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California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS



Chief Consultant
Josh Tooker

Senior Consultant
Paige Brokaw
Shannon McKinney

Committee Secretary
Pia Estrada

BILL QUIRK
CHAIR

AGENDA

Tuesday, June 26, 2018
1:30 p.m. -- State Capitol, Room 444

SPECIAL ORDER OF BUSINESS

1. SB 212 Jackson Solid waste: pharmaceutical and sharps waste stewardship.

HEARD IN SIGN-IN ORDER

2. SB 966 Wiener Onsite treated nonpotable water systems.
3. SB 998 Dodd Discontinuation of residential water service: urban and community water systems.
4. SB 1215 Hertzberg Provision of sewer service: disadvantaged communities.
5. SB 1263 Portantino Ocean Protection Council: Statewide Microplastics Strategy.
6. SB 1422 Portantino California Safe Drinking Water Act: microplastics.
7. SB 1481 Hill Structural pest control: certification: fumigation: penalties.
8. SJR 22 Hueso Tijuana River Valley.

PROPOSED CONSENT

9. SB 1054 Hertzberg Santa Susana Field Laboratory cleanup.
10. SB 1133 Portantino Water quality control plans: funding.

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 212 (Jackson) – As Amended June 18, 2018

SENATE VOTE: Not relevant

SUBJECT: Solid waste: pharmaceutical and sharps waste stewardship

SUMMARY: Requires manufacturers that sell covered products (drugs or sharps) in the state to individually or with other manufacturers develop and implement a statewide pharmaceutical and sharp stewardship plan for the collection and proper disposal of home generated pharmaceutical and sharps waste. Requires the Department of Resources, Recycling and Recovery (CalRecycle) to oversee and enforce the stewardship plan (Plan). Specifically, **this bill:**

- 1) Defines "authorized collector" as a person or entity that has entered into an agreement with a program operator to collect covered products, including, but not limited to, a person or entity registered with the United States Drug Enforcement Administration (US DEA) to collect controlled substances for the purposes of destruction; a law enforcement agency; an entity authorized by the State Board of Pharmacy (Board) or the Department of Public Health (CDPH) to provide an alternative collection mechanism for covered products that are not controlled substances; and, retail pharmacies.
- 2) Defines "covered drug" as a drug, including a brand name or generic drug, sold, offered for sale, or dispensed in the state in any form, including, but not limited to, prescription and nonprescription drugs approved by the United States Food and Drug Administration (FDA); a drug marketed as an over-the-counter drug; a drug in a medical device; and, a drug for veterinary use.
- 3) Defines "covered manufacturer" as a person, corporation, or other entity engaged in the manufacture of covered products sold, offered for sale, or introduced into the State of California.
- 4) Defines "covered product" as a covered drug or home-generated sharps waste.
- 5) Defines "Department" as CalRecycle.
- 6) Defines "drug" as an article recognized in the official United States pharmacopoeia, the official national formulary, the official homeopathic pharmacopeia of the United States, or any supplement of the formulary or those pharmacopoeias; a substance intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; a substance, other than food, intended to affect the structure or any function of the body of humans or other animals; or, a substance intended for use as a component of any substance specified in the bill.
- 7) Defines "pharmaceutical and sharps stewardship organization" as an organization established by a group of covered manufacturers to develop, implement, and administer a stewardship program.

- 8) Defines "pharmaceutical and sharps stewardship plan (Plan)" as the plan for collecting and properly managing covered products that is developed by a covered manufacturer or pharmaceutical and sharps stewardship organization.
- 9) Defines "pharmaceutical and sharps stewardship program" as a stewardship program for the collection, transportation, and disposal of covered products.
- 10) Defines "program operator" as a covered manufacturer, or stewardship organization on behalf of a group of covered manufacturers, that is responsible for operating a stewardship program.
- 11) Defines "retail pharmacy" as an independent pharmacy, a supermarket pharmacy, a chain pharmacy, a hospital pharmacy or clinic pharmacy, or a mass merchandiser pharmacy possessing a license from the Board to operate a pharmacy.
- 12) Defines "sharps" as hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.
- 13) Requires a covered manufacturer, no later than April 1, 2019, to provide a list of covered products, and a list and description of any drugs or sharps that are not covered products, that it sells or offers for sale in the state to the Board and CDPH.
- 14) Requires a retail pharmacy, no later than April 1, 2019, that sells a drug under its own label to provide notification to the Board and CDPH identifying the covered manufacturer from which the retail pharmacy obtains that drug.
- 15) Requires the Board and CDPH to verify the information received from covered manufacturers and retail pharmacies and within six months of receiving that information, provide it to CalRecycle.
- 16) Provides that a covered manufacturer is not in compliance with this bill and is subject to penalties if, on or after July 1, 2020, it sells a covered product that is not subject to a Plan.
- 17) Requires a program operator to do all of the following: promote its stewardship program to ultimate users by placing signage on covered drug collection receptacles and sharps collection containers; provide outreach materials for pharmacies and pharmacists; provide outreach materials for ultimate users; prepare additional outreach materials as needed; and, encourage ultimate users to separate products that are not covered products from covered products, when appropriate, before taking covered products to a collection site.
- 18) Requires a program operator, within six months of adoption of regulations by CalRecycle, to submit a Plan for the establishment and implementation of a pharmaceutical and sharps stewardship program to CalRecycle, for approval.
- 19) Requires CalRecycle to approve a Plan submitted to it that meets the requirements of this bill.
- 20) Authorizes CalRecycle, before approving a Plan, to require a program operator to submit its proposed Plan to the Board, CDPH, the Department of Toxic Substances Control (DTSC), or any other state agency with authority or expertise relative to the Plan.

- 21) Requires, in order to be complete, a Plan to do all of the following: identify and provide contact information for the stewardship organization, and each participating covered manufacturer, and identify each covered product sold by each covered manufacturer; identify and provide contact information for the authorized collectors; demonstrate adequate funding for all administrative and operational costs of the stewardship program, to be borne by participating covered manufacturers; provide for a handling, transport, and disposal system that complies with state and federal laws; and, provide for a collection system that complies with the requirements of the bill and meets both of the following for authorized collection sites in each county in which the Plan will be implemented: provides a minimum of five authorized collection sites or one authorized collection site per 50,000 people, whichever is greater, and provides for a reasonable geographic spread of authorized collection sites.
- 22) Requires a program operator, at least 120 days before submitting a Plan to CalRecycle, to notify each potential authorized collector in the county or counties in which it operates of the opportunity to serve as an authorized collector.
- 23) Requires a retail pharmacy to make a reasonable effort to serve as an authorized collector. Requires a retail pharmacy chain, if there are not at least five collection sites in a county, to have at least fifteen percent of its store locations serve as authorized collectors.
- 24) A Plan shall require an authorized collection site to accept all covered products from ultimate users during the hours that the authorized collector is normally open for business.
- 25) Requires CalRecycle, within 30 days of receiving a Plan from a program operator, to determine if a Plan is complete and notify the submitting program operator.
- 26) Requires CalRecycle, within 90 days of receiving a complete Plan, to review the completed Plan and approve, disapprove, or conditionally approve the Plan.
- 27) Requires a program operator to initiate operation of an approved stewardship program no later than 270 days after approval of the Plan by CalRecycle.
- 28) Requires CalRecycle to make all Plans submitted to it available to the public, except for proprietary information in the Plan.
- 29) Requires a program operator, on or before an unknown date, to submit to CalRecycle an initial stewardship program budget for the first calendar year of operation.
- 30) Requires a program operator, on or before an unknown date, and each year thereafter, to prepare and submit to CalRecycle both of the following: a written report describing the stewardship program activities during the previous reporting period of one year, and a written program budget for stewardship program implementation for the upcoming calendar year.
- 31) Requires CalRecycle to review the annual report and program budget, and, within 90 days of receipt, to approve, disapprove, or conditionally approve the annual report and program budget.
- 32) Requires the program operator to keep minutes, books, and records that clearly reflect the activities and transactions of the program operator's stewardship program and requires the

program operator to be audited by an independent certified public accountant at least once each calendar year. Requires the program operator to provide the audit to CalRecycle.

- 33) Requires each covered manufacturer, individually or through a stewardship organization, to pay all administrative and operational costs associated with establishing and implementing the stewardship program, including the cost of collecting, transporting, and disposing of covered products, as well as the regulatory and oversight costs of CalRecycle and any other state agency involved in this regulatory program.
- 34) Requires CalRecycle, on or before an unknown date, and at least annually thereafter, to post on its Internet Web site a list of covered manufacturers, stewardship organizations, authorized collections sites, retail pharmacies, and retail pharmacy chains in compliance with the stewardship program.
- 35) Authorizes CalRecycle to impose a civil penalty on any covered manufacturer, stewardship organization, authorized collector, retail pharmacy, or retail pharmacy chain that sells, offers for sale, or provides a covered product in violation of the provisions of this bill. Prohibits the violation from exceeding one thousand dollars (\$1,000) per day unless the violation is intentional, knowing, or reckless, in which case the civil penalty shall not exceed five thousand dollars (\$5,000) per day.
- 36) Requires all handling, transport, and disposal undertaken as part of a stewardship program to comply with applicable state and federal laws, including, but not limited to, regulations adopted by the US DEA.
- 37) Provides that this bill shall preempt a local stewardship program for covered products enacted by an ordinance that has an effective date on or after April 18, 2018.
- 38) Allows a local stewardship program enacted prior to April 18, 2018 to continue to operate; however, prohibits that local stewardship program and its participants from receiving any funds from CalRecycle that it received pursuant to a pharmaceutical and sharps stewardship program, unless that local stewardship program dissolves.
- 39) Requires CalRecycle, on or before an unknown date, to adopt regulations for the administration of this bill.

EXISTING LAW:

- 1) Pursuant to the Medical Waste Management Act (MWMA), requires CDPH to regulate the management and handling of medical waste and authorizes off-site medical waste treatment facilities, oversees transfer stations, approves alternative treatment technologies, and acts as the local enforcement agency in 25 jurisdictions where local agencies have elected not to conduct their own enforcement. (Health and Safety Code (HSC) § 117600, et seq.)
- 2) Exempts household pharmaceutical waste from hazardous waste classifications and as medical waste. (HSC § 117700)
- 3) Defines "home-generated sharps waste" as hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of

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

- 4) Defines "medical waste" to include, among other things, pharmaceutical waste, which includes a prescription or over-the-counter human or veterinary drug, including, but not limited to, a drug as defined in the Federal Food, Drug, and Cosmetic Act. (HSC § 117690 and § 117747)
- 5) Prohibits a person from hauling medical waste unless the person is a registered hazardous waste hauler; a mail-back system approved by the United States Postal Service; a common carrier allowed to haul pharmaceutical waste; a small- or large-quantity generator transporting limited quantities of medical waste with an exemption; or, a registered trauma scene waste practitioner. (HSC § 117900)
- 6) Requires a person that generates or treats medical waste to ensure that the medical waste is treated by one of the following methods rendering it solid waste:
 - a. Incineration at a permitted medical waste treatment facility in a controlled-air, multichamber incinerator, or other method of incineration approved by CDPH which provides complete combustion of the waste into carbonized or mineralized ash;
 - b. Treatment with an alternative technology approved by CDPH that treats the waste with temperatures in excess of 1300 degrees Fahrenheit;
 - c. Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with specified operating procedures for steam sterilizers or other sterilization; or,
 - d. Other alternative medical waste treatment methods which are approved by CDPH and result in the destruction of pathogenic micro-organisms. (HSC § 118215(a))
- 7) Prohibits the disposal of home-generated sharps waste in the trash or recycling containers, and requires that all sharps waste be transported to a collection center in a sharps container approved by the local enforcement agency. (HSC § 118286)
- 8) Authorizes a city and a county Household Hazardous Waste (HHW) element to include a program for the safe collection, treatment, and disposal of sharps waste generated by households. (Public Resources Code (PRC) § 41502)
- 9) Requires manufacturers of self-injectable medications to annually submit a plan describing how it provides for the safe collection and proper disposal of medical sharps. (PRC § 47115)
- 10) Requires pharmaceutical takeback programs to be in compliance with the Controlled Substances Act and its implementing regulations. (21 U.S.C. § 801-971 and 21 Code of Federal Regulations 1300-1321)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "For too long, our communities have dealt with the impacts from improperly disposed pharmaceutical drugs and medical sharps. The cost of inaction has been enormous to our public health, environment, water quality, and public safety. This bill establishes an industry-run and funded program, overseen by the state, that will ensure we provide convenient locations for Californians to safely dispose of their unused prescriptions and other medical waste. This is an important step to finally getting unused and discarded medical products out of our public spaces, municipal waste systems, and our environment."

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

Medical Waste Management Act (MWMA): The MWMA was created to comprise a single, integrated, and complementary approach to the storage, treatment, transportation, and disposal of medical waste. Medical waste is defined as waste materials generated at health care facilities, such as hospitals, clinics, physician's offices, dental practices, blood banks, and veterinary hospitals/clinics, as well as medical research facilities and laboratories. Under the MWMA, pharmaceutical waste has to be incinerated at a permitted medical waste treatment facility; treated at temperatures in excess of 1300 degrees Fahrenheit; or, steam sterilized at a permitted medical waste treatment facility. The MWMA is administered by CDPH.

Scope of the problem: According to the U.S. Centers for Medicare & Medicaid Services, approximately \$275.9 billion in prescription drugs were predicted to be prescribed in the U.S. in 2014. By 2020, that number is projected to reach \$379.9 billion. An estimated 10 to 33 percent of prescribed medicines are not consumed. With a lack of safe, secure, and convenient disposal options, consumers traditionally turn to trashing, flushing, or storing these medicines at home.

Medical sharps: An estimated one million Californians inject medications outside traditional health care facilities, which generate approximately 936 million sharps each year, and the numbers of patients using injectable medications will continue to grow because it is an effective delivery method for various medications. The most common home use of sharps is to manage diabetes. Other reasons to inject at home include hepatitis, multiple sclerosis, infertility, migraines, allergies, hemophilia, and medications for pets. According to statistics from CalRecycle, 43% of all self-injectors throw needles in the trash.

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

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

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

California Board of Pharmacy (Board): The Board regulates the pharmacy practice of pharmacists, interns, pharmacy technicians, and exemptees (those who are involved with the wholesale or manufacturer of drugs and medical devices, but not required to hold a pharmacist license). The Board also regulates all types of firms that distribute prescription drugs and devices in California, including community pharmacies and those located in hospitals, clinics, home and community support services facilities, and out-of-state mail order pharmacies that fill prescriptions and deliver them in California.

Confusion over where/how to dispose of household pharmaceutical and sharps waste: The guidance by the federal and state government is not clear on how consumers should dispose of their sharps and pharmaceutical waste.

According to the FDA website, it states that there are two ways for consumers to dispose of medicine, depending on the drug:

"Flushing medicines: Because some medicines could be especially harmful to others, they have specific directions to immediately flush them down the sink or toilet when they are no longer needed. Check the label or the patient information leaflet with your medicine. Or consult the FDA's list of medicines recommended for disposal by flushing.

Disposing medicines in household trash: Almost all medicines can be thrown into your household trash. These include prescription and over-the-counter (OTC) drugs in pills, liquids, drops, patches, creams, and inhalers."

However, CalRecycle's website on managing household pharmaceutical and sharps waste states the following:

"There are no laws that forbid households from putting medication into the trash. Household waste is exempt from classification as hazardous waste and as medical. If take-back programs or mail back options are not available to you, and if your local household hazardous waste facility does not accept pharmaceuticals, then as a last resort, disposing nonchemotherapy medication in the trash is probably your best option. Mix medicines (do not crush tablets or capsules) with an unpalatable substance such as dirt, kitty litter, or used coffee grounds; place the mixture in a container such as a sealed plastic bag; then throw the container in your household trash. Wastewater treatment plants are not designed to remove pharmaceuticals and studies show exposure to even low levels of drugs has negative effects on fish and other aquatic species, and also may negatively affect human health. Thus, we recommend households do not dispose of waste medication down the drain or down the toilet. This includes any prescription or nonprescription substances intended to be swallowed, inhaled, injected, applied to the skin or eyes, or otherwise absorbed.

Note: Due to security concerns, the FDA lists a small number of drugs that it recommends flushing including Oxycodone, Duragesic (Fentanyl) patch, Demerol, Methadone, Morphine, and Percocet."

In summary, the FDA says to trash most medications and flush some of the rest, and CalRecycle says that it is ok to trash most medications; however, specific packaging instructions need to be followed before placing in the garbage and do not flush them; however, it is ok to flush the medications that the FDA says to flush, which is clearly confusing.

Extended Producer Responsibility (EPR): Extended Producer Responsibility (EPR), also known as Product Stewardship, is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public; while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond. CalRecycle has developed an EPR framework and checklists to guide statutory proposals that would allow CalRecycle and other stakeholders to implement product stewardship programs.

Current State EPR Programs: There are several statewide EPR programs, all of which are overseen by CalRecycle. They include: Carpet Materials Management (Carpet), Paint Product Management (Paint), and Mattress Product Management (Mattresses). One important distinction between these EPR programs and SB 212, for the current state EPR programs the focus is not only on collection of the waste but ways to recycle these wastes. However, for pharmaceutical and sharps waste, they cannot be recycled and must be destroyed.

Carpet: California is the first state to establish a private-sector designed and managed statewide EPR carpet recycling program. This program, started in 2011, follows EPR principles for the proper management of discarded carpets. It also includes a long-term, sustainable funding plan based on manufacturer assessments. The amount of the assessment shall be sufficient to meet, but not exceed, the anticipated cost of carrying out the plan. The law allows flexibility in the method and associated costs in implementing the plan, provided goals are met.

Paint: California was the second state in the nation to enact an industry-led, statewide program to reduce the generation of leftover paint, promote its reuse, and properly manage unwanted leftover paint. The Paint Stewardship Program follows EPR principles to ensure that leftover paint is properly managed in a manner that is sustainably funded by an assessment on paint sold by manufacturers into the state.

Mattresses: It is estimated that millions of mattresses and box springs reach the end of their lives in California every year. The bulky nature of mattresses and the lack of affordable, convenient recycling options have resulted in significant illegal dumping costs to local jurisdictions throughout the state.

The Mattress EPR Program established an industry-run, statewide program to increase the recovery and recycling of mattresses at their end-of-use funded by a charge added to the purchase price of each mattress sold in the state.

Key differences between the Mattress EPR program and the pharmaceutical/sharp EPR program envisioned in SB 212: The Mattress EPR Program was enacted a few years after the first EPR programs and that statute reflected changes based upon lessons learned with the earlier EPR programs. While both the Mattress EPR program and SB 212 use EPR principles, there are several key differences.

First, the Mattress EPR program uses a broader definition of "manufacturer" that includes not only the manufacturer, but the distributor and the importer of the mattress into the state if there is not a manufacturer. However, SB 212 only includes the manufacturer of a covered product.

Second, under the Mattress EPR program, a retailer is prohibited from selling a mattress into the state unless the retailer and manufacturer are complying with the mattress EPR program. SB 212 does not have a product prohibition (it is important to note that SB 212 is focused on medications).

Third, the Mattress EPR program has detailed language that requires the Mattress Stewardship Organization to set an amount of a mattress recycling charge that is to be added to the purchase price of a mattress and that that charge shall be sufficient to fund the program. Additionally, the Mattress Stewardship Organization, as part of their annual budget to be submitted to CalRecycle, shall include the amount of the mattress recycling charge and itemization of costs. In SB 212, the language states that the funding must be sufficient to cover the Plan's costs; however, there is not much of detail on what the funding is or who pays in the budget that is submitted to CalRecycle.

