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Assembly
California Legislature

ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
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AGENDA

Tuesday, April 9, 2019
1:30 p.m. -- State Capitol, Room 444

HEARD IN SIGN-IN ORDER

1. A.B. 495 Muratsuchi. Cosmetics: safety.
2. A.B. 508 Chu. Drinking water: consolidation and extension of service: domestic wells.
3. A.B. 637 Gray. State Water Resources Control Board: minority and low-income communities: drinking water.
4. A.B. 647 Kalra. Hazardous materials: cosmetics: safety documents.
5. A.B. 755 Holden. California tire fee: Stormwater Permit Compliance Fund
6. A.B. 762 Quirk. Public health: fish and shellfish: health advisories. (Proposed Consent)
7. A.B. 912 Muratsuchi. Marine invasive species: ballast water and biofouling management requirements.
8. A.B. 1093 B. Rubio. Municipal separate storm sewer systems: financial capability analysis. (Proposed Consent)
9. A.B. 1429 Chen. Hazardous materials: business plans. (Proposed Consent)
10. A.B. 1462 Santiago. Hazardous substance: lead: cleanup: Exide Technologies facility.
11. A.B. 1509 Mullin. Solid waste: lithium-ion batteries.
12. A.B. 1588 Gloria. Drinking water and wastewater operator certification programs. (Proposed Consent)
13. A.B. 1596 Committee on Environmental Safety and Toxic Materials. Hazardous substances: contaminated property: fentanyl cleanup. (Proposed Consent)
14. A.B. 1672 Bloom. Solid waste: flushable products.
15. A.B. 1751 Chiu. Water and sewer system corporations: consolidation of service.

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Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 495 (Muratsuchi and Wicks) – As Amended March 27, 2019

SUBJECT: Cosmetics: safety.

SUMMARY: Amends the Sherman, Food, Drug and Cosmetic Act (Sherman Act) to define when a cosmetic is adulterated. Specifically, **this bill**:

1) Establishes the Toxics Free Cosmetics Act.

2) Determines that a cosmetic is adulterated if it contains asbestos, lead, or any of the following intentionally added ingredients:

   a) Dibutyl phthalate;
   b) Diethylhexyl phthalate;
   c) Formaldehyde;
   d) Formaldehyde releasers;
   e) Mercury and related compounds;
   f) Isobutylparaben;
   g) Isopropylparaben;
   h) Butylparaben;
   i) Propylparaben;
   j) Tuluene;
   k) Triclosan;
   l) Carbon Black; or,
   m) Per- and polyfluoroalkyl substances (PFASs).

3) Requires, if the Division of Environmental and Occupational Disease Control (Division) within the California Department of Public Health (CDPH) determines that a cosmetic product is adulterated, to refer its investigation making that determination to the Department of Industrial Relations, the Department of Justice, and the Office of Environmental Health Hazard Assessment (OEHHA).

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

   a) The requirements of the Sherman Act;
   b) A request by the Division pursuant to existing statutory authority for information, data, or statistics; and,
   c) Guidelines or instructions issued by the Division to implement the Sherman Act.

5) Requires the Division to report all violations to the Department of Justice.

EXISTING LAW:

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

2) Pursuant to the Sherman Act:

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "No one knowingly wants to use face powder contaminated with asbestos, lipstick that contains lead, or baby shampoo with formaldehyde. AB 495 would clarify in statute that cosmetics containing some of the most well-known carcinogens, reproductive toxicants, and endocrine disruptors are 'adulterated cosmetics,' and therefore cosmetics that cannot be sold in California. This bill will also require the Safe Cosmetics Program to report the discovery of any cosmetics containing any one of the listed chemicals to the Attorney General, who must then take action. The bill also strengthens the Safe Cosmetics Program's authority to require manufacturers to report harmful ingredients that are included in their cosmetic products."

Chemical exposure: Decades of studies indicate that serious health issues (including but not limited to asthma, cancer, and infertility) are on the rise and are due in some part to our ongoing exposure to toxic chemicals—whether it's in the shower, on our commute, while we are at work, or when we clean our kitchens at home.

More than 84,000 chemicals have been registered for use in the United States, and more than 700 new chemicals enter the marketplace each year. Many do not have any safety data. As more and more chemicals enter our homes and workplaces, the need for transparency of those chemicals becomes more critical.

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

is why it is so important that cosmetic products are safe, properly labeled, and free of contamination.

Cosmetic products contain a wide variety of chemical ingredients to which cosmetic users and workers are exposed to on a daily basis. According to the United States Department of Labor, "These exposures can 'add up,' especially when many products are being used at the same time [and] the products are used day after day."

Specific dangers of cosmetics sold in California: Various cosmetic products have been found to be toxic and, in some instances, acutely harmful to people.

Asbestos in children's cosmetic products. As a part of routine monitoring, the FDA, in 2017, first became aware of reports of asbestos contamination in certain cosmetic products sold by Claire's and Justice retailers. Those tests confirmed the presence of asbestos in three of the product samples collected from Claire's and one of the product samples collected from Justice.

Claire's, which sells, according to its website, "the latest trends in jewelry & accessories for girls, teens, & tweens," had more than 2,400 locations in North America and Europe as of last August.

No amount of asbestos exposure is safe. More asbestos accumulates in the body with every exposure, and there is no known way to reverse the cellular damage it causes.
Asbestos is believed to cause mesothelioma, a type of cancer affecting the lining of the chest and abdomen, and is linked to an increased risk of other forms of cancer and lung disease.

Unknown chemical in WEN hair products. More than 17,000 American consumers have expressed complaints directly to the manufacturer, Guthy-Renker, reporting that they had lost hair or had gone bald after using various WEN hair products.

Because the FDA does not require companies to submit their product formulations, including specific ingredients in fragrance mixtures, it has not been determined exactly which chemicals or what concentrations or mixtures of chemicals might have caused WEN customers to lose hair. Under current federal cosmetic safety regulations, the manufacturer is under no obligation to report adverse health events or customer complaints to the FDA.

State cosmetic regulatory requirements: California has two laws governing the safety of cosmetics.

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

Pursuant to the Sherman Act, any cosmetic is considered to be "adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to users."

It is not perfectly clear how CDPH defines "poisonous", "deleterious", or "injurious;" CDPH has not promulgated regulations concerning this provision. Generally, the terms are used in reference to a substance that causes injury, illness, or death, and to something that is damaging or harmful. In theory, any cosmetic that contains an ingredient, for instance, on the Proposition 65

list, such as mercury, formaldehyde, or asbestos – depending on dosage and how much is applied per the label's instructions – could be considered "adulterated" under the Sherman Act.

Since 2014, CDPH's Food and Drug's program has issued 11 enforcement actions under the Sherman Act for adulterated or mislabeled cosmetics due to the *presence* of a contaminant, including five for mercury contamination in face creams; microbial adulteration in tattoo ink; and, other actions based on pharmaceutical or biological contaminants.

The other law is the California's Cosmetics Act SB 484 (Migden, Chapter 729, Statutes of 2005). It requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. CDPH maintains an active, searchable database with all of the data collected from manufacturers under the Cosmetics Act to make that data user-friendly and available to the public. Anyone can search the database for a type of product; a specific product name; or, a brand or company name to get more information about whether a product contains a covered chemical. To date, 613 companies have reported 75,279 products to CDPH.

There are several issues with the Cosmetics Act that make it relatively ineffective. First, there is a general lack of public knowledge about the existence of the CDPH database, and it is unknown how widely it is used or whether it is helpful to consumers, employers, or anyone else interested in ascertaining the toxicity of a cosmetic product.

Second, the database includes carcinogenic and reproductive toxicants, but not all ingredients that could cause harm, such as skin and respiratory irritants, neurotoxins, etc.

Third, CDPH does not have any enforcement authority or penalty authority over the manufacturers that are covered, so not all manufacturers are currently complying and submitting their products' information. There is no way to compel these manufacturers to comply.

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

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

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

As it relates to labeling, cosmetics produced or distributed for retail sale to consumers for personal use are required to have an ingredient declaration. Under the FD&C Act, cosmetic ingredients are required to be identified by the names established or adopted by regulation; those accepted by the FDA as exempt from public disclosure may be stated as "and other ingredients" (21 CFR 701.3(a)). The FD&C Act exempts chemicals used as fragrances or flavoring from

being identified as ingredients on the labels of cosmetic products. Therefore, not only do products not have to be approved as safe by the FDA before they are sold, but they are not even required to disclose their ingredients, thereby denying consumers the ability to determine a product's safety.

The FDA conceded about the asbestos in products sold at Claire's, "that it did not have the authority to force Claire's to pull the potentially dangerous products off store shelves."

According to the New York Times (NYT), the American cosmetics industry is a $70 billion per year industry. The FDA's Office of Cosmetics and Colors (Office) has an annual budget of just $8 million and 27 staff members. The FDA does not have the resources to ensure the safety of imported cosmetics; it inspects less than one percent of the three million cosmetics shipments that come into the United States every year. Among those that it does test, roughly 15 percent are found to be contaminated or to contain dangerous ingredients.

The NYT states, "The laws governing the [Office's] authority run just two pages long and have not been updated since 1938, when they were first enacted. Such meager tools leave federal officials nearly powerless to regulate the makeup, lotions, toothpastes, deodorants and other elixirs that often are applied to the most intimate parts of the human body."

Furthermore, on March 5, 2019, FDA Commissioner Scott Gottlieb, M.D., and Susan Mayne, Ph.D., director of the Center for Food Safety and Applied Nutrition, issued a statement on tests confirming a 2017 finding of asbestos contamination in certain cosmetic products and new steps that FDA is pursuing to improve cosmetics safety. Of note, the FDA stated,

> "When it comes to cosmetics, our authority hasn't changed in many years even as the industry has undergone rapid evolution. Right now, when it comes to cosmetics, companies and individuals who market these products in the U.S. hold the responsibility for the safety and labeling of their products. This means that ultimately a cosmetic manufacturer can decide if they'd like to test their product for safety and register it with the FDA. To be clear, there are currently no legal requirements for any cosmetic manufacturer marketing products to American consumers to test their products for safety."

Voluntary disclosure: Although the federal law does not require cosmetic products to be registered with the FDA, the FDA is calling upon cosmetic firms to take responsible steps to voluntarily register their products and list ingredients, including talc, used in their products via the FDA's Voluntary Cosmetic Registration Program. This program provides a mechanism for cosmetic manufacturers, distributors and packers to voluntarily file information on their products that are currently being marketed to United States (U.S.) consumers and to register their manufacturing and/or packaging facility locations. The FDA is also calling on manufacturers to proactively report adverse events involving cosmetic products to the federal Center for Food Safety and Applied Nutrition's Adverse Event Reporting System.

The FDA states, "Although this is not required by current law, we believe this reporting is an important component of responsible marketing and safe oversight of these products."

However, as noted above in regards to CDPH's Safe Cosmetics Act, non-compulsory reporting does not always result in thorough or reliable information or participation.

Retailers are taking steps to protect consumers: Absent federal and state regulation of consumer cosmetic safety, some national retailers are taking matters into their own hands to prevent the use of known hazardous chemicals in everyday cosmetic and hygiene products. These retailers have developed internal initiatives to cut out certain chemicals from their privately-labeled cosmetics.

Target's corporate chemical policy includes more than 100 chemicals on its "unwanted chemicals" list. Its policy states,

> "We introduced our first set of goals in 2017, aimed at addressing unwanted chemicals with the biggest potential health impact, and factoring in their prevalence within our products. The goals also prioritize products guests tell us are most important to them—like the ones that go in, on and around their bodies."

One of their goals is to,

> "Achieve transparency to all ingredients, including generics such as 'fragrance', in beauty, baby care, personal care and household cleaning formulated products by 2020." To meet that goal, among others, Target is "implementing solutions that facilitate increased access to ingredient information, remove unwanted chemicals in the products we sell and provide safer chemical alternatives."

Rite Aid has a Restricted Substances List stating "chemicals of high concern are restricted from use in all formulated Rite Aid private brand health, beauty, personal care, baby, household chemical and food products." Walgreens, Walmart, and Amazon have similar restricted chemicals policies.

With the collective purchasing power and retail sales of these stores, these corporate initiatives can potentially make a significant impact on the quality of safe cosmetic products sold in the U.S. However, it is not the job of retailers to police cosmetic safety, and products with worrisome ingredients can still be sold in other stores.

Enhancing government oversight of cosmetic safety: Under the Sherman Act it is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any cosmetic that is adulterated, and it is unlawful for any person to adulterate any cosmetic. (HSC § 111700 and 111705)

AB 495 would augment the definition of 'adulterated' to provide direction to CDPH on how to enforce that provision of the law.

Specifically, the bill would define an adulterated cosmetic as having one of the following intentionally added chemicals: asbestos; lead; dibutyl phthalate; diethylhexyl phthalate; formaldehyde; formaldehyde releasers; mercury and related compounds; isobutylparaben; isopropylparaben; butylparaben; propylparaben; tuluene; triclosan; carbon black; or, per- and polyfluoroalkyl substances (PFASs).

What we know about the chemicals listed in the bill vis-à-vis Proposition 65: The Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65, requires the state to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity. Asbestos, lead, dibutyl phthalate, diethylhexyl phthalate, formaldehyde, mercury and related compounds, carbon black, toluene, and at least two PFAS chemicals, perfluorooctanoic

acid and perfluorooctane sulfonate, are recognized on the Proposition 65 list as a reproductive toxicant, a carcinogen, or both.

Businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical, unless the business can show that the anticipated exposure level will not pose a significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm. Many cosmetics that contain one or more of the chemicals listed in the bill do not have Proposition 65 warning labels because the amount of the chemical present in the product is too low to trigger the warning.

For example, toluene was listed on Proposition 65 list as a developmental toxicant on January 1, 1991. OEHHA determined the maximum allowable dose level (MADL), as an inhalant, is 13,000 µg/day and an MADL for oral consumption is 7,000 µg/day. Toluene is often found in nail polish and fingernail glue, which can off-gas and be inhaled by the user or professional worker. By volume, a single bottle of nail polish would not off-gas enough toluene to legally require the Proposition 65 warning. However, Proposition 65 considers the impact of one product, not the cumulative effects. In other words, one-time use of a single nail polish may expose a user to toluene, but at levels below the Proposition 65 MADL, yet a nail salon worker who uses nail polishes through the course of an 8-hour work day may be exposed to levels that far exceed the MADL for toluene, but Proposition 65 labels do not apply to cumulative exposure to multiple products.

What we know about the chemicals listed in the bill vis-à-vis the Candidate Chemicals List: The Department of Toxic Substances Control (DTSC), pursuant to its Green Chemistry Program, developed a list of Candidate Chemicals, which are chemicals that exhibit a hazard trait and/or an environmental or toxicological endpoint and are either found on one or more of 23 different authoritative lists or are listed by DTSC using specified criteria. The authoritative lists include, but are not limited to, Proposition 65, the US EPA's Integrated Risk Information System, and the European Commission's candidate list of Substances of Very High Concern. All of the chemicals listed in this bill are on DTSC's Candidate Chemical List, except isopropylparaben, a member of the paraben family.

Parabens are preservatives used by the food, pharmaceutical, and personal care product industries. The European Commission on Endocrine Disruption has categorized isobutylparaben as being closely related to butylparaben, which is on DTSC's Candidate Chemical List. Parabens are listed as priority chemicals from the list of designated chemicals for the California Biomonitoring Program. Designated chemicals in the California Biomonitoring Program are "chemicals that are known to, or strongly suspected of, adversely impacting human health or development, based upon scientific, peer-reviewed animal, human, or in vitro studies, and consist of only those substances including chemical families or metabolites that are included in the federal Centers for Disease Control and Prevention [CDC] studies that are known collectively as the National Reports on Human Exposure to Environmental Chemicals program." (HSC §105449)

Are the chemicals listed in the bill necessary to the formulation of cosmetic products? The short answer is no. Alternatives are on the market today. There are lines of cosmetics that are free of all of the chemicals listed in the bill, as well as free of all Proposition 65 chemicals.

There are chemistry modifications that can prevent the need to use the listed chemicals. Reducing the pH level of a product can reduce the risk of bacteria growth. Mechanical interventions, such as changes in packaging, can also eliminate the need for some of the listed chemicals. For instance, putting a product in a closed system with a pump dispenser (over putting the product in an open container) may reduce or eliminate the need for preservatives.

Additionally, products can be reformulated with safer alternatives where mechanical options do not suffice. Sodium benzoate, phenoxyethanol, potassium sorbate, caprylyl glycol, and sorbitan caprylate are all alternatives that can supplant parabens in water-based products, like shampoos. For lower-water based products, essential oils can be used in place of synthetic preservatives.

Beautycounter, a cosmetics manufacturer, manufacturers mascara without coal tar (carbon black); uses essential oils in lieu of synthetic fragrances, which often contain phthalates; uses rose oils in lieu of parabens as preservatives; and, many other alternatives.

It is critical to acknowledge that the Legislature does not want to support regrettable substitutions. In the case of Bisphenol-A (BPA), a known reproductive and developmental toxicant, manufacturers, in the face of a state ban on BPA in certain product applications, used an alternative that is now understood to be just as toxic, if not more toxic.

None of the aforementioned alternatives listed above (or below) are on the Proposition 65 or DTSC's Candidate Chemical List. But, it will take true enforcement from CDPH and the FDA on the current state and federal cosmetics laws to regulate, not just the alternatives to the chemicals listed in the bill, but *all* ingredients used in a cosmetic product.

Intentionally added ingredients versus contaminants: With some cosmetics, heavy metals can remain a concern. Many contaminants in our environment are naturally occurring, like arsenic and hexavalent chromium, as well as asbestos and lead. These naturally occurring contaminants can be present in minerals or absorbed by plants used to make cosmetic ingredients. Beautycounter acknowledges that "companies are not intentionally adding heavy metals to cosmetics. Instead, they are typically contaminants that tag along with both mineral and synthetic ingredients used to give products color." Beautycounter further states, "...it became clear that getting to zero heavy metal contamination – while always the goal – simply wasn't going to be an option across the board."

However, the FDA has recently stated that it considers a cosmetics product to be adulterated if the product contains any level of asbestos. The FDA is working with cosmetic manufacturers to help them ensure "that talc used in any cosmetic product is free from asbestos."

The author may wish to acknowledge that some natural contaminants may be unavoidable in cosmetic production (while others may be avoidable) and provide immunity from violation of selling an adulterated product in the event that trace amounts of certain naturally occurring contaminants are present.

Cost concerns: One concern that has been raised with implementing the provisions of this bill is the impact of using alternatives to these chemicals on cosmetic affordability. To illustrate that the cost of ingredients that are safe is not a prohibitive factor to producing safe and affordable cosmetic products, below is a chart that shows commodity costs by chemical and by its alternative.

Ingredient	Ingredient Cost	Size	Alternative Ingredient	Alternative-1 Cost	Alt-1 Size	Alternative-2 Cost	Alt-2 Size
Dibutyl phthalate	$17.60	500 ML	Alternatives to Phthalates include acetyl tributyl citrate, di-butyl sebacate, DINCH and more.	$127.25 - acetyl tributyl citrate	500 GM	$61.60- Dibutyl Sebacate	500 ML
Diethylhexyl phthalate (DEHP)	$139.00	500 ML	Alternatives to Phthalates include acetyl tributyl citrate, di-butyl sebacate, DINCH and more.	$127.25 - acetyl tributyl citrate	500 GM	$61.60- Dibutyl Sebacate	500 ML
Formaldehyde and Formaldehyde releasers	$78.00	500 ML	Formaldehyde-releasers and the parabens are all preservatives: The appropriate alternate preservatives will depend on the water concentration of the product, but some alternatives are isothiazolinones, phenoxyethanol, sodium benzoate	$109.60 - Phenoxyethanol	500 ML	$125.15 - Sodium Benzoate	500 GM
Mercury and related compounds including Thimerosal	$1,856.60	500 GM	(Mercury) Thimerosal is used as an antimicrobial/preservative. An alternative is phenoxyethanol.	$109.60 - Phenoxyethanol	500 ML		
Isobutyl paraben	$242.00	500 GM	See notes above for Formaldehyde and Formaldehyde releasers alternatives	$109.60 - Phenoxyethanol	500 ML	$125.15 - Sodium Benzoate	500 GM
Isopropyl paraben	$259.60	500 GM	See notes above for Formaldehyde and Formaldehyde releasers alternatives	$109.60 - Phenoxyethanol	500 ML	$125.15 - Sodium Benzoate	500 GM
Butyl Paraben	$263.00	500 GM	See notes above for Formaldehyde and Formaldehyde releasers alternatives	$109.60 - Phenoxyethanol	500 ML	$125.15 - Sodium Benzoate	500 GM
Propyl Paraben	$162.00	500 GM	See notes above for Formaldehyde and Formaldehyde releasers alternatives	$109.60 - Phenoxyethanol	500 ML	$125.15 - Sodium Benzoate	500 GM

Toluene	$64.60	500 ML	Toluene is a solvent: There are several other solvents; the suitability will depend on the formulation.				
Triclosan	$330.00	500 GM	Triclosan is an antimicrobial: The FDA said it's unnecessary, so perhaps no alternative is needed. Other antimicrobial chemicals include alcohol and benzalkonium chloride	$172.00 - benzalkonium chloride	500 ML		

This shows the alternatives to the chemicals listed in the bill are comparable or more affordable. Furthermore, the price of each ingredient alone does not speak to the final price point of a cosmetic. Larger manufacturers will have additional advantages, such as a larger economy of scale, to making their cosmetics affordable.

Giving manufacturers time to comply: Absent a stated effective date, the bill, should it be enacted, would go into effect January 1, 2019. The Committee strongly encourages the author to consider providing a later effective date to provide manufacturers time to sell their current inventory of products and reformulate their products, if needed, to comply with the bill.

Environmental considerations of these chemicals in cosmetics: Our water supplies are increasingly contaminated with chemicals of concerns. Numerous contaminants, such as pharmaceuticals, personal care products (antibacterial soaps, sunscreen, bath gels, etc.), and other constituents of emerging concern, are more likely to be present in municipal wastewater than in other water sources. Although they typically exist in small concentrations, there is growing concern about the impact of constituents of emerging concern, and other unregulated compounds, on public health and the environment. Cosmetic ingredients inherently have an impact on public health because people are directly applying cosmetic products to their skin and/or hair, but the chemical ingredients of these products also create a greater risk of chemical contamination in our environment.

Cosmetics can have an impact as a solid waste in our landfills. According to the California Department of Resources Recycling and Recovery's most recent waste characterization study, *2014 Disposal-Facility-Based Characterization of Solid Waste in California*, released October 6, 2015, mixed residue represented 3% (926,996 tons) of the overall disposed solid waste stream statewide. Mixed residues are a category of wastes that cannot be put in any other type or category and include, among other wastes, cosmetics. It is unknown how much discarded cosmetics represents of this waste stream, but even if it is conservatively estimated that cosmetics were 0.5% of the total, that would mean 46,000 tons of cosmetics potentially containing the chemicals listed in the bill were disposed in California landfills in one year.

This matters because hazardous chemicals from wastes disposed in solid waste landfills have the high potential to leak and contaminate groundwater. The U.S. Environmental Protection Agency has acknowledged that all landfills -- including those using the best available construction materials and techniques -- will eventually leak, allowing their contents (whether municipal solid

waste or legally hazardous waste) to enter the local environment. The State Water Resources Control Board assessed leakage from solid waste disposal sites and found that, of 544 sites evaluated across the state, 392 (72%) sites were found to have leaked waste constituents from the waste management unit; 33 sites (6%) were classified as leaking wastes at concentrations exceeding hazardous levels; and, 276 of the sites (51%) were determined to be leaking waste constituents above other "regulatory levels."

Cosmetics also impact water quality. Everything we wash off our bodies in the shower, wash down the sink, or flush in the toilet goes to a waste water treatment facility, which treats waste water for constituents for which we have regulatory thresholds for effluent. However, not all chemicals that go down the drain get treated before the water gets released back into the environment. The review, *Occurrence, fate and behavior of parabens in aquatic environments: A review*, published in the journal Water Research in January 2015, stated, "Despite treatments that eliminate [parabens] relatively well from wastewater, parabens are always present at low concentration levels in effluents of wastewater treatment plants. Although they are biodegradable, they are ubiquitous in surface water and sediments, due to consumption of paraben-based products and continuous introduction into the environment. Methylparaben and propylparaben predominate, reflecting the composition of paraben mixtures in common consumer products."

Another study, *Pharmaceuticals, hormones, and other organic wastewater contaminants in U.S. streams, 1999-2000: a national reconnaissance*, published in Environmental Science and Technology in March 2002, reported that the U.S. Geological Survey used five newly developed analytical methods to measure concentrations of 95 organic wastewater contaminants (OWCs) in water samples from a network of 139 streams across 30 states during 1999 and 2000. OWCs were found in 80% of the streams sampled; triclosan, one of the chemicals listed in the bill, was one of the eight most frequently detected compounds.

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

The Personal Care Product Council argues that the Green Chemistry Program was enacted so that "the Legislature would not be faced with bills like AB 495, which puts them in the position of making complex scientific decisions on an ingredient-by-ingredient basis."

While the intent of AB 1879 was to establish a robust and thorough regulatory process rooted in science, not politics, to consider exposure to chemicals in consumer products, it has long been recognized that DTSC does not have the resources to evaluate all chemicals in every consumer product application. While the SCP Program set up a regulatory framework to scientifically evaluate product safety, the permutations of product and chemical combinations are virtually limitless; DTSC has the formidable task of identifying just three Priority Products, which are

products for which DTSC has identified a product/Candidate Chemical combination and for which an analysis to identify safer alternatives must be conducted, per work plan.

Additionally, not only does the SCP Program lack a dedicated funding source to fund DTSC's work, DTSC is currently operating under a structural deficit, leaving further constrained resources for that program. DTSC has had historic challenges due to resource constraints.

There is nothing in the Green Chemistry statues that, in any way, preclude the Legislature from taking legislative action on consumer products or use of chemicals in consumer product applications. When there is science to support a change in state policy to protect public health, the Legislature, made of up elected officials responsible to their constituents, can respond to that science more expeditiously than DTSC. Since AB 1879 was enacted, the Legislature has enacted policies on various chemical-product applications, including a ban on flame retardants in children's products (AB 2998, Chapter 924, Statutes of 2018); labeling requirements on upholstered furniture that contains flame retardants SB 1019 (Leno, Chapter 862, Statutes of 2014); a ban on BPA in toddler sippy cups and bottles (AB 1319, Butler, Chapter 467, Statutes of 2011); a ban on the sale of jewelry with cadmium at certain levels AB 929 (Pavley, Chapter 313, Statutes of 2010); and, a ban on the sale of brake pads containing copper in exceedances of certain levels SB 346 (Kehoe, Chapter 307, Statutes of 2010).

"DTSC, in fact, wrote in support of AB 1319 (Butler) stating: "DTSC does not believe that the regulations should every be viewed as excluding action that the Legislature might take to address specific product related concerns that are brought to its attention."

DTSC is proposing to list nail products containing toluene as a Priority Product. However, since AB 1879 was enacted in 2008, the SCP has moved deliberatively, with three product-chemical combinations currently finalized and three more in various stages of the program. But, not a single product has yet undergone the alternatives analysis. In addition, no product has yet been subject to a regulatory response, which could include a ban on a chemical, a restriction on a chemical, labeling requirements, or no action at all.

State scientists, including those at DTSC and OEHHA, have determined that the chemicals listed in the bill definitively pose a threat to human health at various levels and in various capacities. AB 495, in recognition of the state's science, is proposing to protect the public from the risks of these chemicals more expeditiously than DTSC is currently able.

