SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 995		
Author:	Cristina Garcia, et al.		
Version:	7/2/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Hazardous waste

DIGEST: Creates the Board of Environmental Safety (Board) within the California Environmental Protection Agency (CalEPA) to provide policy direction to and oversight of the Department of Toxic Substances Control (DTSC) and makes various other changes to the hazardous waste control laws.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee, as a typical timeline would allow.

ANALYSIS:

Existing law:

1) Requires DTSC to enforce the standards within the Hazardous Waste Control Law (HWCL) and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code Section (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 Hazardous Waste Control Law (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) 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 the public health or the environment. (HSC § 25300 et seq.)

6) Creates, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 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. Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (U.S.C.) § 9601 et seq.)

This bill:

1) Creates the Board of Environmental Safety (Board) within the CalEPA consisting of five members with three members appointed by the Governor, subject to confirmation by the Senate, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules.

2) Requires the Board, using a public process, to do all of the following:

   a) Review the Department's duties and responsibilities in law, the current status of hazardous waste facility permits, the site mitigation program and remediation activities, and enforcement decisions for hazardous waste facilities and propose statutory, regulatory, and policy changes;

   b) Hear and decide appeals of hazardous waste facility permit decisions;

   c) Provide opportunities for public hearings on individual permitted or remediation sites, and, if necessary, direct the department to respond to or address public concerns and questions; and

   d) Set priorities for each program for each year at a public hearing, which the director shall carry out.

3) Provides that the members of the Board shall be appointed to fill certain qualifications, specifically:

   a) One Board member shall be an attorney admitted to practice law in this state who is qualified in the field of environmental law pertaining to hazardous waste, hazardous substances, or site remediation;

b) One Board member shall be an environmental scientist qualified in the fields of toxicology, chemistry or industrial hygiene or a licensed geologist or licensed engineer, in an area specific to the statutory responsibilities of the Board;

c) One Board member shall have expertise in public health;

d) One Board member shall be qualified in the area of regulatory permitting; and,

e) One Board member shall have expertise in cumulative impact assessment and management.

4) Provides that Board members shall be appointed for a term of four years, however the terms shall be staggered with the first two initial members serving a term of two years and the other three initial members shall serve a four year term.

5) Authorizes the Board to meet in Executive Session for any purpose authorized pursuant to the Bagley-Keene Open Meeting Act and requires the Board to adopt rules for conduct of its affairs in conformity with existing law.

6) Provides that the Chairperson of the Board is appointed by the Governor and shall be full-time and the remaining members of the Board shall be half-time.

7) Prohibits a member of the Board from participating in any action of the Board or attempt to influence any decision of which the Board member has a financial interest.

8) Requires the Board to conduct at least six public hearings per year, with three of those hearings being held in locations outside the county of Sacramento.

9) Establishes an office of ombudsperson in the Board to receive complaints and suggestions from the public, to evaluate complaints received, to report findings and make recommendations to DTSC and the Board, and to render assistance to the public.

10) Requires the Secretary for Environmental Protection to convene a fee task force to review the existing fee structure supporting the Hazardous Waste Control Account and the funding structure supporting the Toxic Substances Control Account. Requires the Secretary to provide recommendations to the Legislature by January 10, 2022, as part of the Governor's Budget, on a fee system for the Hazardous Waste Control Account (HWCA) and a funding

structure for the Toxic Substances Control Account (TSCA) that does all of the following:

a) Provides protection for public health and safety and the environment;

b) Provides adequate funding to ensure the remediation of contaminated sites, including the remediation and potential reuse of orphan sites;

c) Provides adequate funding for oversight and proper enforcement;

d) Provides adequate funding for the programs that protect consumers from potentially harmful chemicals in products or workplaces;

e) Provides for a reasonable distribution of costs among the sectors that contribute to the need for management of hazardous waste in the state;

f) Provides a level of funding that will enable the Board to appropriately implement and carry out its duties and responsibilities in a manner that is consistent with the objectives of those laws; and

g) Considers increasing existing fees, decreasing existing fees, consolidating existing fees, eliminating fees, or creating new fees, as appropriate. The task force shall consider where tiered rates can be implemented to reflect greater regulatory costs associated with large volumes of hazardous waste in the areas of generation, transport, and treatment.

11) Requires the task force include representatives from the Legislative Analyst's Office; appropriate policy committees of the Assembly and the Senate; fiscal committees of the Assembly and Senate; state employees; environmental organizations; environmental justice organizations; and payers of fees required pursuant to this chapter, including at least one federal permittee.

12) Requires the Board to annually submit to the Secretary and the Legislature a review of the Department's performance measured against the Board's objectives.

13) Requires DTSC to prepare the state hazardous waste management plan and present it to the Board for approval. Revises, adds, and repeals some the elements required to be in the plan and requires DTSC to conduct at least three public workshops, as provided.

14) Requires DTSC, on or before March 1, 2021, to post on its internet website the Spatial Prioritization Geographic Information Tool in order to provide the

public with information on the location of contaminated groundwater in the state.

15) Requires DTSC to review, at least once every 5 years, the financial assurances required to operate a hazardous waste facility and the cost estimates used to establish the amount of financial assurances required. If DTSC's review finds that the cost estimates are inadequate, requires the owner or operator to update the cost estimates and to adopt adequate financial assurances within 90 days of notification from DTSC.

16) Requires DTSC to issue a final decision on a permit within 12 months of the expiration of the permit, or within 5 years of the expiration of a permit that expires before December 31, 2023, and for which an application for renewal was submitted at least 180 days before the expiration of the permit. If the department has not issued a final permit decision by the applicable deadline, the bill would require the department to, among other things, issue a report, to be released publicly, that includes the reasons why the final permit decision was not made on time and a proposed schedule for issuing the final permit decision.

17) Requires DTSC to take certain actions if a final permit decision is not issued in accordance with the deadlines established above, including preparing a report on factors driving the delay and presenting the report to the Board.

18) Requires, for a hazardous waste facilities permit that will expire on or before January 1, 2023, the owner or operator of a facility intending to extend the term of that permit to submit a Part A and Part B application for a permit renewal at least 6 months before the fixed term of the permit expires. Further, requires, for a hazardous waste facilities permit that will expire after January 1, 2023, the owner or operator to submit a Part A and Part B application for a permit renewal at least 2 years before the fixed term of the permit expires.

19) Requires a permittee to submit a renewal application by these deadlines instead of the permit expiration date in order to be deemed extended until it is approved or denied.

20) Requires DTSC, no later than 90 days after receiving an application for a hazardous waste facilities permit, to post on its internet website a timeline with the estimated dates of key milestones in the application review process, to note on its internet website that these dates are estimates, and to update the dates as needed.

21) Requires DTSC, under specified circumstances, to request an owner or operator of a hazardous waste facility to submit to the department for review

and approval a written cost estimate to cover activities associated with a corrective action based on available data, history of releases, and site activities, as specified. Requires the owner or operator to submit the corrective action cost estimate within 60 days of the department's request. Requires the owner or operator, within 90 days of the approval of the imposition of a corrective action cost estimate, as specified, to fund the cost estimate or enter into a schedule of compliance for assurances of financial responsibility for completing the corrective action.

22) Repeals the provision making implementation of the Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration Act of 1985 contingent upon, and limited to, the availability of funding on January 1, 2023.

23) Repeals the provision making implementation of the Pollution Prevention and Hazardous Waste Source Reduction and Management Review Act contingent upon, and limited to, the availability of funding on January 1, 2023.

Background

1) 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.

2) 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, providing public involvement on issues related to permitted facilities.

3) 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, which involve review of submitted data and reports as well as physical observation, testing, and evaluation of regulated facilities; and targeted compliance inspections, which 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 to inform those decisions.

4) *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.

5) *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. Additionally, DTSC ensures that the state meets the federal requirements that California pay 10 percent of cleanup costs for federal Superfund sites and 100 percent of the operation and maintenance costs after cleanup is complete. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state laws also authorize DTSC to recover costs and expenses it incurs in carrying out these activities.

6) *Recent criticism of DTSC.* Over the past decade or so, DTSC has received complaints from the public about its permitting program and held meetings with the public, the regulated community, and stakeholders to identify and understand concerns about its permitting program. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or have numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years

beyond the expiration date of their permit, as well as the costs associated with processing a permit.

Currently, the only time the public is involved in the permit process is when there is a draft permit decision released by DTSC. If a permit application takes 10 years to review, that means it could have been 20 years since the public has been provided information about the permit for the hazardous waste facility in their community. For example, the permit for the facility Phibro-Tech located in Santa Fe Springs was issued in 1991 and expired in 1996, a permit decision has not yet been made, and the last public meeting regarding the permit was over 23 years ago.

7) *Legislative Oversight.* Specific incidents across California have exposed and continue to expose glaring failings in DTSC's implementation of its core programs as well as its support programs. The mishandling of the hazardous waste facility permitting and enforcement of the Exide and the Quemetco battery recycling facilities; neglected cost recovery efforts for cleanups across the state leading to an accumulation of 1,661 projects totaling almost $194 million in uncollected cleanup costs dating back 26 years; a growing backlog of applications to renew hazardous waste permits; delayed site remediation; failed public participation and transparency activities; and, personnel issues have all led to decreased stakeholder confidence and public trust in DTSC's ability to meet its mandate to protect public health and the environment.

Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the budget and policy committees have evaluated the following four main areas: (1) reviewing and monitoring the department's strategic plan and reorganization; (2) auditing cost recovery at the department; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at the department.

Numerous statutory changes have been made to clarify and strengthen DTSC's statutes to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain.

8) *DTSC Independent Review Panel (IRP).* In 2015, the Legislature passed and the Governor signed SB 83 (Budget Committee, Chapter 24, Statutes of 2015), which established within DTSC a three-member IRP to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. The statute stipulates that IRP membership shall be comprised of a community representative, a person with scientific experience related to toxic materials, and a local government management expert. Pursuant to SB 83, the IRP was authorized until January 1, 2018. Over the course of its term, the IRP conducted 24 public meetings and released 11 progress and annual reports. On January 8, 2018 the IRP released its final report and recommendations concluding: "The Department has implemented, or is working on, most of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics. However, there is more work to be done. In the absence of the IRP, the Governor and the Legislature should consider a DTSC governing board or other structural change to enhance transparency and accountability and regularly monitor the status of the IRP-suggested recommendations and performance metrics, as well as DTSC's ongoing initiatives and decision-making."

9) *Funding sources for DTSC.* DTSC's funding comes primarily from the Hazardous Waste Control Account (HWCA) and the Toxic Substances Control Account (TSCA). HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. With the exception of the Activity Fee for Permitting, the rest of the fees were last amended in statute in 1998 or earlier. TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. Revenues from the Environmental Fee constitutes 80 percent of TSCA with the rest making up the remaining 20 percent. The Environmental Fee was established in 1989 and is subject to an annual CPI adjustment.

   Both HWCA and TSCA has been operating with a structural deficit. expenditures out of HWCA and TSCA have exceeded revenues for many years. HWCA became insolvent in fiscal year 2018-19 with a $4.8 million shortfall and a projected -$24.8 million in 2019-20 absent remedial action. The Budget Act of 2019 provided HWCA with $27.5 million in General Fund to backfill the shortfall and maintain existing operations. TSCA became insolvent in fiscal year 2019-20. The Budget Act of 2020 included $28.2 million in loans to cover the shortfall in both HSCA and TSCA.

A number of factors contribute to the operating structural deficit in both accounts. They include increasing legislative mandates, an outdated fee structure that no longer corresponds to the proportion of waste generated or disposed, increasing costs relating to the state obligated cost share for National Priority List sites, and a backlog of unresolved response costs worth approximately $194 million at over 1,600 cleanup sites over a 25-year period.

10) Governor proposal. In January, the Governor proposed, as part of his 2020-21 Budget, trailer bill language that would create a Board of Environmental Safety, generally similar to AB 995, increase fees to support current hazardous waste and cleanup activities and provide authority to the Board to raise these fees. One key difference between the two proposals is that AB 995 would require the Secretary for CalEPA to convene a task force to review the fee structure for HWCA and TSCA. AB 995 requires the Secretary to provide recommendations to the Legislature, by January 10, 2022, on how these funds could be modified to ensure they provide adequate funding to support DTSC's programs.

Another important difference relates to Board member selection and confirmation. Under the Governor's proposals, all five board members would be appointed by the Governor without making them subject to Senate confirmation. This provision could make the Board less likely to reflect the Legislature's priorities. AB 995, on the other hand, allows for the Senate and Assembly to each appoint one member, and requires the Governor's three appointees to be subject to Senate confirmation.

Lastly, unlike the Governor's proposed trailer bill, AB 995 would also make a number of statutory changes to deadlines within the permitting process to ensure timely response by both the permit applicants and DTSC, and would make improvements to the department's financial assurances requirements. While Budget actions were taken in June, action on the trailer bill was delayed until August.

11) Legislative Analyst's Office (LAO) Comments: According to the LAO's 2020-21 Budget Report on Resources and Environmental Protection, released on February 25, 2020:

> *"Concept of Establishing a Board Has Merit.* A board that holds regular public meetings could improve transparency and allow the public and stakeholders a regular venue to raise issues and discuss their concerns. The

board structure could also help to promote greater accountability by requiring the DTSC director to regularly report on the department's progress towards meeting outcome goals."

"Board Could make DTSC's Programs More Effective. Some elements of the proposal could make DTSC's programs more effective and result in the public receiving improved services. In particular, the proposals to require that the board (1) review and approve the director's annual priorities for each program and (2) provide the Secretary of CalEPA with an annual performance review appear to be directed towards improving the department's performance."

"New Structure Would Improve Accountability. The addition of the board would result in a government structure where the Legislature and the public could more easily identify the persons responsible for managing DTSC's programs and hold them accountable. Annual goal setting, long-term goal setting, and an annual performance review of DTSC by the board would establish a public process for identifying performance issues, determining who is responsible for them, and measuring the department's progress towards addressing them. The creation of an ombudsman who would receive complaints from the public, render assistance, and make recommendations to the board and the director would increase the department's accountability by creating an additional forum for the public to voice its concerns. In addition, providing a public hearing forum to appeal departmental permit decisions could result in a more transparent appeals process."

Comments

1) *Purpose of Bill.* According to the author, "For years the Legislature has been raising a wide range of issues with the performance of DTSC including extremely long permit process times, poor enforcement, delayed site remediation, and a failure to respond to public concerns. We have made numerous legislative efforts to improve different aspects of DTSC programs, but previous administrations have either vetoed such efforts or asked the Legislature to hold-off while internal efforts to improve the function of DTSC were underway. Unfortunately, none of these internal efforts have resulted in substantial improvements in DTSC's operations, which is why I introduced AB 995.

"In addition to the programmatic problems, last year DTSC was faced with substantial structural deficit in the Hazardous Waste Control Account (HWCA)

that necessitated the appropriation of $27.5 million from the General Fund to cover their regulatory costs for just last fiscal year, HWCA also needed $19.5 million in this fiscal year. The Toxic Substances Control Account (TSCA) is also in severe structural imbalance, needing $7.7 million this year which has been negatively affecting the remediation of orphan sites throughout the state, thereby creating public health risks and preventing the reuse of those lands.

"AB 995 creates the Board of Environmental Safety a policy setting and permit appeals body that will consist of five members, make a number of statutory changes to deadlines within the permitting process to ensure timely response by both the permit applicants and DTSC, and would make improvements to the department's financial assurances requirements. Lastly, AB 995 would create a fee task force led by the Secretary of CalEPA charged with making a comprehensive evaluation of DTSC's fee structure to identify a funding structure that would provide sufficient resources for DTSC to carry out its statutory mandates.

