

**Vice-Chair**  
Melendez, Melissa A.

**Members**  
Arambula, Joaquin  
Bauer-Kahan, Rebecca  
Dahle, Brian  
Garcia, Cristina  
Holden, Chris R.  
Mathis, Devon J.  
Muratsuchi, Al

**California State Assembly**  
**ENVIRONMENTAL SAFETY AND TOXIC MATERIALS**



**BILL QUIRK**  
CHAIR

**Chief Consultant**  
Josh Tooker

**Senior Consultant**  
Paige Brokaw  
Shannon McKinney

**Committee Secretary**  
Pia Estrada

**AGENDA**

Tuesday, March 12, 2019  
1:30 p.m. -- State Capitol, Room 444

**ADOPTION OF COMMITTEE RULES**

**HEARD IN SIGN-IN ORDER**

- |    |        |                 |   |
|----|--------|-----------------|---|
| 1. | AB 142 | Cristina Garcia | Lead-acid batteries.(Urgency)   |
| 2. | AB 402 | Quirk           | State Water Resources Control Board: local primacy delegation: funding stabilization program. |
| 3. | AB 432 | Quirk           | Released waste: certification of local officers.  |

**PROPOSED CONSENT**

- |    |        |       |   |
|----|--------|-------|---|
| 4. | AB 292 | Quirk | Recycled water: raw water and groundwater augmentation. |
| 5. | AB 320 | Quirk | Pest control: mosquito abatement.                       |

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS  
Bill Quirk, Chair  
AB 142 (Cristina Garcia) – As Amended February 25, 2019

**SUBJECT:** Lead-acid batteries

**SUMMARY:** Increases the Manufacturer Battery Fee and makes other changes to the Lead-Acid Battery Recycling Act (Act) of 2016. Specifically, **this bill:**

- 1) Revises the definition of "manufacturer" to state that a person who manufactures a lead-acid battery is subject to the jurisdiction of the state with respect to a lead-acid battery if the person is engaged in business in this state, including a "retailer engaged in business in this state," as defined, with respect to that lead-acid battery.
- 2) States that if a new car dealer sells or leases to a person a used vehicle into which the new car dealer has incorporated a replacement lead-acid battery, the California Battery Fee shall not apply to the person with regard to that replacement lead-acid battery.
- 3) Authorizes a person who manufactures a lead-acid battery and who is not subject to the jurisdiction of the state to agree in writing with the importer of that lead-acid battery to pay the Manufacturer Battery Fee on behalf of the importer.
- 4) Requires a person who pays the Manufacturer Battery Fee on behalf of an importer to be credited for that payment, if the person does all of the following:
  - a) Submits to the jurisdiction of the state for purposes of the fees imposed under the Act and registers with the California Department of Tax and Fee Administration (CDTFA) to pay and remit the manufacturer battery fee;
  - b) Provides to the purchaser a statement on the invoice, contract, or other record documenting the transaction that includes the following information:
    - i) The person's manufacturer account number with CDTFA;
    - ii) An identification of the lead-acid battery or batteries sold that will be subject to the manufacturer battery fee; and,
    - iii) A statement that the person will pay the manufacturer battery fee to the state on behalf of the importer;
  - c) Retains records sufficient to document that the lead-acid battery for which the person has agreed to pay the manufacturer battery fee was delivered for retail sale in California, the identity of the purchaser of that battery, and that the statement was provided to the purchaser of the battery in a timely manner; and,
  - d) Requires the person to retain these records for a period of no less than four years and to make the records reasonably available to CDTFA upon request.

- 5) Requires a purchaser of a lead-acid battery who receives a timely statement from a manufacturer, and any subsequent purchaser of that battery, to be relieved from any obligation related to the Manufacturer Battery Fee on the sale of that battery, provided that the manufacturer remits payment of the Manufacturer Battery Fee to the state for the sale of that battery. Requires that a statement shall be considered timely if it is issued before the manufacturer bills the purchaser for the lead-acid battery, within the manufacturer's normal billing and payment cycle, before delivery of the battery to the purchaser, or before the date on which a return would be due.
- 6) Authorizes an importer who has paid the Manufacturer Battery Fee for a lead-acid battery and who subsequently receives an untimely statement that the fee has been paid for that battery to file a claim for a refund for any overpaid fees.
- 7) Requires, on or before January 1, 2021, CDTFA to submit to the Legislature a report relating to persons who have paid the Manufacturer Battery Fee on behalf of an importer. Requires the report to include, but not be limited to, all of the following information:
  - a) Any regulations or policies adopted by CDTFA for the purposes of ensuring compliance with the registration, returns, reporting, payments, audits, refunds, or collection requirements related to the manufacturer battery fee;
  - b) The revenue impact as determined by the revenues paid or collected compared to the estimated revenue amount calculated by the Senate Committee on Appropriations in its analysis of the fiscal impact of Assembly Bill 2153 (C. Garcia, Chapter 666, Statutes of 2016), adjusted as deemed appropriate by the CDTFA to account for differences in reporting periods and to account for exemptions or exclusions that were not previously accounted for in that analysis or that were enacted after January 1, 2018; and,
  - c) The fiscal impact of the Manufacturer Battery Fee, including costs required to ensure compliance, costs related to audits, refunds, and administering regulations, and estimated cost savings.
- 8) Deletes the sunset on the \$1 Manufacturer Battery Fee and increases the fee to \$2 in perpetuity effective April 1, 2022.
- 9) States that a person is not required to register as a manufacturer of lead-acid batteries if the person has an agreement or agreements with a manufacturer or manufacturers of lead-acid batteries pursuant to which the manufacturer or manufacturers agree to pay the Manufacturer Battery Fee on behalf of the person and the agreement or agreements apply to all lead-acid batteries sold by the person.
- 10) Authorizes CDTFA to disclose the name, address, account number, and account status of a person registered with CDTFA required to pay the Manufacturer Battery Fee. Prohibits the account status from including the amount of the Manufacturer Battery Fee paid by any person.

- 11) States that funds from the Lead-Acid Battery Cleanup Fund (Fund) can only be used for repayment of a loan to clean up the Exide Technologies (Exide) remediation site after the other eligible expenses for the Fund are paid first.
- 12) Makes technical changes to update the Board of Equalization's name to CDTFA.
- 13) Establishes these statutory changes as an urgency act in order to increase the cleanup of toxic materials and to prevent additional toxic pollution at the earliest possible time. Provides that it is necessary that these provisions take effect immediately.

**EXISTING LAW:**

Pursuant to the Lead-Acid Battery Recycling Act of 2016 (Health & Safety Code (HSC) § 25215, et seq):

- 1) Requires, on and after April 1, 2017, until March 31, 2022, a California Battery Fee of \$1 to be imposed on a person for each replacement lead-acid battery purchased from a dealer. Requires, on and after April 1, 2022, the amount of the California Battery Fee to increase to \$2. (HSC § 25215.25)
- 2) Requires each manufacturer to remit to the CDTFA a \$1 Manufacturer Battery Fee for each lead-acid battery sold at retail to a person in California. Sunsets the Manufacturer Battery Fee on April 1, 2022. (HSC § 25215.35)
- 3) Requires all California Battery Fee and Manufacturer Battery Fee revenues be remitted to the CDTFA for administration of the fee and the remainder to be deposited into the Fund. (HSC § 25215.5)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

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

"Since the [AB 2153] was signed into law, the Board of Equalization (BOE), now the California Department of Tax and Fee Administration (CDTFA), has been working on regulations to implement the fee collection and technical problems have been identified. Exide and the other communities with historic lead-acid battery manufacturing plants have a great need for ongoing funding and to ensure that the battery fee money can only be used for its intended purpose.