Enhanced enforcement on adulterated cosmetics: The bill requires the Division, if it determines that a cosmetic product is adulterated, to refer its investigation making that determination to the Department of Industrial Relations, the Department of Justice, and OEHHA. This is an important provision of the bill as it ensures that the appropriate state regulators overseeing the safety of consumers and professionals using these products are made aware of the adulteration, enabling them to take enforcement action. Moreover, the bill adds the Department of Justice to the list of state entities to which the Division must report an adulteration. To date, only the Attorney General has taken enforcement action against toxic personal care products, so it is critical the Department of Justice be well-informed of any other potential cases to pursue.

Need for technical restructuring: The Cosmetics Act is in state law under the Sherman Act (Division 104 Part 5), which are both administered by CDPH. However, the Cosmetics Act is administered under the Division of Environmental and Occupational Disease Control (Division), and the Sherman Act is administered under the Food & Drug Branch (Branch).

The Division and the Branch operate separately. AB 495 proposes amendments to both the Cosmetics Act and the Sherman Act and weaves together the jurisdictions and responsibilities of the Division and the Branch in a way they are not sharing jurisdictions now.

The Committee strongly encourages the author to work with CDPH to restructure the bill so that it appropriately aligns the new requirements proposed by the bill with the appropriate administering entity within CDPH.

Arguments in support: Environmental Working Group, CALPIRG, Breast Cancer Action, Consumer Federation of California, and Physicians for Social Responsibility state, "Californians, unfortunately, remain unprotected. According to the California Safe Cosmetics Program, at least 88 different carcinogens and reproductive toxicants are intentionally added to cosmetics sold in California today. Additionally, numerous tests have confirmed that lead and asbestos frequently contaminate certain cosmetics. And labels indicate that well-known endocrine disruptors, and even highly fluorinated substances (PFAS) are common cosmetic ingredients. Unbelievably, the use of these harmful chemicals in cosmetics is legal. We wish to stop this public health threat now.

" … men, women, and children of all ages regularly use personal care products and cosmetics. In fact, young women – women of child-bearing age – often use up to 16 products each day, and studies have shown that human bodies absorb the products' chemicals … Californians need the same protections from harmful cosmetics as those provided to citizens of dozens of other nations."

Arguments in opposition: Personal Care Products Council, CalChamber, American Chemistry Council, HCPA, and the Fragrance Creators Association argue, "Personal care products companies have a shared interest with consumers, regulators, and lawmakers to provide safe and high-quality products. Current regulations were created in collaboration, using the best science available, to ensure just that. The regulatory laws at both the state and federal levels provide transparency and oversight on the health and safety of all cosmetics. These laws require that the U.S. Food and Drug Administration (FDA) deem every cosmetic and personal care product and each individual ingredient safe before going to market, and that they contain no prohibited ingredients. If they are not substantiated for safety, they are required to carry the following warning statement: '*Warning: The safety of this product has not been determined.*' Decades of consumer experience with our products demonstrate they are among the safest product categories regulated by the FDA.

"In addition to the comprehensive federal laws, the personal care products industry has collaboratively established strong California regulations that provide consumers with the confidence they need to purchase a product. This includes the California Safe Cosmetics Act of 2005 and Cleaning Product Right to Know Act of 2017, under which cosmetics businesses are required to report all intentionally added ingredients in a product known or suspected to pose harm to the California Department of Public Health, and must list specified chemicals and allergens on product labels and websites.

"AB 495 is an unnecessary regulation that duplicates and complicates the work already being done by the state of California and cosmetics companies."

Committee amendments:

1) The Committee may wish to consider providing flexibility to update the list of chemicals delineated in the bill as science informs us about the safety of other chemicals in the future. The bill could be amended to authorize the Division to use its authority to add chemicals to this list pursuant to its regulatory authority under the Sherman Act.

2) The Committee may wish to amend the bill to recognize manufacturers who, in good faith, do not intentionally add naturally occurring contaminants listed in the bill but have a *de minimus* amount of lead, or any other naturally occurring contaminant CDPH may add to the list, present in their products.

Related legislation:

1) AB 228 (Aguiar-Curry). This bill would provide that, under the Sherman Act, a cosmetic is *not* adulterated because it includes industrial hemp, or cannabinoids, extracts, or derivatives from industrial hemp. This bill is pending before the Assembly Appropriations Committee.

2) SB 574 (Leyva). This bill would require a cosmetics manufacturer to disclose to the Department of Public Health any cosmetic products that contain a fragrance ingredient or flavor ingredient that is included on one of 27 state, federal, and international designated lists of chemicals, and a list of each fragrance ingredient and flavor ingredient in the cosmetic product. This bill is going to be heard in Senate Health on April 3, 2019.

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

4) SB 258 (Lara, Chapter 830, Statutes of 2017). Requires a manufacturer of a cleaning product manufactured or sold in California on or after July 1, 2018, to disclose each ingredient contained in the product on the product label.

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

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

Double referral: Should this bill be approved by the Assembly Environmental Safety & Toxic Materials Committee, it will be referred to the Assembly Health Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

CALPIRG (CO-SPONSOR)
ENVIRONMENTAL WORKING GROUP (CO-SPONSOR)

7TH GENERATION ADVISORS
BEAUTYCOUNTER
BIOSSANCE
BLACK WOMEN FOR WELLNESS
BREAST CANCER ACTION
BREAST CANCER PREVENTION PARTNERS
C'EST MOI
CALIFORNIA CLEAN
CALIFORNIA HEALTH COALITION ADVOCACY
CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE
CALIFORNIA LEAGUE OF CONSERVATION VOTERS
CALIFORNIA PRODUCT STEWARDSHIP COUNCIL
CENTER FOR ENVIRONMENTAL HEALTH
CLEAN WATER ACTION
CONSUMER ATTORNEYS OF CALIFORNIA
CONSUMER FEDERATION OF CALIFORNIA
EVERYONE FOR EVERYBODY
FRIENDS COMMITTEE ON LEGISLATION OF CALIFORNIA
JUICE BEAUTY
MAKES 3 ORGANICS
MARIN BEE
NATIONAL STEWARDSHIP ACTION COUNCIL
NATURAL RESOURCES DEFENSE COUNCIL
PHYSICIANS FOR SOCIAL RESPONSIBILITY - SAN FRANCISCO BAY AREA CHAPTER
SIERRA CLUB CALIFORNIA
SMART OAKLAND
WOMEN'S VOICES FOR THE EARTH

Opposition

AMERICAN CHEMISTRY COUNCIL
CALIFORNIA CHAMBER OF COMMERCE
FRAGRANCE CREATORS ASSOCIATION
HOUSEHOLD AND COMMERCIAL PRODUCTS ASSOCIATION
PERSONAL CARE PRODUCTS COUNCIL

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 508 (Chu) – As Amended March 25, 2019

SUBJECT: Drinking water: consolidation and extension of service: domestic wells

SUMMARY: Requires the State Water Resources Control Board (State Water Board), upon ordering consolidation or extension of service, to notify owners and renters of dwelling units that are reliant on a domestic well with unsafe drinking water about the adequacy and safety of the unit's drinking water; deletes statute that requires the State Water Board, before ordering consolidation or extension of service, to obtain written consent to the project from a domestic well owner; prohibits the State Water Board, before ordering consolidation or extension of service, from using a specific percentage of well owners that are likely to provide consent to the project as a metric of feasibility; prohibits a receiving water system from charging any fees to compensate for increased groundwater use if the subsumed water system was reliant on groundwater before the consolidation or extension of service; and, makes other changes to ordered consolidation law. Specifically, **this bill**:

1) Clarifies that the State Water Board may order a consolidation or extension of service in a disadvantaged community that has one or more residences that are reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water.

2) Establishes a deadline of no later than July 1, 2020, as the date by which the State Water Board is required to develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the State Water Board to consider ordering a consolidation.

3) Deletes statute that requires the State Water Board, before ordering consolidation or extension of service, to obtain written consent from any domestic well owner for consolidation or extension of service.

4) Provides that the State Water Board, before ordering consolidation or extension of service, need not find, and shall not require, that any specific percentage of the owners of dwelling units served by domestic wells in the service area are likely to consent to the construction of a lateral to serve their dwelling unit.

5) Requires the State Water Board, upon ordering consolidation or extension of service, to inform the owner of the dwelling unit and, if different, the owner of the domestic well, if a dwelling unit is reliant on a domestic well within the service area that does not provide an adequate supply of safe drinking water.

6) Requires, upon ordering consolidation or extension of service, the State Water Board, if the owner of the dwelling unit or, if applicable, the domestic well, does not provide written consent for construction of a lateral to serve the dwelling unit, to promptly take all reasonable steps to provide to the tenants a written statement that includes the following information:

    i) That the domestic well does not provide an adequate supply of safe drinking water;

ii) All likely health risks associated with all of the dwelling unit's specific known and likely water supply and water quality issues;
iii) That the owner of the dwelling unit has been informed that the domestic well does not provide an adequate supply of safe drinking water and, despite being informed, has refused to consent to the construction of a lateral;
iv) That the dwelling owner's failure to consent to construction of a lateral or provide an alternate adequate supply of safe drinking water evidences a failure to provide the bare living requirements necessary for a habitable dwelling; and,
v) That the dwelling unit is untenantable because the dwelling unit substantially lacks an approved water supply.

7) Prohibits a receiving water system from charging any fees to mitigate or compensate for increased groundwater use if the subsumed water system was reliant on groundwater immediately before the consolidation or extension of service.

8) Makes other clarifying and conforming changes.

EXISTING LAW:

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

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

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

4) Requires the State Water Board, in administering SDWA programs to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities; and, to prioritize funding for construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system. (HSC § 116326)

5) Authorizes the State Water Board, where a public water system or a state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water or where a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water, to order consolidation, either physical or operational, with a receiving water system. (HSC § 116682 (a)(1))

6) Requires the State Water Board to develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the State Water Board to consider ordering consolidation. (HSC § 116682 (a)(2))

7) Requires the State Water Board, before ordering consolidation or extension of service, to perform a series of activities, including, encouraging voluntary consolidation or extension of service; considering other enforcement remedies; consulting with the relevant local agency formation commission; and, notifying the potentially receiving water system and the potentially subsumed water systems. (HSC § 116682 (b))

8) Provides that any domestic well owner within the consolidation or extended service area who does not provide written consent shall be ineligible, until the consent is provided, for any future water-related grant funding from the state other than funding to mitigate a well failure, disaster, or other emergency. (HSC § 116682 (b)(9))

9) Requires the State Water Board, before ordering consolidation or extension of service, to make seven findings, including that the potentially subsumed water system has consistently failed to provide an adequate supply of safe drinking water; that all reasonable efforts to negotiate consolidation or extension of service were made; and, that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. (HSC §116682 (d))

10) Prohibits, in the case of an ordered consolidation, the consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit. Provides that, in the case of an ordered consolidation, fees or charges imposed on a customer of a subsumed water system shall not exceed the cost of the service. (HSC § 116682 (g)(1)(A) – (B))

11) Prohibits the receiving water system from charging any fees to, or place conditions on, customers of the subsumed water system that it does not charge to, or impose on, new customers that are not subject to the consolidation with the receiving water system. (HSC § 116682 (g)(1)(C))

12) Authorizes the State Water Board, in order to provide an adequate supply of affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to, if sufficient funding is available, contract with, or provide a grant to, an administrator to provide administrative, technical, operational, or managerial services, or any combination of those services, to a designated water system to assist the designated water system with the provision of an adequate supply of affordable, safe drinking water. (HSC § 116686 (a)(1)(A)(i))

13) Authorizes the State Water Board to order the designated water system to accept administrative, technical, operational, or managerial services from an administrator appointed by the State Water Board for full oversight of construction or development projects related to a consolidation or extension of service, including, but not limited to, accepting loans and grants and entering into contracts on behalf of the designated water system. (HSC § 116686 (a)(1)(C))

14) Makes legislative findings that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and that it is in the interest of the people of

the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems. (HSC § 116760.10 (h))

FISCAL EFFECT: Unknown.

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

"AB 508 improves the State Water Board's process for expanding access to safe drinking water for disadvantaged communities across the state. Additionally, the bill prevents receiving water systems from charging specific mitigation or 'capacity' fees to homes already reliant on groundwater.

...Under the law, the [State Water] Board must obtain written consent from domestic well owners before ordering extension of services for the remainder of the community. In some communities, domestic well owners have withheld their consent, thus withholding the opportunity for other community members to access safe drinking water.

Additionally, some public water systems charge mitigation fees for connections that are intended to ensure that population growth pays for water supply improvements to serve the new development... However, in the case of consolidation or extension of service to existing groundwater users, as is addressed in AB 508, capacity fees are often charged both to existing households and new developments – thus treating existing households reliant on groundwater by way of domestic well the same as new development. Charging these fees is inappropriate for existing communities that are already reliant on groundwater and is diverting critical State funds from further efforts to building groundwater capacity and access to safe drinking water."

Human right to water: In 2012, by enacting Assembly Bill (AB) 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 established state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply issues, contaminants, costs of treatment and distribution systems, climate change, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors continue to challenge progress in implementing the Human Right to Water.

Drinking water contamination in disadvantaged communities: The February 2018, University of California (UC) Davis report, "*The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities*," summarizes drinking water issues facing disadvantaged communities in California as follows.

"In California, lack of access to clean, safe, and affordable water is a threat to public health and well-being, and violates the state's newly codified Human Right to Water. In low-income communities located outside city boundaries (known as disadvantaged unincorporated communities or DUCs), drinking water is often unsafe to drink. In many such localities, drinking water is contaminated by industrial by-products (usually associated with agriculture, oil and gas production, transportation, and manufacturing) and compromised by inadequate wastewater treatment and disposal systems, as well as naturally occurring toxic substances like arsenic and uranium. Many DUC residents in the San

> Joaquin Valley pay a triple penalty to obtain safe water: they bear the health costs of unsafe drinking water; they purchase that unsafe water at high costs; and they must also purchase 'substitute' water—typically expensive bottled water—for drinking and cooking.
>
> Lack of access to clean, safe and affordable drinking water has a racial and ethnic component: the vast majority of DUC residents are people of color who also face cumulative impacts from environmental contamination brought on by proximity to air pollution, pesticides, toxic facilities and waste disposal. Without city governments to directly represent their interests and provide essential services, residents of DUCs have been systematically deprived of access to important means of democratic governance."

While the 2018 UC Davis report focuses on DUCs in the San Joaquin Valley, the findings are consistent with a more expansive 2013 State Water Board report and 2012 UC Davis report that found that drinking water contamination in California disproportionally affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source. The 2013 State Water Board report found that 682 community public water systems in California, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water. It also found that 265 community public water systems, which serve a little more than two million people, had received at least one drinking water quality violation within the last compliance cycle. The report points out that an additional two million Californians rely on groundwater from a private domestic well or a smaller groundwater-reliant system that is not regulated by the state. The State Water Board reports that currently approximately 330 drinking water systems are not in compliance with drinking water standards.

The 2018 UC Davis report also found that a significant number of DUC residents live close to an existing, and water quality compliant, community water system that could provide them with clean drinking water.

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

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

Evolution of consolidation authority in California: California has recognized the benefits of consolidation for decades. SB 1307 (Costa and Thompson, Chapter 734, Statutes of 1997), instituted the state's Drinking Water State Revolving Fund (DWSRF), and declared that, "It is in the interest of the people of the State of California to encourage the consolidation of the

management and the facilities of small water systems to enable those systems to better address their water contamination problems."

After the enactment of SB 1307, and in order to promote consolidation, the California Department of Public Health (CDPH), which managed that state's drinking water program at the time, established the Consolidation Incentive Program, which provided an incentive for larger, compliant water systems to consolidate with nearby noncompliant systems. Previously, CDPH only invited drinking water systems that were out of compliance with drinking water standards to submit applications for DWSRF funding. However, through this new program, compliant systems that agreed to consolidate with a neighboring noncompliant system became eligible for DWSRF funding.

AB 783 (Arambula, Chapter 614, Statutes of 2007) provided further support and direction for the state's consolidation efforts by directing CDPH to encourage; provide funds for and studies on; and, prioritize funding for projects that consolidate small public water systems in certain situations.

In 2014, SB 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the Drinking Water Program from CDPH to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water within the State Water Board. Since the transfer, the consolidation of failing drinking water systems in order to supply safe, affordable, and reliable drinking water has been a priority for the state.

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

SB 88 set up the existing structure for current ordered consolidation law. First, it requires the State Water Board, *before ordering* consolidation or extension of service, to complete several tasks, such as notify the water systems, consult with various entities, provide technical expertise to both water systems, and obtain written consent from domestic well owners for consolidation or extension of service. Next, it requires the State Water Board, *before ordering* consolidation or extension of service, to make certain findings, such as that all reasonable efforts to negotiate consolidation or extension of service were made and that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. Finally, it requires the State Water Board, *upon ordering* consolidation or extension of service, to complete certain tasks, such as making funds available to the receiving water system for the costs of completing the consolidation and compensating the owners of a privately owned subsumed water system for the fair market value of the system.

While for many years the state's drinking water program had *encouraged* voluntary consolidation of public water systems, SB 88 authorizes the state to *mandate* the consolidation of water systems, where appropriate.

Additional consolidation authority: SB 552 (Wolk, Chapter 773, Statutes of 2016) expanded the State Water Board's authority to order consolidation by enabling it to contract with a competent administrator to provide managerial and technical expertise for public water systems that are consistently unable to provide an adequate and affordable supply of safe drinking water. AB 2501 (Chu, Chapter 871, Statutes of 2018) authorized the State Water Board to also order consolidation or extension of service to a disadvantaged community that is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water.

Proposed changes to ordered consolidation laws: This bill builds upon the authority vested to the State Water Board to order the consolidation of domestic wells with inadequate supplies of safe water in disadvantaged communities. Its intent is to remove barriers to, and to encourage, consolidation efforts in several ways.

First, this bill deletes statute that requires the State Water Board, before ordering consolidation or extension of service, to obtain written consent from any domestic well owner. The bill also prohibits the State Water Board, before ordering consolidation or extension of service, from using, as a metric of feasibility of the project, a specific percentage of the owners of dwelling units (or well owners, if different) served by domestic wells in the service area that are likely to provide consent to the construction of a lateral to serve their dwellings units. Obtaining the consent of well owners prior to initiating a consolidation effort informs the State Water Board's evaluation of the feasibility of the project and enables them to better prioritize resources toward potential ordered consolidation projects. The sponsors of the bill, the Leadership Counsel for Justice and Accountability, argue, however, that under current law and practice, a requirement for consent from well owners and then lack of consent could result in the early termination of a consolidation project, even when lack of written consent is due to either a desire for more information or failure of a landlord to respond. Sponsors argue that the provisions in the bill would alter the process so that a drinking water project is not thwarted by an artificial requirement that a certain percentage of a community consent to the project, regardless of whether the project is an economically feasible way to deliver safe drinking water to the community in need.

The Committee may wish to consider whether the State Water Board should retain some flexibility to use the possibility of consent to the consolidation project as a means to determine whether the project is feasible.

Second, the bill requires the State Water Board, upon ordering consolidation or extension of service, to notify owners and renters of dwelling units that are reliant on a domestic well with unsafe drinking water about the adequacy and safety of the unit's drinking water. According to the sponsors, these provisions are meant to provide those tenants with information about water quality inadequacies, as well as the fact that the landlord has not consented to a drinking water solution. Sponsors argue that this information will enable the tenant to take appropriate steps to address the problem, including switching to another drinking water source, use of appropriate filtration, relocation, or a request that the owner reconsider refusal of consent to extension of service. The sponsors assert that this written information, provided to tenants, should put pressure on landlords to consent to the extension of service.

In order to provide information about unsafe well water to tenants earlier, and in order to potentially encourage dwelling and well owners to consent to consolidation efforts, the Committee may wish to move the notification requirement provisions so that the notification

occurs earlier in the consolidation process (before the consolidation efforts begin, not during the consolidation project).

Third, this bill makes other changes to ordered consolidation law, including prohibiting a receiving water system from charging any fees to mitigate or compensate for increased groundwater use if the subsumed water system was reliant on groundwater immediately before the consolidation or extension of service.

Proposed Committee amendments:

1) Clarify that one well with unsafe water within a disadvantaged community would not necessarily trigger a consolidation effort by amending the bill to authorize the State Water Board to order consolidation or extension of service within a disadvantaged community, which is, *in whole or in part,* reliant on domestic well*s* that consistently fail to provide an adequate supply of safe drinking water. (Page 4, line 1)

2) Make the bill consistent with current statutory terms relating to consolidation and extension of service by replacing the phrases that include "lateral" throughout the bill with "consolidation or extension of service."

3) Clarify that the State Water Board shall inform the owner of the dwelling, or well owner, if different, that the dwelling unit is supplied by a domestic well that does not provide an adequate supply of safe drinking water. (Page 8, line 25)

4) Delete provisions requiring the State Water Board to determine whether a dwelling is rented to tenants and to provide a written statement to tenants about their drinking water, and instead require the State Water Board to provide a written statement, as specified in the bill, to the occupants of a dwelling supplied by a domestic well with unsafe water. (Page 8, line 35)

5) Clarify that the dwelling owner's failure to consent to an extension of service or to provide an alternate adequate supply of safe drinking water evidences a failure to provide an adequate supply of safe drinking water to the dwelling, not failure to "provide bare living requirements necessary for a habitable dwelling." (Page 9, line 10)

6) Delete the requirement that the written statement that must be sent to the occupants of a dwelling served by a well with unsafe water include the following information, "That the dwelling unit is untenantable because the dwelling unit substantially lacks an approved water supply." (Page 9, line 12)

7) Reinsert an existing statutory requirement, which had been deleted in the bill, requiring the State Water Board to use well owner's potential consent to the project as a means to determine if the project is feasible, by amending 116682 (d)(3) as follows: Before ordering consolidation or extension of service, the state board shall find… Consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. In making this finding, *the state board shall consider how many owners of dwelling units served by domestic wells in the service area have provided, or are likely to provide, written consent to extension of service.* (Page 7, line 3)

8) Delete, in order to provide the State Water Board with flexibility on how best to evaluate and prioritize consolidation projects, provisions that prohibit the State Water Board , in determining whether a consolidation project is feasible, from using a specific percentage of well owners that are likely to provide consent to the project as a metric of feasibility, by amending 116682 (d)(3) as follows: *However,* the state board need not find~~, and shall not require,~~ that any specific percentage of the owners of dwelling units served by domestic wells in the service area are likely to consent to the ~~construction of a lateral~~ *consolidation or extension of service* to serve their dwelling unit. (Page 7, line 4)

9) Move the provisions in 116682 (e)(6), which require the State Water Board, to, upon ordering consolidation or extension of service, notify owners and renters of dwelling units that are reliant on a domestic well with unsafe drinking water about the adequacy and safety of the unit's drinking water, to 116682 (b), which would require the State Water Board to take those actions before ordering consolidation or extension of service. (Page 8, line 22)

Related legislation:

1) AB 2501 (Chu, Chapter 871, Statutes of 2018). Authorizes the State Water Board to order consolidation with a receiving water system when a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water; prohibits, for an ordered consolidation, the receiving water system from charging specified fees or imposing specified conditions on customers of the subsumed water system that it would not otherwise charge or impose; and, makes other changes to ordered consolidation law.

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

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

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

5) SB 1263 (Wieckowski, Chapter 843, Statutes of 2016). Authorizes the State Water Board to deny a permit for a new public water system if it determines that it is reasonably foreseeable that the proposed new public water system will be unable to provide affordable, safe drinking water.

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

7) AB 685 (Eng, Chapter 524, Statutes of 2012). Declares that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and that relevant state agencies, including the Department of Water Resources, the State Water Board, and the State Department of Public Health shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

REGISTERED SUPPORT / OPPOSITION:

Support

LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY (SPONSOR)
ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT (ACCE) ACTION
AUDUBON CALIFORNIA
CALIFORNIA COASTKEEPER ALLIANCE
CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE
CALIFORNIA INSTITUTE FOR RURAL STUDIES
CENTER FOR SUSTAINABLE NEIGHBORHOODS
CENTRAL CALIFORNIA ENVIRONMENTAL JUSTICE NETWORK
CLEAN WATER ACTION
COMMUNITY WATER CENTER
COURAGE CAMPAIGN
DIOCESE OF FRESNO SOCIAL JUSTICE MINISTRY
ELLA BAKER CENTER FOR HUMAN RIGHTS
LUTHERAN OFFICE OF PUBLIC POLICY - CALIFORNIA
PLANNING AND CONSERVATION LEAGUE
POLICYLINK
PUEBLO UNIDO CDC
THE TRUST FOR PUBLIC LAND

Opposition

NONE ON FILE.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 637 (Gray) – As Amended March 19, 2019

SUBJECT: State Water Resources Control Board: minority and low-income communities: drinking water

SUMMARY: Requires the State Water Resources Control Board (State Water Board), before taking an action that impacts drinking water, to identify potential adverse human health effects that the proposed action may have on minority and low-income populations, and seek to reduce those effects to the greatest extent practicable. Additionally, requires the State Water Board to promote nondiscrimination and provide minority and low-income communities with opportunities for public participation before taking an action that impacts drinking water.

EXISTING LAW:

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

2) Requires the State Water Board, in administering SDWA programs to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities and to prioritize funding for construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system. (HSC § 116326)

3) Defines "disadvantaged community," for the purposes of ordered consolidation, as a community with an annual median household income that is less than 80 percent of the statewide annual median household income and that is in an unincorporated area, is in a mobile home park, or is served by a mutual water company or a small public water system. (HSC § 116681(f))

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

FISCAL EFFECT: Unknown.

COMMENTS:

Human right to water: On September 12, 2012, Governor Edmund G. Brown Jr. signed AB 685 (Eng, Chapter 524, Statutes of 2012), making California the first state in the nation to legislatively recognize the human right to water. The bill statutorily recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas.

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

Drinking water contamination in disadvantaged communities: The February 2018, University of California (UC) Davis report, "*The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities*," summarizes drinking water issues facing disadvantaged communities as follows:

> "In California, lack of access to clean, safe, and affordable water is a threat to public health and well-being, and violates the state's newly codified Human Right to Water. In low-income communities located outside city boundaries (known as disadvantaged unincorporated communities or DUCs), drinking water is often unsafe to drink. In many such localities, drinking water is contaminated by industrial by-products (usually associated with agriculture, oil and gas production, transportation, and manufacturing) and compromised by inadequate wastewater treatment and disposal systems, as well as naturally occurring toxic substances like arsenic and uranium. Many DUC residents in the San Joaquin Valley pay a triple penalty to obtain safe water: they bear the health costs of unsafe drinking water; they purchase that unsafe water at high costs; and they must also purchase "substitute" water—typically expensive bottled water—for drinking and cooking.
>
> Lack of access to clean, safe and affordable drinking water has a racial and ethnic component: the vast majority of DUC residents are people of color who also face cumulative impacts from environmental contamination brought on by proximity to air pollution, pesticides, toxic facilities and waste disposal. Without city governments to directly represent their interests and provide essential services, residents of DUCs have been systematically deprived of access to important means of democratic governance."

While the 2018 UC Davis report focuses on DUCs in the San Joaquin Valley, the findings are consistent with a more expansive 2013 State Water Board report and 2012 UC Davis report that found that drinking water contamination in California disproportionally affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source.

