California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

EDUARDO GARCIA
CHAIR

AGENDA

Tuesday, April 9, 2024
1:30 p.m. -- State Capitol, Room 444

HEARD IN FILE ORDER

1.	AB 1798	Papan	Department of Transportation: contaminated stormwater runoff: salmon and steelhead trout bearing surface waters.
2.	AB 1864	Connolly	Pesticides: agricultural use near schoolsites: notification and reporting.
3.	AB 2244	Ting	Product safety: proofs of purchase: bisphenols.
4.	AB 2408	Haney	Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances.
5.	AB 2515	Papan	Menstrual products: perfluoroalkyl and polyfluoroalkyl substances (PFAS).
6.	AB 2552	Friedman	Pesticides: anticoagulant rodenticides.
7.	AB 2614	Ramos	Water policy: California tribal communities.
8.	AB 2686	Grayson	Hazardous waste: generation and handling fees.
9.	AB 2699	Wendy Carrillo	Hazardous materials: reporting: civil liability.
10.	AB 2761	Hart	Product safety: plastic packaging: Reducing Toxics in Packaging Act.
11.	AB 2851	Bonta	Metal shredding facilities: fence-line air quality monitoring.
12.	AB 3004	Mike Fong	Proposition 65: certificates of merit: Attorney General communications.
13.	AB 3073	Haney	Wastewater testing: illicit substances.

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 1798 (Papan) – As Amended April 3, 2024

SUBJECT: Department of Transportation: contaminated stormwater runoff: salmon and steelhead trout bearing surface waters

SUMMARY: Requires the California Department of Transportation (Caltrans), in conjunction with the State Water Resources Control Board (State Water Board), to develop a programmatic environmental review process that includes implementation of five pilot projects, to prevent 6PPD and 6PPD-quinone (6PPD-q) from entering salmon and steelhead trout-bearing surface waters of the state. Specifically, **this bill**:

1) Defines the following terms:

    a) "6PPD" means the chemical compound N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine commonly contained in motor vehicle tires;

    b) "6PPD-quinone" means the reaction product of 6PPD that is acutely toxic to aquatic life;

    c) "Biofiltration" means the effect of vegetated treatment facilities that reduce stormwater pollutant discharges by intercepting rainfall on vegetative canopy, and through incidental infiltration or evapotranspiration, and filtration;

    d) "Bioretention" means the effect of engineered facilities that store and treat stormwater by passing it through a specified soil profile, and either retain or detain the treated stormwater for flow attenuation;

    e) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty, and recognize a tribe's potential needs for confidentiality with respect to places that have traditional tribal cultural significance; and,

    f) "Tribal community" means a community within a federally recognized California Native American tribe or nonfederally recognized Native American tribe on the contact list maintained by the Native American Heritage Commission.

2) Requires Caltrans, in conjunction with the State Water Board, to develop a programmatic environmental review process to prevent 6PPD and 6PPD-q from entering salmon and steelhead trout-bearing surface waters of the state.

3) Requires Caltrans and the State Water Board, to the extent practicable, to seek the assistance and expertise of the States of Washington and Oregon in the development of the programmatic review process.

4) Requires the State Water Board to determine, for the programmatic environmental review process, the frequency and timing for sampling for a qualified storm event, monitoring and reporting protocols, the specific project location for each county, and all other information and data deemed necessary to inform future stormwater permit reissuances.

5) Requires the programmatic environmental review process to include all of the following:

   a) Five pilot projects (described further below), to study the water quality control and cost effectiveness of installing and maintaining bioretention and biofiltration along department rights-of-way to eliminate the discharge of 6PPD and 6PPD-q into surface waters of the state;

   b) A map of all locations where Caltrans is likely to discharge stormwater into salmon or steelhead trout bearing surface waters, to include an overlay of salmon and steelhead fishery information, areas of high vehicle miles traveled, and specific drainage outlets or other likely discharge points for each location; and,

   c) A strategy to eliminate, by December 31, 2037, the discharge of 6PPD and 6PPD-q by Caltrans into salmon and steelhead trout-bearing surface waters of the state. The strategy shall be posted on Caltrans' website on or before December 31, 2027, and include considerations of cost-savings through implementation of existing total daily maximum load (TMDL) projects and planned projects where biofiltration or bioretention could effectively be implemented to control 6PPD and 6PPD-q. In developing the strategy, Caltrans may consult with the California Department of Toxic Substances Control (DTSC) and consider how the strategy, in combination with efforts by DTSC to regulate the use of 6PPD in the manufacture of motor vehicle tires, will further reduce the presence of 6PPD and 6PPD-q in surface waters.

6) Requires, no later than December 31, 2026, Caltrans to construct five pilot projects—one each in the counties of San Mateo, Contra Costa, Sonoma, Humboldt, and Nevada—to study the highest performance and most cost-effective methods for installing bioretention and biofiltration, and to measure the effectiveness of bioretention and biofiltration in controlling the discharge of microplastics and other pollutants, deemed appropriate by the State Water Board, from state highways into surface waters of the state.

7) Requires Caltrans to provide consultation on a government-to-government basis with tribal communities, to allow tribal officials the opportunity to provide meaningful and timely input on the development of Caltrans' strategy to eliminate 6PPD and 6PPD-q from all salmon and steelhead trout-bearing surface waters of the state.

8) Requires all information provided by Caltrans to the State Water Board, pursuant to the programmatic environmental review process, to be made publicly available through the State Water Board's stormwater data collection system.

EXISTING LAW:

1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (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 (Regional Water Boards) to prescribe waste discharge requirements that, among other things, regulate the discharge of pollutants into stormwater, including municipal stormwater systems. (33 USC § 1342)

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

4) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals and chemical ingredients that may be considered chemicals of concern; establish a process to evaluate chemicals of concern, and their potential alternatives, to determine how best to limit exposure or reduce the level of hazard posed by a chemical of concern; and, specify the range of potential regulatory responses that DTSC may take after the alternatives analysis is completed. (Health and Safety Code § 25252, et. seq.)

5) Establishes Caltrans and provides that it has full possession and control of all state highways and property and rights in property acquired for state highway purposes. (Streets and Highways Code (SHC) § 90)

6) Requires Caltrans to prepare an annual report to the Legislature describing the status of progress in locating, assessing, funding, and remediating barriers to fish passage, and requires an assessment of potential barriers to fish passage prior to commencing project design. (SHC § 156, et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

"We must take action to preserve the health and safety of rivers and streams in order to build a strong, safe, and sustainable future for Californians everywhere. In doing so we must address the many dangers facing our waterways including micro-particle pollutants and toxic stormwater runoff that threaten native species and aquatic ecosystems. One such pollutant, known as 6PPD, is an emerging toxin found in vehicle tires, that's alarming scientists due to the extremely dangerous impact that it has on native salmon and trout populations in California surface waters. Fortunately, there are stormwater management practices that are readily available to effectively treat the runoff of 6PPD which helps reduce toxic chemical exposure threatening salmon throughout the state. Therefore, I am proposing Assembly Bill (AB) 1798, which will require the Department of Transportation to develop and implement a strategy to eliminate 6PPD from stormwater discharges into our California aquatic systems. With this bill, California will get in front of the problem and be one step closer towards preserving the health and wellness of our natural water system."

The NPDES Permit Program: In 1972, amendments to the Federal Water Pollution Control Act of 1948—the first major United States law to address water pollution—created what is commonly known today as the CWA. The federal CWA establishes the basic structure for regulating discharges of pollutants into waters of the United States and regulating quality

standards for surface waters. Under the CWA, the United States Environmental Protection Agency (US EPA) implements pollution control programs that include setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit.

As authorized by the federal CWA, the NPDES Permit Program controls water pollution by regulating point sources—or discrete conveyances such as pipes, or human-made ditches—that discharge pollutants into waters of the United States. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste. Industrial, municipal, and other facilities must obtain an NPDES permit to discharge into surface water. In California, implementation of the NPDES Permit Program has been delegated to the State Water Board and nine Regional Water Boards, which maintain regional jurisdiction within boundaries that are based on major watersheds.

Stormwater regulation: Stormwater is defined by the US EPA as runoff generated when precipitation from rain and snowmelt events flows over land or impervious surfaces, without percolating into the ground. Stormwater is often considered a nuisance because it mobilizes pollutants such as motor oil, trash, and microplastics. According to the State Water Board, in most cases, stormwater flows directly to water bodies through sewer systems, contributing a major source of pollution to rivers, lakes, and the ocean. Because of their propensity to contain and mobilize pollutants, stormwater discharges in California are regulated through NPDES permits. However, when properly managed, stormwater may also act as a resource and recharge groundwater sources.

Under the Municipal Storm Water Program, the State Water Board regulates stormwater discharges from municipal separate storm sewer systems (MS4s), defined by the US EPA as a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels, or storm drains. Under this program, the State Water Board adopted, in June 2022, an updated NPDES Statewide Stormwater Permit (Permit) to regulate stormwater discharges from Caltrans' statewide transportation system, which includes MS4s, more than 50,000 miles of highway and freeway lanes, and maintenance, storage, and vehicle parking facilities. The Permit specifies TMDLs, which define how much of a pollutant a water body can tolerate and establish a plan to restore clean water through the examination of water quality problems, identification of pollution sources, and specification of solutions. TMDLs for 6PPD and 6PPD-q are not included in the Permit.

6PPD, 6PPD-q, and salmon die off: According to the US EPA, 6PPD is added to vehicle tires to prevent them from breaking down due to reactions with ozone and other reactive oxygen chemicals in the air. When 6PPD reacts with ozone, it forms 6PPD-q. Tires wear down through contact with roads, releasing particles containing 6PPD into the environment, and when it rains, stormwater washes these particles into streams and other water bodies.

Available information on 6PPD-q indicates that it is acutely toxic to some species of fish. A 2021 publication in the journal *Science* linked coho salmon death to 6PPD-q in stormwater (Tian et al.). The authors found that concentrations in stormwater were lethal to coho salmon following exposures lasting only a few hours. Subsequent work identified other fish species as vulnerable to 6PPD-q; for example, one study in the journal *Environmental Science and Technology Letters* demonstrated acute toxicity of 6PPD-q to two different trout species (Brinkmann et al., 2022).

The US EPA notes that the impacts of 6PPD-q on salmon populations is a key issue. These fish species have cultural, commercial, and ecological importance, and some coho salmon populations are endangered and threatened. Many Tribes rely heavily on salmon and other aquatic resources for food and cultural practices. Healthy and accessible salmon populations are critical to the health and wellbeing of Tribes, including the practice and protection of Tribal Treaty Rights.

Action by Native American tribes to urge federal regulation of 6PPD: On August 1, 2023, the US EPA received a petition under the federal Toxic Substances Control Act, submitted by EarthJustice on behalf of the Yurok Tribe, the Port Gamble S'Klallam Tribe, and the Puyallup Tribe of Indians. The petition requests that the US EPA "establish regulations prohibiting the manufacturing, processing, use, and distribution of [6PPD]… for and in tires…with such regulation to take effect as soon as practicable, in order to eliminate the unreasonable risk 6PPD in tires presents to the environment." The US EPA granted the petition and plans to take action to address the risk to the environment presented by 6PPD and 6PPD-q, through an advance notice of proposed rulemaking under the Toxic Substances Control Act. The US EPA also plans to propose a rule to require manufacturers (including importers) of 6PPD to report certain lists and copies of unpublished health and safety studies to the US EPA.

California's adoption of motor vehicle tires containing 6PPD as a Priority Product: On May 20, 2022, DTSC initiated rulemaking to list motor vehicle tires containing 6PPD as a Priority Product under DTSC's Safer Consumer Products regulations. The finalized regulation became effective October 1, 2023 and requires domestic and foreign manufacturers of motor vehicle tires containing 6PPD to submit a Priority Product Notification for these products, if they are entered into the stream of commerce in California, by November 30, 2023. After submitting the Priority Product Notification, manufacturers must submit one of several specified notifications, which can, among other things, indicate that the manufacturer has or intends to remove 6PPD from its products, or that the manufacturer has or intends to remove the product from the stream of commerce in California.

In its rationale for listing motor vehicles containing 6PPD as a Priority Product, DTSC states:

> "The tire antidegradant 6PPD and its reaction product 6PPD-quinone are highly toxic to aquatic organisms. 6PPD has been used as an antidegradant for decades and is found in most, if not all, motor vehicle tires. 6PPD performs the critical function of protecting rubber from reactions with ozone and oxygen, which can lead to cracks.
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> However, 6PPD is toxic to aquatic organisms at multiple trophic levels, can impair wildlife survival, and is toxic to algae. 6PPD-quinone, a reaction product of 6PPD, is acutely toxic to coho salmon and kills fish within a few hours after exposure. While little is known about the effect of 6PPD-quinone on other organisms, 6PPD-quinone may also be toxic to closely related species such as steelhead and chinook. Tires release 6PPD-quinone into the aquatic environment, sometimes at levels lethal to coho salmon.
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> Over the life of a tire, 6PPD continuously migrates to the surface, where it provides protection from degradation caused by ozone and oxygen. Tire wear particles (TWP) are generated during use as tires roll across the road surface, particularly as vehicles brake, accelerate, and turn. TWP, and the 6PPD they contain, can then enter the aquatic environment from road dust into surface runoff and stormwater.

While it is unclear exactly where and how 6PPD-quinone is formed, detections of 6PPD-quinone in California waterways clearly indicate that it is sufficiently persistent in aquatic systems for aquatic organisms to be exposed to the chemical at levels that may cause harm. 6PPD-quinone has been measured in California streams at concentrations above those shown to kill at least half of coho salmon in laboratory experiments.

Based on the criteria in the Safer Consumer Product Regulations, DTSC has determined that aquatic organisms can be exposed to 6PPD and 6PPD-quinone derived from motor vehicle tires. This exposure may cause or contribute to significant adverse impacts to aquatic organisms, including two populations of coho salmon in California, one of which is endangered, the other threatened. 6PPD-quinone is present in California runoff and waterways above concentrations that kill coho in laboratory studies. Exposure to 6PPD and 6PPD-quinone may jeopardize the recovery of coho salmon and other imperiled species. The loss of coho salmon in California has significantly impacted Native American tribes in California that have traditionally relied on the species as an important food source. The loss of core traditional food sources for tribal communities has been linked to loss of culture, increased physical and mental health issues, and increased poverty."

Biofiltration and bioretention: In the 2007 report, "A review of low impact development policy: Removing institutional barriers to adoption," the State Water Board describes the promise of low impact development (LID) strategies. Traditional methods of stormwater management have focused on collection and conveyance systems, and end-of-pipe treatment and control technologies. These traditional methods of control deal only with the consequences of development, without addressing the root causes of polluted stormwater runoff into water bodies. LID strategies present an appealing alternative to traditional management approaches because they can manage stormwater and capture pollutants through high rates of infiltration, vegetative interception, and evapotranspiration, by mimicking or preserving the "evolved natural hydrology" of a site.

Rather than centralized, end-of-pipe controls, LID relies on an integrated system of decentralized, small-scale control measures. These measures can include installation of biofiltration and bioretention systems, which remove pollutants from runoff through physical filtration as stormwater passes through media layers. These systems have been shown to mitigate 6PPD-q pollution and reduce the occurrence of fish mortality associated with urban runoff. For example, a 2016 study published in the *Journal of Applied Ecology* (Spromberg, et al.) showed that while untreated highway runoff was universally lethal to adult coho salmon, this mortality was prevented when highway runoff was first pretreated through bioretention columns, engineered using gravel, soil, and mulched bark. Another study, published in 2023 in the journal *Environnmental Science and Technology Letters*, showed that stormwater bioretention systems can mitigate more than 90% of 6PPD-q loadings to streams under average storm conditions (Rodgers, et al.).

In its 2018 "Stormwater Quality Handbook" for maintenance staff, Caltrans identifies biofiltration and detention devices as "technically and fiscally feasible" and approved best management practices for reducing contaminants to improve water quality. In addition, the Permit, described above, requires Caltrans to maintain a Stormwater Management Plan (Plan), a document that describes Caltrans' plans for complying with the requirements of the Permit. The Plan must include specified elements, including Caltrans' plans for complying with post-construction requirements. The Permit requires that these projects "be designed to control and

abate the discharge of pollutants in stormwater with primary consideration to infiltrating, harvesting, and/or re-using the stormwater runoff prior to consideration of treatment and discharge (e.g., biofiltration)." The Permit also states that the "first priority shall be the use of vegetated landscape and soil based best management practices to treat stormwater runoff."

Other states have evaluated the use of best management practices such as bioretention and biofiltration to address the impacts of 6PPD and 6PPD-q on water quality and fish species. For example, in 2021, the Washington State Legislature appropriated $523,000 for the state department of transportation and university partners to identify priority areas affected by 6PPD from roads and transportation infrastructure, identify best management practices for reducing toxicity, develop a standard method for the laboratory measurement of 6PPD-q, and submit a report to the state legislature. Among its findings, the report, completed in October 2022, states that the "amount of stormwater mitigation needed to address the tire pollution problem varies considerably from watershed to watershed. Identifying areas for finer-scale assessments based on vulnerability will require more coordination and research."

Arguments in support: According to a coalition of supporting organizations:

"Studies on the 'coho mortality phenomenon' have found that biofiltration and bioretention systems, readily available green infrastructure practices, effectively treat the runoff of 6PPD in terms of both toxic chemical exposure and salmon spawner survival. Biofiltration will not only prevent 6PPD from killing our endangered salmon and steelhead species but can also prevent other stormwater pollutants—such as microplastics and toxic metals—from entering our waterways…AB 1798 would require Caltrans to identify all locations where state highways cross salmon and steelhead bearing waters, and then study the feasibility and most cost-effective biofiltration and bioretention systems in order to install such systems throughout the state to prevent the runoff of 6PPD into salmon and steelhead bearing waters. Ultimately, the SALMON Act can 'kill two birds with one stone' by requiring Caltrans to install stormwater control measures that not only prevent the mortality of salmon through the runoff of 6PPD, but those same stormwater controls would also prevent other pollutants from harming our waterways…"

Arguments in opposition: None on file.

This bill: AB 1798 requires Caltrans to develop a programmatic environmental review process, to study the effectiveness of using bioretention and biofiltration to eliminate the discharge of 6PPD and 6PPD-q into salmon or steelhead trout-bearing surface waters. In combination with DTSC's efforts to regulate 6PPD in motor vehicle tires, the outcomes of this process could help the state reduce the prevalence of 6PPD and 6PPD-q in the environment, and the negative impacts of these contaminants on water quality, aquatic environments, and the Native American tribes that rely on fish for food and cultural practices.

Related legislation:

AB 756 (Papan, 2023). Would have required Caltrans to develop a programmatic environmental review process to prevent 6PPD and 6PPD-q from entering salmon and steelhead trout bearing surface waters of the state; submit a report to the Legislature that includes a map identifying all locations where Caltrans is likely to discharge stormwater into salmon or steelhead trout bearing surface waters of the state; and annually install bioretention and biofiltration controls at 10% of the locations identified in the map for 10 years. This bill was held on the suspense file in the Assembly Appropriations Committee.

AB 2106 (Robert Rivas, 2022). Would have required the State Water Board to modernize its stormwater tracking system, on or before December 31, 2025, and to establish a statewide commercial, industrial, and institutional NPDES order. This bill was vetoed by the Governor.

SB 857 (Kuehl, Chapter 589, Statutes of 2006). Required Caltrans to provide an annual report of progress in locating, assessing, and remediating barriers to fish passage, including salmon and steelhead, to the Legislature through 2020. The bill also requires transportation projects using state or federal funding to assess potential barriers to fish if the project affects a stream crossing.

REGISTERED SUPPORT / OPPOSITION:

Support

7th Generation Advisors
California Coastkeeper Alliance
California Council for Environmental & Economic Balance (CCEEB)
California Environmental Voters (formerly CLCV)
California Trout
City/County Association of Governments of San Mateo County
Clean Earth 4 Kids
Clean Water Action
Cleanearth4kids.org
Defenders of Wildlife
Environmental Action Committee of West Marin (EAC)
Heal the Bay
Humboldt Waterkeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper
Monterey Bay Aquarium
Monterey Waterkeeper
Orange County Coastkeeper
Planning and Conservation League
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Save the Bay
Shasta Waterkeeper
Sierra Club California
Solano County Water Agency
South Yuba River Citizens League
The Otter Project
Tuolumne River Trust
U.S. Tire Manufacturers Association
Ventura Coastkeeper
Water Climate Trust
Wishtoyo Chumash Foundation
Yuba River Waterkeeper

Opposition

None on file.

Analysis Prepared by: Naomi Ondrasek / E.S. & T.M. /

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 1864 (Connolly) – As Amended April 1, 2024

SUBJECT: Pesticides: agricultural use near schoolsites: notification and reporting

SUMMARY: Requires a notice of intent (NOI) to be submitted before a person applies a pesticide within one-quarter mile of a schoolsite using an application method that is restricted under the Department of Pesticide Regulation's (DPR) Pesticide Use Near Schools regulations; requires reporting of specified types of information on applications for permits for the use of restricted materials, NOIs, and pesticide use reporting (PUR) forms, to enable accurate reporting and enforcement of DPR's school regulations; and requires DPR to adopt changes to the Pesticide Use Near Schools regulations, to expand their application to private schools. Specifically, **this bill**:

1) Defines schoolsite to have the same meaning as defined in DPR's Pesticide Use Near Schools regulations.

2) Requires the county agricultural commissioner (CAC) of a county in which a schoolsite is located to require an NOI to be submitted before a person applies a pesticide, for the production of an agricultural commodity, within one-quarter mile of a schoolsite using an application method that is restricted under DPR's Pesticide Use Near Schools regulations.

3) Requires DPR to do all of the following, to enable accurate reporting and enforcement of DPR's Pesticide Use Near Schools regulations:

    a) Require a separate site identification number for the portion of an agricultural field that lies within one-quarter mile of a schoolsite;

    b) Require—for a permit application for agricultural use of a pesticide designated as a restricted material, as it pertains to an agricultural field of which any portion lies within one-quarter mile of a schoolsite—reporting on the specific method of pesticide application, as specified in DPR's Pesticide Use Near Schools regulations;

    c) Require—for an NOI for pesticide use, as it pertains to an agricultural field of which any portion lies within one-quarter mile of a schoolsite—reporting on both of the following: the specific method of pesticide application, as specified in DPR's Pesticide Use Near Schools regulations, and the allowable dates and times of the period during which the pesticide is to be applied; and,

    d) Require—for PUR forms and procedures, as they pertain to an agricultural field of which any portion lies within one-quarter mile of a schoolsite—reporting on both of the following: the specific method of pesticide application, as specified in DPR's Pesticide Use Near Schools regulations, and the exact date, start time, and end time of the pesticide application.

4) Requires DPR, in evaluating a county's pesticide use enforcement program, to evaluate the county's effectiveness at enforcing the Pesticide Use Near Schools regulations and the requirements established under AB 1864.

5) Requires DPR, on or before December 31, 2026, to adopt changes to the Pesticide Use Near Schools regulations, to apply the regulations to private schools serving pupils in kindergarten or grades 1 to 12, inclusive, with an enrollment of 6 or more pupils.

6) Requires—on January 1, 2025 and annually thereafter—the California Department of Education to provide DPR and the CAC for each county with information available to the California Department of Education regarding the location of private schools serving pupils in kindergarten or grades 1 to 12, inclusive, with an enrollment of six or more pupils.

7) Provides that the requirements under AB 1864 do not apply to a school conducted in a person's residence.

8) Provides that the requirements under AB 1864 do not restrict DPR's authority to amend its Pesticide Use Near Schools regulations, to the extent that those amendments are consistent with requirements established by AB 1864.

EXISTING LAW:

1) Authorizes the state’s pesticide regulatory program and mandates DPR to, among other things, provide for the proper, safe, and efficient use of pesticides essential for the production of food and fiber, for the protection of public health and safety, for the protection of the environment from environmentally harmful pesticides, and to assure agricultural and pest control workers safe working conditions where pesticides are present by prohibiting, regulating, or otherwise ensuring proper stewardship of those pesticides. (Food and Agriculture Code (FAC) § 11401, et seq.)

2) Regulates the use of pesticides and authorizes the director of DPR to adopt regulations to govern the registration, sale, transportation, or use of pesticides, as prescribed. (FAC § 11501, et seq.)

3) Defines "agricultural commodity" as an unprocessed product of farms, ranches, nurseries, and forests (except livestock, poultry, and fish). Defines agricultural commodities as including fruits and vegetables, grains, legumes, animal feed and forage crops, rangeland and pasture, seed crops, fiber crops, oil crops, trees grown for lumber and wood products, nursery stock grown commercially, Christmas trees, ornamentals and cut flowers, and turf grown commercially for sod. (3 California Code of Regulations (CCR) § 6000)

4) Defines "agricultural use" to mean the use of any pesticide or method or device for the control of plant or animal pests, or any other pests, or the use of any pesticide for the regulation of plant growth or defoliation of plants. (FAC § 11408)

5) Establishes DPR's Pesticide Use Near Schools regulations, pertaining to pesticide applications made for the production of an agricultural commodity, within one-quarter mile of a schoolsite. (3 CCR § 6690-6692)

6) Defines, under the Pesticide Use Near Schools regulations, "schoolsite" to mean any property used as a child day care facility, or for a kindergarten, elementary, or secondary school, including all areas of the property used on weekdays by children attending such facilities or schools, or other property identified by the CAC as a park adjacent to a school that is used by the school for recess, sports, or other school activities. Provides that "schoolsite" does not include family day care homes; postsecondary educational facilities attended by secondary pupils; private kindergarten, elementary, or secondary school facilities; or vehicles or bus stops not on school property. (3 CCR § 6690)

7) Provides, under the Pesticide Use Near Schools regulations, that pesticide application restrictions will apply Monday through Friday, during the hours of 6 a.m. to 6 p.m., and that the specific restriction will depend on the distance from the treated area to a schoolsite, the application equipment used, and the type of pesticide applied. Requires, during these time periods, the operator of the property and the pesticide applicator to assure that an application is not made within a specified distance of the schoolsite, as follows:

   a) A minimum one-quarter mile distance is required for applications using an aircraft, airblast sprayer, sprinkler chemigation equipment, dust or powder, or fumigant (3 CCR § 6691(a));

   b) A minimum distance of 25 feet is required for applications using a ground-rig sprayer (unless the equipment is used to apply a dust, powder, or fumigant, in which case the one-quarter mile distance restriction applies); field soil injection equipment (unless the equipment is used to apply a fumigant, in which case the one-quarter mile restriction applies, or if the equipment is used to apply dust, or powder, in which case there is no minimum distance restriction); other application equipment not identified in the regulations (unless the equipment is used to apply dust, powder, or fumigant, in which case the one-quarter mile distance restriction applies) (3 CCR § 6691(b));

   c) No distance restriction is required under specified circumstances, including when the pesticide application is made within an enclosed space or using bait stations, backpack sprayers, or hand pump sprayers; however, the use of these pesticide application methods trigger the one-quarter mile distance restriction under certain circumstances, such as when a backpack sprayer is used to apply a dust or powder (3 CCR § 6691(c)); and,

   d) No distance restriction is required when school classes are not scheduled for the day of application, or a child day care facility is closed during the entire day of the application. (3 CCR § 6691(d))

8) Provides that, in addition to the time and distance restrictions specified above, fumigants cannot be applied when school classes are scheduled or child day care facilities are open within 36 hours following fumigation. (3 CCR § 6691(e))

9) Provides that the application restrictions do not apply when there is a written agreement—between the operator of the property, the principal or child day care facility administrator, and the CAC—that specifies alternative application restrictions that the parties agree provide the same or a greater level of protection as the restrictions specified under DPR's Pesticide Use Near Schools regulations; requires the CAC to enforce the written agreement as if they were requirements established in regulation; and provides that any party may rescind the

agreement at any time by notifying the other parties in writing, in which case the Pesticide Use Near Schools regulations control. (3 CCR § 6691(f))

10) Requires, for all applications of pesticides expected to be made for the production of an agricultural commodity within one-quarter mile of a schoolsite, the operator of the property to be treated to provide annual notification to the following individuals, no later than April 30, for pesticides expected to be used from July 1 of the current year through June 30 of the next year: the principal of a public K-12 school, the administrator of a child day care facility, and the CAC. (3 CCR § 6692)

11) Requires that the annual notification be provided in writing and include the following information (3 CCR § 6692):

    a) A summary of the operator of the property's requirements to provide annual notification to a schoolsite;

    b) A summary of the applicable pesticide application restrictions specified in the Pesticide Use Near Schools regulations;

    c) The operator's name and contact information;

    d) A map showing the location of the field(s) involved, and the school or child day care facilities;

    e) The CAC's contact information;

    f) The National Pesticide Information Center website address;

    g) Information on the pesticide(s) expected to be used, including the name of each active ingredient, or the principal functioning agent for a spray adjuvant; example pesticide product name(s); and the United States Environmental Protection Agency (US EPA) or California registration number;

    h) The following statement: "This notification is informational only, and includes a list of pesticides expected to be used. Beginning July 1, 2018, schoolsites will be informed of pesticides not on the list at least 48 hours prior to their use. The county agricultural commissioner may be contacted for questions or additional information; if violations of these requirements are suspected; or other non-emergency situations"; and,

    i) A description of the option to negotiate an alternate to the required application restrictions.

12) Requires the operator of a property, for a pesticide to be used that was not included in the annual notification, to provide the information described above to the schoolsite and the CAC at least 48 hours prior to application. (3 CCR § 6692)

13) Requires a property operator to retain a copy of each annual notification for two years and to make them available to DPR or the CAC upon request; requires the CAC to retain a copy of each annual notification for one year. (3 CCR § 6692)

14) Authorizes the CAC of any county to adopt regulations applicable to his or her county that are supplemental to those of the director of DPR which govern the conduct of pest control operations and records and reports of those operations; requires that each regulation of the CAC be approved by the director before it becomes operative; requires the director, in reviewing a CAC's regulations, to consider the necessity, authority, clarity, and consistency of the regulations. (FAC § 11503)

15) Authorizes a CAC to apply the authority granted above (under FAC § 11503) to the agricultural use of any pesticide for agricultural production within one-quarter mile of a school with respect to the timing, notification, and method of application; requires that any regulations adopted pursuant to this authority become operative, unless specifically disapproved in writing by the director within 30 calendar days of their submission by the CAC. (FAC § 11503.5)

16) Authorizes a comprehensive school safety plan to include, at the local discretion of the governing board of the school district, procedures for responding to the release of a pesticide or other toxic substance from properties located within one-quarter mile of a school. (Education Code § 32284)

17) Requires DPR to control and otherwise regulate the use of restricted materials found to meet criteria specified in FAC § 14004.5. (FAC § 14001)

18) Requires DPR to, by regulation, designate and establish a list of restricted materials based upon, but not limited to, any of the following criteria: danger of impairment of public health; hazards to applicators and farmworkers; hazards to domestic animals, or to crops from direct application or drift; hazard to the environment from drift on to streams, lakes, and wildlife sanctuaries; hazards related to persistent residues in the soil resulting in contamination of the air, waterways, estuaries, or lakes, with consequent damage to fish, wild birds, and other wildlife; and hazards to subsequent crops through persistent soil residues. (FAC § 14004.5)

19) Prohibits a person from using or possessing any pesticide designated as a restricted material for any agricultural use except under a written permit of the CAC. (FAC § 14006.5)

20) Prohibits a CAC from requiring a permit for the agricultural use of any pesticide not designated as a restricted material, unless the CAC determines that the pesticide's use will present an undue hazard when used under local conditions. (FAC § 14006.6)

21) Requires each permit issued for agricultural use of a restricted material to be site and time specific. (3 CCR § 6422(a))

22) Requires specified information to be included in each application for a permit for agricultural use of a restricted material, including the location of each property to be treated; identification of all known areas that could be adversely impacted by the use of the restricted material, including schools and playgrounds; the approximate date or crop stage of intended restricted material applications; and the expected method of application. (3 CCR § 6428)

23) Requires, when an NOI is required by a CAC, specified information to be provided on the NOI, including the method of application, the date the intended application is to commence, and the location and identity of areas to be treated that have changed since a permit was

issued and which may be adversely impacted; requires that the CAC is notified at least 24 hours prior to commencing the use of a pesticide requiring a permit. (3 CCR § 6434(b)(11))

24) Requires that the following persons maintain records of pesticide use: any person who uses a pesticide for an agricultural use, other than use on livestock; any person who uses a pesticide listed by DPR as a restricted material; any person engaged for hire in the business of pest control; any person who uses a pesticide for industrial post-harvest commodity treatment; and, any person who uses a pesticide from a specified list for any outdoor institution or outdoor industrial use. (3 CCR § 6624(a))

25) Requires that pesticide use records include specified information for each pest control operation, including the date and time of pesticide application, location of the property treated, total acreage or units treated at the site; and, the pesticide and amount used. (3 CCR § 6624(b))

26) Requires the operator of a property that is producing an agricultural commodity, and an agricultural pest control business applying pesticides to such property, to include specified information, in addition to the information required under 3 CCR § 6624(b), including the date and time the pesticide treatment started and ended, and the method of application. (3 CCR § 6624(c))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "Strengthening the enforcement of pesticide regulations in school zones is critical to student health, particularly in our rural school districts. Children are particularly vulnerable to the health impacts of pesticides, and insufficient enforcement of pesticide regulations disproportionally impacts students of color. Enforcing the restriction of pesticide use within [one-quarter] mile of a school site during school hours will help keep our students safe from the harmful effects of prolonged exposure."

Pesticide use near schools and children's health: The US EPA defines a pesticide as any substance, or mixture of substances, intended for preventing, destroying, repelling, or mitigating pests; use as a plant regulator, defoliant, or desiccant; or use as a nitrogen stabilizer. These chemicals are designed to kill unwanted organisms—including animals, plants, and microbes—and many pesticides can also pose risks to people. The US EPA notes that, to determine human health risk, both the toxicity or hazard of the pesticide and the likelihood of exposure must be considered. For example, a low level of exposure to a very toxic pesticide may pose similar risk to a high level of exposure to a relatively low toxicity pesticide. The specific health effects of pesticides depend on the type of pesticide. Some, such as organophosphates and carbamates, affect the nervous system. Others may act as carcinogens, affect the body's endocrine (hormone) systems, or irritate the skin or eyes.