"We strongly share the Administration's belief that programmatic improvements to DTSC will not be achieved unless and until DTSC has sufficient fiscal resources to achieve its statutory mandates. But at the same time the legislature must be able to anticipate improved performance by the department with sufficient funding.

"The current poor condition of DTSC will continue to put disadvantaged communities in danger. Many of these communities are similar to those that lack safe and affordable drinking water, which is why we believe we share a common goal of protecting these communities for this generation and the next. DTSC must be reformed if we want to properly care for our most vulnerable populations that have been exposed to toxics from decades. If we are going to truly start to address the systemic racism in our systems, we need to take action now to fix a department that's in charge of protecting the public's health, especially those in low income communities of color where we are most likely to be over burdened with these toxics. DTSC's inefficiencies and the inability to address this is cutting black and brown and poor people's life's short in addition to making us live with chronic diseases. We optimistically hope that the Administration will look to AB 995 as we continue to negotiate and will work together along with stakeholders to fully reshape this entity into one that can oversee the management of hazardous waste in the state in a transparent manner that is fully protective of communities and public health."

2) *Worthy Proposal.* Effective regulation of hazardous waste is essential for the protection of public health and the environment. Over the last several years, there has been a number of internal and external efforts to improve DTSC's ability to adequately meet its core mission and statutory mandates. Despite these efforts, the Department continues not to meet public expectations, especially in regards to clean-up and permitting activities.

   The establishment of a Board could provide strategic guidance for DTSC, which the IRP found to be lacking and a board structure would bring some transparency to DTSC's decision-making process. Holding public meetings to discuss regulatory work, the status of cleanup sites, or why a permit decision has been delayed for a decade or longer will at least provide stakeholders with access to information they otherwise would not have.

   DTSC's difficulties are a result of multiple factors, though undoubtedly a major factor is the shortage of funding in both HWCA and TSCA. The fees that feed into these funds have not been adjusted for over 20 years and do not reflect significant program expansions and new mandates. Both HWCA and TSCA are in need of funding from the General Fund in order to backfill the deficit. Absent any changes, both accounts will continue to need funding from the General Fund to stay balanced. However, by doing so, the state would continue to subsidize fee payers with taxpayer dollars.

   While the Administration's proposal is well-intended, the proposal falls short on several fronts. The creation of a board in and of itself is not going to resolve the many longstanding operational shortfalls at DTSC. Without making changes to some of the programmatic controls contemplated in AB 995, the creation of a Board would not resolve the permit backlogs nor the deficient financial assurances currently in place.

   Smartly, AB 995 proposes several additional elements that distinguish it from the Administration's proposal: it creates a fee taskforce in order to evaluate the appropriate fee structure at DTSC, including ensuring adequate funding for the programs that protect consumers from potentially harmful chemicals in products; proposes statutory changes to improve and speed up the permitting process; ensures the proper financial assurances are in place; and re-establishes the Pollution Prevention Program.

   The Committee may wish to support this reasonable, well-thought through, and needed proposal.

3) *Board Appointment Provisions*. As noted earlier, one of the key differences between this bill and the Governor's proposed trailer bill relates to Board member selection and confirmation. Under the Governor's proposals, all five board members would be appointed by the Governor without making them subject to Senate confirmation. AB 995, on the other hand, allows for the Senate and Assembly to each appoint one member, and requires the Governor's three appointees to be subject to Senate confirmation.

   As the author continues negotiations with the Administration on marrying these proposals, *the Committee may wish to direct the author to ensure that the Legislative appointments are retained, Senate Committee, Budget, and leadership staff continue to be included in discussions, and also consider adding further clarity to the Board appointments as follows:*

   a. *Specify which category of appointee the Senate and the Assembly should have and consider a rotation of these categories;*
   b. *Clarify whether the Senate is to fill a vacancy left by the Governor and the Speaker, or just the Governor's vacancy; and*
   c. *Identify which category of appointment shall get the shorter initial term.*

Related/Prior Legislation

AB 2094 (Kalra, 2018). Would have required DTSC to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters. This bill was held in the Senate Appropriations Committee.

AB 2345 (Reyes, 2018). As it was heard before the ESTM Committee, would have made statutory changes to improve the process for the permitting of hazardous waste facilities. This bill was later amended to require the California Energy Commission to require each large electrical corporation to establish a tariff or tariffs that provide for bill credits for electricity generated by eligible renewable generating facilities and exported to the electrical grid. This bill was held in Senate the Rules Committee.

AB 2606 (Fong). Would have required DTSC to process a hazardous waste facility renewal permit in an expedited manner if DTSC determines certain conditions apply. This bill was held in the Senate Appropriations Committee.

AB 248 (Reyes, 2017). Would have made statutory changes to improve the permitting process for hazardous waste facilities. This bill was vetoed by the Governor.

AB 1179 (Kalra, 2017). Would have required DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and for hazardous waste generators and transporters. This bill was vetoed by the Governor.

SB 774 (Leyva, 2017). As it was heard before the ESTM Committee, would have created the California Toxic Substances Board within DTSC to provide oversight of California's hazardous waste management and the remediation of contaminated sites. This bill was later amended to require the California State University Trustees to oversee a competitive process to award funds to the Wildland and Wildland Urban Interface Wildfire Research Grant Program and appropriate $5 million from the General Fund to the Trustees in order to oversee the program. This bill was vetoed by the Governor.

SB 812 (De León, 2014). Would have modified the permitting process and public participation requirements for hazardous waste facilities. Would have established a Bureau of Internal Affairs to oversee DTSC and investigate departmental misconduct and a DTSC Citizen Oversight Committee to receive and review allegations of misconduct. This bill was vetoed by the Governor.

SOURCE: Author

SUPPORT:

Breast Cancer Prevention Partners
California Environmental Justice Alliance.
California League of Conservation Voters
Californians Against Waste
Center on Race, Poverty & the Environment
Clean Water Action
Natural Resources Defense Council

OPPOSITION:

California Resource Management Association

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1672		
Author:	Bloom		
Version:	7/9/20	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Solid waste: premoistened nonwoven disposable wipes

DIGEST: Requires labels indicating that a product should not be flushed on specified nonwoven disposable products and establishes enforcement provisions and a consumer education and outreach program.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow.

ANALYSIS:

Existing law:

Under federal guidelines:

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

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

Under state law:

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

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

This bill:

1) Defines "covered product" as a premoistened nonwoven disposable wipe marketed as a baby or diapering wipe or composed of petrochemical-derived fibers and is likely to be used in a bathroom and with significant potential to be flushed, including baby wipes, bathroom cleaning wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting wipes, hand sanitizing wipes, antibacterial wipes, facial and makeup removal wipes, general purpose cleaning wipes, personal care wipes for use on the body, feminine hygiene wipes, adult incontinence wipes, adult hygiene wipes, and body cleansing wipes.

2) Defines "covered entity" as the manufacturer of a covered product that is sold or offered for sale in the state, including a wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a specified, covered product.

3) Commencing January 1, 2022, except as provided, requires certain nonwoven disposable wipes to be labeled clearly and conspicuously to communicate that they should not be flushed, and prescribes specified "Do Not Flush" symbols, size, and location requirements for the label.

4) Prohibits a covered entity from making a representation about the flushable attributes, benefits, performance, or efficacy of those premoistened nonwoven disposable wipes, as provided.

5) Establishes enforcement provisions, including authorizing a civil penalty not to exceed $2,500, up to a maximum of $100,000 per violation. Requires the court, in assessing the amount of a civil penalty, to consider all of the following:

   a) The nature, circumstances, extent, and gravity of the violation;
   b) The violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment;
   c) The violator's ability to pay the proposed penalty;
   d) The effect that the proposed penalty would have on the violator and the community as a whole;
   e) Whether the violator took good faith measures to comply with this part and when these measures were taken;
   f) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and
   g) Any other factor that justice may require.

6) Provides that enforcement actions may be brought by the Attorney General, by a district attorney, by a city attorney, a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

7) Stipulates that these provisions supersede and preempt all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the labeling of covered products.

8) Establishes a consumer education and outreach program as specified, including requiring covered entities to:

   a) Collaborate with wastewater agencies for the purpose of gaining understanding of consumer behavior regarding the flushing of covered products as a key input into the design of a consumer education and outreach program;

   b) Conduct a consumer opinion survey to identify baseline consumer behavior and awareness regarding the flushing or other disposal of covered products;

   c) Conduct a comprehensive multi-media education and outreach program in the state, including promoting consumer awareness and understanding of and compliance with the Do Not Flush symbol and providing education and outreach in Spanish and English.

d) Report to the Senate Committee on Environmental Quality, the Assembly Committee on Environmental Safety and Toxic Materials Committee, and the State Water Board on their activities on an annual basis.

9) Specifies that the education and outreach program shall conclude on December 31, 2025.

Background

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

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

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

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

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

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

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

4) *The Cost of Wipes.* It is estimated that North American businesses and households spent some $2.5 billion on personal wipes in 2019. There are no reliable statistics about how many wipes are flushed down toilets, but there are hundreds of reports each year of clogged household plumbing and costly damage to public sewer systems and treatment plants caused by wipes when they are flushed. In 2019, the National Association of Clean Water Agencies (NACWA) conducted a nationwide study of the costs of wipes. NACWA estimates that wipes result in about $441 million a year in additional operating costs at US clean water utilities. The study estimates that the cost of wipes in California cities with collection systems is over $47 million a year. Individual utilities in California pay on average about $100,000 a year in additional operating costs because of wipes. Individual O&M associated with wipes cost the average individual in California about $1.85 a year, although that figure varies considerably from city to city, with people in the highest cost city paying $21.39 a year.

5) *Increase in SSOs Due to Wipes.* In the last decade, while annual non-wipes related SSO's have gone down by 56%, spills related to wet wipes have increased by 35%. Specifically, according to the California Association of Sanitation Agencies (CASA), in the last decade, wet wipes have been identified in 3,097 sanitary sewer overflows resulting in 5.9 million gallons spilled. Of these, 623 were Category 1 spills for which over 3.5 million gallons reached surface waters. With approximately 43,000 spills reported over the last decade, wet wipes were identified in 7% of incidences. There has been a Category 1 spill every week over the last decade in which wet wipes were identified.

   In this year alone, wet wipes have been identified in 145 sanitary sewer overflows resulting in over 45,000 gallons spilled. Of these, 22 were Category 1

spills for which over 15,000 gallons reached surface waters. With 1,300 total spills reported thus far this year, wet wipes were identified in 11% of incidences. This represents a 53% increase in the amount of spills related to wet-wipes compared to the average over the last decade.

6) *State Water Board Advisory regarding Flushing Wipes and COVID-19.* In March, the Water Board issued an advisory, warning the public not to flush disinfecting wipes down the toilet:

> *"Flushing wipes, paper towels and similar products down toilets will clog sewers and cause backups and overflows at wastewater treatment facilities, creating an additional public health risk in the midst of the coronavirus pandemic. Even wipes labeled "flushable" will clog pipes and interfere with sewage collection and treatment throughout the state.*
>
> *"Wastewater treatment facilities around the state already are reporting issues with their sewer management collection systems. These facilities are asking state residents to not discard wipes in the toilet, but instead to throw them in the trash to avoid backups and overflow. A majority of urban centers are on centralized sewage collection systems depend on gravity and enough water flow to move along human waste and biodegrable toilet paper. The systems were not designed for individual nylon wipes and paper towels. The wipes do not break down like toilet paper, and therefore clog systems very quickly.*
>
> *"Wipes are among the leading causes of sewer system backups, impacting sewer system and treatment plant pumps and treatment systems. Many spills go to our lakes, rivers, and oceans where they have broad ranging impacts on public-health and the environment. Preventing sewer spills is important, especially during this COVID-19 emergency, for the protection of public health and the environment."*

Comments

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

"AB 1672 prescribes clear and consistent consumer messaging to help combat the aforementioned problems caused by improperly flushing wet wipes. Wipes that are not intended by the manufacturer to be flushable, which are mostly made with plastic materials, should be labeled clearly and conspicuously to communicate that they should not be flushed. In order to address consumer confusion, AB 1672 would define these non-flushable wipes as "covered products," and require them to be clearly labeled with the "Do Not Flush" symbol and warning notice. The bill would also require the manufacturers of these products or "covered entities" to conduct a comprehensive statewide consumer education and outreach campaign to inform the public not to flush products covered by the labeling requirement.

"Due to the COVID-19 pandemic and families being quarantined at home, there has been a significant uptick of wipes debris in California public sewer systems. The impact of people using single use disinfecting wipes to sanitize during the coronavirus outbreak, coupled with the toilet paper shortage leading to the use of non-flushable substitutes has exacerbated a problem that has plagued wastewater treatment systems for years. AB 1672 provides clear and consistent information to improve consumer understanding of how to properly dispose of single use plastic wipes."

2) *Consensus Proposal.* Prior to the 2020 two-year bill deadline in January, the author, bill sponsors, and industry representatives agreed to enter into a good faith negotiation with the intent to find agreement on amendments to address the labeling of non-flushable wipes. The process was predicated on the understanding that the bill would not move forward unless all stakeholders agreed on the final language, and in that case the industry stakeholders would join as co-sponsors of the bill. Recent amendments to the bill represent the product of these months-long, weekly negotiations – a consensus agreement to establish the strongest non-flushable wipes labeling standard in the country.

The AB 1672 working group initially met and established their joint policy objective to keep plastic wipes out of wastewater by providing clear and consistent consumer information and proceeded in developing language to meet the objective. Throughout subsequent meetings, compromise language was negotiated to define "covered products" as those most likely to be used in a bathroom and flushed, and also as those wipes that are made with plastic fibers. Based on industry best practices, the labeling requirements language requires that "Do Not Flush" labeling is visible during two key consumer interactions with the product: when the product is purchased, and each time a wipe is dispensed from the package. The enforcement provisions were

developed to mirror similar environmental policy intended to keep plastic out of wastewater and the agreement strikes a balance of significant daily and total fines to command compliance, but without being overly punitive to the point that human error has the potential to make selling products in California cost prohibitive. Finally, recognizing that education is a driver of behavior change, the stakeholders negotiated provisions requiring manufacturers of covered products to conduct statewide multimedia education and outreach activities to explain the "Do Not Flush" symbol and label notice to consumers, and to gauge the effectiveness of their campaigns with consumer surveys.

Related/Prior Legislation

None

SOURCE: California Association of Sanitation Agencies, National Stewardship Action Council, and INDA – Association of the Nonwoven Fabric Industry

SUPPORT:

Association of California Water Agencies (ACWA)
Babcock Laboratories, INC.
Bay Area Pollution Prevention Group
Burbank Sanitary District
California Association of Sanitation Agencies
California Manufacturers and Technology Association
California Special Districts Association
California State Association of Counties
California-Nevada Section, American Water Works Association
Camarillo Sanitary District
Carpinteria Sanitary District
Central Contra Costa Sanitary District
City of Camarillo
City of Glendora
City of San Carlos
City of San Diego
City of Thousand Oaks
City of Torrance
City of West Hollywood
Clean Water Action
Delta Diablo
Dublin San Ramon Services District

East Bay Municipal Utility District
Elsinore Valley Municipal Water District
Goleta Sanitary District
INDA, Association of The Nonwoven Fabric Industry
Inland Empire Utilities Agency
Irvine Ranch Water District
Kimberly-clark Corporation
Las Virgenes - Triunfo Joint Powers Authority
League of California Cities
Leucadia Wastewater District
Los Angeles County Division, League of California Cities
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
National Association of Clean Water Agencies
Northern California Recycling Association
Procter & Gamble
RecycleSmart
San Francisco Public Utilities Commission
Sanitation Districts of Los Angeles County
Sonoma County Water Agency
Stege Sanitary District
StopWaste
Town of Apple Valley
Valley Sanitary District
West County Wastewater District
Western Municipal Water District

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to INDA, "Clear communication on packaging is vital to help ensure consumers understand the proper disposal route for these products and minimize negative impacts of non-flushable products on municipal wastewater systems. Key elements of the INDA labeling Code of Practice – the language-neutral symbol and other elements – are incorporated into the labeling specifications in AB 1672 (Bloom).