The 2013 State Water Board report found that 682 community public water systems in California, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water. It also found that 265 community public water systems, which serve a little more than two million people, had received at least one drinking water quality violation within the last compliance cycle. The report points out that an additional two million Californians rely on groundwater from a private domestic well or a smaller groundwater-reliant system that is not regulated by the state. While these statistics may have changed a bit over the past several years, the State Water Board notes that currently approximately 282 drinking water systems are not in compliance with drinking water standards.

The 2018 UC Davis report also found that a significant number of DUC residents live close to an existing and water-quality compliant community water system that could provide clean drinking water.

The 2018 UC Davis report included policy recommendations to better enable DUCs to secure access to safe and affordable drinking water. These recommendations included, "State law should clarify that the board may use its authority to extend services to DUC residents who receive residential water from [state small water systems] and private wells. Another potential mechanism for expanding the reach and effectiveness of the law would be to allow communities without safe drinking water to petition the state to consider ordering consolidations."

Environmental Justice: Government Code section 65040.12(e) defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

President Clinton Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations: In 1994, President Bill Clinton signed an Executive Order requiring federal agencies to address an environmental justice issue. The Executive Order stipulated to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. Additionally the Executive Order required federal agencies, whenever practicable and appropriate translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations as well as work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

California Environmental Protection Agency (CalEPA) Environmental Justice update 2013-2015: Within the CalEPA Environmental Justice Update, the Secretary of CalEPA included the following message, "California is a land of promise. For many, however, it is a promise that remains unfulfilled. Too many communities in the state continue to bear a disproportionate share of environmental pollution, while also dealing with other socioeconomic and health issues. There are many reasons for this: Some areas are wrestling with the legacy of long past industrial and agricultural practices, while others are grappling with the cumulative impacts of earlier land use decisions. Residents near trade corridors may feel the brunt of air pollution that, in spite of some of the country's strictest regulatory controls, may be caused by trucks and trains that route goods to the rest of the nation. Natural conditions and disasters, such as droughts or extreme weather events brought on by a changing climate, present further challenges. Meeting the needs of these disadvantaged communities is one of many daily tests we face at CalEPA. These communities require our focused attention and deserve to experience the privileges of a clean environment and economic prosperity that many Californians enjoy today."

As part of the CalEPA Environmental Justice Update, it included an update from the State Water Board that included, "The Water Boards realize that this vision must include all Californians, including those individuals who live in environmentally burdened communities as well as members of California Native American Tribes. In pursuit of solutions to better serve

environmental justice communities and Tribes, the Water Boards will continue to partner with community organizations, local governments, and state and federal agencies to achieve environmental justice goals. During the past two years the Water Boards have focused efforts to address environmental justice concerns in five ways: 1) assuring a smooth transfer of the drinking water program to the State Water Board, 2) addressing environmental justice concerns throughout the Water Boards' programs, 3) providing financial assistance to disadvantaged communities and severely disadvantaged communities particularly as it relates to the drought, 4) equipping environmental justice communities and Tribes with information about the Water Boards' programs and public participation opportunities, and 5) equipping staff and Board Members with skills to more effectively work with environmental justice communities and Tribes.

AB 637 builds upon the work CalEPA has committed to regarding environmental justice by further directing the State Water Board to ensure that minority and low-income communities are involved when the State Water Board is considering action impacting drinking water. Additionally, the bill requires the State Water Board to identify potential adverse human health effects that proposed actions may have on minority and low-income populations, which is consistent with the human right to water as well as state and federal environmental justice policies.

Potential clarification: The author and committee may wish to consider language to ensure this bill does not duplicate any required public meetings of the State Water Board. This could also include direction to the State Water Board to hold outreach and meetings in locations that are accessible to communities impacted by the decisions the State Water Board may make, specifically relating to drinking water impacts.

Related legislation:

1) AB 1490 (Gray, 2017). Would have required the State Water Resources Control Board (State Water Board) to, no later than July 1, 2018, prepare and submit to the Legislature a report evaluating potential adverse impacts resulting from the implementation of the Bay-Delta Water Quality Control Plan on the quality and supply of drinking water provided to schools in disadvantaged communities. This bill was held on the Assembly Appropriations Committee suspense file.

2) AB 1071 (Atkins, Chapter 585, Statutes of 2015). Required each Board, Department, and Office within the CalEPA that has enforcement authority to establish a specified policy for supplemental environmental projects that benefit disadvantaged communities.

3) SB 673 (Lara, Chapter 611, Statutes of 2015). Required the Department of Toxic Substances Control to develop and implement programmatic reforms designed to include strengthening environmental justice safeguards, enhancing enforcement of public health protections, and increasing public participation and outreach activities.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Stanislaus

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 647 (Kalra) – As Amended March 14, 2019

SUBJECT: Hazardous materials: cosmetics: safety documents

SUMMARY: Requires a manufacturer of a hazardous substance or mixture of substances that constitute a cosmetic, or are used to disinfect, to post a material data safety sheet (MSDS) online. Specifically, **this bill:**

1) Requires a manufacturer of a hazardous substance or mixture of substances that constitute a cosmetic, or any substance or mixture of substances used to disinfect, that is required to create an MSDS under current law, to post the MSDS to an internet website at which the public may find it and access it by its brand name or other commonly known name.

2) Requires the manufacturer to post separate MSDSs based on color or tint as in nail polishes, hair dye, or other cosmetic.

3) Requires the manufacturer to translate the MSDS into languages determined by the director of the Department of Industrial Relations to be common for the beauty care industry, including, but not limited to, Spanish, Vietnamese, Chinese, and Korean, and requires these translations to be publicly available on the manufacturer's internet website.

EXISTING LAW:

1) Establishes the Hazard Communication Standard (HCS) to require that the chemical manufacturer, distributor, or importer provide Safety Data Sheets (SDSs) (formerly Material Safety Data Sheets or MSDSs) for each hazardous chemical to downstream users to communicate information on these hazards. Requires employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels, and other forms of warning. (29 Code of Federal Regulations 1910.1200)

2) Requires the Occupational Safety and Health Standards Board to adopt a standard setting forth an employer's duties toward its employees consistent with specified guidelines, including, among other things, that the employer shall make SDSs on substances in the workplace available to employees, collective bargaining representatives, or employee physicians. (California Code of Regulations (CCR), Title 8, Section 5194)

3) Requires the director of the Department of Industrial Relations to establish a list of hazardous substances and make the list available to manufacturers, employers, and the public. Requires substances on the list to be designated by their chemical and common name or names. Requires the director to adopt, amend, and repeal regulations for the establishment of the list of hazardous substances. (Labor Code § 6380)

4) Defines cosmetic as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the

human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance. Excludes soap. (Health and Safety Code § 109900)

5) Defines disinfect as the use of chemicals to destroy harmful bacteria, viruses, and pathogens on implements or tools to render them safe for use. (CCR, Title 16, § 977)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Salon professionals, many of whom are immigrants and women of color, handle cosmetic products on a daily basis and for long hours that contain hazardous chemicals. Cosmetic manufacturing companies are required by law to create Safety Data Sheets (SDS). However, there currently is no law requiring manufactures to post SDSs online. This bill would require manufacturing companies to post them on the internet making it accessible to salon professionals and translating them into the most prominent languages spoken by workers--Vietnamese, Korean, Chinese, and Spanish. AB 647 would give workers access to important information, empowering them to take control of their health by becoming educated in the potential health hazards and take the necessary precautions to protect themselves. By increasing the transparency and bringing safety awareness, we can improve the health and working conditions for salon professionals."

Chemical exposure: Decades of studies indicate that serious health issues (including but not limited to asthma, cancer, and infertility) are on the rise and are due in some part to our ongoing exposure to toxic chemicals—whether it is in the shower, on our commute, while we eat lunch at a local restaurant, or when we clean our kitchens at home.

More than 84,000 chemicals have been registered for use in the United States, and more than 700 new chemicals enter the marketplace each year. Many do not have any safety data. As more and more chemicals enter our homes and workplaces, the need for transparency of those chemicals becomes more critical.

According to a 2014 article in *The Journal of Environmental Studies and Sciences,* as a consequence of weaknesses in federal chemicals policy, chemicals suspected of being hazardous are found in numerous consumer and commercial products, including everyday products. Downstream businesses that purchase and use chemicals shoulder the burden of identifying and managing potentially hazardous chemicals in their supply chains.

The Centers for Disease Control and Prevention have detected hundreds of industrial chemicals in American children and adults, based on nationally representative and cumulative biomonitoring data. In California, chemical and pollution related diseases among children and workers cost the state's insurers, businesses, and families an estimated $2.6 billion in direct and indirect costs per year. In 2004, more than 200,000 California workers were diagnosed with deadly, chronic diseases - such as cancer or emphysema - attributable to chemical exposure in the workplace.

Cleaning products: Cleaning products contain an array of chemical substances that are necessary to the efficacy of the product as a cleaning agent or disinfectant.

These products are formulated using chemicals that improve the performance of these cleansers, but often these same chemicals can also harm people or our environment. People may get cleaning products directly on their skin or in their eyes, or they can inhale their vapors. Exposure to chemicals such as strong acids or bases in cleaning products can cause skin rashes, severe burns, or asthma attacks. Other chemicals in some cleaning products are endocrine disruptors, reproductive toxicants, or neurotoxicants.

Those who use cleaning products at work have higher exposures. According to the National Institute of Occupational Health Sciences (NIOSH), 2.3 million people work in building custodial services occupations in the United States, and another 1.4 million work as maids in hotels, or in healthcare facilities. NIOSH has made it a priority to support ongoing research to help cleaning professionals recognize and prevent or reduce risks at work. The California Department of Public Health (CDPH) has published reports and factsheets on work-related asthma among workers exposed to cleaning products.

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

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

Under the federal Food, Drug & Cosmetic Act, cosmetics and their ingredients are not required to be approved before they are sold to the public, and the United States Food and Drug Administration does not have the authority to require manufacturers to file health and safety data on cosmetic ingredients or to order a recall of a dangerous cosmetic product.

Absent regulatory oversight, providing information about a product's ingredients and health hazards provides an opportunity to cosmetic consumers and professional users to evaluate a product's safety for her/himself.

Hazardous substance listing and notification to employees: Under current law, the director of the Department of Industrial Relations is required to establish a list of hazardous substances, designated by their chemical and common name or names, which is approved by the Occupational Safety and Health Standards Board. (Labor Code § 6380)

The list is required to include substances listed as human or animal carcinogens by the International Agency for Research on Cancer; substances designated as toxic pollutants by the United States Environmental Protection Agency (US EPA) pursuant to the federal Clean Water Act or as hazardous air pollutants pursuant to the federal Clean Air Act; substances listed by the Occupational Safety and Health Standards Board as an airborne chemical contaminant; substances designated by the Director of Food and Agriculture as restricted materials which have known, adverse human health risks; substances listed in the Hazard Evaluation System and Information Service, a repository of toxic materials and harmful physical agents in use or

potentially in use in places of employment in the state; and, any other substance added by the director. (Labor Code §6832 (b))

The director is required to make the list available to manufacturers, employers, and the public.

Current law provides that a hazardous substance is considered present in any mixture or product if it is present in specified concentrations (i.e. one percent or more of the mixture or product, two percent of the mixture or product if the hazardous substance exists as an impurity in the mixture, or one-tenth of 1 percent of the mixture or product if the hazardous substance in the mixture or product is designated as a carcinogen pursuant to the Occupational Carcinogens Control Act of 1976). (Labor Code §6383)

Disclosing ingredients on disinfectants and cosmetics: Many employers can get information from product Material Safety Data Sheets (MSDS). The California Division of Occupational Safety and Health's (CalOSHA) Hazard Communication Standard requires product manufacturers to provide employers with an MSDS for each product used in the workplace that may contain a hazardous chemical (Labor Code § 6390). The MSDS explains the health risks of the product and lists precautions for worker protection.

On each hazardous chemical, an MSDS provides information such as health hazards, special chemical and physical characteristics, protective measures, precautions for safe handling, use and storage of each chemical. Employers can use the information contained in MSDSs to educate employees on hazards associated with chemicals found in their workplace. Because information contained in MSDSs can change, employers must review the MSDSs and ensure that employees are provided with the most current version.

The challenge is that employees may request MSDSs from their employer, but they can be difficult to obtain from the manufacturer. Additionally, many workers are characterized as "independent contractors" and therefore do not have the same rights under occupational safety and health law as "employees" to demand those from the employer.

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

This Cleaning Product Right to Know Act of 2017 also requires an employer, who is required to make an MSDS readily accessible to an employee pursuant to the Occupational Safety and Health Standards Board standard, to make certain information for cleaning products in the workplace readily accessible in the same manner.

AB 647 would require a manufacturer of a hazardous substance or mixture of substances used to disinfect, who is already required to create an MSDS under current law, to post the MSDS online.

The term "disinfect" is defined under the Board of Barbering and Cosmetology's regulations as "the use of chemicals to destroy harmful bacteria, viruses, and pathogens on implements or tools to render them safe for use." Some or all of the products covered under this bill may also be covered under the Cleaning Product Right to Know Act of 2017.

The author may wish to provide further clarification on the scope of disinfectant products covered under this bill to provide clear direction to manufactures so they know for which products they must comply.

Making more information readily accessible: There is currently no requirement that MSDSs be made available virtually on the internet. AB 647 addresses that issue by proposing to require manufacturers of cosmetics and cleaning disinfectant products, who are required by federal and state law to create and distribute MSDS, to post the MSDSs on an internet website in a way that is accessible to salon professionals and owners. To be clear, this bill only applies to manufacturers who are required, under current law, to create an MSDS. This bill does not require manufacturers to generate new MSDSs.

The bill would also increase transparency for ingredient combinations in various products by requiring, in the case of separate MSDSs based on color or tint as in nail polishes, hair dye, or other cosmetic, the manufacturer to post each MSDS on its website.

Language barriers: Often, language barriers are an obstacle to obtaining product safety information, even when an MSDS is available. The large majority of nail salon professionals in California are Vietnamese, many of whom have limited English skills. A 2008 study in the Journal of Community Health, "*A preliminary survey of Vietnamese nail salon workers in Alameda County,*" estimated that 59% to 80% of California nail salons are run by women of Vietnamese decent who face socio-cultural barriers that may compromise their workplace safety and health care access. English is often not their primary language. Limited English proficiency can limit a worker's ability to comprehend warnings of health risks, exposure routes, and preventive measures in product literature. The Department of Toxic Substances Control notes that workers who stay on the job while pregnant expose themselves and their fetuses to a variety of known and potentially toxic chemicals that may lead to a wide range of acute and chronic adverse health conditions for both mother and child.

The state Board of Barbering and Cosmetology, which licenses salon professionals and owners in the state, translates its materials into Spanish, Vietnamese, and Korean. AB 647 follows suit and requires the MSDS to be translated into languages determined by the director to be common for the beauty care industry, including, but not limited to, Spanish, Vietnamese, Chinese, and Korean.

Arguments in support: Physicians for Social Responsibility, San Francisco Bay Area Chapter, states, "On a daily basis, for long hours, nail and hair salon professionals handle potentially hazardous products including disinfectants, polishes, dyes, and straighteners, containing a multitude of chemicals known or suspected to cause cancer, allergies, and respiratory, neurological and reproductive harm. Federal and state labor law requires manufacturers of any product with a hazardous chemical to create Safety Data Sheets (SDS) and distribute them to direct purchasers. SDSs contain essential information on health impacts of exposures to hazardous substances in products and safety precautions when using those products while at work, among others. Passing AB 647 (Kalra) will help ensure that SDSs for cosmetics and disinfectants are easier to access by requiring them to be posted on a website. It will help remove language as a barrier to important worker safety and health information by requiring SDSs to be translated into certain specified languages, including Vietnamese."

Arguments in opposition: The Chemical Industry Council of California states, "...the bill blurs the necessary distinction between workplace and consumer-public information ... Importantly, though, workplace exposure potential will almost always be different in type, frequency, intensity and duration than in normal consumer use of products containing any given chemical. The MSDS process already requires such workplace warnings to be in languages appropriate to a given worksite, under the regulatory authority of both OSHA and Cal OSHA ... The emphasis in the bill of providing for such public access also risks mis-informing ultimate consumers regarding both the type and level of risk posed by a given chemical in any one of multiple different uses to which it may be put."

Related legislation: AB 2686 (Tran, 2008). This bill would have required manufacturers, certain other persons, and employers that sell or use Professional Use-Only Nail Care Products, as defined, to prepare and provide and translate into the Vietnamese language the MSDS to purchasers of such products as well as to licensed professional nail care employees upon request. It was held in the Assembly Appropriations Committee.

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

REGISTERED SUPPORT / OPPOSITION:

Support

CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE (CO-SPONOR)
WORKSAFE (CO-SPONSOR)
AMERICAN CONGRESS OF OBSTETRICIANS & GYNECOLOGISTS - DISTRICT IX
ASIAN AMERICANS ADVANCING JUSTICE - CALIFORNIA
ASIAN HEALTH SERVICES
BLACK WOMEN FOR WELLNESS ACTION PROJECT
BREAST CANCER ACTION
BREAST CANCER PREVENTION PARTNERS
CALIFORNIA HEALTH COALITION ADVOCACY
CALIFORNIA LABOR FEDERATION, AFL-CIO
EDUCATE. ADVOCATE.
EMPOWER FAMILY CALIFORNIA
ENVIRONMENTAL WORKING GROUP
NATIONAL EMPLOYMENT LAW PROJECT
OCA - ASIAN PACIFIC AMERICAN ADVOCATES: EAST BAY CHAPTER
PUBLIC HEALTH JUSTICE COLLECTIVE
SAN FRANCISCO BAY AREA PHYSICIANS FOR SOCIAL RESPONSIBILITY
SAN FRANCISCO DEPARTMENT OF THE ENVIRONMENT
VIETNAMESE AMERICAN COMMUNITY CENTER OF THE EASR BAY
WOMEN'S VOICES FOR THE EARTH

Opposition

AMERICAN CHEMISTRY COUNCIL
CHEMICAL INDUSTRY COUNCIL OF CALIFORNIA
HOUSEHOLD AND COMMERCIAL PRODUCTS ASSOCIATION
PERSONAL CARE PRODUCTS COUNCIL

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 755 (Holden) – As Introduced February 19, 2019

SUBJECT: California tire fee: Stormwater Permit Compliance Fund

SUMMARY: Increases the California tire fee from $1.75 to $3.25 per tire, and directs the additional revenue to be available for grants for municipal stormwater projects that mitigate zinc pollution from tires. Specifically, **this bill**:

1) Increases the California tire fee from $1.75 to $3.25 per tire: directs the additional revenue to the Stormwater Permit Compliance Fund (Fund), to be administered by the California Water Resources Control Board (State Water Board); and, requires the State Water Board to provide grants for municipal stormwater projects that mitigate zinc pollution from tires.

2) Directs the money from the tire fee as follows: seventy-five cents ($0.75) to the Air Pollution Control Fund, one dollar ($1.00) to the California Tire Recycling Management Fund, and one dollar and fifty cents ($1.50) to the Stormwater Permit Compliance Fund.

3) Authorizes the State Water Board to use funds in the Stormwater Permit Compliance Fund for competitive grants to fund projects and programs for a municipal storm sewer system compliance requirement that would prevent or remediate zinc pollutants caused by tires.

4) Increases, beginning on January 1, 2024, the California tire fee from $0.75 to $2.25 per tire: directs the additional revenue to the Fund, to be administered by the State Water Board; and, requires the State Water Board to provide grants for municipal stormwater projects that mitigate zinc pollution from tires.

5) Provides that this is an urgency in order to help grant recipients achieve municipal storm sewer system permit compliance requirements that would prevent or remediate zinc pollutants caused by tires at the earliest possible time.

EXISTING LAW:

1) Enacts the "California tire fee" and requires a person who purchases a new tire to pay a California tire fee of one dollar and seventy-five cents ($1.75) per tire and reduces the tire fee to seventy-five cents ($0.75) per tire beginning on January 1, 2024. (Public Resources Code (PRC) § 42885)

2) Authorizes the Department of Resources, Recycling, and Recovery (CalRecycle) to award grants, subsides, rebates, and loans, from the tire fee, to businesses or other enterprises and public entities that result in reduced landfill disposal of used whole tires and reduced illegal disposal or stockpiling of used whole tires. (PRC § 42872)

3) Pursuant to the Porter-Cologne Water Quality Control Act, prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code (WC) § 1300 et seq.)

4) Requires the State Water Board to establish an online resource center that addresses measures available for municipalities to comply with municipal stormwater permit requirements. (WC § 13383.9)

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

6) Establishes the national pollutant discharge elimination system (NPDES) permit program to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in storm water, including municipal storm water systems. (33 U.S.C. § 1251 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The removal of contaminants, including zinc, from stormwater is an urgent issue for a number of cities throughout California. For example, in Los Angeles County it is estimated it will cost approximately $20 billion for compliance with stormwater permits and to upgrade infrastructure and implement stormwater capture and contaminant removal technology.

AB 755 would increase the California tire fee by a modest $1.50 per tire to help cities fund clean-up projects to reduce and eliminate zinc found in stormwater runoff. Zinc is among several dozen heavy metals and other contaminants that are considered high-level water quality threats throughout areas in California. Elevated zinc concentrations in runoff must be addressed to achieve Clean Water Act compliance in many California urban areas.

AB 755 offers a much-needed funding tool to offset the costs of zinc remediation. It is estimated that the permit compliance fund would raise approximately $50 million annually, which would be invested in the State's communities to reduce and eliminate zinc as a public health and environmental threat."

Stormwater: Stormwater is runoff from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways, or parking lots carrying with it pollutants such as oil, pesticides, herbicides, sediment, trash, bacteria, and metals. The runoff can then drain directly into a local stream, lake, or bay. Often, the runoff drains into storm drains untreated which eventually flows into a local body of water. Both the United States Environmental Protection Agency (US EPA) and the Regional Water Quality Control Boards (Regional Water Board) have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health. However, stormwater may also act as a resource and recharge to groundwater when properly managed.

Tires derived zinc stormwater pollution: According to the report, "Zinc Sources in California Urban Runoff" prepared for the California Stormwater Quality Association on April 2015, the major sources of zinc in urban runoff are outdoor zinc surfaces (including galvanized surfaces) and tire wear debris. The report states, "Elevated zinc concentrations in urban runoff must be addressed for Clean Water Act compliance in many California urban areas, particularly in the

Los Angeles and San Diego regions, which have multiple Total Maximum Daily Loads (TMDLs) for zinc. Treating urban runoff to achieve compliance, while theoretically feasible, could cost billions of dollars statewide. Controlling zinc at its source is a promising alternative. For outdoor zinc surfaces, both source control and on-site treatment of concentrated runoff appear to be technically feasible. Reducing zinc from tires will pose a greater challenge, as low-zinc and zinc-free products have little market presence and tire wear debris is widely dispersed across urban environments, making it very difficult to collect…Examine the possibility of petitioning the California Department of Toxic Substances Control (DTSC) to require evaluation of zinc in tires under its Safer Consumer Products Regulations. If multiple California agencies determine that zinc reductions are necessary for Clean Water Act compliance and cannot reasonably be achieved from other sources, the potential to reduce zinc concentrations in tires should be evaluated."

Regulating stormwater: For nearly two decades, the State Water Board has regulated runoff and treatment of storm water from industrial and municipal sources in California, including storm drains, rivers, streams, lakes, wetlands, and the ocean. The federal Clean Water Act requires the State Water Board and regional water boards to regulate the discharge of storm water from a number of sources. Stormwater discharges in California are regulated through NPDES permits.

Municipal Separate Storm Sewer Systems (MS4) Permitting Program: The Municipal Storm Water Permitting Program regulates storm water discharges from MS4 permits, which are issued in two phases. Under Phase I, NPDES storm water permits were issued for medium (serving between 100,000 and 250,000 people) and large (serving 250,000 people) municipalities. Most of these permits are issued to a group of co-permittees encompassing an entire metropolitan area. These permits are reissued as the permits expire. The Phase I MS4 permits require the discharger to develop and implement a Storm Water Management Plan/Program with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP). The management programs specify what best management practices (BMPs) will be used to address certain program areas. The program areas include public education and outreach; illicit discharge detection and elimination; construction and post-construction; and, good housekeeping for municipal operations. In general, medium and large municipalities are required to conduct monitoring. Under Phase II, the State Water Board issues a General Permit for the Discharge of Storm Water from Small MS4s to provide permit coverage for smaller municipalities (population less than 100,000), including non-traditional Small MS4s, which are facilities such as military bases, public campuses, prisons, and hospital complexes. AB 755 is designed to provide a funding source for a grant program to help municipalities comply with the MS4 permit specifically dealing with stormwater.

Costs and funding options complying with the MS4 stormwater permit: The effort required to comply with the MS4 permit can be significant, as projects may be very costly and take considerable time to complete. Local jurisdictions typically incur project costs in three phases: planning, construction, and operation and maintenance. During the planning phase, local jurisdictions identify management practices that they anticipate would address the pollutant control plan set by the regional water board. During the construction phase, local jurisdictions implement their project plans, which can require significant amounts of capital to complete. Finally, during the operation and maintenance phase, local jurisdictions must conduct ongoing activities to ensure that their projects work as intended. One important component of the operation and maintenance phase is monitoring the storm water to ensure that the pollutants have been reduced. Local jurisdictions monitor pollutant levels by testing water samples. Local

jurisdictions then provide those monitoring data to the regional board as evidence of their progress towards achieving pollutant limits.

Local jurisdictions have limited options for covering the costs of storm water management:

1) **General fund revenue:** A local jurisdiction that does not have sufficient revenue from other sources will have to supplement storm water spending with revenue from its general fund;

2) **Storm water fees:** Some local jurisdictions have adopted a fee structure that allows the jurisdiction to collect a fee from property owners;

3) **Development fees:** Local jurisdictions can charge a fee to individuals seeking services, such as building permit reviews or inspections; and,

4) **Grants:** Limited grant funding is available from the state through bond funds and the California Department of Transportation

Requirements in state law have limited local jurisdictions' ability to impose storm water fees on properties within their geographic areas. Proposition 218, approved by voters in 1996, requires a majority of voters to approve property-related fees, with the exception of sewer and water fees. Fees for sewer and water services are approved if after the local jurisdiction proposes the fee, a majority of property owners do not write in to the local jurisdiction to oppose it. However, fees for storm water management require approval by a majority of voters, a significant limit on the ability of local jurisdictions to generate revenue to help pay for it. In October 2017, Governor Brown approved legislation (SB 231, Hertzberg, Chapter 536, Statutes of 2017) that clarified Proposition 218 by defining the term *sewer* to include both sanitary sewers and storm water sewers. Consequently, a local jurisdiction is now able to impose or increase storm water fees if a majority of property owners do not write in to oppose the fee—a substantially lower burden than obtaining a majority vote through a ballot measure. This change will likely result in an easier process for local jurisdictions to establish these fees.

Los Angeles County Measure W: In November 2018, Measure W was passed by the voters in Los Angeles County with a vote of 69.45%. Measure W enacts the Los Angeles Region's Public Health and Safe, Clean Water Program. The Measure establishes a parcel tax of 2.5 cents per square foot of impermeable area, exempting low-income seniors, raising approximately $300,000,000 annually for programs/projects that improve/protect water quality; capture rain/stormwater to increase safe drinking water supplies and prepare for future drought; and, protect public health and marine life by reducing pollution, trash, and toxins/plastics entering Los Angeles County waterways/bays/beaches. It has been estimated that the cost of complying with stormwater MS4 permits in Los Angeles County will be approximately $20 billion. It is important to note that the funding from Measure W is not just for stormwater projects.