In 2014, the California Department of Public Health, California Environmental Health Tracking Program, and Public Health Institute released a study (2014 Study), "Agricultural pesticide use near public schools in California," examining the use of agricultural pesticides near public schools, in the top 15 counties by agricultural pesticide use in California for 2010. The 2014 Study, which preceded the development of DPR's Pesticide Use Near Schools regulations (described further below), notes that, compared with adults who do not work in agricultural

settings, children are more likely to be exposed to pesticides and more susceptible to the health effects of pesticides. Reasons for this increased susceptibility include:

- **Behavior.** Certain childhood behaviors—such as spending more time outdoors, playing on the ground, and putting objects in their mouths—can increase children's risk for pesticide exposure;

- **Physiological development.** Children's bodies are still maturing, so their physiology undergoes rapid changes, leaving them vulnerable to interruptions or delays in key developmental milestones; and,

- **Body size.** Relative to their weight, children eat, drink, and breathe more than adults, increasing their exposure on a per pound basis.

The six categories of pesticides considered in the 2014 Study are:

- **Carcinogens,** which are chemicals or physical agents that can cause cancer;

- **Reproductive and developmental toxicants,** which are chemical, physical, or biological agents that can affect children's ability to develop normally and at a normal pace;

- **Cholinesterase inhibitors,** which are chemicals that block the normal breakdown of an important chemical in the body that regulates nerve cell activity;

- **Toxic air contaminants,** which cause or contribute to increased mortality, increased cancer risk, or other serious health impacts such as birth defects, adverse reproductive outcomes, or other effects on the immune, nervous, and respiratory systems;

- **Fumigants,** which are pesticides that are used in gaseous form. According to the 2014 Study, fumigants account for 20% of all pesticides used in California, and the fumigants most often used include chemicals that are reproductive or developmental toxicants, toxic air contaminants, and carcinogens. Because fumigants are gaseous, there is a high potential for measurable amounts to distribute into the air and drift away from their original application site; and,

- **Priority pesticides for assessment and monitoring,** which have been identified by DPR as priorities for additional risk assessment or monitoring, due to evolving understanding of their toxicological properties, exposure pathways, health effects, and/or their increasing use.

Across the 15 counties, the 2014 Study assessed 2,511 public schools attended by over 1.4 million students, by linking geographic school data to over 2.3 million PURs (described further below). Key findings of the 2014 Study include the following:

- Hispanic children made up 54.1% of the population in the public schools in the 15 counties. However, they comprised 61.3% of the population in schools with any pesticide use within one-quarter mile, and 67.7% of the population in schools in the highest quartile of pesticide use. Hispanic children were 46% more likely than White children to attend schools with any pesticides of concern (i.e., those with the potential to

cause adverse health effects) applied nearby and 91% more likely than White children to attend schools in the highest quartile of pesticide use;

- For 36% of schools, pesticide use within one-quarter mile ranged from less than 1 pound applied to nearly 30,000 pounds applied. The heaviest use was concentrated across a small percentage of schools;

- Pesticide use near schools varied among counties, with Fresno and Tulare counties having the highest number or percentage of schools with any pesticides applied nearby, and Ventura and Monterey counties having the highest number or percentage of schools in the top 5% for nearby pesticide use, where the amounts of applied pesticides within one-quarter mile of schools ranged from 2,600 to nearly 30,000 pounds;

- The top three pesticides of public health concern used within one-quarter mile of schools were all classified as toxic air contaminants, fumigants, and priority pesticides for assessment and monitoring. Of the top 10 pesticides used near schools, six were listed by DPR as restricted materials, which require special permits and are eligible for additional regulation at the local level (described further below). Additionally, eight of the top 10 pesticides have a chemical persistence (measured as half-life in soil) of more than a week. The 2014 Study notes that some pesticides can take weeks or months to degrade in the environment, and there is a higher risk of exposure for pesticides that do not break down quickly. While the inhalation of pesticides through drift is a potential pathway for exposure during or shortly after an application, other routes of exposure (including skin contact and hand-to-mouth contact) can also occur after airborne chemicals have deposited onto surfaces (e.g., playground equipment). In such cases, environmental persistence is a major factor in the likelihood of exposure; and,

- Of the six categories of pesticides assessed, priority pesticides for assessment and monitoring were used near the most schools (33.8%) and fumigants were used near the fewest schools (12.7%). However, both of these pesticide categories had similar ranges of use, from zero to over 27,000 pounds applied within one-quarter mile of a school.

Restricted materials, NOIs, and PURs: According to DPR, restricted materials are pesticides deemed to have a higher potential to cause harm to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or other crops compared to other pesticides. State law requires the restricted material designation to be made through regulations, and only DPR can designate a pesticide as a restricted material (although federal designation of a pesticide as a "restricted use pesticide" (RUP) is one of several factors that DPR uses to designate a pesticide as a restricted material). With certain exceptions, restricted materials may be purchased and used only by or under the supervision of a certified commercial or private applicator under a permit issued by the CAC. California requires permits for restricted materials so that the local CAC can assess, in advance, the potential effects of the proposed application on health and the environment. The CAC may deny permits or require feasible alternatives to be used. CACs can also require a permit for a non-restricted material if the application would present an "undue hazard."

According to DPR, the restricted material permit process involves two steps. First, to obtain a permit, the property owner or business operator must apply to the CAC. Among other things, an application must list the areas to be treated, their location and size, crops or commodities, pest

problems, names of restricted pesticides to be applied, and application method. The permit application must also include a map or description of the surrounding area, showing any places, such as schools, that could be harmed by pesticides. If a CAC decides that substantial harm is likely, they can require the permit applicant to evaluate alternatives (including not using a pesticide at all), or impose extra controls designed to reduce the risk of harm to people or the environment, in addition to the controls already on the pesticide label and in regulation. A CAC must deny a permit application if they conclude that use of the pesticide may harm people or the environment and no restrictions are available to mitigate that harm.

NOIs represent the second step in the restricted material permit process. In a fact sheet describing this process, DPR states that, since "permits are typically issued for a year and it is not possible (or desirable) to schedule pesticide treatments months in advance, applicants must let the CAC know each time they plan to use any of the restricted materials on their permit." Applicants do this by filing an NOI. Specifically, the applicator or permittee must send the NOI to the CAC at least 24 hours before the scheduled treatment, and the NOI must describe the specific site to be treated and the pesticides to be applied. Neither California state law nor regulations require NOIs to be submitted for non-restricted materials.

NOIs provide CACs with information about planned applications of restricted materials, before the applications occur. In contrast, agricultural PURs—which growers must submit monthly to the CAC—capture information about pesticide applications that have already occurred, for both restricted and non-restricted materials. PURs provide government officials, scientists, growers, policymakers, and public interest groups with information about regional and statewide pesticide use, including the dates and times of application, field location and site identification number, application method, and the amount of pesticide used. To allow for location-specific tracking of pesticide use, site identification numbers are assigned for each location or field where pesticides will be used for the production of an agricultural commodity; these numbers are also recorded on restricted material permits. According to DPR, the use of PUR data allows for risk assessments and policy decisions to be based on actual reported pesticide use rates; these data are also used to support the enforcement of pesticide laws.

State action to reduce the exposure of children to pesticides: The California Legislature has put forward numerous bills over the last 30 years in an effort to reduce the exposure of children to pesticides, by regulating pesticide use both on and near schoolsites. The Healthy Schools Act, established by AB 2260 (Shelley, Chapter 718, Statutes of 2000), defines requirements for school and child care center staff, pest management professionals, and DPR, when pesticides are used at schools and child care centers.

In 2002, enactment of AB 947 (Jackson, Chapter 457) explicitly authorized CACs to adopt regulations for the use of any pesticide for agricultural production within one-quarter mile of a school with respect to the timing, notification, and method of application of the pesticide. However, the 2014 Study found that as of September 2013, the existence and nature of locally-required pesticide application buffer zones near schools varied widely across the 15 counties examined. One county recommended, but did not require, pesticide application buffer zones. Other counties required buffer zones, but had wide-ranging differences in the size of the buffer zone (ranging from 120 feet to one mile from a schoolsite) and how the requirements were structured based on multiple factors, including a pesticide's classification, time of day for an application, and the application method.

DPR's Pesticide Use Near Schools regulations. In an effort to reduce the chances of unintended pesticide exposure to children at school, and increase communication between growers, CACs, and schoolsites, DPR standardized school buffer zone requirements across counties on January 1, 2018, when its Pesticide Use Near Schools regulations took effect. To help manage the risk of pesticide drift, these regulations provide minimum distance standards for certain agricultural pesticide application methods near schoolsites; the regulations also require growers to provide annual notifications about the pesticides they expect to use in the upcoming year to school and child day care administrators. "Schoolsites" are defined to mean public K-12 schools, licensed child day care facilities (not including family day care homes), and parks adjacent to a schoolsite that are regularly used by the school for recess, sports, or other school activities. The application restrictions require a minimum distance between pesticide application and a schoolsite, Monday through Friday from 6 a.m. to 6 p.m., as follows:

- One-quarter mile for potentially higher drift applications, such as by aircraft;
- 25 feet for lower drift applications, such as most tractor applications;
- No minimum distance for negligible drift applications, such as within a greenhouse; and,
- No minimum distance when no classes are scheduled, or a child day care is closed.

To examine the efficacy of the Pesticide Use Near Schools regulations, California Rural Legal Assistance, Inc. (a nonprofit law firm) undertook an analysis of PUR data for 2018-19, for fields within one-quarter mile of public schools in five counties (Fresno, Kern, Tulare, Ventura, and Sonoma), and examined the number of notices of violations issued for the Pesticide Use Near Schools application restrictions.

Restricting the analysis to 4-6 schoolsites per county, and to fields that were 100% treated with classes of pesticide that are likely to be restricted under the Pesticide Use Near Schools regulations (fumigants, aerial applications, ground applications of fungicide, spreader-stickers, or insecticides), California Rural Legal Assistance, Inc. found what it determined to be a "large number of potential violations": 97 in Fresno, 99 in Kern, 25 in Sonoma, and 89 each in Tulare and Ventura counties. However, the number of formal notices of violation or proposed action issued by CACs for each county in the same timeframe were "just 2 each in Fresno and Sonoma, 1 each in Kern and Ventura, and none at all in Tulare."

On the basis of the above investigation, Californians for Pesticide Reform (CPR; an environmental justice organization), submitted a written letter to DPR on March 9, 2021, stating the following:

> "We wish to notify you of significant practical concerns that have come to light in the three years since DPR's regulation Pesticide Use Near Schoolsites took effect on January 1, 2018. Our efforts to groundtruth compliance with the regulation have highlighted serious flaws that underscore the need to improve enforceability of this important protection for the next generation of Californians…
>
> Because the regulation restricts application methods and not specific pesticides or classes of pesticides, enforcement depends on the ability to identify the application method. For pesticides not classified as restricted materials, information is confined to the [PUR] data

> submitted to DPR after the fact (3 CCR 6624(c)). PUR reporting provides broad information about application method ('ground,' 'air,' 'fumigation,' or 'other'). However, 3 CCR 6691 requires a [one-quarter] mile buffer only for some, and not all, types of ground applications and a 25 foot buffer for some additional types of ground applications…Without requirements to report specific information that directly aligns with the language in 3 CCR 6691, it is extremely challenging for [CACs] to confirm with certainty whether a particular application was in fact a violation…
>
> For applications that take place on fields that lie partly inside the school buffer zone and partly outside, it is extremely difficult to confirm the exact location of an application, even if the application method is known. For an application on a field that crosses the buffer zone that began before 6 am and continued into the school day, it is usually impossible to know where spraying occurred and when, and therefore whether a violation occurred. One option for improving enforceability would be a requirement to divide such fields into two site identification numbers: one for the portion located inside the buffer zone, and the other for the portion outside the buffer zone. Each site would require independent [NOIs] and [PURs]…
>
> The data available in PURs, NOIs and other records are not sufficient to confirm whether a prohibited application method was used, or whether the application was inside the buffer zone during school hours for fields that cross the line."

In a written letter dated February 25, 2022, DPR responded to CPR, stating that CPR's suggested actions would require regulation. DPR also stated: "DPR is actively working on identifying immediate actions in close coordination with CACs to enhance the tools available for tracking compliance with the Pesticide Use Near Schools regulations. This includes increasing outreach to growers and applicators. The Department has issued guidance to CACs for distribution at permitting times, and during Spray Safe and grower meeting events to increase compliance. We also will evaluate regulatory options to clarify field application reporting."

AB 1864 relative to guidance, regulations, and revisions to regulations for PURs and NOIs: In an effort to address the issues raised by CPR, DPR issued guidance containing voluntary "tips" to help growers comply with the Pesticide Use Near Schools regulations. The guidance states that the "regulations…include specific reporting requirements. This data is reflected in [DPR's] annual [PURs], which are an important tool for DPR to track compliance with the schools regulations, and also help ensure transparent communication to the public." DPR's tips recommend but do not require, that growers submit accurate PUR information, especially application start and end times for sites within a schoolsite buffer zone, and that growers consider obtaining a separate site identification number for the portion of a field within the buffer zone.

On January 1, 2024, DPR's updated regulations for the certification and training of commercial and private pesticide applicators went into effect. The updated regulations require that growers include the date and time that a treatment started and ended and the method of application. However, as of April 3, 2024, the PUR forms available on DPR's website do not fully reflect these updated regulatory requirements. For example, DPR's "Production Agriculture Monthly Pesticide Use Report" form only requires growers to report the date and time their pesticide application was completed, rather than the start and end time; without the latter information, it is unclear how CACs or DPR would confirm that a grower complied with minimum distance

requirements for pesticide applications during the 6 a.m. to 6 p.m. window, as established in the Pesticide Use Near Schools regulations. Similarly, the same form includes only four categories of pesticide application methods (ground, air, fume, or other), which do not reflect the full scope of application methods that are restricted under the Pesticide Use Near Schools regulations. To address these issues, AB 1864 would require—for pesticide use reporting forms and procedures, as they pertain to an agricultural field of which any portion lies within one-quarter mile of a schoolsite—reporting on both of the following: the specific method of pesticide application, as specified in DPR's Pesticide Use Near Schools regulations; and the exact date, start time, and end time of the pesticide application.

On November 3, 2023, DPR announced a proposal to amend regulations governing NOIs; specifically, the proposed action would require, among other things, that all agricultural NOIs be electronically submitted to the CAC via a specified platform (CalAgPermits); that specific information from NOIs for the use of restricted materials be electronically submitted to DPR; and that DPR make specific NOI information publicly available upon receipt or as soon as practicable. The draft text for the proposed regulations would also require that NOIs include information about the time, in addition to the date, that an intended application is to commence. Existing regulations already require NOIs to include the method of pesticide application, but as of February 18, 2024, CalAgPermits only required growers to specify whether their planned application method fell into one of four broad categories (ground, air, fumigation, or other) which, as noted above, does not reflect the full scope of application methods that are restricted under the Pesticide Use Near Schools regulations. AB 1864 would require—for an NOI for pesticide use, as it pertains to an agricultural field of which any portion lies within one-quarter mile of a schoolsite—reporting on both of the following: the specific method of pesticide application, as specified in DPR's Pesticide Use Near Schools regulations, and the allowable dates and times of the period during which the pesticide is to be applied.

Finally, AB 1864 would require the submission of NOIs for both restricted and non-restricted materials; the latter comprise the majority of pesticides used in California agriculture. Because NOIs are currently required only for pesticides classified as restricted materials, this provision would represent a major change in the way that pesticides are regulated in California, at least with respect to the use of non-restricted materials in school buffer zones. However, this requirement would also provide CACs with an opportunity to assess, in advance, the potential effects of the proposed application for any pesticide—whether it is a restricted material, or not—on nearby school populations. Notably, the 2014 Study, described above, found that of the top 10 pesticides with the highest application amounts (by pound) within one-quarter mile of a public school, four were not classified as restricted materials; however, they were classified by DPR as priority pesticides for assessment and monitoring. In addition, a 2021 short paper by CPR, "There's something in the air, and it causes childhood cancers," reviews several studies on pesticides and childhood cancers in the context of current restrictions on pesticide use, and highlights eight pesticides that are not classified as restricted materials, but have been associated with increased incidences of certain types of childhood cancer.

This bill: By requiring the inclusion of specified types of information on applications for restricted material permits, NOIs, and PUR forms, AB 1864 could enable more accurate reporting and enforcement of DPR's Pesticide Use Near School regulations. AB 1864 would also require the expansion of these regulations to private schools, and the submission of NOIs for all planned pesticide applications subject to the Pesticide Use Near School regulations. In doing

so, this bill could expand protections for children from pesticide drift, while they are at school or in child day care facilities.

Arguments in support: According to a coalition of organizations, including environmental justice, environmental, and community-based organizations:

"Efforts to evaluate the impact of the school buffer zone regulation at a sample of 25 public schools across 5 counties revealed an extraordinarily large number of likely violations—399 in the space of 11 months, an average of 16 per school site. However, there were just six actual notices of violation from County Agricultural Commissioners across the same timeframe for all schools in the five counties. The remaining likely violations were unverifiable because the required pesticide use reporting did not match the restrictions in the regulation. In some cases, the start and end time of the applications were not reported or were improperly reported; in others, it was impossible to confirm with certainty that the application used a prohibited method because the application method does not have to be reported. Finally, for agricultural fields that are both outside and within the school buffer zone, it was impossible to verify whether an application took place within the buffer zone.

Furthermore, the protections of DPR's school regulation do not extend to students at private schools. In January 2023, the Fire Department was called to Modesto Christian School, where up to 20 students and several teachers experienced symptoms, including headaches and itchy eyes, when they went outside for a fire drill while pesticides were being sprayed in the orchard across the fence.

DPR was notified of the enforceability issues in 2021, and issued voluntary guidance to growers to improve reporting, verification and compliance. To ensure that all California children are adequately protected, the changes recommended on a voluntary basis by DPR must be mandatory. DPR updated [PUR] requirements in January 2024 but the amendments did not address the issues. AB 1864 will address the issues that prevent DPR's schools regulation from working as intended to protect all children in California from pesticide drift while at school."

Arguments in opposition: According to a coalition of agricultural organizations:

"…we appreciate that the amendments in AB 1864 to require annual permits to include method of application and specific site identification, and for use reports to include method and timing of application, provides corroboration that laws are adhered to. We do not object to these components of the bill and believe they can be achieved through changes to the permits and use reports. However, the obligation for a farmer to complete an [NOI] in anticipation of *any* pesticide application is fraught with challenges and we request this subdivision be removed.

California's current [NOI] system for RUPs (in place for agricultural *and* non-agricultural uses) is a significant undertaking for state, local officials, and users. Farmers must work with a licensed pest control adviser who completes and submits an NOI. This NOI identifies a variety of information related to the pest they seek to address, rate, method and type of product applied, acres treated, the license number associated with the applicator, the site of application, etc. NOIs must be submitted to Commissioners at least 24-48 hours in advance of the start time of a proposed application, depending upon the pesticide and location. Commissioners must then evaluate the NOI to determine if an impact may occur, and if such, dictate an alternative, additional restrictions or prohibit an application.

To duplicate this system for non-RUPs within [one-quarter] mile of schools would be a resource-intensive undertaking without discernable benefit. This additional information is already captured in annual permits submitted by farmers and is corroborated by monthly use reports. The amendments to AB 1864 unrelated to a NOI provide greater surety of this…This is not an efficient use of state and local resources or workload for farmers, which would be fraught with confusion, especially if enforcement is already verified through existing measures. As such, this coalition requests the NOI component of AB 1864 be removed.

Finally, AB 1864 extends the use restrictions and notification requirements for agricultural pesticides to apply to private K-12 schools with six pupils or more. We are not aware at this time that DPR or [CACs] have access to the list of private school sites that meet these requirements and certainly not in a GIS format that would allow for implementation of this law…Without this information, farmers and state/local officials would be on their own accord to estimate proper [one-quarter] mile radii to implement AB 1864. To that end, we request this provision to either be removed entirely or obligate the Department of Education to remit quarterly to DPR and [CACs] a GIS map identifying private schools that meet these pupil thresholds."

Double referral: Should AB 1864 be approved by the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Education Committee.

Related legislation:

1) AB 1721 (Swanson, 2010). Would have created the "Healthy and Safe School Zone Act" and prohibited specific types of pesticide applications and purposes, within one-half or one-quarter mile of a school zone. This bill died in the Assembly Agriculture Committee.

2) AB 622 (Swanson, 2009). Would have established a safety zone of no less than three and three tenths miles for the aerial application of a pesticide for residential areas and known sensitive sites such as schools, hospitals, day care centers, senior citizen centers, residential care homes, and farm labor camps. This bill died in the Assembly Agriculture Committee.

3) SB 759 (Leno, 2009). Would have required that a manufacturer voluntarily provide a complete list of the ingredients in their product to the Office of Environmental Health Hazard Assessment (OEHHA) before a pesticide could be aerially applied to any residential or sensitive area in the state. This bill died on the Senate Appropriations Committee Suspense File.

4) AB 947 (Jackson, Chapter 457, Statutes of 2002). Authorizes a CAC to apply its authority to adopt regulations, granted under FAC § 11503, to the agricultural use of any pesticide for agricultural production within one-quarter mile of a school with respect to the timing, notification, and method of application; requires that any regulations adopted pursuant to this authority become operative, unless specifically disapproved in writing by the director within 30 calendar days of their submission by the CAC; authorizes a comprehensive school safety plan to include, at the local discretion of the governing board of the school district, procedures for responding to the release of a pesticide or other toxic substance from properties located within one-quarter mile of a school.

5) AB 2260 (Shelley, Chapter 718, Statutes of 2000). Established the Healthy Schools Act of 2000, which required, among other things, that the state take the necessary steps to facilitate the adoption of effective least toxic management practices on schoolsites; that each schoolsite maintain records of all pesticide use at the schoolsite for a period of 4 years and make the records available to the public upon request; and that licensed and certified pest control operators include information on any school pesticide application that they perform as part of their otherwise applicable pesticide use reporting requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

350 South Bay Los Angeles
A Voice for Choice Advocacy
Active San Gabriel Valley
Agriculture and Land-based Training Association
Alliance of Nurses for Healthy Environments
American Nurses Association/California
Ban SUP (Single Use Plastic)
Bay Area-System Change Not Climate Change
Breast Cancer Prevention Partners
California Association of Private School Organizations
California Association of Professional Scientists
California Environmental Justice Alliance
California Environmental Voters
California Federation of Teachers AFL-CIO
California Food and Farming Network
California Nurses for Environmental Health & Justice
California Rural Legal Assistance Foundation
California Rural Legal Assistance Foundation (CRLA Foundation)
California School Employees Association
Californians for Pesticide Reform
CALPIRG, California Public Interest Research Group
CAPS 805
CAUSE
Center for Biological Diversity
Center for Farmworker Families
Center for Food Safety; the
Center of Race, Poverty, and The Environment
Central California Asthma Collaborative
Central California Environmental Justice Network
Central Coast Alliance United for A Sustainable Economy
Central Valley Air Quality Coalition (CVAQ)
Centro Binacional Para El Desarrollo Indígena Oaxaqueno
Ceres Community Project
Children Now
Clean Water Action
Clean Water and Air Matter
Cleanearth4kids.org

Coalition Advocating for Pesticide Safety
Coalition for Clean Air
Community Land Shepherds
Dietrick Institute for Applied Insect Ecology
Educate. Advocate.
Environment California
Environmental Working Group
Facts Families Advocating for Chemical and Toxics Safety
Facts: Families Advocating for Chemical & Toxics Safety
Families Advocating for Chemical and Toxics Safety
Fibershed
Future Leaders of Change
GMO Science
Indivisible California Green Team
Interfaith Sustainable Food Collaborative
Latino Community Roundtable
Little Manila Rising
Long Beach Environmental Alliance
Madrone Audubon Society
National Association of Hispanic Nurses - Golden Gate (SF Bay Area) Chapter
Nontoxic Schools
Pajaro Valley Federation of Teachers, AFT 1936
Pajaro Valley Food, Farming and Health Policy Council
Paula Lane Action Network
Paula Lane Action Network (PLAN), Sonoma County, CA
Pesticide Action Network North America
Pesticide Research Institute
Physicians for Social Responsibility - Los Angeles
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Poison Free Malibu
Puma Springs Vineyards
Resource Renewal Institute
Récolte Energy
Safe Ag Safe Schools - Monterey Bay
San Francisco Bay Physicians for Social Responsibility
Sierra Club
Sierra Club California
Socioenvironmental and Education Network (SEEN)
Sonoma County Climate Activist Network (SOCOCAN!)
Sonoma Safe Agriculture Safe Schools (Sonoma SASS)
Sunflower Alliance
The Praxis Project
UFCW - Western States Council
Union of Concerned Scientists
United Food and Commercial Workers Union, Western States Council
Valley Improvement Projects
Valley Improvement Projects (VIP)
Veggielution

West Berkeley Alliance for Clean Air and Safe Jobs
www.gmoscience.org

Opposition

Agricultural Council of California
American Pistachio Growers
California Agricultural Aircraft Association
California Agricultural Commissioners & Sealers Association
California Apple Commission
California Association of Pest Control Advisers
California Association of Wheat Growers
California Association of Winegrape Growers
California Avocado Commission
California Bean Shippers Association
California Blueberry Association
California Blueberry Commission
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Food Producers
California Grain & Feed Association
California Pear Growers Association
California Seed Association
California Strawberry Commission
California Walnut Commission
Family Winemakers of California
Milk Producers Council
Olive Growers Council of California
Pacific Egg and Poultry Association
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association

Analysis Prepared by: Naomi Ondrasek / E.S. & T.M. /

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2244 (Ting) – As Amended March 21, 2024

SUBJECT: Product safety: proofs of purchase: bisphenols

SUMMARY: Prohibits, beginning on January 1, 2025 a paper proof of purchase (receipt), provided to a consumer by a business or created by a manufacturer, from containing bisphenol A (BPA) and would prohibit, beginning January 1, 2026, a paper proof of purchase, provided to a consumer by a business or created by a manufacturer, from containing any bisphenols. Specifically, **this bill**:

1) Defines "business" as a person that accepts payment through cash, credit, or debit transactions, except:

    a. A health care provider.

    b. An entity organized as a nonprofit institution that has annual gross sales receipts of less than two million dollars.

    c. An entity that is not subject to the California Consumer Privacy Act of 2018.

2) Defines "consumer" as person who purchases, and does not offer for resale, food, alcohol, other tangible personal property, or services.

3) Defines "department" as the Department of Toxic Substances Control (DTSC).

4) "Defines "manufacturer" as a person that makes the paper for the paper proof of purchase from raw materials or machinery.

5) Defines "person" as an individual, firm, association, organization, partnership, limited liability company, business trust, corporation, or company.

6) Defines "proof of purchase" as a receipt for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided at the point of sale, but does not include an invoice.

7) Prohibits, beginning January 1, 2025, a paper proof of purchase, provided to a consumer by a business or created by a manufacturer from containing BPA.

8) Prohibits, beginning, January 1, 2026, a paper proof of purchase provided to a consumer by a business or created by a manufacturer from containing any bisphenols.

9) Authorizes DTSC to adopt regulations to implement, interpret, or make specific the provisions of the bill.

10) Requires DTSC to post any violation or enforcement action taken pursuant to the provisions of this bill on their website.

11) Requires DTSC to shall deposit all fines collected from enforcing this bill into the Toxic Substances Control Account for DTSC to use upon appropriation by Legislature to enforce this bill.

12) Authorizes DTSC, the Attorney General, a district, a county counsel, or a city attorney to enforce this bill.

13) Provides that a violation shall be punishable by a civil penalty not to exceed five thousand dollars ($5,000) for a first violation, and not to exceed ten thousand dollars ($10,000) for each subsequent violation.

EXISTING LAW:

1) Defines "person" as any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company. (Health and Safety Code (HSC) § 19)

2) Prohibits, commencing on July 1, 2013, the sale, manufacture, or distribution of any bottle or cup that contains BPA, at a detectable level above 0.1 parts per billion (ppb), if the bottle or cup is designed or intended to be filled with any liquid, food or beverage intended primarily for consumption from that bottle or cup by children three years of age or younger. (HSC § 108940)

Under the Safer Consumer Products (Green Chemistry) statutes:

3) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified. (HSC § 25252)

4) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products, and their potential alternatives, to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern. (HSC § 25253 (a))

5) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)

Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):

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

7) Requires the Governor, on or before March 1, 1987, to publish a list of chemicals known to the state to cause cancer or reproductive toxicity and to revise and republish in light of additional knowledge at least once per year thereafter. The Office of Environmental Health Hazard Assessment (OEHHA) listed BPA on May 11th, 2015 as a chemical known to the state to cause developmental and reproductive toxicity. Bisphenol S (BPS) was listed on

December 29, 2023 as a chemical known to the state to cause reproductive toxicity. (HSC § 25249.8)

FISCAL EFFECT: Unknown

COMMENTS:

Need for bill: According to the author:

"Receipts generate millions of pounds of waste and billions of pounds of carbon dioxide emissions per year. This non-recyclable receipt waste contaminates recyclable paper materials and is extremely harmful to human health. Handling receipts on a day to day basis is known to pose high exposure to BPA and BPS- two chemicals linked to cancer and other major health-related issues.

This bill would prohibit the use of all bisphenol chemicals in paper proofs of purchase [receipts], which will further protect the general public by eliminating toxic contamination in paper waste and will maximize our ability to recycle paper products. It's critical that both businesses and manufacturers make the switch to safer alternatives of paper receipts to help better protect our cashiers and consumers."

Proposition 65: Proposition 65, officially known as the Safe and Drinking Water and Toxic Enforcement Act of 1986, was enacted as a ballot initiative in November 1986. Proposition 65 requires the state to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity, protects the state's drinking water sources from being contaminated with chemicals known to cause cancer, birth defects and other reproductive harm and requires businesses to inform Californians about exposure to such chemicals. OEHHA is the lead agency for implementation of Proposition 65 and has the authority to adopt and modify regulations as necessary. According to OEEHA, Proposition 65 list contains a wide range of naturally occurring and synthetic chemicals including additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents.

OEHHA listed BPA on May 11th, 2015 on the Proposition 65 list for causing reproductive toxicity and on December 18th, 2020 for causing developmental toxicity. BPS was listed on December 29th, 2023 for causing reproductive toxicity. OEHHA considered, but did not list BPA as a carcinogen. The literature review behind this decision covered epidemiological studies in humans and studies in animals. It is titled "Evidence on the Carcinogenicity of Bisphenol A (BPA)," published on September of 2022, and is available on OEHHA's website.

Bisphenols in thermal paper: Bisphenols are phenolic organic compounds that are widely used in various products such as in the creation of plastics, epoxy resins and thermal paper. Thermal paper is coated with a layer of chemicals that is heat sensitive. This thermal layer is comprised of three components: a reactive dye, a color developer and a sensitizer. The heat from a printer head will cause the dye to react with the developer and produce the visible color as seen on paper receipts. The sensitizer serves to optimize conditions for color formation. BPA and BPS are examples of color developers used in this process. Thermal printing is widely used in commercial applications because it is a rapid and inexpensive printing technology.

BPA was the preferred developer in thermal paper until legislation across the nation and worldwide highlighted concern over BPA use. In 2011, Governor Jerry Brown signed into law

(AB 1319, Chapter 467) a ban on the use of BPA in any bottle or cup designed for children 3 years or younger. In 2012, the United States Food and Drug Administration (US FDA) banned the use of BPA in baby bottles and cups. Increased public health concerns led to a gradual shift from BPA to other alternatives, like BPS, in thermal paper manufacturing.

Exposure and toxicity: The extensive uses of bisphenols in different manufacturing processes results in many sources of exposure for humans. Humans are exposed both directly, through oral and/or topical routes, and indirectly through environmental pollution and through the food chain. Scientists from the Centers of Disease Control and Prevention (CDC) published a study, titled "Fourth National Report on Human Exposure to Environmental Chemicals," reporting BPA concentrations in urine from participants ages six and older who took part of the CDC's National Health and Nutrition Examination Survey from 2003-2004. BPA was present in urine samples of nearly all the people tested suggesting widespread exposure of BPA. Biomonitoring data for average BPA urine concentrations is available up to the year 2016. Average urine concentrations are also available for BPS and other bisphenols allowing for some degree of comparison over the years.

Paper receipts, made from thermal paper, are a source of BPA and BPS exposure. People who frequently handle receipts, like cashiers, are constantly exposed to this source. Dermal absorption, transfer to other surfaces and ingestion of BPA or BPS as a result of handling receipt paper have been a point of interest in several research studies. The Ecology Center, a non-profit organization, has gathered data on paper receipts from retail stores in the United States (U.S.). Their first study titled "More Than You Bargained For: Receipt Paper Study 2018," analyzed 167 paper receipts and found that 18% of the receipts tested were positive for BPA and 75% tested positive for BPS. Only 2% of the receipts had no coating. Another study by the Ecology Center, published in the journal Environmental Pollution in 2023, analyzed over 500 cash register receipts from different establishments across 24 states in the country. Compared to their study in 2017, they saw an increase in the use of BPS (85%), a decrease in BPA (1.2%) and use of other alternatives.

OEHHA published a report in 2009 titled, "Evidence on the Developmental and Reproductive Toxicity of Bisphenol A." The authors of this report state that "there are few epidemiologic studies, mostly of cross-sectional design. The human BPA studies are thus of limited usefulness for evaluating causal relationships. In contrast, there are extensive data from animal studies on the developmental, female reproductive and male reproductive toxicity of BPA." While there are limitations and considerations for these studies, overall the findings point to BPA disrupting the endocrine (hormone) system in more than one way. For example, BPA can activate receptors of the reproductive system (estrogen receptors), affect expression of receptors (estrogen and progesterone receptors), alter steroid metabolism, interfere with insulin production, and interfere with thyroid hormone action.

More recently, OEHHA published a report in 2023 titled, "Evidence on the Female Reproductive Toxicity of Bisphenol S." The authors reported that BPS exhibits key characteristics of female reproductive toxicants. BPS alters reproductive hormone receptor signaling, alters reproductive hormone production and release from cells and metabolism in the body. For example, BPS affected ovarian follicle development (stages for creating a mature egg).

Alternatives in the market: The negative health impacts of BPA resulted in manufacturers shifting to BPS as an alternative developer chemical. Shifting to BPS became a regrettable

substitution due to its toxicity profile being similar to BPA. In 2014, the United States Environmental Protection Agency (U.S. EPA), released a report titled "Bisphenol A Alternatives in Thermal Paper." This report discussed some alternatives to BPA and stated that "no clearly safer alternatives to BPA were identified in this report – most alternatives have Moderate or High hazard designations for human health or aquatic toxicity endpoints." Despite these findings, this report represents an early framework to address alternative chemicals to BPA and guided future directions and considerations for research in finding alternatives to BPA.

The findings by the Ecology Center, as previously mentioned, have identified retailers that are using bisphenol-free receipt paper and demonstrate that alternatives are available and are being used by manufactures in recent years. Additionally, according to the website from the American Forest and Paper Association, an association representing manufactures of paper and wood products, U.S. paper manufactures have begun transitioning to new technologies that include phenol-free thermal paper. They also state that BPA has not been used in paper receipts by U.S. producers in over a decade.