AB 142 addresses three technical problems that were identified: 1) Will clarify that out of state Manufacturers can elect to register with the CDTFA to pay a \$1 fee on all batteries sold in the state; 2) This bill will also allow the CDTFA to post who is a registered manufacture on their webpage, this is similar to other fee programs that the CDTFA administers; and, 3) It also clarifies that the consumer fee shall not apply to any person when a replacement lead-acid battery is included in any used vehicle sold or leased by a new motor vehicle dealer.

This bill also addresses two other key issues. It will remove the April 1, 2022, sunset from the manufacturer battery fee, and increase the manufacturer battery fee from \$1 to \$2 to

match the consumer fee, and only allow the repayment of the \$176.6 million dollar loan once the clean-up of Exide and other areas of the state that may be contaminated by lead acid batteries has been completed."

*Lead:* Lead is a toxic metal that does not break down in the environment and accumulates in the human body. Exposures to lead can lead to a number of health problems, including: behavioral problems, learning disabilities, joint and muscle weakness, anemia, organ failure, and even death. Lead has been listed under California's Proposition 65 since 1987 as a substance that can cause reproductive damage and birth defects and has been on the list of chemicals known to cause cancer since 1992.

*Lead-acid batteries:* State and federal governments have passed laws and regulations to reduce human exposure to lead. As a result of these changes in statute, leaded gasoline in automobiles has been phased out; lead solder in cans has been eliminated; lead-based paint for consumer uses, such as housing, has been banned; lead-based paint abatement activities in housing and other buildings is required; and, people are encouraged to recycle batteries, including lead-acid batteries.

Lead-acid batteries constitute an important contributor to lead in the environment. Statute prohibits the disposal of lead-acid batteries at a solid waste facility, or on or in any land, surface waters, watercourses, or marine waters (HSC § 25215.2). It also requires retailers to accept the trade-in of a spent lead-acid battery by a consumer upon purchase of a new one (HSC § 25215.3).

Lead-acid battery recycling facilities, or secondary lead smelters, bring with them the potential for threats to public health from lead poisoning. The recycling process includes: crushing the batteries, draining the sulfuric acid, and smelting the remaining lead material in large furnaces. The furnaces require extensive air pollution control systems to meet current air pollution control requirements. However, some of these secondary lead smelters have been operating for more than 50 years, before any air pollution control requirements existed, and without controls. DTSC estimates that each of these older smelters emitted one ton of lead particles into the air each hour. The particles would land on nearby residential properties, potentially mixing with lead dust from automobile exhaust, lead based paint residues, and lead from other industrial operations.

As a result, there is historical pollution from lead-acid battery smelters all around California that needs to be cleaned up to protect the public from the known and irreparable dangers of lead.

*Inception of the Act:* The Lead-Acid Battery Recycling Facility Investigation and Cleanup Program was established pursuant to Assembly Bill 2153 (C. Garcia, Chapter 666, Statutes of 2016), which became the Lead-Acid Battery Recycling Act of 2016 (Act).

The Manufacturer Battery Fee and California Battery Fee on lead-acid batteries sold in the state are deposited into the Fund created by the Act. The Fund is a dedicated source to pay for cleanup of the Exide battery recycling site in Vernon, California, and at other contaminated sites. The Act also provides that manufacturers paying the fee receive a one-time credit equal to the amount each has paid against any future judgement of legal responsibility for a share of those cleanup costs.

Beginning on and after April 1, 2017, and until April 1, 2022, a \$1 fee is imposed on a manufacturer for each lead-acid battery sold at retail to a person in California, or that is sold to a

dealer, wholesaler, distributor, or other person for retail sale in California. The manufacturer is required to remit the fees to the CDTFA at the time the return is required to be filed.

*Exide Technologies:* The Exide battery recycling facility in Vernon, California, recycled lead from used automotive batteries and other sources. The facility could process about 25,000 automotive and industrial batteries a day, providing a source of lead for new batteries. 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 March, 2015, Exide was forced to close the facility.

Properties up to 1.3 and 1.7 miles away from the facility are impacted by Exide's lead contamination, which amounts to upwards of 10,000 properties. According to DTSC, cleaning each home costs about \$60,000 (an increase from the previously \$45,000 anticipated cost per property). DTSC has sampled 8,527 properties to-date; 7,733 properties have exceeded the screening level of 80 parts per million (ppm), meaning about 90% of all properties tested for lead will require remediation. Removing lead-contaminated soil from thousands of homes surrounding Exide could result in the most extensive cleanup of its kind in California and will be among the largest cleanup ever conducted in the nation.

On April 20, 2016, Governor Jerry Brown signed AB 118 (Santiago, Chapter 10, Statutes of 2016) and SB 93 (De León, Chapter 9, Statutes of 2016), appropriating a \$176.6 million loan from the General Fund to the Toxic Substances Control Account (TSCA) to enable DTSC to test properties, schools, daycare centers, and parks in the 1.7 mile radius and remove contaminated soil at the properties that have the highest lead levels and greatest potential exposure to residents.

Cleanup costs initially incurred by the state will ultimately be sought from the parties responsible for the lead contamination (Exide). DTSC will need funds to pay for the work while it seeks additional money from Exide and other responsible parties.

After the \$176.6 million is expended, DTSC will need additional funds for a complete and thorough cleanup. AB 2153 authorized use of the fee revenues in the Fund to fill that gap and repay the state loan (HSC § 25215.59) while providing an ongoing source of funds to address lead contamination from lead-acid batteries.

Governor Newsom, in his proposed Fiscal Year (FY) 2019-2020 Budget, included an additional \$75 million General Fund one-time loans to accelerate the cleanup of additional properties within a 1.7-mile radius of the facility over the next two years. Of that, \$50 million would allow DTSC to clean up approximately 700 additional high-risk properties in which lead contamination exceeds the state standard of 80 parts per million, and \$25 million would be used to continue cleaning up previously identified sites contaminated by Exide facility.

*Areas potentially contaminated by lead-acid battery recycling:* AB 2153 requires DTSC to annually report to the Legislature on the status of DTSC's progress on implementing the Act and how it plans to spend revenues from the Fund on site remediation at other lead smelter sites.

In DTSC's first report from February 2018, DTSC describes its collaboration with the U.S. Environmental Protection Agency Region 9 (EPA Region 9) to evaluate previous and current lead-acid battery recycling facilities in California. This evaluation focused on 39 former lead

smelter sites identified from a comprehensive review of site investigation and cleanup records maintained by both EPA Region 9 and DTSC, including DTSC's EnviroStor database.

Based on an initial review of the 39 sites, DTSC selected 18 potentially contaminated sites for a more thorough assessment, using available information to determine if further investigation, cleanup, or other appropriate actions are needed to protect public health. DTSC also evaluated areas around these sites to assess potential health impacts to schools, parks, and residential properties. Based on the assessment of the potential threat to public health and the environment, DTSC prioritized four of the 18 sites for investigation and potential remedial action in FY 2018-2019.

These other facilities may have operated and closed before environmental regulatory programs were established. DTSC has noted that although these secondary lead smelters may not precisely meet the definition of lead-acid battery recycling facility pursuant to AB 2153, it is possible that some or all of these historical smelters do meet the facility definition in the Act.

DTSC is researching the historical smelting facilities and gathering additional information on each of these facilities to ascertain the scope and nature of their operations and their impact on the surrounding communities. If any of these facilities meet the definition of a lead-acid battery recycling facility, they would be subject to investigation and cleanup by DTSC. The Fund created by AB 2153 would bear the initial cost of this effort if the Legislature appropriates funds for these activities.