Proposition 1 Water Bond: The Water Quality, Supply, and Infrastructure Improvement Act of 2014, also known as Proposition 1 (AB 1471, Rendon, Chapter 188, Statutes of 2014), approved by the voters on November 4, 2014, authorized $200 million to the State Water Board for providing matching grants to public agencies, nonprofit organizations, public utilities, state and federally recognized Indian tribes, and mutual water companies for multi-benefit storm water projects.

Why additional resources are still needed: Despite the Proposition 1 funding, and the $300 million a year from LA County, local governments need more assistance to comply with storm water requirements. Many jurisdictions in Southern California are struggling to comply with new standards and upcoming enforcement of MS4 permits. While Proposition 1 offered limited funds to help, the cost challenges remain. With a projected cost within Los Angeles County of $20 billion, it will take approximately 30 years of the County's Measure W just to get almost halfway there. AB 755 will provide millions of dollars per year in grant assistance for municipalities to be able to comply with their stormwater permits.

Arguments in support: According to the the Los Angeles County Division of the League of California Cities (Division) representing 86 cities in the County, "The Division supports AB 755, an urgency measure that creates the Stormwater Permit Compliance Fund to offer competitive grants for statewide and regional programs that address the effects of metals and contaminants in stormwater runoff. AB 755 increases the California tire fee by a modest $1.50 to raise revenue to fund projects and programs for Municipal Separate Storm Sewer System Permit (MS4) compliance requirements that would limit zinc pollutants caused by tires or other sources. When a vehicle is driven, the rubber tire tread slowly wears off and mixes with other materials, like pavement debris and soils, which eventually are washed into storm drains. This is becoming a high-level water quality threat to the current collection of stormwater. Under the 2012 MS4 permit adopted by the Los Angeles Regional Water Quality Control Board, cities in Los Angeles County must meet the strongest water quality guidelines in the country. Estimates of the total capital costs to comply with the permit exceed $20 billion to upgrade infrastructure and implement stormwater capture technology. AB 755 offers a much-needed funding tool to offset the costs of zinc pollutants and invests resources into local and regional projects that benefit the state's water quality and supply."

Arguments against: According to a group of organizations including the California Tire Dealers Association, "we are writing to respectfully oppose AB 755, which would increase the current California tire fee from $1.75 to $3.25. The additional revenue would go to municipal storm-water projects that prevent or remediate zinc pollutants. We recognize the threat to aquatic life and public health by storm-water runoff from rain that runs off surfaces such as rooftops, street signs, lights, benches, paved streets, highways, etc carrying with it pollutants such as oil, pesticides, herbicides, sediment, trash, bacteria and metals which then can drain untreated directly into a local stream, lake or bay. We do not understand why the focus is on tires; when they contain a minimal amount of zinc in order accelerate the vulcanization (making rubber durable). Many outdoor metal surfaces made with galvanized steel and coated with liquid zinc for corrosion protection (e.g. street signs, lights, benches, etc) also contribute zinc pollutants into the storm-water runoff. Zinc is contained in countless consumer products. Any new fees and taxes for storm-water projects should be shared fairly among all the zinc surfaces/products that cause pollutants to enter storm runoff. Most troublesome with the proposal is that this tax will fall hardest on those with the least ability to pay, namely low-income individuals and hard-working families. AB 755 institutes a "regressive" tax that, combined with the current tire fee, will increase the cost of a set of new tires by $13.00. Tire retailers have countless stories of potential customers delaying tire purchases when they find out the cost of new tires and the add-on fees (the current $1.75 fee and disposal fee). They have watched low-income consumers deciding to defer their tire purchases and simply drive away on dangerous balding tires. The bill is only going to worsen the problem and fails to share the tax burden fairly. Finally, we believe

that other sources of revenue should be considered for storm-water projects including local funding and state Prop 1 Water Bond, not just a tire tax."

Related legislation:

1) AB 1180 (Holden, Chapter 617, Statutes of 2017) California tire fee: Stormwater Permit Compliance Fund. As it was heard before the ESTM Committee, would have increased the California tire fee from $1.75 to $3.25, and would have directed the additional revenue to be available for grants for municipal stormwater projects that mitigate zinc pollution from tires. This bill was later amended to authorize the Los Angeles County Flood Control District to levy a special tax to manage stormwater.

2) AB 509 (Frazier, 2017). Would have established the Tire Recycling Incentive Program Act to provide incentives for tire recycling activities in California. Would have established a new tire regulatory fee, set by CalRecycle, to cover its regulatory costs associated with waste and used tire management. This bill was held on the suspense file in the Senate Appropriations Committee.

3) SB 1260 (Allen, Chapter 153, Statutes of 2016). Requires the State Water Board to make information available online for compliance with municipal storm water permit requirements.

4) AJR 44 (Holden, Resolution Chapter 145, Statutes of 2016). Urges the federal government to provide greater financial support for local agencies implementing a federal mandate to improve storm water quality, including, but not limited to, by passing legislation strengthening the Clean Water State Revolving Fund and creating new grant programs to assist in funding storm water projects.

REGISTERED SUPPORT / OPPOSITION:

Support

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS (SPONSOR)
LOS ANGELES COUNTY DIVISION, LEAGUE OF CALIFORNIA CITIES
UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT

Opposition

AUTO CARE ASSOCIATION
AUTOMOTIVE SERVICE COUNCILS OF CALIFORNIA
CALIFORNIA AUTOBODY ASSOCIATION
CALIFORNIA AUTOMOTIVE BUSINESS COALITION
CALIFORNIA CHAMBER OF COMMERCE
CALIFORNIA TIRE DEALERS ASSOCIATION
CAWA
INDEPENDENT AUTOMOTIVE PROFESSIONALS
SPECIALTY EQUIPMENT MARKET ASSOCIATION (SEMA)
U.S. TIRE MANUFACTURERS ASSOCIATION

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 762 (Quirk) – As Amended March 11, 2019

SUBJECT: Public health: fish and shellfish: health advisories

SUMMARY: Requires local health officers to conspicuously post fish and shellfish consumption advisories, issued by the Office of Environmental Health Hazard Assessment (OEHHA), at public access points to waterbodies where contaminated fish and shellfish may be caught and where recreational or subsistence fishing is known to occur. Requires OEHHA to make digital posters of the advisories available in English, Spanish, and other languages that people who commonly fish in the area will understand, and to post the digital posters on OEHHA's website for local health officers' use. Specifically, **this bill**:

1) Defines "local health officer" as the legally appointed health officer or director of environmental health of the city, county, or city and county, having jurisdiction over the area in which a publicly accessible body of water is located, which may include a coastal area.

2) Defines "site-specific fish or shellfish health advisory" as a consumption advisory regarding fish or shellfish in a specified body of water or area of that body of water, which may include a specified area of coastal waters.

3) Requires, upon issuance by OEHHA of a site-specific fish or shellfish health advisory, a local health officer to conspicuously post health warnings at public access points to locations where contaminated fish or shellfish may be caught, including piers, jetties, lakes, reservoirs, and other areas where recreational or subsistence fishing is known to occur.

4) Requires the local health officer to coordinate with OEHHA, the State Department of Public Health (CDPH), the Department of Fish and Wildlife (DFW), and the appropriate Regional Water Quality Control Board (Regional Water Board) to identify appropriate posting locations and signage.

5) Requires the local health officer to be responsible for maintaining the signage until OEHHA rescinds or revises the relevant site-specific fish or shellfish health advisory.

6) Requires local health officers, for site-specific fish or shellfish health advisories that are issued by OEHHA before January 1, 2020, to post health warnings on or before March 30, 2020.

7) Requires local health officers, for site-specific fish or shellfish health advisories issued by OEHHA after January 1, 2020, to post health warnings within 30 days of notification by OEHHA that a health advisory has been issued.

8) Requires, at a minimum, the health warnings to contain information on the contaminants of concern and consumption guidelines issued by OEHHA.

9) Requires OEHHA to make available on its internet website digital posters of health warnings for each site-specific fish or shellfish health advisory that local health officers may use in meeting their responsibilities under this bill.

10) Requires OEHHA to make the digital posters available in English, Spanish, and other languages that persons who commonly fish in the area will understand, as determined by OEHHA in consultation with the local health officer.

11) Adds the State Water Resources Control Board (State Water Board) and appropriate Regional Water Boards to the list of entities that OEHHA must notify prior to the issuance of a fish or shellfish health advisory.

12) Deletes statute that requires OEHHA to, "urge county health officers to conspicuously post health warnings in areas where contaminated fish or shellfish may be caught including piers, commercial passenger fishing vessels, and shore areas where fishing occurs."

13) Provides that a duty imposed on a local agency pursuant to this bill is mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the Executive Director of the State Water Board, in the annual Budget Act or otherwise, to cover a local agency's costs associated with the performance of the duties imposed by this bill.

EXISTING LAW:

1) Requires the State Water Board, in consultation with OEHHA, to develop a comprehensive coastal monitoring and assessment program for sport fish and shellfish, to be known as the Coastal Fish Contamination Program (Program), to identify and monitor chemical contamination in coastal fish and shellfish and assess the health risks of consumption of sport fish and shellfish caught by consumers. (Water Code (WC) § 13177.5 (a))

2) Requires the State Water Board to consult with DFW, OEHHA, and the Regional Water Boards with jurisdiction over territory along the coast, to determine chemicals, sampling locations, and the species to be collected under the Program. (WC § 13177.5 (b))

3) Requires the State Water Board to contract with OEHHA to prepare comprehensive health risk assessments, based on the data collected by the Program and information on fish consumption and food preparation, for sport fish and shellfish monitored in the Program. (WC § 13177.5 (d))

4) Requires OEHHA, within 18 months of the completion of a comprehensive study for each area by the State Water Board, to submit to the State Water Board a draft health risk assessment report for that area. Requires OEHHA to update health risk assessments following the reassessment of areas by the State Water Board. (WC § 13177.5 (d))

5) Requires OEHHA to issue health advisories when it determines that consuming certain fish or shellfish presents a significant health risk. Requires the advisories to contain information for the public, and particularly the population at risk, concerning health risks from the consumption of the fish or shellfish. (WC § 13177.5 (e))

6) Requires OEHHA to notify the appropriate county health officers, CDPH, and DFW before the issuance of a health advisory. Requires the notification to provide sufficient information for the purpose of posting signage. (WC § 13177.5 (e))

7) Requires OEHHA to urge county health officers to conspicuously post health warnings in areas where contaminated fish or shellfish may be caught including piers, commercial passenger fishing vessels, and shore areas where fishing occurs. (WC 13177.5 (e))

8) Requires DFW to publish OEHHA's health warnings in its Sport Fishing Regulations Booklet. (WC § 13177.5 (e))

9) Authorizes OEHHA to enjoin and abate nuisances related to matters within its jurisdiction which are dangerous to health; to compel the performance of any act specifically enjoined upon any person, officer, or board, by any law of this state relating to matters within its jurisdiction; and, on matters within its jurisdiction, to protect and preserve the public health. (HSC) § 59009)

10) Authorizes OEHHA to advise all local health authorities, and, when in its judgment the public health is menaced by matters within its jurisdiction, requires OEHHA to control and regulate their actions. (Health and Safety Code (HSC) § 59011)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: While fish and shellfish can be part of a healthy diet, many fish and shellfish in California's rivers, lakes, and streams are contaminated with high levels of mercury, polychlorinated biphenyl chemicals (PCBs), the pesticide DDT, and other contaminants, making them unsafe to eat in certain quantities. The risks associated with the consumption of fish and shellfish containing chemical contaminants include cancer, neurological damage, and developmental impairment in young children.

OEHHA analyzes fish and shellfish tissues in California water bodies, and creates fish and shellfish consumption advisories, or guidelines, that recommend how often people can safely eat the fish or shellfish caught in those water bodies and throughout the state. Unfortunately, these advisories are not always posted, leaving the public unaware of the risks of consuming the fish or shellfish they have caught, even though the state has produced meaningful advisories. This bill requires local health officers to post the fish and shellfish consumption advisories OEHHA has created. It also requires OEHHA to make digital posters of the advisories available in English, Spanish, and other languages that people who commonly fish in the area will understand, and to post the digital posters on OEHHA's website for the use of local health officers and the public. These measures will protect public health by enabling people to make informed decisions about consuming fish they have caught.

Contaminants in shellfish and fish: According to OEHHA, fish are an excellent source of protein, most are low in saturated fats, and they contain omega-3 fatty acids, which may reduce the risk of heart disease and improve brain development in unborn babies and children. However, OEHHA warns, some fish take in toxic chemicals from the water in which they live and the food that they eat. Some of these chemicals bioaccumulate in shellfish and fish, and therefore in the people who eat those animals.

According to OEHHA, certain chemicals are considered to be of potential concern for people who eat fish because of their toxicity and their ability to accumulate in fish tissue. The majority of fish consumption advisories in California are issued because of mercury, followed by PCBs, and in a few cases, selenium, polybrominated diphenyl ethers (PBDEs), or some legacy pesticides (pesticides that are no longer used but remain in the environment), such as DDT.

Mercury is a natural element found in some rock and soil. Human activities, such as burning coal and the use of mercury to mine gold, also add mercury to the environment. If mercury enters waterways, it can be converted to a more toxic form of the element known as methylmercury – which can pass into and build up in fish. High levels of methylmercury can harm the brain, especially in fetuses and children.

PCBs are industrial chemicals previously used in electrical transformers, plastics, and lubricating oils, often as flame retardants or electrical insulators. While their use was banned in the 1970s, they persist in the environment because they do not break down easily and can accumulate in fish. Depending on the exposure level, PCBs may cause cancer or other health effects, including neurotoxicity, in humans.

Selenium is a naturally occurring metalloid and at low doses is an essential nutrient for many important human health processes, including thyroid regulation and vitamin C metabolism. Higher doses cause selenium toxicity, which can cause symptoms ranging from hair loss and gastrointestinal distress to dizziness and tremors.

Chlordanes, DDT, dieldrin, and toxaphene are pesticides that were banned from use in 1973 (DDT), the late 1980s (chlordanes and dieldrin) and 1990 (toxaphene), but are still found in some fish in certain water bodies in California. Depending on the exposure level, these chemicals may cause cancer or adverse effects on the nervous system.

Polybrominated diphenyl ethers (PBDEs) are a class of flame retardants historically used in a variety of consumer products including furniture, textiles, automotive parts, and electronics. The use of PBDEs in new products was largely phased out by 2013 but, due to their wide usage and persistence in the environment, they are still being detected in fish tissues. PBDEs may affect hormone levels, learning, and behavior in children.

In 2008, OEHHA published fish contaminant goals (FCGs) and advisory tissue levels (ATLs) for seven common fish contaminants (chlordane, DDTs, dieldrin, methylmercury, PCBs, selenium, and toxaphene). In 2011, OEHHA developed an FCG and ATLs for PBDEs. FCGs and ATLs inform the development of fish and shellfish consumption advisories.

Current fish advisory program: The State Water Board and Regional Water Boards are responsible for conducting water quality monitoring in the ocean, bays, estuaries, rivers, lakes, and reservoirs throughout California. Through the Surface Water Ambient Monitoring Program (SWAMP), the State Water Board provides resource managers, decision makers, and the public with information to evaluate the condition of all waters throughout California. This program includes the sampling and collection of fish and shellfish tissue for analysis of constituents of concern that could impact human health through consumption.

OEHHA evaluates the collected tissue and other data and develops both site-specific and statewide fish and shellfish consumption health advisories. Site-specific advisories contain

recommended safe eating guidelines based on actual chemical concentrations in the fish and shellfish species found in that specific waterbody. Statewide advisories contain general safe-eating guidelines for fish found throughout the state. Both the site-specific and state-wide advisories contain specific consumption guidelines, one for each of the following populations: women 18 - 49 years and children 1 - 17 years; and, women 50 years and older and men 18 years and older. The advisories contain guidelines for consumption of the specific species of fish or shellfish found in that water body. To date, OEHHA has issued fish and shellfish consumption advisories for about 100 waterbodies throughout the state, as well as statewide advisories. Under current law, OEHHA "urges" local health officers to post the fish consumption advisories it develops, but local health officers decide whether or not to post.

Are fish advisories currently being posted? Despite the resources expended by the state to collect data and develop the advisories, there is no requirement for posting them. An informal survey of local environmental health officers around the state found widely varying posting practices, with some officers posting and actively maintaining durable advisories at the water bodies within their jurisdiction, others posting at some water bodies or with some level of maintenance, and still others not posting at all. The reasons for not posting varied, but included lack of clarity or guidance on the postings and lack of funding. The lack of posting of fish consumption advisories, which provide the public with the most effective "on-the-water" information about the potential human health impacts of eating local fish and shellfish, leaves members of the fishing community vulnerable to contaminants they could avoid.

Changes under this bill: This bill will *require* local health officers to conspicuously post fish and shellfish consumption advisories issued by OEHHA at public access points to waterbodies where contaminated fish and shellfish may be caught, including piers, jetties, lakes, reservoirs, the ocean, and other areas where recreational or subsistence fishing is known to occur. Additionally, this bill will require OEHHA to make the digital posters of the advisories available in English, Spanish, and other languages that people who commonly fish in the area will understand, and to post the digital posters on OEHHA's website for local health officers' use.

This bill will provide members of the recreational and subsistence fishing community with critical information on the health risks associated with fish and shellfish consumption so that they can make informed decisions about the amount of fish and shellfish that they and their families consume.

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners
Clean Water Action
Environmental Justice Coalition for Water
Environmental Working Group
Greenaction for Health and Environmental Justice
Natural Resources Defense Council
San Francisco Bay Area Chapter Physicians for Social Responsibility
San Francisco Baykeeper
Sierra Club California
The Sierra Fund

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 912 (Muratsuchi) – As Introduced February 20, 2019

SUBJECT: Marine invasive species: ballast water and biofouling management requirements

SUMMARY: Delays, from January 1, 2030 to January 1, 2040, the requirement for an owner or operator of a vessel to meet the final California performance standard for the discharge of ballast water and requires the State Lands Commission (SLC) to adopt regulations implementing federal performance standards for the discharge of ballast water. Specifically, **this bill**:

1) Defines "land" as the material of the earth, whether soil, rock, or other substances, that sits landward of, or at an elevation higher than, the mean high-tide line of the ocean, including any rock outcroppings or islands located offshore.

2) Updates the definition of "Pacific Coast Region" to mean all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of *20* degrees N latitude, *inclusive,* of the Gulf of California, instead of the current statutory definition of all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of *25* degrees N latitude, *exclusive,* of the Gulf of California.

3) Deletes statutory provisions that authorize the SLC to modify the boundaries of the Pacific Coast Region through regulation.

4) Deletes past statutory requirements and deadlines relating to the management of nonindigenous species, including the following requirements:

   a) That, by January 1, 2012, the SLC develop and adopt regulations governing the management of biofouling;
   b) That, by July 1, 2005, the SLC adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems;
   c) That, by January 31, 2006, the SLC submit to the Legislature a report that recommends specific performance standards for the discharge of ballast water into the waters of the state; and,
   d) That, before July 1, 2005, a statutorily required advisory panel make recommendations regarding the content, issuance, and implementation of the performance standards to the SLC.

5) Requires the SLC to adopt regulations that do both of the following:

   a) Require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the ballast water discharge performance standards set forth in Section 151.2030(a) of Title 33 of the Code of Federal Regulations (CFR), or as that regulation may be amended.
   b) Require an owner or operator of a vessel carrying or capable of carrying, ballast water that operates in the waters of the state to comply with, as specified, the performance standards set forth in Section 151.2035(b) of Title 33 of the CFR, unless it is extended, or as that regulation may be amended.

6) Delays, from first arrival at a California port (for vessels constructed on or after January 1, 2020) or as of the first drydocking on or after January 1, 2020 (for all other vessels) to January 1, 2030 for all vessels, the requirement for an owner or operator of a vessel capable of carrying ballast water to implement the interim performance standards for the discharge of ballast water.

7) Delays, from January 1, 2030 to January 1, 2040, the requirement for an owner or operator of a vessel capable of carrying ballast water to meet the final performance standard for the discharge of ballast water of zero detectable living organisms for all organism size classes.

8) Delays, from not less than 18 months prior to January 1, 2020 and January 1, 2030, to from not less than 18 months before January 1, 2030 and January 1, 2040, the requirement for the SLC, in consultation with specified entities, to prepare, or update, and submit to the legislature a report of the efficacy, availability, and environmental impacts of currently available technologies for ballast water treatment systems.

9) Delays the sunset, from January 1, 2024 to January 1, 2034, for the requirement for submitting a report on the interim performance standard, and from January 1, 2034 to January 1, 2044, for the requirement for submitting a report on the final performance standard.

10) Adds the United States Environmental Protection Agency (U.S. EPA) to those entities that the SLC must consult with when sponsoring pilot programs for the purpose of evaluating alternatives for treating and otherwise managing ballast water and biofouling.

11) Provides that a goal of establishing pilot programs is the meaningful participation of the State of California in federal rulemaking actions.

12) Authorizes the SLC to take samples of ballast water, sediment, and biofouling from arriving vessels for research purposes.

13) Makes other clarifying and conforming revisions to existing statute.

EXISTING LAW:

Under federal regulation:

1) Requires vessels employing a United States (U.S.) Coast Guard-approved ballast water management system to meet ballast water discharge standards, outlined in regulation, by specified dates. (33 CFR § 151.2030)

2) Requires, in order to discharge ballast water into waters of the United States, the master, owner, operator, agent, or person in charge of a vessel, as specified, to either ensure that the ballast water meets the ballast water discharge standard, as defined in regulation, or use an alternative management system, as described in regulation, or ballast exclusively with water from a U.S. public water system, as specified, according to the schedule outlined in regulation. (33 CFR § 151.2035)

3) Authorizes the U.S. Coast Guard to grant an extension to the ballast water discharge standard implementation schedule only in those cases where the master, owner, operator, agent, or

person in charge of a vessel can document that, despite all efforts, compliance with the ballast water requirement is not possible. (33 CFR § 151.2036)

Under state law:

1) Defines "Pacific Coast Region" as all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. Authorizes the SLC to modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described in statute. (Public Resources Code (PRC) § 71200 (k))

2) Requires the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state to take specified actions to minimize the uptake and release of nonindigenous species. (PRC § 71203, et seq.)

3) Requires the SLC to adopt regulations governing ballast water management practices for vessels arriving at a California port from a port outside of the Pacific Coast Region. (PRC § 71204.3 (a))

4) Requires the SLC to, on or before January 1, 2005, adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. (PRC § 71204.5)

5) Requires the SLC, on or before January 31, 2006, to submit to the legislature and make available to the public a report that recommends specific performance standards for the discharge of ballast water into the waters of the state, or into waters that may impact waters of the state. Requires the performance standards to be based on the best available technology economically achievable and to be designed to protect the beneficial uses of affected, and potentially affected, waters. (PRC § 71204.9 (a) (1))

6) Requires the SLC to adopt regulations that require an owner or operator of a vessel capable of carrying ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the SLC *Report on Performance Standards for Ballast Water Discharges in California Waters*, as approved by the SLC on January 26, 2006. (PRC § 71205.3 (a)(1))

7) Requires the SLC to adopt regulations that require an owner or operator of a vessel capable of carrying ballast water that operates in the waters of the state to comply with the interim performance standards by the applicable following dates:

   a) Upon first arrival at a California port for new vessels constructed on or after January 1, 2020; or,
   b) As of the first scheduled drydocking on or after January 1, 2020, for all other vessels. (PRC § 71205.3 (a)(2))

8) Requires the SLC to adopt regulations that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final

performance standard for the discharge of ballast water of zero detectable living organisms for all organism size classes by January 1, 2030. (PRC § 71205.3 (a)(3))

9) Requires the SLC, not less than 18 months prior to January 1, 2020, and January 1, 2030, to, in consultation with the State Water Resources Control Board (State Water Board), the U.S. Coast Guard, and the specified advisory panel, to prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. Provides that if technologies to meet the performance standards are determined in a review to be unavailable, the SLC shall include in that review an assessment of why the technologies are unavailable. (PRC § 71205.3(b)(1))

10) Requires the SLC, on or before January 31, 2005, and updated biennially, in consultation with the State Water Board, the Department of Fish and Wildlife, and the U.S. Coast Guard, to submit to the legislature, and make available to the public, a report about ballast discharge management. (PRC § 71212)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, the purpose of the bill is, "to change the implementation date of California's ballast water discharge performance standards owing to a lack of available technology that vessels can use to meet them, and to address impending federal preemption of California's standards. The purpose is also to authorize the [SLC] to sample ballast water and biofouling for research (the [SLC] currently only has authority to sample for compliance purposes). The bill will better position California to implement ballast water discharge standards to protect California waters from invasive species introductions, update the definition of Pacific Coast Region, and make technical changes to the Marine Invasive Species Act."

Nonindigenous species in California's waters: Nonindigenous aquatic plant and animal species can be transported, both intentionally and unintentionally, to new ecosystems and regions through human activities. According to the SLC, shipping is the most significant vector for the transport and introduction of aquatic nonindigenous species, contributing 79.5% of established aquatic nonindigenous species in North America and 74.1% across the globe.

Once a nonindigenous species is moved, becomes established in a new geographic location, and causes impacts, it is considered an invasive species. Invasive species cause ecological, economic, and human health harm in the receiving environment. Impacts of these species include disrupting agriculture, shipping, water delivery, and recreational and commercial fishing; undermining levees, docks and environmental restoration activities; impeding navigation and enjoyment of the state's waterways; and damaging native habitats and the species that depend on them. Nonindigenous species are believed to account for up to $120 billion per year in losses across the United States. California has more documented aquatic invasive species than any other state.

Commercial ships transport organisms through two primary vectors: vessel biofouling and ballast water. Vessel biofouling occurs when organisms, such as barnacles, algae, mussels, worms, crabs, and other invertebrates, attach to, or are associated with, the hard surfaces of the

vessel, then are transported to new environments that the vessel enters. Ballast water is sea water taken on, redistributed on, and discharged from large oceangoing vessels for functions related to stability, balance, and trim. Ballast water can contain millions of microscopic aquatic plants, animals, bacteria, and viruses. Each ballast water discharge has the potential to release over 21.2 million individual free-floating organisms. Prior to the implementation of ballast water management practices in the early 2000s, it was estimated that more than 7000 species were moved around the world on a daily basis in ships' ballast water.

The prevention of species introduction through the management of human activities, such as requirements related to biofouling and ballast water management, is considered the most protective and cost-effective way to address the dispersal of nonindigenous species.

California's ballast water management program: In order to address the threat of the introduction of aquatic nonindigenous species, the legislature enacted the Ballast Water Management for Control of Nonindigenous Species Act of 1999, AB 703 (Lempert, Chapter 849, Statutes of 1999), which established initial requirements for vessels to manage ballast water prior to discharge in California waters. The legislature reauthorized and expanded the program through the Marine Invasive Species Act of 2003, AB 433 (Nation, Chapter 491, Statutes of 2003), which mandated moving, "the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable" (PRC § 71201(d)). In 2006, the legislature established interim and final performance standards for the discharge of ballast water from large commercial ships through enactment of the Coastal Ecosystems Protection Act, SB 497 (Simitian, Chapter 292, Statutes of 2006).

California's ballast water performance standards: Among its provisions, SB 497 required the SLC, on or before January 1, 2008, to adopt regulations that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement interim and final (zero detectable living organisms for all organism size classes) performance standards for eradicating organisms in ballast water before it is discharged. The SLC established California performance standards that were to be phased-in between 2009 and 2016 in order to allow for, and encourage, the development of technologies that would enable vessels to meet the standards.