Legislation elsewhere: Several states in the country have enacted legislation prohibiting the use of bisphenols in different items with thermal paper being one of those items. In 2011, the state of Connecticut passed legislation prohibiting the manufacturing, selling, and distribution in the state of thermal receipt paper or cash register receipt paper containing BPA. This law took effect on October, 1, 2013. In 2019, the state of Illinois passed legislation prohibiting, with some exceptions, the manufacturing, selling or use of thermal paper containing BPA. This law took effect on January 1, 2020. In 2023, the Department of Ecology in the state of Washington adopted regulations to prohibit the sale, manufacture and distribution of bisphenol-containing thermal paper beginning January 1, 2026.

The European Union published regulations to restrict BPA in thermal paper in 2016. These regulations took effect on January 2, 2020. In the process, they also acknowledged the similar toxicity profile of BPS with that of BPA and the need to monitor the use of BPS in thermal paper.

Regulating bisphenols as a class: California has passed legislation that regulates perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals as a class. Scientists from the Safer Consumer Product Program under the California Department of Toxic Substances Control state in a publication, titled "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program," that in the case of PFAS, "all members of the class have a potential for significant and widespread adverse impacts due to their extremely high environmental persistence, coupled with growing evidence for human and ecological health hazards for impurities, metabolites and degradation products of the subset commonly used in consumer products."

The state of Washington passed rules prohibiting bisphenols as an entire class of chemicals in several products including thermal paper. Using this approach, they bypass the standard risk assessment chemical-by-chemical method that can be slow, costly and can result in regrettable substitutions ultimately failing to protect public health. In the case of bisphenols, we have a clear example of a regrettable substitution: BPA to BPS. California would not be the first state to take this class approach with bisphenols.

The problem with bisphenols and recycling: According to CalRecycle's website, California has a statewide goal to recycle 75% of all the waste it produces. California is committed to reducing how much trash is made in the state and committed to creating responsible recycling markets.

Paper receipts are coated with chemicals and are therefore not recyclable and end up in landfills. Receipts also have the potential of contaminating the recycling stream.

Regrettable substitutes: BPS became widely used as an alternative to BPA after research identified BPA to be toxic or hazardous to human health. BPS was discovered to have similar negative health impacts, and thus becoming a regrettable substitution. While the proposed laws bans BPA and any bisphenols, including BPS, from receipt paper, there is no language to prevent a manufacturer from replacing these banned chemicals with other harmful chemicals. As this bill moves through the legislative process, the author may wish to consider addressing this issue.

Intentionally added bisphenols vs trace amount: The author may wish to consider adding language to clarify that it is possible for trace amounts of bisphenols to be found in paper for receipts that result from the manufacturing process and were not intentionally added by the manufacturer. This would address the concerns raised by the opposition.

Arguments in support: According to a coalition in support of this bill:

"Bisphenols have been linked to numerous health harms, including low birth weight, fertility problems, obesity, and an increased risk of breast and other cancers. Both BPA and BPS are listed on California's Prop 65 list of chemicals known to the state to cause reproductive harm. In a clear case of what is referred to as "regrettable substitution," the more historical use of BPA in thermal receipt paper has almost completely been replaced by BPS. As documented in a report released early last year, Receipt Deceit: Toxic Chemicals in Receipt Paper, testing conducted by the Ecology Center found that only about 1% of the over 350 receipts tested contained BPA; however, nearly 80% contained BPS. This shift from one Prop 65 chemical to another shows the need to deal with bisphenols as a class, to prevent future toxic substitutions. The good news from the 2023 study is that the use of non-bisphenol receipt paper alternatives increased from 2% in 2017 to 20% in 2023, showing that a shift away from bisphenols is doable."

Arguments in opposition: According to the American Forest & Paper Association:

"AB 2244 does not include language specifying that restrictions on BPA and bisphenols are limited to chemicals which have been "intentionally added," which is a major concern. Restrictions on bisphenols should be limited to intentionally added BPA and bisphenols that have a functional purpose in the final product. Without such a provision, regulating all bisphenols would impose an unnecessary and impractical burden on all producers to develop a testing program for over 100 bisphenol substances to determine if present even when they know they have not added any as part of their own processes.

As drafted, AB 2244 would require additional testing for many manufacturers as they could be held responsible for trace or background bisphenols present in the environment where receipts paper is produced. As such, we request that AB 2244 be amended to specify that restrictions on bisphenols are limited to cases where the chemical is "intentionally added", meaning that a manufacturer has purposefully added a chemistry to a product during manufacturing to have a functional or technical effect in the product. This amendment would be consistent with precedent-setting regulatory work occurring in the State of Washington while protecting California retail workers and consumers."

This bill: This bill would prohibit, beginning January 1, 2025 a receipt paper provided to a consumer by a business or created by a manufacturer from containing BPA. It would prohibit,

beginning January 1, 2026, a receipt provided to a consumer by a business or created by a manufacturer from containing any bisphenols. Any violation or enforcement action of this bill would be posted on DTSC's website and fines collected pursuant to this bill would be deposited into the Toxic Substances Control Account. This bill would authorize DTSC to adopt regulations to implement this bill. Lastly, this bill would authorize DTSC, the Attorney General, a county counsel, a district attorney, or a city attorney to enforce these provisions.

Double Referral: If this bill passes Assembly Environmental Safety & Toxic Materials it will be re-referred to the Judiciary Committee.

Related Legislation:

1) AB 1347 (Ting, 2023). Would have required a business to provide a consumer with the option to receive or not receive a proof of purchase. Would have prohibited a business from printing a paper proof of purchase if the consumer opts to not receive a proof of purchase. Would have also prohibited a paper proof of purchase provided to a consumer by a business from containing BPA and at a later date from containing any bisphenols. This bill was held in the Senate Appropriations Committee.

2) AB 418 (Gabriel, Chapter 17, Statutes of 2023). Prohibits, commencing January 1, 2027, a person or entity from manufacturing, selling, delivering, distributing, holding, or offering for sale, in commerce a food product for human consumption that contains any of the following: brominated vegetable oil, potassium bromate, propylparaben, and red dye 3.

3) AB 1319 (Butler, Chapter 467, Statutes of 2011). Prohibits the sale, manufacture, or distribution of any bottle or cup that contains BPA, at a detectable level above 0.1 parts per billion (ppb), if the bottle or cup is designed or intended to be filled with any liquid, food or beverage intended primarily for consumption from that bottle or cup by children three years of age or younger.

4) AB 1108 (Ma, Chapter 11, Statutes of 2007). Prohibits the manufacture, sale, or distribution in commerce of any toy or child care article that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1 percent. Prohibits the manufacture, sale, or distribution in commerce of any toy or child care article intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent. Requires manufactures to use the least toxic alternative.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
Breast Cancer Prevention Partners
Californians Against Waste
Clean Water Action
Cleanearth4kids.org
Environmental Working Group

Green America
Natural Resources Defense Council (NRDC)

Opposition

American Forest & Paper Association

Analysis Prepared by: Brenda Cisneros-Larios / E.S. & T.M. /

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2408 (Haney) – As Amended March 21, 2024

SUBJECT: Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances

SUMMARY: Prohibits, beginning July 1, 2026, any person from manufacturing, selling, offering for sale, distributing for use in this state, or using in this state, firefighter personal protective equipment (PPE) containing intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS). Specifically, **this bill**:

1) Prohibits, beginning July 1, 2026 any person, including a manufacturer, from manufacturing, selling, offering for sale, distributing for use in this state, or using in this state, firefighter PPE containing intentionally added PFAS chemicals.

2) Provides that upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person that violates the sales, distribution, or use ban on PFAS in firefighter PPE is liable for a civil penalty not to exceed $5,000 for a first violation, and not to exceed $10,000 for each subsequent violation.

3) Requires the Occupational Safety and Health Standards Board, in consultation with the Department of Industrial Relations, within one year of the National Fire Protection Association (NFPA) updating the NFPA 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting to include PFAS-free turnout gear, to update the applicable safety orders, or other applicable standards and regulations, to maintain alignment of the safety orders with the NFPA standard.

EXISTING LAW:

1) Authorizes the State Fire Marshal to make such changes as may be necessary to standardize all existing fire protective equipment throughout the state, and requires the State Fire Marshal to notify industrial establishments and property owners having equipment for fire protective purposes of the changes necessary to bring their equipment into conformity with standard requirements. (Health and Safety Code (HSC) § 13026-13027)

2) Requires, commencing January 1, 2022, a person that sells firefighter PPE to provide a written notice to the purchaser, if the firefighter PPE contains intentionally added PFAS chemicals. (HSC § 13029 (b)(1))

3) Prohibits, commencing January 1, 2022, a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use, and a person from using, class B firefighting foam containing intentionally added PFAS chemicals. (HSC § 13061 (b)(1))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "Twenty years ago heart disease was the biggest threat to firefighter health. Today, cancer has replaced heart disease as the biggest killer of firefighters. While firefighting is an inherently dangerous profession, it is critical for the health and safety of California's fire fighters that all unnecessary cancer causing exposures are eliminated. Firefighters put their lives at risk every day on the front lines saving lives, responding to emergencies and taking care of the vulnerable. We have an obligation to protect them – and that means making sure they are not exposed to cancer-causing chemicals in the very equipment designed to keep them safe."

Perfluoroalkyl and polyfluoroalkyl substances (PFAS): PFASs are a large group of synthetic, highly fluorinated substances that have been widely used in industrial and consumer applications for their heat, water, and lipid resistance properties for more than seven decades. PFAS are long-lasting chemicals that break down very slowly over time. PFAS are ubiquitous, and researchers have found PFAS in indoor and outdoor environments, plants, soil, food, drinking water, wildlife, companion animals, production animals, and humans at locations across the nation and around the globe. Scientific studies have shown that exposure to some PFAS may be linked to harmful health effects in humans and animals. More than 9,000 PFAS chemicals are included in the United States Environmental Protection Agency's (US EPA's) Master List of PFAS Substances. The persistence and proliferation of PFAS chemicals makes it challenging to study and assess the overall potential human health and environmental risks of PFAS exposure.

The breadth of uses of PFAS is immense, making it nearly impossible to avoid exposure. PFAS are used extensively in surface coating and protectant formulations due to their unique ability to reduce the surface tension of liquids. In consumer products, PFAS is used in carpets, furniture fabrics, apparel, paper packaging for food, non-stick cookware, personal care products, and other products designed to be waterproof; grease, heat, water, and stain resistant; or, non-stick. Commercial applications span many sectors of the economy, including aerospace, apparel, automotive, building and construction, pharmaceuticals, medical devices, paints, electronics, semiconductors, energy, oil and gas exploration, first responder safety, firefighting foams, and health care. During production, use, and disposal, PFAS can migrate into the soil, water, and air.

Exposure to PFAS: The main route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), and through inhalation and ingestion of contaminated indoor air and dust. Food can become contaminated with PFAS through contaminated soil and water used to grow the food, food packaging containing PFAS, and equipment that uses PFAS during food processing. Some foods, such as fish, meat, eggs and leafy vegetables, may contain PFAS due to bioaccumulation and crop uptake. Studies have shown that PFAS can transfer from pregnant mothers to their fetuses via the placenta during gestation, and from nursing mothers to their infants via breastfeeding. Dermal exposure is also possible when people touch products treated with PFAS, such as carpets or clothing. Young children may be susceptible to higher levels of exposure than adults because they ingest more dust containing PFAS and mouth PFAS-treated consumer products. Workers, such as carpet installers, carpet cleaners, firefighters, and workers in furniture, furnishings, outdoor clothing, and carpet stores may also experience above average PFAS exposure levels.

Exposure to PFAS in drinking water is an escalating concern due to the persistence of PFAS chemicals in the environment and their tendency to accumulate in groundwater. Groundwater PFAS contamination typically has been associated with industrial facilities where these chemicals were manufactured or used in other products, and in airfields where the chemicals

have been used for firefighting. PFAS chemicals can also enter the environment and drinking water through composting, landfilling, recycling, and incineration of products containing PFAS. The State Water Board indicates that the four major sources of PFAS in drinking water in California are fire training/fire response sites, industrial sites, landfills, and wastewater treatment plants/biosolids. The State Water Board notes that because of their presence and persistence in many drinking water supplies, PFAS remain a serious source of exposure decades after their release into the environment.

Like humans, wildlife is exposed to PFAS by consuming contaminated water or food. Within aquatic food webs, PFAS were found to increase in concentration from ambient water to plankton and further up the food chain.

Hazard traits of PFAS: According to DTSC, all PFAS display at least one of the hazard traits identified in California's Safer Consumer Products (Green Chemistry) Hazard Traits Regulations (22 C.C.R § 69401 et seq.). An intrinsic property of PFAS is the extreme environmental persistence of either the individual compounds or their degradation products or both, resulting in their classification as "forever chemicals." Most PFAS are mobile in environmental media such as air and water, and thus are widespread in living organisms and the environment. Several PFAS bioaccumulate significantly in animals or plants and emerging evidence points to their phytotoxicity, aquatic toxicity, and terrestrial ecotoxicity.

DTSC contends that exposure to PFAS can lead to adverse health outcomes in humans. If humans are exposed to PFAS through diet, drinking water, or inhalation, some of these chemicals remain in the body for a long time. As people continue to be exposed to PFAS, the PFAS levels in their bodies may increase to the point that they suffer adverse health effects. According to the US EPA, current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to: reproductive effects such as decreased fertility or increased high blood pressure in pregnant women; developmental effects, or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body's immune system to fight infections, including reduced vaccine response; interference with the body's natural hormones; and, increased cholesterol levels and/or risk of obesity.

Regulating PFAS as a class: DTSC has adopted a rationale for regulating PFAS chemicals as a class, concluding, "It is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February 2021, *Environmental Health Perspectives* article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program." The authors of the article state:

> "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions. Regulations that focus solely on perfluoroalkyl acids (PFAAs) are ineffective, given that nearly all other PFAS can generate PFAAs in the environment… We at the California DTSC propose regulating certain consumer products if they contain any member of the class of PFAS because: *a*) all PFAS, or their degradation, reaction, or metabolism products, display at least one common hazard trait according to the California Code of Regulations, namely environmental persistence; and *b*) certain key PFAS that are the degradation, reaction or

metabolism products, or impurities of nearly all other PFAS display additional hazard traits, including toxicity; are widespread in the environment, humans, and biota; and will continue to cause adverse impacts for as long as any PFAS continue to be used. Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

Other researchers have made the case for managing PFAS as a chemical class, including in "Scientific Basis for Managing PFAS as a Chemical Class" published in June 2020 in *Environmental Science & Technology Letters*, and "Strategies for grouping per- and polyfluoroalkyl substances (PFAS) to protect human and environmental health," also published in June 2020 in *Environmental Science: Processes & Impacts.*

Health impacts on firefighters: Elevated levels of PFAS chemicals have been documented in the bodies of firefighters. The Firefighter Occupational Exposures Project, a study of environmental chemical exposures in firefighters as part of Biomonitoring California, found that concentrations of a particular perfluorinated chemical were approximately three times higher in the firefighters tested than in adult males participating in the National Health and Nutrition Examination Survey (NHANES) (the study was not designed to identify specific exposure sources). Another study as part of the Women Firefighters Biomonitoring Collaborative, found that women firefighters in San Francisco had significantly higher amounts of three PFAS chemicals in their blood, compared to office workers (Trowbridge et al., 2020). The National Institute for Occupational Safety and Health (NIOSH) conducted a multi-year study of nearly 30,000 firefighters from the Chicago, Philadelphia, and San Francisco Fire Departments, and found the firefighters in the study had higher rates of certain types of cancer than the general US population.

In 2016, the Federal Emergency Management Agency (FEMA) funded the Fire Fighter Cancer Cohort Study with the long-term goal of following 10,000 firefighters across the US over a 30-year observation period. As part of this study, researchers are studying acute PFAS exposure of the fire service through multiple anticipated exposure pathways, including fire response, turnout gear, and the use of aqueous film forming foam.

Firefighter PPE, or "turnout gear," has three layers: the thermal layer closest to the skin, a moisture barrier for water resistance, and the outer shell. Researchers at the University of Notre Dame tested more than 30 samples of used and unused PPE from six specialty textile manufacturers in the US. Their study, recently published in *Environmental Science and Technology*, found the PPE was extensively treated with PFAS or constructed with fluoropolymers, a type of PFAS used to make textiles oil and water resistant. The study found high fluorine concentrations on the moisture barrier and outer shell, though these chemicals can migrate off treated material. This is the first study of its kind, and more research is needed to better understand PFAS exposure specifically from PPE.

PFAS exposure from firefighter PPE: According to the article, "Another Pathway for Firefighter Exposure to Per- and Polyfluoroalkyl Substances: Firefighter Textiles," (Graham F. Peaslee, et. al), published in June 2020 in the journal *Environmental Science and Technology Letters,*

"This preliminary study suggests that significant quantities of fluorochemicals are being shed from the textiles used in PPE for firefighters during the in-service lifetime of the garment. The side-chain fluoropolymers in particular lead directly to PFOA precursor materials in the environment, which provide another route of exposure to both users of the turnout gear and others in the immediate environment. There may also be more direct pathways for these PFAS

to enter the body, through dermal absorption for example, as was recently suggested with PFAS in mice, or inhalation of PFAS-containing particles and fibers resuspended from the turnout gear. The role of clothing in promoting dermal absorption of other contaminants has been reported previously, and while the preliminary nature of this study requires further testing to be performed to assess the magnitude of this exposure route, several important safeguards should be considered immediately for fire service personnel. Minimization of contact with PFAS treated turnout gear could be done in much the same way firefighter safety has been improved by minimization of exposure to fire combustion products. Keeping PFAS-treated turnout gear segregated from other textiles and living quarters and washing the thermal liners before first use might also be helpful strategies. Wearing PFAS-free clothing under the turnout gear and washing it regularly would also help to minimize skin exposure and washing hands after touching turnout gear would be precautionary."

The National Fire Protection Association (NFPA): The NFPA administers the process of developing product safety standards for fire fighter PPE. The NFPA standard, NFPA 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, sets the minimum levels of protection from thermal, physical, environmental, and bloodborne pathogen hazards. The NFPA technical committee responsible for NFPA 1971 has a task group looking at the issue of PFAS and any other chemicals that might cause cancer and may be used in PPE. The NFPA is looking at adopting a PFAS Free standard for firefighter PPE in the near future, potentially this year. Similarly, Cal Fire has a working group looking at the issue of PFAS in PPE and exploring alternative products. AB 2146 (Skinner, Chapter 811, Statutes of 2014) requires the Occupational Safety and Health Standards Board to review, every five years, revisions to NFPA standards pertaining to PPE, and to consider updating safety standards to align with NFPA standards.

Recent law on PFAS in Firefighter equipment: SB 1044 (Allen, Chapter 308, Statutes of 2020) requires sellers of firefighter PPE to provide a written notice at the time of sale if the PPE contains intentionally added PFAS. The notice is required to include the reason that PFAS chemicals have been added to the PPE. This bill does not prohibit any uses of PPE that contain PFAS, as alternatives are still being explored and developed, and are not currently available on the market. While the Division of Occupational Safety and Health, known as Cal/OSHA, in the Department of Industrial Relations sets and enforces workplace safety standards, including for firefighter PPE, the PPE notification provisions in SB 1044 are under the purview of the State Fire Marshal.

This bill: AB 2408 prohibits any person from manufacturing, selling, distributing, or using firefighter PPE containing intentionally added PFAS beginning July 1, 2026. Additionally the bill requires the Occupational Safety and Health Standards Board, within one year of the NFPA updating their standard for firefighter PPE to be PFAS free, to align California's standards with the NFPA standard. The hazards of PFAS have been well documented, as are the risks that firefighters face in the line of duty. Ensuring that the equipment that firefighters wear is free from harmful chemicals, such as PFAS, seems like a very fair and reasonable policy.

Timing could be an issue: The NFPA may adopt a PFAS free standard for firefighter PPE this year, however, there is always the chance that this does not happen. If not, then the date in the bill may be challenging to meet. Therefore, as the bill moves through the legislative process, the author may wish to monitor the NFPA process to ensure there is time for the new PFAS firefighter PPE to be distributed in California.

Arguments in Support: According to the California Professional Firefighters (CPF): "[CPF] is pleased to support AB 2408, which would ban the sale and use of firefighter personal protection equipment (PPE) that contain the toxic family of chemicals known as PFAS in California and require the Occupational Safety and Health Standards Board to update the standards regarding PPE.

While firefighting is an inherently dangerous profession, it is critical for the health and safety of California's firefighters that all unnecessary exposures are eliminated. Every exposure brings with it an additional risk of developing a deadly cancer, and to experience daily exposure to a known carcinogenic and toxic substance through the protective gear that they wear is simply unacceptable.

PFAS is mainly concentrated in the pants and jackets of turnouts within the inner moisture barrier layer, found between the outer shell and the inner thermal liner of the composite material2. The performance, durability, and safety standards for turnouts are governed by standards set by the National Fire Protection Association (NFPA), specifically NPFA Standard 1971. While manufacturers of PPE have largely been able to produce gear able to meet existing NFPA standards with safe alternatives to PFAS, NFPA Standard 1971 § 8.62 requires a light degradation resistance test that, to date, can only be met with the addition of PFAS materials. NFPA standards follow revision cycles to allow for regular updates, with NFPA 1971 set to complete a revision and consolidation with other related standards by summer of 2024. This revision proposes significant changes related to the inclusion of PFAS in turnouts, including the elimination of the light degradation resistance test entirely.

The proposed elimination of the light degradation resistance test from the upcoming revision of the NPFA standard acknowledges the fact that an overly stringent requirement for light resistance is not a necessary safety feature for a material that makes up the interior of the fabric composite and will never be exposed to direct light. As meeting the requirements of this test is the only reason that PFAS is still included in turnout gear, once that test has been removed, we as a state owe it to the men and women who put their lives on the line for our communities every day to move quickly to eliminate this threat."

Arguments in Opposition:

None on file.

Double-referral: Should this bill pass the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Labor and Employment Committee.

Related legislation:

SB 1044 (Allen, Chapter 308, Statutes of 2020). Prohibits the manufacture, sale, distribution, and use of class B firefighting foam containing PFAS chemicals by January 1, 2022, with some exceptions, and requires notification of the presence of PFAS in the protective equipment of firefighters.

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners
California Labor Federation, AFL-CIO
California Professional Firefighters (Sponsor)
Clean Water Action
Cleanearth4kids.org
Natural Resources Defense Council

Opposition

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2515 (Papan) – As Amended April 4, 2024

SUBJECT: Menstrual products: perfluoroalkyl and polyfluoroalkyl substances (PFAS)

SUMMARY: Prohibits a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated perfluoroalkyl or polyfluoroalkyl substances (PFAS), as defined. Specifically, **this bill**:

1) States that the provisions of the bill shall be known as, and may be cited as, the Take All Menstrual Product-PFAS Out Now (T.A.M.P.O.N.) Act.

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

3) Defines "perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

4) Defines "regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS" as either of the following:
   a. Commencing January 1, 2025, PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product, including the PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product; or,
   b. Commencing January 1, 2027, the presence of PFAS in a product or product component at or above 10 parts per million (PPM), as measured in total organic fluorine.

5) Authorizes the Department of Toxic Substances Control (DTSC) to adopt regulations or guidance as necessary for the purpose of implementing, administering, and enforcing the provisions of the bill.

6) Requires DTSC to issue guidance as it relates to testing for the presence of regulated PFAS in menstrual products.

7) Exempts guidance on testing for the presence of regulated PFAS in menstrual products from the requirements of the Administrative Procedure Act.

8) Prohibits a person from manufacturing, distributing, selling, or offering for sale in the state a menstrual product that contains regulated PFAS.

9) Authorizes DTSC, if it finds that a menstrual product contains regulated PFAS and it reasonably suspects that imminent harm would result from the continued sale of the product, to issue a cease and desist order to the manufacturer of the menstrual product.

10) Authorizes any person to bring a civil action in a court of competent jurisdiction for any injury suffered as a result of a product sold in violation of the prohibitions in this bill.

11) Authorizes exemplary damages to also be awarded in any action brought pursuant to the provisions of this bill.

12) Provides that a violation of the prohibitions in this bill is punishable by a civil penalty not to exceed five thousand dollars ($5,000) per day.

13) Provides that a second and subsequent violation of the prohibitions in this bill is punishable by a civil penalty not to exceed ten thousand dollars ($10,000) per day.

14) Authorizes the court to grant injunctive relief in any action brought pursuant to the provisions of this bill.

15) Authorizes actions to be brought pursuant to the provisions in this bill by the Attorney General in the name of the people of the state by the request of DTSC, by a city attorney, by a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

16) Requires that a prevailing plaintiff bringing an action pursuant to the provisions of this bill be awarded attorney's fees and costs by the court.

17) Requires that moneys from penalties collected pursuant to the provisions of this bill be deposited in the T.A.M.P.O.N. Act Fund (Fund), which the bill creates in the State Treasury.

18) Requires that the moneys deposited in the Fund be available, upon appropriation by the Legislature, for expenditure by DTSC exclusively for the support of DTSC in carrying out the duties and responsibilities under the provisions of this bill.

EXISTING LAW:

1) Requires, commencing January 1, 2022, a person that sells firefighter personal protective equipment to provide a written notice to the purchaser if the firefighter personal protective equipment contains intentionally added PFAS chemicals. (Health and Safety Code (HSC) § 13029 (b)(1))

2) Prohibits, commencing January 1, 2022, a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use, and a person from using, class B firefighting foam containing intentionally added PFAS chemicals. (HSC § 13061 (b)(1))

3) Prohibits, on and after July 1, 2023, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product, as defined, that contains intentionally added PFAS or PFAS at or above 100 ppm, as measured in total organic fluorine. (HSC § 108946)

4) Prohibits, on or after January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any new, not previously used, textile articles that contain

intentionally added PFAS, or PFAS at or above 100 PPM, and on or after January 1, 2027, 50 PPM, as measured in total organic fluorine. (HSC § 108971)

5) Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale, in commerce any cosmetic product that contains any specified intentionally added ingredients, including some PFAS chemicals. (HSC § 108980 (a))

6) Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS. (HSC § 108981.5)

7) Prohibits, commencing January 1, 2023, a person from distributing, selling, or offering for sale in the state any food packaging that contains intentionally added PFAS or PFAS at or above 100 ppm, as measured in total organic fluorine. (HSC § 109000)

8) Authorizes the State Water Resources Control Board (State Water Board) to order a public water system to monitor for PFAS; requires community water systems to report detections; and, where a detected level of these substances exceeds the response level, to take a water source out of use or provide a prescribed public notification. (HSC § 116378)

9) Requires a package or box containing menstrual products that was manufactured on or after January 1, 2023, for sale or distribution in this state to have printed on the label a plain and conspicuous list of all intentionally added ingredients in the product. (HSC § 111822.2)

Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):

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

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

3) Requires the Governor to publish a list of chemicals known to cause cancer or reproductive toxicity and to annually revise the list. The Office of Environmental Health Hazard Assessment (OEHHA) has listed perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), which are members of the PFAS class, as chemicals known to the state to cause developmental toxicity. (HSC § 25249.8)

Under the Safer Consumer Products (Green Chemistry) statutes:

1) Requires the DTSC to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified. (HSC § 25252)

2) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products, and their potential alternatives, to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern. (HSC § 25253 (a))

3) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author, "These once ubiquitous, forever compounds have been linked to health problems, including breast and other cancers, hormone disruption, kidney and liver damage, thyroid disease, developmental harm, and immune system disruption. The presence of PFAS in menstrual products contributes to existing gender health inequities as exposure to PFAS is almost unavoidable. In a recent study, 48% of sanitary pads, incontinence pads, and panty liners tested were found to contain PFAS, as were 22% of tampons. Additionally, menstrual products have shown higher levels of PFAS than are found in tap water.

AB 2515 takes a critical step towards protecting women's health and reducing the amount of PFAS in the environment by eliminating polyfluoroalkyl substances (PFAS) from menstrual products. California's pursuit for gender equity and clean drinking waters requires action to ensure that feminine hygiene products are safe, clean and free from forever chemicals. With viable alternatives available, there is no longer a good rationale for their use in menstrual products. Women's health must be prioritized over the use of these unnecessary chemicals. It's past time to protect women and our environment."

Perfluoroalkyl and polyfluoroalkyl substances (PFAS): PFAS are synthetic, highly fluorinated substances that have been widely used in industrial and consumer applications for their heat, water, and lipid resistance properties for more than seven decades. In consumer products, PFAS are used in carpets, furniture fabrics, apparel, paper packaging for food, non-stick cookware, personal care products, and other products designed to be waterproof; grease, heat, water and stain resistant; or, non-stick. Commercial applications span many sectors of the economy, including aerospace, automotive, building and construction, pharmaceuticals, medical devices, paints, electronics, semiconductors, energy, oil and gas exploration, first responder safety, firefighting foams, and health care. During production, use, and disposal, PFAS can migrate into the soil, water, and air. Some PFAS are volatile, and can be carried long distances through the air, leading to contamination of soils and groundwater far from the emission source. Researchers have found PFAS in indoor and outdoor environments, plants, soil, food, drinking water, wildlife, companion animals, production animals, and humans at locations across the nation and around the globe. PFAS are extremely persistent and degrade very slowly over time, which has resulted in their accumulation in the environment since the onset of their production in the late 1940s. Currently, nearly 15,000 PFAS chemicals are included in the chemicals database CompTox, which is maintained by the United States Environmental Protection Agency (US EPA).

Exposure to PFAS: The main route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), through contact with consumer products, and through inhalation and ingestion of contaminated indoor air and dust. Food can

become contaminated with PFAS through soil and water used to grow the food, food packaging containing PFAS, and equipment that uses PFAS during processing. Some foods, such as fish, meat, eggs, and leafy vegetables, may contain PFAS due to bioaccumulation and crop uptake. Studies have shown that PFAS can transfer from pregnant mothers to their fetuses via the placenta during gestation, as well as transfer from nursing mothers to their infants via breastfeeding. Dermal exposure is also possible when people touch products treated with PFAS, such as carpets or clothing. Young children may be exposed to higher levels of PFAS than adults because they ingest more dust containing PFAS and mouth PFAS-treated consumer products. Workers, such as carpet installers, carpet cleaners, firefighters, and workers in furniture, furnishings, outdoor clothing, and carpet stores, may also experience above average PFAS exposure levels.

Exposure to PFAS in drinking water is an escalating concern due to the persistence of PFAS chemicals in the environment and their tendency to accumulate in groundwater. Groundwater PFAS contamination typically has been associated with industrial facilities where these chemicals were manufactured or are used in other products, and in airfields where the chemicals have been used for firefighting. PFAS chemicals can also enter the environment and drinking water through composting, landfilling, recycling, and incineration of products containing PFAS. The State Water Board indicates that the four major sources of PFAS in drinking water in California are fire training/fire response sites, industrial sites, landfills, and wastewater treatment plants/biosolids. The State Water Board notes that because of their presence and persistence in many drinking water supplies, PFAS remain a serious source of exposure decades after their release into the environment.

Like humans, wildlife is exposed to PFAS by consuming contaminated water or food. Within aquatic food webs, PFAS are found to increase in concentration from ambient water to plankton and further up the food chain.

Hazard traits of PFAS: According to DTSC, all PFAS display at least one of the hazard traits identified in California's Safer Consumer Products (Green Chemistry) Hazard Traits Regulations (22 C.C.R § 69401 et seq.). An intrinsic property of PFAS is the extreme environmental persistence of either the individual compounds or their degradation products or both, resulting in their classification as "forever chemicals." Most PFAS are mobile in environmental media such as air and water, and thus are widespread in living organisms and the environment.

Scientific studies have shown that exposure to some PFAS can lead to adverse health outcomes in humans and animals. DTSC states that if humans are exposed to PFAS through diet, drinking water, or inhalation, some of these chemicals remain in the body for a long time. As people continue to be exposed to PFAS, the PFAS levels in their bodies may increase to the point that they suffer adverse health effects. According to the US EPA, current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to: reproductive effects such as decreased fertility or increased high blood pressure in pregnant women; developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body’s immune system to fight infections, including reduced vaccine response; interference with the body’s natural hormones; and, increased cholesterol levels and/or risk of obesity. In addition to direct human health impacts, some PFAS, may have high global warming potential. Also, several PFAS bioaccumulate significantly in animals or

plants and emerging evidence points to their phytotoxicity, aquatic toxicity, and terrestrial ecotoxicity.

The persistence and proliferation of PFAS chemicals makes it challenging to study and assess the overall potential human health and environmental risks of PFAS exposure.

Regulating PFAS as a class: DTSC adopted a rationale for regulating PFAS chemicals as a class, concluding, "it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February, 2021, *Environmental Health Perspectives* article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program." The authors of the article state,

> "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions. Regulations that focus solely on perfluoroalkyl acids (PFAAs) are ineffective, given that nearly all other PFAS can generate PFAAs in the environment… We at the California DTSC propose regulating certain consumer products if they contain any member of the class of PFAS because: *a*) all PFAS, or their degradation, reaction, or metabolism products, display at least one common hazard trait according to the California Code of Regulations, namely environmental persistence; and *b*) certain key PFAS that are the degradation, reaction or metabolism products, or impurities of nearly all other PFAS display additional hazard traits, including toxicity; are widespread in the environment, humans, and biota; and will continue to cause adverse impacts for as long as any PFAS continue to be used. Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

Other researchers have made the case for managing PFAS as a chemical class, including in "Scientific Basis for Managing PFAS as a Chemical Class" published in June, 2020, in *Environmental Science & Technology Letters,* and "Strategies for grouping per- and polyfluoroalkyl substances (PFAS) to protect human and environmental health," also published in June, 2020, in *Environmental Science: Processes & Impacts.*

PFAS in menstrual products: In the United States, people who menstruate have their period, on average, for about 40 years of their life. During this time, they rely on a diverse range of menstrual products, including tampons, pads, menstrual cups, and period underwear. To illustrate the prevalence of PFAS in menstrual products, the author of the bill points to tests on menstrual products commissioned by the consumer watchdog site, *Mamavation,* and *Environmental Health News.* Conducted at US EPA-certified laboratories between 2020 and 2022, the tests detected organic fluorine, a marker for PFAS, in several menstrual products. For example, 22% of the 23 tampon products tested had indications of PFAS, including 2 products advertised as "organic." Forty eight percent of 46 different sanitary pads, panty liners, and incontinence pads tested had indications of PFAS, including several products marketed as "organic" and "natural." Finally, 65% of period underwear products tested, and 57% of the period underwear brands tested, had detectable levels of fluorine present.

