the concern about disclosure thresholds to determine whether 100ppm is the appropriate floor for requiring disclosure.

Clarifying responsibility: Environmental Working Group notes that, "the bill places the disclosure and labeling responsibility solely on the manufacturer, and not on the retailer or distributor. As a result, only manufacturers – many of whom are out of state or overseas -- would be held responsible for carrying out the law, and retailers could continue to sell noncompliant products."

The Cleaning Products Right to Know Act, the intended model for AB 1989, holds retailers responsible for ensuring that the labeling standard is upheld. Health and Safety Code section 108958, which was added to statute by SB 258, states, "A designated product shall not be sold in the state unless the designated product and the manufacturer of the designated product comply with this chapter." For purposes of consistency with existing California law, the Committee may wish to include the same language in AB 1989.

New York State menstrual product disclosure law: In October 2019, New York enacted a law (S.2387-B/A.164-B) requiring menstrual product packages or boxes sold in New York State to contain a plain and conspicuous printed list of all the ingredients in the products. This law makes New York the first state in the nation to require ingredient labels on menstrual products. Under the law, product manufacturers will have 18-months to develop new packaging or labels with the ingredients, effecting the disclosure requirements in April 2021.

Opposition, including CALPIRG, National Women's Health Network, Center for Environmental Health, The Diva Cup, and others, argue that AB 1989 should be modeled after the New York law, and requiring anything less than that law undercuts the precedent New York set.

A copy of New York's law would not paste neatly into California law: First, the 5th amendment of the U.S. Constitution provides the guarantee of due process for all persons, which requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive any person of life, liberty, or property.

Philip Morris, Inc. v. Reilly, 312 F.3d 24 (2002) concerned one attempt, by the state of Massachusetts, to regulate tobacco products by requiring tobacco companies to submit to Massachusetts the ingredient lists for all cigarettes, snuffs, and chewing tobaccos sold in the state. For each brand, the manufacturer is required to list, by relative amount, all ingredients besides tobacco, water, or reconstituted tobacco sheet. (Massachusetts General Laws ch. 94, § 307B (2002). A group of tobacco companies treat these ingredient lists as trade secrets and

either do not disclose brand-specific information at all or do not disclose it without some guarantee of confidentiality. The courts ruled that the Massachusetts statute, which allows the public disclosure of these ingredient lists whenever such disclosure, "could reduce risks to public health," created an unconstitutional taking, and the Massachusetts statute violated the tobacco companies' due process rights by effecting a taking of their property without first providing a meaningful opportunity to be heard.

If AB 1989 required disclosure of all menstrual product ingredients without respect to trade secrets, as the New York law requires, California could be found in violation of the Takings Clause of the U.S. Constitution. The author included the CBI protections in the bill to prevent liability of constitutional violation.

Second, New York's disclosure requirements are arguably vague. The law requires each package of menstrual products to list all intentionally added ingredients. It leaves it up to each manufacturer's interpretation as to the specificity of disclosure. Some manufacturers may interpret the law not to cover unintentionally added ingredients; others may not disclose trace amounts of intentionally added ingredients; some may only disclose ingredients at amounts determined by themselves; and, others may have different interpretations altogether. Furthermore, the law is silent on fragrance disclosure, which is not required to be disclosed under federal law. The federal Food, Drug, and Cosmetic Act exempts chemicals used as fragrances or flavoring from being identified as ingredients on the labels of cosmetic products (21 CFR 701.3(a)), so it is unclear whether "all ingredients" is inclusive of fragrances, or whether federal law would usurp fragrance disclosure.

While there is room in this bill for the author to work with the stakeholders who have raised concerns about the level of disclosure and CBI protections, California's precedent for ingredient disclosure is more precise and offers greater clarification for the covered entities doing business in this state. By establishing parameters for disclosure via the designated lists, California's current laws create clear, finite direction on what needs to be disclosed.

Ambiguity in any law can lead to confusion, and confusion leads to potentially diminished compliance. Given the population size of California and the size of the state's economy, laws need to be clear to ensure enforceable compliance, which benefits the consumer, and that is the intent of AB 1989.

Technical amendment: The Committee may wish to consider deleting the reference to the EU's Detergent's Regulation as follows as it is not relevant to the consumer product category covered by this bill.

> Sec. 111822 (c)(1)(C) A fragrance allergen included in Annex III to European Union Cosmetics Regulation (EU) No. 1223/2009, ~~as required to be labeled pursuant to European Union Detergents Regulation (EU) No. 648/2004~~ or subsequent updates to those regulations when present in the menstrual product in a concentration at or above 0.01 percent (100 parts per million).

Arguments in support: California Health Coalition Advocacy states, "[Feminine care] products intended for use on or in an incredibly absorbent part of a woman's body are marketed and sold with little to no data assuring the ingredients they contain are safe. Ingredients are determined "safe," operating under the premise that they are used on ordinary skin just like other cosmetic

products. That means chemicals of concern, such as carcinogens, reproductive toxins, endocrine disruptors, and allergens are being on, or even in, the extremely permeable mucus membranes of the vaginal area. … Women have a right to know about these ingredients."

Arguments in opposition: CALPIRG, et al, state, "Independent testing of menstrual products has detected harmful chemicals including styrene, toluene, chloromethane, dioxins, furans, parabens, phthalates, and toluene, PFAS, among others. This is especially concerning considering menstrual products may be inserted into the body or placed on or around absorbent vaginal tissue … Unlike cleaning products, there is so much that we do not know about the manufacture, ingredients and potential health impacts of menstrual products … The chemical exposure routes from menstrual products are unique as these products are inserted into the body or touch highly absorbent vaginal and vulvar tissue. Allowing some ingredients to be hidden as CBI will hamper the progress of needed research, and will not give menstruators, advocates, or researchers a full picture of the ingredients used in these products."

Double referral: This bill was double referred to the Assembly Environmental Safety & Toxic Materials Committee and the Assembly Health Committee; however, due to the COVID-19 pandemic and state-wide shelter in place orders that have truncated the Legislative calendar for considering legislation, this bill will only be heard by this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
California Health Coalition Advocacy
City of West Hollywood
Educate. Advocate.
Empower Family California

Opposition

ACT for Women and Girls
American Chemistry Council
Breast Cancer Action
California Chamber of Commerce
California Healthy Nail Salon Collaborative
California Latinas for Reproductive Justice
California Manufacturers & Technology Association
CALPIRG, California Public Interest Research Group
Center for Baby and Adult Hygiene Products
Consumer Health Products Association
Consumers Brands Association
Diva Cup
Femtruth
Fragrance Creators Association
Healthy Babies Bright Futures
Informed Green Solutions
Lola
National Center for Health Research

National Women's Health Network
Natracare
Period Equity
Sierra Club
Sustain Natural
The Center for Environmental Health
Turning Green
Women's Voices for the Earth

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2296 (Quirk) – As Amended May 5, 2020

SUBJECT: State Water Resources Control Board: local primacy delegation: funding stabilization program

SUMMARY: Authorizes Local Primacy Agency (LPA) counties to elect to participate in a funding stabilization program, administered by the State Water Resources Control Board (State Water Board), to fund regulatory oversight of small public drinking water systems. Specifically, **this bill**:

1) Authorizes the State Water Board to delegate partial responsibility for the administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement.

2) Authorizes the State Water Board to offer counties the opportunity to apply for delegation of partial or primary responsibility for the administration and enforcement of public water system compliance if a local primacy delegation agreement does not exist as of January 1, 2021.

3) Requires the State Water Board's annual evaluation of each LPA's oversight program to include deficiencies in the program and requires the evaluation be posted online. Requires an LPA to make program improvements within two years.

4) Authorizes any LPA to elect to participate in a funding stabilization program effective for the 2022-23 fiscal year and thereafter. Requires LPAs electing to participate in the funding stabilization program to apply to the State Water Board with the approval of the county board of supervisors within one year of when participation is sought.

5) Authorizes the State Water Board to approve applications for the funding stabilization program if the LPA program is in good standing and the State Water Board has determined the LPA has a need for state fund augmentation. Requires the determination of need to be based on a finding that the local health officer does not have a sufficient fee base to fully fund oversight activities in the LPA delegation agreement.

6) Authorizes, if approved, LPA participation in the funding stabilization program to continue annually until the LPA terminates participation or the State Water Board terminates participation because it determines the LPA is no longer in compliance with its delegation agreement or no longer needs state funding augmentation.

7) Authorizes the State Water Board to provide funds for the funding stabilization program through a grant, contract, or other expenditure.

8) Requires LPAs to remit all penalties, fines, and reimbursement of costs to the State Water Board for deposit into the Safe Drinking Water Account.

9) Requires the State Water Board under the funding stabilization program to provide funding to the LPA for each year of costs incurred for activities set forth in the LPA work plan, including inspection, monitoring, surveillance, water quality evaluations, and enforcement, approved by the State Water Board. Prohibits an LPA from charging or collecting any additional fees from public water systems.

10) Requires the State Water Board to adopt policies, guidelines, or procedures for the preparation of the LPA work plan and the terms of payment for work done by the LPA.

11) Requires the LPA to maintain accurate accounting records of all costs incurred associated with the activities described in the LPA delegation agreement, and to periodically make them available to the State Water Board.

12) Requires a participating LPA to identify small water systems in their jurisdiction that may be suitable for consolidation based on the size, compliance history, location, and its technical, management, and financial resources, and report an identified small water system to the State Water Board at least annually.

EXISTING LAW:

1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300(f) et seq.)

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

3) Requires, pursuant to the California SDWA, the State Water Board to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)

4) 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(h))

5) Authorizes the State Water Board to delegate primary responsibility of administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement. Declares that the delegation shall not include community water systems serving 200 or more service connections. (HSC § 116330 et seq.)

6) Defines "small water systems," for the purposes of local primacy delegations, as community water systems except those serving 200 or more service connections, or non-community transient or non-community non-transient water systems. (California Code of Regulations (CCR) Title 22 § 64251)

7) Authorizes a public water system to request and receive from the State Water Board a reduced fee if its entire service area serves a disadvantaged community, defined as a community with a median annual household income of less than 80% of the statewide median annual household income. (CCR Title 22 § 64300(a) and 64310)

8) Establishes 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. (HSC § 116766 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "California recognizes that all individuals have a human right to safe, clean, affordable, and accessible water, including disadvantaged groups and communities in rural areas. The State seeks to protect these rights by enforcing the Safe Drinking Water Act. LPA delegation agreements help ensure that small water systems deliver adequate and safe drinking water. Compared to larger systems, small water systems often require more resources per consumer to ensure compliance with state requirements, but also generate less regulatory fee revenue. However, increasing regulatory fees to match program cost is difficult, especially when the communities served are also disadvantaged. LPAs currently regulate more than half of all public drinking water systems, but are at risk of relinquishing oversight authority to the state without a continuous source of funding. It is in the state's interest to ensure that LPAs can continue to provide oversight to ensure that the systems they regulate deliver adequate and safe drinking water."

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 (PWS), especially in disadvantaged communities, and many other factors continue to challenge progress.

Classification of public water systems: Public water systems supply water for human consumption to 15 or more service connections or regularly serve 25 individuals at least 60 days per year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) 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-community non-transient, and non-community transient. The type of water system is based on how often people consume the water. Community water systems are city, county, regulated utilities, regional water systems, or 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. Drinking water regulations impose the most stringent monitoring requirements on community and non-community non-transient water systems because the people they serve obtain all or much of their water from that system each day. Non-community transient water systems include entities like rural gas stations, restaurants, and State and National parks that provide their own potable water source. Most people that consume the water neither reside nor regularly spend time there.