"We are proud to continue our work on product stewardship and expand our voluntary labeling practices into a mandate, as set forth in AB 1672. The bill's provisions on consumer outreach and education to promote awareness, understanding of, and compliance with the Do Not Flush symbol and label notice will help ensure enhanced disposal labeling has greater impact."

-- END --

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2060		
Author:	Holden		
Version:	8/3/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Drinking water: pipes and fittings: lead content

DIGEST: This bill establishes a "lead free" performance standard for end use plumbing fixtures, requires labeling of such products, and sets an implementation schedule for compliance with the new standard.

ANALYSIS:

Existing law:

1) Prohibits, under the federal Safe Drinking Water Act (SDWA), the use of pipe, any pipe or plumbing fitting or fixture, solder, or flux that is not lead free in any public water system or facility providing drinking water. (Public Law 116–92 §1417)

2) Prohibits the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not "lead free" in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption. (Health & Safety Code (HSC) § 116875(a))

3) Defines "lead free" as not containing more than 0.2 percent lead when used with respect to solder and flux and not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures. (HSC § 116875(e))

4) Requires all pipe, pipe or plumbing fittings or fixtures, solder, or flux to be certified by an independent American National Standards Institute (ANSI) accredited third party, including, but not limited to, NSF International, as being in compliance with this law. (HSC § 116875(g)(1))

5) Requires the certification described above to, at a minimum, include testing of materials in accordance with the protocols used by the Department of Toxic

Substances Control (DTSC) in implementing Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20. (HSC § 116875(g)(2)(A).

This bill:

1) Commencing January 1, 2024, additionally defines "lead free," for purposes of conveying or dispensing water for human consumption, to mean does not leach more than one microgram of lead (1 µg/L) under certain tests and meeting specified certification when used with respect to certain endpoint plumbing devices.

2) Notwithstanding that commencement date, establishes an implementation schedule by which time manufacturers must make certain percentages of product models available that comply with the new "lead free" standard:
   a) 20% of models by July 1, 2021;
   b) 40% of models by January 1, 2022;
   c) 75% of models by January 1, 2023; and
   d) 100% of models by January 1, 2024

3) Requires manufacturers to inform the State Water Resources Control Board (State Water Board) in writing, of the percentage of their product models covered by AB 2060 that comply with new standard within 30 days of each of the above dates.

4) Requires the consumer-facing packaging or labeling of such products be consistent with NSF/ANSI/CAN 61 labeling requirements to indicate compliance.

5) Authorizes the DTSC, when evaluating an endpoint device's compliance with the "lead free" requirements, to base its evaluation upon documentation provided by an American National Standards Institute (ANSI) accredited third party that has certified that the endpoint device does not leach more than one µg/L, as calculated pursuant to specified standards.

Background

1) Lead. Lead has been listed under California's Proposition 65 since 1987 as a substance that can cause reproductive damage and birth defects, and has been listed as a chemical known to cause cancer since 1992. Lead exposure and lead

poisoning are also associated with cognitive and other health impacts, especially to children, that appear irreversible. There is no level of lead that has been proven safe, either for children or for adults.

2) *Lead in water.* Concern about lead in drinking water has heightened since the Flint, Michigan water crisis, and, in fact, some of the most prevalent sources of lead in drinking water are from pipes, fixtures, and associated hardware from which the lead can leach. According to *Lead in Drinking Water and Human Blood Levels in the United States*, published by the National Center for Environmental Health in 2012, nearly all lead in users' tap water does not come from the primary water source or from the municipal treatment plant, but is a result of corrosion resulting from materials containing lead coming into contact with water after it leaves the treatment plant. Lead can enter a building's drinking water by leaching from lead service connections, from lead solder used in copper piping, and from brass fixtures.

   The amount of lead in tap water can depend on several factors, including the age and material of the pipes, concentration of lead in water delivered by the public utility, and corrosiveness of the water.

3) *Lead in plumbing.* Beginning January 1, 2010, California law (AB 1953, Chan, Chapter 853, Statutes of 2006) banned for sale and use any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not "lead free."

   That law defines "lead free" as not more than 0.2 percent lead when used with respect to solder and flux, not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures, and not more than 8 percent when used with respect to pipes and pipe fittings.

   This applies to kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking. However, service saddles, backflow preventers for non-potable services such as irrigation and industrial uses, and water distribution main gate valves that are two inches in diameter and larger are excluded.

   The federal SDWA, which defines "lead free" with the same metrics as California law, prohibits the "use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 1986, in the installation or repair of (i) any public water system; or (ii) any plumbing in a residential or non-

residential facility providing water for human consumption, that is not lead free."

4) *Standards and Certification.* To address contamination in drinking water, the United States Environmental Protection Agency (US EPA) contracted with NSF (an independent, not-for-profit organization that develops consensus national plumbing standards, and provides product inspection, testing, and certification) in 1985 to lead a consortium of public and private partners (PPP) to develop health-based product standards for products that could be used in public drinking water supplies. These standards were developed as American National Standards and subsequent iterations became known as NSF/ANSI 60, followed by NSF/ANSI/CAN 61.

   This ANSI standard limits the amount of impurities that individual products can introduce into a home's water supply for potable water contact, including lead and other metals, volatile organic chemicals, phthalates, and bisphenol A. Products covered by this standard include faucets, pipe, drinking water fountains, water meters, and water storage tanks. That standard also sets a limit of allowable lead leaching in overnight samples from end-use devices over the first three weeks of use. The leaching limit is based on a specific protocol in NSF/ANSI 61. Current law requires such covered products be certified by an independent ANSI accredited third party as being in compliance with the "lead free" standard.

5) *New National Consensus Standard.* On June 18, 2020, the national consensus standard for plumbing devices, known as NSF/ANSI/CAN 61, was revised to require, by January 1, 2024, that manufacturers of faucets and fountains that dispense drinking water meet limits five times more protective for lead leaching than the current standard (reducing the current limit of 5 µg/L to 1 µg/L). Manufacturers have the option to have their products tested and certified to the revised standard beginning in the fall of this year, after it is published. All states require plumbing devices comply NSF/ANSI/CAN 61.

   AB 2060 codifies this new lower lead leaching standard for specified faucets and establishes an earlier implementation schedule (i.e., requiring manufacturers to sell or offer for sale in California a certain percentage of certified models starting in July of 2021 and gradually increasing the percentage until full compliance is reached in 2024). While this earlier start date differs from the 3-year implementation period contemplated in NSF/ANSI/CAN 61, Plumbing Manufacturers International (PMI), the trade association for the industry, indicates that the ramp up approach in AB 2060, while aggressive, is

doable. It still provides manufacturers, third party certifiers, distributors, and retailers with enough time to get products certified and in stock in the state prior to a January 1, 2024 deadline.

A 2018 NSF International report, found that 73% of faucets submitted to NSF for certification since 2011 as "lead free" leached one µg/L or less of lead. That has been interpreted as meaning nearly two-thirds of the faucets on the market today would meet the performance standard proposed by this bill. NSF International clarifies that, "While it is true that 73 percent of the faucet models tested by NSF met a Q value of ≤ 1ug, these data do not reflect the number of faucet models that could currently be listed to this new criterion. The 527 data points reported by NSF represent over seven years of test data and likely include the same faucet model tested in different years, faucet models that are no longer in production, and faucet models tested with materials that are no longer used."

6) *Efforts to test lead in drinking water:* Given the impacts of lead on children, California has made it a priority in recent years to address lead in drinking water by testing the taps at institutions that cater to children.

In 2017, AB 746 (Gonzalez, Chapter 746, Statutes of 2017) was enacted to require community water systems that serve a schoolsite built before January 1, 2010, to test for lead in the potable faucets of the schoolsite on or before July 1, 2019. Concurrently, the State Water Resources Control Board (State Water Board) required approximately 1,200 community water systems to test the drinking water for lead at any school that requested it.

Furthermore, in 2018, the Legislature enacted AB 2370 (Holden, Chapter 676, Statutes of 2018) to require the state to test drinking water at all licensed childcare centers and recommended remediation strategies if lead is detected, including faucet replacement. Last year, Budget Act of 2019-20 included $5 million to start that testing process ahead of AB 2370 implementation given the fact lead exposure to babies and toddlers is the most critical.

Under the proposed AB 2370 sampling protocols, there is a five parts per billion (ppb) lead action level, and a requirement that all test results – with detections down to 1 ppb – be reported. (Please note that 1 ppb ≠ 1 µg/L. Both are very low thresholds for lead in drinking water, but are not the same measurement.)

7) *Results from water testing at schools:* There are approximately 9,000 K-12 schools in California serving more than six million school-age children, and

more than 600,000 California children are enrolled in 10,500 licensed child care centers.

The AB 746 testing was completed in July 2019, and the data show that approximately 18% of K-12 public school campuses found at least one faucet that dispensed lead containing more than 5 ppb lead or more. (Many schools that tested their drinking water did not test all of the drinking water fountains or faucets of potable water, so there could be a greater percentage of schools with lead contaminated drinking water.) The testing at childcare centers has not yet commenced, but there is concern the results could mirror what we are seeing at schools.

The timing of AB 2060 is relevant; when lead is found in drinking water, faucets tend to carry the majority of the blame for the lead exposure, and are also one of the easiest things to remediate. However, if a sizeable portion of the "lead free" faucets on the market are leaching lead, then any remediation at a school or childcare center to replace a faucet will be for naught.

8) *Goals to reduce lead in drinking water:* The American Academy of Pediatrics (AAP) recommends that drinking water in public schools should not exceed one µg/L lead. Specifically, the AAP is calling for state and local governments to take steps to ensure that the water lead concentrations at school water fountains do not ever exceed one µg/L.

   At an October 2019 public hearing, the State Water Board recommended a goal of reducing lead in childcare centers' drinking water to no more than 1 ppb. Members of the State Water Board did not vote to approve the health-protective lead goal during the meeting but did instruct its staff to include it in the recommendations and protocols the State Water Board will send to the Department of Social Services (DSS), which oversees licensed childcare centers and will administer the lead testing program pursuant to AB 2370.

   The State Water Board reaffirmed that 1 ppb goal in a November 2019 guidance document, *Guidance for Sampling Lead in Drinking Water at Licensed Child Day Care Centers*. The document stated that reducing lead in drinking water is a critical step to reducing children's overall lead exposure and, although zero lead is the ideal, the State Water Board recommends DSS to adopt a goal of reducing lead in licensed childcare centers drinking water to no more than 1ppb. However, since the guidance document also said that more data was needed to determine if that goal was feasible, the Board recommended DSS adopt an Action Level of 5ppb.

Comments

1) *Purpose of Bill.* According to the author, "We all expect the water we drink to keep us healthy and not make us sick. California has progressively been working to reduce residents' exposure to lead. Yet lead is still leaching into drinking water through faucets, fixtures, and other end use plumbing devices during the curing process which can last for weeks. We can fix this by requiring all faucets/fixtures and other end-use devices to leach as little lead as possible and third party testing demonstrates that this standard can be met."

2) *Further Reducing Lead Exposure Makes Sense.* AB 2060 would effectively codify and accelerate implementation of a new national performance standard in addition to the existing content standard to require end-use devices to leach less than one μg/L helping the state in meeting its goals to reduce lead in drinking water.

   California has progressively worked to reduce residents' lead exposure. It has been a leader on reducing lead from plumbing fixtures. Environmental Defense Fund and Environmental Working Group, cosponsors of AB 2060, state that the bill continues that effort but ensures fixtures that people drink water from leach much lower amounts of lead and enables schools and childcare facilities in particular to replace problem fixtures with ones that deliver safe water.

Related/Prior Legislation

AB 2370 (Holden, Chapter 676, Statutes of 2018). Requires the state to test drinking water at all licensed childcare centers and recommended remediation strategies if lead is detected, including faucet replacement.

AB 746 (Gonzalez, Chapter 746, Statutes of 2017). Requires community water systems that serve a schoolsite built before January 1, 2010, to test for lead in the potable faucets of the schoolsite on or before July 1, 2019.

AB 1953 (Chan, Chapter 853, Statutes of 2006). Bans for sale and use any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not "lead free."

SOURCE: Environmental Working Group and Environmental Defense Fund

SUPPORT:

Alliance of Nurses for Healthy Environments
Breast Cancer Prevention Partners
California Building Industry Association
California League of Conservation Voters
California Public Interest Research Group
Calpirg
Campaign for Safe Cosmetics
Center for Environmental Health
Clean Water Action
Coalition of California Welfare Rights Organizations
East Bay Municipal Utility District
Environmental Defense Fund
Environmental Working Group
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
Gerber Plumbing Fixtures
Kohler Co.
Laufen Cz S.r.o.
Pacific Water Quality Association
Plumbing Manufacturers International
Santa Clara Valley Water District
SmartOakland Healthy Homes
T&s Brass and Bronze Works, INC.
Water Quality Association
Western Center on Law and Poverty

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to PMI, "AB 2060 provides an effective, manufacturer-specific framework and tiered, three-year timeframe to transition rapidly to protect public health by providing licensed child care centers, schools and Californians with plumbing fixture fittings that are compliant with the pending NSF 61 2020, significantly reducing the amount of lead permitted to be

released during product testing from faucets and other endpoint devices used to provide water for drinking or cooking.

"The tiered model compliance dates that will begin 6 months after enactment of AB 2060 and will conclude on January 1, 2024 will assure that all endpoint devices subject to the measure that are available for sale will be available and meet the new standard, with numerous choices for consumers. The timetable also provides manufacturers the option and incentive to place products on the market prior to the effective date to gain advantage in a competitive marketplace.

"Importantly, our wholesaler, distributor and retailer partners will have three years, until January 1, 2024, to transition their inventories to these new products."

-- END --

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2104		
Author:	Cristina Garcia		
Version:	3/4/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Lead-acid batteries: Lead-Acid Battery Recycling Facility Investigation and Cleanup Program

DIGEST: This bill revises the Lead-Acid Battery Recycling Facility Investigation and Cleanup Program (Program) to expand requirements for the Department of Toxic Substance Control (DTSC) to receive and respond to information from the public and provides additional time for DTSC to complete or renew investigations.

ANALYSIS:

Existing law:

Pursuant to the Act (Health & Safety Code (HSC) § 25215, et seq):

1) Requires, on and after April 1, 2017, until March 31, 2022, a California Battery Fee of $1 to be imposed on a person for each replacement lead-acid battery purchased from a dealer. Requires, on and after April 1, 2022, the amount of the California Battery Fee to increase to $2. (HSC § 25215.25)

2) Allows an out-of-state lead-acid battery manufacturer, not subject to the Manufacturer Battery Fee, to pay the fee on behalf of an importer and claim the associated credits to offset potential hazardous waste liability. Requires the California Department of Tax and Fee Administration (CDTFA) to report to the Legislature relating to out-of-state manufacturers who opted to pay the Manufacturer Battery fee. (HSC § 25215.3)

3) Requires, until April 1, 2022, each manufacturer to remit to the CDTFA a $1 Manufacturer Battery Fee for each lead-acid battery sold at retail to a person in California. Requires, on and after April 1, 2022, the Manufacturer Battery Fee to increase to $2. (HSC § 25215.35)

4) Requires all California Battery Fee and Manufacturer Battery Fee revenues be remitted to the CDTFA for administration of the fee and the remainder to be deposited into the Lead-Acid Battery Cleanup Fund (Fund). Moneys in the Fund shall be expended to perform cleanup, remedial action, removal,

monitoring, or other response actions to address contamination directly attributable to releases from a facility known to have been a lead-acid battery recycling facility. (HSC § 25215.5)

5) Requires DTSC to establish a LABRIC Program to identify areas of the state eligible for expenditure of moneys from the Fund. Requires proposed designations to include explanations and documentation relied upon during investigation. Requires the LABRIC program to provide public notice of an investigation or site evaluation and accept public comment. (HSC § 25215.51)

This bill:

1) Clarifies DTSC will accept comments or information from the public by 90 days after public notice of the initiation of an investigation or site evaluation.