Joint Legislative Audit Committee (JLAC) audit of pharmaceutical and sharps waste: In 2016, JLAC approved Assemblymembers Ting and Grays audit request that the State Auditor provide independently developed and verified information related to CDPH, CalRecycle, and a selection of counties' waste disposal standards for home-generated sharps and pharmaceutical waste. In May 2017, the audit was submitted to the Legislature and here is a summary of the audit's recommendations:

- 1) To foster consumers' proper disposal of sharps and pharmaceutical waste, the Legislature should provide CalRecycle statutory oversight responsibility for home generated sharps and pharmaceutical waste disposal and provide CalRecycle additional resources to the extent that it can justify the need. This responsibility should include the following actions:
 - a) Developing and implementing a public education campaign about home generated sharps pharmaceutical waste disposal. CalRecycle should coordinate this campaign with local, state, and, to the extent possible, federal agencies to ensure consumers receive consistent guidance regarding proper disposal methods;
 - b) Maintaining an up-to-date, well-publicized, and accessible statewide list of free sharps and pharmaceutical waste collection sites. CalRecycle should create this list by either improving its FacIT database or by establishing a new database, potentially using Recyclewhere.org as a model;

- c) Increasing consumers' access to proper disposal methods in underserved locations. It could increase access by subsidizing prepaid mail-back options or by encouraging municipalities to include the collection of sharps and pharmaceutical waste in their contracts with waste haulers;
 - d) Determining the characteristics of other government programs, such as New York State's consumer education program, that might benefit California; and,
- 2) To increase in-state options for processing California's home-generated pharmaceutical waste, the Legislature should expressly authorize municipal solid waste incinerators to burn limited quantities of home-generated pharmaceutical waste, but only after considering environmental impacts. To ensure consistency throughout the State, the Legislature should adopt standard requirements for counties to follow when implementing EPR programs. These requirements should limit any additional costs the programs may impose on consumers.

Existing Pharmaceutical/Sharp EPR programs: Currently, there are a few local pharmaceutical and sharps EPR programs, including a program in Alameda County.

Alameda County: The Alameda County Board of Supervisors passed the Alameda County Safe Drug Disposal (SDD) Ordinance on July 24, 2012. The Alameda County Board of Supervisors passed the Alameda County Safe Consumer-Generated Sharps Disposal (SSD) Ordinance on November 15, 2015, adding Chapter 6.54 to the Alameda County General Ordinance Code. The SSD Ordinance places certain requirements on pharmaceutical and Sharps manufacturers that sell or distribute products in Alameda County usually intended for administration outside of a healthcare setting. The SSD Ordinance took effect December 18, 2015.

The SDD and SSD requires pharmaceutical producers to develop a product stewardship program (Program) to finance and manage the collection, transportation, treatment, and disposal of consumer-generated Sharps waste within Alameda County including unincorporated areas. The costs of implementing the program will be allocated in a fair and reasonable manner, such that the portion of costs paid by each producer is reasonably related to the amount of sharps and medication usually injected outside a healthcare setting that producer sells in the County. The program will accept sharps regardless of who produced them or their compatibility with producers' drugs, unless excused from this requirement by the Alameda County Department of Environmental Health.

According to the Alameda County website, "There are now 41 collection sites throughout Alameda County where residents can drop-off their unwanted prescription and OTC drugs, including 40 sites that can accept Schedule II-IV Controlled Substances. This updated information includes 37 sites now managed by the Alameda MED-Project Stewardship Organization, as well as a pair of Walgreen's stores that initiated an independent collection program during 2016."

Ordinances similar to Alameda County's have been enacted in the City and County of San Francisco, Marin County, San Mateo County, and Santa Clara County.

New York: In June 2018 the New York State Legislature passed S.9100 (Hannon) to require certain manufacturers to operate a drug take back program to accept and dispose of covered drugs and provides that, in any city with a population of 125,000 or more, regulations shall be established for a distribution plan that ensures that on-site collection receptacle or drobox placement shall be reasonably accessible to all residents.

Issues for the author and committee to consider: While this bill has many program details, the author and committee may wish to carefully examine the language and should the committee pass the bill, the author may wish to consider continuing to work on the following aspects of the bill.

How to ensure that this EPR program will be effective? This is a key component of any EPR program. SB 212 uses a couple of key components: first, it requires program promotion; in essence, getting the word out about how and where to properly dispose of used pharmaceuticals and sharps and a convenience standard, which is a floor of having at least five sites in a county or one per 50,000 people, whichever is greater, which is to make it convenient for the consumer and for the program operator to drop off and collect covered drugs. Other approaches to consider include using the convenience standard within the bill, and allowing CalRecycle, based on how the EPR program is working, to adjust this standard. This type of adjustment will allow the program to be flexible in a way that acknowledges that California is a very diverse state and may require different approaches in different parts of the state. Another approach is to require each pharmacy in the state to accept pharmaceutical and sharps waste, either on-site or very near to their store.

Definition of covered manufacturer: SB 212 defines a covered manufacturer as a person, corporation, or other entity engaged in the manufacture of covered products sold, offered for sale, or introduced into the State. However, what if a manufacturer is located outside of California? Can CalRecycle compel an out-of-state manufacturer to comply with the provisions of this bill? Other EPR programs under CalRecycle's purview, including mattresses, include a definition of manufacturer that also includes the importer of the product into the state. This is one way to ensure that the product is covered in the event an out-of-state manufacturer chooses not to comply and the State is unable to enforce. *This issue could use some further exploring, especially since the entire program is funded by the manufacturer. Therefore, getting this right could be vital to ensuring the efficacy of the program.*

Definition of retail pharmacy chain: The bill has a definition for retail pharmacy, but not a retail pharmacy chain; however, the bill imposes specific requirements on retail pharmacy chains. Under certain circumstances, the bill compels retail pharmacy chains to ensure that at least 15 percent of their stores in a given county accept covered products. However, the definition of retail pharmacy includes an independent pharmacy, a supermarket pharmacy, a chain pharmacy, and a hospital or clinic pharmacy. *The author may wish to clarify this definition, which will make it clear as to which pharmacies are "chain" pharmacies and therefore could be compelled to participate, as well as ensure that CalRecycle knows who must comply with what.*

Overlap with local programs: Though SB 212 preempts local governments from adopting ordinances for pharmaceutical and sharps EPR programs as of April 18, 2018, it is unclear how the state EPR program will operate within jurisdictions that already have enacted similar ordinances. The bill does not preclude the state program from operating within jurisdictions that already have ordinances, and the bill specifically prohibits existing local EPR programs from

receiving funding from the statewide program. Presumably, the state program could operate collection sites within all jurisdictions of the state, regardless of whether or not there is a local program. However, it seems possible that the intent is to allow the local programs to continue and the state EPR program would only operate in those areas that do not have a local program. At the very least, it is unclear how this would work as currently drafted. *The author may wish to consider how to reconcile this issue.*

Enforcement: The bill contains a penalty provision of up to \$1,000 or up to \$5,000, depending on the type of violation. The bill also allows for enforcement against a covered manufacturer, stewardship organization, authorized collector, retail pharmacy, or retail pharmacy chain. *Given the lack of clarity with some of the definitions of these categories, the author may wish to continue to work on this to ensure that each entities role is clear and that CalRecycle has a clear understanding of who to enforce against in the event that becomes necessary.* Additionally, it is important to note that the other EPR programs under CalRecycle include a product ban as part of enforcement. However, there is a difference in banning the sale of carpet, paint, and mattresses versus banning the sale of pharmaceuticals and sharps. *Therefore, instead of a product ban, the author may wish to consider whether or not the penalties in the bill are enough to ensure compliance.*

SB 212 applies to drugs for both human use and animal use. Should it? The EPR program envisioned in this bill includes drugs for use for both humans and animals. In addition to acquiring medications for pets from a veterinarian versus a local drug store, there is also the consideration of use of drugs on animals in an agriculture setting, including the use of medicated feedstock. While some local ordinances have included both human and animal drugs in their programs, when looking at California, it is quite diverse, including a very large and diverse farming and agriculture industry. *The author and Committee may wish to consider whether or not it is appropriate to include drugs for use on animals or just focus on establishing an effective statewide EPR program on human drugs and sharps.*

Another area to explore: The bill, on page 11, authorizes CalRecycle to ask the program operator to provide the submitted Plan to the Board, CDPH, and DTSC before CalRecycle reviews this plan. *The author and committee may wish to consider requiring CalRecycle to require the program operator to give the Plan to these other agencies first, primarily because these agencies have the regulatory responsibility over medical waste, controlled substances, hazardous waste and hazardous and medical waste haulers, where CalRecycle does not have that expertise or authority.*

Related legislation:

- 1) AB 2039 (Ting, 2016). Would have required the development and implementation of industry-generated plans to collect and recycle home-generated sharps. Held in the Assembly Environmental Safety and Toxic Materials Committee.
- 2) SB 1229 (Jackson, Chapter 238 Statutes of 2016). Provides qualified immunity from civil and criminal liability of participating entities that take reasonable care to ensure the health and safety of consumers and employees when maintaining secure drug take-back bins on their premises.

- 3) AB 1159 (Gordon, 2015). Proposed establishing a pilot product stewardship program for the management of medical sharps and household primary batteries. Held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors
Butte County Board of Supervisors
California Association of Environmental Health Administrators
California State Association of Counties
California Hospital Association
California Product Stewardship Council
California Resource Recovery Association
California School Employees Association, AFL-CIO
Californians Against Waste
Central Contra Costa Sanitary District
City of Chula Vista
City of Santa Monica
City of Sunnyvale
City of Torrance
City of West Hollywood
Communities Against Abuse of Prescription Drugs
County Health Executives Association of California
County of Sacramento
County of Santa Clara
County of Mendocino
County Sanitation Districts of Los Angeles County
Covanta
Del Norte Solid Waste Management Authority
Delta Diablo
Dublin San Ramon Public Services District
Gallinas Watershed Council
GreenWaste
Las Gallinas Valley Sanitary District
League of California Cities
Long Beach Gray Panthers
Los Angeles County Solid Waste Management Committee/Integrated Management Task Force
Medical Waste Services
Mendocino Solid Waste Management Authority
Metropolitan Recycling, LLC
Monterey County Prescribe Safe Initiative
Monterey Regional Waste Management District
Mojave Desert & Mountain Recycling Authority
National Stewardship Action Council
Orange County Sanitation District
Prescribe Safe Monterey County

ReThinkWaste
Riverside County Department of Waste Resources
Rural County Representatives of California
Salinas Valley Solid Waste Authority
San Benito County Integrated Waste Management
San Joaquin County
Save the Bay
Solid Waste Association of North America
Sonoma County Waste Management Agency
Stop Waste
Surfrider Foundation
Surfrider Foundation, Los Angeles
Upper Valley Waste Management Agency
Watershed Alliance of Marin
Western Placer Waste Management Authority
7th Generation Advisors

Opposition

Advanced Medical Technology Association (AdvaMed)
Association for Accessible Medicines
Biocom
Biotechnology Innovation Organization
California Life Sciences Association
California Pharmacists Association
California Retailers Association
National Association of Chain Drug Stores

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

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 966 (Wiener) – As Amended June 19, 2018

SENATE VOTE: 39-0

SUBJECT: Onsite treated nonpotable water systems.

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to develop standards for onsite nonpotable water treatment and reuse and authorizes local jurisdictions to adopt programs to permit onsite nonpotable water treatment and reuse using those standards. Specifically, **this bill:**

- 1) Requires, on or before December 1, 2022, the State Water Board, in consultation with the California Building Standards Commission (Commission), to adopt regulations for risk-based water quality standards for the onsite treatment and reuse of nonpotable water for nonpotable end uses in multifamily residential, commercial, and mixed-use buildings.
- 2) Requires the State Water Board to address in those regulations, at a minimum, all of the following:
 - a) Risk-based log reduction targets for the removal of pathogens such as enteric viruses, parasitic protozoa, and enteric bacteria for nonpotable water sources, including graywater, rainwater, stormwater, and backwater, for the following nonpotable end uses: toilet and urinal flushing, clothes washing, irrigation, and dust suppression;
 - b) Water quality monitoring requirements;
 - c) Reporting requirements for the water quality monitoring results;
 - d) Notification and public information requirements; and,
 - e) Cross-connection controls.
- 3) Requires a local jurisdiction that elects to establish a program for onsite treated nonpotable water systems to do all of the following:
 - a) Adopt a local program through a local ordinance that includes the risk-based water quality standards established by the State Water Board;
 - b) Consult, if not providing water service or sewer service, with a water service provider or sewer service provider, respectively, that provides water service or sewer service within the boundaries of the jurisdiction before adopting, amending, or repealing an ordinance that institutes a program for onsite treated nonpotable water system installation and regulation;

- c) Give the water or sewer service provider the opportunity to demonstrate that the proposed ordinance could result in significant adverse impacts to operations, maintenance, or management of the existing sewer collection or treatment system due to reduced flows; significant adverse impacts to existing or planned centralized recycled water, potable reuse facilities, or projects due to reduced flows; or, significant adverse impacts to receiving waters.
 - d) Further consult, if the water or sewer service provider demonstrates a significant risk of such impacts, with the water or sewer service provider on ways to mitigate that risk prior to adopting an ordinance.
 - e) Establish onsite treated nonpotable water system design criteria, permitting, cross-connection control, and enforcement procedures;
 - f) Provide an annual report to the State Water Board that includes the number, location, and description of permits issued for new and replacement onsite treated nonpotable water systems, the types and quantity of nonpotable water for nonpotable end uses, water quality monitoring data, and a summary of any violations and corrective actions taken in the local jurisdiction's program;
 - g) Terminate the operation of, and modify to render inoperable, any onsite treated nonpotable water system at the direction of the State Water Board;
 - h) Implement its program for the protection of public health; and,
 - i) Rescind any issued permits and require all installed systems to be rendered inoperable prior to the cessation of its program if the local jurisdiction determines that it can no longer effectively implement its program while protecting public health, or if it decides to terminate its program.
- 4) Prohibits the State Water Board from administering a local jurisdiction's program in place of a local jurisdiction that is unable to effectively implement its program while protecting public health or that decides to terminate its program.
 - 5) Prohibits the standards established pursuant to the State Water Board's regulations from addressing untreated graywater systems that are used exclusively for subsurface irrigation.
 - 6) Prohibits the standards established pursuant to the State Water Board's regulations from addressing untreated rainwater systems that are used exclusively for surface, subsurface, or drip irrigation.
 - 7) States that the standards established pursuant to the State Water Board's regulations shall not be considered building standards and shall be treated as program regulations.
 - 8) Establishes that the standards established pursuant to State Water Board's regulations are effective commencing on the date on which the regulations are approved and final.
 - 9) Requires an onsite treated nonpotable water system in operation before the effective date of the regulations to comply with the regulations within two years of the effective date.

Authorizes a local jurisdiction, if the permitting local jurisdiction finds that the permittee is working to come into compliance with the regulations, but due to extenuating circumstances related to the engineering, repair, or replacement of the system a further extension is warranted, to grant an extension to comply with the regulations not to exceed five years after the effective date.

- 10) Authorizes the State Water Board to contract with public or private entities to advise the State Water Board on public health issues and scientific and technical matters regarding the content of the standards established pursuant to the State Water Board's regulations.
- 11) Prohibits an onsite treated nonpotable water system, except those for untreated graywater systems and untreated rainwater systems, from being installed except under a local jurisdiction's program to permit use of an onsite treated nonpotable water system.

EXISTING LAW:

- 1) Establishes the Water Recycling Act of 1991, creating a statewide goal to recycle a total of 700,000 acre-feet of water per year by the year 2000 and 1,000,000 acre-feet of water per year by the year 2010. Requires each urban water supplier to prepare, and update every five years, an urban water management plan with specified components, including information on recycled water and its potential for use as a water source in the service area of the urban water supplier. (Water Code (WC) § 13577)
- 2) Makes findings regarding the State Water Board's updated water recycling goals adopted by resolution, which update the above goals to 1,000,000 acre feet per year in exceedance of 2002 levels by 2020 and by at least 2,000,000 acre feet per year by 2030. (State Water Board Resolution 2013-0003, January 22, 2013)
- 3) Requires the State Water Board to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health. (WC § 13521)
- 4) States that no person shall recycle water or use recycled water for any purpose for which recycling criteria have been established until water recycling requirements have been established or a regional water quality control board determines that no requirements are necessary. (WC § 13524)
- 5) Makes legislative findings that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water within the California Constitution if recycled water is available which meets certain conditions, as determined by the State Water Board, after notice, and a hearing provided to any person or entity who may be ordered to use recycled water or to cease using potable water. (WC § 13550)
- 6) Declares that the people of the state have a primary interest in the development of facilities to recycle water containing waste to supplement existing surface and underground water supplies and to assist in meeting the future water requirements of the state. (WC § 13510)

- 7) Makes legislative findings that a substantial portion of the future water requirements of this state may be economically met by beneficial use of recycled water. Finds that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the state. States that the use of recycled water constitutes the development of "new basic water supplies" as defined. (WC § 13511)
- 8) Declares that it is the intent of the Legislature that the state undertake all possible steps to encourage the development of water recycling facilities so that recycled water may be made available to help meet the growing water requirements of the state. (WC § 13512)
- 9) Requires the Commission to adopt building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses in nonresidential occupancies. Governs the use of recycled water from sources that contain domestic waste, in whole or in part. (California Code of Regulations (CCR) Title 22 , Division 4, Chapter 3)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 966 directs the [State Water Board] to develop regulations governing the installation of onsite non-potable water reuse systems in commercial, multifamily residential, and mixed-use buildings that are adequately protective of public health. Onsite non-potable reuse involves using a non-potable source of water (for example, graywater or rainwater) for a non-potable end purpose (for example, flushing toilets or irrigation), without needing to make the water potable at any point during the process. Such practices can dramatically reduce water consumption in buildings and help conserve during shortages. Unfortunately, local governments frequently lack risk-based guidance to develop regulatory frameworks that allow for the use of treated alternate water sources. As a result, not many onsite reuse systems get permitted, and innovators cannot easily develop new technologies in the absence of a single, clear standard. SB 966 would direct [State Water Board] to develop statewide risk-based water quality standards and accompanying regulations to ensure that, should local governments choose [to] save water by permitting onsite reuse, their programs are adequately protective of public health."

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

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

Due to a high precipitation year in 2017, Governor Jerry Brown issued Executive Order B-40-17 rescinding those mandated water use cuts, but acknowledging, "increasing long-term water

conservation among Californians, improving water use efficiency within the state's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change."

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

Recycled water and other alternative water supplies will become a more important factor as the state's population grows and as drought conditions threaten the reliability of California's traditional water supplies.

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

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

This bill proposes to regulate and permit onsite nonpotable water treatment and reuse, which is recycled water used onsite for non-drinking purposes.

Benefits of water recycling: Recycled water can provide a dependable, locally-controlled water supply and can provide other environmental benefits. By providing an additional source of water, water recycling can help reduce the diversion of water from constrained water sources and could result in energy savings. Other benefits include decreasing wastewater discharges to rivers, estuaries, or bays, thereby reducing or preventing effluent pollution. Recycled water can now also be used for indirect potable reuse, including groundwater recharge and surface water supply augmentation, which replenishes over-subscribed water supply sources by augmenting with an alternative water source.

State water recycling policy: The State Water Board supports and encourages the use of recycled water to promote the conservation of water resources. The Policy for Water Quality Control for Recycled Water (Recycled Water Policy) was developed to increase the use of recycled water from municipal wastewater sources in a manner that is protective of public health and the environment. The Recycled Water Policy provides goals for recycled water use in California, guidance for use of recycled water that considers protection of water quality, criteria for streamlined permitting of recycled water projects, and requirements for monitoring recycled water for constituents of emerging concern.