Regulation of public water systems: The State Water Board has regulatory oversight of approximately 7,500 public drinking water systems in California. 30 of California's 58 counties have LPA delegation agreements with the State Water Board, and therefore have primary responsibility of regulatory oversight of the public drinking water systems in their counties. LPA counties regulate a total of approximately 4,500 public drinking water systems, which consist of community water systems with more than 14 and less than 200 connections, non-community non-transient systems, and non-community transient systems. In the remaining 28 counties, all public water systems, regardless of size, are directly overseen by the State Water Board. In all 58 counties, public water systems with 200 service connections or more are directly overseen by the State Water Board.

"State small water systems" serve more than 5 and less than 14 service connections and do not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days per year. (HSC § 116275(n)) These water systems are not considered public and are not regulated by the State Water Board. Instead, state small water systems are regulated by county health officials, regardless of LPA status. (CCR Title 22 § 64211) Private domestic wells (systems with 1-4 service connections) are currently not regulated by any entity.

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. These regulatory responsibilities are the same, whether the water system is overseen by the State Water Board or an LPA.

Under LPA delegation agreements, the State Water Board reviews the performance of each LPA annually and makes recommendations for program improvement, to be completed by the LPA in a "reasonable amount of time." In order to provide additional oversight of LPAs, AB 2296 would require the State Water Board to include program deficiencies in their evaluation, post the evaluation online, and require LPAs to make program improvements within two years. The State Water Board has the authority to revoke an LPA's delegation agreement if the LPA fails to make needed improvements.

State Water Board regulatory fees for public water systems: The State Water Board establishes regulatory fees, paid annually by public water systems, based on costs of activities associated with regulating public water systems. The total collected revenue cannot exceed the amount allocated by the legislature in the annual budget, while also taking into account available reserves. For community water systems serving more than 100 service connections, a graduated flat fee is applied based on the number of service connections. For non-community non-transient water systems, the fee is based on the number of people the public water systems serves, while non-community transient water systems pay a flat fee per system. Fees collected by the State Water Board are deposited in the Safe Drinking Water Account.

According to the 2015 Safe Drinking Water Plan, "The Safe Drinking Water Account derives the majority of its funding from fee-for-service cost recovery for activities associated with the oversight of PWS serving 1,000 or more service connections. A lesser amount comes from smaller PWS and non-community water systems. There are also fees that cover the costs of writing permits and enforcement actions."

LPA regulatory fees for public water systems: LPAs establish and collect oversight fees independently from the State Water Board and do not deposit revenue into the Safe Drinking Water Account. Fee revenue collected by LPAs are used to fund all costs associated with oversight.

Challenges in regulating water systems in LPAs: According to the 2015 Safe Drinking Water Plan, several challenges face LPAs seeking to continue the delegation of primacy including, "(1) the increasing number and complexity of drinking water standards and regulations; (2) the technical expertise required to operate water treatment facilities; (3) the amount of time and resources required to carry out enforcement actions; and, (4) complex compliance issues, such as regional nitrate and arsenic problems that disproportionately impact small water systems. The problem with this funding structure is that the greatest need for oversight is among those smaller PWS serving less than 1,000 service connections, but the fees to cover this activity are insufficient. As a result, it has been a struggle to maintain a program that provides sufficient oversight of smaller PWS. In recent years, more LPAs have returned the small PWS regulatory oversight program because their funding is inadequate to effectively administer the program."

Several LPAs have had difficulty administering their oversight programs. From 2007-2014, six counties have returned oversight authority back to the State Water Board: Fresno (2007), Marin (2010), Tuolumne (2010), San Mateo (2011), Tulare (2014), and Merced (2014). In these cases, the State Water Board assumed regulatory jurisdiction for these water systems. In 2014, the State Water Board provided one-time grant funding to the remaining LPAs to assist with data reporting, training, staffing, equipment, and other drinking water related items.

In their 2015 Safe Drinking Water Plan, the State Water Board recommended the Legislature implement a funding strategy to address the need for more oversight and technical assistance to small PWS, especially those serving disadvantaged communities.

Drinking water violations in small water systems: In November 2018 the Public Policy Institute of California (PPIC) reported in *California's Waters*, "According to state data, in July 2018 more than 230 systems, serving roughly 357,000 people (0.9% of the population), had unsafe drinking water. More than 400 schools have their own water systems, and 33 of them (serving 13,000 people) were also out of compliance." According to the US EPA's ECHO portal, of the 190 systems with violations for three or more years, 94% are small, serving fewer than 3,300 people; 77% serve fewer than 500 people.

The State Water Board estimates that one million Californians in more than 300 communities lack access to safe drinking water because of contamination in smaller poorly maintained older water systems in disadvantaged communities (State Water Board, *Safe and Affordable Drinking Water Fund Fact Sheet*, 2019). To ensure that disadvantaged communities could afford drinking water oversight, in 2017, the State Water Board limited its own oversight fees to $100 per system (for systems with greater than 100 connections, an additional graduated flat fee per service connection greater than 100 applies). (CCR Title 22 § 64310)

The Safe and Affordable Drinking Water Fund: SB 200 (Monning, Chapter 120, Statutes of 2019) established the Safe and Affordable Drinking Water (SADW) Fund to address longstanding issues with water supply, infrastructure, and operations. The fund provides $130 million annually for the State Water Board to support operations and maintenance for small community water systems unable to meet safe drinking water standards. The State Water Board adopted a resolution in August 2019 to issue grants and contracts for funding appropriated in the

Fiscal Year 2019-20 Budget. In December 2019, the Advisory Group was formed pursuant to SB 200 to help identify needs and designate spending priorities for the SADW Fund.

Previous attempts at funding stabilization for small drinking water systems: AB 402 (Quirk, 2019) would have created an opt-in program, administered by the State Water Board, to fund regulatory oversight of small public drinking water systems in LPA counties. Under AB 402, the State Water Board would have provided funding for approved LPA activities including inspection, monitoring, and enforcement, with the goal of continued local oversight of small water systems, as opposed to remitting oversight back to the State Water Board. AB 402 did not mandate LPAs to participate in the funding stabilization program, instead allowing LPA counties to decide on their own how best to fund their activities. AB 402 was held on suspense in the Senate Appropriations Committee.

AB 2296 picks up where AB 402 left off, including additional provisions that expand potential sources for the funding stabilization program. AB 2296 provides the intent of the Legislature to consider funding sources from the General Fund, the Safe Drinking Water Account, including regulatory fees on public water systems, or other appropriate sources. LPAs would be required to remit all penalties, fines, and reimbursement of costs to the State Water Board for deposit into the Safe Drinking Water Account. AB 2296 includes additional requirements for the State Water Board to approve an application for the funding stabilization program, providing that the board of supervisors of the LPA applicant will make a determination that the LPA has a need for state fund augmentation. The determination of need is required to be based on a finding that the local health officer does not have a sufficient fee base to fully fund the oversight activities described in the local primacy agency delegation agreement. AB 2296 also specifies the fate of the funding stabilization program if approved. The funding stabilization program would continue annually until either the LPA terminates participation or the State Water Board determines the LPA is no longer in compliance with the delegation agreement or the board of supervisors determines the LPA does not have a need for state funding augmentation.

Consolidation of water systems: According to the US EPA, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. 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.

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 to consolidate with, or receive an extension of service from, a compliant public water 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. As of summer 2018, there were 13 mandatory consolidations. Voluntary consolidations have also increased, numbering 72 by summer 2018.

Under AB 2296, an LPA participating in the funding stabilization program would be required to identify small water systems under the LPA's jurisdiction that may be suitable for consolidation

and report the identified small water systems to the State Water Board at least annually and work with the State Water Board to consolidate the systems.

Related legislation:

1) SB 1096 (Caballero). Would authorize a water or sewer system corporation to apply to the Public Utilities Commission to consolidate their system with a public water system or state small water system. This bill is double referred to the Senate Energy, Utilities, and Communications Committee and Senate Environmental Quality Committee.

2) SB 1280 (Monning). Would authorize the State Water Board to order consolidation between a public water system and an at-risk water system if the State Water Board receives a petition from the water system's governing body or at least 30% of the households served by the water system. This bill is double referred to the Senate Environmental Quality Committee and the Senate Governance and Finance Committee.

3) AB 402 (Quirk, 2019). Would have created an opt-in program, administered by the State Water Board, to fund regulatory oversight of LPA counties. This bill was held on suspense in the Senate Appropriations Committee.

4) SB 200 (Monning, Chapter 120, Statutes of 2019). Created 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.

5) AB 386 (Aghazarian, 2003). Would have required the Department of Health Services (responsible for drinking water regulation at the time) to meet with local health officers to provide sufficient funding prior to passing or expanding any new mandates. This bill died in the Assembly Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Environmental Health Administrators (CAEHA) (Sponsor)
California State Association of Counties (CSAC)
Health Officers Association of California
Rural County Representatives of California (RCRC)

Opposition

None on file.

Analysis Prepared by: Rachel Silvern / E.S. & T.M. /

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2333 (Quirk) – As Amended May 6, 2020

SUBJECT: Waste: releases: remedial action: local oversight

SUMMARY: Provides state oversight and sets requirements for local officers overseeing remedial action at sites with released hazardous waste. Specifically, **this bill**:

1) Amends the definition of "local officer" to mean a county health officer, city health officer, or county director of environmental health who has been granted authority by their jurisdiction to enter into remedial action agreements and oversee remedial action at sites with released hazardous waste.

2) Permits a responsible party for the release of hazardous waste to request a local officer oversee the remedial action if the local officer demonstrates to the Department of Toxic Substances Control (DTSC) and regional water quality control board (regional water board) that adequate staff resources and technical expertise are available to oversee the remedial action.

3) Requires the remedial action agreement to specify proposed remedial actions, required reporting and public notifications, and enforcement actions or referrals in the event of noncompliance.

4) Permits a local officer who enters into a remedial action agreement to withdraw from the agreement after giving the responsible party at least 30 days' notice and making one or more of the specified findings.

5) Requires a local officer to provide written notification to DTSC and the regional water board at least 30 days before entering into a remedial action agreement.

6) Requires the written notification to include:

   a) Names and addresses of current site owners if different from the responsible party;

   b) Address and location of site or sites to which the remedial action agreement will apply;

   c) A description of any known local, state, or federal regulatory involvement at the site;

   d) A preliminary description of the release, and the anticipated investigation or remediation, if known;

   e) A description of the technical expertise and staff resources available to oversee the remediation of the release site, including resumes of appropriately licensed professionals;

   f) Certification that appropriate financial resources and funding mechanisms are available to oversee the remediation of the site;

g) Certification that all applicable statutory requirements will be adhered to, and that if enforcement action is necessary, it will be conducted or promptly referred to DTSC or the regional water board; and,

h) Certification that accurate records will be maintained and kept up to date, including through the use of the State Water Resources Control Board's (State Water Board) GeoTracker electronic data management system (GeoTracker), and kept in compliance with electronic reporting requirements.

7) Requires a local officer entering into a remedial action agreement to establish a global identification number and public record for the State Water Board's GeoTracker and upload a copy of the remedial action agreement under their global identification number. Requires local officers to comply with electronic reporting requirements, and include these reporting requirements as provisions of the remedial action agreement.

8) Authorizes DTSC or the regional water board to inform the local officer that they will retain oversight authority for the waste release during the notification period. Prohibits a local officer from entering into a remedial action agreement if they are informed DTSC or the regional water board will retain oversight authority.

9) Prohibits DTSC or the regional water board from assuming regulatory oversight authority of a waste release after a remedial action agreement has been entered into unless DTSC or the regional water board make one or more of the specified determinations. Requires notification to occur with a minimum 30 day notice after which the remedial action agreement is no longer valid.