2) Requires DTSC to review and provide written responses to any comments or information submitted by the public before completing its investigation or site evaluation.

3) Allows for a deadline extension for completion of the investigation in increments of three months, not to exceed one year, with good cause and adequate public notice.

4) Provides additional technical clarifications.

Background

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

   Children 6 years old and under are most at risk because their bodies are growing quickly. According to the Centers for Disease Control and Prevention there is no safe blood level in children. Lead is a leading environmental threat to children's health in the United States. When children are exposed to lead it has lifelong adverse effects, such as lowered IQ scores, hearing disabilities,

difficulty paying attention, hyperactivity, and disrupted postnatal growth.

2) *Lead-acid batteries*. Lead-acid batteries are rechargeable batteries made of lead plates situated in sulfuric acid within a plastic casing. They are used globally for a wide range of purposes, most commonly in vehicles like automobiles, boats, trucks, and industrial vehicles. The lead-acid battery market in the United States was valued at more than $9.9 billion in 2018, and is expected to grow with increased demand for use in electric vehicles and energy storage. The demand for lead is high and as such lead is a highly valued commodity that makes recycling highly profitable.

   The United States and California have increased regulations over smelting operations (the process through which lead is retrieved) to decrease potential environmental and public health exposures to smelting emissions and contamination. However, some smelters in California, like the Exide facility, have pollution resulting from operations prior to the air, soil and water regulations of today.

   The operation of lead-acid battery recycling facilities, or secondary lead smelters, bring with them the potential for threats to public health from lead poisoning. The recycling process includes: crushing the batteries, draining the sulfuric acid, and smelting the remaining lead material in large furnaces. The smelting process produces significant emissions and furnaces require extensive air pollution control systems to meet current air pollution control requirements. DTSC estimates that each of these older smelters emitted up to one ton of lead particles into the air each hour. The particles would land on nearby residential properties, potentially mixing with lead dust from automobile exhaust, lead based paint residues, and lead from other industrial operations.

   As a result, there is historical pollution from lead-acid battery smelters all around where they operated in California, many in vulnerable and environmentally burdened communities that needs to be cleaned up to protect the public from the known and irreparable dangers of lead.

3) *Lead-Acid Battery Recycling Act.* The LABRIC Program was established pursuant to Assembly Bill 2153 (C. Garcia, Chapter 666, Statutes of 2016), which enacted the Lead-Acid Battery Recycling Act (Act) of 2016. The Act has been subsequently amended pursuant to Assembly Bill 142 (C. Garcia, Chapter 860, Statutes of 2019).

   Beginning on or after April 1, 2017, The Act imposed a fee on a manufacturer for each lead-acid battery sold at retail to a person in California, or that is sold

to a dealer, wholesaler, distributor, or other person for retail sale in California. The Manufacturer Battery Fee and California Battery Fee on lead-acid batteries sold in the state is deposited into the Lead Acid Battery Cleanup Fund created by the Act. The Fund is a dedicated source to pay for the investigation and cleanup of the Exide battery recycling site in Vernon, California, and at other contaminated former lead-acid battery recycling sites. There was a question of whether the Act applied to secondary lead smelters. AB 142 narrowed the definition of "lead-acid battery recycling facility" to exclude any facility designed and operated for the primary purpose of recovering lead from materials other than used lead-acid batteries. The Act also provides that manufacturers paying the Manufacturer Battery Fee receive a one-time credit equal to the amount each manufacturer has paid against any future judgement of legal responsibility for a share of those cleanup costs for those manufacturers that did not also operate a lead-acid battery recycling facility in California.

4) *Exide Technologies*. The Exide Technologies (Exide) battery recycling facility in Vernon, California recycled lead from used automotive batteries and other sources. The facility could process about 25,000 automotive and industrial batteries per day, providing a source of lead for new batteries. Over the course of decades of operation, the facility polluted the soil beneath it with high levels of lead, arsenic, cadmium, and other toxic metals. It also contaminated groundwater, released battery acid onto roads, and contaminated homes and yards in surrounding communities with lead emissions. In March, 2015, Exide was forced to close the facility for good and, under a state agreement with DTSC, set aside $7.7 million in emergency funding to test homes and other structures around the facility for pollution resulting from the facility.

   Properties up to 1.3 and 1.7 miles away from the facility are impacted by Exide's lead contamination, which amounts to upwards of 10,000 properties. According to DTSC, cleaning each home costs between $68,000 and $83,000 depending on the contractor, an increase from the anticipated cost per property. DTSC has sampled 8,555 properties to-date; 90% of the properties tested have exceeded the screening level of 80 parts per million (ppm) for lead and will require remediation. As of February 2020, 1,676 properties have been cleaned up. Removing lead-contaminated soil from thousands of homes surrounding Exide could result in the most extensive cleanup of its kind in California and will be among the largest cleanup ever conducted in the nation.

   On April 20, 2016, Governor Jerry Brown signed AB 118 (Santiago, Chapter 10, Statutes of 2016) and SB 93 (De Léon, Chapter 9, Statutes of 2016), appropriating a $176.6 million loan from the General Fund (GF) to the Toxic

Substances Control Account (TSCA) to enable DTSC to test properties, schools, daycare centers, and parks in the 1.7 mile radius and remove contaminated soil at the properties that have the highest lead levels and greatest potential exposure to residents. AB 2153 authorized use of the fee revenues in the Fund to fill that gap and repay the state loan while providing an ongoing source of funds to address lead contamination from Elead-acid battery recycling facilities. AB 142 specified that the repayment of the $176.6 million GF loan or any other loan provided to DTSC to clean up the Exide remediation site will not be paid back until the cleanup of Exide and all other areas of the state contaminated by lead-acid batteries is completed. The 2018-19 Budget Act included $6.5 million for the testing and remediation of parkways. The 2019-20 Budget Act included $74.5 million for a one-time basis to accelerate the cleanup of additional properties within the 1.7 mile radius and cover the increased cost of cleanup. .

5) *DTSC evaluation of lead-acid battery recycling facility sites*: According to DTSC's first report to the Legislature in February 2018, DTSC worked with the U.S. Environmental Protection Agency Region 9 (EPA Region 9) to evaluate 39 former lead smelter sites identified from a comprehensive review of site investigation and cleanup records maintained by EPA Region 9 and DTSC. Based on an initial review, DTSC selected 18 potentially contaminated sites for more thorough assessment to determine if further actions were needed to protect public health. DTSC also evaluated areas around these sites to assess potential health impacts to schools, parks, and residential properties. Based on their assessment, DTSC prioritized four of the 18 sites for investigation and potential remedial action, and began evaluation for these sites in January 2019. Evaluation recommendations include performing sampling in the community to determine the nature and extent of contamination from the smelter facilities, and performing removal action if required. While AB 2153 requires DTSC to report to the Legislature annually on the implementation of the Act, a report has not been released since the 2018 report.

   Based on changes made through AB 142, the LABRIC Program is required to provide public notice of the initiation of an investigation or site evaluation of an area suspected to have been contaminated by a lead-acid battery recycling facility. AB 2104 sets a time limit of 90 days from the time a public notice is issued for DTSC to receive public comments and requires DTSC to respond to comments before completing an investigation. If, within two years of the public notice DTSC is unable to designate a site as contaminated from a lead-acid battery recycling facility, the public notice is considered withdrawn and the investigation is no longer authorized. AB 2104 prolongs the time that DTSC can extend this deadline from three months to up to one year in three

month intervals and provides an exception to these time limits if DTSC determines new evidence warrants renewed investigation.

DTSC developed a draft framework for the LABRIC Program presented at two public meetings in the summer of 2018 proposing to consider additional information on lead hazards in areas with contamination from lead-acid battery recycling facilities, including elevated blood lead levels in children, housing stock that contains lead-based paint, and other sources of lead emissions to enhance evaluation and prioritization. The Act requires DTSC to investigate and respond to information provided by the public that may suggest an area was not contaminated by a lead-acid battery recycling facility. AB 2104 explicitly requires DTSC to investigate and respond to information from the public suggesting other sources may be responsible for the lead contamination.

The author is currently in discussion with DTSC regarding some additional amendments to address changes to the Act made by AB 142 which narrowed the use of the Fund. The author has agreed to involve Committee staff in those discussions as the bill moves forward.

Comments

1) *Purpose of Bill.* According to the author, "AB 2153 (Chapter 666, Statutes of 2016) was signed in to law by Governor Brown. This law reallocates a fee already imposed on all car batteries to fund the cleanup of contamination caused by lead acid batteries throughout the state. At the point of sale, $1 from the consumers' deposit will go to the cleanup fund. Manufacturers will also pay a $1 fee on all batteries sold in the state. On April 1, 2022 the Consumer fee will go up to $2, and the Manufacture fee will sunset.

"AB 142 (Chapter 860, Statutes of 2019) was signed in to law by Governor Newsom. This measure removed the April 1, 2022 sunset from the manufacturer battery fee, and increased the manufacturer battery fee from $1 to $2 to match the consumer fee. This will help bring relief to these affected communities and ensure funding solutions to a major long-term problem.

"Since the bill was signed in to law the Department of Toxic Substance Control (DTSC) has been working on regulations to implement the testing and cleanup of possible sites and technical problems have been identified."

Related/Prior Legislation

AB 2677 (Santiago) creates a community liaison position in the California Environmental Protection Agency to conduct community outreach and disseminate information relating to cleanup of the lead contamination in the areas surrounding Exide. This bill was held in Assembly Environmental Safety and Toxic Materials Committee.

AB 142 (C. Garcia, Chapter 860, Statutes of 2019) amended the Act to increase the Fee to $2 and made other changes to the Act.

AB 1462 (Santiago, 2019) would have transferred $100 million from the GF to TSCA and appropriated the funds to DTSC for activities related to accelerating the investigation and cleanup of Exide. The bill was held on suspense in the Assembly Appropriations Committee.

AB 1663 (C. Garcia, 2017) would have amended the Act to clarify provisions related to an out-of-state lead-acid battery manufacturer's financial responsibilities. The bill was later amended with unrelated content.

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

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2287		
Author:	Eggman and Ting		
Version:	6/25/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Solid waste

DIGEST: Authorizes the use of agricultural mulch film plastic labeled "soil degradable" if it meets specified standards. Makes related clarifying and technical changes to the law relating to biodegradable and compostable labeling. Gives the Statewide Commission on Recycling Markets and Curbside Recycling an additional six months to make certain market development policy recommendations and to identify recyclable or compostable products.

ANALYSIS:

Existing law:

1) Finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products (Public Resources Code (PRC) §42355.5).

2) Prohibits the sale of a plastic product that is labeled with the term "compostable," "home compostable," or "marine degradable," unless the product meets certain American Society for Testing and Materials (ASTM) standard specification, the Vicotte OK compost HOME certification, or a standard adopted by the Department of Resources Recycling and Recovery (CalRecycle) (PRC §§42356.2, 42357).

3) Prohibits the sale of a plastic product that is labeled as "biodegradable," "degradable," "decomposable," or implies that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment, except as specified (PRC §42357).

4) Authorizes CalRecycle to review a new standard developed by ASTM or any other organization for labels "compostable" or "marine degradable" and to make recommendations to the Legislature if CalRecycle determines the new

standard is more protective of public health, public safety, and the environment, and consistent with state policies (PRC §42356.1).

5) Requires a manufacturer or supplier to provide a person, upon request and within 90 days of the request, easily understandable and scientifically accurate documentation of compliance with the requirements above (PRC §42357).

6) Defines "plastic product" as a product made of plastic, alone or in combination with other material (PRC §42356).

7) Imposes a civil liability of $500 for the first violation of the statutes related to marketing of plastic products, $1,000 for the second violation, and $2,000 for the third and any subsequent violation (PRC §42358).

8) Requires CalRecycle to, by July 1, 2020, convene a Statewide Commission on Recycling Markets and Curbside Recycling, and, by January 1, 2021, to issue policy recommendations to achieve market development goals and identify products that are recyclable or compostable (PRC §42005.5).

This bill:

1) Revises and renames the "OK home compost" definition to the "OK compost HOME certification" to demonstrate conformity with the TUV Austria certification.

2) Removes references to "marine degradable" plastic.

3) Authorizes the director of CalRecycle to issue guidelines for determining whether a plastic product is not compliant with the labeling requirements for compostable plastic, and whether a plastic product is designed, pigmented, or advertised in a manner that is misleading to consumers.

4) Authorizes CalRecycle to adopt the European Committee for Standardization's standard specification 17033:2018, *Plastics – Biodegradable mulch films for use in agriculture and horticulture – Requirements and test methods*; or may adopt a standard that is equivalent to, or more stringent than, the European Committee's standard.

    a) Authorizes a person to sell commercial agricultural mulch film labeled with the term "soil biodegradable" if CalRecycle has adopted the standard specification and if it meets that standard.

b) Defines "agricultural mulch film" as film plastic that is used only as a technical tool in commercial farming applications.

5) Gives the Statewide Commission on Recycling Markets and Curbside Recycling an additional six months to make the policy recommendations and identify recyclable or compostable products. Requires the commission to provide an opportunity for public review and comment.

Background

1) *Managing agricultural mulch film.* Plastic mulch film, generally made of polyethylene, is widely used for crop production because it controls weeds, conserves soil moisture, increases soil temperature, increases crop yield and quality, has a relatively low cost, and is readily available. Polyethylene mulch film is made of non-renewable, petroleum-based feedstock, and the operational lifetime usually spans one growing season prior to disposal.

Once the plastic mulch film has fulfilled its purpose in the field, end-of-life options include landfill disposal, on-site burning, or recycling – none of which are optimally environmentally-friendly. For example, recycling is only available on a very small scale as it can be limited by the contamination of the plastic after field use, the lack of specialized baling equipment, and distance to a recycling facility. Used agricultural mulch film can contain pesticides, herbicides or fertilizers and has to be properly cleaned in order to prevent contamination of the recycling stream, which requires large amounts of water.

Disposal of plastic mulch also raises concerns; in a 2008 report on agricultural plastic, CalRecycle found that over 55,500 tons of agricultural mulch film is disposed (i.e., landfilled or burned) in California annually. Landfill disposal is costly and takes up limited landfill capacity and runs contrary to the state's 75% recycling goal. On-site burning of plastic mulch film is harmful to air quality. Ideally, plastic products would be recycled. However, due to the available end-of-life options for the vast sheets of dirty, contaminated plastic and the burdensome, resource-intensive nature of recycling this material, it seems prudent to allow a narrow exception to the biodegradable labeling prohibition in this case if CalRecycle adopts a standard that ensures the material will safely decompose into the soil in a relatively short time period.

Biodegradable agricultural mulch film is designed to be incorporated into the soil after the growing season, which eliminates the need for other disposal options.

2) *Biodegradable and compostable plastic standards*. ASTM has developed standards for plastics designed to be composted in industrial compost facilities (D6400) and for paper and other products coated in plastic or other polymers designed to be composted in industrial compost facilities (D6868). ASTM began development of a marine degradable standard, but it was withdrawn, which means the standard has been "discontinued by the ASTM Sponsoring Committee responsible for the standard. A standard may be withdrawn with or without replacement." There is no current standard for marine degradable plastic.

