
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

Bill No: AB 2560
Author: Quirk
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Urgency: No
Consultant: Gabrielle Meindl

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Fiscal: Yes

SUBJECT: Water quality: notification and response levels: procedures

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

ANALYSIS:

Existing law:

- 1) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels, or MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health & Safety Code (HSC) § 116270, et seq.)
- 2) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275)
- 3) Requires a public water system, within 30-days of detection of a contaminant in exceedance of an MCL, NL, or a RL, to provide notification to its governing body of the detection. (HSC § 116455)
- 4) Requires any person who owns a public water system to ensure that the system does all of the following:
 - a) Complies with primary and secondary drinking water standards;
 - b) Will not be subject to backflow under normal operating conditions;
 - c) Provides a reliable and adequate supply of pure, wholesome, healthful, and potable water;

- d) Employs or utilizes only water treatment operators or water treatment operators-in-training that have been certified by the State Water Board at the appropriate grade; and,
 - e) Complies with the operator certification program. (HSC § 116555 (a))
- 5) Requires the US EPA to establish criteria for a program to monitor unregulated contaminants and publish a list of up to 30 contaminants to be monitored every five years, known as the federal Unregulated Contaminant Monitoring Rule (UCMR). (42 United States Code § 300(f))
- 6) Establishes the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

This bill:

- 1) Requires the State Water Board, when establishing or revising a NL or RL to do all of the following:
- a) Post on its internet website and distribute through e-mail that it has initiated the development of a NL or RL;
 - b) Post on its internet website and distribute through e-mail a notice that a proposed NL or RL is available, including documents that were used to support the proposed NL or RL and whether or not those documents were peer reviewed.
 - c) Include, prior to finalizing a NL or RL, as an information item, the proposed NL or RL at a regularly noticed meeting of the State Water Board. Specifies notices and documents be available at least 30 days prior to the meeting.
- 2) Specifies that the 30-day notice requirement and the document availability requirement above shall *not* apply if the Division of Drinking Water of the State Water Board finds that an acute contaminant presents a public health emergency calling for immediate action to avoid imminent harm to public health and safety. Requires the Division to issue a declaration confirming its finding within 30 days of suspending these provisions.

Background

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

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

- 2) *What is a public water system?* A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. Many people think of public water systems as large city or regional water suppliers, but they also include small housing communities, businesses, and even schools and restaurants that provide water. A public water system is not necessarily a public entity, and most public water systems are privately owned. Drinking water regulations impose the most stringent monitoring requirements on community and non-transient non-community water systems because the people they serve obtain all or much of their water from that system each day. Community water systems are city, county, regulated utilities, regional water systems, and even small water companies and districts where people live. Non-community non-transient water systems are places like schools and businesses that provide their own water. Being a public water system means providing affordable, safe drinking water to customers 24 hours a day, 7 days a week, 365 day a year. This includes the associated legal, fiscal, and operational responsibilities, and future planning.
- 3) *Regulating water quality:* Water is California's most precious resource. With a growing population of more than 39 million people, a limited supply of fresh water, and a range of impacts on both terrestrial and marine habitats and

resources, the protection of water for beneficial uses is of paramount concern for all Californians. Water quality is a concern for all bodies of freshwater, both surface water and groundwater, and depends on a variety of chemical and biological factors regulated by a number of local, state, and federal agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

While NLs and RLs are not regulatory standards they provide important information about contaminants to public water systems and their customers, at the same time there are signification actions imposed upon public water systems with the issuance of a NL or RL. Under current law, there is not a clear process for when or how DDW provides a new or revised NL or RL, AB 2560 adds some requirements on the State Water Board to ensure that the issuance or revision of a NL or RL is posted on its website. Additionally, AB 2560 requires the State Water Board to post the supporting documentation used for a NL or RL so that public water systems have access to this information in order to better serve their customers. The bill also provides an important safeguard by providing an exception to the noticing requirement in the case where the an acute contaminant is found by the Division of Drinking Water to present a public health emergency calling for immediate action to avoid imminent harm to public health and safety.

Comments

- 1) *Purpose of Bill.* According to the author, "The State Water Board adopts MCLs for contaminants, which are health protective drinking water standards to be implemented by public water systems. MCLs take into account not only

a contaminant's health risks but also factors such as its detectability and treatability, as well as costs of treatment. Under current law there is a very clear process for the establishment of an MCL.

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

Related/Prior Legislation

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

SOURCE: Author

SUPPORT:

Association of California Water Agencies (ACWA)
California Groundwater Coalition
California Municipal Utilities Association
California Special Districts Association
Clean Water Action
Desert Water Agency
East Bay Municipal Utility District
Eastern Municipal Water District
El Dorado Irrigation District
Environmental Working Group
Inland Empire Utilities Agency
Irvine Ranch Water District
Leadership Counsel for Justice and Accountability

Mesa Water District
Metropolitan Water District of Southern California
Natural Resources Defense Council
Palmdale Water District
Rowland Water District
Santa Clara Valley Water District
Santa Clarita Valley Water Agency
Santa Margarita Water District
Sierra Club California
Valley County Water District
Valley Industry & Commerce Association
Walnut Valley Water District
Watereuse Association
Western Municipal Water District
Yorba Linda Water District

OPPOSITION:

None received

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