10) Requires local officers, at least 30 days before certifying the cleanup goals in the remedial action agreement were accomplished, to conduct a public notification process that must include, at a minimum, notifying DTSC, the regional water board, agencies with authority to issue building permits on land affected by the waste release, and owners and occupants of the property impacted by the waste release and adjacent to the waste release. Requires the public notice to be posted on GeoTracker under the global identification number for the site.

11) Requires the local officer to provide the responsible party with a document describing the release of waste, remedial action taken, and certification that the cleanup goals were accomplished after the local officer determines a permanent remedy for the release of waste has been achieved. Requires the document be posted on GeoTracker under the global identification number established for the site.

12) Provides that nothing prohibits DTSC, the State Water Board, or regional water board from assuming jurisdiction over a waste release or taking enforcement action.

EXISTING LAW:

1) Authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request a local officer to supervise the remedial action. Authorizes the local officer to supervise the remedial action if they determines that adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. (Health & Safety Code (HSC) § 101480 (b))

2) Prohibits a local officer from overseeing remedial action at specified sites determined by DTSC. (HSC § 101483)

3) Requires a local officer to provide written notice with specified information to DTSC and the appropriate regional water board at least 10 working days prior to entering into an agreement with a responsible party. (HSC § 101487)

4) Authorizes the California Environmental Protection Agency (CalEPA) to certify Unified Program Agencies (CUPAs) to carry out environmental programs on behalf of the state, including programs related to the regulation of hazardous waste generators and onsite hazardous waste treatment, and the regulation of petroleum underground storage tanks. (HSC § 25404 - 25404.9)

5) Authorizes the State Water Board to certify local agencies as qualified to clean up or oversee a responsible party to clean up soil and groundwater contamination from leaking underground storage tanks. Prohibits local agencies from overseeing the cleanup of leaking underground storage tank sites unless they have been certified by the State Water Board. (HSC § 25297.01)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 2333 will help to ensure that local health officers who oversee the cleanup of contaminated sites have the necessary expertise, knowledge, and resources to carry out remediation responsibilities in a manner that is protective of public health. This bill sets certain requirements for local health officers overseeing cleanup sites including for electronic reporting, public notification, and written notice to DTSC and the State Water Board outlining technical and fiscal resources available for the cleanup. AB 2333 will provide consistency and reduce the likelihood that sites will have to be reopened due to ongoing contamination."

Remedial actions for waste releases: There are currently thousands of contaminated sites across the state where recent or historical unauthorized releases of pollutants to the environment have occurred. These sites are varied, but can include pesticide manufacturing facilities, rail yards, ports, dry cleaners, and refineries where there have been releases of pollutants to the soil, groundwater, surface water, and/or sediment. The types of pollutants encountered at these sites are plentiful and diverse and can include solvents, heavy metals, and petroleum.

The State Water Board and DTSC both have authority to do hazardous waste cleanup, but have different jurisdictions. The State Water Board oversees remediation where hazardous waste impacts surface or ground waters of the state, as well as underground storage tank contamination. There are nine regional water boards that exercise rulemaking and regulatory activities by groundwater basin. DTSC oversees all other hazardous waste release cleanup.

The regional water boards and DTSC are charged with identifying parties that are responsible for the contamination, setting cleanup standards and requirements, and overseeing the cleanup of contaminated sites to ensure that they are properly remediated and do not continue to pose a threat to public health and the environment. State law specifies requirements for cleaning up contaminated sites, and the regional water boards and DTSC have developed extensive policies

and procedures for determining the extent and type of contamination, and processes and standards for the proper remediation of contaminated sites.

Local oversight of hazardous waste cleanup: Historically, the California legislature has acknowledged that local agencies, when provided sufficient resources and information, can help the state address, through oversight or abatement efforts, the sites that require cleanup. AB 3193 (Polanco, Chapter 1113, Statutes of 1990), the Polanco Redevelopment Act, was enacted as part of the Community Redevelopment Act to assist redevelopment agencies in responding to brownfield properties (properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation cost and liability concerns) in their redevelopment areas. (HSC § 33459-33459.8) Under the law, redevelopment agencies could take action to remediate releases of hazardous substances on a property that was part of a redevelopment project. The redevelopment agencies were granted qualified immunity from liability under state or local law, provided that the cleanup was conducted in accordance with a remedial action plan approved by DTSC or a regional water board. (HSC § 33459.3)

The CUPAs were created through the enactment of SB 1082 (Calderon, Chapter 418, Statutes of 1993) to be regulated under the unified hazardous waste and hazard materials management regulatory program (Unified Program). The Unified Program ensures consistency throughout the state for the implementation of administrative requirements, permits, inspections, and enforcement at the local regulatory level. CalEPA oversees the statewide implementation of the Unified Program and its 81 CUPAs, which apply regulatory standards established by the Governor's Office of Emergency Services, DTSC, the Office of the State Fire Marshal, the State Water Board, and CalEPA. DTSC may certify CUPAs to oversee the cleanup of contaminated sites, if DTSC determines they are qualified to do so. Under the Unified Program, CUPAs are certified to do corrective action on a limited number of tiered permitted hazardous waste facility sites. These CUPAs may be certified by DTSC as approved for "Tier 1 cleanup oversight" for less complex sites, or "Tier 2 cleanup oversight" for complex or high risk sites.

The Site Designation Process was enacted by AB 2061 (Umberg, Chapter 1184, Statutes of 1993) to allow a responsible party to request CalEPA to designate a local agency to oversee the cleanup action. AB 1248 (O'Connell, Chapter 671, Statutes of 1995) authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request the local health officer to supervise the remedial action. The law authorizes the local health officer to supervise the remedial action if they determine adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. This program, commonly referred to as the "voluntary cleanup program," requires local health officers to enter into a remedial action agreement with the responsible party which specifies the testing, monitoring, and analysis that the responsible party will undertake to determine the extent and type of contamination at the site and the remedial actions that will be undertaken by the responsible party. (HSC § 101480)

In 2001, the California Land Environmental Restoration & Reuse Act (SB 32, Escutia, Chapter 764, Statutes of 2001) established a new hazardous materials investigation and cleanup program to be administered by local agencies with oversight from DTSC or the regional water board, and would provide cost reimbursement.

When the Legislature dissolved local redevelopment agencies (AB 1X 26, Blumenfield, Chapter 5, Statutes of 2011), it created problems regarding local access to brownfield remediation tools

previously granted under Polanco Redevelopment Act authority. AB 1X 26 required successor agencies to expeditiously dispose of assets and properties of former redevelopment agencies. However, there was a concern that many of those properties would either be difficult for successor agencies to sell or maximize the value of in the sale due to the actual or perceived contamination of the site. Therefore, the Legislature subsequently enacted AB 440 (Gatto, Chapter 588, Statutes of 2013) to authorize a local agency (a county, city, or housing authority) to take any action, similar to that under the Polanco Redevelopment Act, to remedy or remove a release of hazardous material on or under a "blighted property" within a "blighted area." AB 440 also provides immunity from further liability to the local agency, any person who enters into an agreement with that local agency to develop the property, and any future property owners.

Under the State Water Board's Local Oversight Program (LOP), the State Water Board certifies local agencies (regardless of whether they are local health agencies) as qualified to clean up or oversee a responsible party cleanup of soil and groundwater contamination from leaking underground storage tanks. (HSC § 25297.1) Local agencies are prohibited from overseeing the cleanup of leaking underground storage tank cleanup sites unless they have been certified by the State Water Board.

Status of the voluntary cleanup program: Local health officers currently oversee remediation sites pursuant to a voluntary agreement for any sites where there is no lead agency (i.e. DTSC or regional water board) providing oversight and where local health officers determine they have the appropriate level of expertise. These sites include redevelopment with various previous site uses, such as gas stations, dry cleaners, industrial sites; gun range contamination; large spills from truck accidents; spills from aboveground tanks; contaminated soils associated with disposal sites; and, spills from machinery or other equipment, including transformers.

The United State Environmental Protection Agency estimates that there are between 96,000 and 212,000 contaminated sites in California. DTSC has identified approximately 9,800 contaminated sites statewide. Current law authorizing local health officers to oversee site remediation helps to fill the gap where state agencies may not have the bandwidth to address the large number of contaminated sites in a timely manner.

In order to enter into a voluntary cleanup agreement with a responsible party, a local health officer is required to first provide written notification to DTSC and the appropriate regional water board(s) within 10 working days prior to entering into an agreement with a responsible party to ensure the state is aware of the site remediation and who is conducting it. (HSC § 101487) There are a number of sites where local health officers are prohibited from using the voluntary cleanup agreement authority, including, but not limited to, any State Response, federal Superfund, military, and backlog sites designated by DTSC; sites subject to a cleanup and abatement order for a violation of any waste discharge requirement into a water source; or, sites that are under Phase I Environmental Assessment. (HSC § 101483) The notification required to the state before entering into a voluntary agreement provides the opportunity for the state and local health officer to determine the applicability of the local health officer's authority to oversee the site remediation.

Current law allows the local health officer to determine whether they have the staff resources, technical expertise, and capabilities to oversee site remediation, and if not, they can refer the cleanup to the state. Local health officers can also refer voluntary cleanups to DTSC or the

regional water board if the site becomes large or more complex than first expected, or if the responsible party is not in compliance with the remedial action agreement.

The State Water Board's LOP certifies local health officers to oversee the cleanup of sites contaminated by leaking underground storage tanks. However, current law does not provide state oversight or certification of local health officers implementing the voluntary cleanup program. There is relatively little data available on cleanups of contaminated sites under the voluntary cleanup program because local agencies are not required to upload their cleanup data to the State Water Board and DTSC's websites and most do not do so voluntarily. Regional water boards have found instances in which cleanups of contaminated sites overseen by a local health officer under the voluntary cleanup program have been inadequate. Specifically, problems have arisen including: inconsistent cleanup oversight practices, under-qualified personnel conducting highly specialized technical oversight, lack of data entry, lack of public access to case records, poorly documented sites, and approval of site closures that may not meet the regional water board or DTSC requirements even though the site has been certified by the local agency as "clean."

Standards for local health officers: AB 432 (Quirk, 2019) would have required the State Water Board and DTSC to develop and implement a program to certify local officers to enter into remedial action agreements for the oversight and abatement of hazardous wastes. AB 432 would have been similar to the State Water Board's existing LOP program for certifying local agencies to oversee the cleanup of sites contaminated by leaking underground storage tanks.

There were several concerns with the certification program proposed in AB 432, including that the certification program could become too onerous, timely, and costly for local health officers, making them less likely to apply for the authority due to limited local resources. If local health officers were to opt out of the proposed certification program, there would have been a greater burden on DTSC and the regional water boards to oversee more cleanup sites. AB 432 was held on suspense in the Assembly Appropriations Committee.

AB 2333 takes a different approach than AB 432, instead setting a number of requirements for local health officers overseeing the cleanup of contaminated sites. In order to enhance oversight and transparency, AB 2333 sets forth requirements for local health officers, including: providing more detailed written notification to DTSC and the regional water board before entering into a remedial action agreement; specifying proposed remedial actions, required reporting and public notifications, and enforcement actions or referrals in the event of noncompliance in remedial action agreements; and, establishing a global identification number for the site through the State Water Board's GeoTracker and complying with electronic reporting requirements. In order to provide more consistency for the certification of cleanups, AB 2333 requires local health officers to provide public notification and documents outlining the remedial action and certification of cleanup goals to the responsible party.

The requirements for local health officers described above would apply to remedial action agreements entered into on or after January 1, 2021. For open cases where remedial action agreements have been entered into before January 1, 2021, only the certification requirements of providing public notification and documents to the responsible party, and posting both of these on GeoTracker would apply.