State water recycling goals: The Water Recycling Act of 1991 set California water recycling goals at 700,000 acre-feet/year by 2000 and 1 million acre-feet by 2010. Ten years later, Assembly Bill 331 (Goldberg, Chapter 590, Statutes of 2001) was enacted to require the

Department of Water Resources to convene the Recycled Water Task Force (Task Force) to investigate the opportunities and constraints to increasing the industrial and commercial use of recycled water. The Task Force projected that by 2030, if financial resources become available to water recycling projects, the total recycled water use would increase from the current amount of about 525,000 acre-feet to more than 2 million acre-feet a year.

The 2013 Recycled Water Policy established a mandate to increase the use of recycled water in California by 200,000 acre-feet/year by 2020 and by an additional 300,000 acre-feet/year by 2030.

The most recent survey of municipal water recycling, conducted jointly by the Department of Water Resources and the State Water Board, found that California reused 714,000 acre-feet of municipal recycled water during 2015. This was an increase of 45,000 acre feet since the previous survey in 2009. This gain was achieved during the drought when mandatory water restrictions reduced flows to wastewater treatment plants.

Existing state standards for water recycling: The State Water Board regulates use of recycled water pursuant to the Uniform Statewide Recycling Criteria (Criteria) (CCR, Title 22, Division 4, Chapter 3), which contain requirements for recycled water quality and wastewater treatment requirements for the various types of allowed uses, including irrigation, impoundments (such as reservoirs, ponds), and industrial facility cooling.

The Criteria have additional eligible uses for recycled water that is disinfected tertiary recycled water, including, but not limited to, flushing toilets and urinals, decorative fountains, commercial laundries, artificial snow making for commercial outdoor use, and commercial car washes. For nonpotable reuse applications, there are four types of recycled water based on levels of treatment: 1) non-disinfected secondary, 2) disinfected secondary-23, 3) disinfected secondary 2.2, and 4) disinfected tertiary. The level of treatment used is based on how the recycled water is intended to be used. In uses where there is a greater chance of human exposure to the water, more treatment is required.

Non-disinfected secondary recycled water is water with the lowest level of treatment, suitable for applications that have a very minimal public exposure level, such as irrigation for fodder crops. Disinfected tertiary recycled water goes through higher levels of treatment, sufficient for applications with more public exposure, such as irrigation of parks, decorative fountains, or artificial snowmaking for commercial outdoor use. The Criteria are generally for municipal-scale projects that treat wastewater in treatment plants and use that water offsite, not for onsite indoor use.

In June 2016, the State Water Board adopted water reclamation requirements for Recycled Water Use (WQ 2016-0068-DDW) (General Order) to encourage recycled water projects by acknowledging recycled water as a resource through water reclamation requirements, and allowing recycled water programs implemented in multiple regional water quality control boards (regional water boards) boundaries to be permitted by the State Water Board.

The General Order is intended to be the primary method for regional water boards to permit recycled water use and provides regulatory coverage for certain uses of recycled water that are consistent with the requirements of the aforementioned regulatory Criteria. Therefore, the General Order does not address onsite nonpotable water treatment and reuse projects, and there

are no current permitting requirements for onsite water treatment and reuse in indoor applications, such as toilet flushing.

Given that lack of statutory and regulatory clarity around onsite water reuse, the author contends that local governments are not sure which types of systems and uses they are allowed to permit, or which are safe for public use.

SB 966 seeks to establish that clarification for onsite nonpotable water reuse, which would further the state's water recycling goals and encourage innovation for nonpotable water treatment.

Plumbing recycled water: Since the 1990s, California's Building Code has included provisions that authorized the installation and use of graywater systems, but the regulations were seen to be restrictive and complicated.

In 2008, the California Legislature enacted SB 1258 (Lowenthal, Chapter 172, Statutes of 2008), which required the Department of Housing and Community Development (HCD) to revise building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses.

HCD promulgated the new standard and incorporated it into the 2007 California Plumbing Code. The new standard is intended to conserve water by facilitating greater reuse of laundry, shower, lavatory, and similar sources of discharge for irrigation and/or indoor use; reduce the number of non-compliant graywater systems by making legal compliance more easily achievable; provide guidance for avoiding potentially unhealthful conditions; and, provide an alternative way to relieve stress on a private sewage disposal systems by diverting the graywater.

In addition, the California Plumbing Code contains design standards to safely plumb buildings with both potable and recycled water systems. These statewide standards apply for installing both potable and recycled water plumbing systems in commercial, retail, and office buildings, theaters, auditoriums, condominiums, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories. These standards are found in the 2013 California Plumbing Code (CCR, Title 24, Part 5).

Expanding the safe use of nonpotable onsite water recycling: SB 966 would require the State Water Board, in consultation with the Building Standards Commission, to develop regulations for risk-based water quality standards for the onsite treatment and reuse of nonpotable water for nonpotable end uses in multi-family residential, commercial, and mixed-use buildings, and authorize local governments to adopt programs that use those regulatory standards to permit onsite treatment and reuse of nonpotable water.

Californians use an average of 196 gallons of water per day showering, doing laundry, washing dishes, flushing toilets, and watering landscape. On average, 30-60% of the water Californians consume is used outdoors. This bill would result in standards for onsite nonpotable reuse for toilet and urinal flushing, clothes washing, irrigation, and dust suppression. Expanded onsite nonpotable water treatment and reuse, through the local programs that would be authorized under this bill, could result in significant water savings across the state.

Some businesses use onsite water recycling now. Stone Brewery in San Diego, for example, recycles all of its wastewater, amounting to about 100,000 gallons per day — or about 25 percent of the total amount of water used in the brewery. After the brewing company filters and treats the water, it then circulates its own recycled water back into the building for use in cooling, cleaning, and in the boilers (not into its brewing system).

SB 966 recognizes current onsite water recycling, and gives two years for those in operation before the effective date of the State Water Board's regulations to comply with the regulations.

Creating competition for recycled water: With the state's lofty water recycling goals and the drought-driven need for new water supplies, many local jurisdictions have invested in water recycling infrastructure for various municipal uses. The State Water Board is also working on the feasibility of developing uniform recycling criteria for direct potable reuse (use of recycled water as drinking water), which will make wastewater supplies for recycled water more attractive to water providers.

The Desert Water Agency and El Dorado Irrigation District are special districts that own and operate recycled water production distribution systems that are funded by ratepayers. Those two districts are concerned that, by allowing a city or county to adopt a program to permit onsite treated nonpotable water systems, this bill would lead to a reduction of wastewater flows into the community sewer system, which could increase the salt load of the remaining wastewater flows, and impact and ultimately reduce the production of the district's recycled water production. They argue that could necessitate the water systems having to substitute potable water in place of the wastewater to dilute the salt content.

To address those districts' concern, though, the bill requires a local jurisdiction to consult with a water service provider or sewer service provider that provides water or sewer service within the boundaries of the jurisdiction. The bill requires the local jurisdiction to consider any concerns raised by the water or sewer service provider about any significant adverse impacts to operations, maintenance, or management of the existing sewer collection or treatment system due to reduced flows; significant adverse impacts to existing or planned centralized recycled water, potable reuse facilities, or projects due to reduced flows; or, significant adverse impacts to receiving waters.

The bill would not prevent a local program from being adopted should the water service provider or sewer service provider raise concerns; however, it would enable the local jurisdiction to be fully informed and cognizant of the potential impacts of permitting new onsite treated nonpotable water systems before adopting a new permitting program.

Related legislation:

- 1) SB 740 (Weiner, 2017). Would have required the State Water Board, on or before December 1, 2018, and in consultation with other state agencies, to adopt regulations to provide comprehensive risk-based standards for local permitting programs for onsite water recycling. SB 740 was held in the Senate Appropriations Committee.
- 2) AB 574 (Quirk, Chapter 528, Statutes of 2017). Requires the State Water Board to, on or before December 31, 2023, adopt uniform water recycling criteria for potable reuse through raw water augmentation.

- 3) AB 2076 (C. Garcia, 2016). Would have required the State Water Board to adopt uniform water recycling criteria for the use of recycled water in the manufacture of beer and wine. AB 2076 was amended with unrelated content before being heard in its first policy committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Advanced Onsite Water
Alliance for Water Efficiency
ARB
Artemis Water Strategy
Berkeley Water Center
California Coastkeeper Alliance
California Professional Association of Specialty Contractors
Ceres
City of Mountain View
City and County of San Francisco
Clean Water Action
Facebook
Greywater Action
Groundwater Resources Association of California
Integral Group
Natural Resources Defense Counsel
Natural Systems Utilities California
Planning and Conservation League
Regional Water Authority
San Diego County Regional Airport Authority
Santa Clara Valley Water District
Save the Bay
SPUR San Francisco
Sustainable Silicon Valley
WaterNow Alliance
Wholly H²O

Opposition

California Municipal Utility Association
Desert Water Agency
El Dorado Irrigation District

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

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 998 (Dodd) – As Amended June 14, 2018

SENATE VOTE: 25-10

SUBJECT: Discontinuation of residential water service: urban and community water systems

SUMMARY: Requires all public water systems (with more than 200 connections) to have a written policy on discontinuation of residential water service, provide that policy in multiple languages, include provisions for not shutting off water for certain customers that meet specified criteria, prohibit the shutoff of water service until the bill has been delinquent for 60 days, and caps the reconnection fees for restoring water service. Specifically, **this bill:**

- 1) Defines "residential service" as water service to a residential connection that includes individually metered single-family residences, individually metered and master-metered multifamily residences, master-metered mobilehome parks, individually metered mobilehomes in mobilehome parks, or farmworker housing.
- 2) Defines "urban and community water system" as a public water system that supplies water to more than 200 service connections.
- 3) Requires an urban and community water system to have a written policy on discontinuation of residential service for nonpayment available in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by at least 10 percent of the people residing in its service area.
- 4) Prohibits an urban and community water system from discontinuing residential service for nonpayment until payment by a customer has been delinquent for at least 60 days.
- 5) Provides that requirements for discontinuation of residential service apply to an urban water supplier not regulated by the California Public Utilities Commission (CPUC) on and after February 1, 2020.
- 6) Provides that requirements for discontinuation of residential service apply to an urban and community water system regulated by the CPUC on and after February 1, 2020.
- 7) Provides that the requirements for discontinuation of residential service apply to urban and community water systems not regulated by the CPUC on and after April 1, 2020.
- 8) Authorizes the State Water Resources Control Board (State Water Board) to enforce the requirements on urban and community water systems for discontinuing residential water service.
- 9) Prohibits an urban and community water system from discontinuing residential service for nonpayment if all of the following conditions are met: the customer, or tenant of a customer, submits to the urban and community water system the certification of a primary care provider that discontinuation of residential service will be life threatening to, or pose a serious threat to, the health and safety of a resident of the premises where residential service is provided;

the customer demonstrates that he or she is financially unable to pay for residential service within the urban and community water system's normal billing cycle; and, the customer is willing to enter into an amortization agreement, alternative payment schedule, or plan for deferred or reduced payment with respect to all delinquent charges.

- 10) Requires an urban and community water system that discontinues residential service for nonpayment to provide the customer with information on how to restore residential service and petition for a waiver of reconnection fees.
- 11) Requires an urban and community water system to waive reconnection fees and offer a reduction or waiver of interest charges on delinquent bills once every 12 months for a residential customer who demonstrates that they have income below 200 percent of the federal poverty line.
- 12) Authorizes an urban and community water system to set a reconnection of service fee at fifty dollars (\$50), but not to exceed the actual cost of reconnection if it is less for residential customers that do not meet the criteria for having reconnection fees waived.
- 13) Requires an urban and community water system to make every good faith effort to inform the residential occupants, by means of written notice, of a single-family dwelling, multiunit residential structure, mobilehome park or permanent resident structure in a labor camp, when the residential occupant is the tenant and the owner of the property's account is in arrears and service is going to be terminated.
- 14) Requires an urban and community water system to make service available to residential occupants who are the tenant of a property whose account is in arrears, if the residential occupant is willing and able to assume responsibility for charges to the account to the satisfaction of the urban and community water system.
- 15) Requires an urban and community water system to report the number of annual discontinuations of residential service for inability to pay on the urban and community water system's Internet Web site and to the State Water Board. Requires the State Water Board to post this information on its Internet Web site.
- 16) Authorizes the Attorney General, at the request of the State Water Board or upon his or her own motion, to bring an action in state court to restrain by temporary or permanent injunction the provisions of this bill.
- 17) Requires all written notices required under the bill to be provided in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by 10 percent or more of the customers in the urban and community water system's service area.
- 18) States that the provisions of the bill do not apply to the termination of a service connection by an urban and community water system due to an unauthorized action of a customer.

EXISTING LAW:

- 1) Vests the State Water Board with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Public Health (CDPH) and its

predecessor to enforce the State Drinking Water Act (SDWA). (Health and Safety Code (HSC) § 116271)

- 2) Requires any person who owns a public water system to ensure that the system does all of the following:
 - a) Complies with primary and secondary drinking water standards;
 - b) Will not be subject to backflow under normal operating conditions;
 - c) Provides a reliable and adequate supply of pure, wholesome, healthful, and potable water;
 - d) Employs or utilizes only water treatment operators or water treatment operators-in-training that have been certified by the State Water Board at the appropriate grade; and,
 - e) Complies with the operator certification program. (HSC § 116555 (a))
- 3) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275)
- 4) Defines "Community water system" as a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. (HSC § 116275(i))
- 5) Defines "Service connection" as the point of connection between the customer's piping or constructed conveyance, and the water system's meter, service pipe, or constructed conveyance. (HSC § 116275(s))
- 6) Defines "Resident" as a person who physically occupies, whether by ownership, rental, lease, or other means, the same dwelling for at least 60 days of the year. (HSC § 116275(t))
- 7) Declares to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes. (Water Code § 106.3)
- 8) Provides that any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into a contract, as specified, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, that includes a translation of every term and condition in that contract or agreement. (Civil Code § 1632)
- 9) Defines a "water corporation" to include every corporation or person owning, controlling, operating, or managing any water system for compensation within this State. (Public Utilities Code (PUC) § 241)
- 10) Defines a "public utility" to include every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph

corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public. (PUC § 216 (a))

- 11) Provides that when any public utility performs a service for, or delivers a commodity to, the public for which any compensation or payment is received, it is subject to the jurisdiction, control, and regulation of the CPUC. (PUC § 216(b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"California has more than 3,000 city, county, mutual and private agencies delivering water to homes and apartments. While there are consistent lifeline programs for people having difficulty paying their electric, gas and telephone bills, there is nothing more than a local patchwork set of policies addressing long-term water bill delinquencies. Further, Prop 218 restrictions limit the ability of all water agencies to offer subsidies and rebates to low-income customers unable to pay for basic water needs.

The cost of water in California is rising at an alarming rate. Statewide, water rates have risen over 66% between 2007 and 2015. Rising water rates for low income ratepayers is resulting in higher delinquency rates on paying water bills, which, in turn, leads to an increasing number of water service discontinuations. In 2015, 3,953 customers of the Los Angeles Department of Water and Power (LADWP) had water service interruptions due to unpaid bills. The number of discontinuations increased to over 5150 shutoffs in 2016, an increase of 29%. In San Diego 6,000 households face the loss of water service due to delinquent bills each year. Loss of water service can have dire health and safety consequences for residents, lead to a loss of residence, and create strains among residents within a household. When a tenant is faced with a shutoff, and the tenant relies on the landlord to pay for water service, rectifying the problem becomes complicated for the tenant.

Since water is a necessity for life, and since California has declared that access to safe and affordable water is a human right, many low-income ratepayers face troubling tradeoffs in order to pay water bills. Establishing a statewide structure for helping low income ratepayers cope with increasing water rates will reduce difficult tradeoffs families will have to make and improve overall health and safety for many communities and households."

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

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

The State Water Board directly enforces the federal SDWA for all large water systems (those with 200 or more service connections), including those water systems regulated under the California Public Utilities Commission (CPUC), Division of Corporations (DOC), or Department of Housing and Community Development (DHCD). For small water systems (those with less than 200 connections), local health departments can be delegated to have regulatory authority as the local primacy agency. Along with the regulation of drinking water, the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) are responsible for protecting the waters of the state, including drinking water sources, both surface water and groundwater supplies.

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

According to the State Drinking Water Plan for California, June 2015, "Over the last two decades, water costs have, on average, increased about 45 percent within all size groups of water systems (range of 42 to 47 percent). Average water costs remain highest in the San Francisco Bay Area, Central Coast, and Southern California, and lowest in the Central Valley/Agricultural (including Imperial County), Foothill, and Mountain/Desert regions. On average, customers of small water systems (serving less than 200 service connections) pay approximately 20 percent more for water than those customers served by larger systems. Many disadvantaged communities are served by small water systems. As a result, water affordability has become a significant issue among residents in these communities."

States agencies involved in the regulation of public water systems: The regulation of water supply, water quality, and the various types of water systems that serve drinking water is shared among several agencies, including local agencies, in California. The State Water Board has primary responsibility for regulating all public water systems. There are three other state agencies that also regulate certain aspects of specific classes of water systems including: (1) the California Public Utilities Commission (CPUC) for investor-owned systems, (2) the Division of Corporations (DOC) for mutual water companies, and (3) the Department of Housing and Community Development (DHCD) for mobile home parks.

California Public Utilities Commission (CPUC) role in water system regulation: The CPUC regulates investor-owned water utilities with particular attention to rates and quality of service. These utilities are owned by investors expecting a return on investments. Small utilities are

generally owned by a single individual, corporation, or a partnership. Owners of large utilities are generally investors holding financial interest in the utility or its parent company. There are several large investor-owned utilities in California that own and operate multiple water systems across a region or across the state. The CPUC ensures that customers of regulated water utilities receive safe and reliable water service while allowing the utility a fair opportunity to earn a reasonable return on its investment.

Division of Corporations (DOC) role in regulating water systems: The DOC within the Department of Business Oversight has responsibility under the Corporate Securities Law of 1968 to approve and register the security offering of mutual water companies. Mutual water companies are privately owned water companies in which each lot owner is entitled to one share per lot that they own. They are managed and operated in accordance with Articles of Incorporation and bylaws approved by the DOC and filed with the Secretary of State. Existing regulations set forth the standards governing the regulation of mutual water companies. These regulations do not deal with the quality of the drinking water served.

Department of Housing and Community Development (DHCD) role in regulating water systems: DHCD is responsible for the regulation of the construction and maintenance of mobile home parks (MHPs) and employee housing facilities, such as labor camps, many of which have independent water systems.

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. There are three legal distinctions between the types of public water systems: community, non-transient non-community, and transient. The type of water system is based on how often people consume the water. Drinking water regulations impose the most stringent monitoring requirements on community and non-transient non-community water systems because the people they serve obtain all or much of their water from that system each day. Community water systems are city, county, regulated utilities, regional water systems, and even small water companies and districts where people live. Non-community non-transient water systems are places like schools and businesses that provide their own water. The customers of non-community non-transient water systems have a regular opportunity to consume the water, but they do not reside there. Transient water systems include entities like rural gas stations, restaurants, and State and National parks that provide their own potable water. Most people that consume the water neither reside nor regularly spend time there.

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

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

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

Proposition 218: On November 5, 1996, California approved Proposition 218, the "Right to Vote on Taxes Act." Proposition 218 added articles XIIC and XIID to the California Constitution, and applies to local government finance law. Proposition 218 characterized all taxes [at the local level] as either special taxes or general taxes, requires a majority vote for general taxes at the same election as for members of the legislative body of the local government (except in cases of emergency), requires a 2/3 vote for special taxes, and makes all of the taxes of "special purpose" districts (including school districts) special taxes. It also requires existing, new, or increased assessments to comply with Proposition 218 beginning July 1, 1997.

The author of this bill obtained an opinion from the Legislative Counsel, which reviewed whether SB 998 violated Proposition 218 and the opinion concludes, "It is our opinion that proposed Health and Safety Code section 116908 in Senate Bill No. 998 (2017-2018 Reg. Sess.) as amended May 7, 2018, would not violate California Constitution, article XIID, section 6, subdivision (b)(3)."