*Statutorily authorized uses of the Fund revenues:* Under current law, CDTFA collects all fees and retains sufficient funds necessary to cover its administrative costs to collect the fee. Once those costs are deducted, the remaining fees are deposited into the Fund, which are then available upon appropriation by the Legislature.

AB 2153 specified that monies from the Fund shall be expended for the following activities:

- 1) Investigation, site evaluation, cleanup, remedial action, removal, monitoring, or other response actions at any area of the state that is reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility;
- 2) State administrative costs; and,
- 3) Repayment of the \$176.6 million General Fund loan to cleanup Exide.

*A symbolic gesture to fee payers:* This bill includes language that states that revenues from the Fund can only be used for repayment of a loan to clean up Exide *after* the other eligible expenses for this Fund (investigation and site cleanup, administration of the Act), are initially paid.

Though the law specifies eligible expenditures of the fee revenues, AB 2153 was approved by a 2/3 vote of the Legislature due to an urgency clause in the bill. However, that vote threshold effectively rendered the fee a tax, which loosens the restraints for what the fee revenues can be spent.

This language is intended to clarify legislative intent and restrict spending for non-lead-acid battery pollution related expenditures, even if it can be overridden by future legislatures.

*Revenue projections and need:* Since 2017 when the fees went into effect, the Fund accrued \$17.2 million in FY 2017-2018, \$19.6 million in FY 2018-2019, and, according to the Department of Finance, another \$19.6 million is projected for FY 2019-2020.

To keep track of who is paying what and how much, AB 142 requires CDTFA to report to the Legislature by January 1, 2021, and outline the revenue impact determined by revenues collected compared against the revenue estimate from the August 11, 2016, Senate Appropriations Committee analysis for AB 2153, which predicted the Fund would generate "up to \$32 million in revenue from the fee assessment" -- a far cry from the current \$19 million projections.

Projections are important so DTSC can project revenue needs for implementing the Act.

DTSC is expected to release its next annual report to the Legislature, as required by AB 2153, in March, 2019, which will provide more information on DTSC's planned implementation efforts to identify and clean up lead pollution from lead-acid battery smelting. The report will also include information on the sites at which actions were performed using moneys from the Fund, the status of cleanup at those sites, including total anticipated costs of cleanup at those sites, the balance of the Fund, the amount of fees remitted to the Fund, the amount spent by the Fund and the purposes for which those amounts were spent, and the amounts reimbursed to CDTFA.

The report should shine a light on DTSC's resource needs from the Fund for lead contamination cleanup.

*Variability in fee collections:* The Act requires manufacturers (or an importer on a manufacturer's behalf) and dealers (retailers who collect and remit the consumer's California Battery Fee) to collect and remit a \$1 fee (\$2 in aggregate) on each lead-acid battery sold in California.

Despite the fact a \$1 fee is being collected by two entities for the same battery, the remitted amounts vary. For instance, according to CDTFA data, the state is collecting more Manufacturer Battery Fee revenues than California Battery Fee revenues. In Quarter 4 for 2017, \$2.75 million in Manufacturer Battery Fees were remitted, while only \$1.85 million in the California Battery Fee were remitted. This discrepancy can be attributed to manufacturers paying the fee for every lead-acid battery sold in the state, yet not all lead-acid batteries sold in the state are required to have a consumer fee collected. Pursuant to HSC § 25215.1 (o)(2)(A-E), replacement lead-acid batteries, lead-acid batteries for incorporation into new equipment for subsequent resale, replacement of a lead-acid battery pursuant to a warranty or a vehicle service contract, and the sale of any battery intended for use with or contained within a medical device are all excluded from the fee. In addition, dealers can retain 1.5% of the California Battery Fee to cover their administrative costs (HSC 25215.25 (a)(3)). Therefore, fewer California Battery Fee revenues are collected per battery.

*Use of the Fund revenues to-date:* The Legislature has appropriated funds to DTSC to set up and administer the Act, which includes development of a framework for implementation of the Act, and funds to CDTFA to set up and administer the Fund, including outreach to and registration of fee payees— battery manufacturers, importers, and dealers.

Additionally, between the FY 2017-2018 and FY 2018-2019 Budget Acts, the Legislature appropriated \$26.7 million from the Fund to repay the General Fund Exide loan (as authorized

per HSC § 25215.5 (b)(1)(C)). The Governor's proposed FY 2019-2020 Budget would appropriate \$16 million in loan repayment to the General Fund.

There are strong concerns over use of the revenues from the Fund. Loans have been provided to other state accounts unrelated to lead-acid battery clean up, and DTSC has indicated that both of its primary funding accounts (Hazardous Waste Control Account (HWCA) and Toxic Substances Control Account (TSCA)) have large, growing structural deficits.

TSCA provides funds to DTSC to do cleanup at Superfund and state orphan sites (hazardous waste sites without a billable responsible party). DTSC estimates the demand for funding those sites to be \$15 - \$20 million annually for the next few years from TSCA, though the account only has approximately \$10 million in revenues annually. These structural deficits put pressure on the Fund to float funds to those accounts via appropriated loans.

*Why increase the fee to \$2?:* Current law requires both consumers and manufacturers to pay a \$1 fee until April 2022. The California Battery Fee then goes up to \$2 in April 2022 and the Manufacturer Battery Fee sunsets. AB 142 strikes the 2022 sunset date for the Manufacturer Battery Fee and increases the fees to \$2 in perpetuity. Establishing the Manufacturer Battery Fee at \$2 creates equity with what consumers will be paying.

Despite concerns over use of the Fund, it is undisputed that ongoing costs to clean up lead pollution from lead-acid battery operations will be ever increasing and ongoing.

The current Fund balance is not enough to pay back the current \$176.6 million loan and proposed \$75 million additional loans. As it relates to the Governor's proposed \$75 million in loans for Exide cleanup, the Legislative Analyst's Office recommends the Legislature require a report to discuss any plans to use the Fund to repay these proposed loans, and what Exide's repayment could mean for the Fund.

Based on rough math, it would take the Fund more than 12 years to accrue enough revenue to pay the three General Fund loans back in full, and an additional 25 years to fund total cleanup (should DTSC not be able to have cost recovery from Exide as the responsible party for the pollution before cleanup is finished).

Notwithstanding Exide and the future loan repayments for those cleanup costs, there are at least 39 other former lead smelter sites, which may require future remediation. Of the four sites that DTSC prioritized from the list of 39, the estimated sampling and removal action costs are \$30 million.

The additional \$2 fee would theoretically double the Fund's revenues. This will make a dent in the loan repayments, but is insufficient to do lead remediation at the prioritized four sites, let alone 39, additional lead smelter sites.

*Level playing field:* AB 142 seeks to address the issue of out-of-state manufacturers paying the Manufacturer's Battery Fee. The bill allows a lead-acid battery manufacturer not subject to the jurisdiction of the state to enter into a written agreement with the California importer of that lead-acid battery to pay the manufacturer battery fee on behalf of the importer. That out-of-state manufacturer that enters into a written agreement with the importer and who pays the manufacturer battery fee on behalf of the importer will be credited against amounts owed to the state pursuant to a judgment or determination of liability, or any other law for removal,

remediation, or other response costs related to hazardous substance release from a lead-acid battery recycling facility. The out-of-state manufacturer will then be credited for that payment if specified conditions are met.

Since an out-of-state manufacturer conducting transactions wholly outside this state would not be subject to this state's taxing authority, AB 142 creates a mechanism that allows the California importer to agree in writing with the out-of-state manufacturer to pay the Manufacturer Battery Fee for those batteries imported in this state on behalf of the importer. The bill keeps intact the manufacturer and importer's ultimate responsibility for registration, reporting, and payment of the Manufacturer Battery Fee.