In addition to the requirements for entering into remedial action agreements and certifying cleanups, AB 2333 authorizes DTSC or the regional water board to retain oversight authority

before or after entering into a remedial action agreement. AB 2333 prohibits DTSC or the regional water board from assuming oversight authority over a release where a remedial action agreement has already been entered into unless DTSC or the regional water board makes one or more of the specified determinations related to insufficient resources to oversee the remedial action or insufficient enforcement authority to ensure the responsible party is in compliance with the remedial action agreement. If DTSC or the regional water board do assume regulatory oversight authority, they are required to provide a minimum 30-day notice, and local health officers will still be able to recover costs from the responsible party for their work up until that point.

Related legislation:

1) AB 432 (Quirk, 2019). Would require the State Water Board and DTSC to develop and implement a certification program for local health officers who enter into remedial action agreements. This bill was held on suspense in the Assembly Appropriations Committee.

2) AB 440 (Gatto, Chapter 588, Statutes of 2013). Authorizes a local agency to take any action, similar to that under the Polanco Redevelopment Act, to remedy or remove a release of hazardous material on or under a "blighted property" within a "blighted area."

3) AB 1701 (Wieckowski, Chapter 536, Statutes of 2012). Requires the State Water Board to establish a program for certifying cities and counties to oversee the cleanup of leaking underground storage tanks and prohibits cities and counties from overseeing the cleanup unless they have been certified by the State Water Board.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Rachel Silvern / E.S. & T.M. /

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 3039 (Quirk) – As Amended May 4, 2020

SUBJECT: Underground storage tanks: small business loan and grant program

SUMMARY: Extends, until January 1, 2026, the Replacing, Removing, or Upgrading (RUST) program, which provides loans and grants to assist small businesses with complying with state and federal standards for underground storage tanks (USTs). Expands RUST grant eligibility to certain applicants who are not in compliance with water quality or air quality requirements. Provides the State Water Resources Control Board (State Water Board) with authority to help prevent fraud in the RUST program and help recover monetary losses to the RUST program due to fraud.

EXISTING LAW:

1) Requires, by December 31, 2025, the owner or operator of an 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 a person to furnish, under penalty of perjury, any information related to financial responsibility, costs related to grants, unauthorized releases as requested by the local agency or State or Regional Water Board. Subjects a person who fails to provide this information to civil liability not to exceed $10,000 per violation. (HSC § 25299.78)

4) Provides that a person who makes a misrepresentation in a document relating to a grant or loan issued pursuant to the UST Cleanup Fund program that is submitted to the State Water Board, is subject to civil liability of not more than $500,000 per violation. (HSC § 25299.80)

5) Provides that a person who knowingly makes or causes to be made a false statement, material misrepresentation, or false certification in support of a grant or loan under the UST Cleanup Fund Program is subject to a fine of not more than $10,000, or imprisonment in county jail up to one year. (HSC § 25299.80.5)

6) Requires, until January 1, 2022, the State Water Resources Control Board (State Water Board) to conduct a loan and grant program to assist small businesses in upgrading, replacing, or removing USTs to meet applicable local, state, or federal standards. (HSC § 25299.101)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: In order to protect public health and safety and the environment, USTs are regulated by the State Water Board. Existing law requires single-walled USTs to be removed no later than December 31, 2025. Given the expense of removing these USTs, the state created the RUST program to provide grants and loans to small businesses to assist them with complying with UST laws and regulations. The RUST program is scheduled to sunset on January 1, 2022; however, that is three years before the statutory requirement to replace single-walled USTs. Therefore, AB 3039 extends the sunset of the RUST program until January 1, 2026 allowing a continuation of assistance for small businesses to comply with UST laws and regulations.

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, and large businesses and individuals by providing reimbursement for expenses associated with the cleanup of leakage from petroleum USTs.

RUST Program: Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) grants and loans are available to assist small business UST owners and operators to come into compliance with UST regulatory requirements by removing, replacing, or upgrading USTs. Loans and grants are available through the RUST program to assist small businesses to remove single-walled USTs and to replace them with double-walled USTs. Typical eligible costs are removing and replacing single-walled USTs and/or piping with double-walled USTs and/or piping, UST upgrades including installing containment sumps, under-dispenser containment boxes/pans, and electronic monitoring systems, and conducting enhanced leak detection tests.

Under current law, the RUST program sunsets on January 1, 2022; however, the requirement to remove single-walled UST is not until December 31, 2025.

AB 3039 extends the RUST program until January 1, 2026, which mirrors the UST Cleanup Fund Program; expands RUST grant eligibility to certain applicants who are not in compliance with water quality or air quality requirements; provides the State Water Board with authority to help prevent fraud in the RUST program and help recover monetary losses to the RUST program due to fraud; and, makes minor and technical changes to the RUST program for efficiency and clarification purposes.

Related legislation:

1) SB 445 (Hill, Chapter 547, Statutes of 2014). Extended the State Water Resources Control Board (State Water Board) program for the clean-up of Underground Storage Tanks (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 (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

Metropolitan Water District of Southern California

Opposition

None on file.

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2762 (Muratsuchi) – As Introduced February 20, 2020

SUBJECT: Cosmetics: safety

SUMMARY: Amends the Sherman, Food, Drug and Cosmetic Act (Sherman Act) to expand the definition of an adulterated cosmetic. Specifically, **this bill**:

1) Establishes the Toxic-Free Cosmetics Act.

2) Provides that, beginning January 1, 2022, a cosmetic is adulterated if it contains any amount of the following intentionally added ingredients:
   a) Dibutyl phthalate;
   b) Diethylhexyl phthalate;
   c) Formaldehyde;
   d) Paraformaldehyde;
   e) Methylene glycol;
   f) Quaternium-15;
   g) Mercury;
   h) Isobutylparaben;
   i) Isopropylparaben;
   j) m-Phenylenediamine and its salts;
   k) o-Phenylenediamine and its salts; and,
   l) The following long-chain per- and polyfluoroalkyl substances (PFAS) and their salts:
      i) Perfluorooctane sulfonate (PFOS);
      ii) Perfluorooctanoic acid (PFOA);
      iii) Perfluorodecanoic acid (PFDA); and,
      iv) Perfluorononanoic acid (PFNA).

3) Provides that a cosmetic is adulterated if it contains a chemical, other than those listed above, that has been identified by the California Department of Public Health (CDPH) by regulation after a stakeholder process. Authorizes CDPH to identify additional chemicals only if the chemical is listed as a banned substance in Annex II of Regulation No. 1223/2009 of the European Parliament and of the European Council or in any updates to that Annex.

4) Provides that, if a cosmetic product made through manufacturing processes intended to comply with this part contains a technically unavoidable trace quantity of a chemical listed above or identified and added by CDPH, and that trace quantity stems from impurities of natural or synthetic ingredients, the manufacturing process, storage, or migration from packaging, that trace quantity shall not cause the cosmetic product to be adulterated.

5) Provides that failure to comply with any of the following is a violation of the Sherman Act:

   a) The requirements of the Sherman Act;
   b) A request by the Division of Environmental and Occupational Disease Control (Division) pursuant to existing statutory authority for information, data, or statistics; and,

c) Guidelines or instructions issued by the Division to implement the Sherman Act.

6) Requires the Division to report all violations of the Sherman Act to the Department of Justice.

7) Establishes the intent of the Legislature to enact a prohibition on the presence of chemicals in cosmetics that is consistent with the prohibition on the presence of chemicals in cosmetics that was enacted by the European Union (EU).

EXISTING LAW:

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

2) Defines, pursuant to the Sherman Act, "cosmetic" as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance. Provides that the term "cosmetic" does not include soap. Makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any cosmetic that is adulterated. Makes it unlawful for any person to adulterate any cosmetic. Makes it unlawful for any person to receive in commerce any cosmetic that is adulterated or to deliver or proffer for delivery any such cosmetic. (Health & Safety Code (HSC) § 109900)

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

4) Prohibits, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)

5) Requires the Department of Toxic Substances Control (DTSC), under the State's Green Chemistry regulations, to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered a chemical of concern. (HSC § 25252) Requires DTSC to develop and maintain a list of Candidate Chemicals that exhibit a hazard trait and/or an environmental or toxicological endpoint and is either 1) found on one or more of the statutorily specified authoritative lists or 2) is listed by DTSC using specified criteria. (California Code of Regulations § 69502.2 (b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "No one knowingly wants to use face powder contaminated with asbestos, lipstick that contains lead, or baby shampoo with formaldehyde.

AB 2762 would clarify in statute that cosmetics containing some of the most well-known carcinogens, reproductive toxicants, and endocrine disruptors are adulterated cosmetics, and cannot be sold in the state, protecting Californians against harmful chemicals in cosmetic products they use every day."

Public health concerns with cosmetics: Cosmetic products are sold to consumers across California, including to children who are still in the formative years of development. These products are used as part of daily beauty and cleansing routines, often times on the skin's most sensitive areas, like the face, eyelids, and lips. Cosmetic products are most heavily used by women, including those of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to substances that can cause cancer and reproductive toxicity. That is why it is so important that cosmetic products are safe, properly labeled, and free of contamination.

State cosmetic regulatory requirements: California has two laws governing the safety of cosmetics. The first is the Sherman Act, which is administered by CDPH to regulate cosmetics. It broadly defines a cosmetic as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance.

Pursuant to the Sherman Act, any cosmetic is considered to be adulterated "if it bears or contains any poisonous or deleterious substance that may render it injurious to users." However, adulteration, in many instances, refers to tampering with a product after the manufacturer has completed its manufacturing. Selling adulterated cosmetics can lead to civil and administrative penalties, embargoes, and even bans on products.

The other law is the California's Cosmetics Act, established by SB 484 (Migden, Chapter 729, Statutes of 2005). It requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. CDPH maintains an active, searchable database with all of the data collected from manufacturers under the Cosmetics Act. It is required to make that data user-friendly and available to the public. To date, 613 companies have reported 75,279 products to CDPH. CDPH does not have any enforcement authority or penalty authority over the manufacturers that are covered, so not all manufacturers are currently complying and submitting their products' information. There is no way to compel these manufacturers to comply.

Federal cosmetics regulatory requirements: Neither the FDA nor CDPH require premarket safety testing, review, or approval of cosmetic products.

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

What we know about the chemicals listed in the bill vis-à-vis the EU: The EU, which includes 28 member countries mostly across Europe, develops policies to ensure the free movement of people, goods, services, and capital within the internal market, and enacts legislation to maintain common policies to have cohesion amongst the 28 members on things from trade to agriculture.

The EU Cosmetics Directive (Directive) was adopted in 1976 and formed on the basis of commonly agreed to safety standards relative to cosmetics. This Directive was reevaluated in 2009 and an EU-wide Cosmetics Products Regulation was enacted in July 2013.

EU regulation No 1223/2009 on cosmetics establishes rules to be complied with by any cosmetic product made available on the market, in order to ensure the functioning of the internal market and a high level of protection of human health. The regulation defines "cosmetic product" as "any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odors." The scope of products covered under the EU's definition of cosmetics is broader than the scope of products covered under California's definition of cosmetics.

Annex II of regulation No 1223/2009 lists the substances prohibited in cosmetic products. The intent of this bill is to be consistent with the approach of the EU's cosmetic regulation. All of the chemicals listed in AB 2762 have been fully banned in the EU under Annex II.

Establishing a prohibition: As the bill is currently written, a cosmetic would be deemed adulterated if it contained one or more of the listed intentionally added ingredients. However, the cosmetics and personal care products industry contend that a product could be adulterated by a third party *after* the product has been manufactured. As a case in point, skin creams that have recently been found on the market laced with mercury and found in violation of the Sherman Act as adulterated products were not made by the manufacturer with mercury; rather, the skin creams were adulterated after the fact by a below-board retail entity, which was no fault of the manufacturer. Therefore, to reconcile the semantics of the bill while maintaining legal responsibility on the manufacturer for producing cosmetics without the listed ingredients, the Committee may wish to amend the bill as follows:

> ~~(a) Beginning January 1, 2022, except as provided in subdivision (c), a cosmetic is adulterated if it contains any amount of the following intentionally added ingredients:~~ *Commencing January 1, 2025, no person or entity shall manufacture, sell, deliver, hold, or offer for sale in commerce any cosmetic product that contains any of the following intentionally added ingredients:*

In addition, the EU cosmetics regulation references prohibited ingredients, not adulteration; therefore, the proposed Committee amendment will further align the bill with the EU's regulatory approach for banned ingredients.