Policy question before the committee: Should the state create a statewide standard for when a public water system can shut off water to a customer or should it be left to each of the thousands of public water systems in the state to enact their own policy?

Discussion of bill: SB 998 proposes to require all public water systems (with more than 200 connections) to have a written policy on discontinuation of residential water service, provide that policy in multiple languages, and include provisions for not shutting off water for those customers that can demonstrate that losing water service will be life threatening; the customer is unable to pay during the water system's normal billing cycle; and the customer is willing to enter into a payment schedule for all delinquent charges.

There are thousands of public water systems in the state and currently each one has its own policy on how and when they will shut off water to a residential customer. Statewide data is not available on the number of customers that had their water shut off by a public water system. However, according to information supplied by the author's office, in 2015, 3,953 customers of LADWP had water service interruptions due to unpaid bills and there were more than 5,150 shutoffs in 2016. In San Diego, 6,000 households face the loss of water service due to delinquent bills each year. Given these numbers, it is difficult to ascertain the full scope of the problem; however, according to the author, the goal is to provide protections to the most vulnerable people in our state, those on low incomes dealing with rising water bills and facing serious health issues.

SB 998 not only requires a public water system to have a written policy on the discontinuation of water service for residential customers, it requires the public water systems to give the residential customer 60 days before the water can be shutoff and caps the amount of the reconnection fee that can be charged to the customer at \$50 during normal business hours and \$150 for non-operational hours. It waives the reconnection fee for those customers that can demonstrate they have a household income below 200 percent of the federal poverty line. Additionally, SB 998 requires that the tenant be informed by the water system before the water is shut off and creates a

process where the tenant can take over paying the bill, to the satisfaction of the water system, when the landlord has not paid the bill.

Reconnection fees: A reconnection fee for water service is the amount the public water system charges the customer for having to manually turn the water back on. According to a recent survey by the State Water Board of 30 water agencies, the reconnection fee for some of those agencies is less than \$50; therefore, SB 998 picked an amount (\$50) that is comparable to the reconnection fee of water agencies surveyed by the State Water Board.

What if water agencies are already required to have a policy for discontinuance and restoration of water service? SB 998 contains a provision that states that if there are provisions of existing law that are duplicated by this bill then compliance with one is deemed compliance with the other. The public water systems regulated under the CPUC are required, under Rule No. 11, to have a discontinuance and restoration of service policy. In reviewing Rule No. 11, the requirements are very similar to SB 998 and it is very possible that those water systems may be in compliance with SB 998 if they are in compliance with Rule No. 11.

Arguments in support: According to organizations in support of the bill which include, Clean Water Action, the Rural County Representatives of California, and the Western Center on Law and Poverty, they state: "In 2012, the Legislature adopted the Human Right to Water, which established a vision for the state that the Legislature, advocates and the Administration continue to work to fulfill. The Human Right to Water states that access to a reliable source of safe and affordable water is a right and not a privilege. SB 998 begins to address the larger issue of affordability and its impact on access to water. While we agree that everyone should pay their bills in full and on time, the fact is that for some people, at certain points in their life, this becomes difficult, if not impossible. SB 998 is intended to provide transparency for the shutoff process and provide protection to vulnerable households." .

Arguments in opposition: According to organizations in opposition to the bill including the Association of California Water Agencies, the California Municipal Utilities Association and the League of California Cities, they state, "We are writing to express opposition to SB 998, by Senator Bill Dodd (D-Napa), which would completely change the practice of public water agencies who currently undertake multiple protocols to ensure that water service is discontinued for non-payment only when a customer fails to follow-through with safeguards that build into the operations and management of water systems. Our water agencies deliver safe, reliable, high-quality and affordable water to customers in a dependable and responsible manner. This new one-size-fits-all statewide program would be created instead, that would among other things prevent service shut-offs for at least 60 days for delinquent customers, create a cap on reconnection fees that may or may not cover the actual cost of these physical reconnections and trigger Prop. 218 concerns for public water agencies, and expand authority to both the State Water Board and the Attorney General to enforce provisions of the bill. Water agencies are in the business of delivering water – they don't disconnect delinquent customers without prior substantial engagement."

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California Center for Advocacy and Policy
Audubon California

California Rural Legal Assistance Foundation
California State Association of Counties
Clean Water Action
Community Water Center
Food & Water Watch
Leadership Counsel for Justice & Accountability
League of Women Voters of California
Pacific Institute
Rural County Representatives of California
Sierra Club California
Western Center on Law and Poverty

Opposition

American Water Works Association California-Nevada Section
Association of California Water Agencies
California Association of Mutual Water Companies
California Municipal Utilities Association
California Special Districts Association
California Water Association
Camrosa Water District
Central Basin Water Association
City of Dinuba
City of Lakewood
City of Livermore
City of Palo Alto
City of Riverside
City of Roseville
City of Thousand Oaks
East Orange County Water District
Eastern Municipal Water District
Elsinore Valley Municipal Water Districts
Irvine Ranch Water District
League of California Cities
Long Beach Water Department
Mesa Water District
Mission Springs Water District
Modesto Irrigation District
Municipal Water District of Orange County
Olivenhain Municipal Water District
Regional Water Authority
San Gabriel Valley Water Association
San Diego County Water Authority
Santa Clarita Valley Water Agency
Southwest Water Coalition
Truckee Donner Public Utility District
Twentynine Palms Water District
Valley Center Municipal Water District

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

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 1215 (Hertzberg) – As Amended June 21, 2018

SENATE VOTE: 30-8

SUBJECT: Provision of sewer service: disadvantaged communities

SUMMARY: SB 1215 would authorize the Regional Water Quality Control Boards (Regional Water Boards) to order the provision of sewer service to a disadvantaged community that has inadequate onsite sewage treatment systems. Specifically, **this bill:**

- 1) Defines "Inadequate onsite sewage treatment system" as an onsite sewage treatment system that has the reasonable potential to cause a violation for water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state.
- 2) Defines "Annexation" as the inclusion, attachment, or addition of territory to a city or district.
- 3) Defines "Extension of service" as having the same meaning as set forth in Section 56133 of the Government Code, that is, extension of services outside a city of district's jurisdictional boundary.
- 4) Defines "Provision of sewer service" as the provision of sewer service to a disadvantaged community by any of the following processes:
 - a) Annexation, in cases when the receiving sewer system is a special district; or,
 - b) Extension of service, in cases when the receiving sewer system is a city of county.
- 5) Authorizes a Regional Water Board to order the provision of sewer service by a receiving sewer system to a disadvantaged community served by one or more inadequate onsite sewage treatment systems.
- 6) Requires a Regional Water Board to take certain actions before ordering the provision of sewer service including, but not limited to:
 - a) Encouraging voluntary provision of service;
 - b) Consulting with, and considering input from, relevant agencies including the State Water Resources Control Board (State Water Board);
 - c) Notifying the potentially receiving sewer system and affected residents;
 - d) Holding at least one public meeting; and,
 - e) Finding that provision of sewer service is an effective and cost-effective means to address the inadequate onsite sewage treatment system.
- 7) Requires, upon issuance of a Regional Water Board's order requiring the provision of sewer service, the State Water Board to:

- a) Make funds available, upon appropriation by the Legislature, to the receiving sewer system for the costs of completing the provision of sewer service, including, but not limited to, compensation for any capacity lost as a result of the provision of sewer service and by paying the receiving sewer system's capacity connection fee.
 - b) Ensure payment of standard local agency formation commission fees caused by the Regional Water Board's order.
- 8) Specifies that, should capacity beyond what is needed for consolidation be provided, the State Water Board retains its rights to use the additional capacity without paying additional capacity charge fees for five years, unless it releases those rights in writing.
 - 9) Prohibits additional costs or fees related to consolidation, including, but not limited to, other public works costs or upgrades, from delaying the provision of sewer service.
 - 10) Prohibits the receiving sewer system from increasing charges on existing customers of the receiving sewer system solely as a consequence of the provision of sewer service unless the customers receive a corresponding benefit.
 - 11) Prohibits the receiving sewer system from charging rates to newly absorbed customers of the sewer system that are higher than those necessary to provide service.
 - 12) Authorizes the State Water Board to develop and adopt a policy, through the adoption of a policy handbook, that creates a process by which members of disadvantaged communities may petition a Regional Water Board for consideration of provision of sewer service.

EXISTING LAW:

Under the federal Clean Water Act (CWA) (33 United States Code (USC) § 1251 et seq.):

- 1) Establishes the structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.
- 2) Makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. (33 USC § 1341)
- 3) Provides that the National Pollutant Discharge Elimination System (NPDES) permit program controls discharges. (33 USC § 1342)
- 4) Authorizes states to implement and enforce the NPDES permit program as long as the state's provisions are as stringent as the federal requirements. (33 USC § 1342 (b))

Under state law:

- 1) Establishes, pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne), the State Water Board and Regional Water Boards to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. (Water Code (WC) § 13000 et seq.)

- 2) Requires a Regional Water Board to prescribe requirements for any proposed, changed, or existing wastewater discharge, except discharges into a community sewer system. Specifies that requirements implementing water quality control plans protect beneficial uses of the water and the need to prevent a nuisance. (WC § 13269 et seq.)
- 3) Requires each Regional Water Board to formulate and adopt water quality control plans, or basin plans, for all areas within the region. Requires each Regional Water Board to establish water quality objectives to ensure the reasonable protection of beneficial uses and a program of implementation for achieving water quality objectives within the basin plans. (WC § 13240)
- 4) Authorizes a Regional Water Board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by law, to investigate the quality of any waters of the state within its region. (WC § 13267)
- 5) Requires the State Water Board to develop regulations or standards for the permitting and operation of onsite sewage treatment systems, including requirements for systems adjacent to impaired waters, requirements for corrective action when a system fails to meet the requirements or standards, and minimum requirements for monitoring. (WC § 13291)
- 6) Expresses the intent of the Legislature to assist private property owners with existing onsite sewage treatment systems who incur significant costs as a result of the implementation of the State Water Board's onsite sewage treatment system policy using loans under the State Water Pollution Control Revolving Fund. (WC § 13291.5, WC § 13475)
- 7) Defines a disadvantaged community as a community with an annual median household income that is less than 80 percent of the statewide annual median household income. (WC § 79505.5)
- 8) Authorizes the State Water Board to order consolidation with a receiving water system where a public water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water. (HSC § 116682)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author, "Hundreds of communities throughout the state rely on inadequate septic systems or more rudimentary waste collection and treatment systems to manage both gray water and black water. Lack of adequate wastewater management results in contaminated groundwater, drinking water sources, and soils, which in turn threatens both environmental and public health. Fortunately, many communities without adequate wastewater service are within a mile of a municipal wastewater provider. One solution to inadequate onsite treatment would be connecting with the nearby wastewater service provider. In this and many other circumstances, wastewater service extensions are the best and most cost-effective means of providing reliable wastewater service. However, the state does not have the tools necessary to compel service connection. SB 1215 grants the State Water Board authority, when resources are

available, to order consolidation or extension of sewer service to a disadvantaged community that has inadequate onsite sewage treatment."

Sewer systems: Most cities, towns, and surrounding areas are served by municipal wastewater systems. These centralized systems convey sewage and storm water from the service area to treatment plants, where the waters are prepared for release back into local waterbodies. For example, the City of Sacramento provides wastewater service to more than 75,000 customers. The City of Sacramento collects fees from rate payers to fund the system and wastewater treatment in the Sacramento Regional Wastewater Treatment Plant, which is managed by the Sacramento Regional County Sanitation District. The boundaries of this sanitation district are drawn by Sacramento County's Local Agency Formation Commission (LAFCO). (LAFCOs are countywide commissions that oversee boundary changes of cities and special districts in order to coordinate logical changes in local government boundaries and encourage efficient provision of services, such as water and sewer service.) To comply with the federal Clean Water Act and California's implementation of this law, wastewater treatment plants must obtain a NPDES permit from the State Water Board and the water they release into local water bodies must meet the water quality criteria prescribed in the permit's waste discharge requirements.

Onsite wastewater treatment systems: Not all properties are connected to centralized wastewater systems. Properties in rural areas that lie beyond city or sanitation district limits, or that pre-date surrounding municipal systems and have not been retrofitted may instead use Onsite Wastewater treatment Systems (OWTSs), which typically refers to septic tanks, and the two terms will be used interchangeably in this analysis. Some residences, mobile home parks, and commercial establishments including restaurants use septic tanks. As of 2012, the State Water Board estimated that California has about 1.2 million septic systems in use.

In a standard septic system, wastewater flows from the building into the first compartment of the septic tank. Solids sink to the bottom of the tank and greasy material form a scum at the top. The clear zone in between flows into the second compartment of the septic tank and, from there, leaches into an underground drain field through series of perforated pipes. Septic tanks can also incorporate a water treatment step prior to distribution in the leach field.

Property owners are responsible for septic tank maintenance, which primarily involves removing solids every few years. However, since they do not pay to use a municipal system, monthly costs are typically lower. That changes if a septic tank requires significant repair or replacement or when a failed septic tank pollutes surrounding areas. In those cases, costs may reach tens of thousands of dollars. Furthermore, when many properties use septic tanks near the same waterbody, the combined effect can degrade water quality. Nitrogen, phosphorous, and pathogens in the waste contribute to algal blooms, wildlife kills, and disease. Generally, however, a properly placed and functioning septic system is environmentally sound.

Onsite Wastewater Treatment System Policy: Septic systems are regulated by the State Water Board under their OWTS policy, adopted 2012 and required by AB 885 (Jackson, Chapter 781, Statutes of 2000). Prior to the adoption of this policy, California was one of only two states that had not adopted statewide standards for the permitting and operation of OWTSs. The OWTS Policy tiers septic system requirements based on their actual or risk for negative environmental and public health impacts. At the low-risk end, pre-existing septic systems in good working order are generally covered by Tier 0 and do not see additional requirements. Tiers 1 through 3

cover functioning septic systems that are low-risk (Tiers 1 and 2) or that are located near impaired water bodies (Tier 3).

SB 1215 primarily deals with failing septic systems which would fall into Tier 4- OWTS Requiring Corrective Action. Failure modes include an OWTS that is pooling wastewater at the surface, that has wastewater backing up into plumbing fixtures, that is affecting human health, or that threatens groundwater or surface water to a degree that would make it unfit for drinking or other uses. When a septic system fails, it is subject to Tier 4 requirements and the owner is responsible for repairing it as soon as reasonably possible.

As communities on OWTSs age and their original septic tanks begin to fail, community members must decide whether to fix or replace the system or whether to convert the community to a sewer system. For disadvantaged communities located near an existing sewer system, the last option can be an attractive source of long-term, reliable service and valuable investment in the community. Collaborations between a disadvantaged community, city, local water district, and other state and local agencies have led to septic to sewer conversion projects. For example, the community of Enchanted Heights, located in the City of Perris and on its western outskirts, reportedly had sewage seeping into its streets due to inadequate, aged septic systems. There, a major local effort and multimillion principle forgiveness loan from the State Water Board enabled provision of sewer service by Eastern Municipal Water District to the community. However, according to the Leadership Council for Justice and Accountability, which is sponsoring this bill, other disadvantaged communities including Lanare Community, Tombstone Territory, and Matheny Tract have struggled to gain sewer service.

Existing authority and new authority: The State and Regional Water Boards have the authority to prohibit discharges from an OWTS provided they have substantial evidence indicating that the discharges will result in a violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state. The policy requires connection to a public sewer instead of installation of a new or replacement OWTS where the public sewer is within 200 feet unless the connection fees and construction cost are greater than twice the total cost of the replacement OWTS. However, under Porter-Cologne, the State and Regional Water Boards generally do not have the power to say how dischargers should fix a problem. Failure to meet Tier 4 requirements is subject to further enforcement action, such as notices of violation, cleanup orders, or administrative penalties.

This bill grants the Regional Water Boards the authority to address actual or potential water quality problems caused by inadequate onsite sewage treatment systems through a specific solution: ordering provision of service via annexation or extension of service, as specified. Based on the definitions of "annexation" and "extension of service" used in the bill, SB 1215 does not seem to empower a Regional Water Board to order provision of service within city or wastewater district boundaries.

However, some of the communities intended to benefit from this legislation span incorporation and unincorporated territory or fall squarely within a water system. For example, according to the Leadership Council for Justice and Accountability, there are rural disadvantaged communities that rely on septic tanks that are within the historic irrigation districts of the Coachella Valley that have expanded into wastewater services as well. The author and

Committee may wish to consider an amendment to grant the Regional Water Boards the authority to order additional sewer service within city, county, or district boundaries.

Fixing septic systems: SB 1215 specifically targets situations where septic system users are nearby a public waste water system and where septic to sewer conversion is economically feasible. However, it is worth reviewing what resources are available to disadvantaged residents with failing septic systems because septic to sewer conversion projects can take years to complete and, in some cases, a Regional Water Board may find that septic to sewer conversion is not feasible for economic or other reasons. To provide financial assistance to residents with failing septic systems, local agencies may apply to the State Water Board for funds from the Clean Water State Revolving Fund (Fund) for use in mini-loan programs. These programs would provide low interest loans to private property owners to assist with costs associated with complying with the OWTS Policy. To date, no local agencies have applied to the Fund to administer a mini-loan program. However, some districts offer their own funding programs for septic system rehabilitation.

For example, the Coachella Valley Water District advertises a 2017 septic rehabilitation program, which offers applicants up to \$30,000 per septic system at existing mobile home parks or up to \$15,000 per septic system at existing individual residences in disadvantaged communities to rehabilitate failing septic systems. This program is funded by a Proposition 84 Integrated Regional Water Management Round 4 Implementation Grant secured by the Coachella Valley Regional Water Management Group. The purpose of this rebate program is to improve failing septic systems in communities where no public sewer infrastructure exists and septic systems are the only option for sewage disposal. In order to be eligible, applicants must not have reasonable access to public sewer infrastructure.

Septic to sewer conversion: The process SB 1215 lays out for ordering provision of sewer service to disadvantaged communities with inadequate onsite wastewater treatment systems closely follows the model set forth in SB 88 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015). SB 88 authorized the State Water Board to, where economically feasible, order consolidation of water systems in disadvantaged communities with chronic lack of adequate, safe, and reliable drinking water. The procedure for ordering provision of service in SB 1215 very closely follows the procedure developed in SB 88, but makes some changes based on lessons learned through implementation of SB 88. For example, SB 1252 provides an opportunity for stakeholders to submit comments to the Regional Water Board.

According to the Senate Government and Finance Committee analysis of SB 1215, the State Water Board has completed two mandatory consolidations and initiated an additional nine mandatory consolidations of 13 failing water systems to date. The State Water Board has also issued 230 informal consolidation letters indicating the State Water Board's intent to initiate consolidation, which have led to more than 40 voluntary consolidations.

SB 88 is also the template used by AB 2501 (Chu, 2018), which proposes to extend the State Water Board's authority to ordering consolidation with a receiving water system when a disadvantaged community is reliant on a failing domestic well. Similar to drinking water consolidations, SB 1215, requires the State Water Board to, as necessary and appropriate make funds available, upon appropriation by the Legislature, to the receiving sewer system for the costs of completing the provision of sewer service. SB 1215 would provide a new process by which the Regional Water Boards could facilitate and, if necessary, order provision of sewer

service to disadvantaged communities located near existing sewer systems.