SB 497 also requires the SLC, prior to implementing performance standards, to report to the legislature on the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment. SB 497 additionally requires the SLC, if it determines that technologies to meet the performance standards are unavailable, to include in the report an assessment of why the technologies are unavailable (PRC § 71205.3). In response to these reporting requirements, between 2007 and 2014, the SLC produced five reports (2007, 2009, 2010, 2013, and 2014) for the legislature, all of which indicated that ballast water treatment technologies were not available, at the time, to enable vessels to comply with the then existing performance standards. Therefore, the legislature updated and delayed implementation of the performance standards several times (SB 1781 (2008), SB 814 (2013), AB 1312 (2015)). The current implementation dates for the ballast water discharge performance standards, as enacted by AB 1312, are as follows:

1) Interim standards:

- Newly built vessels constructed on or after January 1, 2020: first arrival at a California port on or after January 1, 2020
- Existing vessels constructed prior to January 1, 2020: first scheduled drydocking on or after January 1, 2020

2) Final standards:
   - All vessels: January 1, 2030

In its December 2018 report, 2018 Assessment of the Efficacy, Availability, and Environmental Impacts of Ballast Water Treatment Technologies for Use in California Waters, the SLC reports, once again, that based on all available data, there are currently no ballast water treatment technologies available to enable vessels to meet the interim California performance standards.

AB 912 would further delay the implementation date for interim ballast water discharge standards to January 1, 2030 for all vessels, and delay the date for implementation for final ballast water discharge standards to January 1, 2040.

While California has endeavored to address its invasive species threat by leading the nation with stringent ballast water discharge standards, unfortunately, over the years the statutory standards and state regulations have not driven the development of ballast water treatment technology as the state had hoped. Does repeatedly delaying performance standards remove the incentive for technology development and compliance with the standards?

Federal ballast water performance standards: According to the SLC, for many years, the shipping industry has advocated for enactment of one uniform national standard for ballast water discharge to replace the perceived patchwork of state and federal ballast water management requirements. The legislation it sought, the federal Vessel Incidental Discharge Act (VIDA), failed repeatedly in recent years. The SLC opposed VIDA, as did other states, state attorneys general, and environmental groups, arguing that a one-size-fits-all federal approach to vessel discharge management ignores the unique environmental concerns in each state, usurps state authority, and weakens environmental protection. Nevertheless, in December 2018, President Trump signed VIDA into law. The SLC notes that VIDA, regrettably, will preempt California's authority to establish or implement state-specific ballast water management requirements once implementing federal regulations are adopted.

Under VIDA, the U.S. EPA is responsible for establishing a uniform national standard for ballast water discharge. The U.S. EPA has two years to adopt vessel discharge regulations, and the U.S. Coast Guard, the entity charged with implementing and enforcing the discharge standards established by the U.S. EPA, has two additional years to adopt implementation and enforcement regulations. State laws remain effective until the U.S. Coast Guard promulgates regulations establishing enforcement protocols. States, including California, may enforce the federal standard, inspect vessels, and collect fees and ballast water management reporting forms from vessels arriving at ports.

AB 912 requires the SLC to adopt regulations that require vessels employing an U.S. Coast Guard-approved ballast water management system to meet ballast water discharge standards, outlined in federal regulation, by specified dates. The bill also requires the SLC to adopt regulations that require, in order to discharge ballast water into waters of the United States, the master, owner, operator, agent, or person in charge of a vessel to either ensure that the ballast

water meets the federal ballast water discharge standard, use an alternative management system, or ballast exclusively with water from a U.S. public water system.

According to the SLC, the state's adoption of the federal standards would enable the SLC to assess vessel compliance to the federal discharge standard and hold non-compliant vessels accountable for violations.

AB 912 also authorizes the SLC to collect valuable real-world data on the operation of ballast water management systems that could inform implementation of California standards in the future.

Related legislation:

1) SB 69 (Wiener). Requires the State Water Board, instead of the SLC, to adopt ballast water discharge regulations that require an owner or operator of a vessel carrying ballast water to implement and comply with an interim performance standard and then the final performance standard of zero detectable living organisms by January 1, 2030. This bill was double referred to the Senate Committees on Natural Resources and Water, where it is set to be heard on April 9, 2019, and Environmental Quality.

2) AB 3116 (Cooley, 2018). Would have required the person in charge of vessels to minimize the uptake and release of nonindigenous species, including minimizing the uptake of ballast water in areas designated by the SLC. The hearing for this bill in the Assembly Committee on Environmental Safety and Toxic Materials was canceled at the request of author and the bill subsequently died on file.

3) AB 1312 (O'Donnell, Chapter 644, Statutes of 2015). Delayed the implementation of interim and final performance standards for eliminating living organisms in ships' discharged ballast water from 2016/ 2018 (interim standard) to 2020 and from 2020 to 2030 (final standard).

4) SB 814 (Committee on Natural Resources and Water, Chapter 472, Statutes of 2013). Delayed implementation of ballast water performance standards for vessels that carry, or are capable of carrying, ballast water into the state by two to six years, depending on when the ship was constructed and the vessel's ballast water capacity.

5) SB 935 (Committee on Environmental Quality, Chapter 550, Statutes of 2012). Delayed the date by which the SLC must approve a vessel operator's application to install an experimental ballast water treatment from January 2008 to January 2016.

6) SB 1781 (Committee on Environmental Quality, Chapter 696, Statutes of 2008). Delayed implementation of ballast water performance standards for new vessels with ballast water capacity less than 5000 metric tons from January 1, 2009, to January 1, 2010.

7) SB 497 (Simitian, Chapter 292, Statutes of 2006). Enacted the Coastal Ecosystems Protection Act, which established interim and final performance standards for the discharge of ballast water from large commercial ships. Required interim standards, which identified a range of thresholds for living organisms by class size, to begin to take effect January 1, 2009.

Required the final standards, a "zero detectable living organisms" standard for all organism size classes, to take effect January 1, 2020.

8) AB 433 (Nation, Chapter 491, Statutes of 2003). Consolidated law related to the management of ballast water into the Marine Invasive Species Act, and revised various requirements for ballast water management practices to minimize the release of nonindigenous species.

9) AB 703 (Lempert, Chapter 849, Statutes of 1999). Enacted the Ballast Water Management for Control of Nonindigenous Species Act, which established initial requirements for vessels to manage ballast water prior to discharge in California waters.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Lands Commission (sponsor)

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1093 (Blanca Rubio) – As Introduced February 21, 2019

SUBJECT: Municipal separate storm sewer systems: financial capability analysis

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to establish financial capability assessment (FCA) guidelines for municipal separate storm sewer system (MS4) permittees that are adequate and consistent when considering the costs to local jurisdictions. Specifically, **this bill**:

1) Requires, by July 1, 2020, the State Water Board to establish FCA guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions, including costs incurred in previous years.

2) Requires the State Water Board, in developing the guidelines, to document any source it uses to develop an estimate of local costs and the overall cost of stormwater management.

3) Requires the State Water Board to consider both of the following, but not limited to, United States Environmental Protection Agency (US EPA) policies in drafting the FCA guidelines:

   a) *Combined Sewer Overflows—Guidance for FCA and Schedule Development*, dated February 1997.

   b) *Affordability Criteria for Small Drinking Water Systems: An EPA Science Advisory Board Report*, dated December 2002.

EXISTING LAW:

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "The Clean Water Act (CWA) requires permittees to obtain permits to operate their stormwater systems which discharge into streams, rivers, lakes, or the ocean. In California, the permits are issued by regional water quality control boards under state law and include requirements that permittees reduce pollutants in accordance with strict compliance schedules.
>
> Because most cities do not have a dedicated revenue source for stormwater management, these costs compete with other public services (law enforcement, fire and paramedics, street and road repairs) supported by the general fund.
>
> The California State Auditor released a report on March 1, 2018, concluding that regional water boards have not adequately considered compliance costs because the state water board has not provided guidance to permittees for assessing stormwater compliance costs. As a result, state and regional boards have not had access to consistent cost information in establishing pollutant control plans, resulting in unnecessary costs imposed on local jurisdictions.
>
> Given the ongoing work taking place at [the] State Water Board, AB 1093 would set forth legislative intent and direction to underpin the development of FCA guidelines to assist in the development of consistent, reasonable and cost informed compliance requirements. This will help permittees develop cost-effective plans, secure grants or other necessary revenue sources to fund those plans."

Stormwater: Stormwater is water from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways, or parking lots and can carry with it pollutants such as oil, pesticides, herbicides, sediment, trash, bacteria, and metals. The runoff can then drain directly into a local stream, lake, or bay. Often, the runoff drains into storm drains which eventually drain untreated into a local body of water. Pollution often contaminates stormwater runoff, resulting in a toxic soup of runoff entering California's water ways. Motor oil, cigarette butts, metals, trash, animal feces, bacteria, and pesticides get swept up in stormwater drains and runoff and lead to exceedances of total maximum daily loads and contamination of the water sources where the runoff flows. Both the US EPA and the Regional Water Boards have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health. However, stormwater may also act as a resource and recharge groundwater when properly managed.

Stormwater pollution in California's water bodies: In Los Angeles County, approximately 100 million gallons of contaminated water and debris drain through the storm drain system each dry day. On rainy days the daily flow can increase to 10 billion gallons per day. Because

stormwater drains directly into local water bodies, water bodies throughout the state are continually contaminated by various pollutants. According to the State Water Board, 1,357 of the 2,623 segments of water bodies in California contain harmful levels of one or more types of pollutants, such as bacteria, metals, and pesticides. Excessive amounts of these pollutants can detrimentally affect the environment, including the health of humans and aquatic life. For example, high levels of certain types of bacteria in a water body can cause serious illnesses, such as gastrointestinal illnesses, respiratory illnesses, and skin infections in people who come into contact with the water body. As reported in the *National Water Quality Inventory 1996 Report to Congress*, urban runoff was the leading source of pollutants causing water quality impairment related to human activities in ocean shoreline waters and the second leading cause in estuaries across the nation.

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

Municipal Separate Storm Sewer System (MS4) Permits: Municipal storm sewer systems are defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a state (40 Code of Federal Regulations (CFR) § 122.26(b)(8)). Small and large MS4s are regulated by either the State Water Board or Regional Water Boards using a two-phase system:

- Phase 1 MS4 permits regulate storm water permits for medium (serving between 100,000 and 250,000 people) and large (serving 250,000 people or more) municipalities. Phase I permits are issued by Regional Water Boards for municipalities within the corresponding region.
- Phase II MS4 permits regulate small municipalities (population of less than 100,000 people) and non-traditional small operations such as military bases, public campuses, prisons and hospital complexes that are not jointly regulated under a Phase I MS4 permit. Phase II MS4 Permits are issued by the State Water Board for regulation of small municipalities statewide.
- The largest municipal storm water discharger in California is the California Department of Transportation (Caltrans). The State Water Board regulates storm water discharges from this linear network of highways and road facilities through one statewide Phase I MS4 Permit for Caltrans.

The CWA and federal stormwater regulations require MS4s subject to NPDES permits to reduce the pollutants in stormwater discharges to the maximum extent practicable (MEP). The MEP standard involves applying best management practices (BMPs) that are effective in reducing the discharge of pollutants in storm water runoff. In discussing the MEP standard, the State Water Board has said the following: "There must be a serious attempt to comply, and practical solutions may not be lightly rejected. If, from the list of BMPs, a permittee chooses only a few of the least expensive methods, it is likely that MEP has not been met. On the other hand, if a permittee employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived, it would have met the standard." (Order No. WQ 2000-11, at p.20.)

The permits do not specify strict compliance with numeric water quality standards. Rather, the MS4 permits require the compliance with standards through an iterative approach by following BMPs outlined in a Storm Water Management Program, evaluating the effectiveness of those BMPs, and modifying the management program accordingly (by changing the implementation of the BMP or replacing it with another BMP) in order to continuously achieve the discharge standard of MEP. "EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis." (Federal Register, Volume 64, No. 235, page 68754, December 8, 1999.)

Cost of MS4 compliance: According to the most recent estimate by the US EPA, the nation's wastewater treatment facilities will need $271 billion over the next 20 years to meet the water quality objectives of the CWA. In 2012, the LA Regional Water Board issued a new MS4 stormwater permit in accordance with the NPDES permit pursuant to the CWA. That MS4 permit enacted some of the strictest permit standards with more than 30 pollutants being monitored. The total cost of compliance with the MS4 permit for the County of Los Angeles exceeds $20 billion.

Southern California cities have some of the most expensive MS4 compliance costs nationwide. The City of Industry cites its annual costs at $476,261,000. The City of Monrovia has estimated its cost to address stormwater would result in an annual parcel cost of $1,334 for 30 years. The City of Carson estimates its cost of addressing stormwater will consume an amount equivalent to more than 13% of its operating budget for the first ten years.

Compliance is critical for protecting public health and the environment, but fines for non-compliance can add up, making compliance even more costly. Federal and state law allows Regional Water Boards to levy fines for non-compliance.

According to the LA Regional Water Board, failure to comply with the MS4 Permit conditions could result in the following non-compliant fines: mandatory minimum $3,000/day per violation, and can go up to a maximum of $10,000/day; and, maximum $25,000/day per violation if imposed by state court. Furthermore, violations of federal CWA can be enforced by US EPA, and federal penalties could reach $37,500/day.

Existing efforts to make resources available: Over the last decade, the Legislature has recognized that assistance to local governments to fund stormwater projects was warranted. The state has provided funding through grants to local governments through bond funding and other programs. Funds through loan programs would also have been available, but as most local

governments do not have designated fees for stormwater to repay loans, no loans have been made. Stormwater projects were eligible for funds from bonds as follows:

- The Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Proposition 40) provided the State Water Board with $15 million for Urban Storm Water grants;

- The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) made $90 million available to the State Water Board for matching grants to local public agencies for the reduction and prevention of stormwater contamination of rivers, lakes, and streams; and,

- The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) authorized $200 million to the State Water Board for providing matching grants to public agencies, nonprofit organizations, public utilities, state and federally recognized Indian tribes, and mutual water companies for multi-benefit stormwater projects.

Despite these funding opportunities, the State Auditor has found that because of the significant costs to address stormwater pollution, the demand for grants from the state for stormwater projects has far exceeded the funding available. In 2016, the State Water Board received grant applications requesting $322 million, and it awarded $105 million for 27 projects.

Why additional resources are needed: The Public Policy Institute of California declares stormwater as the state's "fiscal orphan" due to its critical funding gap, which is estimated to be on the order of $500 to $800 million annually. In spite of the aforementioned funding sources, local governments need more assistance to comply with stormwater requirements. Many jurisdictions in Southern California are struggling to comply with new standards and upcoming enforcement of MS4 permits. While Proposition 1 most recently offered funds to help, the cost remains prohibitive for some municipalities.

Financial Capability Assessments (FCA): An FCA is an analysis of a community's ability to pay for/deliver water services, with a focus on stormwater and wastewater requirements. FCAs consider a wide range of financial capacity factors, including residential capability (e.g. median household income or MHI) and the financial strength of permittee organization. Financial strength considers bond ratings, debt, MHI, unemployment rate, tax revenue, and property tax rates.

Determining compliance affordability: AB 1093 requires the State Water Board to establish FCA guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions, and specifies US EPA policies to consider when drafting the FCA guidelines.

A long-standing concern for local governments is the US EPA's process for evaluating how much communities can afford for CWA-mandated and other water infrastructure improvements. For communities to meet CWA requirements, affordability considerations can influence schedules established by US EPA and states. In assessing municipalities' capability to finance infrastructure upgrades, the US EPA relies significantly on guidance issued in 1997.

That guidance, *Combined Sewer Overflows—Guidance for FCA and Schedule Development,* is intended to provide general boundaries to aid the US EPA, states, and cities in negotiating reasonable and effective schedules for implementing infrastructure upgrades.

It uses a two-phase approach to assess financial capability. First, the US EPA identified the combined impact of wastewater and control costs on individual households, calculating average costs per household as a percentage of the local MHI. This phase analyzes the residential share of current and planned controls needed to meet CWA requirements using a value range of whether the costs impose a "low" (less than 1% of MHI), "mid-range" (1%-2% of MHI), or "high" (more than 2% of MHI) financial impact on residential users, yielding a Residential Indicator. Second, the US EPA develops Financial Indicators to evaluate the debt, socioeconomic, and financial conditions that affect the community's financial capability as "weak," "mid-range," or "strong." The combined indicators measure a community's ability to afford compliance with CWA regulations.

For several years, municipalities have urged the US EPA to revise the guidance, arguing that it should take into consideration a larger set of factors and that MHI is a misleading indicator of a community's ability to pay. In some cases, local governments have argued cost impacts for an entire community may be in the US EPA's "mid-range," although impacts in portions of the community (e.g., low-income neighborhoods) are more than 2% of MHI. Alternative household affordability metrics could include average water rates as a percentage of income for potentially vulnerable populations, or expected future water rate increases, or using other indicators of economic need such as the unemployment rate or poverty rate, or percentage of households receiving public assistance. Further, they say that affordability should be tailored to each local government.

Permit requirements have changed since 1997, as well as compliance technologies and wherewithal, making this report from over twenty years ago appear dated to include in the citations the State Water Board is required to consider under this bill; yet, the US EPA has repeatedly insisted that it is not necessary to revise this guidance, stating that it already provides flexibility for financially disadvantaged municipalities.

According to a report prepared by the Congressional Research Service, *Policies Concerning Integrated Planning and Affordability of Water Infrastructure,* the US EPA issued an integrated permitting and planning policy in 2012 in response to concerns by state and local municipalities about the financial challenges that they face in addressing needs for wastewater and stormwater control projects. The intention of the policy is to provide communities with flexibility to prioritize and sequence needed water infrastructure investments so that limited public dollars can be invested in ways that each municipality finds most valuable.

That report notes that, in determining affordability, municipalities can factor in the costs to manage stormwater flows, along with combined sewer overflows and wastewater treatment. The 1997 guidance, however, did not include specific consideration of stormwater.

State Audit on costs of stormwater regulation: On March 1, 2018, the California State Auditor released Report 2017-118, *State and Regional Water Boards: They Must Do More to Ensure That Local Jurisdictions' Costs to Reduce Storm Water Pollution Are Necessary and Appropriate*, and found the following:

- When imposing stormwater requirements, the State Water Board and the Regional Water Boards lack consistent information on the costs that local jurisdictions incur in complying with storm water requirements, and have not adequately considered the costs that local jurisdictions would incur to comply with these requirements.

- Federal regulation requires local jurisdictions to annually report their actual and projected costs for meeting storm water requirements to the Regional Water Boards. However, the State Water Board has not provided guidance to local jurisdictions on how to track or report their storm water management expenditures, and as a result, the costs that local jurisdictions reported have been inconsistent.

- The Regional Water Boards did not always consider the overall cost of storm water management that local jurisdictions paid.

- The Regional Water Boards did not obtain all relevant information on some water bodies before imposing storm water requirements, potentially resulting in local jurisdictions incurring excessive costs or failing to meet water quality goals. Obtaining this information is important, as it can have a substantial effect on the pollutant control plans the regional board ultimately develops.

AB 1093 is responsive to the findings of the State Audit report. The bill finds and declares that, "A FCA is necessary to set achievable schedules for water quality objectives in water quality control plans under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) and to develop integrated regional water management plans." While California is governed by the 1969 Porter-Cologne Act, it is not subject to direct regulation by the US EPA; therefore, US EPA's FCA does not apply to California. Nevertheless, there have been efforts to extend the use of FCAs in California.

The San Gabriel Valley Council of Governments (SGVCOG), which is a joint powers authority comprised of 31 cities, three Los Angeles County Supervisorial Districts, and three Municipal Water Districts located in the San Gabriel Valley of Southern California, unanimously adopted Resolution 18-02 laying out their stormwater legislative agenda for 2018. One element of that agenda addresses FCA suggesting to, "modify the Porter-Cologne Water Quality Control Act to adopt FCA guidance issued by the EPA, in order to address the total cost of all water and stormwater regulations on municipalities and households." SGVCOG argues that FCA should be codified in federal law and extended to states not directly governed by the US EPA.

Short of requiring FCA in California law, AB 1093 bill would require the development of FCA guidelines for compliance with MS4 permit holders that take into consideration the costs of compliance mechanisms.

Related legislation:

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

2) SB 589 (Hernández, 2017). Would have required the State Water Board, in conjunction with an educational institution, to establish FCA guidelines for MS4 permittees, and requires the Los Angeles Area Regional Water Quality Control Board to use the guidelines in a pilot project. Held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
Los Angeles County Division, League of California Cities
San Gabriel Valley Council of Governments

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1429 (Chen) – As Amended April 2, 2019

SUBJECT: Hazardous materials: business plans

SUMMARY: Authorizes a business that handles hazardous materials to submit their Hazardous Materials Business Plan (HMBP) to the California Environmental Reporting System (CERS) once every three years, instead of annually, if that business is not required to submit Tier II chemical inventory information under the federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

EXISTING LAW:

1) Requires a business to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material if the business meets specified criteria. (Health and Safety Code (HSC) § 25507 (a))

2) Defines "handler" as a business that handles hazardous material. (HSC § 25501 (m))

3) Requires the owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 United States Code (U.S.C.) § 651 et seq.) to prepare and submit an emergency hazardous chemical inventory form to the appropriate local emergency planning committee; the state emergency response commission; and, the fire department with jurisdiction over the facility. (42 U.S.C. § 11022)

4) Enacts the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 which was created to help communities plan for chemical emergencies. It also requires industry to report on the storage, use, and releases of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments, and Indian tribes to use this information to prepare their community for potential risks. (42 U.S.C. § 11001 et seq).

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Under current law, a facility handling hazardous materials, as defined, must electronically submit its HMBP annually to CERS, whether there have been changes to the facility or not. Upon submitting the plans, the Certified Unified Program Agency (CUPA) must review and approve the plan, verifying the information and providing it to local and state agencies responsible for the protection of public health and safety and the environment. Unfortunately, in some counties CUPAs may be significantly delayed in reviewing and approving the plans, which can lead to facility information being out of date and unavailable to first responders in cases of emergency.

AB 1429 would allow those facilities that fall above the California thresholds but below the federal thresholds to submit the plan one time every three years. Annual reporting would be mandatory for those facilities that exceed federal reporting thresholds. Where significant changes necessitate an update to the plan, the facility would be required to update the information in CERS within 30 days of the change."

Certified Unified Program Agencies (CUPAs): The Secretary of the California Environmental Protection Agency (CalEPA) oversees the "unified hazardous waste and hazardous materials management" regulatory program (Unified Program). Currently, there are 81 CUPAs in California. The Unified Program consolidates, coordinates the following six existing programs:

1) Hazardous Materials Release Response Plans and Inventories (Business Plans);
2) California Accidental Release Prevention (CalARP) Program;
3) Underground Storage Tank Program;
4) Aboveground Petroleum Storage Act;
5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; and,
6) California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

State agencies involved in the implementation of the Unified Program are responsible for setting program element standards, working with the CalEPA to ensure program consistency, and providing technical assistance to the CUPAs. The following state agencies are involved with the Unified Program:

1) CalEPA: The Secretary of the CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying Unified Program Agencies (UPAs). CUPAs are accountable for carrying out responsibilities previously handled by approximately 1,300 different state and local agencies.

2) Governor's Office of Emergency Services (Cal OES): The Cal OES evaluates and provides technical assistance for the Business Plan and the Area Plan Programs.

Hazardous Materials Business Plan (HMBP) program: The HMBP was established in 1986. Its purpose is to prevent or minimize the damage to public health, and public safety, and the environment from a release or threatened release of hazardous materials. It also satisfies community right-to-know laws. This is accomplished by requiring businesses that handle hazardous materials in quantities equal to or greater than 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas, or extremely hazardous substances above the threshold planning quantity to: inventory their hazardous materials, develop a site map, develop an emergency plan, and implement a training program for employees.

Businesses must submit this information electronically to the statewide information management system, the CERS. Once the submittal of the HMBP has been made to CERS, the CUPA will verify the information and provide it to agencies responsible for the protection of public health, public safety, and the environment. These agencies include fire departments, hazardous materials response teams, and local environmental regulatory groups.

Electronic Reporting: AB 2286 (Feuer, Chapter 571, Statutes of 2008) requires all regulated businesses and all CUPAs to use the internet to electronically report and submit required Unified

Program information previously recorded on paper forms. This includes facility data regarding hazardous material regulatory activities, chemical inventories, underground and aboveground storage tanks, and hazardous waste generation. It also includes CUPA data such as inspections and enforcement actions. All businesses must submit and report Unified Program related information to either the statewide CERS, or to the local CUPA's reporting web portal.

The Emergency Planning and Community Right-to-Know Act (EPCRA): EPCRA was passed in 1986 in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. These concerns were triggered by the 1984 disaster in Bhopal, India, caused by an accidental release of methylisocyanate. The release killed or severely injured more than 2,000 people. To reduce the likelihood of such a disaster in the United States, Congress imposed requirements for federal, state and local governments, tribes, and industry. These requirements covered emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

Federal Tier II Inventory Form: The EPCRA requires the owner or operator of specified facilities to submit an emergency and hazardous chemical inventory form by March 1 of each calendar year to the State Emergency Response Commission, the Local Emergency Planning Committee, and the local fire department. EPCRA describes two reporting "tiers" for providing information on hazardous chemicals at a facility. The United States Environmental Protection Agency published two emergency and hazardous chemical inventory forms, Tier I and Tier II, for facilities to report information on hazardous chemicals. The Tier I form contains general information on hazardous chemicals at the facility. The Tier II form contains specific information on hazardous chemicals present at the facility. The requirement for the Tier II Inventory form applies to the owner or operator of any facility that is required under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a MSDS for a hazardous chemical present at the facility. EPCRA has several minimum thresholds that if exceeded trigger the requirement for a facility to report using the Tier II Inventory form. These thresholds are set in federal regulation (40 Code of Federal Regulation part 370) for extremely hazardous substances, gasoline, diesel fuel, and all other hazardous chemicals which require the preparation of a MSDS.

AB 1429 is designed to provide some regulatory flexibility for businesses with smaller quantities of certain hazardous materials that do not have to complete the Tier II form under federal law, by allowing them to report the HMBP once every three years instead of once every year.

Related bills:

1) AB 1689 (ESTM Committee, Chapter 159, Statutes of 2017). Adds combustible metals or metal alloy to the list of materials a business must include in its hazardous materials business plan.

2) AB 2286 (Feuer, Chapter 571, Statutes of 2008). Set a deadline of January 1, 2010, for the Secretary of the CalEPA to establish a statewide information management system for the CUPA program. Requires the Secretary of CalEPA to increase the annual surcharge on

regulated businesses by no more than $25 for three years in order to fund these system enhancements.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council for Environmental & Economic Balance (CCEEB) (Sponsor)
California Association of Environmental Health Administrators (CAEHA)

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1462 (Santiago) – As Amended April 1, 2019

SUBJECT: Hazardous substances: lead: cleanup: Exide Technologies facility

SUMMARY: Appropriates one hundred million dollars ($100,000,000) from the state General Fund to the Department of Toxic Substances Control (DTSC) for activities related to accelerating the investigation and cleanup of homes and communities within a 1.7 mile radius of Exide Technologies (Exide), a former lead acid battery recycling facility, in the City of Vernon.