COVID-19 pandemic: The provisions of this bill directly affect the companies that manufacture cosmetic and personal care products for sale in California, and those companies are currently reeling from the impacts the coronavirus pandemic has had on the economy and the shift in consumer product needs.

As personal hygiene has become the most important method for preventing spread of the virus, consumers have increased their purchasing power of soaps and sanitizers. Hospitals and other health care centers are also in high need of the same line of products. Cosmetic and personal care product companies have refitted their factories to increase production and supply of sanitizer products to help combat COVID-19. On top of the abrupt manufacturing shift, the

cosmetics industry has also been hit hard by an economic slowdown of unprecedented proportions, and will have to rebuild their workforce (layoffs and furloughs) and rebuild their respective companies. As a result, they would need more time in order to work on compliance with any new mandate.

In recognition of the pandemic's impacts on the cosmetic industry, the Committee may wish to consider delaying implementation from 2022 to 2025.

> (a) ~~Beginning January 1, 2022, except as provided in subdivision (c), a cosmetic is adulterated if it contains any amount of the following intentionally added ingredients:~~ *Commencing January 1, 2025, no person or entity shall manufacture, sell, deliver, hold, or offer for sale in commerce, any cosmetic product that contains any of the following intentionally added ingredients:*

The pandemic has also impacted the Legislative timelines for considering legislation this year, and legislation has been prioritized based on whether it addresses the ongoing pandemic and other ancillary priorities. Legislation proposing any workload that is unrelated to the state's current crises (COVID19 pandemic, wildfires, homelessness) for state agencies directly involved with managing those crises have been postponed to future legislative sessions.

As it relates to AB 2762, the author notes that toxic chemicals can impair or suppress immune systems, and preventing unnecessary exposure to toxic chemicals in consumer products can protect public health in times like this. However, the provision in the bill authorizing CDPH to list additional chemicals would create pressure on the department to do workload unrelated to the current pandemic crisis at hand. Therefore, the Committee may wish to consider deleting the provision providing new cosmetic authority to CDPH entirely as follows:

> ~~(b) Except as otherwise provided in subdivision (c), a cosmetic is adulterated if it contains a chemical, other than those listed in subdivision (a), that has been identified by the department by regulation after a stakeholder process. Additional chemicals may only be identified if the chemical is listed as a banned substance in Annex II of Regulation No. 1223/2009 of the European Parliament and of the Council or in any updates to that Annex.~~

Enforcement of new cosmetics: The bill creates new violations of the Sherman Act; however, the Sherman Act already contains strong enforcement provisions that would apply to the provisions of this bill. Therefore, the Committee may wish to consider amending the bill to delete section 111794, entirely, to clarify that the existing enforcement authorities of CDPH pursuant to the Sherman Act apply to the provisions of this bill.

Additional technical amendments:

1) Where the bill mirrors the EU's cosmetic regulation permitting technically unavoidable trace amounts of unintended chemicals, there is a reference to 'adulteration' that needs to be struck for consistency with the aforementioned proposed Committee amendments to move away from the term adulteration. Therefore, the Committee may wish to correct that provision as follows:

   (b) If a cosmetic product made through manufacturing processes intended to comply with this part contains a technically unavoidable trace quantity of an ingredients ~~chemicals~~

listed in subdivision (a) ~~or identified pursuant to subdivision (b),~~ and that trace quantity stems from impurities of natural or synthetic ingredients, the manufacturing process, storage, or migration from packaging, that trace quantity shall not cause the cosmetic product to be *in violation of this section* ~~adulterated~~.

2) A Chemical Abstracts Service number (CAS#) is the universally recognized unique identifier of chemical substances and is often found on packaging and on articles of commerce. To make it unambiguous as to which chemicals will not be permitted in cosmetics sold in California under the provisions of this bill, the Committee may wish to add the CAS #s to each of the ingredients listed in the bill.

3) The PFASs and their salts listed in the bill represent an incomplete list of what is banned by the EU cosmetics regulation. The Committee may wish to flush out the list of prohibited PFAS substances to be consistent with the EU regulation.

4) To provide further clarification, the Committee may wish to define "ingredient" as follows:

   (d) The term ingredient means any single chemical entity or mixture used as a component in the manufacture of a cosmetic product, as that term is defined in Section 111791.5(d) of the Health and Safety Code.

5) Remove the title act until a new title can be agreed upon by the authors and stakeholders.

   ~~SECTION 1. This act shall be known, and may be cited, as the Toxic-Free Cosmetics Act.~~

Arguments in support: Environmental Working Group and Breast Cancer Prevention Partners, among others, state, "Today, personal care and beauty products (generally termed cosmetics) that are sold in California and the United States are largely unregulated. Manufacturers can use practically any chemical to formulate a cosmetic product, including chemicals with well-established links to cancer, reproductive harm or birth defects. Equally troubling, neither federal nor state laws require premarket testing by cosmetic manufacturers or their regulatory agencies to ensure that these products are safe before they hit store shelves. Out of the more than 10,000 chemicals used to formulate beauty and personal care products, the United States Food and Drug Administration has only ever banned or restricted 11. In contrast, the European Union prohibits or restricts the use of nearly 1,400 chemicals in cosmetics, and many other countries tightly regulate cosmetics sold to their citizens. … Californians need and deserve the same protections from harmful cosmetics provided to people that shop for the exact same products in the European Union and numerous other countries."

Arguments in opposition: The Personal Care Products Council, Fragrance Creators Association, California Chamber of Commerce, and other industry groups are oppose unless the bill is further amended. They collectively state, "The undersigned organizations support better alignment with the health and safety standards set forth by the European Union that prohibit the intentional use of specified ingredients which are listed in the EU Cosmetics Regulation 1223/2009, ANNEX II, List of Substances Prohibited in Cosmetic Products. In order to achieve this goal, AB 2762 needs further amendments. The authors have already publicly committed to aligning California law with the EU regulation – not anything more or less. We remain committed to achieving this

goal. As such, we have submitted draft language that we believe would fully align AB 2762 with the EU regulations."

Double referral: This bill was double referred to the Assembly Environmental Safety & Toxic Materials Committee and the Assembly Health Committee; however, due to the COVID-19 pandemic and state-wide shelter in place orders that have truncated the legislative calendar for considering legislation, this bill will only be heard by the Environmental Safety & Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Black Women for Wellness (Cosponsor)
Breast Cancer Prevention Partners (Cosponsor)
Environmental Working Group (Cosponsor)
California Public Interest Research Group (CALPIRG) (Cosponsor)
100%pure
Alaska Community Action on Toxics
American College of Obstetricians & Gynecologists - District IX
Beautycounter
Biossance
Breast Cancer Action
Breast Cancer Over Time
California Baby
California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California League of Conservation Voters
California Product Stewardship Council
Center for Environmental Health
Clean Water Action
Coalition for Clean Air
Consumer Federation of California
Earth Mama Organics
Eco Plum Sustainable Swag
Eighty2degrees Design Studio
Environment America
Environment CA
Eo Essential Oils
Friends Committee on Legislation of California
Han Skincare
Innersense
Juice Beauty
Just the Goods
National Stewardship Action Council
Natural Resources Defense Council (NRDC)
Oz Naturals
San Francisco Bay Area Physicians for Social Responsibility

Sanitation Districts of Los Angeles County
Science and Environmental Health Network
Seventh Generation Advisors
Seventh Generation Inc.
Sierra Club California
Skin Owl
Smart Oakland
Sprout San Francisco
US PIRG
W.S. Badger Company
Women's Voices for the Earth

Opposition

American Chemistry Council
Government Affairs & Legal Fragrance Creators Association
Mc Hugh, Koepke & Associates
Personal Care Products Council
Policy Advocate

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2560 (Quirk) – As Amended May 12, 2020

SUBJECT: Water quality: notification and response levels: procedures

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to post on its internet website and distribute through e-mail that it has initiated the development of a Notification Level (NL) or Response Level (RL) for a contaminant and the draft NL or RL along with supporting documentation. Specifically, **this bill**:

1) Requires the State Water Board, when establishing or revising a NL or RL to do all of the following:

   a) Post on its internet website and distribute through e-mail that it has initiated the development of a NL or RL;

   b) Post on its internet website and distribute through e-mail a notice that a draft NL or RL is available, including documents that were used to support the draft NL or RL and whether or not those documents were peer reviewed; and,

   c) Include, prior to finalizing a NL or RL, as an information item, the draft NL or RL at a regularly noticed meeting of the State Water Board.

EXISTING LAW:

1) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels, or MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health & Safety Code (HSC) § 116270, et seq.)

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

3) Requires a public water system, within 30-days of detection of a contaminant in exceedance of an MCL, NL, or a RL, to provide notification to its governing body of the detection. (HSC § 116455)

4) 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))

5) Requires the US EPA to establish criteria for a program to monitor unregulated contaminants and publish a list of up to 30 contaminants to be monitored every five years, known as the federal Unregulated Contaminant Monitoring Rule (UCMR). (42 United States Code § 300(f))

6) Establishes 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 State Water Board adopts MCLs for contaminants, which are health protective drinking water standards to be implemented by public water systems. MCLs take into account not only a contaminant's health risks but also factors such as its detectability and treatability, as well as costs of treatment. Under current law there is a very clear process for the establishment of an MCL.

In addition to MCLs, the State Water Board utilizes notification levels (NLs), which are health-based advisory levels for contaminants in drinking water that do not have an MCL. Generally, NLs are established as precautionary measures for contaminants that may be considered candidates for establishment of MCLs, but have not yet undergone or completed the regulatory process prescribed for the development of MCLs and are not drinking water standards. However, there is not a clear and consistent process for the establishment of NLs and RLs, which are not set by the State Water Board, but administratively set by the Division of Drinking Water. AB 2560 will provide greater transparency to the NL and RL process to provide all water agencies clear and consistent information as they can continue to provide safe, clean and affordable drinking water to their constituents."

California's drinking water program: Senate Bill 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the state's drinking water program from the California Department of Public Health (CDPH) to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water (DDW) 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 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. 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. 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. 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.

Regulating water quality: Water is California's most precious resource. With a growing population of more than 39 million people, a limited supply of fresh water, and a range of impacts on both terrestrial and marine habitats and resources, the protection of water for beneficial uses is of paramount concern for all Californians. Water quality is a concern for all bodies of freshwater, both surface water and groundwater, and depends on a variety of chemical and biological factors regulated by a number of local, state, and federal agencies.

Risks to human health and the environment are managed by federal and state standards for permissible levels of certain contaminants, known as MCLs. A drinking water contaminant's MCL is required to be established at a level as close to its public health goal (PHG) as is technologically and economically feasible, placing primary emphasis on the protection of public health. A PHG, which is established by Office of Health Hazard Assessment (OEHHA), is the level of a contaminant in drinking water that does not pose a significant risk to health. The process for establishing a PHG for a contaminant in drinking water is very rigorous. OEHHA scientists first compile all relevant scientific information available and perform health risk assessments in which they determine the levels of the contaminant in drinking water that could be associated with various adverse health effects. The State Water Board then goes through a lengthy, public regulatory process to develop the PHG into an MCL.

The State Water Board has an MCL for about 100 chemicals, all of which have a PHG.