Suggested amendments:

- (1) Technical amendments: As noted in the Senate Government and Finance analysis of SB 1215, "consolidation is what must occur when there are two local agencies that merge." Because SB 1215 onsite wastewater treatment systems do not constitute a local agency, the author and Committee many wish to consider replacing references to "consolidation" with "provision of service."
- (2) SB 1215 authorizes a Regional Water Board to provision of sewer service through two mechanisms, annexation and extension of service. Based on the definitions of "annexation" (GOV §56017) and "extension of service" (GOV § 56133) cited in SB 1215, both routes involve provision of service outside the political borders of the city, county, or special district managing the sewer system that may be expanded to a disadvantaged community. However, as discussed above, some of the disadvantaged communities that SB 1215 intends to benefit lie partly or entirely within the relevant city, county, or special district. Therefore, the author and Committee may wish to consider an amendment that would expand the definition of "provision of sewer service" to include provision with a city, county, or special district.
- (3) SB 1215 specifies that a regional Water Board may order that a disadvantaged community be annexed to a special district (e.g. a wastewater district) and may order extension of service to a disadvantaged community from a city or county. However, there may be instances where annexation of a disadvantaged community to a city may be appropriate, for example, when most of that community is already within city limits, and it is unclear whether this would be allowed as part of the process laid out in SB 1215. Furthermore, there may be instances where extension of service from a special district is the most appropriate way to provide sewer service to a disadvantaged community.

To address the points described in (2) and (3), the author and Committee may wish to consider the following amendments:

13288(h) "Provision of sewer service" means the provision of sewer service to a disadvantaged community by any of the following processes:

- (1) Annexation where the receiving sewer system is a special district*
- (2) Extension of service where the receiving sewer system is a city ~~or~~ county, or special district.*
- (3) Additional sewer service provided within city, county, or special district boundaries.*

13289(b)(1)(A) Encourage voluntary ~~annexation or extension~~ provision of sewer service of service, which may include voluntary annexation to a city.

Plus additional conforming changes.

Double referral: Should this bill pass the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Local Government Committee, where it is set for hearing June 27, 2018.

Related legislation:

SB 1333 (Wieckowski, 2018). This bill would extend various requirements in the Planning and Zoning Law to charter cities, including SB 244's requirements to study service deficiencies of nearby disadvantaged unincorporated communities in their general plans. SB 1333 is currently in the Assembly Housing and Community Development Committee.

AB 1989 (Mathis, 2018). This bill would have appropriated \$50 million from the General Fund to the State Water Resources Control Board (State Water Board) for the Water and Wastewater Loan and Grant Program. AB 1989 was held in the Assembly Appropriations Committee.

AB 277 (Mathis, Chapter 438, Statutes of 2017). This bill created the Water and Wastewater Loan and Grant Program, which authorizes the State Water Board to implement low-interest loan and grant programs to fund water and wastewater facilities and improvements for households and small water systems.

SB 1318 (Wolk, 2016). This bill would have required LAFCOs to recommend plans for providing water or wastewater services to disadvantaged unincorporated communities that lack those services. SB 1318 was held in the Assembly Local Government Committee.

SB 88 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015). This bill authorized the State Water Board to order consolidation with a receiving water system where a PWS within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water.

SB 244 (Wolk, Chapter 513, Statutes of 2011). Aimed to prevent cities from carving out disadvantaged unincorporated communities and also required LAFCOs to include in the municipal service review a description of the location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence and to consider the water, sewer, or fire protection needs of disadvantaged unincorporated communities within the sphere when considering updates. Finally, SB 244 required cities and counties to review the water and fire service needs of disadvantaged unincorporated communities in their general plans. SB 244 made it easier for LAFCOs to identify boundary changes and governmental reorganizations necessary to fix water and sewer service problems faced by disadvantaged communities.

AB 885 (Jackson, Chapter 781, Statutes of 2000). This bill established a process for developing statewide performance standards for onsite sewage treatment systems including requiring the State Water Board to adopt regulations or standards for permitting and operation of onsite sewage treatment systems.

REGISTERED SUPPORT / OPPOSITION:

Support

Leadership Council for Justice and Accountability (sponsor)
California Coastkeeper Alliance
California Environmental Justice Alliance
California Institute for Rural Studies
Carbon Cycle Institute

Center for Climate Change and Health
Center for Community Action and Environmental Justice
Center for Sustainable Neighborhoods
Center on Race, Poverty and the Environment
Central California Asthma Collaborative
Central California Environmental Justice Network
Clean Water Action
Community Water Center
Diocese of Fresno
Environment California
Environmental Health Coalition
Plastic Pollution Coalition
Rural Communities Assistance Corp.
Sierra Business Council
Sierra Club California
The 5 Gyres Institute
The Trust for Public Land

Opposition

None on file

Analysis Prepared by: Amy Gilson / E.S. & T.M. /

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 1263 (Portantino) – As Amended June 19, 2018

SENATE VOTE: 39-0

SUBJECT: Ocean Protection Council: Statewide Microplastics Strategy

SUMMARY: Requires the Ocean Protection Council (OPC) to adopt and implement a Statewide Microplastics Strategy (Strategy) that, to the extent feasible, increases understanding of the scale and risks of microplastics pollution in the marine environment and identifies proposed solutions. Specifically, **this bill:**

- 1) Makes findings and declarations related to microplastics pollution.
- 2) Requires, on or before December 31, 2024 and to the extent that funds are available from bonds or other sources, including from federal, state, academic, or other public or private entities, the OPC to adopt and implement a Strategy related to microplastics that pose an emerging concern for ocean health.
- 3) Requires the OPC to work with the State Water Resources Control Board (State Water Board), the Office of Environmental Health Hazard Assessment (OEHHA), and other interested entities in the development of the Strategy.
- 4) Establishes the goal of the Strategy as increasing the understanding of the scale and risks of microplastic materials on the marine environment and identifying proposed solutions to address the impacts of microplastic materials and microfibers, to the extent feasible.
- 5) Authorizes the OPC, in collaboration with the State Water Board, OEHHA, and other interested entities, to enter into one or more contracts with marine research institutes in the State that have demonstrated expertise relating to the effect of microplastic materials on ocean health, for the provision of research services that would contribute directly to the development of the Strategy.
- 6) Requires the Strategy to include, though not be limited to, all of the following components:
 - a) The development of a comprehensive prioritized research plan that includes research that will support the development of risk assessments for microplastics;
 - b) The development of standardized methods for sampling, detecting, and characterizing microplastics;
 - c) The characterization of ambient concentrations of microplastics in the marine environment and an assessment of the associated environmental impacts, by microplastic particle age, size, shape, type, and location;

- d) An investigation of the sources and relative importance of pathways associated with environmental impacts of microplastics determined to be significant;
 - e) The development of a risk assessment framework for microplastics, based on the best available information on exposure of microplastics to organisms, including humans, through pathways that affect the marine environment;
 - f) Research on approaches for reducing the introduction of microplastics into the marine environment from all pathways of exposure, with an emphasis on the sizes, shapes, and types of microplastics that are associated with significant environmental impacts;
 - g) Use of the risk assessment framework developed to evaluate options, including source reduction and product stewardship techniques, barriers, costs, and benefits; and,
 - h) Research on approaches for reducing the introduction of microplastics into the marine environment and into types of microplastics that are associated with significant environmental impacts.
 - i) Use of the risk assessment framework developed to evaluate options, including source reduction and product stewardship techniques, barriers, costs, and benefits.
 - j) Recommendations for additional research or policy changes, including statutory changes, or additional research that may be needed.
- 7) Authorizes the OPC to include the Strategy within the OPC's *California Ocean Litter Prevention Strategy: Addressing Marine Debris from Source to Sea*.
- 8) Requires the OPC, on or before December 31, 2021 and subject to the availability of funding, the OPC to submit the Strategy to the Legislature. Authorizes the OPC to, at that time, also submit to the Legislature suggested policy changes that may be needed to implement the Strategy.
- 9) Requires the OPC, on or before December 31, 2025 subject to the availability of funding, to report to the Legislature on the implementation of the Strategy along with findings and recommendations.
- 10) Specifies that the report shall be complementary to, and not preclude appropriate implementation of, the individual components of the OPC's *California Ocean Litter Prevention Strategy: Addressing Marine Debris from Source to Sea*.
- 11) Sunsets the reporting requirement on December 31, 2029.

EXISTING LAW:

Under federal law:

- 1) Prohibits, under the federal Marine Plastic Pollution Research and Control Act of 1987, the at-sea disposal of plastic and other solid materials for all navigable waters within the United States. (Public Law 100-220, Title II)

- 2) Requires the National Oceanic and Atmospheric Administration (NOAA) to develop a National Marine Debris Monitoring Program designed to assess the effectiveness of the current national marine debris legislation. (33 U.S.C. §1951 et seq.).
- 3) Bans the manufacturing, packaging, and distribution of rinse-off cosmetics that contain intentionally-added plastic microbeads under the amendments to the Federal Food, Drug, and Cosmetic Act made by the Microbead-Free Waters Act of 2015. (21 USC § 331)

Under state law:

- 4) Establishes, under the California Ocean Protection Act, the OPC to coordinate the activities of state agencies related to the protection and conservation of coastal waters and ocean ecosystems. (Public Resources Code § 35600)
- 5) Regulates, under the Porter-Cologne Water Quality Control Act, discharges of pollutants in storm water and urban runoff by regulating, through the National Pollution Discharge Elimination System (NPDES), industrial discharges and discharges through the municipal storm drain systems. (Water Code (WC) § 13000 et seq.)
- 6) Requires the State Water Board and the Regional Water Quality Control Boards to implement a program to control discharges of preproduction plastic (nurdles) from point and nonpoint sources. Requires the State Water Board to determine the appropriate regulatory methods to address the discharges from these point and nonpoint sources. (WC § 13367)
- 7) Declares that littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. (Public Resources Code (PRC) § 42355)
- 8) Prohibits the sale of personal care products that contain plastic microbeads on and after January 1, 2020. (PRC §42360 et seq.)

FISCAL EFFECT: Unknown

COMMENTS: *Need for the bill:* According to the author, "SB 1263 directs the Ocean Protection Council to implement a Statewide Microplastics Strategy, with the goal of increasing the understanding of the scale and risks of microplastic materials and microfibers on the marine environment. Before actions to remedy the microplastics pollution problem can be explored, it is necessary to scope the issue so it can be approached scientifically and methodically, in particular as it relates to considering potential solution. SB 1263 takes that first initial step in addressing the microplastic problem."

Microplastics, mega-problem: According to the California Coastal Commission, the primary source of marine debris is urban runoff, such as lightweight plastic bags and plastic bottles. These macroplastics (>5mm) are broken down by ultraviolet radiation and wave action. Eventually, all plastic in the ocean eventually becomes microplastic (<5mm). Microplastics come in different shapes, sizes, and materials. For example, single use plastic water bottles are commonly made from polyethylene and degrade into microplastic fragments in the environment while synthetic clothes are made from resins such as polyester and nylon and shed plastic microfibers as they are washed or otherwise degraded. A 2017 study by the International Union

for Conservation of Nature (IUCN) found that, of the 9.5 million tons of plastic waste flowing into the ocean each year, an estimated 15-30 percent comprises fibers shed from clothing.

Ecological significance of microplastics: While it is intuitive that tons of microplastic pollution cannot be a good thing for aquatic life, there is evidence supporting a number of specific impacts these particles have or may have. These plastics are eaten by marine life from coral to remote deep-sea fish and from mollusks to whales. In multiple species, including crabs, ingesting microplastics reduces food consumption, decreasing the overall energy budget available for growth. In fish, microplastics can cut the intestinal track and cause tissue death and inflammation. Fish fed microplastic fragments which had absorbed these chemicals sustained liver damage. The impacts of ingesting microplastics on individual organisms and on whole ecosystems are ongoing areas of scientific research.

Harmful to humans? SB 1263 broadens the scope of the OPC's current work to, in collaboration with the State Water Board and OEHHA, assess the risks marine microplastics may pose to human health. People are exposed to microplastics through a number of routes including seafood, tap water, and bottled water. Bioaccumulation of toxins from microplastics in seafood has raised concerns that consumption may be a route of exposure to toxins as well as plastic. Two studies commissioned by Orb Media found microplastics in tap water and bottled water in more than 80% of samples taken from around the world.

This bill keeps the OPC's focus on the ocean so drinking water is beyond the scope of the Strategy. However, if the sources of microplastics in the ocean and in drinking water overlap, curbing marine microplastics could also decrease their concentrations in drinking water. Furthermore, another bill before the Committee and by the same author, SB 1422 (Portantino), requires the State Water Board to develop requirements for microplastics testing and reporting in tap water. Both bills require adoption of standard microplastics testing methods in their respective contexts and, to the extent that the same methods work in both, these efforts could be complementary.

So far, it seems few studies have directly assessed potential links between exposure to microplastics and risk to human health. This bill would broaden existing state efforts to address marine microplastics pollution to include development of a risk assessment framework for marine microplastics potential impacts on humans.

The California Ocean Protection Council (OPC): By directing the OPC to adopt and implement the Strategy, SB 1263 reinforces the OPC's ongoing work of addressing marine litter. The OPC was created by the California Ocean Protection Act (Act) in 2004 to help protect, conserve, and maintain healthy coastal and ocean ecosystems and the economies they support. As laid out in the Act, the OPC is tasked with the following responsibilities:

- 1) Coordinating activities of ocean-related state agencies to improve the effectiveness of state efforts to protect ocean resources within existing fiscal limitations;
- 2) Establishing policies to coordinate the collection and sharing of scientific data related to coast and ocean resources between agencies;
- 3) Identifying and recommending to the Legislature changes in law; and,

- 4) Identifying and recommending changes in federal law and policy to the Governor and Legislature.

According to the OPC's website, its major program focus is on marine protected areas, climate change, sustainable fisheries, and marine pollution. Marine debris, or litter, is a major focus on their work of marine pollution.

The OPC turns its attention to ocean litter: Much of the OPC's work on ocean litter began in 2007 when the OPC adopted a resolution entitled "Reducing and Preventing Marine Debris" (Resolution). This Resolution framed the problem of ocean litter: 60 to 80 percent of all marine debris and 90 percent of floating debris is plastic, the vast majority coming from land-based sources. Furthermore, plastic lasts hundreds of years in the environment without biodegrading and can contain potentially harmful constituents such as phthalates, bisphenol A, styrene, vinyl chloride, and flame retardants. These plastics threaten marine ecosystems and California's multibillion dollar ocean-dependent economies.

The OPC identifies solutions to curb ocean litter: The Resolution also identified a number of ambitious priority solutions to curb ocean litter and initiated a steering committee that, in 2008 published *An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter* (2008 Strategy), developed jointly by the OPC and National Oceanic and Atmospheric Administration (NOAA). Since 2008, a number of measures from the 2008 Strategy have been implemented. These include the statewide ban on free plastic carryout bags, and the State Water Board's Trash Amendments, which prohibits discharge of trash into state waters and establishes water quality objectives for trash.

Microplastics come to the fore of OPC efforts: In the last 10 years, research into microplastics presence and impacts on marine ecosystems has increased dramatically. In order to reflect these and other developments, the OPC and NOAA partnered again to update the 2008 strategy. On April 24, 2018, this work culminated with the OPC's adoption of the *California Ocean Litter Prevention Strategy: Addressing Marine Debris from Source to Sea* (2018 Strategy).

Notably, while microplastics were mentioned only briefly in the 2008 Strategy, to "increase understanding of the scale and impact of microplastics and microfibers on the marine environment and develop solutions to address them" is one of three central goals of the 2018 Strategy. To achieve that goal, the 2018 Strategy sets objectives including those summarized below:

- 1) Fund the development and validation of standardized monitoring methods in California, for several different environments where microplastics are found, including: wastewater effluent, stormwater, marine sediments, and fish tissues.
- 2) Convene scientists and experts to develop a comprehensive research plan by 2024 to characterize microplastics' sources, pathways, ambient concentrations, risk assessments, and impacts. Research efforts may include the following:
 - a. Quantify the concentration at which microplastics cause ecological impacts to marine life and ocean health;
 - b. Improve the understanding of the sources and pathways associated with microplastic pollution;
 - c. Determine whether reformulated textiles can significantly reduce the loading of microplastics into the environment; and,

- d. Research into the feasibility and effectiveness of technical solutions for microfibers in wastewater treatment plants, washing machines, and other points in the wastewater management system, including source control.

SB 1263 in context: SB 1263 builds on the OPC's 2018 Strategy in multiple ways. It codifies several of its objectives, and expands them to include a human health component. Furthermore, the bill may facilitate adoption of new policy, including new statute, by advancing the state of the science on microplastics and creating opportunities for the OPC to make recommendations to the Legislature. However, parallel scientific and policy work could complement the Strategy and any legislation that emerges from it. Therefore, an amendment is needed to clarify that SB 1263 is not intended to preclude or put off any additional legislative efforts to curb microplastic pollution.

This bill does not require updates to the Strategy after its initial formulation and implementation. However, OPCs has a strong history of addressing marine debris and a newly articulated focus on marine microplastics. Therefore, it seems likely that any future updates to their *California Ocean Litter Prevention Strategy*, of which the Strategy mandated by this bill may be a part, will continue to tackle marine microplastics. Further legislation may guide that strategy, as SB 1263 does, or address microplastic pollution in new ways.

Environmental Safety and Toxic Materials hearing on Marine Debris Impacts and Strategies for Reduction: On November 17, 2009, the Assembly Committee on Environmental Safety and Toxic Materials, along with the Assembly Committee on Natural Resources, conducted a joint informational hearing on Marine Debris: Impacts and Strategies for Reduction. The Committees examined the policies and actions that California agencies are taking to reduce the environmental and public health hazards, habitat damage, and public cost that trash and other marine debris imposes on California's coastal resources.

Proposed amendment: The author and Committee may wish to consider adding a finding and declaration that clarifies the intent of this legislation: "This chapter is not intended to preclude the Legislature from enacting legislation to reduce microplastic pollution either before or after the Statewide Microplastics Strategy is adopted and implemented."

Double referral: This bill was double-referred to the Assembly Water, Parks, and Wildlife Committee, where it set for hearing the morning of June 26, 2018.

Related legislation:

- 1) SB 1422 (Portantino). Would require the State Water Board to adopt regulations requiring annual testing for, and reporting of, the amount of microplastics in drinking water, including public disclosure of those results. This bill will be heard in this Committee on June 26, 2018.
- 2) AB 2379 (Bloom). Would require that, starting January 1, 2020, for all clothing made from fabric that is composed of more than 50 percent synthetic material (e.g. polyester), the care label and a conspicuously visible label at the point of sale read "This garment sheds plastic microfibers when washed, which contributes to marine plastic pollution." This bill is on the Assembly Floor Inactive File.
- 3) AB 888 (Bloom, Chapter 594, Statutes of 2015). Prohibits the sale of personal care products that contain plastic microbeads on and after January 1, 2020.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Sanitation Agencies (sponsor)
California Council for Environmental & Economic Balance
California Municipal Utilities Association
California Retailers Association
Californians Against Waste
County Sanitation Districts of Los Angeles County

Opposition

None on file.

Analysis Prepared by: Amy Gilson / E.S. & T.M. /

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 1422 (Portantino) – As Amended June 19, 2018

SENATE VOTE: 39-0

SUBJECT: California Safe Drinking Water Act: microplastics

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to adopt requirements for the testing of microplastics in drinking water. Specifically, **this bill:**

- 1) Requires the State Water Board to adopt requirements for the testing and public disclosure of the amount of microplastics in drinking water.
- 2) Requires the State Water Board to adopt a standard method for testing drinking water for microplastics before adopting the testing and reporting requirements described in (1).
- 3) Authorizes the State Water Board to implement (1) and (2) through the adoption of a policy handbook.