EXISTING LAW:

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

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

3) Appropriates $176,600,000 from the Toxic Substances Control Account to DTSC and to be available for expenditure through June 30, 2018. Makes these moneys available for any of the following: activities related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide; job training activities related to the cleanup and investigation of the properties contaminated with lead in the communities surrounding Exide; and, actions taken to pursue all available remedies against potentially responsible parties, including, but not limited to, cost recovery actions against entities that are potentially responsible, for the costs related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide. (AB 118 Santiago, Chapter 10, Statutes of 2016)

4) Authorizes a loan from the state General Fund to the Toxic Substances Control Account under DTSC for activities relating to the investigation and cleanup of properties around Exide. Requires that all funds recovered from the potentially responsible parties be used to repay the loan made pursuant to SB 93. Authorizes the Director of the Department of Finance (Director), if the amount of moneys received from the cost recovery efforts is insufficient to fully repay the loan made pursuant to SB 93, to forgive any remaining balance if, at least 90 days before forgiving any balance, the Director submits a notification to the Joint Legislative Budget Committee. (SB 93, De León, Chapter 9, Statutes of 2016)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "It's been almost four years since Exide Technologies shut down after contaminating countless homes with lead, and our communities are still suffering

today. This is unacceptable. AB 1462 will secure funding for vital clean-up efforts to restore our neighborhoods as quickly as possible."

Regulation of hazardous waste: The Hazardous Waste Control Law (HWCL) 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.

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 utilizes 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 authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

Lead: Lead has been listed under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) requirements as a substance that can cause reproductive damage and birth defects since 1987 and has been on the list of chemicals known to cause cancer since 1992. According to the Office of Environmental Health Hazard Assessment, lead has multiple toxic effects on the human body. Decreased intelligence in children and increased blood pressure in adults are among the more serious non-carcinogenic effects. There is no level of lead that has been proven safe, either for children or for adults. Exposure to lead is a significant health concern, especially for young children and infants whose growing bodies tend to absorb more lead than the average adult.

Exide: Exide, headquartered in Georgia, is a worldwide producer, distributor, and recycler of lead-acid batteries. In 2000, Exide purchased a facility—first opened in 1922—in an industrialized area in the City of Vernon, a few miles southeast of downtown Los Angeles, and operated the facility until its closure in 2015. The facility occupies 15 acres in a heavily industrial region with surrounding residential areas. Facility operations included recycling lead-bearing scrap materials obtained from spent lead-acid batteries. The facility processed about 25,000 batteries a day, providing a source of lead for new batteries. This facility operated under an interim status permit for more than 30 years. During that time, inspectors documented more than 100 violations, including lead and acid leaks, an overflowing pond of toxic sludge, enormous cracks in the floor and hazardous levels of lead in the soil outside. Over the course of decades of operation, the facility polluted the soil beneath it with high levels of lead, arsenic, cadmium, and other toxic metals. It also contaminated groundwater, released battery acid onto roads, and contaminated homes and yards in surrounding communities with lead emissions.

In November of 2014, DTSC announced an enforcement order against Exide's Vernon facility because of the emission of airborne lead contamination, as well as on-site contamination. The order required, among other things, that the company sample the soil for lead contamination and undertake the cleanup of contaminated properties in an initial assessment area in nearby residential neighborhoods. The enforcement order also required the company to place $9 million

in the Exide Residential Off-Site Corrective Action Trust Fund (Trust Fund) for cleanup of contaminated residential properties in the areas identified as having the highest likelihood of being impacted by airborne lead emissions coming from the Exide facility. Exide subsequently made this deposit in 2014 to satisfy its initial residential cleanup obligations. DTSC later required Exide to place an additional $5 million into the Trust Fund beginning in November 2018. Exide made the first payment of $1.5 million in November of 2018, the second installment of $1.5 million was due and paid in March 2019, and the final installment of $2 million is due by March 2020.

In March 2015, DTSC informed Exide that its hazardous waste permit application would be denied, and Exide permanently closed the facility. The facility had been operating under a temporary permit for more than two decades. DTSC's enforcement order requires Exide to submit a Residential Corrective Measures Study in May 2019. This study must identify all off-site residential contamination, evaluate alternatives to remediate it, and recommend a remedy. (Exide is also required to submit reports to identify and remediate all on-site contamination at the Exide facility and in the industrialized areas surrounding it.) DTSC will review the validity of this study and has the authority to dispute Exide's methodology and findings. DTSC will select a corrective action remedy after it approves the Residential Corrective Measures Study. Exide will be required to start making payments to fund costs (in addition to the $14 million Exide has already been required to pay) of an approved corrective action remedy, which could occur over ten annual payments. Exide has challenged DTSC's requirement that Exide complete the Residential Corrective Measures Study. At this time, it is unclear when these issues will be resolved. Funds from the Trust Fund must be used for implementing the final residential corrective action remedy selected.

Investigation of contamination and beginning of cleanup near Exide: In August 2015, the Legislature and the Governor approved $7 million of emergency funding to test up to 1,500 residential properties, parks, schools, and daycare centers in the community surrounding the Vernon Exide facility; develop a comprehensive cleanup plan; and, begin cleanup of the highest priority sites based on the degree of lead contamination and other exposure factors.

On April 20, 2016, Governor Edmund G. Brown signed Assembly Bill 118 (Santiago, Chapter 10, Statutes of 2016) and Senate Bill 93 (De León, Chapter 9, Statutes of 2016) to appropriate $176.6 million of that state's General Fund to DTSC to expedite residential sampling and cleanup in communities within a 1.7-mile area surrounding the former Exide battery recycling facility in Vernon, California. The 1.7-mile area surrounding Exide is designated as the Preliminary Investigation Area (PIA). The funding made available for DTSC would enable them to clean up approximately 2,500 of the highest priority properties within 1.7 miles of the facility over a two-year period. The highest priority properties were determined to be those with the highest levels of lead in soil and greatest risk of exposure.

DTSC's analysis of the PIA indicates that releases from the facility deposited lead dust across an area of southeast Los Angeles County, resulting in contamination extending 1.7 miles from the facility and impacting up to approximately 10,000 properties, including residences, parks, and schools. The South Coast Air Quality Management District also cited the facility numerous times, and reported that arsenic emissions from Exide created an elevated risk of cancer for as many as 11,000 people in the area stretching from Boyle Heights to Huntington Park.

On December 8, 2016, DTSC released the Final Exide Closure Plan and Final Environmental

Impact Report. The Final Exide Closure Plan describes how the hazardous waste management units at Exide will be decontaminated and removed in a manner that is protective of public health and the environment. The plan incorporates many of the recommendations submitted by the community during the public engagement process.

Residential Cleanup near Exide: The Exide residential cleanup project constitutes the largest cleanup effort undertaken by California. Several factors contribute to its complexity, including the nature of the contamination, the concentration of people in a relatively small area, the high number of impacted property owners and residents, the comparatively short timeline to conduct the cleanup, and the keen interest in the project by members of the community and stakeholders. DTSC is the lead agency overseeing the investigation and cleanup of residential properties, schools, parks, daycare, and childcare centers within the approximately 1.7-mile radius of the former Exide facility.

In July 2017, DTSC released the Final Removal Action Plan (Cleanup Plan), and a Final Environmental Impact Report (EIR) related to the cleanup of properties in the PIA. The Cleanup Plan is focused on cleaning up approximately 2,500 residential properties, schools, parks, daycare centers, and child care facilities within the PIA. The PIA includes sections of the cities of Vernon, Bell, Huntington Park, Commerce, Maywood, Los Angeles (Boyle Heights neighborhood), and an area of unincorporated Los Angeles County (East Los Angeles neighborhoods). The Cleanup Plan held the goal of cleaning up all properties with lead sampling results that exceed the representative soil lead concentration of 80 ppm. Additionally, the EIR analyzed a larger cleanup project, up to approximately 10,000 properties in the PIA, and would allow DTSC to continue the cleanup of properties beyond the 2,500 initially selected properties, as funds allow.

Cleanup activities underway: As of February 2019, lead removal has been completed at roughly 600 parcels. This includes 330 parcels that have been cleaned up based on initial work plans and orders. For example, DTSC ordered Exide to clean up 186 properties in the initial assessment areas between August 2014 and November 2015. In addition, cleanup activities have been completed at an additional 275 parcels, consistent with DTSC's July 2017 cleanup plan and final environmental impact report for the cleanup of lead-impacted soil in neighborhoods around the Exide recycling facility.

Properties were initially prioritized for cleanup based on properties sampled prior to release of the Cleanup Plan, and DTSC has entered into contracts to conduct the cleanup activities. As part of the Cleanup Plan, soil samples have been collected and analyzed for more than 8,200 parcels out of an estimated total of 10,173 in the PIA.

Funding provided for Exide cleanup: In order to expedite the cleanup of contamination in the residential neighborhoods surrounding Exide to address the public health threat posed, the Legislature has provided the funding for cleanup and enforcement activities: in the 2015 budget $1.7 million to DTSC to implement the Exide Enforcement Order and $7 million to DTSC for sampling up to 1,500 properties near Exide and develop a cleanup plan; in 2016 a $176.6 million General Fund loan to DTSC for the cleanup of residential properties near Exide; and, in 2018 $6.5 million to DTSC to sample and cleanup parkways in the communities near Exide.

More funding proposed in Governor's 2019-2020 budget: The Governor's proposed 2019 budget requests a $74.4 million dollar loan from the General Fund for clean-up activities relating to

Exide. This funding is needed to cover increased costs relating to the current cleanup of residential properties as well as accelerate the cleanup of additional properties within the PIA.

Remaining costs of cleanup in the residential area: How much does DTSC estimate it will cost to complete the sampling and cleanup of all of the parcels that require cleanup within the PIA? Assuming the additional $74.4 million, proposed in the Governor's budget, is approved, DTSC has estimated that all parcels at or above 333 ppm will be cleaned up using the $176.6 million and the $74.4 million proposed additional funding. Approximately 4,400 additional parcels that have been sampled to date have representative soil lead concentrations below 333 ppm but above DTSC's 80 ppm target cleanup goal. The costs to clean up the remaining approximately 4,400 parcels are difficult to forecast because: the extent of contamination at each parcel is unknown; construction costs may continue to inflate; and, DTSC may not obtain access agreements from property owners to clean up properties that have been sampled with lead levels above 80 ppm. DTSC's current estimate for the average cleanup cost per property is approximately $60,000. DTSC estimates it could cost approximately $300 million to clean up the remaining properties.

State will pursue responsible parties: Exide, and any other responsible party, is legally responsible to clean up all of the properties that were contaminated by its operations. AB 118 (Santiago, Chapter 10, Statutes of 2016) included language that DTSC must take actions to pursue all available remedies against potentially responsible parties, including, but not limited to, cost recovery actions against entities that are potentially responsible for the costs related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide.

Why additional funding is being pursued in AB 1462: The state will pursue any and all responsible parties for the lead contamination near Exide. However, this will likely take a considerable amount of time. Exide is required to submit a corrective measures study to DTSC in 2019, which would include the required cleanup in the residential area which Exide would be responsible for funding. However, given recent document submissions by Exide, it is likely this process will take a while and could very well be settled in court. AB 1462, recognizes the potential future legal battles ahead and proposes additional funding with the belief that these communities affected by this contamination should not have to wait for the court to settle this – likely many years from now.

Technical suggestion: Previous expenditures from the General Fund for Exide were loans from the General Fund to the Toxic Substances Control Account. The author and Committee may wish to clarify that the expenditure in AB 1462 is a loan from the General Fund consistent with previous expenditures.

Related legislation:

1) AB 2189 (Santiago, 2018). Extends the expenditure deadline from June 30, 2018, to June 30, 2021, for DTSC to cleanup properties contaminated with lead near the Exide and appropriates $12 million to DTSC for the investigation and cleanup of parkways near Exide. This bill was held on the suspense file in the Senate Appropriations Committee.

2) AB 118 (Santiago, Chapter 10, Statutes of 2016). Appropriate $176.6 million to DTSC to use for activities related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide.

3) SB 93 (De León, Chapter 9, Statutes of 2016). Amends the 2015-2016 Budget Act to include a new transfer of funds to address urgent cleanup of lead contamination in the communities surrounding Exide.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1509 (Mullin) – As Amended April 1, 2019

SUBJECT: Solid waste: lithium-ion batteries

SUMMARY: Establishes the Lithium-Ion Battery Recycling Program within the California Department of Resources, Recycling, and Recovery (CalRecycle) that requires manufacturers of lithium-ion batteries to provide convenient collection, transportation, and disposal of lithium-ion batteries. Specifically, **this bill**:

1) Defines "covered battery" as a lithium-ion battery or battery pack that is sold separately or is sold with an electronic product and is removable from the electronic product.

2) Defines "covered battery-embedded product" as a product containing a lithium-ion battery or battery pack that is not designed to be removed from the electronic product by the consumer.

3) Defines "manufacturer" as any of the following:

   a) The person or company that manufactures covered batteries and that sells, offers for sale, or distributes the covered batteries in the state; or

   b) If there is no person that meets the description in (a), then the manufacturer is the person or company that imports the covered batteries into the state for sale or distribution; or

   c) If there is no person that meets the description in (a) or (b), then the manufacturer is the person or company that sells the covered batteries in the state.

4) Defines "retailer" as a person or company who sells, offers for sale, imports, or distributes a covered battery-embedded product in the state.

5) Defines "Program" as the Lithium-Ion Battery Recycling Program.

6) Defines "Stewardship program" as a Program established by manufacturers for the free and convenient collection, transportation, and disposal of covered batteries.

7) Requires, by March 1, 2021 and by March 1 each year thereafter, CalRecycle to track the total number of covered batteries and the total number of covered battery-embedded products disposed of in the state in the previous year.

8) Requires manufacturers and retailers to achieve the following recycling rates for covered batteries and covered battery-embedded products, based on the total number of covered batteries and covered battery-embedded products disposed of in the previous year:

   a) Twenty-five percent by December 31, 2025;

   b) Fifty percent by December 31, 2028;

   c) Seventy-five percent by December 31, 2013; and,

d) Ninety percent by December 31, 2034.

9) Requires manufacturers to establish and implement a stewardship program for covered batteries independently or as part of a group of manufacturers through membership in a stewardship organization.

10) Requires, by January 1, 2022, CalRecycle to adopt regulations requiring manufacturers to establish or join a stewardship program for covered batteries.

11) Authorizes a retailer to achieve the recycling rates mandated in the bill through any of the following mechanisms:

a) A take-back program for covered battery-embedded products offered to consumers at the retail location or through a mail-back program;

b) A deposit system, where the retailer charges a refundable deposit sufficient to encourage recovery of a covered battery-embedded product sold by the retailers; or,

c) Participating in an existing battery recycling program, that includes covered batteries, may include covered battery-embedded products if CalRecycle determines that inclusion of covered battery-embedded products in that battery recycling program would accomplish the intent of the program.

EXISTING LAW:

1) Enacts the Rechargeable Battery Recycling Act of 2006, that requires every retailer to have a system in place, on or before July 1, 2006, for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal. (Public Resources Code (PRC) § 42451-42456)

2) Enacts the Electronic Waste Recycling Act of 2003, establishing a program for consumers to return, recycle, and ensure the safe and environmentally sound disposal of video display devices, such as televisions and computer monitors, that are hazardous wastes when discarded. (PRC § 42460 et seq.)

3) Enacts the Cell Phone Recycling Act which requires all retailers of cellular telephone to have in place a system for the collection, reuse, and recycling of cell phones and requires the Department of Toxic Substances Control (DTSC) to provide information on cell phone recycling. (PRC § 42490-42499)

4) Creates the Hazardous Waste Control Law and provides the DTSC with the responsibility for overseeing the management of hazardous waste in California. (Health and Safety Code § 25100 et seq).

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Assemblymember Berman, Senator Hill and I introduced AB 1509 in response to the fire caused by a lithium-ion battery at the Shoreway Facility in San Mateo County, which caused $8.5 million in damages that shut down the facility

for 90 days and took over a year to restore. But the cost didn't stop there. After the fire, the insurance premium at the facility went from $100,000+ to over $1 million a year, due to ongoing and increasing risk of fire caused by lithium-ion batteries in the waste stream. Should another incident occur at the facility it would be uninsurable.

With over a half million Li-ion batteries sold last year, and the number of batteries on the market expected to double in the next seven years, the quantity of Li-ion batteries found in the waste stream will only increase. It would be short-sighted to ban Li-ion batteries from the myriad of products that they power in our consumer products, but it is reasonable and necessary to include the manufacturers and retailers of these products in our effort to properly recycle them and reduce their improper disposal."

Universal Waste: Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses. Universal wastes include televisions, computers, and other electronic devices as well as batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others. The hazardous waste regulations (California Code of Regulations (CCR), Title 22, Division 4.5, Chapter 11 Section 66261.9) identify seven categories of hazardous wastes that can be managed as universal wastes. Any unwanted item that falls within one of these waste streams can be handled, transported, and recycled following the simple requirements set forth in the universal waste regulations (CCR, Title 22, Division 4.5, Chapter 23) versus the more stringent requirements for hazardous waste. Universal wastes include: electronic devices, household batteries, fluorescent tubes and bulbs, mercury-containing equipment such as thermostats and thermometers, cathode ray tubes (CRTs) from televisions and computer monitors, and non-empty aerosol cans.

Electronic waste (E-Waste): E-waste refers to any unwanted electronic device or CRT and is classified as universal waste. E-waste frequently contains hazardous materials, predominantly lead and mercury, and is produced by households, businesses, governments, and industries. Each year in California, hundreds of thousands of computers, monitors, copiers, fax machines, printers, televisions, and other electronic items become "obsolete" in the eyes of consumers. Rapid advances in technology and an expanding demand for new features accelerate the generation of "old" electronic equipment ("e-waste"). The result is a growing challenge for businesses, residents, and local governments as they search for ways to reuse, recycle, or properly dispose of this equipment. To meet this challenge, California enacted the Electronic Waste Recycling Act of 2003, which established the covered electronic waste recycling program to offset the cost of compliantly handling certain unwanted electronic devices.

Electronic Waste Recycling Act (EWRA): The EWRA was designed to establish a new program for consumers to return, recycle, and ensure the safe and environmentally sound disposal of video display devices, such as televisions and computer monitors that are hazardous wastes when discarded. On January 1, 2005, California consumers began paying a fee of $6 to $10 at the time they purchase certain video display devices. Those fees are deposited into a special account that is used to pay qualified e-waste collectors and recyclers to cover their costs of managing e-waste. Two of the major goals of the EWRA was to limit the amount of toxic substances in certain electronic products sold in California and to establish a funding system for the collection and recycling of discarded covered electronic devices.

The Cell Phone Recycling Act of 2004: Consumers usually replace their cellular phones about every 18 months. Used cellular phones contain hazardous substances and should not be disposed

of with regular household waste. Circuit boards in cellular phones contain arsenic, antimony, beryllium, cadmium, copper, lead, mercury, nickel, and zinc. The rechargeable batteries used with cellular phones contain cobalt, zinc, and copper. The Cell Phone Recycling Act of 2004 AB 2901 (Pavley, Chapter 891, Statutes of 2004) requires retailers to have in place, and promote, a system for accepting and collecting used cellular phones for reuse, recycling, or proper disposal, at no cost to the consumer. This law took effect on July 1, 2006.

Regulation of batteries: Batteries may not be disposed of in the trash or household recycling collection bins intended to receive other non-hazardous waste and/or recyclable materials: it is prohibited by law. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These include single use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes (AAA, AA, C, D, button cell, 9-Volt, and small sealed lead-acid batteries).

If batteries end up in the trash or a recycling bin, owners/operators of solid waste transfer stations, municipal landfills, and recycling centers, who discover batteries in the waste or recyclable materials are required to remove and manage the batteries separately. The facility that removes the batteries from the municipal solid waste stream or recyclable materials becomes the generator of the hazardous waste batteries and must comply with the hazardous waste management regulations. Facilities that do not properly manage hazardous waste may be subject to regulatory enforcement and may be liable for monetary penalties.

Depending on the type of battery and applicable management requirements, batteries must be sent to a facility permitted to accept hazardous waste batteries, universal wastes, or spent lead acid batteries. Only facilities that have a DTSC permit or other type of authorization to treat, store, or dispose of hazardous wastes may accept hazardous waste batteries. Persons that do not have a DTSC permit may accept and store universal waste batteries and spent lead acid batteries if they operate according to the regulations specifically tailored for those types of batteries.

California's Universal Waste Rule allows individuals and businesses to transport, handle, and recycle certain common hazardous wastes, termed universal wastes, in a manner that differs from the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and are not disposed of in the trash. The universal waste requirements are also less complex and easier to comply with, thereby increasing compliance.

Lithium-ion batteries: Lithium-ion batteries, widely used in portable electronics like laptops, smart phones, digital cameras, game consoles, and cordless power tools. All batteries, including lithium-ion batteries, are considered hazardous waste in California when they are discarded. Batteries are considered hazardous because of the metals and/or other toxic or corrosive materials contained within. Batteries are potentially a valuable source of recyclable metal. All batteries in California that are intended for disposal must be recycled, or taken to a household hazardous waste disposal facility, a universal waste handler, or an authorized recycling facility.

Lithium-ion battery waste: According to CalRecycle's 2014 Waste Characterization Study, batteries, which include car, flashlight, small appliance, watch, and hearing aid batteries, represented 11,887 tons (0.003%) of California's overall disposed waste stream. This figure does

not distinguish between single-use and automotive batteries, but it is also likely that automotive Li-ion batteries represent a *de minimis* amount of this total.

California Rechargeable Battery Recycling Act: Most portable electronic devices use rechargeable batteries, and millions of rechargeable batteries are sold in California each year. California does not allow batteries to be disposed of in the trash because they contain toxic metals such as mercury, lead, cadmium, and nickel. If released, these metals may be harmful to humans and the environment. In 2005, to help promote proper disposal of rechargeable batteries by the public, the Governor signed the California Rechargeable Recycling Act AB 1125 (Pavley, Chapter 572, Statutes of 2005), which requires retailers to have a mechanism to accept all rechargeable batteries from consumers for recycling.

The Rechargeable Battery Recycling Act applies to a retailer, defined in the law as "a person who makes a retail sale of a rechargeable battery to a consumer in the state." A sale includes, but is not limited to, a transaction conducted through sales outlets, catalogs, or the internet. For the purposes of this law, a consumer can be an individual, business, corporation, limited partnership, nonprofit organization, or governmental entity, but not a person who purchases batteries in a wholesale transaction.

Large chain supermarkets and persons (including corporations or franchisees) who have less than one million dollars annually in gross sales are not considered "retailers" under this law's definition; and therefore, these businesses are not subject to the law's requirements. Also, sales of rechargeable batteries that are contained in, or packaged with, a battery-operated device are not subject to this law. However, a retailer selling replacement batteries for such devices must comply.

To track how effective this program is, the law requires DTSC to survey battery handling and/or recycling facilities and post on its website, by July 1 of each year, the estimated amount, by weight, of each type of rechargeable batteries returned for recycling in California during the previous calendar year. DTSC receives data voluntarily submitted by the major California battery recyclers to estimate how many rechargeable batteries, by type (e.g., nickel-cadmium, nickel metal hydride, etc.), are collected in each calendar year.

According to DTSC's website, the following are approximate quantities of rechargeable batteries collected for recycling in California in 2017:

400,000	pounds of nickel cadmium batteries (Ni-Cd)
500,000	pounds of lithium ion batteries (Li-ion)
1,100,000	pounds of nickel metal hydride batteries (Ni-MH)
2,300,000	pounds of small lead acid batteries (SS Lead Acid)

It is difficult to accurately estimate the rechargeable batteries collected for recycling in California due to the following reasons: some battery handlers and recyclers do not track the state from which batteries are collected; batteries contained within electronic devices that are recycled (e.g., cell phones and laptop computers) are not counted separately but may represent a significant portion of the total quantity; there may be duplicate data as some battery handlers collect batteries from other collection points; and, California law does not require battery handlers or recyclers to report the number or weight of batteries collected for recycling.

Product Stewardship (stewardship): Product stewardship, also known as Extended Producer Responsibility (EPR), 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. Product stewardship encourages 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 a product stewardship framework and checklists to guide statutory proposals that would allow CalRecycle and other stakeholders to implement product stewardship programs.

Current State Stewardship Programs: There are several statewide Stewardship programs in California, all of which are overseen by CalRecycle. They include: Carpet Materials Management, Paint Product Management, and Mattress Product Management. In 2018, the Legislature passed and the Governor signed SB 212 (Jackson, Chapter 1004, Statutes of 2018) that enacted an EPR program for home-generated pharmaceutical waste and sharps waste.

AB 1509 sets up an EPR program for lithium-ion batteries and sets recycling rates for retailers for products that contain lithium-ion batteries. The bill has two main goals: to reduce (ideally eliminate) the amount of lithium-ion batteries that are being illegally sent to solid waste landfills by consumers and to increase the recycling of lithium-ion batteries. This bill does start with the structure of an EPR program, however, there are several open questions and outstanding issues. It is important to note that recent EPR legislation has been heavily negotiated over a period of a year or two and AB 1509 is the first bill setting up an EPR program for lithium-ion batteries, so it is understandable that there is work to be done. One of the first questions the author will wish to consider as the bill moves through the process is whether or not an EPR is the right approach or would it be possible to build upon the existing Rechargeable Battery Recycling Act by removing the exemptions for batteries within a product? If the authors, likely involving extensive stakeholder input, decide that an EPR program is the best approach for lithium-ion batteries, they will want to address some outstanding issues.

Outstanding Issues: The authors will want to clarify that the EPR program must comply with all applicable state and federal laws and regulations. This is important because the bill is requiring CalRecycle to administer this EPR program, however; only DTSC has regulatory authority over the batteries once they become a waste. The bill will need to ensure that both CalRecycle and DTSC are reimbursed from the EPR program for their regulatory costs associated with the program. Like other EPR programs, this bill will need to address certain elements of the stewardship program such as ensuring that manufacturers and retailers provide CalRecycle and DTSC with whatever information they need, ensure there is a public outreach component, and include enforcement provisions for noncompliance. In order to set the recycling rates, the bill uses a baseline of the number of lithium-ion batteries disposed of in solid waste landfills, however; these batteries cannot legally be disposed of in these landfills. The authors will want to work with CalRecycle to see if another baseline, such as using sales data, could be more appropriate. Because other EPR programs had interactions with local ordinances, the authors will want to work with stakeholders to see if there are any local ordinances on the horizon and if so, determine how this bill would interact with those ordinances. Lastly, the bill currently states the Legislature's intent to amend the Electronic Waste Recycling Act of 2003 to allow lithium-

ion batteries to be included. The authors will want to continue to work with stakeholders to pursue more definitive options, such as allowing a stewardship plan to have an alternative compliance path that includes voluntary participation in the state E-Waste program.

Related legislation:

1) AB 2832 (Dahle, Chapter 822, Statutes of 2018). Requires the Secretary for CalEPA to convene a research group to review and advise the Legislature on policies pertaining to the recovery and recycling of lithium-ion vehicle batteries sold with motor vehicles in the state.

2) SB 212 (Jackson, Chapter 1004, Statutes of 2018). Requires entities that sell drugs or sharps in the state to individually, or with other entities, develop and implement a statewide home-generated drug stewardship plan, or a home-generated sharps waste stewardship plan, or both, for the collection and proper disposal of home-generated drug and sharps waste. Requires CalRecycle to oversee and enforce each stewardship plan.

3) AB 1125 (Pavley, Chapter 572, Statutes of 2005). Enacts the Rechargeable Battery Recycling Act of 2006, and requires retailers of rechargeable batteries, by July 1, 2006, to establish a system for accepting rechargeable batteries for reuse, recycling, or proper disposal.

4) AB 2901 (Pavley, Chapter 891, Statutes of 2004). Enacts the Cell Phone Recycling Act of 2004 and requires all retailers of cellular telephone to have in place a system for the collection, reuse and recycling of cell phones, requires DTSC to provide information on cell phone recycling.