Notification level (NL): The DDW's precursor, the Drinking Water Program of CDPH, and earlier, the California Department of Health Services, CDHS, established health-based advisory levels, called "notification levels" (referred to as "action levels" through 2004), as needed since the early 1980s. These have been used to provide information to public water systems and others about certain non-regulated chemicals in drinking water that lack MCLs. When chemicals are found at concentrations greater than these levels, certain requirement and recommendations apply.

Generally, NLs have been established in response to actual contamination of drinking water supplies, e.g., perchlorate, which now has an MCL. However, NLs for a number of chemicals were established in anticipation of possible contamination, such as from a hazardous waste site containing many pesticides (in the 1980s), or from a federal Superfund site (in the 2000s).

Chemicals for which NLs are established may eventually be regulated by MCLs (through a formal regulatory process), depending on the extent of contamination, the levels observed, and the risk to human health. Most, however, have not proceeded to MCLs.

Once established, a NL generally stays in place, unless it is replaced by an MCL. On occasion, though, the DDW has revised the numeric value of an individual NL to reflect new risk assessment information on the particular chemical. For some of the chemicals that had advisory levels established early on, if no MCL was adopted and the need for the NL had passed, the advisory level was archived. Archived advisory levels may nevertheless be updated to reflect any new risk information that may become available, and may be used as NLs if needed.

To date, of the 93 chemicals for which NLs have been established; 40 now have MCLs. Of the remaining 53 chemicals, 29 are chemicals with current NLs. 24 are chemicals with archived advisory levels.

There are tens of thousands of additional chemicals and constituents that do not have an MCL or a NL and that we do not have enough information about to determine whether those constituents have a human health or environmental impact.

NLs are advisory in nature and not enforceable standards. However, if a chemical is present in exceedance of its NL, state law (HSC §116455) requires a drinking water system to notify the governing body of the local agency in which users of the drinking water reside (i.e., city council and/or county board of supervisors) when a chemical in excess of a NL is discovered in a drinking water source.

Response level (RL): If a chemical is present in drinking water that is provided to consumers at concentrations considerably greater than the NL, the DDW recommends that the drinking water system take the source out of service. The level prompting a recommendation for source removal is the RL, and depends upon the toxicological endpoint that is the basis for the NL. For chemicals with a non-cancer toxicological endpoint, this recommendation occurs at 10 times the NL.

For perfluoroalkyl substances and polyfluoroalkyl substances (PFAS) with RLs where detected levels of a substance exceed the RL (i.e. PFOA and PFOS), state law (HSC § 116378) requires the public water system to either: (1) take the source out of service immediately; (2) use treatment or blending; or, (3) provide public notification of the RL exceedance within 30 days of the confirmed detection. Additionally, the exceedance of the RL must be reported in the annual consumer confidence report.

When a drinking water system does not take a source out of service despite the presence of a contaminant in drinking water at a level confirmed to be greater than the RL, the State recommends the following:

- Notification of the local governing body (*i.e.* city council or board of supervisors, or both) that indicates water is being provided that exceeds the chemical's RL, and the reason for the continued use of the source.
- Notification of the water system's customers and other water consumers that the contaminant is present in their drinking water at a concentration greater than its response level, the level at which source removal is recommended, and the reason for the continued use of the source.
- Whenever such a public "right-to-know" notice occurs, it should be provided to customers and to the water-consuming population in the affected area that would not directly receive such information, including renters, workers, and students.
- Notification should be provided directly to consumers, for example, by posted notices, hand-delivered notices, and water bill inserts.
- A press release from the water system should also be issued to the local media.
- After notification is provided, the DDW recommends the following: (1) Monthly sampling and analysis of the drinking water supply for as long as the contaminant exceeds its RL, and quarterly sampling for 12 months, should the concentration drop below the RL and (2) Quarterly notification of the water system's customers and other water consumers for as long as the contaminant is present at a concentration greater than its RL, using the methods described above.

While NLs and RLs are not regulatory standards they provide important information about contaminants to public water systems and their customers, at the same time there are signification actions imposed upon public water systems with the issuance of a NL or RL. Under current law, there is not a clear process for when or how DDW provides a new or revised NL or RL, AB 2560 adds some requirements on the State Water Board to ensure that the issuance or revision of a NL or RL is posted on its website. Additionally, AB 2560 requires the State Water Board to post the supporting documentation used for a NL or RL so that public water systems have access to this information in order to better serve their customers.

Related legislation:

AB 756 (C. Garcia, Chapter 162, Statues of 2019). Authorizes the State Water Resources Control Board (State Water Board) to order one or more public water systems to monitor for PFAS and establishes a separate public notification process as a result of any confirmed detection(s).

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association (Co-sponsor)
Association of California Water Agencies (ACWA)
California Groundwater Coalition (CGC)
California-Nevada Section, American Water Works Association
Clean Water Action
Desert Water Agency
Eastern Municipal Water District
El Dorado Irrigation District
Elsinore Valley Municipal Water District

Environmental Working Group (EWG)
Inland Empire Utilities Agency
Irvine Ranch Water District
Leadership Council for Justice and Accountability
Mesa Water District
Metropolitan Water District of Southern California (Metropolitan)
Municipal Water District of Orange County
Natural Resources Defense Council (NRDC)
Orange County Water District
Palmdale Water District
Rowland Water District
Sierra Club California
Valley County Water District
Walnut Valley Water District
WateReuse Association
Western Municipal Water District
Yorba Linda Water District

Opposition

None on file.

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2849 (Chau) – As Amended May 4, 2020

SUBJECT: Proposition 65: enforcement

SUMMARY: Authorizes a person, employing fewer than 10 employees, from waiving their exemption to the requirement of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), on terms and conditions as that person shall state in writing to the party providing a notice to bring an action under Proposition 65 and the Attorney General.

EXISTING LAW:

1) Enacts Proposition 65, which prohibits a person in the course of doing business from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water. (Health and Safety Code (HSC) § 25249.5)

2) Prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)

3) Provides that any person who violates the above provisions may be enjoined in any court of competent jurisdiction and shall be liable for a civil penalty not to exceed $2,500 per day for each violation in addition to any other penalty established by law. (HSC § 25249.7)

4) Requires the Governor to cause a list to be published of those chemicals known to the state to cause cancer or reproductive toxicity, and to cause such list to be revised and republished in light of additional knowledge at least once per year. (HSC § 25249.8)

5) Exempts a person, employing fewer than 10 employees from the warning requirement. (HSC § 25249.11)

6) Authorizes amendments to Proposition 65, provided that they are passed in each house of the Legislature by a two-thirds vote and further the purposes of Proposition 65. (Initiative Measure, Proposition 65, Sec. 7, Nov. 4, 1986.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "In 1986, voters approved Prop. 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, which requires California businesses to provide a clear and reasonable warning before knowingly and intentionally exposing individuals to chemicals known to cause cancer and/or reproductive toxicity. Failure to comply with the act exposes a business to civil penalties of up to $2,500 per day. The intent of the law is to allow consumers to make informed choices when they purchase products or enter

certain establishments. Business with fewer than 10 employees are exempt from the act. There exists an odd situation, where small suppliers, who are exempt from Prop. 65, are nonetheless brought into a legal matter because of an indemnity agreement they have with a larger retailer where they are required to pay for the legal costs of defending the larger retailer while having no way of actually settling the matter. AB 2849 would allow businesses with less than ten employees, who are currently exempt from the requirements of Prop. 65, to waive the exemption under the terms and conditions they set out in writing to the party who filed the 60-day notice and the Attorney General. This will allow the business to settle a case and avoid funding expensive litigation by large retailers who have a contractual indemnity agreement with that business."

Proposition 65: In 1986, California voters approved a ballot initiative, the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, to address their concern that "hazardous chemicals pose a serious potential threat to their health and well-being, [and] that state government agencies have failed to provide them with adequate protection..." Proposition 65 requires the state to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, currently includes approximately 800 chemicals. The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program, including an evaluation of all currently available scientific information on substances considered for placement on the Proposition 65 list.

Under Proposition 65, businesses in California are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a Proposition 65-listed chemical. Warnings can be made in many ways, including labeling a consumer product, posting signs, distributing notices, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Recent changes to Proposition 65 warning requirements: Since the original warning requirements took effect in 1988, most Proposition 65 warnings simply state that a chemical is present that causes cancer or reproductive harm, but the warning does not identify the chemical or provide specific information about how a person may be exposed or ways to reduce or eliminate exposure to it. New OEHHA regulations, adopted in August 2016 and that took full effect in August 2018, change the warning requirements in several important ways. The new warnings for consumer products will need to: include the verbiage the product "can expose you to" a Proposition 65 chemical rather than saying the product "contains" the chemical; name at least one chemical listed on the Proposition 65 list; provide the internet address for OEHHA's new Proposition 65 warnings website which provides additional information about the health effects of the chemicals on the Proposition 65 list; and, include a triangular yellow warning symbol.

Enforcement of Proposition 65: The California Attorney General's Office enforces Proposition 65. Any district attorney or city attorney (for cities whose population exceeds 750,000) may also enforce Proposition 65. In addition, any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law.

Lawsuits have been filed by the Attorney General's Office, district attorneys, consumer advocacy groups, private citizens, and law firms. Penalties for violating Proposition 65 by failing to provide warning notices can be as high as $2,500 per violation per day. State law requires any person suing "in the public interest" to enforce Proposition 65, to notify the Attorney General of the lawsuit and outcome of the case. All reports on Proposition 65 private actions must be filed electronically with the Attorney General's Office.

Businesses with fewer than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm. Even given this exemption, some small businesses, with fewer than 10 employees, have been brought into Proposition 65 lawsuits because they have an indemnity agreement with a larger retailer, where the small business is required to pay for the legal costs of defending the larger retailer while not having a pathway to resolve the lawsuit.

AB 2849 addresses this issue by allowing businesses with fewer than ten employees to waive their exemption under Proposition 65. This allows the small business to settle a case and avoid funding expensive litigation by large retailers who have a contractual indemnity agreement with that small business.

Related legislation:

1) AB 1583 (Chau, Chapter 510, Statutes of 2017). Requires the Attorney General, after reviewing the certificate of merit, filed under an action under Proposition 65, if, after reviewing the certificate of merit, they find that there is not merit to the action, to serve a letter to the noticing party and the alleged violator that the Attorney General believes there is not merit to the action. Requires the Governor's Office of Business and Economic Development (GO Biz) to post on its internet website information relating to a business's obligations under Proposition 65.

2) AB 1621 (Travis Allen, 2017). Would have required anyone bringing an action under Proposition 65 to provide the certificate of merit that is required to be provided to the Attorney General, to the alleged violator. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

3) AB 1252 (Jones, 2015). Would have prohibited any person from bringing an enforcement action against a company that employs 25 people or fewer for failure to provide a warning for an exposure to a chemical known to the state to cause cancer or reproductive toxicity, in violation of Proposition 65, unless certain conditions are met. This bill was held in the Assembly Committee on Environmental Safety and Toxic Materials.

4) AB 2361 (Jones, 2014). Would have prohibited any person from bringing an enforcement action against a company that employs 25 people or fewer for failure to provide a warning for an exposure to a chemical known to the state to cause cancer or reproductive toxicity, in violation of Proposition 65, unless certain conditions are met. This bill was held in the Assembly Committee on Environmental Safety and Toxic Materials.

5) AB 227 (Gatto, Chapter 581, Statutes of 2013). Changes the enforcement provisions of Proposition 65 by limiting recovery by private citizen enforcement action for specified types of exposure to chemicals causing cancer, or birth defects, or other reproductive harm, in those circumstances when the failure to provide clear and reasonable warnings has been remedied and a penalty has been paid.