EXISTING LAW:

- 1) Requires the State Water Board to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act (SDWA), adoption of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies (Health and Safety Code (HSC) §116350).
- 2) Requires, pursuant to the federal SDWA and California SDWA, that contaminant levels in drinking water not exceed specified maximum contaminant levels (MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (HSC § 116270, et seq.)
- 3) Requires the State Water Board to adopt regulations it determines to be necessary to carry out the purposes of the California SDWA including, but not limited to:
 - a. The monitoring of contaminants, including the type of contaminant, frequency, and method of sampling and testing, and the reporting of results;
 - b. The monitoring of unregulated contaminants for which drinking water standards have not been established by the department; and,
 - c. Requirements for notifying the public of the quality of the water it delivered to consumers. (HSC § 116375)
- 4) Requires State Water Board to issue permits to public water systems and ensure that all public water systems are operating in compliance with the act and regulations adopted under the act (HSC §§116325, 116525).

- 5) Defines "public water system" (PWS) 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)
- 6) Requires PWS to annually prepare a consumer confidence report notifying consumers about contaminants found in their water and to mail or deliver a copy of that report to each customer. (HSC § 116470)
- 7) 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 (WC) § 106.3)
- 8) Prohibits the sale of a plastic product labeled as "compostable," "home compostable," or "marine degradable" unless the product meets a certain standard, specification, or certification. (Public Resources Code (PRC) §42357)
- 9) Prohibits the sale of a plastic product that is labeled as "biodegradable," "degradable," "decomposable," or in any way implies that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment. (PRC §42357)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author, "It is crucial that the public be made aware of the extent of microplastics present in drinking water because of the potential dangers they pose to human health and the environment. Greater knowledge of the contaminants in drinking water can lead to increased efforts at recycling, decreased use of plastics, decreased pollution, and an overall healthier public and planet.

Under the California Safe Drinking Water Act, the State Water Resources Control Board adopts implementing regulations and conducts studies to determine the quality of water. This bill would add microplastics to the list of contaminants monitored, given the high levels present and their potential effects on public health."

Introducing microplastics: When plastic bags, bottles, take-out boxes, wrappers, and other plastic items enter waterways, they are broken down into tiny particles by ultraviolet radiation and the water's motion. When clothes made from synthetic materials, such as polyester and nylon, are washed, they shed tiny fibers that evade capture by wastewater treatment facilities at rates up to 40% and are released into surface waters, according to a review of available data by the outdoor clothing and gear company, Patagonia, and the Bren School of Environmental Science and Management at the University of California at Santa Barbara. These tiny bits of plastic are called microplastics when they are smaller than five millimeters. Microplastics come in different shapes (fragments, films, and fibers), sizes, and materials (such as polystyrene and polyester). For example, single use plastic water bottles are commonly made from polyethylene and break-down into microplastic fragments, while clothes made from polyester, nylon, and other synthetics shed microplastic fibers. A 2017 study by the International Union for Conservation of Nature found that 9.5 million tons of plastic waste flow into the ocean each year

and, according to the US EPA, microplastics are commonly found in freshwater systems as well. Plastics are not biodegradable; they persist for hundreds or thousands of years.

How microplastics are detected: Standard methods adopted by the US EPA or State Water Board are used to test drinking water for required contaminants in order to ensure reliable results that are comparable across tests. There are many different methods to detect microplastics. A method developed by the National Oceanic and Atmospheric Administration (NOAA) in 2015 uses chemicals to break down natural particles, leaving behind plastic particles which can be counted under a microscope. Other methods employ dyes that generally color only natural or only plastic materials in order to identify likely microplastics. None of these methods distinguish among types of plastic materials. In order to identify specific resins, spectroscopy such as FTIR or Raman must be used. According to a 2017 US EPA Microplastics Expert Workshop Report, quantifying the smallest microplastics, "nanoplastics" (<100nm, smaller than the length of a bacterium), is extremely challenging and there are very few methods available. Current, more widely used technologies could still detect a meaningful range of microplastics sizes.

SB 1422 requires the State Water Board to develop a standard method for testing microplastics in drinking water, but does not make any more specific requirements, for example, that the microplastics testing methodology distinguish among microplastics by size, shape, and type of plastic material.

Microplastics in drinking water: In the last two years, the publication of two reports by Orb Media in collaboration with scientists at Fredonia State University of New York and other academic institutions brought the prospect of human exposure to microplastics via drinking water to wide attention. In their 2017 analysis and follow-up peer reviewed publication, 81% of 159 drinking water (i.e. tap) samples from around the world tested positive for likely microplastics using the dye method described above. Close to 100% of those particles were microfibers. An average of about nine particles per liter was found in the 33 US samples; however, results varied widely, from zero to 70 per liter. Using this average, Americans who get all their water from tap water ingest about 6,000 microplastic particles per year. Their follow-up study testing for microplastics in bottled water is discussed below.

Is drinking microplastics harmful? There do not appear to be any studies directly assessing potential human health impacts of microplastics in drinking water because probable microplastics were only discovered in drinking water in 2017. However, there is a broad knowledge base on the toxicity to humans of plastic materials themselves and on the toxicity to humans of chemicals that these plastics can absorb. Furthermore, the microplastics that slough off plastic medical implants, such as replacement knee or hip joints can disrupt cellular processes and degrade tissues. Finally, health effects of constituents in animals are widely used as evidence that a constituent may be toxic to humans (for example, animal testing for toxicity is required before human trials for a new medication) and there is a significant body of evidence evaluating toxic effects of microplastics on fish and other aquatic creatures. These are reviewed in a 2016 US EPA State of the Science Report on the chemical toxicity (2016 US EPA Toxicity Report) of plastics pollution to aquatic life.

Chemical toxicity of plastics pollution: According to the 2016 US EPA Toxicity Report, "Key contaminants detected in plastics in the aquatic environment include: phthalates, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), organochlorine pesticides (OCPs),

polybrominated diphenyl ethers (PBDEs), alkylphenols, bisphenol A (BPA), and metals (e.g., cadmium, zinc, aluminum)."

Plastics typically contain additives to improve their properties. Phthalates and BPA are two of the most common additives; they are plasticizers that impart pliability and prevent shattering and can comprise up to 50% of finished plastic material. BPA and five phthalates are on California's Proposition 65 list as chemicals known to the state to cause reproductive harm. Flame retardants, such as PBDEs are also commonly used in plastics. According to the US EPA, "Toxicological studies with both animals and humans have demonstrated that PBDEs are potential carcinogens, neurotoxins, and endocrine disruptors." Responding to this evidence of flame retardant toxicity, AB 2998 (Bloom, 2018) would ban the sale of many products containing flame retardant materials. Plastics can also accumulate chemicals from the surrounding water, including chemicals such as such as PCBs, PAHs, and dichlorodiphenyltrichloroethane (DDT) which are categorized as persistent, bioaccumulative, and toxic by the US EPA. The 2016 US EPA Toxicity Report also raises concerns that nanoplastics carry especially high concentrations of toxins and, because of their small size, are able to migrate through tissues and cells.

Several studies have directly assessed toxic effects of microplastics on fish and invertebrates and found that chemicals associated with the plastic, as well as the plastic itself, was associated with health affects including liver damage. According to the 2016 US EPA Toxicity Report, "Further research is needed to gain knowledge of the extent to which plastics transfer contaminants to organisms compared to other sources, as well as the toxicological impacts of plastic ingestion compared to other environmental stressors."

Drinking water regulation and study: Consider water quality regulation as roughly categorized into four categories, roughly of decreasing stringency. A constituent can fall into one of the tiers as follows:

- 1) Regulated via maximum contaminant levels (MCL): PWSs must monitor for constituents with MCLs and ensure that their concentrations do not exceed the MCL, which is the legal threshold at which a constituent is permitted in drinking water. MCLs have been established by the US EPA or the State Water Board for about 100 chemicals, for example, arsenic, lead, and benzene. Instituting an MCL is a lengthy process. First, the Office of Environment Health and Hazard and Assessment (OEHHA) establishes the level of a chemical contaminant in drinking water that does not pose a significant risk to health by reviewing the scientific literature and performing a health risk assessment. This level is set as the public health goal (PHG) that the State Water Board will aim for when establishing the MCL. Then, the State Water Board assesses the constituent's detectability and treatability, as well as costs of treatment to determine the final, regulatory binding MCL. Current law requires a contaminant's MCL to be established at a level as close to its PHG as is technologically and economically feasible (HSC §116365(a)). As an example, the PHG for lead is 0.0002mg/L, but the MCL is 0.015 mg/L. PWS send consumer confidence reports (CCR) annually to their customer base, detailing any contaminants found in their water along with their MCL and PHG.
- 2) Unregulated but monitored
 - a) Monitored with notification and response levels: PWS are recommended, but not required, to monitor for 29 additional chemicals that do not have MCLs. Examples of

chemicals that have notification levels include boron, ethylene glycol, formaldehyde, and 2,4,6-trinitrotoluene (TNT). For these constituents, notification and response levels are set based on information about the constituents' toxicity and a risk assessment of the health threats they pose. Should a chemical be detected over its notification level, the PWS must notify the local agency (e.g. city council) in which users of the drinking water reside and is recommended to notify consumers as well. If a chemical is present in drinking water at concentrations considerably greater than the notification level, the State Water Board's Division of Drinking Water (DDW) recommends that the drinking water system take the source out of service. MCLs are eventually established for some of these constituents, for example, perchlorate (rocket fuel).

- b) Unregulated Constituents with Required Monitoring (UCRMs), typically two year of monitoring: PWSs must monitor for constituents with UCRMs and include the data in their CCR. The US EPA's fourth and current UCMR is being used to collect occurrence data between 2018 and 2020 for about 30 contaminants. These include cyanotoxics produced by harmful algal blooms, chlorpyrifos, and several other pesticides. The State Water Board had statewide UCMRs from 2001-2003, collecting data on constituents including perchlorate and chromium-6, now both regulated contaminants. The US EPA and State Water Board use the Unregulated Contaminant Monitoring Rule to collect data for contaminants that are suspected to be present in drinking water and do not have health-based standards set under the SDWA. Occurrence data support US EPA or State Water Board determinations of whether to regulate particular contaminants in the interest of protecting public health. Similar to notification levels, UCMRs have health-based "reference concentrations" that provide context for detection of a UCMR contaminant.

The US EPA maintains a Contaminant Candidate List (CCL) of unregulated contaminants that are known or anticipated to occur in drinking water and which may warrant regulation (MCLs). Selection of contaminants for a particular UCMR cycle is largely based on a review of the CCL. Contaminants with more extensive health effect information are prioritized for UCRMs, but the US EPA notes that there is limited information about health effects and treatment techniques to address some of these unregulated contaminants. Contaminants that do not have a standard method of detection ready for use are typically removed from consideration. The US EPA pays for the analysis of all samples from systems serving 10,000 or fewer people and coordinates an approval program for laboratories that wish to analyze public water system samples.

- 3) Unregulated constituents of concern: "Constituent of emerging concern" (CEC) is a catch-all term used for the vast array of unregulated constituents that are concerning, but new, difficult to detect or possible to detect only recently. The category of CECs is amorphous and sometimes used to include constituents with UCMRs and notification levels, as well as their less thoroughly characterized counterparts. Current CECs include some pharmaceuticals, flame retardants, newly registered pesticides, and perfluorooctane sulfonate (PFOS)/perfluorooctanoic acid (PFOA). Constituents on the US EPA's CCL list would typically be referred to as CECs. In addition, microplastics are currently consisted CECs by the State Water Board. The State Water Board can prioritize CECs for special studies of toxicity, development of monitoring methods, and treatment methods. CEC projects include environmental studies as well as efforts geared more directly towards drinking water. Eventually, this work may lead to development of notification levels or MCLs.

AB 2072 (Quirk, 2018, held in Assembly Appropriations) would have created a CEC research program at the State Water Board. CEC efforts have been largely geared towards developing monitoring strategies for recycled water. While microplastics are clearly on the State Water Board's radar, they do not seem to have been a major focus of their CEC work to date.

SB 1422 would require the State Water Board to develop a standard method for testing microplastics, then "upgrade" microplastics from a CEC to a constituent with testing and reporting requirements that most closely resemble a UCMR. The three main distinctions are that UCMRs last two years while the microplastics testing would be permanent, the US EPA pays for UCMR monitoring for small water systems, and each UCMR is accompanied by a reference concentration that provide health-based context for local agencies and consumers interpreting UCMR levels.

Bottled water contains microplastics too: A 2018 report (as yet unpublished in a peer-reviewed scientific journal) commissioned by Orb Media and carried out by some of the same scientists as the drinking water study described above, found nearly twice as much microplastic in bottled water than tap water. While microfibers were the most common type of likely microplastic in tap water, fragments were most common in bottled water and the type of plastics in the bottled water matched those used to make the bottle cap. Therefore, they speculate that the fragments were introduced during the bottling process.

Regulation of bottled water quality: Bottled water is regulated by the Department of Public Health at the state level and the Department of Food and Agriculture at the federal level. Bottled water must meet MCLs but are not subject to notification requirements or UCMRs.

What may be learned from testing microplastics in drinking water: Better understanding of microplastics in drinking water's potential health effects on humans requires three components: standard methods for detecting microplastics, more information about the toxicology of microplastics, and more information and human exposure to microplastics through drinking water. Research specifically into the toxicity effects of microplastics on humans appears to be in its infancy, so ongoing research will be extremely useful. However, there are substantial bodies of research supporting toxicity for a wide variety of microplastics' constituents. SB 1422 takes care of two of the three components. Testing for microplastics would create a dataset that, it appears, would be unique in the country. These data could potentially be used in epidemiological studies examining whether or not areas with relatively more microplastics in their drinking water have higher instances of certain illnesses. Furthermore, because drinking water sources vary greatly throughout the state, these data could also help determine sources of microplastics pollution, which may include wastewater effluent and litter.

Another approach to consider: At present, the testing requirements prescribed in SB 1422 do not fit neatly into any of the typical regulatory frameworks used by the US EPA or State Water Board to regulate drinking water, though a permanent UCMR may satisfy the bills requirements. To place microplastics squarely within the existing drinking water regulatory framework, the author and Committee may wish to consider amendments that would require the State Water Board to develop a UCMR for microplastics.

Arguments in support: According to a coalition of environmental groups, "In a survey that compared 150 tap water samples from both large cities and small towns on five continents,

microscopic plastic fibers were found in nearly every sample. 94% of the water samples from the United States contained plastic microfibers. Microfiber pollution isn't unique to just tap water, two recent studies have shown that microplastics are present in bottled water as well. One study found that 19 out of 20 bottled water brands analyzed were contaminated with microplastics mostly consisting of fibers, and another study done by the University of New York at Fredonia found that 93% of bottled water is contaminated with microplastics.

Consumers have a right to know what they are ingesting and SB 1422 will provide useful data on the presence of microplastics in drinking water."

Arguments in opposition: According to the California Municipal Utilities Association, "In its current form, SB 1422 requires the State Water Resources Control Board (State Board) to adopt requirements for the annual testing and reporting of the amount of microplastics in drinking water. These requirements are premature for a number of reasons. Research about the presence and impact of microplastics in drinking water is in its infancy as evidenced by the fact that there is no standard methodology for testing for microplastics. There are also no accredited environmental laboratories in the state which can provide analysis for the presence of microplastics in drinking water. Finally, there are no health standards for the presence of microplastics in drinking water. Without studying the effect exposure to microplastics has on the human body, there is no way to determine the impact of the varying levels of microplastics found in drinking water. Nevertheless, SB 1422 would require disclosure of this information to consumers without any context for what it does or does not mean to their health and without the research having been done to provide that context." Other opposition groups make similar arguments and propose amendments that would provide for an expert panel that would make recommendations to the Legislature.

Related legislation:

SB 1263 (Portantino, 2018). This bill would require the Ocean Protection Council to adopt and implement a Statewide Microplastics Strategy to address microplastic materials that pose an emerging concern for ocean health. SB 1263 is set for hearing in this committee on June 26, 2018.

AB 2379 (Bloom, 2018). This bill would have required that clothing made from fabric that is composed of more than 50% synthetic material bear a conspicuous label that is visible to the consumer at the point of sale, as specified, including a statement that the garment sheds plastic microfibers when washed. AB 2379 is currently on the Assembly inactive file.

AB 2072 (Quirk, 2018). This bill would have created dedicated program to research the potential effects of constituents of emerging concern (CEC) in water sources on human and ecosystem health. AB 2072 was held on suspense in the Assembly Appropriations Committee.

AB 888 (Bloom, Chapter 594, Statutes of 2015). This bill prohibits a person from selling or offering for promotional purposes a personal care product containing plastic microbeads that are used to exfoliate or cleanse in a rinse-off product.

SB 351 (Ortiz, Chapter 602, Statutes of 2001). This bill directed Department of Health Service to adopt a primary MCL for Chromium-6.

REGISTERED SUPPORT / OPPOSITION:

Support

Azul
Breast Cancer Prevention Partners
Californians Against Waste
California Coastkeeper Alliance
California Coastal Protection Network
California Product Stewardship Council
Center for Biological Diversity
Clean Water Action
Empower Family California
Environmental Working Group
Greenpeace
Heal the Bay
National Stewardship Action Council
Northern California Recycling Association
Plastic Pollution Coalition
Seventh Generation Advisors
Sierra Club of California
StopWaste
Surfrider Foundation
Team Marine
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education (COARE)
The Trust for Public Land
UPSTREAM Policy
WILDCOAST
Wishtoyo Chumash Foundation

Opposition

Association of California Water Agencies
California Council for Environmental and Economic Balance
California Municipal Utilities Association
California Water Association

Analysis Prepared by: Amy Gilson / E.S. & T.M. /

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1481 (Hill) – As Amended June 18, 2018

SENATE VOTE: 38-0

SUBJECT: Structural pest control: certification: fumigation: penalties

SUMMARY: Makes technical changes to the laws governing structural pest control operators, adjusts penalty amounts for violations of those laws, and extends the sunset date on the Structural Pest Control Board (Board). Specifically, **this bill:**

- 1) Extends the sunset date on the Board from January 1, 2019, to January 1, 2023.
- 2) Defines "control" as a pest population management system that utilizes techniques to reduce and maintain pest populations at levels below those causing economic or material injury, or to manipulate the populations to prevent causing such injury.
- 3) Defines "eradication" as the total elimination of a pest from a designated area. States that elimination and extermination shall have the same meaning as eradication.
- 4) Defines "inspection" as the act of a field representative or operator physically performing an onsite assessment of real property.
- 5) Makes a technical change to delete obsolete reference to 'nondecay fungi' in the context of documentation requirements for pest identification.
- 6) Requires a registered company, when a limited inspection report has disclosed no infestation or infection, to provide certification that states: "This is to certify that a limited inspection report was conducted on the area of the property described herein on ____ (date(s)) in accordance with the Structural Pest Control Act and rules and regulations adopted pursuant thereto, and has revealed no evidence of active infestation or infection in the visible and accessible areas inspected."
- 7) Requires certification to be included on and made part of the complete, limited, supplemental, or reinspection report.
- 8) Strikes the requirement that the certification (which must be provided after an inspection report has been prepared by a Branch 3 registered company that discloses a wood destroying pest or organism (WDO) can be eradicated by fumigation as performed by a Branch 1 registered company) be delivered to the person ordering the fumigation.
- 9) Deletes the requirement that the distribution of any documents pertinent to the fumigation done by a Branch 1 registered company be the responsibility of the Branch 1 registered company and requires the Branch 1 registered company to provide the certification described above to the consumer who ordered the fumigation.