   The European Committee for Standardization has adopted numerous standard specifications for plastics. In January 2018, it adopted EN 17033:2018, which applies to all European Union countries and Macedonia, Norway, Sweden, Switzerland, Serbia, Turkey, and the United Kingdom. This standard regulates the requirements for biodegradable plastic mulch films: their composition, biodegradability in soil, effect on the soil environment (i.e., ecotoxicity), mechanical and optical properties, and the test procedures for each of the listed categories. It is the only internationally-recognized standard for agricultural mulch films.

3) *Statewide Commission on Recycling Markets and Curbside Recycling (Commission)*. For three decades, CalRecycle has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through the Integrated Waste Management Authority (IWMA). Under IWMA, the state has established a statewide 75 percent source reduction, recycling, and composting goal by 2020 and over the years the Legislature has enacted various laws relating to increasing the amount of waste that is diverted from landfills. According to CalRecycle's *State of Disposal and Recycling in California 2017 Update*, 42.7 million tons of material were disposed of into landfills in 2016.

   An estimated 35 million tons of waste are disposed of in California's landfills annually, of which 32% is compostable organic materials, 29% is construction and demolition debris, and 17% is paper. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro, Chapter 476, Statutes of 2011) required commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro, Chapter 727, Statutes of 2014) required

generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep it out of the landfill.

AB 1583 (Eggman, Chapter 690, Statutes of 2019) required CalRecycle to convene a Statewide Commission on Recycling Markets and Curbside Recycling and required the commission, by January 1, 2021, to issue policy recommendations to achieve market development goals for postconsumer waste material and secondary waste material and to achieve the reduction, recycling, and composting goal; and to identify products that are recyclable or compostable and regularly collected in curbside recycling programs.

Comments

1) *Purpose of Bill.* According to the author, "Plastic manufacturers have used the terms "compostable," "home compostable," or "soil biodegradable" for products that could take hundreds of years to effectively degrade or produce other negative environmental impacts. While this misuse of important terms hurts the environment, it also hurts the businesses that try to meet the standards in good faith, can encourage littering, and contaminates compost and recycling streams. This bill would allow the Director of CalRecycle to provide guidance on which products are compliant with established standards and would prevent the deceptive use of these terms if plastic products do not meet minimum requirements.

   "This bill also supports development and use of truly degradable alternatives to traditional plastics by updating [California's] existing "Truth in Environmental Advertising" law to reflect updated standards, certifications, and best practices for labeling products. It prevents the sale of products that use fraudulent claims of degradability."

2) *Removing references to "marine degradable" plastic.* The ASTM began development of a marine degradable standard, but withdrew it. There is no current standard for marine degradable plastic. AB 2287 deletes references to that term in code.

3) *Adding more public participation to the Statewide Commission of Recycling Markets and Curbside Recycling (Commission).* As formed by AB 1583, the Commission consists of representatives of public agencies, private solid waste enterprises, and environmental organizations with expertise in recycling. Since AB 1583's enactment, some entities have felt that the interests represented are too narrow. To address this concern, AB 2287 requires the commission to

provide an opportunity for public review and comment before finalizing recommendations and identifications and, taking into account the additional public participation, gives the commission an additional six months to make the recommendations and identifications.

Related/Prior Legislation

SB 1383 (Hueso) of 2014 would have authorized the Director of CalRecycle to adopt a standard for plastic products that degrade in soil, as specified, and permits the sale of agricultural mulch film plastic that meets that standard. This bill was vetoed by Governor Brown, who stated that the standard for biodegradable agricultural film plastic was not yet finalized.

SB 567 (DeSaulnier), Chapter 594, Statutes of 2011, created the Plastic Products Law under the California Integrated Waste Management Act of 1989, to prohibit a plastic product from being sold that is labeled "compostable," "home compostable," or "marine biodegradable" unless the plastic meets certain ASTM standards or another standard that is subject to CalRecycle requirements.

SB 228 (DeSaulnier), Chapter 406, Statutes of 2010, required a compostable plastic bag manufacturer meeting certain standards to ensure that the compostable plastic bag is "readily and easily identifiable" (as defined in this bill) from other plastic bags, in a manner that is consistent with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims.

SB 1454 (DeSaulnier), of 2010 was similar to SB 567, but was vetoed by Governor Schwarzenegger.

AB 2071 (Karnette), Chapter 570, Statutes of 2008 set penalties for violations of the SB 1749 plastic bag requirements and the AB 2147 food and beverage container requirements.

AB 1972 (DeSaulnier), Chapter 436, Statutes of 2008, revised prohibited actions under the plastic bag, as well as the food and beverage container, requirements, while revising definitions and providing for review of changing ASTM standards.

AB 2147 (Harman), Chapter 349, Statutes of 2006, prohibited persons from selling plastic food and beverage containers labeled as "compostable," "biodegradable," "degradable," or any form of those terms, unless the containers meet certain requirements.

SB 1749 (Karnette), Chapter 619, Statutes of 2004, prohibited persons from selling a plastic bag labeled as "compostable," "biodegradable," "degradable," or any form of those terms, unless the plastic bag meets certain requirements.

AB 1023 (DeSaulnier) Chapter 143, Statutes of 2007, exempted these bags from the Plastic Trash Bag Law.

SOURCE: Biodegradable Products Institute and Californians Against Waste (co-sponsors)

SUPPORT:

American Beverage Association
American Chemistry Council
California Chapters of The Solid Waste Association of North America's Legislative Task Force
California Farm Bureau Federation
California Food Producers
California League of Conservation Voters
Californians Against Waste
City of Torrance
Household and Commercial Products Association
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Plastics Industry Association
RecycleSmart
Republic Services INC.
RethinkWaste
Sierra Club California
Surfrider Foundation
Wine Institute

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2296		
Author:	Quirk		
Version:	5/5/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

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

DIGEST: Authorizes Local Primacy Agency (LPA) counties to elect to participate in a funding stabilization program, administered by the State Water Resources Control Board (State Water Board), to fund regulatory oversight of small public drinking water systems.

ANALYSIS:

Existing law:

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

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

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

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

5) Authorizes the State Water Board to delegate primary responsibility of administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement.

Declares that the delegation shall not include community water systems serving 200 or more service connections. (HSC § 116330 et seq.)

6) Defines "small water systems," for the purposes of local primacy delegations, as community water systems except those serving 200 or more service connections, or non-community transient or non-community non-transient water systems. (California Code of Regulations (CCR) Title 22 § 64251)

7) Authorizes a public water system to request and receive from the State Water Board a reduced fee if its entire service area serves a disadvantaged community, defined as a community with a median annual household income of less than 80% of the statewide median annual household income. (CCR Title 22 § 64300(a) and 64310)

8) Establishes the Safe and Affordable Drinking Water Fund to help water systems provide an adequate and affordable supply of safe drinking water in both the near-and long-term. (HSC § 116766 et seq.)

This bill:

1) Authorizes the State Water Board to delegate *partial* responsibility for the administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement.

2) Authorizes the State Water Board to offer counties the opportunity to apply for delegation of partial or primary responsibility for the administration and enforcement of public water system compliance if a local primacy delegation agreement does not exist as of January 1, 2021.

3) Requires the State Water Board's annual evaluation of each LPA's oversight program to include deficiencies in the program and requires the evaluation be posted online. Requires an LPA to make program improvements within two years.

4) Authorizes any LPA to elect to participate in a funding stabilization program effective for the 2022-23 fiscal year and thereafter. Requires LPAs electing to participate in the funding stabilization program to apply to the State Water Board with the approval of the county board of supervisors within one year of when participation is sought.

5) Authorizes the State Water Board to approve applications for the funding stabilization program if the LPA program is in good standing and the State

Water Board has determined the LPA has a need for state fund augmentation. Requires the determination of need to be based on a finding that the local health officer does not have a sufficient fee base to fully fund oversight activities in the LPA delegation agreement.

6) Authorizes, if approved, LPA participation in the funding stabilization program to continue annually until the LPA terminates participation or the State Water Board terminates participation because it determines the LPA is no longer in compliance with its delegation agreement or no longer needs state funding augmentation.

7) Authorizes the State Water Board to provide funds for the funding stabilization program through a grant, contract, or other expenditure.

8) Requires LPAs to remit all penalties, fines, and reimbursement of costs to the State Water Board for deposit into the Safe Drinking Water Account.

9) Requires the State Water Board under the funding stabilization program to provide funding to the LPA for each year of costs incurred for activities set forth in the LPA work plan, including inspection, monitoring, surveillance, water quality evaluations, and enforcement, approved by the State Water Board. Prohibits an LPA from charging or collecting any additional fees from public water systems.

10) Requires the State Water Board to adopt policies, guidelines, or procedures for the preparation of the LPA work plan and the terms of payment for work done by the LPA.

11) Requires the LPA to maintain accurate accounting records of all costs incurred associated with the activities described in the LPA delegation agreement, and to periodically make them available to the State Water Board.

12) Requires a participating LPA to identify small water systems in their jurisdiction that may be suitable for consolidation based on the size, compliance history, location, and its technical, management, and financial resources, and report an identified small water system to the State Water Board at least annually.

Background

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

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

   The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures; (2) inspection of water systems; (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards; and, (4) assuring notification is provided to consumers when standards are not being met. These regulatory responsibilities are the same, whether the water system is overseen by the State Water Board or an LPA.

   Under LPA delegation agreements, the State Water Board reviews the performance of each LPA annually and makes recommendations for program improvement, to be completed by the LPA in a "reasonable amount of time." In order to provide additional oversight of LPAs, AB 2296 would require the State Water Board to include program deficiencies in their evaluation, post the evaluation online, and require LPAs to make program improvements within two years. The State Water Board has the authority to revoke an LPA's delegation agreement if the LPA fails to make needed improvements.

2) *State Water Board regulatory fees for public water systems.* The State Water Board establishes regulatory fees, paid annually by public water systems

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

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

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

4) *Challenges in regulating water systems in LPAs*. According to the 2015 Safe Drinking Water Plan, several challenges face LPAs seeking to continue the delegation of primacy including, "(1) the increasing number and complexity of drinking water standards and regulations; (2) the technical expertise required to operate water treatment facilities; (3) the amount of time and resources required to carry out enforcement actions; and, (4) complex compliance issues, such as regional nitrate and arsenic problems that disproportionately impact small water systems. The problem with this funding structure is that the greatest need for oversight is among those smaller PWS serving less than 1,000 service connections, but the fees to cover this activity are insufficient. As a result, it has been a struggle to maintain a program that provides sufficient oversight of smaller PWS. In recent years, more LPAs have returned the small PWS regulatory oversight program because their funding is inadequate to effectively administer the program."

Several LPAs have had difficulty administering their oversight programs. From 2007-2014, six counties have returned oversight authority back to the State Water Board: Fresno (2007), Marin (2010), Tuolumne (2010), San Mateo (2011), Tulare (2014), and Merced (2014). In these cases, the State Water Board assumed regulatory jurisdiction for these water systems. In 2014,

the State Water Board provided one-time grant funding to the remaining LPAs to assist with data reporting, training, staffing, equipment, and other drinking water related items.

In their 2015 Safe Drinking Water Plan, the State Water Board recommended the Legislature implement a funding strategy to address the need for more oversight and technical assistance to small PWS, especially those serving disadvantaged communities.

5) *Drinking water violations in small water systems.* In November 2018 the Public Policy Institute of California (PPIC) reported in California's Waters, "According to state data, in July 2018 more than 230 systems, serving roughly 357,000 people (0.9% of the population), had unsafe drinking water. More than 400 schools have their own water systems, and 33 of them (serving 13,000 people) were also out of compliance." According to the US EPA's ECHO portal, of the 190 systems with violations for three or more years, 94% are small community water systems, serving fewer than 3,300 people; 77% serve fewer than 500 people.

   The State Water Board estimates that one million Californians in more than 300 communities lack access to safe drinking water because of contamination in smaller poorly maintained older water systems in disadvantaged communities (State Water Board, Safe and Affordable Drinking Water Fund Fact Sheet, 2019). To ensure that disadvantaged communities could afford drinking water oversight, in 2017, the State Water Board limited its own oversight fees to $100 per system (for systems with greater than 100 connections, an additional graduated flat fee per service connection greater than 100 applies).

6) *The Safe and Affordable Drinking Water Fund.* SB 200 (Monning, Chapter 120, Statutes of 2019) established the Safe and Affordable Drinking Water (SADW) Fund to address longstanding issues with water supply, infrastructure, and operations. The fund provides $130 million annually for the State Water Board to support operations and maintenance for small community water systems unable to meet safe drinking water standards. The State Water Board adopted a resolution in August 2019 to issue grants and contracts for funding appropriated in the Fiscal Year 2019-20 Budget. In December 2019, the Advisory Group was formed pursuant to SB 200 to help identify needs and designate spending priorities for the SADW Fund.

7) *Consolidation of water systems.* According to the US EPA, restructuring can be an effective means to help small water systems achieve and maintain

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

SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system to consolidate with, or receive an extension of service from, a compliant public water system. While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate. As of summer 2018, there were 13 mandatory consolidations. Voluntary consolidations have also increased, numbering 72 by summer 2018.

Under AB 2296, an LPA participating in the funding stabilization program would be required to identify small water systems under the LPA's jurisdiction that may be suitable for consolidation and report the identified small water systems to the State Water Board at least annually and work with the State Water Board to consolidate the systems.

Comments

1) *Purpose of Bill.* According to the author, "California recognizes that all individuals have a human right to safe, clean, affordable, and accessible water, including disadvantaged groups and communities in rural areas. The State seeks to protect these rights by enforcing the Safe Drinking Water Act. LPA delegation agreements help ensure that small water systems deliver adequate and safe drinking water. Compared to larger systems, small water systems often require more resources per consumer to ensure compliance with state requirements, but also generate less regulatory fee revenue. However, increasing regulatory fees to match program cost is difficult, especially when the communities served are also disadvantaged. LPAs currently regulate more than half of all public drinking water systems, but are at risk of relinquishing oversight authority to the state without a continuous source of funding. It is in

the state's interest to ensure that LPAs can continue to provide oversight to ensure that the systems they regulate deliver adequate and safe drinking water."

2) *Need for funding stabilization.* While the State Water Board has the statutory responsibility to regulate drinking water in all public water systems, it has the authority to delegate primary responsibility for the administration and enforcement of the SDWA to a county local health officer to assume such duties. As discussed earlier, this delegation to LPAs is only for small water systems serving fewer than 200 service connections and is subject to specific requirements that are contained in a Primacy Delegation Agreement with the LPA.

   The regulatory functions of LPAs over drinking water systems are the same as the State Water Board, including the issuance of permits, inspection, surveillance, and enforcement activities. LPAs are authorized to collect fees as well as recover actual costs for implementing the regulatory program.

   Due to the increasing costs and complexity of regulating small water systems, some LPAs have returned oversight to the SWRCB, because they lacked capacity to continue administering their programs. Since 2007, six counties have given up their local primacy programs. In these cases, the SWRCB has re-assumed regulatory jurisdiction for these water systems.

3) *Previous attempts at funding stabilization for small drinking water systems.* AB 402 (Quirk, 2019) would have created an opt-in program, administered by the State Water Board, to fund regulatory oversight of small public drinking water systems in LPA counties. Under AB 402, the State Water Board would have provided funding for approved LPA activities including inspection, monitoring, and enforcement, with the goal of continued local oversight of small water systems, as opposed to remitting oversight back to the State Water Board. AB 402 did not mandate LPAs to participate in the funding stabilization program, instead allowing LPA counties to decide on their own how best to fund their activities. AB 402 was held on suspense in the Senate Appropriations Committee.