The vast majority of lead-acid battery manufacturers are located out-of-state. There are four lead-acid battery manufacturers in California, while roughly 85% of all lead-acid batteries are made outside California.

AB 142 will ensure the Manufacturer Battery Fee is paid for each lead-acid battery sold in California, but it also gives out-of-state manufacturers a way to 'buy in' credits for their legal liability should they be found liable for remediation costs.

*Allowing another person to pay a tax or fee for another person is not unique:* CDTFA administers more than 30 different tax and fee programs and has experienced unique industry compliance issues that have necessitated allowing another person the ability to pay the tax or fee for another person. There have been other instances in which a clear policy issue has required a change in statute or regulation to allow another person to pay a tax or fee for another.

*Arguments in support:* The Los Angeles County Board of Supervisors states, "The County's Department of Public Health (DPH) notes that the County is home to two of the largest battery recycling facilities in California: Exide in the City of Vernon and Quemetco, Inc. in the City of Industry. The increased revenue from AB 142 would increase the funds available for clean-up efforts at contaminated sites across the State. DPH indicates that contaminated sites create a health equity issue, because at-risk communities at risk of lead exposure are predominantly communities of color, and those residents experience underlying health inequities and contend with exposure to multiple environmental hazards."

*Arguments in opposition:* Battery Council International states that it, "opposes the passage of AB 142 as an urgency measure unless amended because it proposes to double the fee imposed upon battery manufacturers before the full revenue potential is established. It is premature to increase the existing fee level before CDTFA establishes if its current implementation efforts are resulting in under-collection of fee revenues and DTSC develops a spending plan consistent with the purposes of the statute."

*Related legislation:*

- 1) AB 1663 (C. Garcia, 2017). Would have amended the Act to clarify provisions related to an out-of-state lead-acid battery manufacturer's financial responsibilities. Specifically, would have authorized a person who manufactures a lead-acid battery and is not subject to the jurisdiction of the state and who agrees in writing with the importer of that lead-acid battery to pay the Manufacturer Battery Fee imposed on behalf of the importer. The bill was later amended with unrelated content.

2) AB 2153 (C. Garcia, Chapter 666, Statutes of 2016). Enacted the Act.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Communities Against Toxics  
California New Car Dealers Association  
California Safe Schools  
Coalition for a Safe Environment  
Desert Citizens Against Pollution  
Los Angeles County Board of Supervisors  
Mothers of East Los Angeles  
PROUNO  
South Coast Air Quality Management District

**Opposition**

AutoCare Association  
Battery Council International  
California Automotive Wholesalers' Association  
California Retailers Association  
Motor and Equipment Manufacturers Association  
National Marine Manufacturers Association

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

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 402 (Quirk) – As Amended March 5, 2019

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

**SUMMARY:** Creates an opt-in program, administered by the State Water Resources Control Board (State Water Board), to fund regulatory oversight of small public drinking water systems in Local Primacy Agency (LPA) counties. Specifically, **this bill:**

- 1) Clarifies that local primacy agreement enforcement activities are covered by the annual drinking water surveillance program grant.
- 2) Authorizes the State Water Board to administer an opt-in program to fund local oversight of small public drinking water systems in LPA counties.
- 3) Requires that an LPA must submit an intention to participate in the program to the State Water Board, with approval by the county board of supervisors, by January 1 of the fiscal year immediately preceding the commencement of the fiscal year for which participation is sought.
- 4) Declares that participation in the program continues until it is terminated by either the LPA or the State Water Board by submitting a notice by January 1 of any year with termination effective July 1 of the succeeding fiscal year.
- 5) Authorizes the State Water Board to establish and collect all fees payable by small public water systems for LPA activities. Prohibits the established fees from exceeding fees charged to equivalent small public water systems regulated directly by the State Water Board. Prohibits LPAs from charging or collecting any additional fees from public water systems.
- 6) Requires that LPAs remit all penalties and fines to the State Water Board for deposit into the Safe Drinking Water Account.
- 7) Requires the LPA to submit a detailed annual workscope to the State Water Board for approval. Requires the workscope to include reasonable costs associated with inspection, monitoring, surveillance, water quality evaluation, and enforcement activities described in the LPA delegation agreement. Requires the State Water Board to provide annual funding to the LPA in accordance with the workscope.
- 8) Requires the LPA to maintain accurate accounting records of all costs associated with the activities described in the LPA delegation agreement, and to make them available periodically to the State Water Board.
- 9) Requires the State Water Board to adopt regulations that provide guidelines, policies, and procedures regarding the preparation of the workscope submitted by the LPA and the terms of payment for work done by the LPA. Requires that these regulations include, but are not

limited to, the approval of reimbursable direct and indirect costs and quantifiable measures for performance evaluation of the LPAs' oversight responsibilities.

10) Declares that this bill takes effect in the 2020-2021 fiscal year and continues thereafter.

**EXISTING LAW:**

- 1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300(f) et seq.)
- 2) Declares that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)
- 3) Requires, pursuant to the California SDWA, the State Water Board to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)
- 4) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275(h))
- 5) Authorizes the State Water Board to delegate primary responsibility of administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement. Declares that the delegation shall not include community water systems serving 200 or more service connections. (HSC § 116330 et seq.)
- 6) Defines "small water systems," for the purposes of local primacy delegations, as community water systems except those serving 200 or more service connections, or non-community transient or non-community non-transient water systems. (California Code of Regulations (CCR) Title 22 § 64251)
- 7) Authorizes a public water system to request and receive from the State Water Board a reduced fee if its entire service area serves a disadvantaged community, defined as a community with a median annual household income of less than 80% of the statewide median annual household income. (CCR Title 22 § 64300(a) and 64310)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

"California recognizes that all individuals have a human right to safe, clean, affordable, and accessible water. The law specifies that the right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas.

The State of California seeks to protect public health and protect these rights by enforcing the Safe Drinking Water Act, which includes a variety of water safety standards, requirements for inspection, and reporting to the State.

LPA delegation agreements help ensure that small water systems deliver adequate and safe drinking water, but small water systems often take more resources per consumer to ensure compliance with state requirements than larger systems. Differences in state and local costs and administration can result in fee variability, but LPA oversight activities are funded entirely by fees. Without the benefit of economies of scale, LPA oversight programs not only cost more to administer, but also generate less fee revenue than large water systems overseen by the State Water Board. Increasing fees to match program costs is difficult to approve locally, especially when many of these communities are also disadvantaged. As a result, several LPAs have had difficulty administering their programs and have returned oversight to the State Water Board. Without a continuous source of funding, the remaining 30 LPAs are again at risk of relinquishing their oversight authority back to the state. Because LPAs currently regulate more than half of all public drinking water systems, it is in the state's interest to ensure that LPAs can continue to serve California consumers."

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

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

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

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

The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures; (2) inspection of water systems; (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards; and, (4) assuring notification is provided to consumers when standards are not being met.

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

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

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

*Challenges in regulating water systems in LPAs:* According to the 2015 Safe Drinking Water Plan, "Larger water systems are better equipped to deal with water quality issues because they have more customers to fund the necessary improvements, have economy of scale, more technical expertise, better management skills and knowledge, are able to solve operational problems internally, and have dedicated financial and business-related staff. They generally have more sophisticated treatment and distribution system operators who are able to react to incidents and changes in treatment conditions that may occur during operations. On the other hand, small systems, especially those in disadvantaged communities, have only a small number of customers, which provides them with limited fiscal assets and no economy of scale. They often lack technical expertise, the ability to address many of the issues pertinent to operating a water system, as well as qualified management and financial and business personnel. The greatest need for oversight is among those smaller PWS serving less than 1,000 service connections, but the fees to cover this activity are insufficient. As a result, it has been a struggle to maintain a program that provides sufficient oversight of small PWS. In recent years, more

LPAs have returned the small PWS regulatory oversight program because their funding is inadequate to effectively administer the program."