To further investigate PFAS in menstrual products, in early 2023, the *Wirecutter* at the *New York Times* purchased and tested at a University of Notre Dame laboratory 44 different period and incontinence products and found:

- "Two of the 10 pairs of period underwear we sent showed high enough levels of fluorine to suggest that PFAS had been added to them at some point in the manufacturing process. Two of the remaining eight showed levels that suggested unintentional PFAS contamination. These included period underwear from brands that have published documentation certifying that their products are free of these substances.
- The four medical-grade silicone menstrual cups we sent for testing all showed very low levels of suspected PFAS.
- All of the reusable and disposable incontinence underwear we had tested, half of the disposable incontinence pads, and most of the reusable and disposable menstrual pads showed high enough levels of fluorine to suggest unintentional PFAS contamination, with six of the 24 products in these categories registering enough fluorine to suggest that PFAS had been added to them.
- All five of the tampons we sent for testing showed very low levels of suspected PFAS, though the applicator from one of them showed fluorine levels suggesting unintentional PFAS contamination."

Exposure to PFAS through menstrual products is particularly concerning because the vagina is an extremely vascular area and dermal exposure in the vaginal area is often higher than other places of the body. Additionally, people using menstrual products are of reproductive age, thus exposure could potentially impact unborn children, as well as the person using the product. Also, according to the *New York Times* article, experts are particularly concerned about the effects of PFAS during phases when the body is especially vulnerable, such as when someone gets their first period or is pregnant or is in menopause transition. During these times, the body and brain undergo major shifts, making them extra sensitive to endocrine disrupters.

This bill: This bill prohibits a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated PFAS, as definied.

Recent US EPA action on PFAS: According to the US EPA, "Under the Biden-Harris Administration, [US] EPA has restored scientific integrity and accelerated the pace of research and actions needed to tackle the PFAS crisis and protect American communities." On October 18, 2021, US EPA Administrator Michael S. Regan announced the agency's PFAS Strategic Roadmap, which laid out a whole-of-agency approach to addressing PFAS. The roadmap sets timelines by which US EPA plans to take specific actions and commits to, "bolder new policies to safeguard public health, protect the environment, and hold polluters accountable."

The US EPA reported that since the roadmap's release in October 2021, it has taken a number of key actions to address PFAS, including publishing a rule that will require all manufacturers (including importers) of PFAS to report information on PFAS uses, production volumes, disposal, exposures, and hazards; initiating nationwide monitoring of 29 PFAS in drinking water systems; allocating $2 billion to address emerging contaminants, including PFAS, in drinking water across the country; and, releasing a framework for addressing new PFAS and new uses of PFAS under the Toxic Substances Control Act (TSCA). US EPA states that the framework will ensure that before these chemicals are allowed to enter into commerce, US EPA will undertake an extensive evaluation to ensure they pose no harm to human health and the environment.

State action on PFAS: California has undertaken efforts to address PFAS substances across several state entities. For example, at DTSC, all PFAS chemicals are "Candidate Chemicals"

under the Safer Consumer Products (SCP, previously known as Green Chemistry) Program, because they exhibit a hazard trait and/or an environmental or toxicological endpoint, and the entire class of PFAS was added by the California Environmental Contaminant Biomonitoring Program to its list of priority chemicals.

On July 1, 2021, DTSC designated carpets and rugs containing PFAS as a "Priority Product." A Priority Product is a consumer product identified by DTSC that contains one or more Candidate Chemicals and that has the potential to contribute to significant or widespread adverse impacts to humans or the environment. The Priority Product designation required domestic and foreign carpet and rug manufacturers that use PFAS and related chemicals in their products to submit information on all of the manufacturer's products that contain PFAS and are sold in California, by August 30, 2021. Manufacturers were then required to show intent to remove or replace PFAS in their products, remove the product from the market, or identify potential alternatives to PFAS to be used in the product by December 28, 2021. This process is ongoing.

In regulations that went into effect on April 1, 2022, DTSC also designated treatments containing PFAS for use on converted textiles or leathers such as carpets, upholstery, clothing, and shoes as a Priority Product. Domestic and foreign manufacturers of treatments for converted textiles or leathers that contain any member of the class of PFAS selling their products in California were required to submit information on those products by May 31, 2022. After submitting the required information, manufacturers were then required to show intent to mitigate exposure to PFAS in their products by September 28, 2022. This process is ongoing.

DTSC appears to be evaluating artificial turf with PFAS. Previously, DTSC proposed investigating PFAS in other product categories, such as food packaging and children's products, but during the investigative period the Legislature prohibited PFAS in those product categories and it appears DTSC has shifted its resources to investigating other product/ chemical combinations.

OEHHA, under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), listed PFOA and PFOS as chemicals known to the state to cause reproductive toxicity. In July, 2021, OEHHA announced the release of a draft document for public review describing proposed Public Health Goals (PHGs) for PFOA and PFOS in drinking water. A PHG is the level of a chemical contaminant in drinking water that does not pose a significant risk to health. PHGs published by OEHHA are considered by the State Water Board in setting drinking water regulatory standards (Maximum Contaminant Levels, or MCLs) for California.

The State Water Board has taken a number of recent actions related to PFAS in drinking water, including several investigative orders to public water systems requiring testing for PFAS. Most recently, it issued General Order DW 2024-0002-DDW (2024 Order), in March 2024, to public water systems for monitoring PFAS in community public water systems serving disadvantaged and severely disadvantaged communities. The purpose of this monitoring is to understand PFAS's impacts on drinking water in these communities.

Recently, the State Legislature has also taken action on PFAS by enacting a slew of bills prohibiting PFAS at different levels across many product categories. These include a ban on textiles that contain PFAS (AB 1817,Ting, Chapter 762, Statutes of 2022); a ban on cosmetic products that contain PFAS (AB 2771, Friedman, Chapter 804, Statutes of 2022); a ban on food packaging that contains PFAS (AB 1200, Ting, Chapter 503, Statutes of 2021); a ban on new

juvenile products that contain PFAS (AB 652, Freidman, Chapter 500, Statutes of 2021); and, a ban on firefighting foam containing PFAS (SB 1044, Allen, Chapter 308, Statutes of 2020). The Legislature also authorized the State Water Board to order public water systems to monitor for PFAS and required municipalities to notify consumers of PFAS detected above notification levels (AB 756, C. Garcia, Chapter 162, Statutes of 2019).

Chemical bans and the Safer Consumer Products Program: In 2008, California enacted AB 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008) to establish a regulatory process for identifying and prioritizing chemicals of concern in consumer products, to create methods for analyzing alternatives to existing hazardous chemicals, and to ultimately take regulatory action to reduce the level of harm from the chemicals in those products. DTSC did this by promulgating the Safer Consumer Products regulations, which took effect in October 2013. DTSC's 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.

While the intent of AB 1879 is to establish a robust and thorough regulatory process rooted in science to consider exposure to chemicals in consumer products, it has long been recognized that DTSC does not have the resources to evaluate all, or even a significant percentage of, chemicals in every consumer product application. The permutations of product and chemical combinations are virtually limitless. To that end, the Safer Consumer Products statute does not preclude the Legislature from taking legislative action on the use of chemicals in consumer products. When there is credible scientific evidence to support a change in state policy to protect public health, the Legislature can respond to that science more expeditiously than can DTSC. Since AB 1879 was enacted, the Legislature has enacted policies on various chemical-product applications, which include, in addition to the PFAS prohibitions listed above, a ban on flame retardants in children's products, mattresses, and upholstered furniture (AB 2998, Bloom, Chapter 924, Statutes of 2018); 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 [Safer Consumer Products] regulations should ever be viewed as excluding action that the Legislature might take to address specific product related concerns that are brought to its attention. Not only have the regulations taken longer to adopt than originally anticipated, DTSC also expects that the process to be represented in the regulations will be subject to time and resource constraints. There may be circumstances that warrant more timely action than DTSC can accommodate through its process."

Acceptable levels of PFAS in products: This bill prohibits, in menstrual products, intentionally added PFAS, and, commencing January 1, 2027, PFAS at or above 10 PPM, as measured in total organic fluorine. Existing statute sets different thresholds for PFAS in different product categories, including 100 PPM for juvenile products, textile articles, and food packaging. Since the bills were enacted that set the 100 PPM standard in statute, science has emerged indicating that 100 PPM might not be protective enough, especially for some sensitive subpopulations. While this bill authorizes DTSC to enforce the provisions of the bill, it sets a standard of 10 PPM without the benefit of an investigation or study by DTSC’s team of scientists, who have related public health backgrounds. If standard-setting authority were conferred on DTSC, its team could

set the appropriately protective thresholds, and update the threshold through regulation consistent with emerging science. Instead, the Legislature is tasked with setting the appropriately protective standard in statute, and presumably updating those statutory thresholds by legislation when needed.

This bill: This bill prohibits, commencing January 1, 2027, the presence of PFAS in a product or product component at or above 10 PPM, as measured in total organic fluorine. For the 10 PPM threshold set in this bill, the author's office points to the European Union's limit for PFOS, for which they reference the Regulation on the Use of Persistent Organic Chemicals from 2019, in Annex I, Part A.

Governor's action on PFAS bills: In 2023, Governor Gavin Newsom vetoed three bills prohibiting the use of PFAS in several product categories, including AB 246 (Papan, 2023), which was similar to AB 2515. AB 246 would have prohibited, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale menstrual products that contain PFAS at or above 10 PPM (for a detailed list of related previous and current legislation, see the "Related legislation" section of this analysis). The three bills received similar veto messages. The message for AB 246 read:

> "To the Members of the California State Assembly:
>
> I am returning Assembly Bill 246 without my signature.
>
> This bill would prohibit, by 2025, the manufacture, distribution, or sale of menstrual products that contain intentionally added perfluoroalkyl or polyfluoroalkyl substances (PFAS) at a certain concentration level, as well as limit, by 2027, the concentration of total organic fluorine in menstrual products.
>
> This is one of three single-product chemical bans passed by the Legislature this year that attempt to address serious concerns with the presence of PFAS in consumer products. These bills do not identify or require any regulatory agency to determine compliance with, or enforce, the proposed statute.
>
> While I strongly support the author's intent and have signed similar legislation in the past, I am concerned that this bill falls short of providing enhanced protection to California consumers due to lack of regulatory oversight. Previously enacted single-product chemical bans, which also lack oversight, are proving challenging to implement, with inconsistent interpretations and confusion among manufacturers about how to comply with the restrictions.
>
> In order to instill consumer confidence and effectively address public health and environmental concerns, I am directing the Department of Toxic Substances Control to engage with the author and the Legislature and consider alternative approaches to regulating the use of these harmful chemicals in consumer products.
>
> For these reasons, I cannot sign this bill.
>
> Sincerely,

Gavin Newsom"

This bill: Unlike AB 246, this bill authorizes DTSC to adopt regulations or guidance as necessary for the purpose of implementing, administering, and enforcing the prohibition of PFAS in menstrual products, as delineated in the bill. It also requires DTSC to issue guidance as it relates to testing for the presence of regulated PFAS in menstrual products, and it exempts that guidance from the requirements of the Administrative Procedure Act. This exemption could allow DTSC to move quickly on establishing guidance as it relates to testing for the presence of regulated PFAS in menstrual products, but it would also permit DTSC to bypass the public rulemaking process requirements of the Administrative Procedure Act. The bill also gives DTSC additional enforcement authority by authorizing it to, if it finds that a menstrual product contains regulated PFAS and it reasonably suspects that imminent harm would result from the continued sale of the product, issue a cease and desist order to the manufacturer of the menstrual product. As this bill moves through the legislative process, the author may wish to consider whether to include the guidance on testing requirements and the cease and desist authority in DTSC's authority to promulgate regulations.

Additional enforcement provisions: In addition to the enforcement authority conferred upon DTSC, AB 2515 authorizes any person to bring a civil action in a court of competent jurisdiction for any injury suffered as a result of a product sold in violation of the prohibitions in this bill; authorizes exemplary damages to also be awarded in any action brought pursuant to the provisions of this bill; provides for specified civil penalties; authorizes the court to grant injunctive relief in any action brought pursuant to the provisions of this bill; authorizes specified public attorneys to take actions to enforce the provisions in this bill; and requires that a prevailing plaintiff bringing an action pursuant to the provisions of this bill be awarded attorney's fees and costs by the court. These enforcement authorities will be analyzed further by the Assembly Judiciary Committee, should this bill be approved by the Assembly Environmental Safety and Toxic Materials Committee.

Arguments in support: The American College of Obstetricians and Gynecologists District IX (ACOG) writes in support, "Exposure to toxic chemicals can have many harmful effects on health. These chemicals disrupt the body's endocrine system, which makes hormones and sends them throughout your body. This means chemicals can affect many parts of your body, including your thyroid gland, brain, reproductive organs, and immune system. Chemicals can disrupt cells and contribute to cancer… Since the 1990s, we've called substances that have these harmful effects on the body "endocrine disruptors." There are many different types of endocrine disruptors, including lead and chemicals called parabens, phthalates, and PFAS, which are addressed in this bill. PFAS are widely used substances that break down very slowly, earning them the name "forever chemicals." This makes them especially harmful to our health. Given the harmful effects of PFAS, California has been focused on removing or limiting PFAS from our products. AB 2515 makes another logical step to remove and limit PFAS from menstrual products."

Los Angeles County Sanitation Districts writes in support, "AB 2515 would provide important protection from PFAS by controlling a potential source of this class of "forever chemicals" that have been shown to cause increased incidences of cancer and reproductive harm. In addition to the potential direct exposure to an individual, menstrual products containing PFAS are often flushed down the drain, or used products may be sent to solid waste facilities when disposed of

in the trash. Additionally, landfill leachate (rainwater that filters through wastes in a landfill and is collected for proper management) is often discharged to the sewer and contributes to PFAS loadings at wastewater treatment facilities. When taken together with contributions from numerous other sources, these pathways can lead to ubiquitous low concentrations of PFAS in wastewater, which may be recycled or discharged to the ocean or other local waterways. AB 2515 could not only enhance public health by minimizing exposure to these hazardous chemicals but could also reduce the influx of PFAS into waste streams and the environment. As a passive receiver of PFAS at our solid waste and wastewater facilities, the Districts support implementing source control measures that prevent PFAS from entering the waste stream or the environment."

Arguments in opposition: A coalition of opponents writes, "Our manufacturers do not intentionally add PFAS to serve any functional or technical effect in menstrual products. Our coalition supports the responsible production, use, and management of fluorinated substances, including regulatory requirements that protect human health and the environment. Given menstrual products are an essential product for women's health, our coalition is supportive of the policy direction in AB 2515…. Unfortunately, AB 2515 creates a framework that punishes manufacturers that are NOT intentionally adding PFAS to menstrual products by extending expansive liabilities for the unintentional presence of PFAS chemicals, at or above 10 PPM. The challenge of unintentional PFAS contamination is that it may exist beyond what a manufacturer can control. AB 2515 creates a brand-new private right of action (PRA)... and the ability to levy punitive damages. PRAs bring unintended consequences and increase frivolous litigation on California businesses… AB 2515, and its prohibition on intentionally added PFAS, is laudable. However, the provisions establishing the PRA and accompanying punitive damages are wrongly placed. Punitive damages are generally warranted when a party's actions are malicious, intentional, or are grossly negligent. Punitive damages are structured to deter a party from repeating certain misconduct in the future. In the case of AB 2515, manufacturers are not intentionally adding PFAS or wishing to harm consumers. Manufacturers are responsibly not using these chemicals but will face lawsuits accusing them of malfeasance even though they have removed any intentional application of PFAS to the product… If the private right of action and punitive damages provisions in AB 2515 are removed from the bill, we believe the primary remaining issue is resolvable…. AB 2515 is not clear on what the scope of the violation would be if a single item were to be tested to contain levels above the specified threshold. Specifically, it would be helpful to understand whether, when a single tampon, pad or other individual item is tested, the intent of the language is that a detect over the threshold will constitute a violation on a per item basis, whether the violation would include any sales of that item (e.g., in various pack configurations), or something in between (e.g., if the item tested was in a 16-ct. pack, then the violation is any sales of that specific pack). Clarifying language, which our coalition provided to the author to resolve the issue and hope will be accepted, would be helpful so that companies are clear as to the scope of a violation."

Related legislation:

1. AB 2761 (Hart). Prohibits, beginning January 1, 2026, the sale, use, and manufacture of plastic packaging that contains PFAS or polyvinyl chloride (PVC), inclusive of polyvinylidene chloride (PVDC). This bill is pending in the Assembly Environmental Safety and Toxic Materials Committee.

2. SB 903 (Skinner). Prohibits, commencing January 1, 2030, a person from distributing, selling, or offering for sale in the state a product that contains intentionally PFAS.

Authorizes DTSC to establish regulations to administer the prohibition. This bill is pending in the Senate Judiciary Committee.

3. AB 347 (Ting). Requires DTSC to take a number of actions regarding implementation of existing laws dealing with PFAS in food packaging and cookware, including adopting and publishing guidance and testing products. This bill is currently on the inactive file on the Senate floor.

4. AB 246 (Papan, 2023). Would have prohibited, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state menstrual products that contain PFAS at or above 10 PPM. This bill was vetoed by Governor Gavin Newsom.

5. AB 727 (Weber, 2023). Would have prohibited, beginning January 1, 2025, a person from manufacturing, selling, delivering, distributing, holding, or offering for sale, a cleaning product that contains intentionally-added PFAS or PFAS at or above 50 PPM, and on January 1, 2027, a cleaning product that contains PFAS at or above 25 PPM. This bill was vetoed by Governor Gavin Newsom.

6. AB 1423 (Schiavo, 2023). Would have prohibited, commencing January 1, 2025, a person or entity from manufacturing, distributing, selling, or offering for sale in the state any covered surface that contains PFAS at or above 20 PPM, and, commencing January 1, 2024, a public entity, a public or private school, or a public or private institution of higher learning, as specified, from purchasing or installing a covered surface that contains PFAS at or above 20 PPM. This bill was vetoed by Governor Gavin Newsom.

7. AB 1817 (Ting, Chapter 762, Statutes of 2022). Prohibits, beginning January 1, 2024, a person from distributing, selling, or offering for sale in the state a textile article, as defined, that contains regulated PFAS, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles to comply with the provisions of the bill.

8. AB 2771 (Friedman, Chapter 804, Statutes of 2022). Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS.

9. AB 1200 (Ting, Chapter 503, Statutes of 2021). Prohibits, commencing January 1, 2023, the sale of food packaging that contains PFAS; requires, commencing January 1, 2024, cookware manufacturers to label their product if it contains an intentionally added chemical on specified lists; and prohibits, commencing January 1, 2023, for the internet and January 1, 2024, for the cookware package, a cookware manufacturer from making a claim that cookware is free of a chemical, unless no chemical from that chemical class is intentionally added to the cookware.

10. AB 652 (Freidman, Chapter 500, Statutes of 2021). Prohibits, on or after July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain PFAS.

11. SB 1044 (Allen, Chapter 308, Statutes of 2020). Prohibits the manufacture, sale, distribution, and use of firefighting foam containing PFAS chemicals by January 1, 2022,

with some exceptions, and requires notification of the presence of PFAS in the protective equipment of firefighters.

12. SB 1056 (Portantino, 2020). Would have required the State Water Board to establish an analytical laboratory method that can be used as a tool to assess the extent of PFAS contamination in drinking water, surface water, groundwater, and wastewater. This bill was held in the Senate Environmental Quality Committee.

13. AB 1989 (C. Garcia, Chapter 272, Statutes of 2020). Requires a package or box containing menstrual products that was manufactured on or after January 1, 2023, for sale or distribution in this state to have printed on the label a plain and conspicuous list of all intentionally added ingredients, as defined.

14. AB 756 (C. Garcia, Chapter 162, Statutes of 2019). Authorizes the State Water Board to order one or more public water systems to monitor for PFAS and requires municipalities to notify consumers for PFAS detected above notification levels.

15. AB 841 (Ting, Chapter 372, Statutes of 2019). As heard by the Assembly, would have required OEHHA to assess PFAS substances, especially as they might be found in drinking water, to determine which might pose a potential risk to human health. The contents of this bill were deleted in the Senate and amended with unrelated content.

16. AB 958 (Ting, 2018). Would have required a manufacturer of food packaging or cookware sold in the state to visibly disclose on an exterior location of the food packaging or cookware packaging a specified statement relating to the presence of PFAS in the product. This bill was held on the Senate Floor.

17. SB 1313 (Corbett, 2008). Would have prohibited the manufacture, sale, or distribution of any food contact substance, as defined, which contains perfluorinated compounds, as defined, in any concentration exceeding 10 parts per billion. This bill was vetoed by Governor Arnold Schwarzenegger.

Double referral: This bill was referred to the Assembly Environmental Safety and Toxic Materials Committee and the Assembly Judiciary Committee. Should this bill be approved by the Assembly Environmental Safety and Toxic Materials Committee, it will be referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
American College of Obstetricians and Gynecologists District IX
Breast Cancer Prevention Partners
California Professional Firefighters
California Women's Law Center
Cleanearth4kids.org
Educate. Advocate.
Los Angeles County Sanitation Districts
Orange County Sanitation District

Planned Parenthood Affiliates of California
Reproductive Freedom for All

Opposition

American Chemistry Council
American Forest & Paper Association
California Chamber of Commerce
California Manufacturers and Technology Association
Center for Baby and Adult Hygiene Products
Civil Justice Association of California

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2552 (Friedman) – As Amended April 4, 2024

SUBJECT: Pesticides: anticoagulant rodenticides

SUMMARY: Prohibits the use of the anticoagulant rodenticides chlorophacinone and warfarin, as specified; expands the definition of wildlife habitat area; and authorizes any person, on their own behalf or on behalf of individual animals, wildlife, or wildlife species, to commence a civil suit to enjoin a person who is alleged to be in violation of prohibitions on anticoagulant rodenticides. Specifically, **this bill**:

1) Makes legislative findings about the public value of wildlife, conservation and biodiversity policy, the intrinsic value of animals, and the deleterious impact of rodenticides on animals, including nontarget animals

2) Defines "first-generation anticoagulant rodenticide" (FGAR) as a pesticide product containing any of the following active ingredients: diphacinone, chlorophacinone, and warfarin.

3) Expands the existing statutory definition of "wildlife habitat area" to include open-space land, including:
   a) Open space for the preservation of natural resources, including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands;
   b) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors; and,
   c) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

4) Exempts open-space or other land primarily used or managed for agricultural purposes, even if that land is also used or managed in a manner that supports fish or wildlife, from the definition of “wildlife habitat area.”

5) Exempts land subject to a utility easement from the definition of “wildlife habitat area.”

6) Prohibits, except for use for specified health and safety activities, the use of the FGARs chlorophacinone or warfarin in a wildlife habitat area.

7) Prohibits, except for use for specified health and safety activities, the use of second-generation anticoagulant rodenticides (SGARs) and FGARs within 2,500 feet of a wildlife habitat area.

8) Prohibits, except for specified health and safety and agricultural activities, the use of chlorophacinone and warfarin in the state unless the director of the Department of Pesticide Regulation (DPR) takes the actions specified below.

9) Authorizes the director of DPR to suspend the prohibition on chlorophacinone and warfarin if the director makes a determination and certifies that both of the following have occurred:
   a) DPR has completed a reevaluation of chlorophacinone and warfarin, respectively; and,
   b) DPR, in consultation with, and with the concurrence of, the Department of Fish and Wildlife (DFW), has adopted any additional restrictions necessary to ensure a trend of statistically significant reductions in the mean concentration values of detectable levels of chlorophacinone or warfarin, respectively, or any of their metabolites, in tested tissues of a scientifically representative sample of wildlife.
      i) Requires the restrictions to include implementation of integrated pest management alternatives, such as biological control, habitat manipulation, and modification of cultural practices, before the use of chlorophacinone or warfarin, respectively is allowed.
      ii) Requires DPR, in concurrence with DFW, to make a finding that the restrictions are necessary based on the best available science, which may include reviewing data and studying samples of certain species and their populations as proxies for all potentially impacted species and populations.
      iii) Requires that substantial evidence supporting the restrictions, including any requirement to implement alternatives, to the extent feasible, include, but not be limited to, analysis regarding exposure pathways, sublethal effects, species sensitivity, and the cumulative and synergistic effects of exposure to anticoagulant rodenticides, including lethal and sublethal effects on wildlife, including rare, sensitive, special status, threatened, or endangered species..

10) Provides that nothing in this bill requires DPR to suspend the prohibition on chlorophacinone or warfarin, complete a reevaluation of chlorophacinone or warfarin, or adopt any additional restrictions on chlorophacinone or warfarin.

11) Designates chlorophacinone and warfarin as restricted materials.

12) Exempts the following activities, among others, from the prohibition on the use of chlorophacinone and warfarin:
   a) The use of chlorophacinone and warfarin by any governmental agency employee for mosquito or vector control or for public health activities;
   b) The use of chlorophacinone and warfarin by any governmental agency employee to protect water supply infrastructure and facilities;
   c) The use of chlorophacinone and warfarin for the eradication of nonnative invasive species inhabiting or found to be present on offshore islands;
   d) The use of chlorophacinone and warfarin to control an actual or potential rodent infestation associated with a public health need, as defined, as determined by a supporting declaration from the State Public Health Officer or a local public health officer; and,

e) The use, following a specified authorization process, of chlorophacinone and warfarin for research purposes related to the reevaluation of SGARs.

13) Exempts the following locations from the prohibition on the use of chlorophacinone and warfarin in the state and from the use of all FGARs and SGARs in wildlife habitat areas:
   a) A medical waste generator; and,
   b) A facility for producing drugs or medical devices

14) Exempts, outside of use in wildlife habitat areas and the 2,500 foot buffer zone, agricultural activities from the prohibition on the use of chlorophacinone and warfarin, including activities at the following locations: a warehouse used to store foods for human or animal consumption; an agricultural food production site, including, but not limited to, a slaughterhouse or cannery; a factory, brewery, or winery; an agricultural production site housing water storage and conveyance facilities; and an agricultural production site housing rights-of-way and other transportation infrastructure.

15) Modifies current statute to specify that biological control, habitat manipulation, and modification of cultural practices are activities considered to be integrated pest management alternatives, which are required to be implemented if the Director or DPR takes action to suspend the prohibition on SGARs and diphacinone, as specified.

16) Provides that a person who sells or uses a FGAR or SGAR in violation of existing statute or of the provisions of this bill, or any related regulations, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day for each violation, in addition to any other penalty established by law. Authorizes the civil penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction for each individual sale or use, and separate civil penalties for the exposure of each person or animal to a FGAR or SGAR.

17) Authorizes a person to commence a civil suit to enjoin a person who is alleged to be in violation of the FGAR or SGAR prohibitions in existing statute or pursuant to this bill, or of related regulations, and to seek civil penalties. Authorizes the suit to be brought by any person on their own behalf or on behalf of individual animals, wildlife, wildlife species, or any representative thereof that are at risk of being killed, injured, harassed, or harmed by the unlawful sale or use of a FGAR or SGAR.

18) Defines, for purposes of the above provision, "harassment" as including creating a likelihood of injury to an animal by annoying it to such an extent as to disrupt normal behavioral patterns, including, but not limited to, breeding, feeding, or sheltering.

19) Provides that the above actions shall only be commenced if both of the following conditions are satisfied:
   a) Sixty days have passed since written notice of the alleged violation has been given to DPR and any alleged violator; and,
   b) DPR, the Attorney General, a district attorney, a city attorney, or a prosecutor has not commenced or diligently prosecuted a civil or criminal action for the alleged violation.

20) Requires a person who brings an action pursuant to the provisions of this bill to notify the Attorney General and DPR that the action has been filed within 60 days of filing the action.

21) Requires a person who brings an action pursuant to the provisions of this bill, after the action is dismissed or settled or a judgment is entered for the action, to report the dismissal or the results of the settlement or judgment and the final disposition of the case to the Attorney General.

22) Provides that a person who prevails in an action brought pursuant to the provisions of this bill is be entitled to an award of reasonable attorney's fees and costs.

23) Authorizes a court, in an action brought pursuant to the provisions of this bill, to enjoin the unlawful sale or use of a FGAR or SGAR, and to compel specific performance of an act or course of conduct necessary to protect a person, animal, crop, or property.

24) Authorizes a court, in addition to the civil penalty described above, to award medical costs and pain, suffering, and emotional distress damages on behalf of animals or persons that result from the violation.

25) Requires that civil penalties recovered pursuant to the provisions of this bill be deposited into the Poison-Free Wildlife Account, which the bill establishes in the Wildlife Restoration Fund, and requires that the penalty monies be available for expenditure, upon appropriation by the Legislature, as follows:
    a) Forty percent for the support of programs for endangered and rare animals and native plant species, related conservation and enhancement programs, and programs for those species that may be candidates for determination as endangered or rare;
    b) Forty percent to acquire and restore to the highest possible level, and maintain in a state of high productivity, those areas that can be most successfully used to sustain wildlife and which will provide adequate and suitable recreation; and,
    c) Twenty percent for the recovery and rehabilitation of injured, sick, or orphaned wildlife, and for conservation education.

26) Requires that an action brought pursuant to the provisions of this bill be commenced within two years of the occurrence of the violation.

27) Makes other technical and conforming changes to existing statute.

EXISTING LAW:

1) Authorizes the state's pesticide regulatory program and mandates DPR to, among other things, provide for the proper, safe, and efficient use of pesticides essential for the production of food and fiber; for the protection of public health and safety; and, for the protection of the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides. (Food and Agriculture Code (FAC) § 11401 et seq.)

2) Defines "second generation anticoagulant rodenticide" (SGAR) as any pesticide product containing any of the following active ingredients: brodifacoum, bromadiolone, difenacoum, or difethialone. (FAC § 12978.7(a)(3))

3) Defines "wildlife habitat area" as any park or wildlife refuge managed by a state agency, regional government, or quasi-government agency, or by a special district. (FAC § 12978.7(a)(4))

4) Prohibits, except for specified health and safety activities, the use of a SGAR or diphacinone in a wildlife habitat area, as defined. (FAC § 12978.7 (b))

5) Prohibits, except for specified health and safety and agricultural activities, the use of a SGAR in the state until the director of DPR makes a certification that DPR has completed a reevaluation of SGARs and has adopted restrictions to protect wildlife, as specified. (FAC § 12978.7 (c and h))

6) Prohibits, except for specified health and safety and agricultural activities, the use of the FGAR diphacinone in the state and designates diphacinone as a restricted material until the director of DPR makes a certification that DPR has completed a reevaluation of SGARs and has adopted restrictions to protect wildlife, as specified. (FAC § 12978.7 (d and i))

7) Lists exemptions to the prohibition of the use of SGARs and diphacinone, as specified, including for public health activities; to protect water supply infrastructure; for mosquito and vector control; to eradicate nonnative invasive species; for research purposes related to the reevaluation of SGARs; for medical waste generators; for facilities for producing drugs or medical devices; and, for agricultural activities. (FAC § 12978.7 (f - g))

8) Defines, for the purposes of the SGAR and diphacinone prohibitions, a "public health need" as an urgent, nonroutine situation posing a significant risk to human health in which it is documented that other rodent control alternatives, including nonchemical alternatives, are inadequate to control the rodent infestation. (FAC § 12978.7 (f))

9) Designates as restricted materials pesticides containing brodifacoum, bromadiolone, difenacoum, and difethialone. (Title 3 California Code of Regulations (CCR), § 6400)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "California needs to continue applying common-sense restrictions on some of the most dangerous rat poisons. By empowering community members to bring legal action on their own behalf or behalf of animal harmed by the illegal use or sale of anticoagulant rodenticides, AB 2552 takes a thoughtful approach to better protect our wildlife and families. There are also a range of cost-effective alternatives to the most dangerous rat poisons for sale today that don't threaten some of California's most iconic wildlife like mountain lions and eagles."

Rodents: Many species of rodents inhabit California, including squirrels, chipmunks, beavers, gophers, rats, and mice. Rodents native to California play an important ecological role, and are a major food source for predators and scavengers, including hawks, eagles, foxes, coyotes, and bobcats. Some types of rodents, especially non-native species like Norway rats, roof rats, and house mice, however, are pests when they infest houses, threaten public health, and destroy property. These rodents damage and destroy critical habitat, native plants and animals, crops, property, and food supplies. They also can spread diseases to humans both directly and indirectly, including hantavirus, leptospirosis, and salmonella, posing a serious risk to public health.

Rodent control: According to the United States Environmental Protection (US EPA), the most important and effective steps in eliminating and preventing rodent infestations are keeping living spaces clean; preventing rodent access; and, eliminating potential nesting areas (sanitation and exclusion). Other options to control rodent infestations include lethal traps, live traps, and chemical control (rodenticides).

Rodenticides: Rodenticides are pesticides designed to kill rodents, but the ingestion of, or sometimes contact with, rodenticides can have the same type of effect on any mammal. Contact with rodenticides can also affect birds and fish. Rodenticides are usually formulated as baits that are designed to attract rodents, but these baits can also be attractive to nontarget wildlife, children, and pets. Additionally, many rodenticides cause secondary poisoning risks to predators.

According to the US EPA, most of the rodenticides used in the United States are anticoagulant compounds, either first or second generation, that interfere with blood clotting and cause death from excessive bleeding. Death typically occurs between four days and two weeks after rodents begin to feed on the bait.

FGARs include the anticoagulants that were developed as rodenticides before 1970. These compounds are much more toxic when feeding occurs on several successive days rather than on one day only. Chlorophacinone, diphacinone, and warfarin are FGARs that are registered to control rats and mice in the United States. Diphacinone has been prohibited for many uses in California since January 1, 2024. This bill proposes to prohibit the use of chlorophacinone, and warfarin for many uses, as well.

SGARs were developed beginning in the 1970s to control rodents that were resistant to FGARs. SGARs are more likely than FGARs to kill after a single night's feeding, and tend to remain in animal tissues longer than do first-generation compounds. Because of this, SGARs pose greater risks to nontarget species that might feed on bait only once or that might feed upon animals that have eaten the bait. Due to these risks, in the United States, SGARS are no longer nationally registered for use in products geared toward consumers and are registered only for the commercial pest control and structural pest control markets. SGARs registered in the United States include brodifacoum, bromadiolone, difenacoum, and difethialone. These four SGARs have been prohibited for many uses in California since January 1, 2021.

The third category of rodenticides consists of those considered acute toxicants. Acute toxicant rodenticides have differing ways of affecting rodents, including affecting the nervous system, causing heart and kidney failure, and reacting to stomach acid to cause rapid death. In this category, bromethalin, zinc phosphide, and strychnine kill rodents after one feeding, often within a few hours. Formulated as baits, they are highly toxic to people, pets, and wildlife. Cholecalciferol, another acute toxicant, usually requires multiple feedings to kill rodents.

Dangers of rodenticides: According to DFW, the use of poison baits to control rodents has injured and killed thousands of wild animals and pets throughout California. While all rodenticides pose a threat to nontarget animals, anticoagulant rodenticides have been found to pose a particular problem, especially due to secondary exposure, throughout the state. Secondary exposure occurs if an animal consumes another animal that has been poisoned by a pesticide, and the predator is then weakened or dies as a result of exposure to the poisoned prey.