   AB 2296 picks up where AB 402 left off, including additional provisions that expand potential sources for the funding stabilization program. AB 2296 provides the intent of the Legislature to consider funding sources from the General Fund, the Safe Drinking Water Account, including regulatory fees on public water systems, or other appropriate sources. LPAs would be required to remit all penalties, fines, and reimbursement of costs to the State Water Board for deposit into the Safe Drinking Water Account. AB 2296 includes

additional requirements for the State Water Board to approve an application for the funding stabilization program, providing that the board of supervisors of the LPA applicant will make a determination that the LPA has a need for state fund augmentation. The determination of need is required to be based on a finding that the local health officer does not have a sufficient fee base to fully fund the oversight activities described in the local primacy agency delegation agreement. AB 2296 also specifies the fate of the funding stabilization program if approved. The funding stabilization program would continue annually until either the LPA terminates participation or the State Water Board determines the LPA is no longer in compliance with the delegation agreement or the board of supervisors determines the LPA does not have a need for state funding augmentation.

AB 2296 attempts to resolve the challenge of funding for the oversight of small public water systems. The bill makes efficient use of resources by strengthening the existing network of local health officers and encouraging local oversight of small water systems. Offering this funding program as an option, and not a mandate, allows LPA counties to individually decide how best to fund their activities.

Related/Prior Legislation

SB 1096 (Caballero). Would authorize a water or sewer system corporation to apply to the Public Utilities Commission to consolidate their system with a public water system or state small water system. This bill was held in the Senate Energy, Utilities, and Communications Committee.

SB 1280 (Monning). Would authorize the State Water Board to order consolidation between a public water system and an at-risk water system if the State Water Board receives a petition from the water system's governing body or at least 30% of the households served by the water system. This bill was held in the Senate Environmental Quality Committee.

AB 402 (Quirk, 2019). Would have created an opt-in program, administered by the State Water Board, to fund regulatory oversight of LPA counties. This bill was held on suspense in the Senate Appropriations Committee.

SB 200 (Monning, Chapter 120, Statutes of 2019). Created the Safe and Affordable Drinking Water Fund to help water systems provide an adequate and affordable supply of safe drinking water in both the near-and long-term.

AB 386 (Aghazarian, 2003). Would have required the Department of Health Services (responsible for drinking water regulation at the time) to meet with local health officers to provide sufficient funding prior to passing or expanding any new mandates. This bill died in the Assembly Environmental Safety and Toxic Materials Committee.

SOURCE: California Association of Environmental Health Administrators

SUPPORT:

California Association of Environmental Health Administrators (CAEHA)
California Fire Chiefs Association
California State Association of Counties
County of San Luis Obispo
County of Yolo
Fire District Association of California
Health Officers Association of California
Plumas County
Rural County Representatives of California

OPPOSITION:

Howard Jarvis Taxpayers Association

ARGUMENTS IN SUPPORT: According to the California Association of Environmental Health Administrators, "AB 2296 which offers a much-needed fund stabilization option for local jurisdictions to implement their Local Primacy Agency (LPA) drinking water oversight programs. This measure has become even more important since the outbreak of COVID-19 because of the strain this pandemic has placed on all local environmental health programs and the urgent need to shore up local public environmental health resources across the board.

"AB 2296 will help to ensure that all Californians who rely on public drinking water systems – regardless of whether they live in counties whose system oversight is through the state or delegated to the county – can be assured of safe, adequate drinking water.

"If LPAs are funded at the same level as the SWCRB regulatory program, LPAs can provide equal or better programs to their small public drinking water systems and 400 DACs currently being left behind. At this stage, we believe that there is no

opposition from the affected water agencies on the bill as they have likely concluded that AB 2296 will enable local jurisdictions to remain LPAs and possibly reduce overall costs of small water system oversight."

ARGUMENTS IN OPPOSITION: According to the Howard Jarvis Taxpayer's Association, "In AB 2296, unlike last year's AB 402, it appears that the State Water Board will determine which LPA's [*sic*] have a financial need. This change may ensure lower ratepayer and General Fund costs. Unlike AB 402, this bill also allows this mandate to potentially be funded out of the General Fund. This is an appropriate solution because clean water is a matter of statewide concern and should be funded by all taxpayers.

"However, language in the bill continues to mandate that each local public water agency pay increased fees to the State Water Board. The probable result is that larger water agencies will be subsidizing this new program. Further, they will be receiving no additional benefit from these funds. The original intent of this proposal last year, authorizing the State Water Board to fund the program by assessing fees only on small water systems would have been a more appropriate nexus.

"While we appreciate the narrower focus offered by AB 2296, what happens if the State Water Board determines all the LPA's [*sic*] have a financial need? If they all participate there would be at least a $7 million cost. To fund the program the Water Board would need to increase fees by as much as 28 percent, burdening public water agencies many of whom would receive no direct benefit. Undoubtedly, costs to ratepayers will increase."

-- END --

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2323		
Author:	Friedman and Chiu		
Version:	7/1/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: exemptions

DIGEST: Expands various CEQA exemptions by modifying the exclusion of sites and authorizing, as one of the criteria for eligibility, a project be located within a very low vehicle travel area for purposes of the transit priority project exemption; by permitting projects be within a very low vehicle travel area and permitting community plans to serve as the basis for exemption of residential, mixed-use, and employment center projects near transit; and modifying the exclusion of sites from affordable agricultural housing, affordable urban housing, and urban infill housing.

ANALYSIS:

Existing law, the California Environmental Quality Act (CEQA):

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code §21000 et seq.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1)).

2) Exempts the following projects:

    a) Transit priority projects that meet certain criteria including, but not limited to, site restrictions, maximum residential units limitations, maximum project site size limitations, and being located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan (PRC §21155.1)

b) Residential projects, employment center projects, and mixed-use development projects, including any subdivision or zoning change, that are (1) within a transit priority area; (2) undertaken to implement and is consistent with a specific plan for which an EIR has been certified; and (3) consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy (SCS) or alternative planning strategy (APS) for which the California Air Resources Board (CARB) has accepted a metropolitan planning organization's determination that the SCS or APS would achieve the greenhouse gas emissions reduction targets (PRC §21155.4). Commonly known as the transit-oriented development (TOD) exemption.

c) Specified residential housing projects which meet detailed criteria established to ensure the project does not have significant effects on the environment (PRC §§21159.21 – 21159.124). These exemptions are available to:

   i) Affordable agricultural housing projects not more than 45 units on a site not more than five acres in size;

   ii) Urban affordable housing projects not more than 100 units on a site not more than five acres in size; and

   iii) Urban infill housing projects not more than 100 units on a site not more than four acres in size which is within one-half mile of a major transit stop.

This bill:

1) Expands the transit priority project exemption by modifying the project sites where a project may be located and permitting, for purposes of meeting a specific location requirement, a transit priority project to be within a very low vehicle travel area, as defined by the bill.

2) Expands the housing project, employment center project, and mixed-use development project exemption by permitting community plans, as defined, to serve as the basis for exemption of those projects near transit; and, as an alternative to being located near transit and as a basis for the exemption, authorizes a project to be located within a very low vehicle travel area.

3) Expands the specified residential housing projects for affordable agricultural housing, affordable urban housing, and urban infill housing by eliminating the exclusion of sites within the boundaries of state conservancy and otherwise modifying the projects sites where a project may be located.

4) Further expands the urban infill housing project exemption by allowing, as an alternative to the requirement that the project be within one-half mile of a major transit stop, a project to be within a very low vehicle travel area.

5) Defines "very low vehicle travel area" as either of the following:
   a) For projects that are at least two-thirds residential uses by square footage, means an area that is surrounded by or adjacent to existing residential development that generates vehicle travel per capita that is under 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.
   b) For projects that are at least two-thirds office uses by square footage, means an area that is surrounded by or adjacent to existing office development that attracts vehicle travel per employee below 85 percent of the existing vehicle miles traveled per employee for the region.

6) Requires the Office of Planning and Research (OPR) to create maps depicting these "very low vehicle travel areas" by July 1, 2021, and requires the maps to be updated at least once every four years or as necessary.

Background

1) Background on CEQA.

   a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the

proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the project because many environmental impacts of a development extend beyond the identified project boundary. Also, CEQA stipulates that the environmental impacts must be measured against existing physical conditions within the project area, not future, allowable conditions.

c) *CEQA provides hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e., alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e., the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

2) *CEQA and land use.* The adoption of general plans, specific plans, and community plans are all subject to CEQA.

a) *General plans.* The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan provides a long-term vision for the community's growth, and includes goals, policies, and maps to guide decisionmaking on zoning and particular projects. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting— must be consistent with their general plans. In this way, the general plan is a blueprint for future development.

b) *Specific plans.* Local agencies may also adopt specific plans that provide for the systematic implementation of a general plan in a particular area. Specific plans are an optional way to provide for the implementation of the general plan for all or a portion of a community. Specific plans are often appropriate for larger infill development opportunities. They allow a community to determine the mix of uses, densities and development standards that are suitable to the site or sites but that may not be applicable to the jurisdiction as a whole.

c) *Community plans.* Community plans address specific geographic areas of a city and build upon the more general citywide policies established in the general plan with policy recommendations that apply to the community and neighborhood level. Community plans provide the level of information and community-specific detail that is needed in order to review and assess proposed public and private development projects. While the community plan addresses community needs, its policies and recommendations must be consistent with the general plan, other community and resource plans, and citywide policies. Community plans also address other aspects of land use planning that are unique to their areas, such as mobility, community facilities, and urban design features and guidelines.

   The nature of a community plan depends upon the need of the community. A community plan for a developed, mature area would focus on neighborhood enhancement and commercial revitalization goals and action items; whereas a community plan for a newly developing area would focus more on new development needs, e.g. location of new public facilities and infrastructure financing.

   Most existing community plans are over 20 years old; several of the plans were adopted in the 1970's or early 1980's. Unlike general plans, community plans are not required to be updated regularly.

3) *CEQA exemptions for housing.* CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines, for housing projects. For example, any residential development project, including any subdivision, or any zoning change that is consistent with an adopted specific plan is exempt from CEQA pursuant to a statute enacted in 1984.

In 2002, SB 1925 established CEQA exemptions for certain residential projects providing affordable urban or agricultural housing, or located on an infill site within an urbanized area, and meeting specified unit and acreage criteria.

Since SB 1925, additional legislation has provided CEQA exemptions and streamlining for residential (including, but not limited to, affordable housing) and certain other projects in infill areas. SB 375 provided a CEQA exemption for a narrow set of eligible residential projects in infill areas adjacent to transit. SB 226 provided abbreviated CEQA review procedures for a broader set of urban infill projects, including retail, commercial, and public buildings. SB 743 established a new exemption for residential, mixed-use and "employment center" projects located within one-half mile of a major transit stop, if the project is consistent with an adopted specific plan and specified elements of an SB 375 strategy. SB 743 also required the Office of Planning and Research (OPR) to propose revisions to the CEQA Guidelines for transportation impacts to better support infill development.

In 2017, the Legislature passed three bills to streamline the CEQA process for affordable housing projects. SB 35 established a ministerial approval process (i.e., not subject to CEQA) for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs. SB 540 authorizes a city or county to establish a Workforce Housing Opportunity Zone (WHOZ) by preparing an EIR and by adopting a specific plan. Once a WHOZ is established, and for five years thereafter, eligible housing developments within a WHOZ must be approved within 60 days without requiring the preparation of an EIR or negative declaration under CEQA. AB 73 authorizes a city or county to create a Housing Sustainability District (HSD) to complete upfront zoning and environmental review in order to receive incentive payments for residential and mixed-use development projects with an affordable housing component. Once the city or county has prepared an EIR for the HSD, then housing projects within, and consistent with, a designated HSD are exempt from CEQA.

In 2018, AB 1804 codified an existing categorical exemption for infill projects, expanding the exemption to apply to multi-family residential and mixed-use

housing projects on infill sites in unincorporated urbanized areas or urban clusters.

Since 1978, CEQA has included statutory exemptions for housing projects. There are now 12 distinct CEQA exemptions for housing projects. Three are specific to projects with an affordable housing fraction, the rest are available to affordable and market-rate projects alike. Each exemption includes a range of conditions, including requirements for prior planning-level review, as well as limitations on the location and characteristics of the site. These conditions are intended to guard against the approval of projects with significant environmental impacts that go undisclosed and unmitigated – endangering workers, residents, and the greater environment.

However, as these exemptions have been added in bills over the past 40 years, and in particular since SB 1925 in 2002, the conditions in each bill have varied and evolved.

Comments

1) *Purpose of Bill.* According to the author, "AB 2323 is intended to help address California's housing and climate crises by ensuring that CEQA streamlining for housing projects works as intended, and that well-planned housing near transit and jobs is not delayed unnecessarily. AB 2323, in its current form and with pending amendments, aims to make the existing housing exemptions more consistent, objective and aligned with housing and climate goals."

2) *Expanding CEQA housing exemptions.* AB 2323 expands various CEQA housing project exemptions as follows:

   a) Expands the exemption for transit priority projects by:
      i) Modifying the sites excluded from the exemption to make the site exclusions more objective.
      ii) Permitting a project be within a very low vehicle travel area as an alternative to being within one-half mile of a rail transit station or ferry terminal or within one-quarter mile of a high –quality transit corridor.

   b) Expands the exemption for TOD projects by:
      i) Permitting community plans to serve as a basis for the exemption.
      ii) Permitting a project be located within a very low vehicle travel area as an alternative to the project be located near transit.

c) Expands the exemption for SB 1925 housing projects by:
   i) Modifying the sites excluded from the exemption to make the site exclusions more objective, most notably eliminating the exclusion of sites within the boundaries of a state conservancy.
   ii) Specifically for the urban infill housing exemption, permitting a project be located within a very low vehicle travel area as an alternative to the project being located within one-half mile of a major transit stop.

3) *What do we lose when we remove the environment review of CEQA?* Often groups will seek a CEQA exemption to expedite construction of a particular type of project and reduce costs. In this case, already existing, and some argue under-utilized, CEQA exemptions are expanded to increase housing production. Providing an exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts and identify ways to avoid or significantly reduce environmental damage. Environmental review includes more than just looking at the impact a project may have on a wetland or a threatened species; it looks at things such as air quality, impacts to neighboring facilities such as hospitals and schools, pressure on underlying infrastructure, and so much more, and analyzes those impacts in the context of one another.

   Often CEQA exemptions will include certain restrictions or requirements to proactively mitigate or limit a project's potential environmental impacts that would not be analyzed due to the application of an exemption. Is including such criteria an adequate substitution for environmental review and information provided under CEQA?

   "CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one." (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.)

4) *Will expanding existing exemptions through insertion of objective, more consistent standards potentially lead to overlooking important environmental factors?* The CEQA housing exemptions covered by this bill contain various site exclusions. More recent exemptions have been less restrictive, more objective, and have emphasized production of housing in urban areas near transit. Consistent with these objectives, AB 2323 proposes changes to provide consistency for site exclusions between exemptions, and providing a more

objective standard for the identification of those sites. The objective standards to those are found in recent streamlining provisions such as SB 35. However, some stakeholder groups argue that the objective environmental standards of SB 35 were temporary concessions based on the bill's 2026 sunset date and are not appropriate for the permanent exemptions covered by AB 2323.

Inserting more objective-based standards also expands the exemptions. For example, a transit priority project, under AB 2323, could be located in an area not currently permitted under the existing exemption – such as in a developed open-space area; in an area that harms a species protected by the federal Endangered Species Act of 1973, the Native Plant Protection Act, or the California Endangered Species Act; on a project site that is subject to an unusually high risk of fire or explosion from materials stored or used on nearby properties; or on a project site that presents a risk of public health exposure at levels exceeding standards established by a state or federal agency. Or, for a SB 1925 housing exemption, projects could be located within the boundaries of a state conservancy. Some may argue that such site exclusions can be subjective, making it difficult to qualify for the exemption. The standards are perceived as restrictive, defeating the purpose of the exemptions by making them effectively unusable.