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

The State Water Board recommended in 2015 that the legislature address the need for funding of activities that provide greater oversight of and technical assistance to small public water systems, particularly those that serve disadvantaged communities.

*Drinking water violations in small water systems:* In January 2018, the Public Policy Institute of California (PPIC) reported in *Information Gaps Hinder Progress on Safe Drinking Water*, "As of November 2017, the State Water Board's Human Right to Water portal showed that over 300 water systems, serving roughly 490,000 people, were out of compliance. About 13% of these systems are schools, serving roughly 13,000 people; the rest are community water systems. More than 90% of the non-compliant community systems are small, serving fewer than 3,300 people each; 75% serve fewer than 500 people. Small systems are more likely to violate drinking water standards and to lack the technical, financial, and managerial capacity to resolve these issues on their own."

The State Water Board estimates that 300 disadvantaged communities in California are served by systems that fail to meet state drinking water standards (State Water Board, *Affordable & Safe Drinking Water Initiative Fact Sheet*, 2017). To ensure that disadvantaged communities still received drinking water oversight without an unaffordable fee, as of 2017, the State Water Board limited its own oversight fees to \$100 per system (for systems with greater than 100 service connections, an additional graduated flat fee per service connection greater than 100 applies) (CCR Title 22 § 64310).

*The Governor's drinking water priorities:* During his 2019 State of the State address, Governor Gavin Newsom stressed that "today, more than a million Californians woke up without clean water to bathe in or drink." He highlighted that there are small, disadvantaged communities that "are paying more for undrinkable water than Beverly Hills pays for its pristine water. This is a moral disgrace and a medical emergency."

On the day after his State of the State address, Governor Gavin Newsom signed his first bill, AB 72 (Ting, Chapter 1, Statutes of 2019), which amended the Budget Act of 2018 to appropriate additional funding for emergency drinking water projects and technical assistance related to compliance with current drinking water standards. While this funding is helpful, it is not a long-term funding solution.

By authorizing the State Water Board to establish and collect fees in exchange for funding, AB 402 resolves the challenge of funding oversight of small public water systems exclusively with a fee-for-service structure. The bill makes efficient use of resources by strengthening the existing network of local health officers and encouraging local oversight of small water systems. Offering this funding program as an option, and not a mandate, allows LPA counties to individually decide how best to fund their activities.

*Related legislation:*

- 1) AB 217 (E. Garcia, 2019). Would create a Safe and Affordable Drinking Water Fund for secure access to safe drinking water. This bill has been referred to the Assembly Environmental Safety and Toxic Materials Committee.
- 2) SB 200 (Monning, 2019). Would create a Safe and Affordable Drinking Water Fund to secure access to safe drinking water. This bill is scheduled to be heard in the Senate Environmental Quality Committee on April 3, 2019. This bill is double referred to the Senate Natural Resources and Water Committee.
- 3) SB 669 (Caballero, 2019). Would create a Safe Drinking Water Trust Fund, with net income used to assist community water systems in disadvantaged communities. This bill is in Senate Rules Committee.
- 4) SB 623 (Monning, 2017-18). Would have created a Safe and Affordable Drinking Water Fund for secure access to safe drinking water. This bill was held in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Association of Environmental Health Administrators (Sponsor)  
Amador County Board of Supervisors  
Calaveras County Environmental Management Agency  
City of Berkeley Environmental Health Division  
Contra Costa County  
Plumas County  
Rural County Representatives of California  
San Luis Obispo County  
Siskiyou County  
Yolo County  
Yuba County Environmental Health Department

**Opposition**

None received.

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

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 432 (Quirk) – As Introduced February 7, 2019

**SUBJECT:** Released waste: certification of local officers

**SUMMARY:** Requires the State Water Resources Control Board (State Water Board), in cooperation with the Department of Toxic Substances Control (DTSC), to develop and implement a certification program for local health officers who enter into remedial action agreements. Specifically, **this bill:**

- 1) Amends the definition of "local officer" to mean a county health officer, city health officer, or county director of environmental health that has been certified by DTSC or by the State Water Board to enter remedial action agreements and supervise remedial action sites with released hazardous waste.
- 2) Requires a voluntary remedial action agreement between a responsible party and a local health officer to additionally include required reporting requirements, public notification requirements, the enforcement actions that may occur in the event of noncompliance with directives, and the cleanup goals that the local officer determines are necessary to comply with applicable requirements of state law to protect human health or safety or the environment, and that, if met, constitute a permanent remedy to the release of the waste.
- 3) Requires the local officer to conduct a public notification process, prescribed by DTSC or by the State Water Board, whichever entity certified the local officer, prior to issuing a letter to the responsible party certifying that the remedial action has been completed. Requires the local officer to then send the letter or document to DTSC, or the appropriate regional water quality control board (regional water board) within whose jurisdiction the waste release occurred, at least 30 days prior to certifying that the cleanup goals embodied in the remedial action agreement were accomplished.
- 4) Requires the State Water Board, in cooperation with DTSC and the regional water boards, to develop and implement a local health officer certification program.
- 5) Provides that the authority granted to the State Water Board and DTSC is in addition to the authority already statutorily granted to those entities.
- 6) Authorizes the State Water Board to certify a local officer pursuant to this section if the State Water Board determines that the local officer is qualified to oversee or perform the abatement of unauthorized releases of waste. Requires the State Water Board to consider, as criteria for determining whether a local officer is qualified, at a minimum, all of the following factors:
  - a) Adequacy of the technical expertise possessed by the local officer and his or her staff resources;
  - b) Adequacy of staff resources;

- c) Knowledge of the Health and Safety Code, Water Code, and regulations or policies enacted by DTSC, the State Water Board, or a regional water board regarding the requirements for remediation of released waste;
  - d) Adequacy of budget resources and funding mechanisms;
  - e) Training requirements;
  - f) Past performance in implementing and enforcing remedial action agreements;
  - g) Recordkeeping and accounting systems and practices, including the use of the State Water Board's environmental data management system for case management; and,
  - h) Public notification practices and the provision of due process.
- 7) Requires the State Water Board to adopt procedures and criteria for certifying and revoking certification of local officers. Exempts the adoption of these procedures and criteria from the Administrative Procedures Act.
- 8) Authorizes, on and after July 1, 2020, only a certified local officer, or DTSC pursuant to its existing authorities, to enter into a remedial action agreement.
- 9) Requires the State Water Board, if it does not, by July 1, 2021, certify a local officer who has been implementing remedial action agreements entered into before July 1, 2021, to transfer the cases for which certification of the officer is required from that local officer to DTSC, the appropriate regional water board, or a local officer who is certified by the State Water Board.
- 10) Provides that an order or directive issued by an uncertified local officer before July 1, 2020, shall remain in effect and may be enforced by DTSC, the appropriate regional water board, or the local officer who receives the case.
- 11) Requires the State Water Board to review, at least once every three years, the qualifications of a certified local officer to oversee or perform the abatement of unauthorized releases of waste. Requires the State Water Board, when conducting this review, to consider the certification criteria and the criteria adopted.
- 12) Authorizes the State Water Board, after conducting the review, to revoke the certification of the local officer. Provides that, upon certification revocation, the oversight of or performance of the abatement that was handled by the formerly certified local officer may be transferred from the local officer to DTSC, the appropriate regional water board, or a local officer who is certified by the State Water Board. Requires the orders and directives issued by the formerly certified local officer to remain in effect and be enforceable.
- 13) Requires the State Water Board to not make the date for the revocation of a certification effective prior to the termination date of the remedial action agreement entered into between the State Water Board and the local officer, unless the certified local officer fails to comply with the terms of the agreement.