Large predators, such as mountain lions, can additionally be impacted by consuming smaller predators that have preyed upon poisoned rodents.

Pesticides do not always have to kill an animal to cause serious harm. Instead, a pesticide may have sublethal effects, such as making the animal sick, changing its behavior, or changing its ability to reproduce or survive stress. There is evidence of sublethal effects of anticoagulant rodenticide exposure in many species of predatory animals in California, including raptors, coyotes, bobcats, and mountain lions.

California-restricted materials designation for SGARs: In July 2011, DFW requested that DPR designate all SGARs as California-restricted materials in order to mitigate nontarget wildlife exposure. DFW reported that dozens of species are impacted by anticoagulant pesticides, including the golden eagle, great-horned owl, Cooper's hawk, American kestrel, black bear, fisher, red fox, gray fox, San Joaquin kit fox (federally endangered), coyote, mountain lion, bobcat, and badger.

Restricted materials are pesticides deemed to have a higher potential to cause harm to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or crops compared to other pesticides. With certain exceptions, restricted materials may be purchased and used only by, or under the supervision of, a certified commercial or private applicator under a permit issued by the County Agricultural Commissioner.

In response to DFW's 2011 request, DPR obtained wildlife incident and mortality data from between 1995 and 2011, which it analyzed together with land use data and rodenticide use and sales data between 2006 and 2010. It found that of the mammals and bird tested, 74.8 percent had residues of one or more anticoagulant rodenticide (FGARs and SGARs). Of the animals that tested positive for at least one anticoagulant rodenticide, 97.6 percent had residues of at least one SGAR, while 17.7 percent had residues of at least one FGAR. After reviewing the data obtained from both urban and rural areas, DPR found that SGAR exposure and toxicity to nontarget wildlife is a statewide problem, regardless of the setting, and, on March 18, 2014, DPR designated the SGAR active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone as California-restricted materials with specified use restrictions.

This bill: This bill designates the FGARs chlorophacinone and warfarin as restricted materials. Previous legislation, AB 1322 (Friedman, Chapter 836, Statutes of 2023), designated the FGAR diphacinone as a restricted material. The intent of these provisions is that any allowed uses of these three chemicals be restricted to purchase and use only by, or under the supervision of, a certified commercial or private applicator under a permit issued by the County Agricultural Commissioner.

DPR's reevaluation of SGARs: In addition to DPR's restricted materials designation of SGARs, in 2014, the Legislature passed, and Governor Edmund G. Brown Jr. signed, AB 2657 (Bloom, Chapter 475, Statutes of 2014), which prohibits the use of the four SGARs in wildlife habitat areas, defined at the time as any state park, state wildlife refuge, or state conservancy. The provisions of this bill went into effect on January 1, 2015.

According to DPR, after designating SGARs as restricted materials in 2014, and after AB 2657 went into effect (but before subsequent legislation further restricting SGARs or any FGARs went into effect), DPR continued to receive reports claiming that SGARs may have caused, or are

likely to have caused, significant adverse impacts to nontarget wildlife. Under 3 CCR § 6220, the Director of DPR is required to investigate such reports and if the investigation finds that the pesticide caused or is likely to cause significant adverse impacts, the Director is required to begin a reevaluation of the pesticide.

DPR's investigation on the potential significant adverse impacts of anticoagulant rodenticides found that while SGAR use patterns changed since 2014, reported rates of nontarget wildlife exposure to SGARs had not decreased. Based on the investigation, the Director found that a significant adverse impact had occurred or is likely to occur from the use of SGARs and noticed, on March 12, 2019, its final decision to begin reevaluation of SGAR pesticide products. The SGAR reevaluation involves 74 pesticide products and 15 registrants, from whom DPR required submission of existing data related to nontarget wildlife exposure. In 2023, DPR reported that its scientists completed their review of registrant identified data, data on file, and public literature, and that they were meeting with stakeholders to refine a mitigation strategy. DPR has not provided a time frame for completion of the revaluation of SGARs.

DPR's reevaluation of the FGAR, diphacinone: On May 17, 2023, DPR issued a notice of its proposed decision to begin reevaluation of pesticide products containing the active ingredients diphacinone and diphacinone sodium salt (collectively referred to as diphacinone). At the same time, DPR issued a public report that concluded that there have been substantial increases in diphacinone exposure rates to nontarget wildlife, identified chemical toxicity from diphacinone exposure to mammals and birds, and that diphacinone has the potential to bioaccumulate. These factors, along with increases in sales and use data in recent years, suggests that significant adverse impacts to nontarget wildlife have occurred or are likely to occur from use of diphacinone. On October 3, 2023, DPR issued a notice of its final decision to begin reevaluation of diphacinone. DPR has not provided a time frame for completion of the revaluation of diphacinone.

Recent legislation restricting the use of rodenticides: Following the enactment of AB 2657 in 2014, Governor Gavin Newsom signed AB 1788 (Bloom, Chapter 250, Statues of 2020), which prohibits the use of the four SGARs throughout the state, with some exemptions, including for public health and agricultural activities, until DPR completes its SGAR reevaluation and adopts additional restrictions to minimize impacts on nontarget wildlife. The provisions of AB 2657 went into effect on January 1, 2021.

Last year, Governor Gavin Newsom signed AB 1322 (Friedman, Chapter 836, Statutes of 2023), which prohibits the use of the FGAR diphacinone in wildlife habitat areas, the definition of which was expanded to include a park or wildlife refuge managed by a regional government or quasi-government agency, or by a special district, and prohibits the use of diphacinone in the state (with exemptions) unless DPR completes a reevaluation and adopts further restrictions on its use, as specified. The bill also made changes to existing restrictions on the use of SGARs consistent with those placed on diphacinone. The provisions of AB 1322 went into effect on January 1, 2024.

This bill: AB 2552 builds upon existing statute that prohibits many uses of SGARs and the FGAR diphacinone, by prohibiting the use of the remaining FGARs, chlorophacinone and warfarin, in wildlife habitat areas, except for use for specified health and safety activities. Like existing statute for SGARs and diphacinone, the bill also prohibits, except for specified health, safety and agricultural activities, the use of chlorophacinone and warfarin throughout the state

unless the director of DPR makes a certification that DPR has completed a reevaluation of chlorophacinone and warfarin, respectively, and has adopted restrictions to protect wildlife, as specified.

The bill also expands the definition of "wildlife habitat area" to include open-space land, and creates a new 2,500 foot buffer zone around wildlife habitat areas in which the use of SGARs and FGARs are prohibited, except for certain health and safety activities.

Chlorophacinone and warfarin: Chlorophacinone and warfarin are both first generation anticoagulants (FGARs), which, like all anticoagulant pesticides, work by preventing blood clotting. Animals that eat anticoagulant rodenticides die from internal hemorrhaging (bleeding), usually within a few days. Chlorophacinone and warfarin lethality generally requires that an animal consumes multiple doses of the bait over several days. These are known as a multiple-dose anticoagulants.

According to the National Pesticide Information Center, chlorophacinone is one of the rodenticides that pose the greatest secondary poisoning risks for wild mammals, dogs, and cats. The National Pesticide Information Center notes that both birds and mammals are of low risk of secondary poisoning from warfarin. US EPA's 2020 analysis, "Seven Anticoagulant Rodenticides: Draft Ecological Risk Assessment for Registration Review," found, "On a subacute dietary exposure basis, the FGARs range from highly toxic (chlorophacinone) to moderately toxic (warfarin and diphacinone) to birds."

While trends of rodenticide use and exposure are emerging since AB 1788 prohibited many uses of SGARs in the state in January 2021, and AB 1322 prohibited many uses of diphacinone in the state in January 2024, the sponsors of the bill point to numerous studies indicating continued anticoagulant rodenticide exposure to nontarget wildlife as illustrations of the necessity of the bill. Additionally, DFWs recent reports on pesticide exposures in nontarget wildlife continue to find alarming exposure rates. For example, DFW's 2023 "Pesticide Exposures & Mortalities in Nontarget Wildlife," which documents necropsies on wildlife remains, indicates that 81 percent of wildlife tested in 2022 were exposed to anticoagulant rodenticides, and DFW's 2022 "Pesticide Exposures & Mortalities in Nontarget Wildlife," indicates that 70 percent of wildlife tested in 2021 (post enactment of AB 1788) were exposed to anticoagulant rodenticides.

Alternatives to rodenticides: According to DFW and DPR, the most effective and safest ways to address rodent issues are through exclusion and sanitation—by eliminating factors that allow rodents to reproduce and thrive. DPR notes that rodenticides do not eradicate rodents and may not reduce their numbers for long. If there is an area-wide population of rodents, rodents from the edges move into the available space vacated by the poisoned rodents. Rodent numbers surge when people leave unpicked fruit on trees and pet food outside. Rodents find shelter when people ignore clutter and overgrown vines and allow access inside houses and garages.

To address these issues, DPR and DFW suggest that people who have identified a rodent population eliminate rodent entrances to the structure (seal holes, fill cracks, and install door sweeps); remove brush piles and debris near the structure; and, remove other food sources, such as pet food, wild bird seed, and fruit from trees. In addition to exclusion and sanitation, traps and electrocution devices can also be employed to address rodent pests. The sponsors of the bill also point to rodent fertility control as a potential alternative, which appears to already be in use by the city of San Francisco.

Unintended consequences? While sanitation and exclusion are the most effective methods for long-term rodent control, should the prohibition on warfarin and chlorophacinone be enacted though this bill, acute toxicant rodenticides would still be allowed. Under the provisions of the bill, rodenticides with the active ingredients bromethalin, zinc phosphide, strychnine, and cholecalciferol, can still be used, with some restrictions based on container size and specific uses. These rodenticides all carry risks. For example, bromethalin, a nerve toxicant that is designed to kill in a single feeding, causes symptoms such as lack of coordination, tremors, seizures, paralysis, and often death. Should a child or pet ingest bromethalin, antidotes do not exist. Zinc phosphide kills rodents quickly because their stomach acid reacts with phosphide to produce toxic phosphine gas. Predators and scavengers can be poisoned if they eat enough of the gut content of animals recently killed with zinc phosphide. Strychnine is a neurotoxin that acts as an antagonist of glycine receptors, resulting in uncontrollable muscle contractions. A lethal dose of strychnine can cause convulsions that lead to rapid asphyxiation and death. DFW reports that it has seen an increase in the number of strychnine-related wildlife losses in recent years. Finally, high doses of cholecalciferol raise blood calcium levels and cause heart and kidney failure in rodents. Secondary poisoning cases related to cholecalciferol are less frequent than for other rodenticides, but it is not a very effective tool for rodent control.

Policy consideration- Integrated Pest Management: The March 26, 2019, Assembly Environmental Safety and Toxic Materials Committee analysis for AB 1788 (Bloom, Chapter 250, Statutes of 2020), stated, "Should the prohibition on SGARs in this bill be enacted without corresponding requirements for or support of an integrated pest management approach to rodent management, it is likely that the use of FGARs and acute toxicants to control rodents would increase… Instituting stronger state support of, or requirements for, integrated pest management approaches to rodent control would likely reduce the use of rodenticides overall." Unfortunately, the predictions in the analysis appear to have come true. An analysis provided by the sponsors of this bill of DFW's reports on documented pesticide exposure and toxicosis in California's fish and wildlife from January 2015 to February 2023, shows that exposure rates to SGARs before AB 1788, which prohibited many uses of SGARs, averaged 75.2% across examined years, and *decreased* to 64.9% after it was in effect. At the same time, exposure rates to FGARs averaged 41.3% before AB 1788 was in effect, and *increased* to 54.4% after it was in effect.

According to the University of California Statewide Integrated Pest Management Program, integrated pest management, or IPM, is a process used to solve pest problems while minimizing risks to people and the environment. IPM is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed, according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and nontarget organisms, and the environment.

While use patterns for SGARs and diphacinone, especially, are still evolving, it appears that rodenticide exposure in nontarget wildlife overall is continuing at high rates. Unless the state institutes comprehensive IPM strategies for controlling rodent pests, it remains likely that consumers and pesticide applicators will simply turn to other chemical rodent controls when

specific rodenticides are prohibited. To significantly reduce primary and secondary rodenticide poisoning of nontarget wildlife, the state should adopt stringent and comprehensive IPM policies.

Enforcement provisions: This bill creates a civil penalty program for violations of existing prohibitions on SGARs and diphacinone and for the new prohibitions on chlorophacinone and warfarin. Under the provisions of the bill, a person who sells or uses a FGAR or SGAR in violation of existing statute or provisions of this bill, or any related regulations, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day for each violation, in addition to any other penalty established by law. The bill authorizes the civil penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction for each individual sale or use, and separate civil penalties for the exposure of each person or animal to a FGAR or SGAR.

AB 2552 additionally authorizes a person to commence a civil suit to enjoin a person who is alleged to be in violation of the FGAR or SGAR prohibitions in existing statute or pursuant to this bill, or of related regulations, and to seek civil penalties. The suit can be brought by any person on their own behalf or on behalf of individual animals, wildlife, wildlife species, or any representative thereof that are at risk of being killed, injured, harassed, or harmed by the unlawful sale or use of a FGAR or SGAR.

Civil penalties recovered pursuant to the provisions of the bill be deposited into the Poison-Free Wildlife Account, which the bill establishes in the Wildlife Restoration Fund, and requires that the penalty monies be available for expenditure, upon appropriation by the Legislature, for specified programs for endangered and rare animals and native plant species, related conservation and enhancement programs, and programs for those species that may be candidates for determination as endangered or rare; to acquire, restore and maintain in a state of high productivity those areas that can be most successfully used to sustain wildlife and which will provide adequate and suitable recreation; and, for the recovery and rehabilitation of injured, sick, or orphaned wildlife, and for conservation education.

These enforcement authorities, and other provisions of the bill, will be further analyzed by the Assembly Judiciary Committee and the Assembly Water, Park, and Wildlife Committee, should this bill be approved by the Assembly Environmental Safety and Toxic Materials Committee.

Arguments in support: A coalition of supporters writes,

> "AB 2552 extends the existing moratorium on dangerous anticoagulant rodenticides to include the entire class of anticoagulant rodenticides, buffer zones to better protect wildlife habitat areas, and a public interest citizen suit provision to increase enforcement while reducing the burden on government agencies. AB 2552 is narrowly targeted to the most dangerous class of rodenticides until state regulators can develop better safeguards on their use and specifically exempts agricultural activities, public health protections, water supply infrastructure, biotech, and emergency pest infestations.
>
> In a recent editorial, the Los Angeles Times endorsed AB 2552 as "crucial to ridding the environment of these toxins that kill wildlife and pets and have been known to poison people — usually children — as well." In 2023, the California Department of Fish and Wildlife found that 81% of animals tested had exposure to anticoagulant rodenticides, including

88.2% of tested birds with 56.7% dying as a result of anticoagulant rodenticide poisoning. Greater restrictions are needed.

Anticoagulant rodenticides pose an unreasonable risk to children and pets. The National Poison Data System documented over 2,300 cases of anticoagulant rodenticide poisoning of children under the age of 6 years old in one year alone. Rodenticides pose an unreasonable risk to pets and domestic animals as well. More than 100 pets needlessly die each year due to rodenticide exposure. More protections for California families are necessary.

Anticoagulant rodenticides pose an unreasonable risk to wildlife. [DPR] has documented anticoagulant rodenticide poisonings in at least 38 different nontarget species in California such as eagles, hawks, falcons, owls, bobcats, mountain lions, and even the imperiled San Joaquin kit fox, northern spotted owl, and California condor. The problem is so severe that over half of wildlife tested in California are exposed to rodenticides. A national study found that 96 percent of bald eagles—our national bird—have been exposed to anticoagulant rodenticides and that 77 percent of golden eagles have been exposed.

There is a wide array of cost-effective alternatives available on the market today to better address rodent infestations. Sealing buildings and eliminating food and water sources are a necessary first step. Sustainable rodent control strategies that involve snap traps, electric traps, fertility control, and other non-toxic methods can then be implemented to address any infestations. Several types of less toxic rodenticides are available as well."

Arguments in opposition: A coalition of opponents writes,

"…products sought to be sold and used in California must also be approved by [DPR], which considers the ingredients of the pesticides, crops, or sites where they're to be used, the amount, frequency and timing of use, among other things... But rather than utilize this established and thorough process to scientifically evaluate the need for further restrictions on rodenticide use, AB 2552 unilaterally prohibits use of the first-generation anticoagulant rodenticides warfarin and chlorophacinone in the state.

…Currently, the U.S. EPA is undergoing a review process to evaluate the need for measures specifically intended to protect nontarget organisms, including for first generation anticoagulant rodenticides… AB 2552 disregards this more comprehensive approach to rodenticide risk management. Therefore, due to these ongoing federal actions, the California Legislature should not undertake any further legislative actions regarding rodenticides.

…This additional prohibition [in the expanded wildlife habitat areas and new buffer zone] is not required to be substantiated by a finding of wildlife species impact, a reevaluation by DPR, or any other state specified scientific method. This arbitrary, near one-mile buffer zone around these newly determined areas would have substantial impact to the safety of nearby communities and in many counties, serve as a de facto ban.

…Between new definitions for wildlife habitat areas, expansive new buffer zones, and increased litigation risk, AB 2552 significantly erodes the exemptions for agriculture if production sites, storage or food processing is occurring within the 5,000-foot buffer zone, which will result in significant public health, food safety, and security risks, and other impacts to agricultural production.

…Arbitrarily removing pesticide tools undermines this [IPM] holistic approach. To that end, AB 2552 foregoes these principles rather than being consistent with them.

…the bill confers the ability for a person to sue on *behalf* of an animal that might be exposed to harm but does not actually require proof of such harm. This unprecedented approach turns the injury requirement normally required in litigation on its head by allowing individuals to sue over conjecture or conceptual harm. In addition, the notice requirement before a suit is filed is similar to that seen in other contexts and is often used to leverage settlements outside of court, where would-be plaintiffs can obtain arbitrary monetary awards without proving their case to a court. Creating this new private right of action will lead to numerous, expensive, and frivolous lawsuits against entities who sell or use rodenticides."

Triple referral: This bill has been referred to the Assembly Committee on Environmental Safety and Toxic Materials, the Assembly Committee on Water, Parks, and Wildlife, and the Assembly Committee on Judiciary. Should the Assembly Committee on Environmental Safety and Toxic Materials approve this bill, it will be referred to the Assembly Committee on Water, Parks, and Wildlife.

Recent related legislation:

1) AB 1322 (Friedman, Chapter 836, Statutes of 2023). Prohibits the use of the FGAR diphacinone in wildlife habitat areas, as defined, and prohibits the use of diphacinone in the state until DPR has completed a reevaluation and developed and adopted further restrictions on its use. Makes changes to existing restrictions on the use of SGARs consistent with those placed on diphacinone.

2) AB 1298 (Bloom, Chapter 479, Statutes of 2021). Corrects a drafting error in AB 1788 (Bloom, Chapter 250, Statutes of 2020) related to the prohibition of the use of SGARs.

3) AB 1788 (Bloom, Chapter 250, Statutes of 2020). Prohibits the use of SGARs until the director of DPR certifies a completed reevaluation of SGARs.

4) AB 2422 (Bloom, 2018). Would have prohibited the use, except as specified, of any pesticide that contains an anticoagulant. The Assembly Water, Parks, and Wildlife Committee hearing on this bill was cancelled at the request of the author and the bill subsequently died on file.

5) AB 1687 (Bloom, 2017). Would have prohibited the use of any pesticide that contains one or more of nine specified active ingredients (including all first and second generation anticoagulant rodenticides and some acute toxicants). The Assembly Committee on Environmental Safety and Toxic Materials hearing on this bill was cancelled at the request of the author and the bill subsequently died on file.

6) AB 2596 (Bloom, 2016). Would have prohibited the use of second generation anticoagulant rodenticides. The Assembly Committee on Environmental Safety and Toxic Materials hearing on this bill was cancelled at the request of the author and the bill subsequently died on file.

7) AB 2657 (Bloom, Chapter 475, Statutes of 2014). Prohibits the use of second generation anticoagulant rodenticides in wildlife habitat areas, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
All About Owls
Animal Legal Defense Fund
Animazonia Wildlife Foundation
Arroyos & Foothills Conservancy
Brentwood Alliance of Canyons & Hillsides
California Association of Professional Scientists
California Wildlife Center
Canyon Back Alliance
Center for Biological Diversity
City of Agoura Hills
Cleanearth4kids.org
Coastal Ranches Conservancy
Defenders of Wildlife
Defiance Canyon Raptor Rescue
Endangered Habitats League
Felidae Conservation Fund
Filoli Gardens
Friends of Griffith Park
Friends of Plumas Wilderness
Greenspace - the Cambria Land Trust
Happy Hen Animal Sanctuary
Hills for Everyone
Humane Wildlife Control
In Defense of Animals
International Fund for Animal Welfare
Klamath Siskiyou Connectivity Project
Mojave Desert Land Trust
Morro Coast Audubon Society
Mountain Lion Foundation
Oakland Museum of California
Ojai Raptor Center
Old Agoura Homeowners
Pathways for Wildlife
Poison Free Agoura
Poison Free Conejo Valley
Poison Free Malibu
Preserve Wild Santee
Project Coyote
Raptors are The Solution
San Bernardino Valley Audubon Society
San Diego Humane Society

Save Joshua Tree Wildlife
SC Wildlands
SoCal 350 Climate Action
Social Compassion in Legislation
Teranga Ranch Wildlife
The Cougar Fund
The Escondido Creek Conservancy
The Human Society of The United States
The Nature of Wildworks
The River Otter Ecology Project
The Wildlands Conservancy
Unchainedtv
United Neighborhoods for Los Angeles (UN4LA)
Urban Wildlife Research Project
Ventura Land Trust
Voters for Animal Rights
Wild Earth Guardians
Wildlife Emergency Services
Wishtoyo Foundation
Women United for Animal Welfare (WUFAW)

Opposition

Almond Alliance of California
American Pistachio Growers
Association of California Egg Farmers
California Agricultural Commissioners & Sealers Association
California Association of Pest Control Advisers
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Business Properties Association
California Cattlemen's Association
California Citrus Mutual
California Cotton Ginners and Growers Association
California Fresh Fruit Association
California Grain & Feed Association
California League of Food Producers
California Pear Growers Association
California Rice Commission
California Seed Association
California State Floral Association
California Strawberry Commission
California Tomato Growers Association
California Walnut Commission
California Warehouse Association
Household and Commercial Products Association
Pacific Egg and Poultry Association
Pest Control Operators of California

Responsible Industry for A Sound Environment - RISE
Rodenticide Task Force
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2614 (Ramos) – As Amended March 21, 2024

SUBJECT: Water policy: California tribal communities

SUMMARY: Defines tribal water uses and requires this definition to be used by state agencies in place of previously used definitions for tribal traditional cultural uses and tribal subsistence uses. Requires the State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Water Boards), when approving a project or regulatory program, to describe how that project or regulatory program would impact tribal water uses. Specifically, **this bill**:

1) States that the Legislature finds and declares:

    a) California tribal communities have special ties to the bodies of water that have sustained their people, who have suffered from genocide, disease, displacement, and discrimination dating back to European colonization, and therefore tribal water uses must be protected through the statewide program for the control of the quality of all the waters of the state.

    b) Furthermore, allowing for tribal water uses should be a primary factor in determining the highest water quality that is reasonable in all regulatory decisions.

2) Changes the definition of beneficial uses of waters of the state to include tribal water uses.

3) Defines "tribal water uses" as any tribal practice that involves contact with a body of water or use of animals, plants, or fungi that reside in, or are adjacent to a body of water.

4) Allows a California tribal community that elects not to publicly disclose its tribal water uses to confidentially disclose them to the State Water Board or a Regional Water Board.

5) Requires the above definition of tribal water uses to be used exclusively and to replace all definitions previously adopted by a state agency, including but not limited to, definitions of "tribal traditional cultural uses" and "tribal subsistence uses."

6) Requires that policies of the state, with respect to water quality as it relates to California tribal communities, consist of both of the following:

    a) Tribal ecological knowledge should be valued and incorporated into regulatory and management programs; and

    b) State agencies should make resources available for tribal co-management of aquatic resources within traditional and current tribal lands.

7) Requires any project or regulatory program, subject to approval by the State Water Board or a Regional Water Board, to—within an environmental review under the California Environmental Quality Act (CEQA)—describe, with both quantitative and qualitative information, how the project or regulatory program will impact tribal water uses.

8) Requires the State Water Board, during the process of formulating or revising state policy for water quality control, to consult with and carefully evaluate the recommendations of California tribal communities.

9) Requires, on or before January 1, 2026, the State Water Board to incorporate water quality standards to achieve reasonable protection of tribal water uses into the water quality control plan for the San Francisco Bay and Sacramento-San Joaquin Delta watershed.

10) Requires the memorandum of understanding (MOU) between the California Environmental Protection Agency (CalEPA) and the Natural Resources Agency (NRA) that establishes the California Water Quality Monitoring Council (Monitoring Council) to describe the means by which the Monitoring Council will formulate recommendations to achieve and maintain tribal water uses through State Water Board and Regional Water Board regulatory action and other programs, including but not limited to, co-management of habitat restoration and management programs and consultations within California tribal communities.

11) Requires, on or before December 1, 2025, CalEPA and NRA to amend the MOU to incorporate participation from California tribal communities in the actions of the Monitoring Council.

12) Requires Regional Water Boards, when establishing water quality objectives, to additionally consider the following factors:

    a) Consultations with California tribal communities; and

    b) Environmental justice considerations.

13) Provides that the adoption of tribal water uses within a water quality control plan shall not be subject to CEQA.

14) Requires, on or before January 1, 2028, each Regional Water Board to adopt water quality standards for the reasonable protection of tribal water uses into water quality control plans.

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) Pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne), 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.)

3) Defines "beneficial uses" of waters of the state that may be protected against quality degradation to include, but not be limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. (WC § 13050 (f))

4) Requires the State Water Board, during the process of formulating or revising state policy for water quality control, to consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies. (WC § 13144)

5) Requires, on or before December 1, 2007, CalEPA and the NRA to enter into an MOU for the purposes of establishing the Monitoring Council. Requires the State Water Board to administer the Monitoring Council. (WC § 13181)

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

7) Requires a Regional Water Board to prescribe requirements for any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area upon or receiving waters into which the discharge is made or proposed. Specifies that requirements that implement any relevant water quality control plans have been adopted, and take into consideration, the beneficial uses to be protected, water quality objectives, other waste discharges and the need to prevent nuisance. (WC § 13269, et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "California tribes have been fighting to preserve their way of life since the beginning of California's history. The state and tribes have been working hand in hand to correct injustices and heal historical trauma. Laws have been passed mandating consultation and preservation of tribal sacred sites and cultural resources. However; tribes cannot maintain their ways of life without access to the plants and animals sustained by healthy rivers and lakes. AB 2614 would establish statewide tribal beneficial water uses which would ensure all California tribes can benefit from water quality management plans that would place cultural uses on equal footing with other uses."

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

State regulation of water pollution: The State Water Board is responsible for administering the federal CWA and California's Water Quality Act (Porter-Cologne), enacted in 1969, which set up the statewide structure for water quality control. Porter-Cologne designates the State Water Board as the water pollution control agency for all purposes stated in the CWA, and it authorizes the State Water Board to exercise any powers that the federal CWA delegates to the State. The State Water Board and Regional Water Boards are charged with preventing and reducing water pollution in rivers, streams, lakes, beaches, bays, and groundwater.

California Water Quality Monitoring Council: In November 2007, an MOU was signed by the Secretaries of CalEPA and the NRA to establish the Monitoring Council. The MOU requires the boards, departments, and offices within CalEPA and the NRA to integrate and coordinate their water quality and related ecosystem monitoring, assessments, and reporting.

The Monitoring Council is required to develop specific recommendations to improve the coordination and cost-effectiveness of water quality and ecosystem monitoring and assessment, enhance the integration of monitoring data across departments and agencies, and increase public accessibility to monitoring data and assessment information. While the Monitoring Council may recommend new monitoring or management initiatives, it aims to build on existing efforts to the greatest extent possible.

This bill: AB 2614 requires the MOU between CalEPA and the NRA to be amended, to incorporate the participation of California tribal communities into the Monitoring Council.

State Water Board resolution regarding tribal water uses: In 2016, the State Water Board adopted Resolution 2016-0011, which directs staff to develop proposed beneficial uses pertaining to tribal traditional and cultural use, tribal subsistence fishing, and subsistence fishing. The resolution includes the following declarations:

- "Beneficial uses are the cornerstone of water quality protection. The Porter-Cologne Act provides that the beneficial uses of the state's waters to be protected against degradation include, but are not limited to, 'domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.' (Wat. Code, § 13050, subd. (f).)";

- "Of the nine Regional Water Boards, only the North Coast Regional Water Board's basin plan explicitly lists (at p. 2-3.00) a beneficial use that pertains to the cultural and traditional rights of indigenous people."; and,

- "The State Water Board recognizes the importance of identifying and describing beneficial uses unique to California Native American tribes, in addition to subsistence fishing by other cultures or individuals."

In addition, the resolution contains a list of actions taken by the State Water Board, including directions for:

- "…State Water Board staff to develop proposed beneficial use categories, including definitions, pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals"; and,

- "…State Water Board staff to consider the beneficial uses presented in Attachment A when developing the aforementioned proposed beneficial use categories."

The State Water Board's resolution specifies (in "Attachment A) the following beneficial uses, as proposed by tribes, tribal representatives, and environmental justice representatives:

- "California Indian Tribal Traditional and Cultural Use: Uses of water that supports the cultural, spiritual and traditional rights and lifeways of California Indian Tribes. This includes but is not limited to: fishing, gathering, and safe consumption of traditional foods and materials, as defined by California Indian Tribes, for subsistence, cultural, spiritual, ceremonial and navigational activities associated with such uses";

- "California Indian Tribal Subsistence Fishing Use: Uses of water that supports the gathering and distribution of natural aquatic resources, including fish and shellfish, to meet traditional food needs of California Tribal individuals, households and communities for personal, family and community consumption, and for traditional and/or ceremonial purposes"; and,

- "Subsistence Fishing: Uses of water that support the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, by individuals for the personal consumption by individuals and their households or communities, to meet fundamental needs for sustenance due to cultural tradition, lack of personal economic resources, or both."

Beneficial uses of water: Beneficial uses are goals the State Water Board designates to ensure Californians have access to the highest water quality and can use it for maximum benefit. There are an array of beneficial uses including, but not limited to: recreation, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

Tribal beneficial uses of water: Tribal Beneficial Uses are a group of beneficial uses that can help protect activities specific to Native American cultures and their uses of California waters, including the consumption of non-commercial fish or shellfish. Tribal Beneficial Uses can also be referred to as cultural uses of water.

California Native American Tribes use California's surface waters in a manner unique to tribal culture, tradition, ceremonies, and lifeways. Tribal Beneficial Uses provide a way to adequately protect certain uses of water that directly relate to Native American cultures. In some cases, the levels of waste allowed to be released into California waters (discharge requirements) or existing water quality standards may not adequately protect Tribal Beneficial Uses. To account for this, in 2017 the State Water Board identified and described beneficial uses unique to California Native American Tribes, in addition to subsistence fishing by other cultures or individuals.

In some cases, current discharge requirements may not adequately protect the new beneficial uses. Examples include the timing of the application of aquatic herbicides so that they do not interfere with cultural practices and reducing bioaccumulative pollutants to levels that are protective of a high rate of fish consumption.

In establishing the beneficial use definitions (Resolution 2016-0011), the State Water Board provided the following direction:

"The [Regional Water Boards] shall use the beneficial uses and abbreviations listed below, to the extent such activities are defined in a water quality control plan after June 28, 2017.

For a [Regional Water Board] to designate the Tribal Tradition and Culture or Tribal Subsistence Fishing beneficial uses in a water quality control plan for a particular waterbody segment and time(s) of year, a California Native American Tribe must confirm the designation is appropriate."

Basin Plans: Basin Plans (commonly referred to as "water quality control plans") are the foundation for the Regional Water Boards' water quality regulatory programs and are regulatory references for meeting the state and federal requirements for water quality control. They provide a plan of action designed to preserve and enhance water quality and require public participation. Each Regional Water Board has its own Basin Plan(s). Basin Plans contain:

- Beneficial use definitions;
- Designated beneficial uses for both surface and ground water bodies;
- Water quality objectives to protect those beneficial uses;
- Implementation plans that describe the actions necessary to achieve water quality objectives; and
- Descriptions of the surveillance and monitoring activities needed to determine regulatory compliance and assess the health of the water resources.

The nine Regional Water Boards are required to develop and adopt Basin Plans. The Regional Water Boards review their Basin Plans every three years and determine a list of basin-planning priority projects (a process known as the "triennial review"). The Regional Water Boards implement their priority planning projects by amending their respective Basin Plans.

Tribal beneficial uses under each Regional Water Board: Although the State Water Board established the Tribal Beneficial Uses in 2017, the nine Regional Water Boards must initiate and complete a basin-planning process for the beneficial uses to be incorporated into their respective Basin Plans. However, incorporating the Tribal Beneficial Uses into the Basin Plan does not designate any specific waterbodies with the use. For Tribal Beneficial Uses to be memorialized in a region and for waterbodies to be protected, there are several basin-planning actions a Regional Water Board could take, including:

- Add one or more of the beneficial use definitions to the Basin Plan;
- Designate one or more water bodies with one or more of those beneficial uses; and,
- Add one or more of the beneficial use definitions to the Basin Plan and designate one or more water bodies with one or more of those beneficial uses.

This bill: AB 2614 defines tribal water uses and requires this definition to be used by state agencies in place of previously used definitions for tribal traditional cultural uses and tribal subsistence uses. Additionally, this bill requires the State Water Board and the Regional Water Boards, when approving a project or regulatory program, to describe how that project or regulatory program would impact tribal water uses.

Arguments in Support: According to the Shingle Springs Band of Miwok Indians:

"AB 2614 will establish tribal beneficial uses (TBUs) of water statewide and provide direction to the State and Regional Water Boards on tribal consultation and co-management. It will also mandate a framework for tracking implementation of TBUs.

Most statewide beneficial uses were created legislatively during the late 1960s and early 1970s. TBUs were not included at that time and the State and Regional Water Boards did not begin consideration of adding TBUs into water quality control plans until recently. However, the regulatory process to establish TBUs is fragmented by region and subject to racist and onerous requirements on tribes to document that their water-related practices deserve equal protection as other established beneficial uses.