However, removing them can also have some concerns. For instance - the unusually high risk of fire or explosion exclusion. Some point to the fact that other CEQA exemptions don't contain such a restriction. But is a restriction not being in other exemptions a good enough reason to take out its consideration from these exemptions? Concern has also been raised over changing a site restriction from areas that have significant value as wildlife habitat and the project does not harm certain protected species to habitats for protected species. What areas of habitat would now be eligible for development under AB 2323 that are otherwise protected under existing law?

Does the fact that it is a subjective consideration justify it being removed as a requirement for a project that is not subject to environmental review? Or are these the changes that are necessary to make the exemptions more accessible?

5) *TOD projects – Potentially relying on outdated community plans*? Unlike general plans, community plans are not required to be updated regularly and can be out of date. For example, most community plans in Sacramento County are at least 20 years old. AB 2323 would allow certain community plans to be used as the basis for qualifying for the TOD project exemption. Such community plans are those that have not been updated since at least 2009 and that, in addition to other criteria, include at least two transit priority areas and

the city or county that adopted the plan has adopted a vehicle miles traveled threshold of significance. Although the proposed expanded exemption would require that the community plan have a certified EIR, a lot can change since the time the EIR was certified, especially if the community plan is over 20 years old. The general character of a community can shift, and environmental impacts that may have been relevant 20 years ago may no longer apply. Similarly, new, unconsidered environmental impacts may have developed since the last community plan update. A project that relies on such a community plan as a basis for a CEQA exemption is only as good as the community plan itself. Does allowing local officials to rely on potentially outdated information align with the author's intent of promoting well-planned housing?

The committee may wish to amend the bill as follows:

(a) *Define "community plan," for purposes of CEQA, as part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those polices to each involved parcel.*

(b) *Require that a community plan, for purposes of qualifying for the TOD exemption, has been updated within the previous 15 years.*

6) *Defining "very low vehicle travel area."* As an alternative to the transit requirement that is found in the 3 CEQA housing exemptions covered by this bill, AB 2323 offers a different option – that a project be within a "very low vehicle travel area."

Based on type of use. The definition for "very low vehicle travel area" provides two standards depending on the type of project – residential or office. Development projects are not often characterized using the term "office," but instead referred to as "retail" or "commercial" uses. Merriam-Webster's definition of "office," *the place in which a professional person conducts business*, would encompass retail and commercial uses, however, the author may wish to consider using the term "retail" or "commercial" instead as to remain consistent with existing code references.

What if a project fits in neither category? Under the proposed definition of "very low vehicle travel area," the area that a project is to be located, for purposes of using it as a basis to qualify for an exemption, is tied to the type of project – whether it has at least two-thirds residential uses or whether it has at least two-thirds office uses. However, what if a project does not fit within either category? What if the project is 60 percent residential and 40 percent

office, which does not fit in either category? Is that project ineligible for the "very low vehicle travel area" option and must be located near transit, as otherwise required by the exemption?

Can this definition lead to sprawl? The definition of "very low vehicle travel area" includes an area that is surrounded by or adjacent to existing residential or office development. Thus, a project site can be next to an existing development on one side, and undeveloped space on the remaining sides. This can lead to sprawl.

To address these concerns, the committee may wish to amend the bill as follows:

- *Amend the definition of "very low vehicle travel area" to mean an urbanized area that meets either of the following:*
  - *For residential and mixed-use projects, an area where the existing residential development generates vehicle miles traveled per capita that is below 85% of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita.*
  - *For employment-center projects, an area where the existing office development attracts vehicle miles traveled per employee that is below 85 % of the existing vehicle miles traveled per employee that is below 85% of the existing vehicle miles traveled per employee for the region.*
- *Define "area" as a travel analysis zone, hexagon, or grid, as determined by the applicable Metropolitan Planning Organization or the Office of Planning and Research.*
- *Require OPR to maintain statewide maps depicting these areas.*
- *To avoid sprawl that could potentially result from exempting development located in "very low vehicle travel areas," amend each of the exemptions to require that a project be in a lot that has been previously developed; or a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an approved public right-of-way from, parcels that are developed with qualified urban uses.*

7) *Does adding "very low vehicle travel area" significantly expand the exemptions?*

Currently, OPR is developing a SiteCheck mapping tool, which would show, among other things, areas that would be in "very low vehicle travel area" and areas that would be within a certain proximity to a major transit stop or high-quality transit corridor. That site mapping tool is not yet available to the public.

On one hand, the application of "very low vehicle travel area" would increase the geographic areas in which certain CEQA exemptions apply. But on the other hand, using "very low vehicle travel area" also creates an incentive to build around areas that have already been developed and discourages development on greenfield sites. It would seem that the additional consideration of whether an area is a very low vehicle travel area is consistent with the Legislature's policy of encouraging smart growth.

8) *Are current exemptions too restrictive and will expanding them solve California's housing crisis?*

It has been argued that some CEQA exemptions, particularly SB 1925 exemptions, include conditions which are excessively restrictive and subjective, making the exemptions difficult to use.

A study by the Association of Environmental Professionals (AEP) seems to suggest that other exemptions are being used. In 2018, AEP surveyed 46 cities and counties throughout the state to determine CEQA's impact on housing production.[1] The survey found that 42.3 percent of housing projects in those jurisdictions were reviewed under streamlining provisions or exemptions for affordable housing, infill, and transit priority projects. Another 9.3 percent were determined to be eligible for other exemptions. The survey found that cities and counties were not fully utilizing the affordable housing exemption, but instead opting for a full EIR for projects that were eligible for the exemption. The survey respondents also indicated that, among the barriers to increased housing production in California, CEQA is not a major cause. The costs of building, lack of available sites, and lack of financing for affordable housing were all cited as primary barriers to housing production.

Thus, even if eligible for an exemption, it appears that project applicants are instead opting to go through the CEQA process. One argument is that projects applicants, and perhaps due to the uncertainty tied to some of the subjective site restrictions, would rather play it safe than sorry. Will efforts by AB 2323 to expand the exemptions and prevent the delay of housing near transit and jobs by including more objective-based standards result in project applicants utilizing the exemptions? Or do other considerations, such as level of scrutiny the project may still face from community groups or level of risk of eventually having to do an environmental review following a court proceeding anyway, play into the decision to opt for environmental review?

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[1] *CEQA's Impact on Housing Production: 2018 Survey of California's Cities and Counties.*

9) *Tracking exemptions.* The purpose of this bill is to make the covered CEQA housing exemptions less restrictive. However only the infill exemption codified in 2018, which is not subject to this bill, has a reporting requirement for when the exemption is used. It is unknown to what extent the transit priority projects exemption, TOD exemption, and SB 1925 urban infill housing project exemption are being utilized.

   To track the use of exemptions and to help the Legislature gain a better understanding of how often the exemptions are used, the committee may wish to amend the bill to require the lead agency to file a notice of exemption with OPR when one of these housing exemptions is used.

Related/Prior Legislation

SB 899 (Wiener) provides that housing is a use by right on land owned by a religious institution or nonprofit college, as specified. SB 899 has been referred to the Assembly Housing and Community Development Committee.

SB 1289 (Chang) exempts from CEQA, until January 1, 2029, residential and mixed-use development projects that meet certain requirements. SB 1289 was held in this committee.

AB 1279 (Bloom) requires residential development projects in designated high-opportunity areas be a use by right if certain requirements are met. AB 1279 is in the Senate Housing Committee.

SB 4 (McGuire, 2019) would have created a streamlined, ministerial approval process for an eligible neighborhood multifamily project or eligible transit-oriented development project located on an eligible parcel. SB 4 was held in the Senate Governance and Finance Committee.

SB 50 (Wiener, 2019) would have required a local government to grant an equitable communities incentive, which reduces specified local zoning standards in "jobs-rich" and "transit rich" areas," as defined, when a development proponent meets specified requirements, if the local government has not adopted a local flexibility plan, as specified. SB 50 would have also required a neighborhood multifamily project containing up to four dwelling units to be subject to a streamlined, ministerial approval process. SB 50 did not receive enough votes to get off of the Senate Floor.

SB 384 (Morrell, 2019) would have established expedited administrative and judicial review of environmental review and approvals granted for housing

development projects with 50 or more residential units. SB 384 was held in this committee.

SB 1340 (Glazer, 2018) would have required Judicial Council to adopt a rule of court to establish procedures requiring courts to fully adjudicate CEQA actions and proceedings, to the extent feasible, and prohibit courts from staying or enjoining challenged projects, as specified. SB 1340 was held in the Senate Judiciary Committee.

AB 73 (Chiu, Chapter 371, Statutes of 2017) exempts from CEQA, a housing project that meets specified criteria and that is in a housing sustainability district.

AB 1804 (Berman, Chapter 670, Statutes of 2018) provides a statutory exemption from CEQA for infill development residential and mixed-use housing projects within an unincorporated area of a county, as specified.

AB 1886 (McCarty, 2016), for purposes of a transit priority project meeting the requirements for abbreviated review under the Sustainable Communities Strategy provisions of CEQA, revises the definition of "transit priority project" by increasing the percentage, from 25% to 50%, of the project area that maybe farther than one-half mile from a major transit stop or high-quality transit corridor. AB 1886 was held in this committee.

SB 674 (Corbett, Chapter 549, Statutes of 2014) revised the residential infill exemption by increasing the amount of allowable neighborhood-serving goods, services, or retail uses from 15% of the total project floor area to 25% of the total building square footage.

SOURCE: Authors

SUPPORT:

350 Sacramento
American Planning Association, California Chapter
Associated Builders and Contractors Northern California Chapter
Association of Environmental Professionals
Bay Area Council
Bay Area Housing Action Coalition
Bay Area Housing Advocacy Coalition
Bridge Housing Corporation
California Apartment Association
California Association of Realtors
California Building Industry Association

California Chamber of Commerce
California Community Builders
California League of Conservation Voters
California YIMBY
Central City Association of Los Angeles
Council of Infill Builders
Greater Coachella Valley Chamber of Commerce
Habitat for Humanity California
Hollywood Chamber of Commerce
Los Angeles Business Council
Mayor Eric Garcetti, City of Los Angeles
Murrieta Wildomar Chamber of Commerce
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Peninsula for Everyone
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Rural County Representatives of California
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Housing Action Coalition
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Silicon Valley @ home
The Two Hundred
Up for Growth California
YIMBY Action

OPPOSITION:

Bay Area Transportation Working Group
City of Rancho Palos Verdes
State Building & Construction Trades Council of California
Transportation Solutions Defense and Education Fund

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2762		
Author:	Muratsuchi, et al.		
Version:	5/18/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Eric Walters		

SUBJECT: Cosmetics: safety

DIGEST: This bill, beginning January 1, 2025, prohibits the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product intentionally containing any of 24 specified chemicals, consistent with a similar prohibition enacted by the European Union (EU).

ANALYSIS:

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

Existing state law:

1) Defines, pursuant to the Sherman Act, "cosmetic" as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance. Provides that the term "cosmetic" does not include soap. Makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any cosmetic that is adulterated. Makes it unlawful for any person to adulterate any cosmetic. Makes it unlawful for any person to receive in commerce any cosmetic that is adulterated or to deliver or proffer for delivery any such cosmetic. (Health & Safety Code (HSC) § 109900)

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

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

4) Requires the Department of Toxic Substances Control (DTSC), under the State's Green Chemistry regulations, to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered a chemical of concern. (HSC § 25252) Requires DTSC to develop and maintain a list of Candidate Chemicals that exhibit a hazard trait and/or an environmental or toxicological endpoint and is either, 1) found on one or more of the statutorily specified authoritative lists, or 2) is listed by DTSC using specified criteria. (California Code of Regulations § 69502.2 (b))

This bill:

1) States that it is the intent of the Legislature to prohibit the intentional addition of specified chemical ingredients to cosmetic products, consistent with a prohibition enacted by the European Union.

2) Prohibits, beginning January 1, 2025, the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product intentionally containing the following:
   a) Dibutyl phthalate (CAS no. 84-74-2).
   b) Diethylhexyl phthalate (CAS no. 117-81-7).
   c) Formaldehyde (CAS no. 50-00-0).
   d) Paraformaldehyde (CAS no. 30525-89-4).
   e) Methylene glycol (CAS no. 463-57-0).
   f) Quaternium-15 (CAS no. 51229-78-8).
   g) Mercury (CAS no. 7439-97-6).
   h) Isobutylparaben (CAS no. 4247-02-3).
   i) Isopropylparaben (CAS no. 4191-73-5).
   j) m-Phenylenediamine and its salts (CAS no. 108-45-2).
   k) o-Phenylenediamine and its salts (CAS no. 95-54-5).
   l) The following long-chain per- and polyfluoroalkyl substances (PFAS) and their salts:
      i) Perfluorooctane sulfonate (PFOS); heptadecafluorooctane-1-sulfonic acid (CAS no. 1763-23-1).
      ii) Potassium perfluorooctanesulfonate; potassium heptadecafluorooctane-1-sulfonate (CAS no. 2795-39-3).
      iii) Diethanolamine perfluorooctane sulfonate (CAS 70225-14-8).

iv) Ammonium perfluorooctane sulfonate; ammonium heptadecafluorooctanesulfonate (CAS 29081-56-9).
v) Lithium perfluorooctane sulfonate; lithium heptadecafluorooctanesulfonate (CAS 29457-72-5).
vi) Perfluorooctanoic acid (PFOA)(CAS no. 335-67-1).
vii) Ammonium pentadecafluorooctanoate (CAS no. 3825-26-1).
viii) Nonadecafluorodecanoic acid (CAS no. 355-76-2).
ix) Ammonium nonadecafluorodecanoate (CAS no. 3108-42-7).
x) Sodium nonadecafluorodecanoate (CAS no. 3830-45-3).
xi) Perfluorononanoic acid (PFNA)(CAS no. 375-95-1).
xii) Sodium heptadecafluorononanoate (CAS no. 21049-39-8).
xiii) Ammonium perfluorononanoate (CAS no. 4149-60-4).

3) States that, should a cosmetic product contain a technically unavoidable trace quantity of any of the above chemicals due to specified sources, that product shall not be in violation of this act.

Background

1) *Cosmetic regulations affecting California today.* California has two laws governing the safety of cosmetics. The first is the Sherman Act, which is administered by CDPH to regulate cosmetics. It broadly defines a cosmetic as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance.

The other law is the California's Cosmetics Act, established by SB 484 (Migden, Chapter 729, Statutes of 2005). It requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. CDPH maintains an active, searchable database with all of the data collected from manufacturers under the Cosmetics Act. To date, 613 companies have reported 75,279 products to CDPH. CDPH does not have any enforcement authority or penalty authority over the manufacturers that are covered, so not all manufacturers are currently complying and submitting their products' information. There is no way to compel these manufacturers to comply.

Federally, under the FD&C Act, cosmetics and their ingredients are not required to be approved before they are sold to the public, and the Food and

Drug Administration (FDA) does not have the authority to require manufacturers to file health and safety data on cosmetic ingredients or to order a recall of a dangerous cosmetic product.

2) *European Union Cosmetics Directive.* The EU, which includes 28 member countries mostly across Europe, develops policies to ensure the free movement of people, goods, services, and capital within the internal market, and enacts legislation to maintain common policies to have cohesion amongst the 28 members on things from trade to agriculture.

   The EU Cosmetics Directive (Directive) was adopted in 1976 and formed on the basis of commonly agreed to safety standards relative to cosmetics. This Directive was reevaluated in 2009 and an EU-wide Cosmetics Products Regulation was enacted in July 2013.