**EXISTING LAW:**

- 1) Authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request the local health officer to supervise the remedial action. Authorizes the local health officer to supervise the remedial action if she or he determines that adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. (Health & Safety Code (HSC) § 101480 (b))
- 2) Prohibits a local health officer from overseeing remedial action at specified sites determined by DTSC. (HSC § 101483)
- 3) Requires a local health officer to provide written notice with specified information to DTSC and the appropriate regional water quality control board at least 10 working days prior to entering into an agreement with a responsible party. (HSC § 101487)
- 4) Authorizes the California Environmental Protection Agency (CalEPA) to certify Unified Program Agencies (CUPAs) to carry out environmental programs on behalf of the state, including programs related to the regulation of hazardous waste generators and onsite hazardous waste treatment, and the regulation of petroleum underground storage tanks. (HSC § 25404 - 25404.9)
- 5) Authorizes the State Water Board to certify local agencies as qualified to clean up or oversee a responsible party to clean up soil and groundwater contamination from leaking underground storage tanks. Prohibits local agencies from overseeing the cleanup of leaking underground storage tank sites unless they have been certified by the State Water Board. (HSC § 25297.01)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Need for the bill:* According to the author, "AB 432 will establish a state certification program for local health officers who oversee the cleanup of contaminated sites in order to ensure that all hazardous waste cleanup, whether done by the state, a local health agency, or a responsible party, is completed using uniform standards and procedures to ensure maximum protection of public health and the environment. AB 432 will empower local health officers with the knowledge and state assistance to tackle complex hazardous cleanup efforts."

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

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

boards and DTSC have developed extensive policies and procedures for determining the extent and type of contamination, and processes and standards for the proper remediation of contaminated sites.

*Legislative history on local oversight of hazardous waste cleanup:* The California legislature has long been sensitive to the impacts that contaminated properties have on their local communities. It has also acknowledged that local agencies, when provided sufficient resources and information, can help the state address, through oversight or abatement efforts, the sites that require cleanup. This has resulted in a rich history of bestowing and revising local control over hazardous waste oversight and cleanup.

One of the earlier legislative initiatives related to local oversight of cleanup was the adoption of AB 3193 (Polanco, Chapter 1113, Statutes of 1990), known as the Polanco Redevelopment Act (HSC § 33459-33459.8). AB 3193 was enacted as part of the Community Redevelopment Act to assist redevelopment agencies in responding to brownfield properties in their redevelopment areas. Under the law, redevelopment agencies could take action to remediate releases of hazardous substances on a property that was part of a redevelopment project. The redevelopment agencies were granted a qualified immunity from liability under state or local law, provided that the cleanup was conducted in accordance with a remedial action plan approved by DTSC or a regional water board. (HSC § 33459.3)

In 1993, the Legislature created CUPAs through the enactment of SB 1082 (Calderon, Chapter 418, Statutes of 1993) to be regulated under the unified hazardous waste and hazardous materials management regulatory program (Unified Program) regulated by CalEPA. The Unified Program consolidates the administration, permit, inspection, and enforcement activities of six environmental and emergency management programs for hazardous waste management and cleanup at the local level. Under the Unified Program, CUPAs are certified to do corrective action on a limited number of tiered permitted hazardous waste facility sites. DTSC may certify CUPAs to oversee the cleanup of contaminated sites, if DTSC determines they are qualified to do so. These CUPAs may be certified by DTSC as approved for "Tier 1 cleanup oversight" for less complex sites or "Tier 2 cleanup oversight" for complex or high risk sites.

That same year, the legislature enacted AB 2061 (Umberg, Chapter 1184, Statutes of 1993) to establish the Site Designation Process to allow a responsible party to request CalEPA to designate a local agency to oversee the cleanup action.

In 1995, the Legislature enacted SB 1248 (O'Connell, Chapter 671, Statutes of 1995) authorizing a responsible party, whenever a release of waste occurs and remedial action is required, to request the local health officer to supervise the remedial action. The law authorizes the local health officer to supervise the remedial action if she/he determined that adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. This program is commonly referred to as a "voluntary cleanup program." In this program, local health officers are required to enter into a remedial action agreement with the responsible party which specifies the testing, monitoring, and analysis that the responsible party will undertake to determine the extent and type of contamination at the site and the remedial actions that will be undertaken by the responsible party. (HSC § 101480)

In 2001, the California Land Environmental Restoration & Reuse Act (SB 32, Escutia, Chapter 764, Statutes of 2000), established a new hazardous materials investigation and cleanup program

to be administered by local agencies with state oversight. Specifically, it authorized local agencies to enter into an agreement with DTSC or a regional water board for a property regarding DTSC's or the regional water board's activities to review documents, assure implementation, perform other related site investigation and remediation activities, and provide for cost reimbursement.

The Legislature eventually dissolved local redevelopment agencies (AB 1X 26, Blumenfield, Chapter 5, Statutes of 2011), which resulted in problems regarding local access to brownfield remediation tools previously granted under Polanco Redevelopment Act authority. AB 1X 26 required successor agencies to expeditiously dispose of assets and properties of former redevelopment agencies. However, there was concern that many of those properties would either be difficult for successor agencies to sell or to maximize the value of in the sale due to the actual or perceived contamination of the site. Therefore, the Legislature subsequently enacted AB 440 (Gatto, Chapter 588, Statutes of 2013) to grant cities, counties, and housing authorities the power to investigate and clean up releases or spills within the boundaries of the local agency. AB 440 also provides immunity from further liability to the local agency, any person who enters into an agreement with that local agency to develop the property, and any future property owners.

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

*Status of the voluntary cleanup program established pursuant to SB 1248:* The remediation sites a local health officer currently oversees pursuant to a voluntary agreement include any site where there is no current lead agency (i.e. DTSC or regional water board) providing oversight, and where the local health officer determines she/he has the appropriate level of expertise. These sites include redevelopment with various previous site uses, such as gas stations, dry cleaners, industrial sites; gun range contamination; large spills from truck accidents; spills from aboveground tanks; contaminated soils associated with disposal sites; and, spills from machinery or other equipment, including transformers.

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

Before a local health officer can enter into a voluntary cleanup agreement with a responsible party, she/he is required to provide written notification to DTSC and the appropriate regional water board(s) within ten days prior to entering into an agreement with a responsible party (HSC § 101487). This ensures the state is aware of the site remediation and who is conducting it.

Importantly, a local health officer must determine the applicability of his/her authority to enter into a voluntary agreement. There are many prohibitions — sites where local health officers are prohibited from using the voluntary cleanup agreement authority, including, but not limited to, any State Response, federal Superfund and backlog sites designated by DTSC; sites subject to a cleanup and abatement order for a violation of any waste discharge requirement into a water

source; or, sites that are under Phase I Environmental Assessment (HSC § 101483). Therefore, the notification required to the state before entering into a voluntary agreement provides the opportunity for the state and the local health officer to determine the applicability of the local health officer's authority to oversee the site remediation.

Additionally, current law allows the local health officer to make the judgement call as to whether she/he has the staff resources, technical expertise, and capabilities to oversee site remediation, and if not, she/he can refer the site to the state. Also, a local health officer can, and often does, refer local voluntary cases to DTSC or regional water board when the site became larger or more complex than first expected, or where the responsible party did not agree to conduct the additional work being requested in the agreement.

It is unknown how many remediation sites statewide have been overseen by local health officers, but the authority is widely, currently used.