- 10) Requires a warranty for fumigation to be provided in writing by the registered company contracting with the owner or the owner's designated agent.
- 11) Deletes, in the event of a failed fumigation, the current requirements, and requires:
 - a) Where a consumer has authorized a Branch 3 registered company to subcontract the fumigation to a Branch 1 registered company, the Branch 3 registered company to verify the need for a refumigation and issue an inspection report; the consumer to not be charged for this inspection; and, following completion of the refumigation, a new certification and any additional warranty or guarantee to be issued to the owner or the owner's designated agent; and,
 - b) Where the consumer has elected to contract directly with a Branch 1 registered company to perform a fumigation, the Branch 1 registered company to do all of the following:
 - i) Verify the need for a refumigation by obtaining a Branch 3 inspection at no charge to the consumer during the duration of a warranty or guarantee issued by the Branch 1 registered company;
 - ii) Maintain, with the original inspection report, all of the following: the name of the current owner of the structure fumigated, the address of the structure, and the date of the failed fumigation; an explanation of the need for refumigation; and, the proposed date for the refumigation;
 - iii) Following completion of the refumigation, a new certification and any additional warranty or guarantee shall be issued to the owner or the owner's designated agent; and,
 - iv) Within five working days after the completion of the refumigation, the Branch 1 registered company, on a company document, to file with the current owner, notification of the Branch 3 registered company whose report was used for the original fumigation, or refumigation.
- 12) Adds advertising of business or practice of structural pest control to the list of unlawful activities for unlicensed individuals.
- 13) Amends, for violations of the laws governing structural pest control operators, the penalty minimum and maximum from not less than \$100 to not less than \$50, and from not greater than \$1,000 to not greater than \$5,000.
- 14) Requires a registered company, when changing its sole proprietors or partners, to notify the registrar on a form prescribed by the Board of that change within 10 days thereafter.
- 15) Makes a technical amendment to clarify posting an inspection and a completion tag for a WDO can be combined on the same form.
- 16) Requires, if the Board denies a license due in part to an applicant's state or federal criminal history record, the Board to provide the applicant a copy of his or her criminal history record at an address specified by the candidate.

- 17) Authorizes a person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, to petition the Board for reinstatement or modification of the penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed, beginning on the effective date of the decision ordering that disciplinary action:
 - (1) At least three years for reinstatement of a license revoked or surrendered;
 - (2) At least two years for modification of a condition of probation;
 - (3) At least one year for early termination of a probation of less than three years; and,
 - (4) At least two years for early termination of a probation of three years or more.
- 18) Authorizes the Board to require an examination for reinstatement of a license revoked or surrendered.
- 19) Requires a copy of a notice of violation issued for any violation committed by a subcontractor under a Branch 1 license to be sent to the prime contractor responsible for the work by the issuing authority within 30 days from the date the violation was committed or discovered. Requires, in circumstances where the violation is classified as serious or moderate, notification to be performed by certified mail with a return receipt requested.
- 20) Increases the amount the Board or county agricultural commissioner may levy when issuing a fine from \$1,000 to \$5,000 against a registered company acting as a prime contractor for any serious or moderate violation.
- 21) Deletes the requirement that a copy of a notice of violation issued for any violation committed by a subcontractor be sent by certified mail to the prime contractor by the issuing authority within 15 days from the date the violation was committed.
- 22) Authorizes a prime contractor to be fined for a subcontractor's first violation for failing to have a signed Occupants Fumigation Notice on the premises being treated.
- 23) Increases the cap on the activity form fee from \$3 to \$5 per property address.
- 24) Authorizes a county agricultural commissioner, in addition to the Director of the Department of Pesticide Regulation (DPR), to levy a civil penalty against a person or company violating this chapter, including any regulation adopted pursuant to this chapter for failing to pay to the county agricultural commissioner an \$8 fee for each fumigation conducted in Los Angeles County, Orange County, Santa Clara County, or San Diego County.

EXISTING LAW:

- 1) Establishes, within the Department of Consumer Affairs (DCA), a Board that licenses and regulates structural pest control applicators, field representatives, operators, and structural pest control companies, and repeals the Board on January 1, 2019. (Business & Professions Code (BPC) § 8520)

- 2) Establishes the Board's highest priority as the protection of the public through its licensing, regulatory, and disciplinary functions within the pest control industry. (BPC § 8520.1)
- 3) Defines "structural pest control" and "pest control" synonymously as, with respect to household pests and WDOs, or other pests that may invade households or other structures, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or the performance of identifying pests, making inspections and inspection reports for pest infestations, and/or performing work to eliminate, exterminate, control or prevent those pests or organisms. (BPC § 8505)
- 4) Prohibits a Branch 2 or 3 registered company from commencing work on a contract, or deliver documents expressing an opinion or statement relating to the control of household pests, or WDOs until the registered company has completed an inspection partnership, corporation, limited liability company, association or other organization or any combination thereof. (BPC § 8514)
- 5) Defines certification as a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of WDOs and, listing such recommendations, if any, which appear on an inspection report prepared, and which relate to (1) infestation or infection of WDOs found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification. (BPC § 8519)
- 6) Requires, in the event of a failed fumigation by a Branch 1 registered company, that company to verify the need for a refumigation; to maintain the original inspection report; and, for the Branch 1 registered company, within 5 days after the completion of the fumigation, to file a company document with the current owner, and for the Branch 3 registered company to report information on the completion of the fumigation, new certification, and any warranty or guarantee. (BPC § 8519.5)
- 7) Prohibits an individual from advertising, engaging, or offering to engage in the business or practice of structural pest control. (BPC § 8550)
- 8) Permits the ability to fine any person who violates any provision of the Act not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000). (BPC § 8553)
- 9) Authorizes any board, bureau, or commission within the DCA to establish, by regulation, a system for the issuance of an administrative fine not to exceed \$5,000. (BPC § 125.9)
- 10) Requires a registered company to notify the SPCB within 30 days of a change in location of its principal office or any branch office or of a change in qualifying manager, branch supervisor, officers, or its bond or insurance. (BPC § 8553)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, this bill is necessary to reflect Senate Business & Professions Committee staff recommendations made for the purpose of remedying issues

identified through the Board's Sunset Review process. This bill is necessary to make changes to the structural pest control laws and the Board's operations in order to improve the effectiveness and efficiency of this regulatory entity.

Structural pest control: Structural pest control is the control of household pests (including but not limited to rodents, vermin, and insects) and WDOs or other pests that may invade households or structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof.

The practice of structural pest control includes engaging in, offering to engage in, advertising for, soliciting, or the performance of any of the following: identification of infestations or infections; the making of an inspection for the purpose of identifying or attempting to identify infestations or infections of household or other structures by such pests or organisms; the making of inspection reports; recommendations, estimates, and bids, whether oral or written, with respect to such infestation or infections; and the making of contracts, or the submitting of bids for, or the performance of any work including the making of structural repairs or replacements, or the use of pesticides, insecticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices for the purpose of eliminating, exterminating, controlling or preventing infestations or infections of such pests, or organisms.

Structural Pest Control Board (Board): In 1935, the California Legislature passed the first Structural Pest Control Act (AB 2382, Chapter 823, Statutes of 1935) as "An act to regulate the practice of structural pest control; to create the Structural Pest Control Board; to provide for the registration and licensing of persons engaged in such practice; and, for the protection of the public in the practice of structural pest control," and the Board went into effect on September 15, 1935.

The Board, which is under DCA, is comprised of seven members, including three professional and four public members. The three professional members are licensed structural pest control operators appointed by the Governor.

The Board issues three types of licenses for three different practice areas (branches) of pest control. The branch types are:

- 1) *Branch 1 Fumigation* – The practice relating to the control of household and WDOs by fumigation with poisonous or lethal gases.
- 2) *Branch 2 General Pest* – The practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.
- 3) *Branch 3 Termite* – The practice relating to the control of WDOs by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

A Board in transition: On October 23, 2009, the Board was transferred from DCA to the DPR. On July 1, 2013, the Board returned to DCA under the Governor's 2011-2012 Reorganization Plan No. 2 and AB 1317 (Frazier, Chapter 352, Statutes of 2013).

According to the Senate Business & Professions Committee, it appears that the Board has successfully traversed the transition and is making progress as a regulatory agency.

Given the Board's mission to protect the general welfare of Californians and the environment by promoting outreach, education, and regulation of the structural pest management profession, the Board should be continued. By maintaining a sunset date on the Board, though, the Legislature maintains ongoing opportunity to review the Board's oversight and enforcement and weigh the merits of its existence.

SB 1481 proposed to extend the sunset date of the Board from 2019 to 2023.

Board financing: The Board is a special fund agency whose activities are funded through regulatory fees and license fees and is independent of the State General Fund.

The SPCB administers three funds: the Structural Pest Control Fund (Support Fund), the Structural Pest Control Education and Enforcement Fund (Education and Enforcement Fund), and the Structural Pest Control Research Fund.

The Support Fund is the primary fund for the Board, accounting for approximately 75% of the Board's annual budget. The majority of the Support Fund comes from Wood-Destroying Pests and Organisms (WDO) filing fees. The WDO filing fee is a \$2.50 fee each time a pest control company inspects a property or completes work on a property. The SPCB has averaged approximately 1,374,949 WDO filings every year over the last four FYs (FY 2013-2017).

SB 1481 proposes to increase the statutory fee for an activity form (WDO filing fee) from not more than \$3 to \$5. At the Board's April board meeting, Board members voted to increase the WDO fee cap from \$3 to \$5 in statute and raise the WDO fee from \$2.50 to \$3 in regulation. The WDO filing fee is where the majority of the Board's revenue comes from (75% of total revenue) and this fee increase is projected to add 1.5 months in reserve for FY 2018/19.

The Education and Enforcement Fund is used by the Board for the purposes of training, reimbursement to DPR for work performed as the agent of the Board, and for expenses incurred by the Disciplinary Review Committee. Average revenue from report filing fees and pesticides fines each year over the past four FYs (FY 2013-2017) has been \$423,509.

SB 1481 proposes amending, for all violations of the Structural Pest Control Operator Act, the penalty minimum and maximum from not less than \$100 to not less than \$50, and from not greater than \$1,000 to not greater than \$5,000. The bill would also increase the amount the Board or county agricultural commissioner may levy when issuing a fine from \$1,000 to \$5,000 against a registered company acting as a prime contractor for any serious or moderate violation. The law that establishes the DCA includes a provision to authorize all boards and bureaus under the DCA to develop a system of citations and orders of abatement up to a maximum of \$5,000. By increasing the fine amounts under the Structural Pest Control Operators Act, SB 1481 is aligning the two laws. These revenues are deposited into the Support Fund.

Sunset Review: Each year, the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee (jointly, 'Committees') hold joint Sunset Review oversight hearings to review the boards and bureaus under DCA. The DCA boards and bureaus are responsible for protecting consumers and the public and regulating the professionals they license. The Sunset Review process provides an opportunity for DCA, the Legislature, the boards, interested parties, and stakeholders to discuss the performance of the boards, and make recommendations for improvements.

On February 26, 2018, the Committees held a joint Sunset Review hearing on the Board to discuss the programmatic and operational changes, enhancements, and other important policy decisions or regulatory changes made by the Board.

The Committee's 2018 Sunset Review Report for the February hearing outlined issues pertaining to the Board where there is room for improvement. Through the Sunset Review process, the Committees and the Board have also identified particular instances in the pest control applicator laws where technical clarifications may improve the Board's operations and application of the statutes governing its work. Clarification on and improvements to communication in the event of a failed fumigation is an example, which is addressed with clarifying language in the bill.

The primary intent of SB 1481 is to extend the sunset date on the Board, but it also implements technical and non-substantive changes to certain provisions of the law, deletes existing provisions from the law that are no longer applicable, and deletes or amends other provisions to support legislative intent.

Related legislation: AB 1244 (Lieu, Chapter 560, Statutes of 2014) extended, until January 1, 2019, the provisions establishing the Board, and made numerous, technical, and corrective changes to the structural pest control law.

Double referral: This bill was heard in the Assembly Business & Professions Committee on June 19, 2018, where it was approved 17-0.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SJR 22 (Hueso) – As Amended May 29, 2018

SENATE VOTE: 36-0

SUBJECT: Tijuana River Valley

SUMMARY: Urges the federal government and the United States Section of the International Boundary and Water Commission (USIBWC) to take immediate action to adequately address cross-border pollution in the Tijuana River Valley. Specifically, **this resolution:**

1) Makes the following legislative findings:

- a) The Tijuana River watershed is approximately 1,700 square miles and drains to the Pacific Ocean in the United States through the Tijuana River Valley, which consists of the Tijuana River, the Tijuana River estuary, and the ocean shoreline, all located in the most southwestern portion of the City of San Diego, bounded by the residential community of San Ysidro;
- b) The Tijuana River estuary is designated as "Wetlands of International Importance" by the United Nations pursuant to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, February 2, 1971 and is one of the few estuaries and coastal lagoons in southern California, and the only one in the City of San Diego, not bisected by a railroad or freeway;
- c) The Tijuana River estuary contains one of the few salt marshes remaining in California, where more than 90 percent of wetlands have been lost to development;
- d) The Tijuana River estuary provides a critical habitat for multiple endangered species and is also a critical stopover point in the Pacific Flyway for more than 370 species of migratory and native birds;
- e) The Tijuana River estuary is protected by the United States Fish and Wildlife Service and parts of the estuary, such as the Border Field State Park, are protected by the California Department of Parks and Recreation, as the Tijuana River Valley offers some of the few recreational activities that are affordable to nearby low-income communities, including disadvantaged communities and severely disadvantaged communities;
- f) The Tijuana River, which flows east to west from Mexico and drains into the Pacific Ocean through the Tijuana River estuary, has, for decades, experienced an increased discharge of trash, sediment, and wastewater generated on the Mexico side of the border, which, as a result of sewage infrastructure inadequacies, has created recurring pollution problems;
- g) In February of 2017, one of the largest spills occurred, resulting in 143 million gallons of raw sewage flowing into the Tijuana River Valley;

- h) Transboundary flows containing raw sewage, waste tires, trash, and sediment cause severe economic and environmental degradation as a result of the continued need to excavate, haul, and dispose of the pollution in the Tijuana River Valley, and those flows also result in constant beach closures that compromise the economic potential of south county beaches in the County of San Diego;
- i) The discharge of raw sewage and other waste through the Tijuana River Valley poses serious public health risks from untreated and partially treated human and industrial wastewater that contains toxins and bacterial and viral pathogens, such as hepatitis and enteroviruses, which have been detected in the surf zone of the Tijuana River during wet weather;
- j) The City of San Diego has declared a continued state of emergency since 1993 as a result of the escalated discharge of raw sewage from Tijuana, Mexico, that has caused numerous health problems, such as headaches, rashes, infections, and breathing problems;
- k) The USIBWC and its Mexican counterpart, Comisión Internacional de Límites y Aguas entre México y Estados Unidos, is an international organization that exercises the rights and obligations of both governments under the Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, a treaty which incorporates the agreement of both governments to "give preferential attention to the solution of all border sanitation problems;"
- l) The Federal Water Pollution Control Act (Clean Water Act) requires that each federal agency or department that has jurisdiction over any property or facility, or that is engaged in any activity resulting in, or which may result in, discharge or runoff of pollutants, "shall be subject to all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as a nongovernmental entity;"
- m) The federal Resource Conservation and Recovery Act (RCRA) provides that any person may commence a civil action on his or her own behalf "against any person, including the United States [U.S.] and any other governmental instrumentality or agency ... who has contributed or who is contributing to the past or present handling, storage, treatment transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment;"
- n) In December of 2017, the federal Department of Justice, the U.S. Environmental Protection Agency, the federal Department of State, the USIBWC, the Cities of Imperial Beach, San Diego, and National City, the County of San Diego, the Port of San Diego, and the San Diego Regional Water Quality Control Board (San Diego Water Board) met to discuss a number of project concepts to address cross-border pollution and the Tijuana River Valley that led to the development of a final project proposal that was shared with all jurisdictions;
- o) The final project proposal was submitted to the USIBWC and required that the agency commit to implement priority projects that would control cross-border pollution in the main channel of the Tijuana River and tributary canyons; monitor and access the sources,

- extent, and magnitude of specific pollutants from existing and potential transboundary flows; and, mitigate or restore the Tijuana River National Estuarine Research Reserve and other areas of the Tijuana River Valley;
- p) In the three months leading up to the USIBWC's response, the transboundary flows have continued. At least 17 spills have been recorded, at least three million gallons of wastewater have been dumped, and portions of south county beaches in the County of San Diego have been closed for 40 percent of the time;
 - q) On March 1, 2018, the USIBWC notified the San Diego Water Board that "[t]he USIBWC's role under the 1944 Water Treaty does not make it the agency, that, under U.S. Law, is 'responsible for managing transboundary trash, sewage, and sediment discharge' from Mexico" and that it does not make unilateral commitments and decisions and cannot commit to projects for which it does not have an appropriation;
 - r) The USIBWC has failed repeatedly to abide by the state's water quality control standards for over 30 years, and millions of gallons of wastewater, sediment, and trash have poured into our coastal waters, with no effective diversion in place;
 - s) The City of San Diego, the City of Imperial Beach, the City of Chula Vista, the County of San Diego, and the Port of San Diego recently filed intentions to sue if the USIBWC fails to take the necessary steps to address the spills and pollution in the Tijuana River Valley and to protect the health and well-being of the people of California;
 - t) The USIBWC's failure to act is a clear violation of the federal Clean Water Act and the RCRA and has endangered the lives of the people of California and threatened the environmental health and viability of the Tijuana River Valley and its diverse and unique potential as an ecological, recreational, cultural, and educational jewel of the State of California for decades; and,
 - u) On May 14th, 2018, Attorney General Xavier Becerra (AG) and the San Diego Water Board, addressing concerns over the public health hazards posed by the spills and pollution in the Tijuana River Valley, filed with the United States Environmental Protection Agency a 60-day Notice of Intent to Sue the USIBWC for violations of the National Pollutant Discharge Elimination System (NPDES) permit granted to the USIBWC by the San Diego Regional Water Quality Control Board pursuant to the Federal Water Pollution Control Act.
- 2) Resolves, on behalf of the Senate and the Assembly of the State of California, jointly, that:
- a) The Legislature urges the federal government and the USIBWC to take immediate action to adequately address cross-border pollution in the Tijuana River Valley; and,
 - b) The Secretary of the Senate shall transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the United States Congress, to the Commissioner of the United States Section of the International Boundary and Water Commission, to the Governor, to the Attorney General, and to the author for appropriate distribution.

EXISTING LAW:

- 1) Establishes the International Boundary Commission (IBC). (Treaty Series 241, Convention between the United States of America and Mexico, 1889)
- 2) Renames the IBC the International Boundary and Water Commission (IBWC) and entrusts the IBWC to give preferential attention to the solution of all border sanitation problems. (Treaty Series 944, Treaty between the United States of America and Mexico, 1944)
- 3) Requires, under the federal Clean Water Act, that each federal agency or department that has jurisdiction over any property or facility, or that is engaged in any activity resulting in, or which may result in, discharge or runoff of pollutants, be subject to all federal, state, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as a nongovernmental entity. (33 United States Code (U.S.C.) § 1323(a))
- 4) Provides, under RCRA, that any person may commence a civil action on his or her own behalf against any person, including the U.S. and any other governmental instrumentality or agency who has contributed to or who is contributing to the past or present handling, storage, treatment transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. (42 U.S.C. Sec. 6972(a)(1)(B))
- 5) Requires, under the Porter-Cologne Water Quality Act, the state to protect the quality of all of its waters; that all activities affecting water quality will be regulated to obtain the highest water quality; and, the state to exercise its full power to protect its waters from degradation originating inside or outside the boundaries of the state. (Water Code § 13000 et seq.)
- 6) Establishes the California-Mexico Border Relations Council to, among other requirements, coordinate activities of state agencies that are related to cross-border programs, initiatives, projects, and partnerships that exist within state government in order to improve the effectiveness of state and local efforts that are of concern between California and Mexico. (Government Code § 99522, 995523)
- 7) Establishes the California Border Environmental and Public Health Protection Fund to assist responsible agencies in California and Baja California in the implementation of projects that identify and resolve environmental and public health problems, including projects related to domestic and industrial wastewater. (Public Resources Code § 71101)

FISCAL EFFECT: This bill was keyed as having no fiscal impact by the office of the Legislative Counsel.