Referral: Bills amending Proposition 65 are historically referred to the Assembly Environmental Safety and Toxic Materials Committee and the Assembly Judiciary Committee, however, given the extraordinary circumstances surrounding the COVID-19 pandemic, this bill was single referred to the Assembly Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners
Center for Environmental Health
Clean Water Action
National Resources Defense Council

Opposition

None on file.

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 2920 (Obernolte) – As Amended May 6, 2020

SUBJECT: Hazardous waste: transportation: consolidated manifesting procedures

SUMMARY: Authorizes hazardous waste generators and transporters to use consolidated manifesting procedures for retail hazardous waste, as defined, collected from retailers engaged in business in the state.

EXISTING LAW:

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

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

3) Under the HWCL, requires any person who generates, transports, or receives hazardous waste in California to use the Uniform Hazardous Waste Manifest. (HSC § 25160)

4) Defines "manifest" as a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by DTSC and that complies with all applicable federal and state regulations. (HSC § 25160)

5) Permits transporters and generators of hazardous waste to use consolidated manifesting procedures, as defined, to consolidate shipments of specified waste streams collected from multiple generators onto a single consolidated manifest. (HSC § 25160.2)

6) Requires anyone who submits incomplete or erroneous information on a completed manifest to correct the information and to submit a $20 fee to DTSC. (HSC § 25160.5)

7) Authorizes the US EPA to implement a national electronic manifest (e-manifest) system under the Hazardous Waste Electronic Manifest Establishment Act. (42 USC § 3024)

8) Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system. (HSC § 25160.01)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 2920 is a common sense bill that would allow hazardous waste transporters the ability to consolidate some commonly expired household items that are currently considered "California only" hazardous waste items. In 2002, California enacted SB 271, which consolidated and simplified the state's hazardous waste manifest laws and regulations governing the collection and transport of certain types of California regulated

hazardous wastes. The items included were used oil, antifreeze, inks, paint, dry cleaning solvents, chemical and laboratory packs. This bill seeks to expand that original list to include household bleach/cleaning products, light bulbs, pool chemicals, laundry detergent, cat litter, potting soil, and fertilizers, among others. These items are routinely picked up at retailers throughout California and transported for disposal but must be individually listed on the manifest and in its own container. This causes extra vehicle trips and other inefficiencies on both retailers and waste drivers. The passage of this bill would ensure the safe, efficient and cost-effective management of these California regulated retail hazardous wastes in a manner that is both environmentally and economically beneficial."

Hazardous waste management: Hazardous waste is a waste with properties that make it potentially dangerous or harmful to human health or the environment. The Resource Conservation and Recovery Act (RCRA) is the federal statute that regulates generators, transporters, and facilities that treat, store, or dispose of hazardous wastes (40 Code of Federal Regulations (CFR)). In regulatory terms, a waste is hazardous if it appears on a RCRA hazardous waste list or exhibits one of the four characteristics of a hazardous waste: ignitability, corrosivity, reactivity, or toxicity. "Non-RCRA hazardous wastes" are hazardous wastes regulated in the state of California, other than RCRA federally regulated hazardous wastes (22 California Code of Regulations § 66261.101). Hazardous wastes are prohibited from being disposed of in the trash, and must be properly transported and disposed of at a permitted treatment, storage, and disposal facility (TSDF) or at a recycling facility.

The Hazardous Waste Control Law (HWCL) is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federally authorized facility. Under the HWCL, the generator of a waste is responsible for determining how a waste is classified and for managing it accordingly. Once a hazardous waste determination is made, the generator is required to manifest, transport by a certified hauler, and arrange for disposal at a permitted TSDF, or other authorized facility. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. DTSC's hazardous waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.

Uniform Hazardous Waste Manifest: The Uniform Hazardous Waste Manifest is the shipping document that travels with hazardous waste from the point of generation, through transportation, to the final TSDF. Each party in the chain of shipping hazardous waste, including the generator, signs and keeps one of the manifest copies, creating a "cradle-to-grave" tracking of hazardous waste. Hazardous waste transporters (a person engaged in the offsite transportation or movement of hazardous waste by air, rail, highway, or water) in California must be registered with DTSC.

The Hazardous Waste Electronic Manifest Establishment Act was signed into law by President Obama on October 5, 2012 authorizing the US EPA to implement a national e-manifest system. The US EPA worked with states, industry, and related stakeholders to develop a national e-manifest system to facilitate the electronic transmission of the uniform manifest form and to make the use of the manifest much more effective and convenient for users. The e-manifest extends to all federally and state-regulated wastes requiring manifests. The US EPA fully implemented the e-manifest system on June 30, 2018. AB 1597 (Committee on Environmental Safety and Toxic Materials, Chapter 133, Statutes of 2019) authorizes the state's hazardous

waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system. Under the HWCL, requirements for manifest signatures are satisfied by an electronic signature and requirements to retain manifest copies are satisfied by the retention of a signed e-manifest. Transporters may continue to use paper manifests.

Consolidated manifesting: SB 271 (O'Connell, Chapter 319, Statutes of 2001) replaced milk run operations and modified manifesting with consolidated manifesting. Consolidated manifesting allows certain registered hazardous waste transporters to combine specified wastes from multiple eligible generators on a single manifest, rather than having to use a separate manifest from each generator. The generators using the consolidated manifesting procedure are exempt from filling out a hazardous waste manifest. Instead, the consolidated transporter (hazardous waste transporter who has notified DTSC of its intent to use the consolidated manifesting procedures) completes both the generator and transporter section of the manifest. Consolidated manifesting does not exempt generators from the requirements to properly characterize, handle, label, manage, and accumulate hazardous waste, and does not authorize transporters to commingle different types of hazardous wastes into the same tank or container, in accordance with US Department of Transportation regulations. The total volume or quantity of each waste stream and units of measure must be entered on the manifest at the change of each date, driver, or transport vehicle. Consolidated manifesting requires all hazardous waste generators, transporters, and permitted TSDFs to have identification numbers, which are used to identify the hazardous waste handler and track the waste from its point of origin to its final disposal.

Current non-RCRA (California-only) wastes eligible for consolidated manifesting include used oil, brake fluid, antifreeze, "paint-related" wastes, spent photographic solutions, dry cleaning solvents, asbestos, and chemicals and laboratory packs collected from K-12 schools, among others. DTSC may also specify in regulations other wastes eligible for consolidated manifesting. In order to use consolidated manifesting, the generator cannot generate more than 1,000 kilograms of hazardous waste per month. Consolidated manifesting procedures may be used for RCRA hazardous waste only if the waste is not required to be manifested pursuant to RCRA or federal regulations, and the waste is transported by a registered hazardous waste transporter. (HSC § 25160.2)

To operate under consolidated manifesting procedures, generators are required to use only transporters that have registered and notified DTSC of their intent to operate under the consolidated manifesting procedure. (HSC § 25165(a)) The transporter must agree in writing (on a consolidated manifest receipt or a separate document) to confirm to the generator that the hazardous wastes were transported to an authorized facility for appropriate treatment, except for asbestos, asbestos-containing materials, and chemicals and laboratory packs from K-12 schools, which must be transported to an authorized facility. Transporters using consolidated manifesting are required to report detailed information from each receipt on a quarterly basis to DTSC.

Retail hazardous waste: Over 400,000 retail locations in California handle a large number of diverse consumer products, some of which are not sold to consumers for a variety of reasons. These products may be donated, liquidated through secondary markets, returned through the vendor, or discarded. The process of consolidating, aggregating, and segregating retail products is sometimes managed through reverse logistics centers (RLCs) who may also facilitate financial reconciliation between the retailer and manufacturer prior to return, resale, or disposal. When discarded, the retail products that exhibit hazardous waste characteristics are subject to hazardous waste regulations.

Challenges in managing retail waste: Since 2007, state and local prosecutors and large retailers have settled enforcement actions for alleged mishandling of hazardous waste, including provisions in the settlements to promote regulatory reform. DTSC and stakeholders formed an informal Retail Waste Working Group in 2013 to facilitate dialogue and information sharing between the state and retail industry.

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. In the Workgroup's report to the Legislature, *Surplus Household Consumer Products and Wastes*, they identify a number of challenges with the regulation of hazardous waste generated by the retail sector, including: the number and variety of waste streams (some retailers report they sell 24-55 million different products); the large number of retail locations; the nature of consumer products as constantly changing (seasonal and new products); limited product and ingredient information for making a hazardous waste determination; and, limited workforce expertise to make these waste determinations.

Under current law, when retailers dispose of retail waste that is hazardous, transporters servicing California retailers must place each individual retail waste item on its own manifest and in its own container on the transporter truck. This may lead to inefficient transport of retail hazardous waste. Most states currently allow for consolidation of retail waste on a transporter truck or at a 10-day transfer station. Consolidated manifesting is unique to California non-RCRA hazardous waste, so other states are not subject to similar statewide hazardous waste laws.

AB 2920 would add retail hazardous waste collected from a retailer engaged in business in the state to the eligible wastes for consolidated manifesting. "Retail hazardous waste" is defined as unsold consumer products in its original retail sales packaging that is determined by the retailer to be waste. Once the waste determination has been made by the retailer, as required, and the retail waste has been placed on a hazardous waste manifest, the waste is subject to proper handling under the HWCL, including transportation to a certified TSDF or other authorized facility. Consolidated manifesting would not permit retail hazardous waste to be resold through an RLC. The specific retail hazardous waste products eligible for consolidated manifesting under AB 2920 are bleach and other cleaning products, pool chemicals, laundry detergent, cosmetics, personal hygiene products, nail polish, aerosol products, cat litter, potting soil, herbicides, and fertilizers. While not all of the wastes listed in AB 2920 are considered hazardous waste, the use of consolidated manifesting would require those waste streams to be treated as hazardous. The bill specifies that if consolidated manifesting procedures are used, the retail hazardous waste must be properly managed and incompatible materials must be appropriately segregated.

Related legislation:

1) AB 1597 (Committee on Environmental Safety and Toxic Materials, Chapter 133, Statutes of 2019). Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system.

2) AB 2660 (Quirk, 2018). Would have allowed a retailer to ship a surplus household consumer product to a reverse distributor without making a waste determination. This bill died in the Senate Environmental Quality Committee.

3) SB 423 (Bates, Chapter 771, Statutes of 2016). Requires DTSC to convene a Retail Waste Working Group to identify regulatory and policy directives that need clarification for managing consumer products, and adopt consensus recommendations for waste reduction opportunities.

4) SB 271 (O'Connell, Chapter 319, Statutes of 2001). Defines the consolidated manifesting procedure allowing certain registered hazardous waste transporters to combine specified wastes from multiple eligible generators on a single manifest, rather than using a separate manifest from each generator.

5) SB 606 (O'Connell, Chapter 745, Statutes of 1999). Authorizes antifreeze, oil/water separation sludge, and parts cleaning solvent, as specified, to be manifested for transportation under a modified manifesting procedure for a registered hazardous waste hauler and with the consent of the generator.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Retailers Association
Clean Harbors Environmental Services, Inc.
Southwest California Legislative Council

Opposition

None on file.

Analysis Prepared by: Rachel Silvern / E.S. & T.M. /

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 3220 (Committee on Environmental Safety and Toxic Materials) – As Introduced February 21, 2020

SUBJECT: Pesticide poisoning

SUMMARY: Extends the sunset, from January 1, 2021, to January 1, 2023, on the reporting and registration provisions of the pesticide worker protection program known as the California Medical Supervision Program (Program).