*Which brings us to AB 432:* Under all of the aforementioned statutes providing local agencies with the authority to oversee hazardous waste cleanup, the local agencies are certified by the state to do so. The only exception is the authority provided to do the voluntary cleanup program under SB 1248, which did not require any state certification or oversight.

The voluntary cleanup program does not specify any standards or requirements to which the remediation overseen by the local health officer must be conducted. AB 432 intends to bring this statute into the fold of state oversight to ensure hazardous waste cleanup is implemented under the same stringent standards that DTSC and the regional water boards follow for cleanup under other programs.

As envisioned, the certification program established by AB 432 would be similar to the State Water Board's existing program for certifying local agencies to oversee the cleanup of sites contaminated by leaking underground storage tanks (LOP), and which prohibits local agencies from overseeing the cleanup of such sites unless they have been certified by the State Water Board.

AB 432 would require the State Water Board, in cooperation with DTSC, to develop and administer a program for certifying and overseeing local health officers who enter into remedial action agreements. The bill specifies that the State Water Board, in determining whether a local health officer is qualified to oversee the cleanup of contaminated sites, must evaluate specific factors, including staff resources and expertise, past performance, and record keeping. It would also prohibit local health officers from entering into remedial action agreements unless they have been certified by the State Water Board or by DTSC to do so.

Notably, while the State Water Board and DTSC both have authority to do hazardous waste cleanup, they have different jurisdictions. The State Water Board oversees remediation where hazardous waste impacts surface or ground waters of the state, as well as underground storage tank contamination. DTSC oversees essentially all other hazardous waste release cleanup.

*Local concerns:* There is concern that this certification program could become too onerous, time-consuming, and costly for local health officers. If that is the case, local officers will likely be disinclined to apply for this authority due to limited local resources.

The intent of the current law is to authorize local oversight and enable more entities to oversee hazardous waste cleanup. Given the magnitude of cleanup sites around the state, the more local agencies equipped to oversee site remediation, the more sites will be cleaned up in a timely manner. If local health officers opt out of the certification program established by this bill, then there will be a greater burden on DTSC and the regional water boards to oversee more cleanup sites.

This committee held a joint legislative hearing in February of this year on DTSC's budget and fiscal constraints. There is concern that DTSC may not have the bandwidth or financial capabilities to take on more site remediation should the local agencies decide not to pursue certification pursuant to this bill.

The author is working with the State Water Board and DTSC to identify the costs and time commitment to comply with the anticipated requirements of a new certification program, and ascertain whether any costs will be passed down to the local health officer.

*Policy issues for further consideration:* It is critical that any entity overseeing or conducting hazardous waste cleanup have sufficient resources and technical expertise to ensure that the cleanup is done to state standards to ensure protection of public health and the environment. The intent of AB 432 is to provide that support to local health agencies through a certification program similar to other state certification programs.

In order to do that in a comprehensive way, there are some policy issues, summarized below, that the author should continue working on with the local health officers, the State Water Board, and DTSC, and other stakeholders, including:

- 1) There are currently 81 CUPAs and 62 local health officers. Given the array of local agencies with potentially overlapping hazardous waste cleanup authorities, and which may not be local health officers, the author may wish to consider whether this bill should solely apply to local health officers, or whether the law should be extended to any local agency that is qualified and certified by the state to provide remediation oversight.
- 2) Current law authorizes local health officers to *oversee* site remediation. This bill provides certification for that oversight *and* would give those local health officers, upon certification, authority to conduct the abatement. The author may wish to consider the intended scope of the bill, which may be appropriate to consider within the context of discussion on whether this provision of law should apply to all local agencies who qualify and can be certified, or just local health officers.
- 3) In HSC § 101480(e) of the bill, the language recognizes that a local health officer may be certified by either the State Water Board or DTSC, and HSC § 101481(b) only authorizes the State Water Board to certify a local health officer. The author may wish to consider clarifying that § 101480 is recognizing existing DTSC certification (under other programs for hazardous waste cleanup) and that the State Water Board certification pursuant to § 101481 is only needed in the absence of DTSC certification.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None received.

**Opposition**

None received.

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

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 292 (Quirk) – As Amended March 6, 2019

**SUBJECT:** Recycled water: raw water and groundwater augmentation

**SUMMARY:** Updates the definition of potable reuse of recycled water by including raw water augmentation, treated drinking water augmentation, groundwater augmentation, or reservoir water augmentation within the definition of recycled water and deleting direct and indirect potable reuse.

**EXISTING LAW:**

- 1) Defines "potable reuse" as direct potable reuse, indirect potable reuse for groundwater recharge, and reservoir water augmentation. (Water Code (WC) §10608.12 (o))
- 2) Defines "direct potable reuse" as the planned introduction of recycled water either directly into a public water system or into a raw water supply immediately upstream of a water treatment plant. (WC § 13561 (b))
- 3) Defines "indirect potable reuse for groundwater recharge" as the planned use of recycled water for replenishment of a groundwater basin or an aquifer that has been designated as a source of water supply for a public water system. (WC § 13561 (c))
- 4) Requires, on or before December 31, 2023, the State Water Resources Control Board (State Water Board) to adopt uniform recycling criteria for direct potable reuse through raw water augmentation. (WC § 13561.2)
- 5) Makes legislative findings that a substantial portion of the future water requirements of this state may be economically met by beneficial use of recycled water. Finds that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the state. Use of recycled water constitutes the development of "new basic water supplies," as defined. (WC § 13511)
- 6) Declares that it is the intent of the Legislature that the state undertake all possible steps to encourage development of water recycling facilities so that recycled water may be made available to help meet the growing water requirements of the state. (WC § 13512)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Need for the bill:* According to the author, "California is a world leader in potable reuse, using highly purified recycled water for drinking water purposes. Potable reuse is currently used for groundwater recharge of drinking water supplies in many places in California and it will soon be used to augment surface water reservoirs that store drinking water supplies. AB 292 will update

and simplify the definition of potable reuse thereby facilitating communication with ratepayers, stakeholders and the public."

*Direct potable reuse:* Under current law (WC § 13563), the State Water Board was required to investigate and report to the Legislature on the feasibility of developing uniform water recycling criteria for direct potable reuse by December 31, 2016. In developing this report, "Investigation on the Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse (Report)," the State Water Board convened two independent groups, an expert panel of scientists and engineers, and an advisory group of stakeholders, to advise the State Water Board on issues related to the investigation of the feasibility of developing uniform water recycling criteria for direct potable reuse. According to the State Water Board's Report, "The expert panel has determined that it is technically feasible to develop uniform water recycling criteria for direct potable reuse; however, the expert panel has also identified a range of public health research needs that would enhance the understanding and acceptance of direct potable reuse in California."

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

- 1) Increase the use of recycled water from 714,000 acre-feet per year (afy) in 2015 to 1.5 million afy by 2020 and to 2.5 million afy by 2030;
- 2) Reuse all dry weather direct discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters that can be viably put to a beneficial use. For the purpose of this goal, treated wastewater does not include discharges necessary to maintain beneficial uses and brine discharges from recycled water facilities or desalination facilities; and,
- 3) Maximize the use of recycled water in areas where groundwater supplies are in a state of overdraft, to the extent that downstream water rights, instream flow requirements, and public trust resources are protected.

The recycled water policy is an important element of the overall effort to encourage the safe use of recycled water in a manner that is protective of public health and the environment. The purpose of the recycled water policy is to increase the use of recycled water from municipal wastewater sources that meets the definition in WC § 13050(n), in a manner that implements state and federal water quality laws.