COMMENTS:

Need for the bill: According to the author,

"For thirty years, wastewater, trash and sediment has flowed into the Tijuana River Valley forcing the closure of beaches along the Southern California coast. In February of 2017, one of the largest spills occurred, resulting in 143 million gallons of raw sewage flowing into the

Tijuana River Valley. From 2017-18, there have been 28 raw sewage spills totaling approximately 160 million gallons. The dangerous contaminants in water and on land are putting the public's health at serious risk.

There have been many recent complaints of respiratory ailments and rashes that can be attributed to bacteria that also have the potential of threatening human life. Furthermore, the noxious waste is devastating to wildlife and thousands of animals have already been killed. This is not only an environmental and health problem, it has severely affected quality of life of residents, as well as harmed the regional economy. Foul smells emanate from the Tijuana River Valley and Estuary every day. Property values are below market value and businesses have closed due to a steep decline in tourism.

For these reasons, I am glad that Attorney General Becerra and the San Diego Regional Water Quality Control board filed notice of intent to sue the USIBWC for violations of the state's water quality standards. Now it's time the USIBWC and the federal government do its job and address cross-border pollution in the Tijuana River Valley and protect the health and well-being of the people of our great state."

Tijuana River watershed: The Tijuana River watershed is a 1,750 square mile binational watershed that lies across the California - Mexico border. Approximately 75 percent of the watershed is within Mexico and encompasses the densely urbanized cities of Tijuana and Tecate. The watershed drains from Mexico into the Tijuana River estuary on the United States' side of the border, and ultimately to the Pacific Ocean through the city of Imperial Beach.

Sewage in the Tijuana River: The State Water Resources Control Board (State Water Board) notes that over the past 30 years, Tijuana, Mexico has experienced tremendous population and industrial growth and rapid urbanization, which has put a strain on aging Mexican sewage infrastructure. Sewage infrastructure inadequacies have created recurring sewage pollution problems on both sides of the California - Mexico border for decades. At times, sewage generated on the Mexico side of the watershed travels north into California through the Tijuana River and other cross-border canyon tributaries in the Tijuana River Valley. Sewage flows degrade water quality in the Tijuana River estuary, and adjacent beaches, and coastal waters, and pose a significant public health risk to residents and visitors along both sides of the border.

The San Diego Water Board submits spill reports when there are dry weather transboundary flows into the Tijuana River Valley. In 2017, the San Diego Water Board submitted 25 spill reports, including one in February of 143 million gallons and 5 others of more than a million gallons each. This year, the San Diego Water Board has submitted 8 spill reports so far. In March, Imperial Beach Mayor Serge Dedina reported that there were 28 beach closures in January and February alone. Since 1993, the city of San Diego has continuously declared a state of emergency for Mexican sewage runoff and spills into waters on both sides of the border. By declaring a state of emergency, the city can seek federal funding and support to mitigate the spills.

Efforts to address binational sewage problems: Border sewage flows present a serious challenge for California because of the lack of U.S. jurisdiction in Mexico, making the development of cooperative binational approaches essential. Governmental organizations on both sides of the border must work collaboratively on multiple fronts to prevent the sewage spills from crossing the border and to address the underlying sewage infrastructure problems.

The U.S. and Mexico sections of the IBWC are the lead binational agencies responsible for implementing water treaty rights and obligations/minutes between the U.S. and Mexico, including those related to sewage releases and the associated water quality problems in the Tijuana River watershed. Efforts on both sides of the border have led to the construction and ongoing operation of diversion structures, pump stations, and treatment plants to reduce the frequency, volume, and pollutant levels of transboundary sewage flows.

The South Bay International Wastewater Treatment Plant (SBIWTP): Jointly funded by the U.S. and Mexico, the SBIWTP provides secondary treatment for 25 million gallons of sewage per day from Tijuana. SBIWTP is located just north of the California - Mexico border in the city of San Diego, and discharges to the Pacific Ocean through the South Bay Ocean Outfall, a four and one-half mile long, 11 foot diameter pipe completed in January 1999.

The SBIWTP is owned and administered by the U.S. Section of the IBWC (USIBWC), a federal government agency and the U.S. component of the IBWC. The SBIWTP is operated and maintained by a private contractor, Veolia Water North America –West, LLC (Veolia). The SBIWTP and its associated facilities operate under, and are subject to the terms of, a National Pollutant Discharge Elimination System (NPDES) permit, under the federal Clean Water Act. The NPDES permit authorizes discharges of pollutants only at the South Bay Ocean Outfall, and only after such pollutants have gone through secondary treatment. All other discharges from the facility are prohibited.

Local lawsuits: On March 2, 2018, the City of Imperial Beach, the San Diego Unified Port District, and the City of Chula Vista (collectively as plaintiffs) filed a complaint against USIBWC and Veolia (collectively as defendants) citing "ongoing, severe, and dangerous violations of the federal Clean Water Act and [RCRA]." The plaintiffs charged that, "pollution discharge events...have become routine. Human sewage, enormous volumes of sediment, industrial wastes, pesticides, massive amounts of trash, and a host of other nefarious pollutants from defendants' facilities barrage the Tijuana River, its Estuary, the Pacific Ocean, and the Imperial Beach beachfront, contaminating those natural resources, stigmatizing the beachfront as unclean and unsafe, and sickening members of the public who use the Tijuana River Valley, the beach, and the ocean for recreation." The suit continues, "Defendants...own and operate, respectively, flood control and wastewater collection and treatment infrastructure in the Tijuana River Valley...In operating their infrastructure, Defendants assumed a critical responsibility: to protect local communities from pollution flowing through the Tijuana River Valley, United States coastal waters, and onto beaches in the United States. Defendants have utterly failed to fulfill their legal and moral mandates."

On May 15, 2018, the Surfrider Foundation, on behalf of its San Diego County Chapter and as a result of the operations and actions of the USIBWC in the Tijuana River Valley, submitted to the USIBWC a 60-Day Notice of Intent to Sue the USIBWC for violations of the federal Clean Water Act and for violations of the NPDES permit it holds.

State's intent to sue: On May 14, 2018, the AG and the San Diego Water Board submitted to the USIBWC a 60-Day Notice of Intent to Sue. In the notice, the AG and the San Diego Water Board allege that the USIBWC, from 2015 to the present, has allowed more than 12 million gallons of untreated wastewater to flow from the Tijuana River watershed in Mexico into California. They note that the wastewater often contains excessive levels of pesticides, heavy

metals, and bacteria, and allege a violation of the Clean Water Act and of the USIBWC's NPDES permit issued by the San Diego Water Board. In the notice, the AG and the San Diego Water Board allege that the USIBWC is not adequately managing transboundary flows, which has impacted human health and the environment.

This resolution, among other findings, memorializes the local lawsuit and the 60-day Notice of Intent to Sue filed by the AG and the San Diego Water Board. The resolution also, on behalf of the Senate and the Assembly of the State of California, jointly, urges the federal government and the USIBWC to take immediate action to adequately address cross-border pollution in the Tijuana River Valley.

As legal action related to the USIBWC and the Tijuana River is evolving, the author may wish to amend the resolution to reflect any developments.

Environmental Safety and Toxic Materials hearing on the Tijuana River: On March 19, 2015, the Assembly Environmental Safety and Toxic Materials Committee (Committee) held an oversight hearing on the progress and challenges facing the Tijuana River Recovery Strategy in Imperial Beach, California. At the hearing, the Committee sought testimony on whether the current planning and regulatory structures are effective and efficient at providing public health and environmental protections for communities impacted by the Tijuana River. Testifying at the hearing were, among others, Serge Dedina, Mayor of Imperial Beach; Dr. Carlos Graizbord, Secretario de Protección al Ambiente de Baja; Carlos A. de la Parra, Chair of the Board, Tijuana-Tecate Citizen's Forum; David Gibson, Executive Officer, San Diego Regional Water Quality Control Board; and, representatives of other related governmental and non-profit organizations.

Related legislation:

- 1) SB 1438 (Hueso, 2018). States that it is the intent of the Legislature to enact legislation to undertake the development of instream or offline structures to temporarily or permanently intercept and divert sewage, solid waste, or sediment from the Tijuana River main channel or tributary canyons. This bill was held in the Senate Rules Committee.
- 2) SB 507 (Hueso, Chapter 542, Statutes of 2017). Authorizes funds granted to the County of San Diego in the 2014 Budget Act to be available for development, improvement, rehabilitation, protection, restoration, and studies of natural and park lands in the Tijuana River Valley.
- 3) SCR 90 (Hueso, Chapter 80, Statutes of 2014). Declares the Legislature's commitment to work with the Tijuana River Valley Recovery Team to protect and preserve the Tijuana River Valley's diverse and unique ecological, recreational, and cultural resources.
- 4) AB 687 (Salas, 2009). Would have established the Tijuana River Valley Conservancy in the Natural Resources Agency. The hearing in the Assembly Natural Resources Committee on this bill was cancelled at request of the author and the bill subsequently died pursuant to Joint Rule 56.
- 5) SB 167 (Ducheny, Chapter 333, Statutes of 2009). Requires the 5-year waste tire program plan to include, as a border activity, the development of projects in Mexico in the California-Mexico border region, including education, infrastructure, mitigation, cleanup, prevention,

reuse, and recycling projects, that address the movement of used tires from California to Mexico that are eventually disposed of in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Alter Terra
San Diego CoastKeeper
Surfrider Foundation San Diego
WILDCOAST

Opposition

None received.

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

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 1054 (Hertzberg) – As Introduced February 12, 2018

SENATE VOTE: 38-0

SUBJECT: Santa Susana Field Laboratory cleanup

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to provide the public with a monthly status report on the cleanup for the Santa Susana Field Laboratory, including projected completion dates for all environmental documents prepared under the California Environmental Quality Act (CEQA) and all approved soil or groundwater cleanup plans.

EXISTING LAW:

- 1) Establishes a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment. Provides that this is known as the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA). (Health and Safety Code (HSC) § 25300 et seq.)
- 2) Authorizes DTSC to regulate hazardous waste management pursuant to the Hazardous Waste Control Law (HWCL). (HSC § 25200 (a))
- 3) Creates a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (U.S.C.) § 9601 et seq.)
- 4) Establishes the national hazardous waste management program under Subtitle C of the Resources Conservation and Recovery Act (RCRA). (42 U.S.C. § 6901 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The cleanup of the Santa Susana Field Laboratory, which was supposed to be finished in 2017, has not even started and DTSC has announced that it won't be completed until 2034. A recent draft programmatic EIR (when finalized) will result in many subsequent project level environmental analyses. This bill is focused on those future documents and directs that they be posted on the department's website. It is important to make it as easy as possible for the public to stay informed, therefore SB 1034 requires DTSC to provide the public with the status of all approved soil and groundwater cleanup plans and all environmental documents under CEQA."

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

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

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

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

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

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and 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.

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

of Energy (DOE), and the National Aeronautics and Space Administration (NASA), and overseen by DTSC.

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

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

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

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

Three landfills were used at SSFL primarily for disposal of non-hazardous, inert construction debris (concrete, asphalt, rock, soil, etc.). Liquid wastes from engine testing were managed until the 1980s in a series of both flow-through and retention ponds. Ten of these ponds (impoundments) have undergone closure: one was clean-closed and nine were closed as RCRA regulated units. Radioactive and mixed wastes were managed for offsite disposal at the onsite Radioactive Materials Handling Facility; non-radioactive, alkaline, and liquid-metal wastes were managed and treated at the onsite Hazardous Waste Management Facility. The onsite Thermal Treatment Facility was used for open burn/open detonation of hypergolic, reactive, and explosive wastes. Operational programs are no longer active since all research and development ceased as of 2006.

Cleanup of SSFL: Cleanup of soil, groundwater, and related media at SSFL will be conducted under the Corrective Action Program of RCRA. In addition, the cleanup of soil by the federal agencies, DOE and NASA, is being conducted under the HSAA. Because of their role in

causing the contamination at the project site, NASA, DOE, and Boeing are referred to as "Responsible Parties" (RPs), which means they are responsible for conducting required investigations and cleanups of contaminants released from past activities at the project site.

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

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

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

The Draft EIR evaluates potential impacts of the SSFL cleanup project described in two types of administrative cleanup documents: A 2007 Consent Order for Corrective Action, which applies to the cleanup of groundwater and contaminated soil in Boeing's area; and 2010 AOCs that apply to the cleanup of contaminated soil in areas controlled by DOE and NASA. As required by CEQA, the Draft EIR also evaluates several alternatives to the proposed project.

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

The PMP will serve as a roadmap for how DTSC and the three RP's (Boeing, NASA, and DOE) will complete the SSFL cleanup. Additionally, the PMP will assist in managing the complex nature of cleanup projects, the responsible parties' schedules, and multiple regulatory agencies' involvement at the site. The PMP will be updated annually to incorporate new information, especially as it relates to schedule and the roles of supporting agencies.

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

SSFL project schedule: The current schedule goal is for DTSC to finalize the EIR in 2018 and for all three RPs to have draft cleanup decision documents to DTSC in late 2018 to early 2019. Cleanup activities are currently anticipated to begin in 2019. Project cleanup schedules will be further defined in the remediation planning documents and associated designs; however, if soil cleanup begins in early 2019, remediation of all chemically and radiologically impacted soils is anticipated to be completed by the end 2034.

The investigation and planning for the cleanup of SSFL has been going on for over a decade and is almost two years past a 2017 goal for completing the cleanup. The investigation and cleanup of SSFL has been complex and involved multiple stakeholders. Once DTSC releases the final EIR, and if it is not litigated, the cleanup of SSFL could begin in 2019. Given how imminent cleanup activities are to commencing and how critical the remaining environmental documents and data are, SB 1054 cements in statute the requirement that DTSC provide the public environmental documents prepared under CEQA and all approved soil or groundwater cleanup plans. Given the volume and complexity of the documents, it is likely that DTSC will comply with this bill by posting the required information on its website and by notifying interested parties via an e-mail list.

REGISTERED SUPPORT / OPPOSITION:

Support

Committee to Bridge the Gap
Physicians for Social Responsibility – Los Angeles
Rocketdyne Cleanup Coalition
Southern California Federation of Scientists

Opposition

None on file.

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

Date of Hearing: June 26, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 1133 (Portantino) – As Amended June 6, 2018

SENATE VOTE: 38-0

SUBJECT: Water quality control plans: funding

SUMMARY: Authorizes the State Water Resources Control Board (State Water Board) to, on behalf of itself or a regional water quality control board (regional water board), accept donations of moneys from a permittee for the purpose of updating a water quality control plan (basin plan), as consistent with the designated use of the funds.

EXISTING LAW:

- 1) Requires, under the Federal Water Pollution Control Act (Clean Water Act), the state to, from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. (40 Code of Federal Regulations § 131.20)
- 2) Makes legislative findings that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state. (Water Code (WC) § 13000)
- 3) Establishes the State Water Board and the regional water boards. (WC § 13100) Requires the State Water Board to formulate and adopt state policy for water quality control. (WC § 13140) Designates the State Water Board as the state water pollution control agency for all purposes stated in the federal Clean Water Act. (WC § 13160)
- 4) Requires the State Water Board to formulate, adopt, and revise general procedures for the formulation, adoption, and implementation of basin plans by regional water boards. Requires the State Water Board to, during the process of formulating or revising such procedures, consult with and evaluate the recommendations of any affected regional water boards. (WC § 13164)
- 5) Requires the State Water Board to allocate to the regional water boards funds appropriated to the State Water Board that may be necessary for the administrative expenses of the regional water boards. Requires the regional water boards to submit annual budgets to the State Water Board. (WC § 13168)
- 6) Requires each regional water board to formulate and adopt basin plans for all areas within the region. Requires the regional water boards to, during the process of formulating basin plans, consult with and consider the recommendations of affected state and local agencies. Requires the regional water board to periodically review the basin plans and authorizes the regional water board to revise the basin plans. (WC § 13240)

- 7) Requires each regional water board to establish water quality objectives in basin plans that in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance. Recognizes that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. (WC § 13241)
- 8) Requires the program for achieving water quality objectives to include, but not be limited to, a description of the nature of actions that are necessary to achieve the objectives; a time schedule for the actions to be taken; and, a description of surveillance to be undertaken to determine compliance with the objectives. (WC § 13242)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to background information submitted by the author, "Although, regional water board[s] continuously update Water Quality Control Plans (Basin Plans), many city officials question whether the current permits are based on current science and methodologies[,] given the dated models and data used [in] basin plans. A thorough modernization of Basin Plans could provide a more realistic plan that adequately consider[s] costs associated with stormwater quality... Water boards lack sufficient budgets to fulfill all responsibilities prescribed to them."

Water quality management in California: In California, the State Water Board and nine regional water boards carry out the regulation, protection, and administration of water quality. The State Water Board holds overall responsibility for setting statewide policy on the administration of water rights and on water quality control. The regional water boards are responsible for the adoption and implementation of basin plans; the issuance of waste discharge requirements; and, performing other water quality control functions, subject to State Water Board review or approval, within their respective regions.

Water quality control plans (basin plans): State law requires each regional water board to develop, adopt after a public hearing, and implement a basin plan for the region under its jurisdiction. The basin plan lays out a program of actions designed to preserve and enhance water quality and to protect beneficial uses of the water in a manner that will result in the maximum benefit to the people of California. It includes, among other components, descriptions of the legal, technical, and programmatic components of water quality regulation in the region; a designation of beneficial uses for surface and ground water in the region; the water quality objectives needed to protect the designated beneficial water uses; and, the strategies and schedules for achieving the water quality objectives. The basin plan provides long-term standards and programmatic guidance for regional water quality.

Updates to basin plans: Basin plans are flexible documents that regional water boards must review and revise as new data and information become available or as specific needs arise. Regional water boards perform updates of the basin plan in response to state and federal legislative requirements; in response to new or updated federal, state, and local plans that affect water quality; and, as funding becomes available.

The federal Clean Water Act requires the state to, from time to time and at least once each three year period, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying, and adopting standards. Additionally, state law requires the

regional water boards to "periodically review" basin plans. In response, regional water boards review basin plans every three years as part of the triennial review process. Triennial reviews are comprehensive and include a public scoping hearing to identify the water quality issues that should be addressed.

Funding for basin plan updates: The State Water Board allocates funding to each regional water board to carry out their overall water quality protection responsibilities, including updating basin plans as needed through the triennial review process.

According to the California Manufacturers and Technology Association, "Although regional [water] boards are authorized to update their basin plans to include new and updated analyses of water quality in the region, many indicate they are challenged to do so on a regular basis due to funding constraints."

This bill will clarify that the State Water Board may, on behalf of itself or a regional waterboard, accept donations of moneys from a permittee for the purpose of updating a basin plan as consistent with the designated use of the funds.

REGISTERED SUPPORT / OPPOSITION:

Support

The Los Angeles County Business Federation (Sponsor)
Apartment Association of Greater Los Angeles
Building Industry Association of Southern California, Los Angeles/ Ventura Chapter
Business Resource Group
California Building Industry Association (CBIA)
California Contract Cities Association
California Council for Environmental and Economic Balance
California Manufacturers & Technology Association (CMTA)
California Small Business Alliance
City of Santa Clarita
City of Signal Hill
Construction Industry Coalition on Water Quality
Engineering Contractors Association
Hospital Association of Southern California
Independent Cities Association
League of California Cities, Los Angeles Division
Los Angeles Area Chamber of Commerce
Mission Valley Bank
NAIOP/Commercial Real Estate Development Association, SoCal Chapter
Richard Watson & Associates
San Gabriel Valley Economic Partnership
South Bay Cities Council of Governments
Southern California Gas Company
Torrance Area Chamber of Commerce

Opposition

None received.

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