5) SB 20 (Sher, Chapter 526, Statutes of 2003). Enacts the Electronic Waste Recycling Act of 2003 to provide for the convenient recycling of covered electronic devices in California.

REGISTERED SUPPORT / OPPOSITION:

Support

CALIFORNIA PRODUCT STEWARDSHIP COUNCIL (CO-SPONSOR)
CALIFORNIANS AGAINST WASTE (CO-SPONSOR)
RETHINKWASTE (CO-SPONSOR)
ACR SOLAR INTERNATIONAL CORP.
ALAMEDA COUNTY BOARD OF SUPERVISORS
CALIFORNIA REFUSE RECYCLING COUNCIL
CALIFORNIA REFUSE RECYCLING COUNCIL, SOUTHERN DISTRICT
CALIFORNIA REFUSE RECYCLING COUNCIL-NORTHERN DISTRICT (CRRC)
CALIFORNIA RESOURCE RECOVERY ASSOCIATION
CALIFORNIA STATE ASSOCIATION OF COUNTIES
CEAR
CIGARETTE BUTT POLLUTION PROJECT, CITY OF SAN CARLOS
CITY OF BURBANK
CITY OF THOUSAND OAKS
CLEAN WATER ACTION
COASTOADIAN.ORG

ECOLOGY CENTER (BERKELEY)
GREENWASTE RECOVERY
LOS ANGELES ALLIANCE FOR A NEW ECONOMY
LOS ANGELES COUNTY SOLID WASTE MANAGEMENT COMMITTEE/INTEGRATED WASTE MANAGEMENT TASK FORCE
MARIN COUNTY HAZARDOUS AND SOLID WASTE MANAGEMENT JOINT POWERS AUTHORITY
MARIN HOUSEHOLD HAZARDOUS WASTE FACILITY
NAPA RECYCLING & WASTE SERVICES
NAPA RECYCLING AND WASTE SERVICES
NATIONAL STEWARDSHIP ACTION COUNCIL
POTENTIAL INDUSTRIES
RECOLOGY
REPUBLIC SERVICES INC.
ROSEVILLE; CITY OF
SAN MATEO CITY COUNCIL MEMBER RICK BONILLA
SANITATION DISTRICTS OF LOS ANGELES COUNTY
SAVE OUR SHORES
SIERRA CLUB CALIFORNIA
SOLID WASTE ASSOCIATION OF NORTH AMERICA, CALIFORNIA CHAPTERS
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA) DBA RETHINKWASTE
SOUTH SAN FRANCISCO SCAVENGER COMPANY
STOPWASTE
WEST BAY SANITARY DISTRICT
ZANKER RECYCLING
ZERO WASTE SONOMA

Opposition

NONE ON FILE.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1588 (Gloria) – As Amended April 2, 2019

SUBJECT: Drinking water and wastewater operator certification programs

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to issue a water treatment operator certificate or water distribution operator certificate to United States (US) military with comparable qualifications in water or wastewater treatment operations during their military service. Specifically, **this bill**:

1) Adds a comparable qualification issued by another state, the United States, a territory or tribal government designated as the primacy agency by the US Environmental Protection Agency (US EPA), or a unit of any of these, as an acceptable form of reciprocity for a State Water Board issued water treatment certificate and water distribution operator certificate.

2) Adds one person who is an active or former member of the US military who is working or who has previously worked in a water or wastewater treatment operations classification within their military service to the State Water Board advisory committee.

3) Declares that water and wastewater treatment and operation is a well-established industry with an aging workforce.

4) Declares that to encourage water operator advancement and cross-training and to attract skilled workers, California operator certification requirements should recognize a broad range of experience and qualifications, including experience and education gained during active military service.

5) Requires that operators of complex industrial facilities, including members of the military and military service veterans, receive full equivalent experience credit and education credit for work and tasks performed that are directly related to the operation of water or wastewater facilities when applying for certification by the State Water Board as a water treatment operator, distribution system operator, or wastewater operator.

6) Requires that full equivalent experience credit and education credit is given for work and tasks during military service that is directly related to the operation of water or wastewater when applying for certification.

7) Declares that experience credit includes work applicable to work performed by a certified operator in California, which may include, but is not limited to:

    a) Operation of similar water treatment processes;
    b) Operation and management of supervisory control and data acquisition (SCADA) systems and automation;
    c) Troubleshooting equipment failures;
    d) Management of water quality;

e) Operation and maintenance of equipment such as pumps, motors, compressors, chemical feed systems, valves, actuators, and meters; and,
f) Calibration of on-line analyzers.

8) Requires that military veterans receive education credit translated to the equivalent college semester unit, continuing education units, education points, or any combination of these, for service in military occupational specialties, including, but not limited to, the following:

a) United States Air Force Specialty Code: 3E4X1 – Water and Fuel Systems Maintenance;
b) United States Army military occupational specialty: 92W Water Treatment Specialist;
c) United States Coast Guard Ratings: Damage Controlman, Machinery Technician, or Marine Science Technician;
d) United States Navy Rating: Machinist Mate, Machinist Mate (Nuclear), or Utilitiesman; and,
e) United States Marines military occupational specialty: 1171 Water Support Technician.

EXISTING LAW:

1) Requires the State Water Board to examine and certify persons as to their qualifications to operate water treatment and distribution systems. (Health and Safety Code (HSC) § 106875)

2) Authorizes the State Water Board to approve courses of instruction provided by educational institutions, professional associations, public agencies, or private agencies for purposes of qualifying persons for issuance of and renewal of a water treatment operator certificate or water distribution operator certificate. (HSC § 106900)

3) Authorizes the State Water Board to adopt rules, regulations, and certification standards, including criteria and standards establishing the level of skill, knowledge, education, and experience necessary to operate successfully specific classes of water treatment plants or water distribution systems so as to protect public health. (HSC § 106910(c)(d))

4) Requires the State Water Board to issue a water treatment operator certificate and water distribution operator certificate by reciprocity to any person holding a valid, unexpired, comparable certification issued by another state, the US, a territory or tribal government that has been designated primacy agency by the US EPA. Authorizes the State Water Board to prescribe procedures and requirements for issuing a water treatment operator certificate and water distribution operator certificate by reciprocity by regulations. (HSC § 106897)

5) Defines "water treatment plant" as a group or assemblage of structures, equipment, and processes that treats, blends, or conditions the water supply of a public water system. (HSC § 116275(w))

6) Defines "water distribution system" as any combination of pipes, tanks, pumps, and other physical features that deliver water from the source or water treatment plant to the consumer. (HSC § 116275(x))

7) Defines "operates a water distribution system" as actions or decisions to control the quality or quantity of drinking water in a water distribution system and includes both of the following:

a) Supervision of other persons operating a water distribution system; and,

b) Any activity designated by the State Water Board, in its regulations to implement the water distribution operator certification program, as an activity that may only be performed by a person with a water distribution operator certificate. (HSC § 106876(d))

8) Defines "water treatment operator certificate" and "water distribution operator certificate" as a certificate of competency issued by the State Water Board stating that a person has met the requirements to be certified to operate a water treatment plant or water distribution system, respectively, for a specific classification and grade level. (HSC § 106876(h)(k))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "AB 1588 allows military veterans with equivalent water operations technical skillsets to receive appropriate crediting for the experience and education gained during their military service. For example, in states like Washington, Texas, North Carolina, and Pennsylvania there are pathways for military veterans to navigate the civilian water system operator certification process and allow the application of equivalency standards to credit military experiences.
>
> Currently in California, military veterans are not able to apply their previous, equivalent experience towards their applications for higher levels of certification. At the same time the demand for qualified operators is increasing due to the high level of expected retirements among the experienced workforce.
>
> There are several anecdotal accounts of veterans who have tried to receive credit for their experience from the State Water Resources Control Board (SWRCB) and been turned down. Additionally, in our own conversations with the SWRCB, they shared that military experience is not considered only state drinking water experience. So while they allow military veterans to take exams, they do not receive the certification. They shared that they would need a statutory change to do this."

Operation of water treatment and water distribution systems in California: Laws and regulations governing certification of water treatment facility operation were enacted in California in 1971. These established the level at which water treatment facilities should be staffed, the minimum qualifications for testing and criteria for renewal and revocation of operator certificates. All public water systems that have water treatment facilities require certified water treatment operators (HSC § 106885). Water systems that only use disinfection facilities for groundwater, where no *Giardia* or virus reduction is required, can meet the operator certification requirements with a certified distribution operator (22 California Code of Regulations (CCR) § 63750.85). All community and non-transient non-community public water systems with or without water treatment facilities must have certified distribution operators.

Certified treatment and distribution system operator authorities: To ensure that treatment and distribution of water systems protect public health, the State Water Board requires that critical water system decisions be made by individuals with sufficient qualifications as follows:

Certified distribution operators are the only individuals authorized to make decisions addressing the following operational activities for a water system:

a) Install, tap, re-line, disinfect, test and connect water mains and appurtenances;
b) Shutdown, repair, disinfect and test broken water mains;
c) Oversee the flushing, cleaning, and pigging of existing water mains;
d) Pull, reset, rehabilitate, disinfect and test domestic water wells;
e) Stand-by emergency response duties for after-hours distribution system operational emergencies; and,
f) Drain, clean, disinfect, and maintain distribution reservoirs.

Certified distribution operators or treatment operators with relevant training are authorized to make decisions addressing the following operational activities for a water system:

a) Operate pumps and related flow and pressure control and storage facilities manually or by using a SCADA system; and,
b) Maintain and/or adjust system flow and pressure requirements, control flows to meet consumer demands including fire flow demands and minimum pressure requirements.

Certified distribution operators or treatment operators are authorized to make decisions addressing the following operational activities for a water system:

a) Determine and control proper chemical dosage rates for wellhead disinfection and distribution residual maintenance; and,
b) Investigate water quality problems in the distribution system. (22 CCR § 63770)

Drinking Water Operator Certification Program: Water treatment and distribution operator certification is managed by the Drinking Water Operator Certification Program (DWOCP) within the State Water Board (since the transfer of these functions from the California Department of Health in 2014). DWOCP is responsible for the testing and certification of approximately 35,000 water treatment and water distribution operators throughout the state of California.

Operator certification progresses through 5 levels, from T1 to T5 or D1 to D5, with each level requiring a demonstration of increased operational expertise and experience. Each level requires an educational prerequisite and successful passing of an examination based on the knowledge, skills, and abilities set forth in the regulation. Educational pre-requisites include such qualifications as high school diplomas or General Educational Development (GED), and also courses specific to water treatment. From level T3 or D3 upwards, the demonstration of applicable operating experience is also required. Certificates must be renewed every three years, with proof of continuing education required at all levels.

The required knowledge, skills, and abilities of each certification level are developed based on job analyses conducted by subject matter experts, who are typically water treatment system operators and managers with extensive field experience. There is an ongoing validation process

to ensure that examination questions are representative of operator duties and responsibilities, with workshops attended by the subject matter experts to validate existing exam questions and to write new questions (*Operator Certification Annual Report for State Fiscal Year 2013-2014*).

Alternatives to operator experience: Applicants with a Bachelor of Science or Master of Science degree can fulfill operator experience requirements for T3 and T4 operator certification with a comprehensive on-the-job operator training program that is at least 6 months long and covers:

a) California Safe Drinking Water Act and regulations promulgated pursuant thereto;
b) Water treatment calculations;
c) SCADA operation;
d) Handling of laboratory chemicals used for drinking water analyses;
e) Laboratory analyses conducted by operators;
f) Safety training;
g) Distribution system operation;
h) Treatment chemical dosing and monitoring;
i) Disinfectant dosing and monitoring; and,
j) Treatment processes and controls.

Applicants with an Associate degree or certificate in water or wastewater technology or distribution including at least 15 units of physical, chemical, or biological science may be used to fulfill 1 year of operator experience for T3-T5 or D3-D5 certifications. Applicants with a Bachelor's or Master's degree in engineering or physical, chemical, or biological sciences may be used to fulfill 1.5 or 2 years of operator experience, respectively, for T3-T5 or D3-D5 operator certifications.

Additionally, lead responsibility for water quality related projects or research can be used on a day-for-day basis to fulfill operator experience requirements for T3 or D3 operator certifications. Experience gained as a certified waste water treatment plant operator may be used to fulfill up to two years of operator experience requirements for T3-T5 operator certifications (two months of waste water treatment experience counts as one month of required operator experience).

State Water Board reciprocity certifications: The State Water Board can grant certification through reciprocity to operators who hold a valid water treatment or water distribution certificate issued by another state (HSC § 106897). Reciprocity is offered for Grades 1-3 for both treatment and distribution. In order to receive certification through reciprocity, applicants must submit an application, application fee, copy of a water treatment or distribution certificate from another state, copies of certificates of completion for any courses taken with at least 35 contact hours, and for Grade 3 certification, a copy of the utility organization chart with employee names and position, and utility's official job description including duties performed. The State Water Board then compares the applicant's education and experience to that required for certification in California in order to make a determination of equitability. Because trainings and experiences of water treatment and water distribution operators in other states may differ from that in California, a case-by-case review of each applicant's qualifications is necessary for the State Water Board to ensure the "level of skill, knowledge, education, and experience necessary to operate successfully specific classes of water treatment plants or water distribution systems so as to protect public health."

Committee suggestions: Historically, California's water quality standards have been more stringent than federal standards, and as a result, the certification requirements for the operation of water treatment and distribution systems in California have evolved accordingly. The State Water Board already has authority to "prescribe procedures and requirements for issuing a water treatment operator certificate and water distribution operator certificate by reciprocity by regulations." Certification by reciprocity is currently approved on a case-by-case basis, after careful consideration of trainings and experiences from other states that may be relevant to California standards. It would be prudent to apply this same approach for training and experience gained during military service, as it is unclear whether there is a one-to-one correspondence of water treatment and distribution operations between all military branches and California. Furthermore, current regulations already outline in detail how higher education, water-related coursework, and other related leadership experience can fulfill operator experience. If necessary, lists of technical occupations or experiences gained during military service are best suited for guidelines or regulations, as codifying in statute means that future updates may result in unnecessary requests for Legislature approval.

As the author continues to refine the technical implementation of AB 1588, the Committee suggests consideration of the following:

1) Evaluate whether or not amendments are necessary for wastewater operator certification. While current law does not authorize certification by reciprocity for wastewater operator certification, it does allow the State Water Board to "accept experience in lieu of qualification training" (Water Code (WAT) § 13627(c)). This could be done by removing references to "wastewater" from 106898(a)(9), 106911, and 106912, and amending the appropriate sections of WAT as necessary.

2) Authorize the State Water Board to consider relevant military occupational specialty coursework and experience in fulfilling education or operator experience requirements, instead of the approach in 106912(c).

3) Consider allowing for full and partial experience or education credit in 106912(a). Current regulations allow certain educational degrees, certificates, or courses to fulfill required operator experience at different rates and capacities depending on operator grade.

Because of the complexity of the problem, the Committee recommends that the author continue to work with the State Water Board on an implementation that (1) expands the State Water Board's authority to consider relevant experience gained during military service and (2) maximizes the use of existing regulations.

Related legislation:

1) AB 2890 (Committee on Environmental Safety and Toxic Materials, Chapter 305, Statutes of 2016). Aligns State Water Board programs for wastewater and drinking water treatment operator certifications to improve the efficiency and effectiveness of these programs, which also included establishing the Drinking Water Operator Certification Advisory Committee and allowing operators that hold certification from another state to apply for reciprocity.

2) AB 1778 (Nakano, 2002). Would have required criminal background checks for persons responsible for water treatment plans and water distribution systems. Held in the Senate Public Safety Committee.

3) SB 1107 (Sher, Chapter 755, Statutes of 1999). Modifies and expands the certification process for operators of drinking water systems to reflect adopted national standards.

REGISTERED SUPPORT / OPPOSITION:

Support

OTAY WATER DISTRICT (COSPONSOR)
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO
AMERICAN G.I. FORUM OF CALIFORNIA
AMVETS, DEPARTMENT OF CALIFORNIA
CALIFORNIA ASSOCIATION OF COUNTY VETERANS SERVICE OFFICERS
CALIFORNIA ASSOCIATION OF SANITATION AGENCIES
CALIFORNIA STATE COMMANDERS VETERANS COUNCIL
CALIFORNIA WATER ASSOCIATION
EASTERN MUNICIPAL WATER DISTRICT
MESA WATER DISTRICT
OCEANSIDE CHAMBER OF COMMERCE
RURAL COUNTY REPRESENTATIVES OF CALIFORNIA
SAN DIEGO COUNTY WATER AUTHORITY
SAN DIEGO NORTH ECONOMIC DEVELOPMENT COUNCIL
SAN DIEGO REGIONAL EDC
SAN DIEGO VETERANS COALITION
SANTA CLARA VALLEY WATER DISTRICT
SWEETWATER AUTHORITY
TURLOCK IRRIGATION DISTRICT
UNITED VETERANS COUNCIL OF SAN DIEGO COUNTY
VALLEY CENTER MUNICIPAL WATER DISTRICT
VETERANS VILLAGE OF SAN DIEGO
VIETNAM VETERANS OF AMERICA, CALIFORNIA STATE COUNCIL

Opposition

NONE ON FILE.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1596 (Committee on Environmental Safety and Toxic Materials) – As Amended April 3, 2019

SUBJECT: Hazardous substances: contaminated property: fentanyl cleanup

SUMMARY: Adds Fentanyl to the Methamphetamine Contaminated Property Act of 2005 in order to set interim cleanup standards for fentanyl contaminated property and provides direction to local health officers for the oversight and cleanup of fentanyl contaminated properties.

EXISTING LAW:

1) Requires the Office of Health Hazard Assessment (OEHHA) to develop guidance for risk-based cleanup standards for methamphetamine. Requires the Department of Toxic Substances Control (DTSC) to develop a health-based target remediation standard for methamphetamine and other methamphetamine precursors and byproducts. (Health and Safety Code (HSC) § 25354.5)

2) Enacts the Methamphetamine Contaminated Property Cleanup Act of 2005 which require the adoption of uniform standards for the cleanup of meth contaminated properties. (HSC § 25400.10 et. seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 1596 is modeled after the Methamphetamine Contaminated Property Cleanup Act of 2005 and updates the statutes to ensure that properties contaminated with fentanyl are safely decontaminated before being rented or sold. Without establishing procedures and standards for cleanup of fentanyl contaminated properties, innocent people are a risk of being harmed from the residue that is left behind by these chemicals when the properties are rented or sold without being adequately decontaminated."

Fentanyl increase in the United States (U.S.): In the last several years, U.S. Law Enforcement has seen a dramatic increase in the availability of dangerous synthetic opioids. A large majority of these synthetic opioids are structural derivatives of the synthetic drug "fentanyl." Fentanyl is a synthetic opioid currently listed as a Schedule II prescription drug that mimics the effects of morphine in the human body, but has a potency that is 50–100 times that of morphine. Due to the high potency and availability of fentanyl, both transnational and domestic criminal organizations are increasingly utilizing these dangerous synthetic opioids as an adulterant in heroin and other controlled substances. The presence of these synthetic opioids in the illicit U.S. drug market is extremely concerning as the potency of these drugs has led to a significant increase in overdose incidents and overdose related deaths throughout the nation.

There is a significant threat to law enforcement personnel, and other first responders, who may come in contact with fentanyl and other fentanyl-related substances through routine law enforcement, emergency, or life-saving activities. Since fentanyl can be ingested orally, inhaled

through the nose or mouth, or absorbed through the skin or eyes, any substance suspected to contain fentanyl should be treated with extreme caution as exposure to a small amount can lead to significant health-related complications, respiratory depression, or death.

Remediation/decontamination of fentanyl contaminated properties: According to the U.S. Drug Enforcement Agency,

> "Due to the hazardous nature of fentanyl, law enforcement personnel should notify any concerned parties of the fact that a clandestine drug laboratory or pill milling site may pose a significant health hazard and prominently display the appropriate warning sign at the site following the identification and/or seizure of a clandestine laboratory or pill milling operation involving fentanyl, fentanyl related substances, or synthetic opioids.
>
> The property owner should also be notified of the situation via certified letter with copies to local health officials and local law enforcement agencies. State/local public health departments will ultimately determine the appropriate remediation action and if/or when the location is fit for future occupancy.
>
> To reduce the potential for accidental exposure, handle all items suspected of being contaminated with fentanyl or fentanyl-related substances with extreme caution, to include the application of universal safety precautions. Avoid skin contact, inhaling or ingesting powders, liquids, or sprays. Wash your hands frequently with copious amounts of soap and water."

Methamphetamine Contaminated Property Act of 2005: AB 1078 (Keene, Chapter 570, Statutes of 2005) enacted the Methamphetamine Contaminated Property Cleanup Act of 2005 (Act). The Act gave authority to local health officials for the oversight of methamphetamine remediation by a property owner, and for recovering the cost of such oversight; to provide notice of contamination to potential buyers and renters of real property; and, to authorize the imposition of a civil penalty upon a property owner who does not provide required disclosures, or who violates an order issued by the local health officer prohibiting the use or occupancy of a property contaminated by a methamphetamine laboratory activity. Additionally, the Act specified interim human occupancy standards for property contaminated with methamphetamine, until the standards could be developed by the Department of Toxic Substance Control (DTSC). At the same time AB 1078 was passed, a companion measure SB 536 (Bowen, Chapter 587, Statutes of 2005) passed that required the OEHHA to develop guidance for risk-based target remediation standards for methamphetamine, methyl iodide, phenyl-2-propanone, and phosphine to ensure protection of the health of all persons who subsequently occupy a former clandestine methamphetamine lab. DTSC used this guidance to develop the human occupancy standards.

AB 1596 protects occupants of properties contaminated by fentanyl by establishing interim cleanup standards for the cleanup of fentanyl labs until standards can be developed by DTSC. Additionally, this bill provides direction to local health officers on how to provide adequate notice to property owners and renters of property contaminated by fentanyl as well as guidance on the oversight of the cleanup of these properties.

Related legislation:

1) AB 1489 (Smyth, Chapter 539, Statutes of 2009). Codifies the health-based clean-up standard for methamphetamine that was developed by the DTSC and OEHHA.

2) AB 1078 (Keene, Chapter 570, Statues of 2005). Enacts the Methamphetamine Contaminated Property Cleanup Act of 2005 (Act). Specifies interim human occupancy standards for property that is subject to the Act, and when those interim methamphetamine standards will be replaced.

3) SB 536 (Bowen, Chapter 587, Statutes of 2005). Requires OEHHA to develop guidance for risk-based cleanup standards for methamphetamine. Requires the Department of Toxic Substances Control (DTSC) to develop a health-based target remediation standard for methamphetamine and other methamphetamine precursors and byproducts.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1672 (Bloom) – As Amended March 28, 2019

SUBJECT: Solid waste: flushable products

SUMMARY: Establishes criteria for "flushability" for nonwoven disposable products and requires non-flushable labels on nonwoven disposable products that do not meet those flushable criteria. Specifically, **this bill**:

1) States the intent of the Legislature to provide clear direction to manufacturers by setting performance requirements for nonwoven disposable products that are marketed for disposal to the sanitary sewer system.

2) Defines "covered entity" as the manufacturer of a covered product that is sold in this state or brought into the state for sale. Excludes a wholesaler, supplier, or retailer that is not responsible for the labeling or packaging of a covered product.

3) Defines a "covered product" as a nonwoven disposable product that is sold in this state or brought into the state for sale, and that is constructed from nonwoven sheets, including moist toilet tissue or cloth, that is designed, marketed, or commonly used for personal hygiene or cleaning purposes, including, but not limited to, diaper wipes, toilet wipes, household cleaning wipes, personal care wipes, and facial wipes.

4) Defines "enforcing agency" as the California Environmental Protection Agency (CalEPA).

5) Defines "flushable wipe" as a nonwoven disposable product that meets the performance standards set forth in the performance standards.

6) Defines "labeling requirements" as the labeling standards contained in the Code of Practice of the Association of the Nonwoven Fabrics Industry and the European Disposables and Nonwovens Association, titled Communicating Appropriate Disposal Pathways for Nonwoven Wipes to Protect Wastewater Systems, second edition, as published in April 2017.

7) Defines "nonflushable wipe" as a nonwoven disposable product that does not meet the performance standards set forth in the performance standards.

8) Defines "performance standards" as the International Water Services Flushability Group testing methods and criteria for flushability, as published in June 2018, as set forth in publicly available specification (PAS) documents 1, 2, and 3, and as summarized in chapters 6 and 7 of PAS document 1.

9) Prohibits, on and after January 1, 2020, a covered entity from labeling a covered product as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe.

10) Prohibits, unless a product is a flushable wipe, a covered entity from making, in any manner, any of the following representations regarding a covered product:

    a) The product can be flushed;

    b) The product is safe for sewer systems;

    c) The product is safe for septic systems;

    d) The product breaks apart shortly after flushing;

    e) The product will not clog household plumbing systems;

    f) The product will not clog household septic systems;

    g) The product is safe for plumbing;

    h) The product is safe to flush; or,

    i) The product will dissolve or disperse in interaction with water.

11) Provides that representations include, among other things, product names, labels, endorsements, depictions, illustrations, trademarks, and trade names.

12) Requires, on and after January 1, 2020, a covered product that does not meet the performance standards to be labeled clearly and conspicuously in adherence with the labeling requirements to communicate that it should not be flushed. Requires the label to be in a high contrast font and color respective to the surrounding wording and space on the packaging and in a location that is visible when individual wipes are dispensed from the product packaging.

13) Requires, for products sold in bulk at retail, both the package purchased in the store and the individual packages contained within, to comply with the labeling requirements.

14) Prohibits a covered entity, directly or through any corporation, partnership, subsidiary, division, trade name, or association in connection to the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of a covered product, from making any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about the flushable attributes, benefits, performance, or efficacy of a nonflushable wipe.

15) Requires, on and after January 1, 2020, a covered entity to test and maintain self-certification records that verify that its covered products meet the performance standards and comply with the labeling requirements.

16) Requires the records demonstrating a flushable wipe's compliance with the performance standards to be made available by the covered entity upon request of the enforcing agency, free of charge, within 30 days of the request.

17) Requires verification of a nonflushable wipe's compliance with the labeling requirements to be made available by the covered entity upon request of the enforcing agency, free of charge, within 30 days of the request.

18) Requires a covered entity that does not properly label flushable wipes or nonflushable wipes that will be sold in California, or are reasonably expected to be sold in California, to be issued a notice of violation by the enforcing agency, providing 30 days for the noncompliant products to be recalled. Provides that the covered entity may be subject to an administrative penalty every day thereafter that those products remain available for purchase at retail or otherwise are distributed in the state.

19) Requires the enforcing agency, in issuing an administrative penalty, to take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the effect that the proposed penalty would have on the violator and the community as a whole.

20) Restricts the penalty imposed under this subdivision from exceeding five hundred dollars ($500) per day.

21) Requires penalties collected to be deposited into the Flushable Wipes Fund, which is hereby created. Requires moneys in the fund to be subject to appropriation by the Legislature for purposes of enforcing this part.

22) Provides that a covered entity that violates or threatens to violate this part may be enjoined by the Attorney General in any court of competent jurisdiction, and civil penalties may be assessed and recovered in a civil action brought in any court of competent jurisdiction in an amount not to exceed two thousand five hundred dollars ($2,500) for each violation.

23) Requires moneys collected by the Attorney General to be deposited into the Unfair Competition Law Fund.

24) Provides that to the extent that there is an inconsistency between this bill and a local standard or an updated performance standard that imposes greater restrictions, the greater restrictions shall prevail.