The Governor has officially recognized and apologized for the legacy of genocide and discrimination against indigenous peoples. The legislature has passed bills to mandate tribal consultation and preservation of sacred sites. Nevertheless, tribes cannot maintain their ways of life without access to the plants and animals sustained by healthy rivers and lakes.

Establishing statewide TBUs in statute would ensure that all California tribes can benefit from water quality management plans that place tribal water uses on equal footing with other uses, such as recreation and hydropower generation."

Arguments in Opposition: According to the Valley Ag Water Coalition (VAWC), which is opposed unless amended:

"VAWC opposes AB 2614 for several reasons. First, AB 2614 is duplicative of existing law. The legislation would require that environmental review conducted pursuant to the California Environmental Quality Act (CEQA) for any project or regulatory program subject to approval by the state board or a regional board, must describe, with both quantitative and qualitative information, how the project or regulatory program will impact tribal water uses.

Beyond being duplicative of existing law, AB 2614 would add two very troubling requirements relating to tribal water uses to the Water Code. First, that adoption of tribal water uses within a water quality control plan would be exempt from CEQA. Second, that each regional board would be required to adopt water quality standards to achieve reasonable protection of tribal water uses into water quality control plans. More specifically, AB 2614 would require the state board to incorporate water quality standards to achieve reasonable protection of tribal water uses into the water quality control plan for the San Francisco Bay and Sacramento-San Joaquin Delta watershed.

VAWC further notes that the provisions of AB 2614 are internally inconsistent in that while the legislation would require CEQA review of any project or regulatory program subject to approval by the state board or a regional board to describe how the project or regulatory program will impact tribal water uses, AB 2614 would allow a California tribal community that elects not to publicly disclose its tribal water uses to confidentially disclose them to the state board or a regional board. How would a project proponent describe how its project would impact tribal water uses if those uses are not publicly disclosed?"

Double-referral: Should this bill pass the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Water Parks and Wildlife Committee.

Related Legislation:

AB 2108 (Robert Rivas, Chapter 347, Statutes of 2022). Requires the State Water Board and the Regional Water Boards to make programmatic findings on potential environmental justice, tribal impact, and racial equity considerations when issuing regional or reissuing statewide waste discharge requirements or waivers of waste discharge requirements. Requires the State Water Board and Regional Water Boards to engage communities impacted by proposed discharges of waste throughout the waste discharge planning, policy, and permitting process.

REGISTERED SUPPORT / OPPOSITION:

Support

Shingle Springs Band of Miwok Indians (Sponsor)
Cahto Tribe
California Coastkeeper Alliance
California Valley Miwok Tribe Aka Sheep Ranch Rancheria
Chips Forestry
Clean Water Action
Environmental Working Group
Friends of The River
Koy'o Land Conservancy dba Colfax Todds Valley Consolidated Tribe
Los Angeles Waterkeeper
Merced River Conservation Committee
Mono Lake Committee
Pesticide Action Network
Restore the Delta
San Francisco Baykeeper
Save California Salmon
Sierra Club California
Sierra Nevada Alliance
South Yuba River Citizens League (SYRCL)
Union of Concerned Scientists
Washoe Tribe of Nevada and California

Opposition

Valley Ag Water Coalition

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2686 (Grayson) – As Amended April 1, 2024

SUBJECT: Hazardous waste: generation and handling fees

SUMMARY: Creates a reduced hazardous waste generation and handling fee for specified projects, including those proposing to build affordable housing, if the hazardous waste meets specified conditions, and only for hazardous waste generated in calendar years 2021, 2022, and 2023. Specifically, **this bill**:

1) Authorizes a generator of hazardous waste, whose project meets specified criteria, to pay to the California Department of Tax and Fee Administration (CDTFA) a reduced generation and handling fee for hazardous waste generated in an amount equal to, or more than, five tons in a calendar year.

2) Limits the reduced generation and handling fee to a project that meets the following criteria:

   a) A residential project, including a mixed-use project in which at least two-thirds of the square footage consists of residential uses, that was deemed complete, as defined in Section 65589.8 of the Government Code, on or before December 31, 2021 and meets both of the following criteria:

      (i) Consists of 600 or fewer units, and

      (ii) At least 15 percent of the total units, as defined in Section 65915 of the Government Code, are affordable to households earning 110 percent of the area median income or less, or at least 10 percent of the units are affordable to households earning 80 percent of the area median income or less;

   b) A project that was issued a permit on or before December 31, 2021, and that is either a mixed-use project in which less than two-thirds of the square footage consists of residential uses or a commercial or nonprofit project of less than 200,000 square feet; or

   c) A student housing project for a public university that was issued a permit on or before December 31, 2021.

3) Limits the reduced generation and handling fee to hazardous waste that meets all of the following criteria:

   a) The hazardous waste was generated in calendar years 2021, 2022, or 2023;

   b) The hazardous waste is non-Resource Conservation and Recovery Act (RCRA) hazardous waste; and,

   c) The hazardous waste was generated in a remedial action, a removal action, or corrective action taken pursuant to, or generated in a soil disturbance conducted in compliance with a risk management plan approved pursuant to, this chapter, Chapter 6.65 (commencing with Section 25260), Chapter 6.7 (commencing with Section 25280), Chapter 6.75

(commencing with Section 25299.10), Chapter 6.8 (commencing with Section 25300), or Division 45 (commencing with Section 78000), or generated in any other required cleanup, removal, or remediation.

4) The reduced generation and handling fee shall be subject to all of the following:

   a) The fee shall be in an amount of five dollars and seventy-two cents for each ton, or fraction of a ton, of hazardous waste;

   b) There shall be an exemption from the generation and handling fee for hazardous waste generated in the 2021 calendar year if the generator meets criteria in the bill outlining eligible projects and was subject to, and paid to CDTFA, before January 1, 2022, the generator fee for that hazardous waste in calendar year 2021; and,

   c) Requires CDTFA to collect and administer the generation and handling fee. Requires the fee to be collected and paid in one installment.

5) Requires the generator of hazardous waste to file an annual return in the form prescribed by CDTFA, and pay the proper amount of the fee due.

6) Requires the generator of hazardous waste to amend the annual return filed in fiscal years 2021-22 and 2022-23 to reflect appropriate fee rates imposed pursuant to the existing generation and handling fee and the reduced generation and handling fee, created by this bill, in calendar year 2021.

7) Requires CDTFA to acknowledge the amended annual return within 30 days from the filing date. Requires CDTFA, after acknowledgement of the amended return, to process the refund either by mailing a check or applying a credit to outstanding future balances of the generator, at the discretion of the generator of hazardous waste.

8) Requires a generator of hazardous waste that generated waste from a project subject to the criteria in this bill, to report to the directors of the Department of Toxic Substances Control (DTSC) and CDTFA by January 1 of the fiscal year in which the reduced generation and handling fee is assessed the following information:

   a) All identification numbers issued by DTSC or by the United State Environmental Protection Agency (US EPA) that are associated with the project that meets the criteria in this bill;

   b) All account numbers issued by CDTFA; and,

   c) The total tonnage of hazardous waste generated from the project meeting the criteria in this bill for each identification number issued by DTSC or US EPA.

9) Provides that the reduced generation and handling fee and the provisions for receiving a refund of the generation and handling fee expire on January 1, 2026.

EXISTING LAW:

1) Authorizes through the Hazardous Waste Control Law (HWCL) DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)

2) Establishes, pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA), a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to public health or the environment. (HSC § 78000 et seq.)

3) Requires a generator of hazardous waste to pay a generation and handling fee, if they generate an amount equal to, or more than five tons in a calendar year to pay forty-nine dollars and twenty-five cents for each ton or fraction of a ton of hazardous waste generator in a calendar year. (HSC § 25205.5)

4) Requires the Board of Environmental Safety (Board) to establish, by regulation, a schedule of rates for the generation and handling fee authorized by the HWCL and may adjust the schedule of rates no more frequently than once per year thereafter and no later than October 1 of any year in which the Board adopts the schedule of rates. Requires rates to allow for a reserve in the Hazardous Waste Control Account each year at an amount determined by the Board to be sufficient to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls or additional baseline expenditure adjustments, but not to exceed 10 percent of authorized expenditure levels. Provides that the rate established by the Board shall not exceed ninety-eight dollars and fifty cents ($98.50). (HSC § 25205.5.01)

6) Defines "deemed complete" as that the applicant has submitted a preliminary application pursuant to Government Code Section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to Government Code Section 65943. (Government Code § 65589.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "California is in the midst of a massive housing affordability crisis. Rising costs and high fees have made it difficult to build housing that is affordable. In recent years, certain developers have experienced sharp cost increases due amended fees for hazardous waste generation that are charged by the Department of Toxic Substance Control. The new hazardous waste generator fee was increased in 2021 by SB 158, and increased fees to a $49.25 per ton flat fee. This caused many projects that were in the pipeline or already built to experience cost overruns, resulting in projects not being able to "pencil out".

To help these projects "pencil out", AB 2686 would offer an alternative fee structure for qualified projects that were deemed complete by December 31, 2021, setting a fee at $5.72 per ton. The "qualified projects" under this bill include residential and mixed-use housing projects, student housing projects, and projects that were by non-profits. This bill would strike a balance to ensure that these vital projects can still "pencil out", and deliver much needed housing in California."

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

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA, or Superfund, provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the US EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. The US EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act.

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. The HSAA provides DTSC with the authority, to investigate, remove, and remediate contamination at sites.

Legacy of DTSC's fiscal issues: DTSC's funding comes primarily from the HWCA and Toxic Substances Control Account (TSCA). The HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. The HWCA funds DTSC's regulatory work overseeing hazardous waste management activities in the state. The TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. TSCA funds DTSC's work dealing with cleaning up contaminated properties, including federal Superfund sites and state orphan sites, as well as funding the Safer Consumer Products Program (also known as the Green Chemistry Program).

The HWCA and TSCA had been operating with a structural deficit for several years. The Budget Act of 2019-2020 provided the HWCA with $27.5 million from the General Fund to backfill the shortfall and maintain existing operations. The Governor's budget for 2020-2021 provided a $12 million backfill from special funds for TSCA and a backfill of approximately $19 million for the HWCA (also from special funds) as those accounts were projected to be insolvent in the budget year.

Governor Newsom's response to DTSC's fiscal situation: As part of the 2020-2021 budget, the Newsom Administration proposed a reform package intended to resolve DTSC’s governance and fiscal problems. The Administration proposed to remedy DTSC's fiscal instability by providing DTSC the ongoing authority to set and revise fees. The Administration included trailer bill language with its proposal to raise fees in the HWCA and TSCA; this language was proposed as a 2/3 vote measure. To address transparency and governance issues, the Administration proposed, also with trailer bill language, to create the Board. Assembly Bill (AB) 1 (from 2021) similarly would have enacted the Board as well as would have raised the HWCA fees, nearly identical to the Administration's HWCA proposal, except AB 1 did not include the 2/3 vote increase for TSCA.

Governor Newsom proposed a new DTSC reform package as part of 2021-2022 budget: The Governor's DTSC Reform package contained three major components: Establishing a Board of Environmental Safety; Fee Reform; and, Programmatic Reform.

The Governor is proposed to create a five-member Board with the members of the Board appointed by the Governor. The Chairperson of the Board would be full-time and the remaining Board members would be half-time. The Board would: set fees and fee rates; decide permit appeals for hazardous waste facilities; provide opportunities for public comment on DTSC's permit and remediation decisions; review and approve the DTSC Director's annual priorities and performance metrics; provide long-term goals for DTSC's programs; and, provide an annual performance review of the DTSC Director. Along with the Board, this proposal established an Ombudsperson to receive and evaluate complaints and suggestions regarding any action, program, or policy of DTSC.

The Governor was proposing a major overhaul of DTSC's fee structure. The proposal was designed to produce sufficient revenue to eliminate the need to provide General Fund revenues to close DTSC's baseline funding gap; pay the costs associated with the Board, support staff, and Ombudsperson; provide for an additionally $59 million in revenue to support anticipated near-term staffing needs, likely beginning in 2022; and, begin to establish a prudent reserve. Additionally, the proposal eliminated three fees under the HWCA (disposal fee, manifest user fee, and EPA ID fee); restructured the generator fee into a generation and handling fee; established a per ton rate for the generation and handling fee; raised and set a new base rate for the facility fee; and, eliminated all of the exemptions except the exemption for small quantity generators (those that generate less than five tons per year). This fee reform proposal also included changes to the Environmental Fee. The proposal permanently eliminated the fee for businesses with less than 100 employees, froze the fee for businesses with 100-499 employees (the proposal included a provision allowing the Board raise the fee in the future); and, more than tripled the fee for businesses with 500 or more employees.

The Governor's proposal included programmatic changes. The proposal established a hazardous waste management plan (Plan) to be presented to the Board. Within the Plan would have been recommendations to establish hazardous waste reduction goals; update DTSC's pollution prevention program; and, reduce the risk of exposure to communities threatened by releases of hazardous waste. Additionally the Governor's proposal included changes to strengthen financial assurance requirements for permitted hazardous waste facilities and would have established accountability requirements for DTSC's permitting of renewal applications for hazardous waste facilities.

Final DTSC reform (Senate Bill (SB) 158): In 2021, as a result of months of negotiation, the Administration and Legislature agreed to a compromise on DTSC Reform by enacting SB 158. SB 158 included the creation of the 5-member Board that sets policy and prioritizes transparency and accountability for DTSC. Each member of the Board must meet at least one qualification from a specified list and the Board is required to meet at least 6 times a year.

SB 158 also enacted fee reform, by eliminating and modifying some fees. This included repealing the Generator Fee and instead establishing the new Generation and Handling Fee. The bill also created a new (hazardous waste) facility fee and modified and raised the Environmental Fee. All fees were set at a rate that would eliminate DTSC's operating deficit, provide revenue

for anticipated needs in the near-term, fund the Board and the development of a hazardous waste management plan, and provide DTSC with a prudent reserve.

Additionally, SB 158 included a number of programmatic reforms such as the development of a hazardous waste management plan to be completed by March 1, 2025 and updated every 3 years; strengthened financial assurance requirements for both hazardous waste facilities and contaminated cleanup sites; and, made changes to the permitting requirements for hazardous waste facilities to improve the efficiency and transparency of the processing of the permits. Lastly, SB 158 included $500 million for the cleanup of contaminated sites, including priority for sites in communities overburdened by pollution.

Polluter pays principle: The current fees on generators of hazardous waste, as required by SB 158, follow the polluter pays principle: the more hazardous waste someone generates the more hazardous waste fees they pay.

Board of Environmental Safety (Board): SB 158 created the Board to improve DTSC's transparency, accountability, and fiscal stability. The Board is comprised of 4 part-time members and one full-time member. Three of the Board members are appointed by the Governor, including the full-time Board Chair, and subject to confirmation by the Senate. The Senate and Assembly each appoint one additional member.

The Board's duties and authorities include: developing a multi-year schedule to develop long-term goals for DTSC's programs; reviewing and approving the Director's priorities and adopting performance metrics; adjusting fee rates based upon changes made in the annual Budget Act; hearing and deciding hazardous waste facility permit appeals; providing opportunities for public hearings on permitted and remediation sites; conducting an analysis of DTSC's fee structure; conducting an analysis of DTSC's programs and their relationship with related programs in other agencies; and, forming advisory subcommittees on any topic, including fees and environmental justice. SB 158 also established an Office of the Ombudsperson within the Board and requires the DTSC Director and the Board Chair to appear annually before Legislative policy committees.

DTSC's new fiscal shortfall: In January 2024, as part of the Governor's proposed budget, DTSC indicated that there was a negative $21 million balance in the HWCA. How did we get here? Below is a summary excerpted from the Legislative Analyst's (LAO's) Report on Insolvency Risks for Environmental and Transportation Special Funds:

> *"HWCA Revenues Primarily Come From Two Major Regulatory Fees.* Funding for HWCA primarily comes from the generation and handling fee (established in SB 158) and facility fees. The generation and handling fee is charged on a per-ton basis to all entities that generate five or more tons of hazardous waste in a calendar year, while facility fees are annual charges levied on permitted facilities that treat, store, or dispose of hazardous waste. Senate Bill 158 set rates for both fees for 2022-23, but authorized BES to adjust rates each year starting in 2023-24.
>
> *Lower-Than-Projected Generation and Handling Fee Revenues Reestablished HWCA Deficit in 2022-23.* During the enactment of SB 158, the new generation and handling fee was set at $49.25 per ton and was projected to generate approximately $81 million in total revenues in 2022-23. However, in the middle of 2022-23, DTSC indicated that these revenues were coming in significantly below what had been anticipated and would only generate about $40

million that year. The lower-than-projected revenues reestablished the structural deficit within HWCA in 2022-23 and set the fund on a path to insolvency in 2023-24. The department's preliminary analysis of the issue indicated the shortfalls were attributable to a combination of three primary factors: (1) a reduction in the amount of hazardous waste generated; (2) a higher utilization of government fee exemptions, such as related to a government entity removing or remediating hazardous waste caused by another entity; and (3) nonpayment or low payment of fee amounts owed.

2023-24 Budget Package Authorized Special Fund Loans for HWCA. To address the revenue shortfall, the 2023-24 budget provided $55 million in special fund loans—$15 million from TSCA and $40 million from the Beverage Container Recycling Fund—to support HWCA. (Budget bill language currently requires DTSC to repay both loans by June 30, 2026.) The loans were intended to allow HWCA to cover its planned expenditures in both 2022-23 and 2023-24. The loans also avoided the need for BES to increase the generation and handling fee in 2023-24. This approach was adopted to provide DTSC with additional time to conduct a more in-depth analysis of the revenue shortfalls and to identify a potential solution. The department was authorized to use a small portion of the loans to support this analysis and to improve fee administration and data collection.

HWCA Projected to Be Insolvent in the Budget Year. HWCA has experienced a longstanding structural deficit between its ongoing revenues and expenditures. The state has responded by providing a series of one-time General Fund backfills to keep the fund solvent, which is primarily how the fund balance has remained positive. The reform package was intended to address the structural deficit and generate additional ongoing revenues for HWCA to support both existing services and programmatic expansions. However, the lower-than-projected generation and handling fee revenues have prevented this from being accomplished. Under the administration's estimates, HWCA is projected to become insolvent in the budget year, absent any corrective action. We note that the department is in the process of gathering revenue data from generation and handling fees that are currently being collected, which could change this projection—potentially for the better or for the worse. Accordingly, uncertainty still exists around the exact magnitude of shortfall that the state will need to address both in the budget year and on an ongoing basis. For instance, higher-than-expected revenues and/or lower-than-expected spending levels in the current year could shrink the anticipated deficit and reduce the magnitude of solutions needed in the budget year.

Administration Indicates Proposal Forthcoming at May Revision. DTSC indicates that it still is in the process of completing its analysis of the causes of the HWCA revenue shortfall, along with collecting updated revenue information. The department has stated that it will use this analysis as the basis for a proposal to address the 2024-25 revenue gap that will be included as part of the May Revision.

Reducing HWCA Expenditures Could Have Negative Implications for Health and Safety. As discussed earlier, generally the Legislature has two key categories of ongoing options for addressing structural fund imbalances: increase revenues (including by raising charges or through loans and transfers) or reduce expenditures. In the case of HWCA, the latter option could raise some concerns. In addition to addressing the structural deficits within HWCA and TSCA, a central component of the recent governance and fiscal reform package the Legislature enacted was to ensure that funding levels in both accounts were sufficient to

support DTSC in better delivering on its mission and statutory authorities. For activities supported by HWCA, this included improving hazardous waste generator inspections and enhancing criminal enforcement investigations. Given that the Legislature recently identified the department's current HWCA expenditure levels as being essential to protecting the public and environment from hazardous waste, this suggests that reducing them could result in a resumption of the safety concerns that initially led to the reform. This does not mean that opportunities for some savings do not exist. For example, the Legislature potentially could direct the department to implement program efficiencies that reduce cost pressures on HWCA and still allow for important services and protections. However, the Legislature likely will want to proceed with caution in considering any reductions to the activities supported by HWCA and ensure they do not result in increased hazards for Californians. Moreover, identifying enough efficiencies to fully address the fund's structural deficit *and* maintain essential activities is highly unlikely.

Legislature Has Several Options to Provide Support for HWCA. Given concerns about reducing DTSC's expenditures and activities, the Legislature might instead want to consider: (1) increasing HWCA revenues; and/or, (2) identifying other fund sources to backfill HWCA. Two primary pathways exist for increasing revenues. First, the Legislature could defer to BES to use its statutory authority to raise the generation and handling fee and align revenues with the amount of 2024-25 expenditures authorized for HWCA. Second, the Legislature could begin to develop its own proposal to increase the amount of revenues collected from the generation and handling fee. For instance, one factor leading to the shortfalls is a higher utilization of government fee exemptions. The Legislature could reduce these exemptions and thereby apply the fee to more payers and generate additional revenues. In addition to raising revenues, the Legislature could identify other fund sources to backfill HWCA, similar to the approach it took in the 2023-24 budget. We note that utilizing this option may be more difficult given the overall budget problem with which the state is grappling. Furthermore, the Governor's budget already proposes using special fund loans—such as from the Beverage Container Recycling Fund—to support the General Fund, which limits the ability to utilize such sources to support HWCA."

This bill will result in a reduction in fee revenue to DTSC, adding pressure for the Board to raise fees on all other generators of hazardous waste.

Hazardous waste management plan: In July 2021, Senate Bill 158 required DTSC to develop a Hazardous Waste Management Report (Report) and a Hazardous Waste Management Plan (Plan) every three years. The first Report, released in July 2023, marks the starting point of an iterative process to determine the types of information and additional research needed to guide a comprehensive planning process for hazardous waste management in the state. The main objectives of the first Report are the following:

1) Establish a baseline understanding of the management of hazardous waste in the State of California
2) Identify data gaps and items that require additional research
3) Begin to develop plans to fill data gaps and complete additional research

The first Report provides information about the types and quantities of hazardous wastes generated in the state as well as the destinations and ultimate dispositions of these wastes,

utilizing available data from roughly the last decade (January 2010 to May 2022). Information from the Report and future iterations will be used to inform the Plan that will be updated triennially. The Plan will recommend strategies to reduce hazardous waste generation, manage more waste in state, and address issues of concern such as hazardous waste impacts to disadvantaged communities.

Future planning efforts will provide the opportunity to identify hazardous waste management strategies that maximize the potential for waste reduction and recycling while ensuring protection of public health and the environment.

DTSC will evaluate California's current hazardous waste criteria to determine whether they are consistent with current science and technology. This review is a significant effort that will require additional research and collaboration with other internal programs and external agencies like the Office of Environmental Health Hazard Assessment. Evaluation of the criteria has begun and will include an assessment of the differences between California's criteria and US EPA's criteria.

Opportunities for a win, win: Prior to SB 158, hazardous waste fees hadn't been increased in a couple of decades. During this time there was efforts made by DTSC to look at strategies to reduce hazardous waste however those efforts did not prove fruitful. Now that DTSC is embarking on a statewide hazardous waste management plan, including looking at opportunities to reduce hazardous waste, there could be an opportunity for a win-win. Some generators of hazardous waste have voiced concern over the total amount of fees that they are required to pay since the passage of SB 158 and the increase in hazardous waste generator fees. If efforts are truly made to reduce the generation of hazardous waste then, not only would generators see lower fees, but communities could see a benefit as well. Communities, both near cleanup sites and near landfills, could see fewer trucks carrying hazardous waste. Additionally, less hazardous waste generated means less hazardous waste disposed of (either in California our out-of-state).

This bill: AB 2686 creates a reduced generation and handling fee for three calendar years (2021, 2022, and 2023) for specified affordable housing and mixed-use projects. The author and proponents contend that without a reduction in hazardous waste fees some affordable housing or mixed-used projects may not be able to be constructed.

Possible amendments: Over the last several years the issue of providing affordable housing for Californians has been a top priority within the Legislature. In keeping with that priority, the committee and author may wish to streamline this bill to focus on affordable housing. Specifically, the committee and author may wish to remove exemptions to the hazardous waste generator fee, provide that generators receiving the lower fee in this bill have paid their hazardous waste fees, provide a mechanism for CDTFA and DTSC to confirm that projects meet the criteria in the bill, and tie the reduced fee rate in the bill to projects that have been built or are being built.

Arguments in Support: According to the Bay Area Council: "On behalf of our over 320 employer members, we are pleased to support AB 2686 (Grayson), which will prevent significant cost increases for housing developers who remediate contaminated soil by allowing projects already in the pipeline to use an alternative fee calculation.

AB 2686 proposes an amendment to current law to offer an alternative fee structure for housing, mixed-use, and commercial developments deemed complete by December 31, 2021. This alternative fee would be set at $5.72 per ton of hazardous waste. Housing developers should not be penalized for opening land for productive use, especially when they are cleaning up pollution instead of creating it."

Arguments in Opposition:

None on file.

Double-referral: Should this bill pass the Assembly Environmental Safety and Toxic Materials Committee it will be re-referred to the Assembly Revenue and Taxation Committee.

Related Legislation:

1) SB 143 (Senate Budget Committee, Chapter 196, Statutes of 2023). Creates a reduced generation and handling fee of $5.72 a ton for projects that meet specified criteria including being certified by the Governor as an environmental leadership develop project.

2) SB 158 (Senate Budget Committee, Chapter 73, Statutes of 2021). Establishes a 5-member Board of Environmental Safety; revises, recasts and increases hazardous waste fees; and makes changes to DTSC financial assurance requirements for hazardous waste facilities and cleanup sites; and makes improvements to the permitting of hazardous waste facilities.

3) AB 1 (C. Garcia, 2021). Would have created the Board of Environmental Safety within the California Environmental Protection Agency (CalEPA) to provide policy direction to and oversight of DTSC. Would have raised and recast existing fees within the Hazardous Waste Control Account (HWCA) to fill a projected deficit of approximately $18 million. This bill language was no longer pursued due to the compromise legislation in SB 158 and subsequently amended into a different bill.

4) AB 995 (C. Garcia, 2020). Would have created the Board of Environmental Safety within CalEPA to provide policy direction to and oversight of DTSC. Raises and recasts existing fees within the HWCA to fill a projected deficit of approximately $18 million. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
Bay Area Council
California Community Builders
Habitat for Humanity Greater San Francisco
Housing Action Coalition (UNREG)
Livable Communities Initiative
Nonprofit Housing Association of Northern California
People for Housing - Orange County
San Francisco-Marin Food Bank

Strada Investment Group 11
University of California, Hastings College of the Law

Opposition

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2699 (Wendy Carrillo) – As Amended April 1, 2024

SUBJECT: Hazardous materials: reporting: civil liability

SUMMARY: Requires the California Environmental Protection Agency (CalEPA) to be responsible for the adoption and revision of regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release. Increases administrative penalties for violations under the Hazardous Materials Business Plan (HBMP) Program and increases penalties for civil and administrative violations under the California Accidental Release Prevention (CalARP) Program. Specifically, **this bill**:

1) Requires CalEPA to be responsible for the adoption and revision of regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release.

2) Requires, on or before January 1, 2028, CalEPA to review and revise regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release.

3) Requires, on or before January 1, 2025, the Office of Administrative Law (OAL) to report to the Legislature whether or not the Office of Emergency Services (OES) has adopted regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release.

4) Provides the following, if in its report to the Legislature OAL indicates that OES has not adopted regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release:

   (a) Establishes definitions for "facility", "immediate", "office", "release", "release reporting", and "threatened release"; and,

   (b) Authorizes CalEPA to revise these definitions.

5) Provides that the existing administrative penalty amounts for the HMBP Program-of not greater than $2,000 for each day for a violation resulting in, or significantly contributing to, an emergency, and of not greater than $5,000 for each day for a business that knowingly violates the provisions of the HMBP-shall expire on January 1, 2025.

6) Enacts new administrative penalty amounts for the HMBP Program-of not greater than $20,000 for each day for a violation resulting in, or significantly contributing to, an emergency, and of not greater than $30,000 for each day for a business that knowingly violates the provisions of the HMBP-beginning on January 1, 2025.

7) Increases the civil or administrative penalty amounts for the CalARP Program, from not more than $2,000 for each day to not more than $20,000 for each day and for a violation

committed knowingly, from not more than $25,000 each day to not more than $30,000 each day.

EXISTING LAW:

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

2) Defines "Certified Unified Program Agency" or "CUPA" as the agency certified by the Secretary of the CalEPA to implement the unified program within a jurisdiction. (Health and Safety Code (HSC) § 25404(a)(1)(A))

3) Defines "Unified Program Agency" or "UPA" as the CUPA to implement or enforce a particular Unified Program element. UPAs have the responsibility and authority to implement and enforce the unified program requirements and implementing regulations. (HSC § 25404(a)(1)(C))

4) Requires the Secretary of CalEPA to adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, known as the unified program. (HSC § 25404(b))

5) Requires, on or before January 1, 2022, OES to adopt regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release. (HSC 25510 § (c))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "The California Accidental Release Program (CalARP) aims to prevent accidental releases of hazardous substances, minimize damages, and increase public awareness of when accidental releases occur. AB 2699 will ensure greater compliance with the California Accidental Release Program (CalARP) by raising daily maximum penalties for noncompliance, while also ensuring greater regulatory clarity about when a release needs to be reported. This bill will help mitigate environmental impacts that historically affect vulnerable communities."

Certified Unified Program Agencies (CUPAs): CUPAs are local agencies certified by the Secretary of CalEPA to implement and enforce six "unified hazardous waste and hazardous materials management" regulatory programs (Unified Program). Currently, there are 81 CUPAs in California tasked with implementation and enforcement of the following:

1) Hazardous Materials Release Response Plans and Inventories (HMBP);
2) California Accidental Release Prevention (CalARP) Program;
3) Underground Storage Tank Program (USTP);

4) Aboveground Petroleum Storage Act (APSA);
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.

Hazardous Materials Business Plan (HMBP) program: The HMBP program was enacted in 1986 with the purpose of preventing or minimizing the damage to public health and safety and the environment that can be caused by a release or threatened release of hazardous materials. The HMBP satisfies community right-to-know laws, mandated by the 1986 federal EPCRA. 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. Crucially, the HMBP enables first responders to make informed decisions in the event of an emergency to protect public health, safety, and the environment.

California Accidental Release Prevention (CalARP) program: The goal of the CalARP program is to prevent accidental releases of substances that can cause serious harm to the public and the environment, to minimize the damage if releases do occur, and to satisfy community right-to-know laws. CalARP requires businesses that produce, handle, process, distribute, or store certain chemicals over a threshold quantity to develop a Risk Management Program, prepare a Risk Management Plan (RMP), and submit the RMP to their CUPA. Regulated substances are those listed either on the federal list (40 Code of Federal Regulations § 68.130) or the state list (22 California Code of Regulations § 2770.5). An RMP is a detailed engineering analysis of the potential accidental factors present at a business and the mitigation measures that can be implemented to reduce this accident potential. The RMP contains safety information; a hazard review; operating procedures; training requirements; maintenance requirements; compliance audits; and, incident investigation procedures. The RMP must also consider proximity to sensitive populations such as children or seniors and external factors such as seismic activity.

Changes to the HMBP and CalARP Title 19 Regulations: On March 6, 2024, approved a rulemaking package that was submitted by CalEPA pursuant to California Code of Regulations, Title 1, Section 100. This rulemaking package was filed with the Secretary of State on March 6, 2024. The changes reflected in the rulemaking were needed as a result of Assembly Bill 148 (Chapter 115, Statutes of 2021), which transferred the responsibility for the HMBP and CalARP programs from the California Governor's Office of Emergency Services (Cal OES) to CalEPA. These updates did not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element.

Requirements on OES to adopt reporting regulations: SB 1261 (Jackson, Chapter 715, Statutes of 2014) made several changes to the Unified Program including requiring Cal OES to adopt, by January 1, 2016, regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release. This deadline was moved to January 1, 2022 by AB 148. *As of the date of this hearing the regulations to establish reporting requirements for the release or threatened release of a hazardous material, hazardous waste, or hazardous substance have not been submitted to OAL.*

This bill: AB 2699 requires the Administration (either OES or CalEPA) to complete regulations establishing reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release. These regulations are over 8 years past their original statutory deadline. Having these regulations completed is important for both the regulators and

the regulated community. Additionally, this bill increases administrative penalties for violations under the HBMP Program and increases penalties for civil and administrative violations under the CalARP Program.

Issues to be worked out: This bill incorporates some definitions and terms into statute that are a part of a discussion draft of potential regulations for reporting requirements for a hazardous material, hazardous waste, or hazardous substance release or threatened release. Given that this draft language has not been through a public process, as the bill moves through the process, the author may wish to continue discussions with stakeholders and the Administration to further clarify and refine these terms and definitions. Additionally, the timing of the reporting regulations and the timing of the penalty increases may not align and the author may wish to continue a dialogue with stakeholders on these penalty amounts as well.

Arguments in Support: According to the California Association of Environmental Health Administrators (CAEHA):

"We are pleased to sponsor and strongly support AB 2699 (Carrillo) which seeks to expedite the adoption of regulations that will clarify the thresholds for the reporting of hazardous material releases across the State. Pursuant to SB 1261 (Hannah-Beth Jackson) the Office of Emergency Services (OES) was directed to adopt, by January 1, 2016, regulations detailing what releases are to be reported to the CUPAs.

These regulations have yet to be adopted, leaving both the regulated community and local regulators unsure of how to implement the law.

Given that the Secretary of Environmental Protection overseas the entire Unified Program and has adopted implementing regulations for other aspects of the multi-faceted Unified Program, CAEHA proposes that the responsibility of rulemaking and enforcement oversight for release reporting be transferred from OES to CALEPA.

The Accidental Release Prevention Program (CalARP) facilities represent the highest risk and pose the greatest potential threat of immediate harm to public health and the environment from accidental releases for chemicals. Because the current CalARP civil and administrative penalties do not adequately reflect this threat and are significantly lower than penalties for the hazardous waste generator program and the USEPA's Risk Management Plan Rule, CAEHA is proposing a commensurate increase in these penalties. We are proposing that the increase in the penalties for the release reporting under Section 25510 be delayed for 12 months after the final adoption of the regulations referred to above."

Arguments in Opposition:

None on file.

Double-referral: Should this bill pass out of the Assembly Environmental Safety and Toxic Materials Committee it will be re-referred to the Assembly Judiciary Committee.

Related Legislation:

1) AB 1716 (ESTM Committee, Chapter 207, Statutes of 2023). Makes various technical changes to the six unified hazardous waste and hazardous materials management regulatory programs that are overseen by the CUPAs.

2) AB 148 (Budget Committee, Chapter 115, Statutes of 2021). Transferred the responsibility for the HMBP and CalARP programs from OES to CalEPA.