Recycled water has been used for many years in many different ways. Some early uses include using recycled water in place of potable water, such as for landscape irrigation and as a barrier for seawater intrusion. As technology advances and population grows, the uses of recycled water

have expanded in type and in scale. More and more recycled water is being looked at as an option to provide additional drinking water. Many water agencies are using recycled water to recharge groundwater aquifers as a source of drinking water. Eventually, as science and safeguards allow, many see the ultimate use of recycled water as a direct use for drinking. AB 292 aims to reduce confusion over the uses of recycled water by updating the definition of potable reuse.

*Related Legislation:*

- 1) AB 574 (Quirk, Chapter 528, Statutes of 2017). Requires, on or before December 31, 2023, the State Water Board to adopt uniform recycling criteria for direct potable reuse through raw water augmentation.
- 2) AB 2022 (Gordon, Chapter 408, Statutes of 2016). Authorizes the bottling of advanced purified demonstration water, as defined, for educational purposes and to promote water recycling.
- 3) SB 918 (Pavley, Chapter 700, Statutes of 2010). Required the Department of Public Health (the responsibility for recycled water has since been transferred to the State Water Board) to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge by December 31, 2013; to develop and adopt uniform water recycling criteria for surface water augmentation by December 31, 2016; and, to investigate and report on the feasibility of developing uniform water recycling criteria for direct potable reuse.

*Double-referral:* If this bill is approved by the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Water Parks and Wildlife Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Association of California Water Agencies  
California Association of Sanitation Agencies  
Eastern Municipal Water District  
Metropolitan Water District of Southern California  
Silicon Valley Clean Water  
WateReuse California

**Opposition**

None received.

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



Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 320 (Quirk) – As Introduced January 30, 2019

**SUBJECT:** Pest control: mosquito abatement

**SUMMARY:** Establishes the California Mosquito Surveillance and Research Program to be administered by the University of California, Davis (UC Davis). Specifically, **this bill:**

- 1) Establishes the California Mosquito Surveillance and Research Program to be administered by UC Davis and requires UC Davis to:
  - a) Maintain an interactive internet website for the management and dissemination of data on mosquito-borne virus and surveillance control;
  - b) Work in conjunction with local mosquito abatement and vector control districts to conduct research on arbovirus surveillance, transmission of vector-borne disease, and mosquito ecology and control; and,
  - c) Coordinate with the Mosquito and Vector Control Association of California, the California Department of Public Health (CDPH), local mosquito abatement and vector control districts, local governments, and other affected stakeholders to share information.

**EXISTING LAW:**

- 1) Establishes the Mosquito Abatement and Vector Control Law, which authorizes the establishment of mosquito abatement and vector control districts governed by a board of trustees. (Health and Safety Code (HSC) § 2000)
- 2) Requires CDPH to maintain a program of vector biology and control including providing consultation and assistance to local vector control agencies; surveillance of vectors and vector-borne diseases; coordinating and conducting emergency vector control; training and certifying government agency vector control technicians; and, disseminating information to the public regarding protection from vectors and vector-borne diseases. (HSC § 116110)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Need for the bill:* According to the author, "This bill would establish the California Mosquito Surveillance and Research Program, to be administered by University of California at Davis, in statute as the statewide surveillance database to track and predict the emergence of invasive species and mosquito-borne diseases, provide confirmation of state and local agency testing, and other duties.

UC Davis currently operates the California Vector Borne Disease Surveillance System (CalSURV) as a resource center for CDPH, university researchers, and state and local agencies to work collaboratively in order to track and prevent the spread of mosquito borne viruses like Zika and West Nile.

Unfortunately, CalSURV is currently dependent on competitive grants, and its existence is in flux, leaving staff vulnerable to losing their employment and being forced to abandon the numerous projects being worked on. Incorporating the work of CalSURV into a codified California Mosquito Surveillance and Research Program will provide stability to these important surveillance and research efforts."

*Mosquito-borne viruses:* Mosquito-borne viruses belong to a group of viruses commonly referred to as arboviruses (for arthropod-borne). Although 15 mosquito-borne viruses are known to occur in California, only West Nile Virus, western equine encephalomyelitis virus, and St. Louis encephalitis virus have caused significant human disease. West Nile Virus continues to seriously impact the health of humans, horses, and wild birds throughout the state. Since 2003, there have been 6,030 West Nile Virus human cases, with 248 deaths, and 1,255 horse cases. Consequently, the California Arbovirus Surveillance Program emphasizes monitoring and providing early detection of these viruses.

California is vulnerable to the introduction of highly virulent mosquito-borne viruses of public and veterinary health concern, such as West Nile Virus, Japanese encephalitis, dengue, Zika, chikungunya, yellow fever, Rift Valley fever, and Venezuelan equine encephalitis viruses. If an existing or introduced virus is detected, it is critical that local and state agencies are prepared to respond in a concerted effort to protect people and animals from infection and disease.

*California Vector Borne Disease Surveillance System (CalSURV):* CalSURV was established in 2006 as a joint effort by CDPH and the University of California (UC). This joint effort allowed for collaboration between CDPH, UC, and local mosquito and vector control agencies in order to track and prevent the spread of mosquito borne viruses like Zika and West Nile. Through CalSURV's online portal, organizations from across the state are able to provide real-time reporting and visualization of potentially dangerous mosquito public health risks and to communicate solutions. CalSURV also works as a statewide database for these groups to use for ongoing research. Viruses such as Zika and West Nile have no vaccines and can have long-term health implications. With CalSURV, local agencies and CDPH can effectively document and track the mosquito migration patterns and rate of infection while working cross-functionally with mosquito control professionals.

*California mosquito-borne disease surveillance program:* California has a comprehensive mosquito-borne disease surveillance program that has monitored mosquito abundance and mosquito-borne virus activity since 1969. The state program is an integral part of integrated mosquito management programs conducted by local mosquito and vector control agencies. Surveillance and interagency response guidelines were published previously by CDPH and the Mosquito and Vector Control Association of California.

AB 320 establishes CalSURV within statute under UC Davis. By placing CalSURV in statute, the bill is recognizing that surveilling vector-borne diseases is a statewide issue and is ensuring the timely and accurate dissemination of information from state and local agencies to the public. It is important to the state and in the best interest of protecting human health that real-time information on mosquito-borne viruses are tracked and reported. AB 320 ensures that the state of California is at the forefront of mosquito borne disease surveillance and prevention by giving UC Davis responsibility over this surveillance program.

*Related legislation:*

- 1) AB 2892 (Quirk, 2018). Would have established the California Mosquito Surveillance and Research Program to be administered by the CDPH. This bill was held on the suspense file in the Senate Appropriations Committee.
- 2) SB 382 (Pan, 2017). Would have created the California Mosquito Surveillance and Research Program Account to fund the California Vector-borne Disease Surveillance System and research grants to help mitigate the effects of increasing vector populations. This bill was held on the suspense file in the Senate Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Mosquito and Vector Control Association of California (Sponsor)  
Alameda County Mosquito Abatement District  
Burney Basin Mosquito Abatement District  
Butte County Mosquito and Vector Control District  
California Special Districts Association  
Coachella Valley Mosquito and Vector Control District  
Compton Creek Mosquito Abatement District  
County Health Executives Association of California (CHEAC)  
Fresno Mosquito and Vector Control District  
Fresno Westside Mosquito Abatement District  
Greater Los Angeles County Vector Control District  
Orange County Mosquito and Vector Control District  
Sacramento-Yolo Mosquito and Vector Control District  
Santa Cruz County Mosquito Abatement / Vector Control  
Shasta Mosquito and Vector Control District  
Sutter-Yuba Mosquito and Vector Control District  
West Valley Mosquito and Vector Control District

**Opposition**

None received.

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