25) Provides that the provisions of this part are severable. Provides that if any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

Under federal guidelines:

1) Defines biodegradability and requires environmental marketing claims and claims of degradability, biodegradability, and photodegradability be qualified to the extent necessary to avoid consumer deception about the product or package's ability to degrade in the environment where it is customarily disposed and the rate and extent of degradation. (Federal Trade Commission (FTC), Green Guide Part 260 § 260.8)

2) Regulates the labeling requirements on various consumer products and requires any person who represents in advertising or on the label or container of a consumer good that the product is not harmful to, or is beneficial to, the natural environment, through the use of terms such as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, to maintain in written form in its records specified information and documentation supporting the validity of the representation. (FTC, Green Guide Part 260 § 260.4)

Under state law:

1) States that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. Provides that for consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials. (Public Resources Code § 42355.5)

2) Provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. (Business and Professions Code (BCP) § 17580.5 (a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "When wet wipes products are flushed into the sewer system they can cause significant issues for private property owners, sewer collection systems, and wastewater treatment plants. Wet products that do not break down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners. Wet wipes have been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners.

AB 1672 presents a straightforward solution to helping combat the aforementioned problems caused by improperly flushing wet wipes. The bill prescribes clear and consistent consumer messaging for these products that indicates to consumers that either a wipe is 'flushable,' or it is not. Under the provisions of AB 1672, wipes can be labeled as 'flushable' if they do not cause harm to the sewer system, meaning that manufacturers can demonstrate that their wipes break down in the sewer system like dry toilet paper. For all other wipes that are not intended to be flushed, they must be conspicuously marked with 'Do Not Flush' labeling."

What does it mean to be "flushable"? Generally, toilet paper is universally considered flushable due to the nature of its use as well as the design of the product to disperse upon being flushed. However, there currently is no federal or state definition of what constitutes a "flushable" consumer product.

As a result, companies have used their own definitions and methods to determine the flushability of their products. For consumers and wastewater agencies, this means there has been no single

reference from which to assess the flushability of a product other than the marketing claim on a package.

Flushable products: This lack of standardization, or regulation, has led to consumer confusion and lack of clarity in the market place as to the appropriateness of disposing certain products via plumbing systems.

In the 1980s, wipes advertised as "flushable" first appeared on the market. Since then, two types of flushable wipes have been designed and introduced: dispersible and low-strength wipes. Low-strength has been one approach to making nonwovens with permanent bonds flushable. These wipes collapse in a toilet, presenting a very small profile and the flexibility to travel through pipes unencumbered. However, their low wet strength makes them poor performers in most cleaning jobs. The second type of flushable wipe is dispersible. These products perform like a standard wipe as far as strength and softness, but in a toilet disperse into individual fibers or small groups of fibers.

More and more, an increasingly diverse range of disposable products has become available for consumer use. The growth of the market for such products is evidence of their popularity with the public, but their increased use brings with it discussion about their disposal, especially the topic of flushability.

For disposable products that address public health and hygiene considerations, consumers often mistakenly use the wastewater system as a preferred means of disposal. These products include disinfectant wipes and baby wipes (which are often confused with "flushable" wipes), feminine hygiene products, diapers, diaper liners, dog poop bags, wash cloths, condoms, and more. While consumer behavior cannot be legislated, legislation can steer manufacturing and labeling in a direction that better informs consumers how to behave. In the case of this bill, the intent is to better inform wipes intended for flushing and provide clarification to consumers on wipes not suitable for flushing.

Problems with nonflushable products: Products that are poorly designed or not at all intended to be flushed down the toilet can cause sewer blockages, which damage sewer lines and can lead to costly sanitary sewer overflows. Damage and overflows present dangers to public health and the environment.

A buildup of nonflushable products has been shown to cause clogs in sewage pumps, lead to entanglements in sewage treatment equipment, lead to sewer backups in residences, and increase the risk of a sanitary sewer overflow during a storm.

Wipes weave together and form large "rags" that can become massive obstructions in sewer lines when they combine with other improperly flushed items and fats, oils, and greases. These obstructions are commonly referred to as "fatburgs," and in addition to being a disgusting environmental problem, local agencies spend significant time and resources to remediate them. In the worst cases, fatburgs attributed to wipes contribute to sanitary sewer overflows, which are a threat to public health and the environment, and result in fines and penalties to public agencies.

The increased maintenance needed to prevent problems from nonflushable products is very costly to public wastewater agencies. Many of the sanitation agencies are finding wipes are the main culprit of the problem. In some cities, such as Petaluma, costly screening facilities have failed to stop these indispersible products from finding their way through the wastewater system.

In 2011, the Orange County Sanitation District (OCSD) conducted nearly 1,000 preventative or corrective de-ragging maintenance calls on 10 of their 15 regional pump stations. Total labor cost was more than $300,000. OCSD continues to spend labor hours to avoid clogging that could lead to a sewer spill. Their crews routinely remove non-dispersables from their three hardest hit stations every Monday and Thursday. On August 13, 2012, the equivalent of 40 large trash bags on non-dispersable materials overburdened their new headworks and completely plugged three new washer compactors. It took six to eight hours and up to 10 plant employees to restore normal operations. The OCSD notes that operations and maintenance costs are going up. Spending more public agency money to reengineer the problem away by installing new machinery is not a sustainable solution.

The City of Camarillo's Waste Water Treatment Plant has invested approximately $500,000 to upgrade its waste water treatment plant pump systems to manage the volume of wipes passing through the system on a daily basis.

California Sanitary Sewer Overflow database: The State Water Resources Control Board (State Water Board) considers a sanitary sewer overflow (SSO) as any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease. SSOs pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

According to the State Water Board's data on SSOs, 70% - 75% of the known causes and trends related to the causes of SSOs across the state tend to be tree roots, grease, fats, oils, and general debris. Even if wipes constitute less than 25% of the cause of SSOs, they still remain a disruption and a growing cost to local sanitation agencies to manage.

Plumbing standards: Minimum standards exist for the construction of building drainage pipe systems; these include allowable pipe diameters and slopes, venting requirements, and piping materials. Increasingly, smaller diameter pipes are being installed in new buildings. The passage of solid materials through these systems is dependent on the water being able to move the product. In 1995, the National Energy Policy Act (House Resolution 776) mandated that all new toilets must flush with no more than 1.6 gallons of water. If a flushable product can pass through a low-consumption toilet after one flush, there is a strong likelihood that product could pass through a stronger toilet system.

Establishing a workable flushable standard for flushable wipes: While there is not yet a regulatory standard for what is allowable to be flushed, there are both industry and water association standards that have used rigorous testing and engineering assessments to define "flushability."

INDA Guidance Document: After years of work, involving some 40 companies, in 2008, INDA and EDANA, the trade associations for non-woven fabrics supplied to the market across North America, Europe, the Middle East, and Africa, published the first edition of its Guidance Document, which contains guidelines to provide companies with a comprehensive framework for testing products to determine their flushability.

The Guidance Document contains flow charts of key questions that need to be answered for each route a product could follow post-flushing. The questions are answered through a series of tests.

Acceptance criteria for each test and for each question either demonstrate compatibility with the disposal system or determine whether further testing would be required before flushability could be clearly established.

The framework in the Guidance Document was based heavily on recommendations in the report by the Water Environment Research Foundation (WERF) called "Protocols to Assess the Breakdown of Flushable Consumer Products." The end-result underwent trials accompanied by a rigorous peer review by U.S. and European experts in wastewater conveyance and treatment, engineers, and those from academia who study the issue.

The INDA guidelines have continued to evolve. As a result, the INDA guidelines have gone through multiple reviews and iterations and have evolved to one that requires all wipes to pass seven different tests in order to be marketed as flushable. The seven tests include: a slosh box disintegration test; household pump test; settling test; aerobic biodisintegration test; anaerobic biodisintegration test; and, a municipal sewage pump test.

The current version of INDA/EDANA's Guidance Document 4 (GD4) was released in May of 2018.

INDA's guidance, per GD4, requires a test system containing 2 liters of water in an oscillating slosh box in which a single nonwoven wipe is run for 60 minutes. Subsequently, the contents of the box are transferred to and then rinsed through a 12.5mm perforated place sieve. The portions of the wipe retained on the sieve are recovered, dried, and analyzed. To pass the test as "flushable," the percent of the starting dry mass passing through the 12.5mm perforated plate sieve after 60 minutes must be greater than 60% for at least 80% of the individual replicates tested.

International Water Services Flushability Group (IWSFG): The IWSFG is an international group of water service providers, and the associations and organizations representing them, that developed criteria for items that can be flushed down the toilet worldwide. Members include the National Association of Water Agencies, California Association of Sanitation Agencies, Sanitation Districts of Los Angeles County, as well as the Japan Sewage Works Association, European Water Association, Israeli Water Association, and water associations from Belgium, France, Spain, the Czech Republic, Estonia, Canada, and many more.

The IWSFG's founding principles state that to prevent problems with sewers, pipe, and toilet blockages plus the human and environmental cost of sewer flooding and pollution, the organizations signing this statement below agree that "only the 3Ps – Pee, Poo, and toilet Paper – should be flushed." They also state that new innovations in materials might make it possible for certain products to be flushed, if they pass a technical standard which has been developed and agreed by the water and wastewater industry. The founding principles state that, "Key requirements for any standard include that the product: a) breaks into small pieces quickly; b) must not be buoyant; and, c) does not contain plastic or regenerated cellulose and only contains materials which will readily degrade in a range of natural environments."

The IWSFG developed the International Water Industry Statement on Flushability that was released on September 22, 2016, and signed by more than 250 water organizations. The 2018 IWSFG standards have five performance criteria, of which three utilize INDA standards. An additional criteria is based on Technical Association of the Pulp and Paper Industry

(TAPPI)/*American National Standards Institute* for testing whether there are plastics in the material, and then there is the fifth criteria, where the IWSFG standard deviates from INDA's: the slosh box test.

Under IWSFG's guidance, wipes are placed in a slosh box containing four liters of water, which are then rotated at 18rpm for 30 minutes. The box is then emptied onto a 25mm perforated sieve and the upper surface of the sieve is rinsed at a designated flow. Quantitative analysis of the retained contents on the sieve is assessed to see if the total pass through rate of 95% of the total initial dry mass is met.

While the IWSFG test requires 35% more disintegration, its slosh box test provides a sieve with perforations that are two times the size of the sieve called for by INDA, and the IWSFG allows for twice as much water than the industry's slosh box test parameters.

Flushability as determined by this bill: Under the IWSFG slosh box test performance standard, 95% of a wipe must disintegrate. In contrast, *prior* to 2018, the INDA standards for the slosh box test only required 25% of a wipe to break apart and disperse for it to be deemed "flushable," meaning 75% of the wipe could remain and it still be "flushable." Under the current GD 4 standard, up to 39% of the wipe can remain.

The California Association of Sanitation Agencies (CASA), which represents more than one hundred public agencies that engage in the collection, treatment or disposal of wastewater, resource recovery or water recycling, states that the IWSFG standard is more stringent and will result in fewer wipes adding to backups and clogs.

AB 1672, sponsored by CASA, would codify the ostensibly more stringent of the two standards -- the IWSFG testing methods and criteria for flushability.

Non-flushable labeling: There are many kinds of wipes on the market: "flushable" wipes, disinfectant cleaning wipes, makeup remover wipes, personal hygiene wipes, and baby wipes, surely among others. The wipes currently sold as flushable are made of cotton. Many of the wipes on the market not intended by the manufacturer to be flushable (but often are flushed by consumers) are made of cotton and plastic materials to make the wipes more durable (such as cleaning wipes). Both "flushable" wipes and those not intended to be flushed can cause problems for sewer agencies. The flushability criteria in the bill will provide clarification to manufacturers of "flushable" wipes. To try to address some of the consumer confusion, AB 1672 requires any product that does not meet the bill's flushability criteria to be clearly labeled that is it not flushable per INDA's labeling requirements. INDA's Code of Practice includes a "Do Not Flush" symbol for companies to use on product packaging.

Enforcement: The bill designates CalEPA as the enforcing agency to issue violations and administrative penalties to manufacturers not in compliance with the provisions of the bill.

CalEPA is not a regulatory agency, and enforcing manufacturer compliance standards is not that state entity's normal purview.

Other state laws that determine manufacturing standards leave enforcement up to the Attorney General and local district attorneys. It may be more appropriate to remove the provisions of the bill from CalEPA and provide enforcement by the Attorney General.

Arguments in support: According to the CASA, the sponsor of the bill, "When wet wipes products are flushed into the sewer system they can cause significant issues for private property owners, sewer collection systems, and wastewater treatment plants. Wet wipes products that do not break down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners. Wet wipes have also been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners … AB 1672 presents a straightforward solution to helping combat the problems caused by improperly flushing wet wipes. The bill prescribes clear and consistent consumer messaging for these products that indicates to consumers that either a wipe is 'flushable,' or it is not. Under the provisions of AB 1672, wipes can be labeled as 'flushable' if they do not cause harm to the sewer system, meaning that manufacturers can demonstrate that their wipes break down in the sewer system like dry toilet paper. For all other wipes that are not intended to be flushed, they must be conspicuously marked with 'Do Not Flush' labeling."

Arguments in opposition: According to INDA, "Data from California State Water Resources Control Board Sanitary Sewer Overflow (SSO) Reduction program illustrates that the INDA/EDANA flushability standards are working well as it reflects wipes products are not the cause of overflows and clogs … AB 1672 (Bloom) seeks to codify the flushability specification created by an informal group of wastewater associations called the International Water Services Flushability Group (IWSFG). Their specification is overreaching in that IWSFG's PAS3 test fails not only all flushable wipes on the market but some toilet paper as well. Unless wastewater experts have decided that their collection systems can no longer handle toilet paper, the necessity for a flushability test so stringent that fails to pass toilet paper is highly questionable."

Committee amendments: The committee may wish to amend the bill as follows:

1) Remove the bill from the jurisdiction of CalEPA and instead leave enforcement up to the Attorney General, district attorneys, and city prosecutors.

2) Delete Section 49652 (f) from the bill to prevent a local standard from superseding the state standard that this bill intends to create.

Double referral: Should this bill be approved by the Assembly Environmental Safety & Toxic Materials Committee, it will be re-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

CALIFORNIA ASSOCIATION OF SANITATION AGENCIES (SPONSOR)
CALIFORNIA PRODUCT STEWARDSHIP COUNCIL
CENTRAL CONTRA COSTA SANITARY DISTRICT
CITY OF BURLINGAME

CITY OF CAMARILLO
EASTERN MUNICIPAL WATER DISTRICT
GOLETA WEST SANITARY DISTRICT
LAS GALLINAS VALLEY SANITARY DISTRICT
LAS VIRGENES MUNICIPAL WATER DISTRICT
NATIONAL STEWARDSHIP ACTION COUNCIL
ORANGE COUNTY SANITATION DISTRICT
SACRAMENTO AREA SEWER DISTRICT
SACRAMENTO COUNTY REGIONAL SANITATION DISTRICT (REGIONAL SAN)
SANITATION DISTRICTS OF LOS ANGELES COUNTY
UNION SANITARY DISTRICT

Opposition

AMERICAN FOREST & PAPER ASSOCIATION
CALIFORNIA CHAMBER OF COMMERCE (CALCHAMBER)
CALIFORNIA MANUFACTURES & TECHNOLOGY ASSOCIATION
CONSUMER HEALTHCARE PRODUCTS ASSOCIATION
GROCERY MANUFACTURERS ASSOCIATION
HOUSEHOLD AND COMMERCIAL PRODUCTS ASSOCIATION
INDA, ASSOCIATION OF THE NON-WOVEN FABRICS INDUSTRY
PERSONAL CARE PRODUCTS COUNCIL

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

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1751 (Chiu) – As Amended March 21, 2019

SUBJECT: Water and sewer system corporations: consolidation of service

SUMMARY: Establishes timeframes by which the Public Utilities Commission (PUC) is required to take action on a request for water system consolidation. Specifically, **this bill**:

1) Establishes the Consolidation for Safe Drinking Water Act of 2019.

2) Makes findings and declarations regarding the needs for facilitating consolidation of public water systems and state small water systems that consistently fail to provide an adequate supply of safe drinking water.

3) States the intent of the Legislature is to promote timely consolidation of water systems to provide an adequate supply of safe drinking water for all residents of California.

4) Defines consolidate as joining two or more public water systems, state small water systems, or affected residences not served by a public water system into a single public water system.

5) Defines subsumed water system as the public water system or state small water system consolidated into the water or sewer system corporation.

6) Authorizes a water or sewer system corporation to file an application and obtain approval from the PUC through an order authorizing that water or sewer system corporation to consolidate with a public water system or state small water system, or to implement rates for the subsumed water system.

7) Requires the PUC to approve or deny an application within eight months of its filing, unless the PUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline by up to an additional eight months.

8) Authorizes a water or sewer system corporation to file an advice letter and obtain approval from the PUC through a resolution authorizing that water or sewer system corporation to consolidate with a public water system or state small water system, or to implement rates for the subsumed water system, when any of the following occur:

   a) A water or sewer system corporation consolidates with a public water system or state small water system with fewer than 3,300 service connections;

   b) A water or sewer system corporation consolidates with a public water system or state small water system serving a disadvantaged community;

   c) A water or sewer system corporation consolidates with a public water system or state small water system that is subject to a compliance order for failure to meet primary or secondary drinking water standards, as defined under current law; or,

d) A water or sewer system corporation consolidates with a public water system or state small water system, the sale or transfer of which has been previously approved under current law.

9) Authorizes approval to be given by the executive director of the PUC or the director of the division having regulatory jurisdiction over the water or sewer system corporation if a filed advice letter is uncontested.

10) Requires the PUC, absent incomplete documentation, to approve or deny the advice letter within four months of its filing by the applicant water or sewer system corporation unless the executive director of the PUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues a response extending the deadline by up to an additional four months.

11) Authorizes the PUC, for any consolidation that meets the criteria described above, to designate a different procedure if it determines that the consolidation warrants a more comprehensive review than the advice letter procedure provides.

12) Provides that nothing in this bill shall be construed to require a public water system or state small water system that is not subject to the jurisdiction, control, and regulation of the PUC to obtain authorization from the PUC before consolidating with a public water system or state small water system.

EXISTING LAW:

1) Requires the State Water Board, in administering Safe Drinking Water Act (SDWA) programs, to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities, and prioritize funding for construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system. (Health & Safety Code (HSC) § 116326)

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

3) Makes legislative findings that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and that it is in the interest of the people of the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems. (HSC § 116760.10 (h))

4) States that no person or corporation shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the PUC. Provides that any merger, acquisition, or control

without that prior authorization from the PUC shall be void and of no effect. (Public Utilities Code (PUC) § 854)

5) States the intent of the Legislature is that transactions with monetary values that materially impact a public utility's rate base should not qualify for expedited advice letter treatment. (PUC § 853 (d))

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

7) Defines "state small water system" as a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. (HSC 116275 § (n))

8) Defines "disadvantaged community" as a community with an annual median household income that is less than 80 percent of the statewide annual median household income. (Water Code (WC) § 79505.5(a))

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "There are communities in California that lack access to clean drinking water. This is unacceptable. In many areas in the state, there are water systems that cannot afford – and are either unwilling or unable to raise rates sufficiently to make – the improvements necessary to provide drinking water to residents … The [PUC] must approve all water system consolidations that involve PUC-regulated utilities .. but the process is inconsistent and sometimes time-consuming … Accordingly, this bill will create a waiver for the current 18-month established time frame for applications and set deadlines for the completion of small water system voluntary consolidations that require PUC approval."

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

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

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

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

Drinking water contamination in disadvantaged communities: The February 2018, University of California (UC) Davis report, "*The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities*," summarizes drinking water issues facing disadvantaged communities in California as follows.

> "In California, lack of access to clean, safe, and affordable water is a threat to public health and well-being, and violates the state's newly codified Human Right to Water. In low-income communities located outside city boundaries (known as disadvantaged unincorporated communities or DUCs), drinking water is often unsafe to drink. In many such localities, drinking water is contaminated by industrial by-products (usually associated with agriculture, oil and gas production, transportation, and manufacturing) and compromised by inadequate wastewater treatment and disposal systems, as well as naturally occurring toxic substances like arsenic and uranium. Many DUC residents in the San Joaquin Valley pay a triple penalty to obtain safe water: they bear the health costs of unsafe drinking water; they purchase that unsafe water at high costs; and they must also purchase 'substitute' water—typically expensive bottled water—for drinking and cooking.
>
> Lack of access to clean, safe and affordable drinking water has a racial and ethnic component: the vast majority of DUC residents are people of color who also face cumulative impacts from environmental contamination brought on by proximity to air pollution, pesticides, toxic facilities and waste disposal. Without city governments to directly represent their interests and provide essential services, residents of DUCs have been systematically deprived of access to important means of democratic governance."

While the 2018 UC Davis report focuses on DUCs in the San Joaquin Valley, the findings are consistent with a more expansive 2013 State Water Board report and 2012 UC Davis report that found that drinking water contamination in California disproportionally affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source. The 2013 State Water Board report found that 682 community public water systems in California, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water. It also found that 265 community public water systems, which serve a

little more than two million people, had received at least one drinking water quality violation within the last compliance cycle. The report points out that an additional two million Californians rely on groundwater from a private domestic well or a smaller groundwater-reliant system that is not regulated by the state. The State Water Board reports that currently approximately 330 drinking water systems are not in compliance with drinking water standards.

The 2018 UC Davis report also found that a significant number of DUC residents live close to an existing, and water quality compliant, community water system that could provide them with clean drinking water.

Urban disadvantaged water systems: A March 15, 2019 briefing paper (Paper) from the UCLA Water Resources Group noted that the Legislature and Governor have made a strong commitment to rural water systems, but have not provided as much information about urban disadvantaged water systems. The Paper noted that Los Angeles County (LA County) has 210 community water systems, with 64 water systems serving either disadvantaged or severely disadvantaged communities. It estimates that these 64 disadvantaged urban water systems could be serving close to 1,000,000 people. One of the key points of the Paper is that there is very little information about these urban water systems, and whether or not they have the technical and managerial expertise to provide clean safe drinking water to their customers. In one recent example in Compton, that State Water Board appointed LA County to take over the administration of the Sativa Water District (District), and LA County discovered that the water system operated by the District was failing and that the District had a compliance order that would take 12 years of its revenues for compliance costs to enact.

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

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

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

Since 2016, the State Water Board has ordered the consolidation of three public water systems with an additional five water systems consolidating voluntarily.

Public Water System and Consolidation Act of 1997: As it relates to public water utilities, state law requires these systems to obtain PUC approval to merge with or buy another public utility or to sell useful utility property (PUC §854(a)). Water system consolidations under the jurisdiction of the PUC are semantically considered acquisitions and mergers, and the approval of those transactions differ from those at the State Water Board.

The Legislature enacted the Public Water System Investment and Consolidation Act of 1997 (Act) to provide water corporations with an incentive to acquire public water systems needing improved infrastructure to meet increasingly stringent safe drinking water laws and regulations. The Act does this by requiring the PUC to use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation, and to use this value for rate setting.

The PUC conducts proceedings to consider applications for authority to merge with or acquire another public utility or to sell a public utility water system, to operate an acquired water system, to include acquired water systems in rate base, to establish tariffs for an acquired water system, and to make other related requests.

The PUC uses two methods for approving PUC-regulated water system consolidations:

1) Applications – where the consolidation involves the acquisition of a PUC-regulated public water system by another PUC-regulated public water system; and,

2) Advice Letters – where the consolidation involves the acquisition of a public water system not regulated by the PUC and where certain conditions are met.

From 1998 (when the Act became effective) through 2016, covered water corporations sought approval to acquire 19 water systems. Thirteen of these requests were made by application, while six were made via Advice Letter.

Currently, applications undergo a formal legal process with an administrative law judge (ALJ) and start with an 18-month time line (although the ALJ or the Assigned Commissioner can extend this deadline indefinitely). Applicable Advice Letters can be processed and approved by the PUC in much less time – sometimes less than four months. The PUC can and has granted requests to require that water utilities file applications for acquisitions of municipal water systems instead of Advice Letters, particularly if there may be rate impacts for either the existing system's customers or the acquired system's customers.

Office of Public Advocates: The Public Advocates Office (Office) is an independent organization within the PUC that advocates solely on behalf of utility ratepayers. The Office represents the public interest and benefits of utility customers in water utility acquisition and other PUC proceedings. The Office is often the only party in these proceedings other than the buyer and seller.

The Office has a very important role in overseeing these consolidations. However, the Office is currently understaffed with only one staff person primarily dedicated to supporting its

participation in water utility acquisition proceedings. All other Office staff in the Water Branch are fully dedicated to supporting advocacy in water general rate case proceedings. According to the Office, staff spends an average of 985 hours per year advocating in each water utility acquisition proceeding. With current resources, the Office can only effectively participate in two water system acquisition proceedings at any given time. This contributes to delays in approving water utility consolidations.

Other delays: The PUC's process for reviewing voluntary system consolidations is inconsistent and often time consuming. It is not unusual for the approval process to take as long as 24-months, even when, in the case of a challenged system, the residents of a town or city have voted to have the system consolidated by the PUC-regulated water utility.

Many factors are impeding faster approval times. The volume of work on the PUC, limited staff resources dedicated to water utility issues, the workload of the ALJs, as well as the nuances of individual consolidation cases, can impact approval time.

Timing: Since 2013, thirteen PUC-regulated water systems have requested consolidation from the PUC. The average amount of time to approve a request is 314 days – nearly a year from when the application or Advice Letter was submitted. Six of those thirteen are still pending.

While consolidations under current law are not as frequent as they are under State Water Board law, the number of applications to the PUC will likely continue to grow on an annual basis because acquisition of small, distressed water systems by larger, better-managed systems is necessary to ensure delivery of safe and reliable drinking water across the state. Therefore, a delay in consolidation can lead to a delay in access to clean drinking water from some Californians.

While many applications on other matters before the PUC (e.g. general rate cases) use the 18-month time frame, the author believes the issues involved in a small system consolidation should not warrant a drawn out proceeding, especially when water quality compliance or technical, managerial and financial challenges increase the risks for water utility customers.

AB 1715 would require the PUC to approve or deny an application within eight months of its filing, and would also require the PUC, absent incomplete documentation, to approve or deny an advice letter within four months of its filing by the applicant water or sewer system corporation.

If those timeframes do not suffice for the work of the Office, or for any other reason, the PUC's judicial process allows for time extensions pursuant to the overseeing judge's discretion. Therefore, should an application, or the PUC, need more time to process a request for consolidation, additional time could likely be granted.

Related legislation:

1) AB 508 (Chu). This bill would further implement the provisions from AB 2501 regarding domestic wells and fees imposed on new and existing customers for increase groundwater use following a consolidation or extension of service. It will be heard in the Assembly Environmental Safety & Toxic Materials Committee on April 9, 2019.

2) AB 2339 (Gipson, Chapter 866, Statues of 2018). This bill authorizes the City of El Monte, the City of Montebello, and the City of Willows to sell its public water utility through an alternative simplified procedure for the purpose of consolidating with another public water system.

3) AB 2501 (Chu, Chapter 871, Statutes of 2018). This bill provides additional authority to the State Water Board to order consolidations.

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

5) SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015). This bill authorizes the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system).

REGISTERED SUPPORT / OPPOSITION:

Support

California American Water, a wholly owned subsidiary of American Water Works
City of Bellflower
City of Perris
Liberty Utilities
Sierra Club

Opposition

None on file.

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