3) SB 1261 (Jackson, Chapter 715, Statutes of 2014). Revises and recasts the area and business plan requirements for CUPAs.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Environmental Health Administrators (CAEHA) (Sponsor)

Opposition

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2761 (Hart) – As Amended April 1, 2024

SUBJECT: Product safety: plastic packaging: Reducing Toxics in Packaging Act

SUMMARY: Prohibits, beginning January 1, 2026, a person from manufacturing, selling, offering for sale, or distributing in the state plastic packaging that contains any of the following: regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS), Polyvinyl chloride (PVC) inclusive of polyvinylidene chloride (PVDC). Specifically, **this bill**:

1) Creates the Reducing Toxics in Packaging Act (Act).

2) As part of the Act, prohibits, beginning January 1, 2026, a person from manufacturing, selling, offering for sale, or distributing in the state plastic packaging that contains any of the following:

   (a) Regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS.

   (b) PVC, inclusive of PVDC.

3) Exempts, from the Act, either of the following:

   (a) Packaging used for any of the following products:

      (i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).

      (ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.

      (iii)Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or be administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

   (b) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

4) Provides that the prohibition on PFAS, PVC, and PVDC in plastic packaging does not impose any requirement in direct conflict with a federal law or regulation, including, but not limited to, any of the following:

   a) Laws or regulations covering tamper-evident packaging pursuant to Section 211.132 of Title 21 of the Code of Federal Regulations;

b) Laws or regulations covering child-resistant packaging pursuant to Part 1700 (commencing with Section 1700.1) of Subchapter E of Chapter II of Title 16 of the Code of Federal Regulations;

c) Regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration relevant to packaging agricultural commodities; or,

d) Requirements for microbial contamination, structural integrity, or safety of packaging under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq., 21 U.S.C. Sec. 2101 et seq.), the federal FDA Food Safety Modernization Act (21 U.S.C. Sec. 2201 et seq.), the federal Poultry Products Inspection Act (21 U.S.C. Sec. 451 et seq.), the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), or the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.).

5) Authorizes a city, a county, or the state to impose a civil violation of five hundred dollars ($500) for the first violation of this Act, one thousand dollars ($1,000) for the second violation of this Act, and two thousand dollars ($2,000) for the third and any subsequent violations of this Act.

6) Provides that any civil penalties collected from violations of this Act shall be paid to the entity that brought the action that resulted in penalties from the Act.

7) Provides that penalties collected by the Attorney General may be expended by the Attorney general, upon appropriation by the Legislature, to enforce this Act.

8) Provides that any costs incurred by a state agency in carrying out the provisions of the Act, shall be recoverable by the Attorney General from the liable person or persons.

EXISTING LAW:

1) Prohibits, on and after January 1, 2006, a manufacturer, supplier or person, offering for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution. (Health and Safety Code (HSC) § 25214.13 (a), (b)).

2) Prohibits, on and after January 1, 2006, a person from offering for sale or for promotional purposes in this state a package, packaging component, or product in a package if the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component exceeds 100 parts per million (ppm) by weight. (HSC § 25214.13 (c)).

3) Defines "package" as any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package, or a shipping container, as defined in the ASTM specification D 996. "Package" also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

"Package" does not include a reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code. (HSC § 25214.12 (h))

4) Defines "Packaging component" as any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel. (HSC 25214.12 § (i))

5) Prohibits, on and after July 1, 2023, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product, as defined, that contains intentionally added PFAS or PFAS at or above 100 ppm, as measured in total organic fluorine. (HSC § 108946)

6) Prohibits, on or after January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any new, not previously used, textile articles that contain intentionally added PFAS, or PFAS at or above 100 ppm, and on or after January 1, 2027, 50 ppm, as measured in total organic fluorine. (HSC § 108971)

7) Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale, in commerce any cosmetic product that contains any specified intentionally added ingredients, including some PFAS chemicals. (HSC § 108980 (a))

8) Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS. (HSC § 108981.5)

9) Prohibits, commencing on January 1, 2023, a person from distributing, selling, or offering for sale in the state any food packaging that contains intentionally added PFAS or PFAS at or above 100 ppm, as measured in total organic fluorine. (HSC § 109000)

10) Defines "Packaging" as any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. "Packaging" includes, but is not limited to, all of the following:

    a) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.
    b) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.
    c) Transport packaging or tertiary packaging intended to protect the product during transport.

d) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:
   (i) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.
   (ii) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together. (Public Resources Code (PRC) 42041 (s))

11) Defines "Plastic" as a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). "Plastic" does not include natural rubber or naturally occurring polymers such as proteins or starches. (PRC 42041 (t))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "Assembly Bill 2761 takes an essential step forward in the State's effort to eliminate two particularly harmful types of plastic packaging - those containing PFAS and PVC/PVDC. The manufacturing and disposal of these toxic plastics represent a substantial threat to both human and environmental health. By removing these toxic chemicals in packaging, the bill will require the use of safer alternatives and encourage the adoption of packaging practices that better protect public health and the environment."

Perfluoroalkyl and polyfluoroalkyl substances (PFAS): Per- and polyfluorinated substances (PFASs) are a large group of synthetic, highly fluorinated substances that have been widely used in industrial and consumer applications for their heat, water, and lipid resistance properties for more than seven decades. PFAS are long-lasting chemicals that break down very slowly over time. PFAS are ubiquitous, and researchers have found PFAS in indoor and outdoor environments, plants, soil, food, drinking water, wildlife, companion animals, production animals, and humans at locations across the nation and around the globe. Scientific studies have shown that exposure to some PFAS may be linked to harmful health effects in humans and animals. More than 9,000 PFAS chemicals are included in the United States Environmental Protection Agency's (US EPA's) Master List of PFAS Substances. The persistence and proliferation of PFAS chemicals makes it challenging to study and assess the overall potential human health and environmental risks of PFAS exposure.

The breadth of uses of PFAS is immense, making it nearly impossible to avoid exposure. PFAS are used extensively in surface coating and protectant formulations due to their unique ability to reduce the surface tension of liquids. In consumer products, PFAS is used in carpets, furniture fabrics, apparel, paper packaging for food, non-stick cookware, personal care products, and other products designed to be waterproof; grease, heat, water and stain resistant; or, non-stick. Commercial applications span many sectors of the economy, including aerospace, apparel,

automotive, building and construction, pharmaceuticals, medical devices, paints, electronics, semiconductors, energy, oil and gas exploration, first responder safety, firefighting foams, and health care. During production, use, and disposal, PFAS can migrate into the soil, water, and air.

Exposure to PFAS: The main route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), and through inhalation and ingestion of contaminated indoor air and dust. Food can become contaminated with PFAS through contaminated soil and water used to grow the food, food packaging containing PFAS, and equipment that uses PFAS during food processing. Some foods, such as fish, meat, eggs and leafy vegetables, may contain PFAS due to bioaccumulation and crop uptake. Studies have shown that PFAS can transfer from pregnant mothers to their fetuses via the placenta during gestation, as well as transfer from nursing mothers to their infants via breastfeeding. Dermal exposure is also possible when people touch products treated with PFAS, such as carpets or clothing. Young children may be susceptible to higher levels of exposure than adults because they ingest more dust containing PFAS and mouth PFAS-treated consumer products. Workers, such as carpet installers, carpet cleaners, firefighters, and workers in furniture, furnishings, outdoor clothing, and carpet stores, may also experience above average PFAS exposure levels.

Exposure to PFAS in drinking water is an escalating concern due to the persistence of PFAS chemicals in the environment and their tendency to accumulate in groundwater. Groundwater PFAS contamination typically has been associated with industrial facilities where these chemicals were manufactured or used in other products, and in airfields where the chemicals have been used for firefighting. PFAS chemicals can also enter the environment and drinking water through composting, landfilling, recycling, and incineration of products containing PFAS. The State Water Board indicates that the four major sources of PFAS in drinking water in California are fire training/fire response sites, industrial sites, landfills, and wastewater treatment plants/biosolids. The State Water Board notes that because of their presence and persistence in many drinking water supplies, PFAS remain a serious source of exposure decades after their release into the environment.

Like humans, wildlife is exposed to PFAS by consuming contaminated water or food. Within aquatic food webs, PFAS were found to increase in concentration from ambient water to plankton and further up the food chain.

Hazard traits of PFAS: According to DTSC, all PFAS display at least one of the hazard traits identified in California's Safer Consumer Products (Green Chemistry) Hazard Traits Regulations (22 C.C.R § 69401 et seq.). An intrinsic property of PFAS is the extreme environmental persistence of either the individual compounds or their degradation products or both, resulting in their classification as "forever chemicals." Most PFAS are mobile in environmental media such as air and water, and thus are widespread in living organisms and the environment. Several PFAS bioaccumulate significantly in animals or plants and emerging evidence points to their phytotoxicity, aquatic toxicity, and terrestrial ecotoxicity.

DTSC contends that exposure to PFAS can lead to adverse health outcomes in humans. If humans are exposed to PFAS through diet, drinking water, or inhalation, some of these chemicals remain in the body for a long time. As people continue to be exposed to PFAS, the PFAS levels in their bodies may increase to the point that they suffer adverse health effects. According to the US EPA, current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to: reproductive effects such as decreased fertility or increased

high blood pressure in pregnant women; developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body's immune system to fight infections, including reduced vaccine response; interference with the body's natural hormones; and, increased cholesterol levels and/or risk of obesity.

Regulating PFAS as a class: DTSC has adopted a rationale for regulating PFAS chemicals as a class, concluding, "it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February, 2021, *Environmental Health Perspectives* article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program." The authors of the article state,

> "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions. Regulations that focus solely on perfluoroalkyl acids (PFAAs) are ineffective, given that nearly all other PFAS can generate PFAAs in the environment… We at the California DTSC propose regulating certain consumer products if they contain any member of the class of PFAS because: *a*) all PFAS, or their degradation, reaction, or metabolism products, display at least one common hazard trait according to the California Code of Regulations, namely environmental persistence; and *b*) certain key PFAS that are the degradation, reaction or metabolism products, or impurities of nearly all other PFAS display additional hazard traits, including toxicity; are widespread in the environment, humans, and biota; and will continue to cause adverse impacts for as long as any PFAS continue to be used. Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

Other researchers have made the case for managing PFAS as a chemical class, including in "Scientific Basis for Managing PFAS as a Chemical Class" published in June, 2020, in *Environmental Science & Technology Letters* and "Strategies for grouping per- and polyfluoroalkyl substances (PFAS) to protect human and environmental health," also published in June, 2020, in *Environmental Science: Processes & Impacts.*

Polyvinyl Chloride (PVC): Most vinyl chloride is used to make polyvinyl chloride (PVC) plastic and vinyl products. Acute (short-term) exposure to high levels of vinyl chloride in air has resulted in central nervous system effect, such as dizziness, drowsiness, and headaches in humans. Chronic (long-term) exposure to vinyl chloride through inhalation and oral exposure in humans has resulted in liver damage. Cancer is a major concern from exposure to vinyl chloride via inhalation, as vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. The US EPA has classified vinyl chloride as a Group A, human carcinogen.

PVC is a high-strength thermoplastic material. It is widely used in applications such as pipes, medical devices, and wire & cable insulation. It is the world's third-most widely produced synthetic plastic polymer.

Avoiding PVC: According to the National Institute of Health, here are some suggestions to avoid exposure to PVC:

- Avoid PVC products such as plastic bottles, toys, or school supplies that may contain PVC. An alternative idea is to use *stainless steel or glass bottles*, and purchase toys that are not plastic.

- Don't let children play in dirt near waste sites or factories.

- Choose glass containers over plastic containers that may contain PVC materials.

- Avoid eating food stored or microwaved in PVC plastic wrap.

- Choose safer PVC-free consumer items (for instance, *swapping out your shower curtain*).

- Keep indoor rooms well ventilated.

- When remodeling older homes, use proper ventilation and protective equipment to minimize exposure to PVC-containing materials.

Instead of relying on consumers being informed enough to make choices to avoid PVC, this bill prohibits the use of PVC in plastic packaging.

Toxics in Packaging Prevention Act: Consumer goods packaging makes up a significant portion of waste going to the nation's municipal solid waste landfills. Packaging containing toxic substances, especially heavy metals lead, cadmium, mercury and hexavalent chromium, can release those poisonous or dangerous substances, contaminating the soil and groundwater surrounding the landfill. To address this problem, the California Legislature passed the Toxics in Packaging Prevention Act, also known as Assembly Bill (AB) 455 (Chu, Chapter 679 , Statutes of 2003). The intent of the law is to reduce the toxicity (the degree toxins can have an effect on humans or animals) in packaging without discouraging the use of recycled materials in packaging production. This approach addresses the pollution problem at the source rather than regulating a material when it becomes a waste.

The law is based on a national model. Many other states have passed similar legislation since the 1990s. Since most packaging is manufactured for nationwide distribution, many packaging manufacturers and suppliers have already taken steps to obey similar laws in other states. The Department of Toxics Substances Control (DTSC) is required to enforce the requirements of the Toxics in Packaging Prevention Act.

This law affect all manufacturers, distributors, and resellers, regardless where the packaging was made, distributed from, or sold from. If it is eventually sold or distributed in California, then this law applies. Examples of some, but not all, packaging covered by this law:

- Food overwrap for food products sold in retail channels;
- Plastic clamshells that hold a product;
- Cardboard used to protect laptop computers;
- Steel strapping used to secure shipping containers; and,
- Recycled materials used to make new packaging.

The Toxics in Packaging Clearinghouse (TPCH): The TPCH maintains the model toxics in packaging legislation and coordinates implementation of state legislation, based on the Model, on behalf of its member states, with the goal of promoting consistency across states. TPCH is a resource and single point of contact for companies seeking information on toxics in packaging requirements or an exemption. Current state members include California, Connecticut, Iowa, Maryland, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, and Washington.

TPCH's updated model legislation calls for the reduction of lead, mercury, cadmium, hexavalent chromium, PFAS and phthalates in packaging or packaging materials used or sold within the state, while also adding new processes for identifying and regulating additional chemicals of high concern in packaging.

This bill: AB 2761 proposes to prohibit the use of PFAS in plastic packaging which is consistent with TPCH's updated model legislation.

Exemptions in bill: AB 2761 contains several exemptions. The overall theme of the exemptions is the same: the exemptions recognize other public health and safety benefits with those exempted packaging products. Additionally, the bill exempts certain packaging products that could be in direct conflict with a federal law or regulation for child-resistant packaging, tamper-evident packaging, or packaging of agricultural commodities.

Federal food packaging oversight: The U.S. Food and Drug Administration (FDA) approves all food packaging materials. Any material intended for use in food packaging must be formulated in compliance with FDA requirements for its intended use. The manufacturer of a new material must petition FDA and provide data proving the material is safe to use if it is not already regulated for the proposed use.

Meat and poultry products may not be packaged in a container composed of any substances that may adulterate the contents or be injurious to health. Packaging materials entering a meat or poultry plant must be accompanied or covered by a guaranty or statement of assurance from the packaging supplier. The guaranty must state that the material complies with the Federal Food, Drug and Cosmetic Act. It must also state the brand name, supplier, and conditions for use, including temperature and other limits.

Packaging that can be purchased or is available to use in grocery stores (such as produce or meat bags) have been approved by the FDA for food contact. These include:

- Plastic Wraps and Storage Bags - Consumer plastic wraps and bags are made from three major categories of plastics: polyethylene (PE), PVDC and PVC. The plastic resins are petroleum derivatives. Plasticizers, colorants or anti-fog compounds may be added.
- In-store Produce Bags - Typically made from PE or other plastic film, these bags are used for consumer in-store packaging of fruits and vegetables. Do not use for cooking; the thin plastic may melt or burn.
- Oven Cooking Bags - Both the bags and their closure ties are made from heat-resistant nylon. They can be used in a microwave oven or in a conventional oven set no higher than 400° F (204.4 °C).
- Aluminum Foil is 98.5% aluminum with the balance primarily from iron and silicon to give strength and puncture resistance. The molten alloy is rolled thin and solidified

between large, water-cooled chill rollers. During the final rolling, two layers of foil are passed through the mill at the same time. The side coming in contact with the polished steel rollers become shiny; the other side comes out dull. It does not make any difference which side of the foil contacts the food.

- Freezer Paper - white paper coated on one side with plastic to help keep air out of frozen foods, thus protecting against freezer burn and loss of moisture.
- Parchment Paper - an odorless and tasteless paper made from cotton fiber and/or pure chemical wood pulps. It may be waxed or coated and is greaseproof or grease resistant. Parchment paper is primarily used in baking as a pan liner or to wrap foods in for cooking.
- Wax Paper - a triple-waxed tissue paper; made with a food-safe paraffin wax which is forced into the pores of the paper and spread over the outside as a coating.

If any of the above packaging has a federal conflict with the requirements of this bill then that packaging would be exempt from the prohibitions in AB 2761.

Other efforts to phase out or prohibit use of certain chemicals in plastic packaging: The United States (U.S.) Plastics Pact is a consortium founded by The Recycling Partnership and World Wildlife Fund, launched as part of the Ellen MacArthur Foundation's global Plastics Pact network. The U.S. Plastics Pact connects diverse public-private stakeholders across the plastics value chain to rethink the way we design, use, and reuse plastics, to create a path forward to realize a circular economy for plastic in the U.S..

The U.S. Plastics Pact brings together businesses, not-for-profit organizations, research institutions, government agencies, and other stakeholders to work toward scalable solutions tailored to the unique needs and challenges within the U.S. landscape, through vital knowledge sharing and coordinated action. The U.S. Plastics Pack works with its member "Activators" to take measures to eliminate 11 problematic and unnecessary resins, components, and formats by 2025, in order to accelerate progress toward a circular economy for plastic packaging in the U.S..

Definition of Problematic or Unnecessary Materials: The U.S. Plastics Pact defines problematic or unnecessary materials as plastics items, components, or materials where consumption could be avoided through elimination, reuse or replacement and items that, post-consumption, commonly do not enter the recycling and/or composting systems, or where they do, are detrimental to the recycling or composting system due to their format, composition, or size.

Problematic and unnecessary materials list: Listed below is the U.S. Plastic Pact's problematic and unnecessary materials list, where U.S. Plastic Pact Activators will take measures to eliminate these items by the end of 2025:

- Cutlery
- Intentionally added Per- and Polyfluoroalkyl Substances (PFAS)
- Non-Detectable Pigments such as Carbon Black
- Opaque or Pigmented PET – Polyethylene Terephthalate bottles (any color other than transparent blue or green)
- Oxo-Degradable Additives, including oxo-biodegradable additives
- PETG – Polyethylene Terephthalate Glycol in rigid packaging
- Problematic Label Constructions – This includes adhesives, inks, materials (e.g., PETG, PVC, PLA, paper). Avoid formats/materials/features that render a package detrimental or

non-recyclable per the *APR Design® Guide*. Labels should meet APR Preferred Guidance for coverage and compatibility and be tested in any areas where this is unclear.
- PS – Polystyrene, including expanded polystyrene
- PVC – Polyvinyl Chloride, including PVDC
- Stirrers
- Straws

According to the U.S. Plastics Pact, these 11 items listed are not currently reusable, recyclable, or compostable with existing U.S. infrastructure at scale and are not projected to be kept in a closed loop in practice and at scale by 2025. Among the U.S. Plastics Pact Activators are: The Clorox Company, The Coca-Cola Company, The Food Industry Association, General Mills, and Walmart.

This bill: Prohibits, beginning January 1, 2026, a person from manufacturing, selling, offering for sale, or distributing in the state plastic packaging that contains any of the following: regulated PFAS, PVC, inclusive of PVDC. AB 2761 is consistent with ongoing efforts to reduce or eliminate these chemicals from packaging included efforts by the Toxics in Packaging Clearinghouse and the U.S. Plastics Pact. There have been some concerns raised about packaging for food and the need to meet federal requirements. This bill contains exemptions for various federal laws and requirements including for conflicts with federal food packaging requirements.

Further consideration: As the bill moves through the legislative process, the author may wish to consider if there should be a state agency providing oversight or enforcement for this bill. Currently there is not a state agency overseeing or enforcing this bill. An option could be to simply add this prohibition of certain chemicals in plastic packaging to the Toxics in Packaging Reduction Act, under DTSC.

Arguments in Support: According to a coalition in support:

"PFAS, PVC, and PVDC all pose threats to human health throughout their lifecycle from production to disposal. PFAS are a class of approximately 9000 man-made chemicals used for a wide range of purposes, including plastic packaging. PFAS are called "forever" chemicals because they are highly persistent and mobile in the environment, making them both difficult and expensive to remediate. They also accumulate in the environment and our bodies. Virtually all Americans and Californians have PFAS in their bodies.

PVC and PVDC are materials often used in packaging to tightly seal consumer products for food, personal care products, and household goods. They are made from vinyl chloride, one of the toxic chemicals at the center of the tragic toxic train crash in East Palestine, Ohio that released 1 million pounds of chemicals into the surrounding air and water, causing serious health and environmental impacts on the surrounding community. Vinyl chloride is a known human carcinogen, as classified by the International Agency for Research on Cancer (IARC), U.S. Department of Health and Human Services (HHS), and the U.S. Environmental Protection Agency (EPA).

Over time these toxic additives can leach out or evaporate, posing unnecessary dangers to human health in its current applications. When PVC and PVDC are produced, landfilled, or burned, highly toxic compounds called dioxins are created and released into the environment.

The United States Plastics Pact, a consortium of over 100 industry members and stakeholders, identified numerous unnecessary plastic packaging materials and additives, including PFAS and PVC / PVDC. These industry stakeholders have voluntarily pledged to eliminate these materials and additives by 2025, demonstrating the viability of eliminating these uses in the near future. AB 2761 would eliminate the unnecessary and avoidable presence of these toxic chemicals from plastic packaging, delivering both health and environmental benefits to all Californians."

Arguments in Opposition: According to a coalition writing in opposition,

"The undersigned organizations, representing a cross-section of manufacturers, consumer product companies, agriculture, food producers, restaurants, and others, must respectfully oppose AB 2761 because the packaging mandates are already anticipated as part of the state's groundbreaking packaging recycling, composting, and waste reduction law.

The enactment of SB 54 (Stats. 2022), along with SB 343 (Stats. 2021) has resulted in arguably the most comprehensive and rigorous single-use packaging and plastics recycling and waste reduction requirements enacted domestically and internationally. As outlined below, new mandates to ensure that packaging is recyclable or compostable by 2032, are source reduced by 25%, and recycled at unprecedented rates will directly impact the types of materials used, including the specific materials subject to AB 2761. Packaging decisions will be directly influenced by a future fee schedule that will incentivize easier-to-recycle materials, and new recyclability labeling requirements will include criteria that considers substances used in packaging, including perfluoroalkyl and polyfluoroalkyl substances (PFAS).

These new laws will require significant resources to implement, both from the regulated community and the California Department of Resources Recycling and Recovery (CalRecycle). To date, CalRecycle is making significant progress to implement the requirements of SB 54. Formal rulemaking began March 8, 2024, with final regulations due in 2025. Additionally, the Circular Action Alliance was approved as the first producer responsibility organization (PRO) in January. Given this on-going work to implement SB 54, creating new packaging mandates as proposed in AB 2761 is unnecessary and counterproductive.

Outright bans on certain materials such as PVdC do not consider potential important tradeoffs or unintended negative consequences. Packaging materials must meet federal standards for food contact applications and are also widely known to prevent food waste."

Double-referral: Should this bill pass out of the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Judiciary Committee.

Related Legislation:

1) AB 2515 (Papan). Prohibits a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated perfluoroalkyl or polyfluoroalkyl substances (PFAS). This bill is pending action in the Assembly Environmental Safety and Toxic Materials Committee.

2) SB 903 (Skinner). Prohibits, beginning January 1, 2030, a person from distributing, selling, or offering for sale in the state a product that contains intentionally PFAS. Authorizes DTSC

to establish regulations to administer the prohibition. This bill is pending in the Senate Environmental Quality Committee.

3) AB 347 (Ting). Requires DTSC to take a number of actions regarding implementation of existing laws dealing with PFAS in food packaging and cookware, including adopting and publishing guidance and testing products. This bill is currently on the inactive file on the Senate floor.

4) AB 246 (Papan, 2023). Would have prohibited, beginning January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state menstrual products that contain PFAS at or above 10 ppm. This bill was vetoed by Governor Gavin Newsom.

5) AB 727 (Weber, 2023). Prohibits, beginning January 1, 2025, a person from manufacturing, selling, delivering, distributing, holding, or offering for sale, a cleaning product that contains intentionally-added PFAS or PFAS at or above 50 ppm, and on January 1, 2027, a cleaning product that contains PFAS at or above 25 ppm. This bill was vetoed by Governor Gavin Newsom.

6) AB 1423 (Schiavo, 2023). Prohibits, beginning January 1, 2025, a person or entity from manufacturing, distributing, selling, or offering for sale in the state any covered surface that contains PFAS, as defined, and prohibits, beginning January 1, 2024, a public entity, a public or private school, or a public or private institution of higher learning, as specified, from purchasing or installing a covered surface that contains PFAS. This bill was vetoed by Governor Gavin Newsom.

7) AB 1817 (Ting, Chapter 762, Statutes of 2022). Prohibits, beginning January 1, 2024, a person from distributing, selling, or offering for sale in the state a textile article, as defined, that contains regulated PFAS, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles to comply with the provisions of the bill.

8) AB 2771 (Friedman, Chapter 804, Statutes of 2022). Prohibits, beginning January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS.

9) AB 1200 (Ting, Chapter 503, Statutes of 2021). Prohibits, beginning January 1, 2023, the sale of food packaging that contains PFAS; requires, beginning January 1, 2024, cookware manufacturers to label their product if it contains an intentionally added chemical on specified lists; and prohibits, beginning January 1, 2023, for the internet and January 1, 2024, for the cookware package, a cookware manufacturer from making a claim that cookware is free of a chemical, unless no chemical from that chemical class is intentionally added to the cookware.

10) AB 652 (Freidman, Chapter 500, Statutes of 2021). Prohibits, on or after July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain PFAS.

11) AB 455 (Chu, Chapter 679, Statutes of 2003). Enacts the Toxics in Packaging Prevention Act, which bans the sale of any package that includes a specified heavy metal that was

intentionally introduced during manufacturing or distribution, and would decrease the incidental concentration of these metals over a three year period.

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners (Co-Sponsor)
Californians Against Waste (Co-Sponsor)
Clean Water Action (Co-Sponsor)
Natural Resources Defense Council (NRDC) (Co-Sponsor)
350 Sacramento
5 Gyres Institute
7th Generation Advisors
A Voice for Choice Advocacy
Active San Gabriel Valley
Alliance of Mission-based Recyclers
American College of Obstetricians and Gynecologists District IX
American Sustainable Business Council
Aveson Global Leadership Academy
Ban SUP (Single Use Plastic)
Bay Area Youth Lobbying Initiative
Beyond Plastics
CA Rethink Disposables
California Climate Action
California Health Coalition Advocacy
California Product Stewardship Council
CALPIRG, California Public Interest Research Group
Center for Biological Diversity
Center for Environmental Health
Cleanearth4kids.org
Community Environmental Council
County of Santa Barbara
Courage California
Defend Our Health
Ecology Center
Environmental Working Group
Every Neighborhood Partnership
Friends Committee on Legislation of California
Friends of The Los Angeles River
Friends of The River
Gaia
Glendale Environmental Coalition
Green America
Green Behind the Scenes
Green Science Policy Institute
Heal the Bay
Indivisible CA: Statestrong
LA Waterkeeper

Los Angeles County Sanitation Districts
Lutheran Office of Public Policy - California
Mothers Out Front
Naturepedic
Northern California Recycling Association
Occidental Arts and Ecology Center
Pacific Environment
Plastic Free Future
Plastic Pollution Coalition
Regeneración - Pajaro Valley Climate Action
Safer States
San Francisco Bay Physicians for Social Responsibility
San Francisco Baykeeper
Save Our Shores
Save the Albatross Coalition
Save the Bay
Sea Hugger
SoCal 350 Climate Action
Surfrider Foundation
Surfrider San Francisco
The Keep a Breast Foundation
The Last Plastic Straw
The Story of Stuff Project
Upstream
Valley Improvement Projects (VIP)
Voices for Progress
Wholly H2O
Wishtoyo Foundation
Zero Waste USA

Opposition

Agricultural Council of California
American Chemistry Council
American Cleaning Institute
American Forest & Paper Association
American Institute for Packaging and Environment (AMERIPEN)
California Chamber of Commerce
California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
Consumer Brands Association
Consumer Healthcare Products Association
Consumer Technology Association
Flexible Packaging Association
Foodservice Packaging Institute
Household and Commercial Products Association

Industrial Environmental Association
Marine Retailers Association of the Americas
Meat Institute
National Marine Manufacturers Association
Personal Care Products Council
Plastics Industry Association
Southwest Meat Association
The Toy Association
Vinyl Institute

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 2851 (Bonta) – As Amended April 4, 2024

SUBJECT: Metal shredding facilities: fence-line air quality monitoring

SUMMARY: Requires the Department of Toxic Substances Control (DTSC), in consultation with local air pollution control districts and air quality management districts, to develop and implement facility-wide fence-line air quality monitoring at metal shredding facilities. Specifically, **this bill**:

1) Requires, on or before July 1, 2025, DTSC, in consultation with affected local air pollution control and air quality management districts, to develop requirements for facility-wide fence-line air quality monitoring at metal shredding facilities.

2) Provides that the requirements developed pursuant to this bill include, but are not limited to, the following:

    a) Monitoring of light fibrous material, lead, zinc, cadmium, nickel, and any other substance required to be monitored by DTSC;

    b) Monitoring at prescribed frequencies of the substances that are required to be monitored;

    c) Reporting on the results of the monitoring required pursuant to this bill to DTSC, the local air district or local air quality management district, and the local public health department; and,

    d) A requirement on the local public health department, if the monitoring required pursuant to this bill indicates a potential adverse impact on air quality or public health, to issue a community notification to the public for the area in which the metal shredding facility is located that informs the public that the facility is causing the potential adverse impact on air quality or public health.

3) Requires all metal shredding facilities, subject to the Hazardous Waste Control Law (HWCL), to implement the facility-wide fence-line air quality monitoring requirements developed pursuant to this bill.

4) Requires, on or before December 31, 2025, DTSC to oversee and enforce the implementation of the facility-wide fence-line air quality monitoring requirements developed pursuant to this bill.

5) Authorizes DTSC to be reimbursed for any regulatory costs incurred in implementing the provisions of this bill through the existing fee that DTSC can impose on metal shredding facilities under the HWCL.

EXISTING LAW:

1) Requires DTSC to enforce the standards within the HWCL and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code (HSC) § 25180)

2) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to, the HWCL. (HSC § 25186)

3) Authorizes DTSC to issue permits for the use and operation of one or more hazardous waste management units at a facility that meets the standards adopted pursuant to the HWCL. (HSC § 25200 (a))

4) Requires DTSC to impose conditions on each permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))

5) Authorizes DTSC, in consultation with the Department of Resources Recycling and Recovery, the State Water Resources Control Board, and affected local air quality management districts, to adopt regulations establishing management standards for metal shredding facilities for hazardous waste management activities within DTSC's jurisdiction as an alternative to the requirements specified in the HWCL. (The authority to adopt regulations for alternative management standards expired on January 1, 2018). (HSC § 25150.82 (c))

6) Authorizes DTSC to collect an annual fee from all metal shredding facilities that are subject to the requirements of the HWCL or to the alternative management standards adopted pursuant to HSC § 25150.82. Requires DTSC to establish and adopt regulations necessary to administer this fee and to establish a fee schedule that is set at a rate sufficient to reimburse DTSC's costs to implement the HWCL as applicable to metal shredder facilities. Authorizes the fee schedule established by DTSC to be updated periodically as necessary and requires the assessment to be no more than the reasonable and necessary cost of DTSC to implement the HWCL, as applicable to metal shredder facilities. (HSC § 25150.84 (a))

7) Defines "metal shredding facility" as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of the end-of-life vehicles, appliances, and other forms of scrap metal. "Metal shredding facility" does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations. (HSC § 25150.82 (b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Metal shredding facilities are disproportionately located in our most vulnerable and underserved communities already suffering from a disproportionate amount of pollution exposure, and in turn, disparate health impacts. AB 2851 will push forward the state’s commitment in advancing environmental justice and equity for those who are impacted the most by toxic emissions. AB 2851 is needed to help support the creation of standards for metal shredders. Fence-line monitoring will give local municipalities an awareness of the ongoing sources of potential pollution and the community notification will benefit all who are living in the surrounding neighborhoods."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's hazardous waste laws and regulations. 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, including hazardous waste generation, management, transportation, and ultimately disposal into a state or federal authorized facility.

DTSC's hazardous waste management permitting program: DTSC is responsible for administering the hazardous waste facility permitting program established under the HWCL and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include: Review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and, ensuring a public process on the permitting of hazardous waste facilities.

DTSC's hazardous waste management enforcement program: DTSC's inspection and enforcement responsibilities include its delegated authority under RCRA, California's HWCL, and state laws pertaining to toxics in packaging, toxic substances in consumer products, and disposal of universal wastes, such as electronic waste. Core activities of DTSC's hazardous waste management program include routine compliance inspections and targeted compliance inspections. Routine compliance inspections involve review of submitted data and reports, as well as physical observation, testing, and evaluation of regulated facilities. Targeted compliance inspections involve review of specific units or processes in response to focused concerns or to inform permitting decisions, as well as analysis of current and historical compliance.

Metal shredder facilities: California law defines a "metal shredding facility" as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from non-recyclable materials. A "metal shredding facility" does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations. As such, most scrap metal recycling facilities would not be subject to any proposed regulations meant to manage the waste generated from metal shredding facilities.

Metal shredder waste: The shredding of scrap metal (e.g., end-of-life vehicles) results in a mixture of recyclable materials (e.g., ferrous metals and nonferrous metals) and non-recyclable material (i.e., metal shredder waste). Aggregate is generated after the initial separation of ferrous metals and consists of nonferrous metals that can be further recovered and metal shredder waste. Metal shredder waste consists mainly of glass, fiber, rubber, automobile fluids, dirt and plastics in automobiles and household appliances that remain after the recyclable metals have been removed. Because scrap metal contains regulated hazardous constituents, it can contaminate and ultimately cause metal shredder waste to exhibit a characteristic of hazardous waste for toxicity. In a 2002 draft report on auto shredder waste, DTSC showed that metal shredder waste often exceeded the soluble threshold limit concentrations (STLCs) for lead, cadmium, and zinc.