EXISTING LAW:

1) Requires each employer who has an employee who regularly handles organophosphate or carbamate pesticides (OP/CB pesticides) to contract with a physician to provide medical supervision of the employee. (California Code of Regulations (CCR), Title 3, § 6728 (b))

2) Delineates the employer's responsibilities for medical supervision for employees who regularly handle OP/CB pesticides, including requiring baseline cholinesterase tests and follow-up tests after the employee has handled OP/CB pesticides, as specified. Requires the employer to follow the recommendations of the medical supervisor concerning matters of occupational health. (CCR, Title 3, § 6728 (c))

3) Requires an employer to investigate the work practices and remove an employee from exposure to OP/CB pesticides if the employee's cholinesterase level falls below specified baseline values. (CCR, Title 3, § 6728 (d - e))

4) Requires any physician and surgeon who knows, or has reasonable cause to believe, that a patient is suffering from pesticide poisoning or any disease or condition caused by a pesticide to promptly report that fact to the local health officer. (Health and Safety Code (HSC) § 105200)

5) Requires an employer, in order to satisfy his or her responsibilities for medical supervision of his or her employees who regularly handle OP/CB pesticides, to contract with a medical supervisor registered with the Office of Environmental Health Hazard Assessment (OEHHA). (HSC § 105206 (a))

6) Requires a laboratory that performs tests ordered by a medical supervisor to report specified information, including test results, to the Department of Pesticide Regulation (DPR), which then shares this information with OEHHA and the State Department of Public Health (DPH). (HSC § 105206 (b))

7) Requires OEHHA to establish a procedure for registering and deregistering medical supervisors for the purposes of outreach and training and authorizes OEHHA to establish reasonable requirements for performance. (HSC § 105206 (f))

8) Requires OEHHA to review the cholinesterase test results. Authorizes OEHHA to provide an appropriate medical or toxicological consultation to the medical supervisor, and, in consultation with DPR and the local health officer, to provide medical and toxicological

consultation, as appropriate, to the county agricultural commissioner to address medical issues related to the investigation of cholinesterase inhibitor-related illness. (HSC § 105206 (f))

9) Requires DPR and OEHHA to prepare and publicly post an update on the effectiveness of the medical supervision program and the utility of laboratory-based reporting of cholinesterase testing for illness surveillance and prevention by January 1, 2021. (HSC § 105206 (g))

10) Sunsets the reporting and registration provisions of the medical supervision program on January 1, 2021.

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: The California Medical Supervision Program (Program) is designed to protect workers who regularly mix, load, or apply organophosphate and carbamate pesticides (OPs/CBs), which are highly toxic pesticides. Under the Program, employers must contract with a medical supervisor to monitor their workers for overexposure to OB/CB pesticides. In order for the state to ensure that the Program is effective and that workers are being protected, agricultural worker pesticide exposure data is transmitted to DPR, and OEHHA registers and provides outreach and consultation to the medical supervisors overseeing the workers' cases. These reporting and registration requirements sunset on January 1, 2021. AB 3220 extends the sunset to January 1, 2023, so that the state can continue to effectively evaluate and manage the Program.

Organophosphate and carbamate (OP/CB) pesticide exposure: According to DPR, OPs and CBs work as a pesticide by inhibiting the nerve enzyme cholinesterase, which breaks down the neurotransmitter acetylcholine, leading to the death of an insect. OPs and CBs can also affect humans by inhibiting cholinesterase. High exposure to OPs/CBs can cause a variety of acute symptoms of neurological poisoning in exposed people, including blurred vision, diarrhea, increased respiratory secretions, tremors, seizures, loss of consciousness, and death. The acute symptoms of OB/CB overexposure can sometimes mimic other illnesses, and people can be sub-clinically affected without showing major acute symptoms. Due to the potential for sub-clinical effects or misdiagnosis of the acute effects, tests for the depression of cholinesterase are essential for identifying potential overexposure.

While the use of cholinesterase-inhibiting pesticides in California has declined by nearly three-quarters since 1995, according to the most recent data, growers still applied about 4 million pounds of OBs/CBs in 2017.

California Medical Supervision Program (Program): Established in 1974, the Program is intended to protect pesticide handlers from excessive exposure to OPs and CBs. Under the Program, employers must contract with a licensed physician as a "medical supervisor" to periodically test the cholinesterase level of workers who regularly handle these pesticides. To monitor each employee, the medical supervisor establishes baseline values of cholinesterase during non-exposure periods, and then periodically measures cholinesterase activity levels while the worker handles OPs/CBs. If the employee's cholinesterase is depressed below certain levels, the employer must take immediate specified actions to reduce continued exposure, such as promptly retesting the employee, evaluating the employee's work practices, or immediately removing the employee from further exposure.

Reporting requirements: While the Program had been in existence for more than 30 years, prior to 2010, the state received very little information from the field to determine whether the Program was effective. However, Assembly Bill (AB) 1963 (Nava, Chapter 369, Statutes of 2010) added HSC § 105206, which requires laboratories that conduct cholinesterase tests as a part of the Program to report test results to DPR. The results are then analyzed by DPR and OEHHA, in consultation with DPH. These provisions were meant to give the state a better idea of whether workers are actually being protected in the field and whether the Program is working as intended.

Program analysis: AB 1963 also required, by December 31, 2015, DPR and OEHHA, in consultation with DPH, to prepare a report on the effectiveness of the medical supervision program and on the utility of laboratory-based reporting of cholinesterase testing for pesticide illness surveillance and prevention. AB 1963 stated that the report may include recommendations to the Legislature that DPR and OEHHA deem necessary.

DPR and OEHHA submitted the resultant report, *"The Report to the California Legislature: California's Cholinesterase Test Results,"* in December 2015, which found that overall the Program appears effective in protecting agricultural workers who handle cholinesterase-inhibiting pesticides. The report did find, however, that based on the data submitted from 2011-2013, the utility of the data analysis is hampered by the inclusion of thousands of records from individuals who are not in the Program, and by missing data on the purpose of the cholinesterase test. DPR and OEHHA laid out specific "future directions," or actions that the two entities will take to improve the Program and improve the utility of the data collected. DPR and OEHHA also made two recommendations, which required legislation, for Program improvement: 1) Cholinesterase reporting should continue at least through December 31, 2018, so that DPR and OEHHA can obtain additional data with clearer information on the purpose of the test and to allow further evaluation of the Program; and, 2) Transferring cholinesterase reporting responsibilities from the laboratories to the medical supervisors may ultimately be a more efficient way to implement the Program. The report also recommended enhanced outreach and training activities to medical supervisors to increase their understanding of the Program.

Program updated: In response to DPR and OEHHA's report, the legislature passed, and the governor signed, AB 2892 (ESTM, Chapter 475, Statutes of 2016), which extended the sunset on the data reporting requirements from January 1, 2017, to January 1, 2021; updated the information that was required to be reported; transferred the responsibility of reporting the cholinesterase test results and related information from laboratories to medical supervisors; required OEHHA to establish a procedure for registering and deregistering medical supervisors and to establish requirements for their performance; codified the requirement that an employer of employees who regularly handle pesticides must contract with a medical supervisor registered with OEHHA; and, required DPR and OEHHA to prepare and publicly post an update on the effectiveness of the medical supervision program and the utility of laboratory-based reporting of cholinesterase testing for illness surveillance and prevention by January 1, 2021.

AB 3220 extends the sunset on the reporting and registration requirements under the Program from January 1, 2021, to January 1, 2023. This will give the legislature time to review DPR and OEHHA's update on the effectiveness of the program, which is due on January 1, 2021, before considering eliminating or further extending the sunset or making programmatic updates.

Related legislation:

1) AB 2892 (ESTM, Chapter 475, Statutes of 2016). Updated and enhanced the Program by extending the sunset on the requirement for laboratories to transmit cholinesterase test results to the state; requiring OEHHA to register medical supervisors; and, requiring medical supervisors to report depressions in cholinesterase levels as a pesticide illness.

2) AB 1963 (Nava, Chapter 369, Statutes of 2010). Required clinical laboratories that perform cholinesterase testing for the purpose of determining workers' pesticide exposure to electronically report test results to DPR.

3) AB 1530 (Lieber, 2007). Would have required clinical laboratories that perform cholinesterase testing for the purpose of determining workers' pesticide exposure to electronically report test results to DPR. This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Rural Legal Assistance Foundation (CRLAF)
Natural Resources Defense Council (NRDC)

Opposition

None on file.

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

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 3261 (Committee on Environmental Safety and Toxic Materials) – As Amended May 4, 2020

SUBJECT: Hazardous waste: small quantity generator

SUMMARY: Updates terms within the state Hazardous Waste Control Law (HWCL) to conform to recent changes in federal hazardous waste regulation promulgated by the United States Environmental Protection Agency (US EPA) under their Generator Improvement Rule (GIR).

EXISTING LAW:

1. Establishes the national hazardous waste management program under Subtitle C of the Resources Conservation and Recovery Act (RCRA). (42 United States Code § 6901 et seq.)

2. Creates the HWCL which authorizes DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code § 25100 et. seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: In May 2017, the US EPA's GIR went into effect nationwide; however, it is not yet in effect in California. This is because, while California is authorized to implement RCRA, it must first adopt the GIR. DTSC is finalizing the regulatory changes needed to conform to the GIR and AB 3261 makes the statutory changes necessary to conform to the federal changes. This bill is necessary to ensure that those generators of hazardous waste, especially those that operate in multiple states, have clear and consistent rules and regulations to follow.

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

California Hazardous Waste Control Law: The HWCL is the state's program that implements and enforces federal hazardous waste law in California. The HWCL covers the entire management of hazardous waste, from the point that the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility. Statute directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. DTSC's hazardous waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.

Federal hazardous waste generator rule: The federal hazardous waste generator regulatory program was originally promulgated in 1980. Over the course of the last decades, the US EPA, through experience with implementing the program, and in various meetings, correspondence, and discussions with the states and the regulated community, has become aware of the need for more clarity, consistency, and flexibility. Many of these issues were identified in a 2004 program evaluation of the hazardous waste generator program conducted by the US EPA. In 2013, a separate US EPA program evaluation addressing hazardous waste determinations also identified a number of concerns related to generators being able to make a proper hazardous waste determination.

After consolidating the feedback from the regulated community, states, and other stakeholders, US EPA developed a proposal to improve the entire hazardous waste generator program to strengthen environmental protection while ensuring businesses have the flexibility and certainty they need to successfully operate. The proposed rule was published in the *Federal Register* (FR) on September 25, 2015 (80 FR 57918).

The US EPA Administrator signed the final Hazardous Waste Generator Improvements Rule (GIR) on October 28, 2016 and it was published in the FR on November 28, 2016. The GIR finalizes a much-needed update to the hazardous waste generator regulations to make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed, and close important gaps in the regulations. In addition to finalizing key flexibilities, the GIR enhances the safety of facilities, employees, and the general public by improving hazardous waste risk communication and ensuring that emergency management requirements meet today's needs.

Implementing the GIR in California: On May 30, 2017, the US EPA's Hazardous Waste GIR went into effect. However, because California is an authorized state the GIR does not take effect in California until DTSC adopts the rule, or parts thereof, via the rulemaking process.

DTSC will adopt some portions of the GIR. To accomplish this, DTSC will conduct a non-substantive (Section 100) rulemaking that will: adopt regulations from the GIR that are more stringent than California's hazardous waste generator regulations (these regulations are considered mandatory provisions) and re-organize California's hazardous waste generator regulations to align with the federal re-organization. DTSC is required to adopt provisions of the rule that are identified as more stringent than US EPA's previous regulations and are also more stringent than California's current hazardous waste laws and implementing regulations. These provisions are considered mandatory because DTSC must adopt them to maintain authorization to administer California's hazardous waste program in lieu of the federal program pursuant to RCRA.

In addition to the changes in state regulation, state law needs to be updated to conform to the changes made by the GIR. AB 3261 updates state law to conform to the US EPA's GIR and will conform to the changes to state regulations being adopted by DTSC that conform to the GIR.

Related legislation:

AB 1597 (ESTM, Chapter 133, Statutes of 2019). Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA electronic manifest system.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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