Non-hazardous waste classification granted to metal shredding facilities: Based on the hazardous characteristics of metal shredder waste, in many instances, metal shredding facilities are hazardous waste generators and are thus subject to hazardous waste requirements, including

permitting, transportation and disposal. In the late 1980's, in an effort to relieve metal shredding facilities of these requirements, the Department of Health Services (DHS) (the predecessor of DTSC) determined that the metal treatment fixation technologies were capable of lowering the soluble concentrations of metal shredder waste such that the treated metal shredder waste was rendered insignificant as a hazard to human health and safety, livestock and wildlife. Seven metal shredding facilities applied for and were granted nonhazardous waste classification letters by DHS and later DTSC if they used the metal treatment fixation technologies. The authority to issue these classifications is found in subdivision (f) of Section 66260.200 of Title 22 of the California Code of Regulations, and these determinations are now known as "f letters." These classifications ultimately allowed treated metal shredder waste to be handled, transported and disposed of as non-hazardous waste in class III landfills (i.e., solid (nonhazardous) waste landfills).

Legislation to address impacts of metal shredding facilities: In 2014, Senator Jerry Hill introduced SB 1249 based in part on concerns about metal shredder safety due to recent fires at metal shredding facilities in his district, but also in response to the historic concerns about metal shredding facilities and their potential impact on the environment. The intent of the bill was that the conditional nonhazardous waste classifications, as documented through the historical "f letters," be revoked and that metal shredding facilities be thoroughly evaluated and regulated to ensure adequate protection of the human health and the environment. SB 1249 (Hill, Chapter 756, Statutes of 2014) was signed by the Governor and authorized DTSC to develop alternative management standards (different from a hazardous waste facility permit) if, after a comprehensive evaluation of metal shredding facilities, DTSC determined that alternative management standards were warranted.

DTSC's implementation of SB 1249: DTSC's implementation of SB 1249 included: conducting a comprehensive evaluation of metal shredding facilities and metal shredder waste; determining if alternative management standards specific to metal shredding facilities could be developed to ensure that the management, treatment and disposal practices related to metal shredder waste are protective of human health and the environment; preparing an analysis of activities to which the alternative standards will apply and to make available to the public before any regulations are adopted; and, adopting emergency regulations establishing a fee schedule to reimburse DTSC's costs for the evaluation, analysis, and regulatory development for metal shredding facilities.

As part this implementation, in January 2015, DTSC developed a three-year work plan to implement SB 1249. The work plan includes development of a treatability study on metal shredder wastes to demonstrate the highest level of treatment that can be achieved with the current technology, and an assessment of the potential for treated or untreated metal shredder waste to migrate off-site and impact residents or business occupants in the areas surrounding metal shredding facilities and landfills that accept metal shredder waste.

As part of the work plan DTSC approved air monitoring summary reports for metal shredding facilities located in Bakersfield, Redwood City, and Terminal Island. Air sampling was conducted at the facilities during October 2016 to assess the potential for offsite emissions associated with the metal shredding operations.

DTSC oversight of metal shredders: DTSC has inspected and taken various enforcement actions on metal shredder facilities, as well as metal recyclers. One facility to note is Schnitzer Steel Industries, Inc. (now known as Radius Recycling) located in Oakland, Alameda County.

Schnitzer Steel owns and operates a scrap metal recovery and recycling facility, located at 1101 Embarcadero West, Oakland, California 94607 (Facility), occupying approximately 33.2 acres adjacent to the Oakland Inner Harbor waterfront and the Port of Oakland. The Facility is bounded on the south by the Oakland Inner Harbor, to the east and west by the Port of Oakland (Howard Terminal and Roundhouse Terminal respectively), and, to the north by Embarcadero West and Union Pacific Railroad tracks. Radius Recycling is the new brand and assumed name of Schnitzer Steel as of July 2023.

Schnitzer Steel's operations at the Facility include, but are not limited to: collecting, sorting, and transporting waste metallic containing materials using conveyor belts and heavy equipment; shredding end-of-life automobiles, appliances, and other recyclable metal containing items; shearing recyclable metals; preparing and sorting ferrous and non-ferrous metal recycling feedstock; stockpiling of unprocessed feedstock, metal shredder aggregate (partially sorted shredder output) and processed metal; chemically treating residue from the metal shredding and separation operations; and loading of processed materials for disposition.

In 2012, the Alameda County District Attorney's Office, in consultation with DTSC and the California Department of Fish and Wildlife, initiated an investigation of the area surrounding the Facility in response to alleged releases of light fibrous material (LFM). On February 3, 2021, a Stipulation for Entry of Final Judgement and Order on Consent (Stipulation) was filed and approved by the Alameda County Superior Court. Schnitzer Steel agreed to a $4.1 million settlement over allegations that it violated the state's environmental laws.

Due to concerns about ongoing releases of LFM, DTSC's Office of Criminal Investigations conducted an air monitoring study and collected samples of LFM from the ground in the areas surrounding the Facility from December 2020 to May 2023.

On February 23, 2021, DTSC ordered Schnitzer Steel, through a formal enforcement action, to clean up contamination both on site and within the surrounding community, modify the facility as needed to prevent releases, and submit a plan to control immediate threats from metal shredding practices.

On March 30, 2022, a joint letter from DTSC, the Attorney General's Office, and the Alameda County District Attorney's Office (the "People"), was sent to Schnitzer Steel notifying them of continued off-site releases and deposition of LFM from the Facility and how they are in violation of the February 3, 2021 Stipulation. The letter included actions Schnitzer Steel must take to stop these releases. After multiple rounds of communication and DTSC's observations that LFM releases are still occurring, a final cease and desist LFM letter was sent to Schnitzer Steel by the People on July 31, 2023.

On August 9, 2023, a fire started in an unprocessed scrap metal pile at Schnitzer Steel's Facility. The next morning, DTSC inspectors responded to investigate the fire and all hazardous waste generated as a result of the fire. DTSC inspectors interviewed facility personnel, inspected the scrap metal pile, and collected samples from the fire impacted metal pile and water runoff samples. DTSC issued violations to Schnitzer Steel for failure to operate the facility to minimize the possibility of a fire and for failure to immediately notify the State Office of Emergency Services that the facility had a fire. DTSC's investigation is ongoing, and we continue to collaborate with other regulatory agencies on this incident.

Currently Schnitzer Steel's hazardous waste treatment operations are being conducted under an Interim Status authority overseen by DTSC. This allows Schnitzer Steel to conduct hazardous waste treatment at the Facility until DTSC issues a decision on Schnitzer Steel's permit application.

Schnitzer Steel is an example of a metal shredding facility that has had multiple enforcement actions brought against it over the years by DTSC. Additionally, this example shows the potential for metal shredding facilities to cause off-site impacts into neighboring communities. AB 2851 requires fence-line air quality monitoring of metal shredding facilities in order to, ideally prevent off-site impacts, but at the least, promptly notify the nearby community of harmful releases from metal shredding facilities.

DTSC enforcement action on metal shredders and metal recyclers: On March 28, 2022, DTSC announced it had ordered the operators of Sims Metal Management in Redwood City to determine the extent of toxic pollution coming from their facility and to clean it up. According to DTSC's announcement:

> "The facility is within two miles of several day care centers, parks, hospitals, schools and homes, and DTSC is concerned about potential health impacts on those populations. The 12-acre recycling and shredding operation is adjacent to Redwood Creek, a public trail and two islands that are part of the Don Edwards San Francisco Bay National Wildlife Refuge. Redwood Creek leads into San Francisco Bay.
>
> Sims receives, sorts, separates and stores bulk metal scrap for sale and export, and operates a conveyor that deposits the material onto ships. The business located near the Port of Redwood City has a history of violating hazardous waste laws, including releasing elevated levels of lead, zinc and cadmium both on- and off-site. As recently as 2019, DTSC inspectors discovered hazardous waste levels of toxic chemicals in several places within facility grounds. Inspectors also found buildup of light fibrous materials, a hazardous substance, on the facility's pavement and near its operations.
>
> The investigation and cleanup evaluation will include recent and historical release at the facility, including any impacts from a March 9 fire. This enforcement order is the latest in a string of similar actions by DTSC against metal recyclers and shredders statewide. Many of these operations are in neighborhoods that suffer from high amounts of pollution, according to CalEnviroScreen, an online tool that identifies vulnerable communities.
>
> Under the enforcement order, the named parties must meet certain deadlines and submit required investigation reports to DTSC, including a plan for cleaning up contamination. DTSC will notify the surrounding community so residents can weigh in on the proposed cleanup plan."

This example of DTSC's enforcement action on Sims Metal Management in Redwood City, illustrates how close some of these metal shredding facilities are to schools, homes, and parks. One of the major goals of AB 2851 is to protect those people living, working and going to school near metal shredding facilities and if needed inform them of any adverse health impacts caused by a metal shredding facility.

DTSC adopts regulations covering metal shredding facilities: On October 26, 2021, DTSC announced regulations had been adopted by the Office of Administrative Law that oversee the operations of metal shredding facilities. According to DTSC,

"In response to ongoing concerns about hazardous waste releases from metal shredders, the state Department of Toxic Substances Control (DTSC) is taking new steps to protect human health, the environment and vulnerable communities from impacts associated with metal shredding operations. These impacts include improper hazardous waste storage, soil contamination, and releases of hazardous waste into surrounding communities.

On Monday, the Office of Administrative Law approved DTSC's emergency regulations, which clarify California's definition of scrap metal. Based on this approval, DTSC requires metal shredders to monitor environmental conditions and provide financial assurance to address environmental concerns. Metal shredding facilities that generate and treat metal shredder aggregate will now need to apply for authorization from DTSC to continue those activities.

Most scrap metal in California comes from old vehicles, appliances, construction and demolition materials, and manufacturing. Metal shredding facilities process the scrap to separate metals by type and separate out non-metal material.

DTSC conducted a comprehensive analysis of California's metal shredding industry, initiated by SB 1249, which identifies repeated examples of hazardous waste violations – often in communities already burdened by multiple sources of pollution. DTSC will replace the emergency regulations with permanent regulations developed through public input and the administrative law process."

SB 1249 authorized, until 2018, DTSC to adopt management standards different from a hazardous waste facilities permit, if DTSC determined it was safe to do so. With that authorization having expired, DTSC adopted emergency regulations to permit metal shredding facilities in order to regulate these facilities.

This bill: AB 2851 requires DTSC, in consultation with local air districts, to develop and implement facility-wide fence-line air quality monitoring at metal shredding facilities. This bill is being proposed to help address potential off-site impacts of metal shredding facilities. Metal shredding facilities have had various enforcement actions brought against them, including for causing contamination in the communities near these facilities. This bill is consistent with DTSC's implementation of SB 1249 and DTSC's efforts to regulate and enforce hazardous waste laws and regulations on metal shredding facilities.

Arguments in support: According to the West Oakland Environmental Indicators Project (WOEIP),

"The WOEIP is proud to support Assembly Bill 2851. This bill requires all metal shredders in California to install a fence-line air monitoring system and to establish a community notification standard so that neighboring communities are alerted of toxic emissions.

Over the last decades, The Department of Toxic Substances has concluded that shredder waste exceeds the state regulatory thresholds for lead, zinc, and cadmium. The operations at metal shredding facilities have resulted in toxic fires and the current accountability mechanism is to

pay for these violations and penalties. AB2851 will ensure that metal shredders take more seriously internal operations to prevent toxic fires from occurring. Installing fence-line monitoring is an essential first step in ensuring compliance with air quality standards.

Metal shredding facilities are in our vulnerable and underserved communities already suffering from a disproportionate amount of pollution. AB2 851 will push forward your strong desire to advance environmental justice and equity for those impacted the most by toxic emissions."

Arguments in opposition: According to the West Coast Chapter of the Institute of Scrap Recycling Industries, Inc.,

"The development of fence-line monitoring standards should be left to local air pollution control districts and air quality management districts that already regulate emissions from metal shredding facilities through the issuance of authorities to construct/permits to operate and the imposition of regulatory standards.

Metal shredding facilities are typically located in highly industrialized areas or next to major thoroughfares with multiple stationary and mobile sources of air emissions. Prior efforts to distinguish the emissions from metal shredding facilities from those of other sources operating in the area have received significant technical criticism, and the results have been deemed unreliable. Any community notification must be based on the results of actual monitoring results that demonstrate on a reliable basis, over appropriate periods of time, that existing air quality standards are in fact exceeded by a specific metal shredder facility and that the emissions pose a threat to the surrounding community as demonstrated through air dispersion modeling."

Double-referral: Should this bill pass out of the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Natural Resources Committee.

Related legislation:

SB 1249 (Hill, Chapter 756, Statutes of 2014). Authorizes DTSC to adopt regulations establishing management standards for hazardous waste management activities at metal shredding facilities until January 1, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

Cleanearth4kids.org
West Oakland Environmental Indicators Project

Opposition

West Coast Chapter-institute of Scrap Recycling Industries

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 3004 (Mike Fong) – As Amended April 1, 2024

SUBJECT: Proposition 65: certificates of merit: Attorney General communications

SUMMARY: Requires a person, when filing an action under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), to include the brand name of the product tested with the certificate of merit. Specifically, **this bill**:

1) Requires a person filing an action under Proposition 65, if a report from a laboratory is submitted with the certificate of merit, then the report shall indicate the brand name, if any, of the product tested. Requires any testing done to support the certificate of merit to have occurred within one year of the submittal of the certificate of merit.

2) Requires the Attorney General (AG), if they provide a comment, suggestion, or any other communication in response to the report provided to them by one of the parties in a settlement or judgment under Proposition 65, to provide that comment, suggestion, or other communication to all parties to the settlement or judgment.

EXISTING LAW:

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

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

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

4) Provides for a specified course of remediation for lawsuits alleging a violation of the clear and reasonable warning requirement for four specified exposures (lawfully permitted alcoholic beverages; chemicals resulting from food or beverage preparation; environmental tobacco smoke on premises where smoking is permitted; and, engine exhaust in parking facilities, as specified). Prohibits the person who files an action from exposure from doing so until 14 days after she or he has served the alleged violator with a notice of alleged violation. Authorizes the person who served the notice of violation to file an action if the alleged violator failed to correct the alleged violation or failed to pay a civil penalty of $500. (HSC § 25249.7)

5) Requires the person filing an action to serve the notice of violation to the alleged violator, the AG and the local District Attorney, and to also include with the notice a certificate of merit

and sufficient factual information to establish the basis of merit. Authorizes the AG to establish whether or not there is merit to the action, and if the AG determines there is not merit to the action, requires the AG to notify both the person bringing the action and the alleged violator. (HSC § 25249.7)

6) Requires a person bringing an action in the public interest under Proposition 65, or a private person bringing an action in which a violation of Proposition 65 is alleged, to, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the AG a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action. (HSC 25249.7 § (f) (2))

7) Exempts a person employing fewer than 10 employees from the warning requirement under Proposition 65. (HSC § 25249.11)

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

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "AB 3004 makes minor changes to Proposition 65 to ensure that the Act is carried out as intended – to ensure that consumers are aware of products containing certain chemicals. Private enforcers who are simply seeking settlement money may reuse the same laboratory test on multiple products over a number of years. This hurts small businesses who must pay sometimes thousands of dollars to settle the claim while possibly not receiving credible information. They may put the label on a product, but they will not know if the product indeed contains the chemicals. This bill ensures that the laboratory test is current and identifies the brand name of the product that was tested."

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

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

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

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

Multiple avenues of enforcement of Proposition 65: Proposition 65 authorizes the California AG, as well as any district attorney or city attorney (for cities whose population exceeds 750,000), to enforce Proposition 65. In addition, a person may bring an action acting in the public interest if both of the following requirements are met: 1) the private action is commenced more than 60 days after the person filing the action has provided the notice of the alleged violation to the AG, local district attorney, and the alleged violator including the certificate of merit and the factual information sufficient to establish the basis of the certificate of merit, and 2) neither the AG nor district attorney has commenced prosecuting an action against the violation.

It is important to note that Proposition 65 only allows enforcement through the courts. Unlike other environmental laws, there is not a state department or state or local agency that is authorized to oversee and enforce Proposition 65 using administrative penalties. If found guilty through the courts, penalties for violating Proposition 65 by failing to provide warning notices can be as high as $2,500 per violation per day.

Exemption from enforcement: Businesses with fewer than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm.

Certificate of merit: Current law requires any person bringing an action under Proposition 65 to provide a notice of alleged violation, 60 days before taking the action, to the AG, including a certificate of merit. The certificate of merit states that the person executing the certificate has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that, based on that information, the person executing the certificate believes there is a reasonable and meritorious case for the private action. Additionally, factual information sufficient to establish the basis of the certificate of merit must be attached to the certificate that is served on the AG. The law also requires the AG, after reviewing the certificate of merit, including the factual basis supporting the certificate of merit, to, if she or he finds that

there is not merit to the action, serve a letter to the noticing party and the alleged violator that the AG believes there is not merit to the action.

This bill: AB 3004 requires a person filing an action under Proposition 65, if a report from a laboratory is submitted with the certificate of merit, to indicate the brand name, if any, of the product tested. It also requires any testing done to support the certificate of merit to have occurred within one year of the submittal of the certificate of merit.

Report to the AG: Existing law requires a person bringing an action in the public interest under Proposition 65 or a private person bringing an action in which a violation of Proposition 65 is alleged, to, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the Attorney General a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action.

This bill: AB 3004 requires the AG, if they provide a comment, suggestion, or any other communication in response to the report provided to them by one of the parties in a settlement or judgment under Proposition 65, to provide that comment, suggestion, or other communication to all parties to the settlement or judgment.

Arguments in Support: According to the Asian Food Trade Association, "Since 1992, the Asian Food Trade Association (AFTA) has served as the leading organization representing the Asian Pacific Islander (API) food importer community in the Golden State and throughout the nation, speaking out and helping to solve challenges and help this community to thrive. We play a pivotal role working to create smoother import processes for our members, notably small to medium sized enterprises, by building relationships and fostering stronger policy that will keep the transaction of goods thriving and growing.

One of the biggest challenges API owner-operators face, is the abuse of Prop 65 (Clean Water Bill) and how it is being weaponized against all types of businesses and their products. However, the loophole that Prop 65 gives a few bad lawyers the legal protection to stretch the law and extorting money from California’s hardworking small businesses.

If passed, we’re only asking that reasonable evidence be given to defendants so they can compare accredited lab reports they should be presenting to the AG, and also to defendants upon request."

Arguments in Opposition:

None on file.

Double referral: Should the Assembly Committee on Environmental Safety and Toxic Materials approve this bill, it will be referred to the Assembly Judiciary Committee.

Related legislation:

1) AB 1521 (Mike Fong, 2023). Would have required a person bringing an action under Proposition 65, when providing factual information sufficient to establish the basis of the certificate of merit to the AG to additionally include information supporting the certificate of merit, including dates and studies related to the product that is the subject of the notice of the

alleged violation. This bill was not heard in the Assembly Environmental Safety and Toxic Materials Committee and subsequently died on file.

2) AB 2743 (Mike Fong, 2022). Would have required a person bringing an action under Proposition 65 to provide the notice of the alleged violation and factual information for the basis for the certificate of merit to the AG, local district attorney, and the alleged violator. This bill was not heard in the Assembly Environmental Safety and Toxic Materials Committee and subsequently died on file.

3) AB 693 (Chau, 2021). Would have required that any compensation received by a plaintiff of a Proposition 65 suit be disclosed to a court, and would have allowed food suppliers and distributors 14 days to label products in violation of Proposition 65 without penalties. This bill was not heard in the Assembly Environmental Safety and Toxic Materials Committee and subsequently died on file.

4) AB 2849 (Chau, 2020). Would have authorized a person employing fewer than 10 employees to waive his or her exemption under Proposition 65 and provide this in writing to the person bringing an action under Proposition 65 and to the AG. This bill died in the Senate on Environmental Quality Committee.

5) AB 1123 (Reyes, Chapter 187, Statutes of 2019). Requires certain notice be provided to the AG before certain proceedings involving Proposition 65 are filed in the Supreme Court, court of appeal, or the appellate division of the superior court.

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Food Trade Association

Opposition

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
AB 3073 (Haney) – As Amended March 21, 2024

SUBJECT: Wastewater testing: illicit substances

SUMMARY: Requires the California Department of Public Health (CDPH), in consultation with participating wastewater treatment facilities, local public health agencies, and other subject matter experts, to create a pilot program (pilot program) to test for high-risk substances and related treatment medications in wastewater. Specifically, **this bill**:

1) Defines "Department" as the California Department of Public Health (CDPH).

2) Requires CDPH, in consultation with participating wastewater treatment facilities, local public health agencies, and other subject matter experts, to create a pilot program to test for high-risk substances and related treatment medications in wastewater. Provides that the goal of the pilot program is to determine how wastewater data can be used by state and local public health programs to address substance abuse in California.

3) Requires CDPH to develop all of the following: protocols for implementing wastewater surveillance for high-risk substances, analyzing the data, and using results to inform decision-making of state and local public health officials; objectives to ensure that data is collected and presented in a way that is ethical, protective of privacy considerations, considers environmental justice implications, and that achieve the goal of the pilot program; and, a list of target substances to be analyzed during the pilot program.

4) Requires, on or before July 1, 2025, CDPH to solicit voluntary participation from local public health agencies and wastewater treatment facilities.

5) Requires CDPH to aim to include in the pilot program local public health agencies and wastewater treatment facilities that, in the aggregate, are representative of California demographics, include representation from large urban and small rural populations, and that are geographically diverse.

6) Requires CDPH to work with the participating local public health agencies and wastewater treatment facilities to collect samples; requires CDPH to arrange for those samples to be tested by qualified laboratories.

7) Requires CDPH, after ensuring that sufficient capacity exists for testing in the pilot program by qualified laboratories, to identify reliable methods for laboratory testing.

8) Requires CDPH, in consultation with the participating local public health agencies and wastewater facilities, to determine the frequency and timing of sampling under the pilot program.

9) Requires laboratories that are participating in the pilot program to transmit the results of wastewater testing to the participating local public health agencies, and to CDPH.

10) Requires CDPH, in consultation with participating local public health agencies and other subject matter experts, to analyze test results to determine possible public health interventions.

11) Authorizes CDPH to consult or contract with other existing wastewater epidemiology projects or public health programs being conducted or previously completed by nonprofits, nongovernmental organizations, academic institutions, and other governmental entities to develop the pilot program.

12) Requires CDPH to provide laboratory services for purposes of the pilot program, either through state-operated laboratories or through contract laboratories, free of charge to participating wastewater facilities.

13) Authorizes CDPH to use, in addition to their existing funds, external funding sources to complete the pilot program; authorizes CDPH to solicit private donations or grants and to accept moneys donated by other wastewater epidemiology or opioid response programs.

14) Creates the Wastewater Testing for Illicit Substances Pilot Program Fund (Fund) for the purpose of receiving moneys from grants or voluntary donations from any person, educational institution, governmental entity, corporation, or other business entity or organization. Provides that all moneys in the Fund are available to CDPH, upon appropriation by the Legislature to implement the pilot program.

15) Requires CDPH, on or before December 31, 2027, to submit a report to the Legislature stating CDPH's findings and recommendations. Requires CDPH, if it recommends that a permanent wastewater testing program or extension or expansion of the pilot program be implemented, to include in the report program parameters, anticipated benefits, and implementation costs for state and local agencies.

EXISTING LAW:

1) Declares, under the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), that the health, safety, and welfare of people require there to be a statewide program for water quality control and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy. (Water Code (WC) § 13000)

2) Defines "wastewater treatment plant" as any of the following:

   (a) Any facility owned by a state, local, or federal agency and used in the treatment or reclamation of sewage or industrial wastes;

   (b) Any privately owned facility used in the treatment or reclamation of sewage or industrial wastes, and regulated by the Public Utilities Commission; or,

   (c) Any privately owned facility used primarily in the treatment or reclamation of sewage for which the State Water Resources Control Board (State Water Board) or a Regional Water Quality Control Board (Regional Water Board) has issued waste discharge requirements. (WC 13625 § (d)(1))

3) Requires the CDPH to maintain a laboratory and branch laboratories as necessary to perform the microbiological, physical, and chemical analyses required to meet the responsibilities of CDPH. (Health and Safety Code (HSC) § 100250).

4) Establishes the intent of the Legislature to establish an Environmental Health Surveillance System to establish ongoing surveillance of the environmental exposures and diseases affecting Californians. (HSC § 104324)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "Successfully used in Europe for over a decade, wastewater based drug testing allows local governments to pinpoint down to a neighborhood level dangerous spikes in the use of illicit drugs. Wastewater testing allows local public health departments to accurately allocate resources to tackle the rise of illegal drugs, allowing communities to feel safer and to save lives.

The surge in illicit drug use has intensified California's struggle with the overdose epidemic. Driven by the proliferation of fentanyl and Tranq, overdose-related deaths in San Francisco peaked to more than 750 people in 2023, taking nearly three times as many lives as COVID-19 at its peak in 2021. Nationally, an estimated 109,680 drug overdose deaths were recorded in 2022 alone according to the CDC 300 Americans each day.

Wastewater drug testing empowers us to be proactive and respond effectively and immediately when we see spikes in certain areas or of particular drugs. The state cannot simply wait for people to die before we act. Wastewater drug testing can give us critical information to respond quicker to stop these drugs and intervene smarter and deploy resources with more precision."

State Water Board authority over sewer systems: To provide a consistent, statewide regulatory approach to address sanitary sewer spills, the State Water Board adopted a General Order for Waste Discharge Requirements for Sanitary Sewer Systems (General Order). The General Order requires public agencies that own or operate sanitary sewer systems to develop and implement sewer system management plans and report all sanitary sewer spills to the State Water Board's online California Integrated Water Quality System (CIWQS) Sanitary Sewer System Database. Among the requirements of the General Order are requirements to monitor, track, and analyze spills for ongoing system-specific performance.

According to its 2022 General Order, the State Water Board regulates over 1,100 publicly owned sanitary sewer systems. California also has a large unknown number of unregulated privately owned sanitary sewer systems. Under authority granted pursuant to the Clean Water Act and the Porter-Cologne Act, the State Water Board's General Order regulates sewer service providers, which can include state agencies, federal agencies, municipalities, special districts, private companies, or other non-governmental entities that own and/or operate a sewer system. The General Order regulates multiple aspects of sewer systems, including the discharge of sewage and monitoring and reporting requirements.

The California Department of Public Health (CDPH): CDPH works to protect the public's health in the Golden State and helps shape positive health outcomes for individuals, families, and

communities. CDPH's fundamental responsibilities are comprehensive in scope and include infectious disease control and prevention, food safety, environmental health, laboratory services, patient safety, emergency preparedness, chronic disease prevention and health promotion, family health, health equity, and vital records and statistics. CDPH's key activities and services include protecting people in California from the threat of preventable infectious diseases like Zika virus, HIV/AIDS, tuberculosis and viral hepatitis, and providing reliable and accurate public health laboratory services and information about health threats.

Wastewater surveillance for SARS-CoV-2 virus: CDPH and the State Water Board together are coordinating with several wastewater utilities, local health departments, universities and laboratories in California on wastewater surveillance for SARS-CoV-2, the virus causing COVID-19. Data collected from this network of participants, called the California Surveillance of Wastewater Systems (Cal-SuWers) Network**,** are submitted to the U.S. Centers for Disease Control and Prevention (CDC) National Wastewater Surveillance System (NWSS). Along with local partners, CDPH is monitoring and quantifying levels of SARS-CoV-2 at the headworks or "influent" of 13 wastewater treatment plants.

Wastewater surveillance, or wastewater-based epidemiology, is a public health tool that can track the presence and amount of pathogens (e.g., viruses, such as SARS-CoV2, bacteria, etc.) in wastewater samples. These data can provide important information about the spread of diseases within a community or potentially as an early warning, even when people are not tested for a disease. This can be an especially important tool for diseases that are not reportable to public health, that are not routinely tested for, or if people rely on at-home testing, which often does not get reported to public health. Wastewater surveillance ca provide insight about the spread of pathogens within a community, as infected persons can shed pathogens in their waste, with or without symptoms. Sewage or waste from an entire community is conveyed to a wastewater treatment plant through a network of underground pipes and connections, also known as a sewershed or service area. Samples of raw wastewater are collected at the headworks of a treatment plant before the wastewater is treated. These samples are then shipped to a laboratory, where they are analyzed to quantify the amount of viral genomic material present. The results and data are shared with epidemiologists at public health departments, who interpret trends in the data to inform public health actions.

Wastewater monitoring for SARS-CoV-2 is carried out by several groups, including CDPH. Other groups also monitor wastewater, with some contributing data to the California Wastewater Surveillance Network (CA WWS Network), managed by CDPH. These data are used for state and local public health, and submitted to the (CDC)(NWSS).

Wastewater surveillance data limitations: Wastewater surveillance for viral detection is still a developing field. Lessons learned from SARS-CoV2 wastewater surveillance include:

- It is not possible to reliably and accurately predict the total number of infected individuals in a community based on sewage surveillance alone.
- Wastewater surveillance will not represent homes on septic-based systems.
- Community-level wastewater surveillance at a wastewater treatment plant will not represent communities or facilities served by decentralized systems, such as prisons, universities, or hospitals that treat their own sewage.
- Low levels of infection in a community may not be captured by sewage surveillance if the quantity of SARS-CoV-2 falls below the limit of detection for laboratory analysis.

- Wastewater is a complex environmental sample and inherent variability in measured concentrations are expected due to environmental variability, day-to-day differences in sewershed and population dynamics, and laboratory variability. As such, trends are more reliable than individual data points; concentration of any individual data point may reflect variability and should be interpreted with caution.

Wastewater surveillance could help guide responses to the opioid epidemic: According to the 2023 article, "Wastewater-based monitoring could help guide responses to the USA opioid epidemic," published in the journal *Nature Water* (Ahmed, et. al):

> "The successful use of wastewater-based data during the COVID-19 pandemic has led to the creation of the National Wastewater Surveillance System in the USA for pathogen monitoring. Now a complementary system is needed for help tackling the opioid epidemic.
>
> In 2021, the Centers for Disease Control and Prevention (CDC) reported annual deaths from drug-involved overdoses in the United States exceeded 100,000 people, with opioids primarily responsible for 75% of overdoses. With opioid overdose deaths having accelerated during the COVID-19 pandemic, better data are urgently needed to illuminate the dynamic shifts in drug use that are occurring. Wastewater-based epidemiology has played a significant role in helping officials monitor and respond to the COVID-19 pandemic. This innovative approach to public health surveillance can also be harnessed for more timely monitoring of the opioid epidemic.
>
> Around the world, wastewater-based epidemiology has become a valuable public health tool to identify the emergence and progression of COVID-19 outbreaks. The CDC has partnered with the US Department of Health and Human Services and other agencies to establish a National Wastewater Surveillance System (NWSS). The current system, which covers 46 states, five cities and two territories (more than 133 million people), is oriented to addressing the COVID-19 pandemic, with an eye towards future monitoring of foodborne illnesses and antimicrobial resistance.
>
> We believe that the United States should develop a similar system to monitor the use of opioids and other drugs. Specifically, there is a need for support from federal agencies to boost the analytic capabilities of testing labs across the county for wastewater monitoring, conduct inter-laboratory validation studies to ensure nationwide robustness, coordinate with state and tribal health agencies to facilitate widespread sampling that is conducted in an ethical manner, and develop standardized reporting procedures and clear messaging around the results. The CDC would be the most appropriate agency to lead this effort, given their leadership with NWSS. A 2023 National Academies report on wastewater-based infectious disease surveillance stated that: [w]hen evaluating potential targets for future wastewater surveillance, CDC should consider three criteria: (1) public health significance of the threat, (2) analytical feasibility for wastewater surveillance, and (3) usefulness of community-level wastewater surveillance data to inform public health action. While this was written with infectious disease as the focus, we believe this sentiment and these three criteria perfectly match with using wastewater for opioid monitoring.
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> Wastewater is essentially a pooled urine and faeces sample of a community that includes biomarkers of both biological and chemical exposures. A national wastewater surveillance system to monitor opioids and other emerging illicit drugs such as benzodiazepines could

help public health and safety officials anticipate new drug outbreaks and respond more quickly to protect the health of US citizens.

Although US government and health officials have data on opioid prescribing practices, hospital admissions, drugs seizures, surveys, and arrests, the release of these data usually lags well behind trends in opioid use because it takes time to collect, structure, analyse, and report the data. Further, people often do not know which opioids or other drugs they are consuming, and so cannot accurately report such on the self-reported surveys that the federal government relies on to understand drug use trends, the populations affected, and the need for treatment services. Wastewater data, by contrast, provide more granular, drug specific, near-real-time information on patterns of opioid and other drug use.

Wastewater-based epidemiology has been used for over a decade in Australia and Europe, and to a lesser extent North America and Asia, to monitor population trends in licit and illicit drug use. Wastewater evidence of a five-fold increase in methamphetamine use in Australia from 2009 to 2015 led the Australian Government to establish a National Wastewater Drug Monitoring Program. Subsequent monitoring of fentanyl observed a higher baseline use in rural areas, and a nearly 150% increase in consumption between 2016 and 2018.

Communities could opt into the opioid expansion of the NWSS. The number of municipalities included in NWSS has greatly expanded during the pandemic, though some remain hesitant to participate in SARS-CoV-2 surveillance due to fears of stigmatization. Finding communities to participate in opioid monitoring may prove more difficult, but communities can be given the choice to opt into an opioid expansion of the NWSS. While some may opt out, due to concerns around privacy or stigmatization, others that continue to seek out better data on drug use to inform their response could benefit."

This bill: AB 3073 requires CDPH to develop and implement a pilot project to test wastewater for illicit drugs. This pilot program could be used to inform other states and the CDC on the potential parameters of a national wastewater surveillance program for illicit drugs. It is important to note that participation in this pilot project by wastewater agencies is voluntary.

Arguments in Support: According to the California Association of Sanitation Agencies, "Wastewater Surveillance (WS) is a public health tool that has been utilized for decades to track diseases such as polio, particularly in developing countries. During the early days of the COVID-19 pandemic in the spring of 2020, WS was elevated to the forefront of the pandemic response as a potential resource to monitor the spread of disease and help support and inform public health interventions. Wastewater agencies responded quickly by collecting and providing treatment plant influent samples to various exploratory programs and academic efforts. The Centers for Disease Control and Prevention (CDC) launched the National Wastewater Surveillance System (NWSS) in September 2020 to build the nation’s capacity to track the presence of SARS-CoV-2 in wastewater across the country through multiple support mechanisms.

In December 2020, CDPH started a pilot program with a few wastewater utilities and local public health agencies to test the implementation of WS and the integration of this new data source into the existing suite of public health metrics. The pilot grew into the California Wastewater Surveillance Network, which now encompasses approximately 26 million residents in 41 counties through voluntary sampling by public wastewater agencies.

AB 3073 would build upon the success of existing WS efforts to evaluate whether testing wastewater for illicit substances such as opioids and the drugs used to treat opioid overdoses can provide helpful data for public health interventions and responses."

Arguments in Opposition:

None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Sanitation Agencies
California State Association of Counties
County Health Executives Association of California (CHEAC)
San Francisco Public Utilities Commission

Opposition

None on file.

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