   EU regulation No 1223/2009 on cosmetics establishes rules to be complied with by any cosmetic product made available on the market, in order to ensure the functioning of the internal market and a high level of protection of human health. The regulation defines "cosmetic product" as "any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odors." The scope of products covered under the EU's definition of cosmetics is broader than the scope of products covered under California's definition of cosmetics.

   Annex II of regulation No 1223/2009 lists the substances prohibited in cosmetic products. The intent of this bill is to be consistent with the approach of the EU's cosmetic regulation. All of the chemicals listed in AB 2762 have been fully banned in the EU under Annex II.

Comments

1) *Purpose of Bill.* According to the author, "No one knowingly wants to use face powder, lipstick, or baby shampoo contaminated with harmful ingredients. AB 2762 would clarify in statute that cosmetics containing some of the most well-known carcinogens, reproductive toxicants, and endocrine disruptors cannot be sold in the state, protecting Californians against harmful chemicals in cosmetic products they use every day."

2) *Mutually agreeable path forward.* As introduced, AB 2762 originally contained additional provisions which (1) rather than prohibiting the intentional inclusion of specified ingredients, would deem products containing them to be "adulterated", even when said chemicals were added after manufacture, (2) required implementation by 2022 (as opposed to 2025), and (3) created additional violations of the Sherman Act, which were deemed unnecessary given existing CDPH enforcement authorities. Amendments made in the Assembly removed those provisions, as well as all registered opposition to the bill.

   In its current form, AB 2762 bans chemicals with proven health harms from being included in cosmetics in California, and it does so without creating intolerable conditions for manufacturers. The committee may wish to consider supporting this measure.

Related/Prior Legislation

SB 312 (Leyva, 2020) – Is nearly identical to SB 574, albeit with an additional year before requirements are enacted on departments. SB 312 is currently before the Assembly Appropriations Committee.

AB 495 (Muratsuchi, 2019) – Amended the Sherman Act to define adulterated cosmetics as those containing certain intentionally-added ingredients, and had other specified duties for the Office of Health Hazard Assessment and CDPH. AB 495 was held in the Assembly Health Committee.

SB 574 (Leyva, 2019) – Required manufacturers of cosmetic products to report flavor and fragrance ingredients in their products that are deemed toxic according to any of a set of specified lists published by regulatory authorities, with some exceptions for trade secrets, and requires CDPH to publish the data. SB 574 was held in the Assembly Appropriations Committee.

SOURCE: Black Women for Wellness, CALPIRG, Breast Cancer Prevention Partners, California Public Interest Research Group, Campaign for Safe Cosmetics, Environmental Working Group (Co-sponsors)

SUPPORT:

100%pure
A Voice for Choice Advocacy
Alaska Community Action on Toxics

American Congress of Obstetricians & Gynecologists - District Ix
Beautycounter
Biossance
Black Women for Wellness
Breast Cancer Action
Breast Cancer Over Time
Breast Cancer Prevention Partners
California Baby
California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California League of Conservation Voters
California Product Stewardship Council
Calpirg
Center for Environmental Health
Clean Water Action
Coalition for Clean Air
Consumer Federation of California
Dignity Health
Earth Mama Organics
EcoPlum Sustainable Swag
Eighty2degrees Design Studio
Environment America
Environment California
Environmental Working Group
EO Products
Friends Committee on Legislation of California
Han Skin Care Cosmetics
Innersense Beauty
Juice Beauty
Just the Goods
Los Angeles County Sanitation Districts
National Stewardship Action Council
Natural Resources Defense Council (NRDC)
Orange County Sanitation District (OCSD)
Oz Naturals
Personal Care Products Council
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Pipette
Sanitation Districts of Los Angeles County
Science and Environmental Health Network
Seventh Generation
Seventh Generation Advisors
Sierra Club California
Skin Owl

SmartOakland.org
Sprout San Francisco
US PIRG
W.S. Badger Company
Women's Voices for The Earth

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 2920		
Author:	Obernolte		
Version:	6/29/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Hazardous waste: transportation: consolidated manifesting procedures

DIGEST: Authorizes hazardous waste generators and transporters to use consolidated manifesting procedures for retail hazardous waste, as defined, collected from retailers engaged in business in the state.

ANALYSIS:

Existing law:

1) Establishes the federal Resource Conservation and Recovery Act (RCRA) to authorize the United States Environmental Protection Agency (US EPA) to manage hazardous wastes throughout its life cycle. (42 United States Code (USC) § 6901 et seq.)

2) Establishes the Hazardous Waste Control Law (HWCL) to authorize the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

3) Under the HWCL, requires any person who generates, transports, or receives hazardous waste in California to use the Uniform Hazardous Waste Manifest. (HSC § 25160)

4) Defines "manifest" as a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by DTSC and that complies with all applicable federal and state regulations. (HSC § 25160)

5) Permits transporters and generators of hazardous waste to use consolidated manifesting procedures, as defined, to consolidate shipments of specified waste streams collected from multiple generators onto a single consolidated manifest. (HSC § 25160.2)

6) Requires anyone who submits incomplete or erroneous information on a completed manifest to correct the information and to submit a $20 fee to DTSC. (HSC § 25160.5)

7) Authorizes the US EPA to implement a national electronic manifest (e-manifest) system under the Hazardous Waste Electronic Manifest Establishment Act. (42 USC § 6939g)

8) Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system. (HSC § 25160.01)

This bill:

1) Allows retail hazardous waste generators and transporters to use consolidated manifesting procedures for retail hazardous waste, as defined, collected from retailers engaged in business in the state.

2) Defines "retail hazardous waste" as unsold consumer products in the original retail sales packaging determined by the retailer to be waste, and includes, but is not limited to, bleach and other cleaning products, pool chemicals, laundry detergent, cosmetics, personal hygiene products, nail polish, aerosol products, herbicides, and fertilizers.

3) Requires incompatible materials transported in the same transport vehicle be managed pursuant to specified provisions that govern the transportation of hazardous waste.

4) Provides that a transporter is not required to send DTSC a copy of an electronic manifest processed completely through a specified electronic manifest system.

5) Makes other minor technical changes to the consolidated manifesting code.

Background

1) *Hazardous waste management:* Hazardous waste is a waste with properties that make it potentially dangerous or harmful to human health or the environment. The Resource Conservation and Recovery Act (RCRA) is the federal statute that regulates generators, transporters, and facilities that treat, store, or dispose of hazardous wastes. In regulatory terms, a waste is hazardous if it appears on a RCRA hazardous waste list or exhibits one of the

four characteristics of a hazardous waste: ignitability, corrosivity, reactivity, or toxicity. However, materials can be hazardous wastes even if they are not specifically listed or don't exhibit any characteristic of a hazardous waste. For example, "used oil" and contaminated soil generated from a "clean up" can also be hazardous wastes. These wastes are referred to as "Non-RCRA hazardous wastes" and are also regulated as hazardous wastes in the state of California. Hazardous wastes are prohibited from being disposed of in the trash, and must be properly transported and disposed of at a permitted treatment, storage, and disposal facility (TSDF) or at a recycling facility.

The Hazardous Waste Control Law (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. 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 federally authorized facility. Under the HWCL, the generator of a waste is responsible for determining how a waste is classified and for managing it accordingly. Once a hazardous waste determination is made, the generator is required to manifest, transport by a certified hauler, and arrange for disposal at a permitted TSDF, or other authorized facility. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. DTSC's hazardous waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.

2) *Uniform Hazardous Waste Manifest*: The Uniform Hazardous Waste Manifest is the shipping document that travels with hazardous waste from the point of generation, through transportation, to the final TSDF. Each party in the chain of shipping hazardous waste, including the generator, signs and keeps one of the manifest copies, creating a "cradle-to-grave" tracking of hazardous waste. Hazardous waste transporters (a person engaged in the offsite transportation or movement of hazardous waste by air, rail, highway, or water) in California must be registered with DTSC.

The Hazardous Waste Electronic Manifest Establishment Act was signed into law by President Obama on October 5, 2012 authorizing the US EPA to implement a national e-manifest system. The US EPA worked with states, industry, and related stakeholders to develop a national e-manifest system to facilitate the electronic transmission of the uniform manifest form and to make the use of the manifest much more effective and convenient for users. The e-manifest extends to all federally and state-regulated wastes requiring manifests. The US EPA fully implemented the e-manifest system on June 30, 2018. AB 1597 (Committee on Environmental Safety and Toxic Materials, Chapter 133, Statutes of 2019) authorizes the state's hazardous waste management manifest

requirements to be satisfied through the use of the US EPA e-manifest system. Under the HWCL, requirements for manifest signatures are satisfied by an electronic signature and requirements to retain manifest copies are satisfied by the retention of a signed e-manifest. Transporters may continue to use paper manifests.

3) *Consolidated manifesting*: SB 271 (O'Connell, Chapter 319, Statutes of 2001) replaced milk run operations and modified manifesting with consolidated manifesting. Consolidated manifesting allows certain registered hazardous waste transporters to combine specified wastes from multiple eligible generators on a single manifest, rather than having to use a separate manifest from each generator. The generators using the consolidated manifesting procedure are exempt from filling out a hazardous waste manifest. Instead, the consolidated transporter (hazardous waste transporter who has notified DTSC of its intent to use the consolidated manifesting procedures) completes both the generator and transporter section of the manifest. Consolidated manifesting does not exempt generators from the requirements to properly characterize, handle, label, manage, and accumulate hazardous waste, and does not authorize transporters to commingle different types of hazardous wastes into the same tank or container, in accordance with US Department of Transportation regulations. The total volume or quantity of each waste stream and units of measure must be entered on the manifest at the change of each date, driver, or transport vehicle. Consolidated manifesting requires all hazardous waste generators, transporters, and permitted TSDFs to have identification numbers, which are used to identify the hazardous waste handler and track the waste from its point of origin to its final disposal.

   Current non-RCRA (California-only) wastes eligible for consolidated manifesting include used oil, brake fluid, antifreeze, "paint-related" wastes, spent photographic solutions, dry cleaning solvents, asbestos, and chemicals and laboratory packs collected from K-12 schools, among others. DTSC may also specify in regulations other wastes eligible for consolidated manifesting. In order to use consolidated manifesting, the generator cannot generate more than 1,000 kilograms of hazardous waste per month. Consolidated manifesting procedures may be used for RCRA hazardous waste only if the waste is not required to be manifested pursuant to RCRA or federal regulations, and the waste is transported by a registered hazardous waste transporter.

   To operate under consolidated manifesting procedures, generators are required to use only transporters that have registered and notified DTSC of their intent to operate under the consolidated manifesting procedure. The transporter must agree in writing (on a consolidated manifest receipt or a separate document) to confirm to the generator that the hazardous wastes were transported to an

authorized facility for appropriate treatment, except for asbestos, asbestos-containing materials, and chemicals and laboratory packs from K-12 schools, which must be transported to an authorized facility. Transporters using consolidated manifesting are required to report detailed information from each receipt on a quarterly basis to DTSC.

4) *Retail hazardous waste*: Over 400,000 retail locations in California handle a large number of diverse consumer products, some of which are not sold to consumers for a variety of reasons. These products may be donated, liquidated through secondary markets, returned through the vendor, or discarded. The process of consolidating, aggregating, and segregating retail products is sometimes managed through reverse logistics centers (RLCs) who may also facilitate financial reconciliation between the retailer and manufacturer prior to return, resale, or disposal. When discarded, the retail products that exhibit hazardous waste characteristics are subject to hazardous waste regulations.

5) *Challenges in managing retail waste*: Since 2007, state and local prosecutors and large retailers have settled enforcement actions for alleged mishandling of hazardous waste, including provisions in the settlements to promote regulatory reform. DTSC and stakeholders formed an informal Retail Waste Working Group in 2013 to facilitate dialogue and information sharing between the state and retail industry.

   SB 423 (Bates, Chapter 771, Statutes of 2016) required DTSC to convene a Retail Waste Workgroup (Workgroup) tasked with identifying regulatory and policy directives that need clarification for managing consumer products. In the Workgroup's report to the Legislature, *Surplus Household Consumer Products and Wastes*, they identify a number of challenges with the regulation of hazardous waste generated by the retail sector, including: the number and variety of waste streams (some retailers report they sell 24-55 million different products); the large number of retail locations; the nature of consumer products as constantly changing (seasonal and new products); limited product and ingredient information for making a hazardous waste determination; and, limited workforce expertise to make these waste determinations.

   Under current law, when retailers dispose of retail waste that is hazardous, transporters servicing California retailers must place each individual retail waste item on its own manifest and in its own container on the transporter truck. This may lead to inefficient transport of retail hazardous waste. Most states currently allow for consolidation of retail waste on a transporter truck or at a 10-day transfer station. Consolidated manifesting is unique to California non-RCRA hazardous waste, so other states are not subject to similar statewide hazardous waste laws.

AB 2920 would add retail hazardous waste collected from a retailer engaged in business in the state to the eligible wastes for consolidated manifesting. "Retail hazardous waste" is defined as unsold consumer products in its original retail sales packaging that is determined by the retailer to be hazardous waste. Once the waste determination has been made by the retailer, as required, and the retail waste has been placed on a hazardous waste manifest, the waste is subject to proper handling under the HWCL, including transportation to a certified TSDF or other authorized facility. Consolidated manifesting would not permit retail hazardous waste to be resold through an RLC.

The retail hazardous waste products eligible for consolidated manifesting under AB 2920 include, but are not limited to, bleach and other cleaning products, pool chemicals, laundry detergent, cosmetics, personal hygiene products, nail polish, aerosol products, herbicides, and fertilizers. The bill specifies that if consolidated manifesting procedures are used, the retail hazardous waste must be properly managed and incompatible materials transported in the same vehicle must be appropriately segregated.

Comments

Purpose of Bill. According to the author, "AB 2920 is a common sense bill that would allow hazardous waste transporters the ability to consolidate some commonly expired household items that are currently considered "California only" hazardous waste items. In 2002, California enacted SB 271, which consolidated and simplified the state's hazardous waste manifest laws and regulations governing the collection and transport of certain types of California regulated hazardous wastes. The items included were used oil, antifreeze, inks, paint, dry cleaning solvents, chemical and laboratory packs. This bill seeks to expand that original list to include household bleach/cleaning products, light bulbs, pool chemicals, laundry detergent, and fertilizers, among others. These items are routinely picked up at retailers throughout California and transported for disposal but must be individually listed on the manifest and in its own container. This causes extra vehicle trips and other inefficiencies on both retailers and waste drivers. The passage of this bill would ensure the safe, efficient and cost-effective management of these California regulated retail hazardous wastes in a manner that is both environmentally and economically beneficial."

Related/Prior Legislation

AB 1597 (Committee on Environmental Safety and Toxic Materials, Chapter 133, Statutes of 2019). Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system.

AB 2660 (Quirk, 2018). Would have allowed a retailer to ship a surplus household consumer product to a reverse distributor without making a waste determination. This bill died in the Senate Environmental Quality Committee.

SB 423 (Bates, Chapter 771, Statutes of 2016). Requires DTSC to convene a Retail Waste Working Group to identify regulatory and policy directives that need clarification for managing consumer products, and adopt consensus recommendations for waste reduction opportunities.

SB 271 (O'Connell, Chapter 319, Statutes of 2001). Defines the consolidated manifesting procedure allowing certain registered hazardous waste transporters to combine specified wastes from multiple eligible generators on a single manifest, rather than using a separate manifest from each generator.

SB 606 (O'Connell, Chapter 745, Statutes of 1999). Authorizes antifreeze, oil/water separation sludge, and parts cleaning solvent, as specified, to be manifested for transportation under a modified manifesting procedure for a registered hazardous waste hauler and with the consent of the generator.

SOURCE: Author

SUPPORT:

California Chamber of Commerce
California Retailers Association
Clean Harbors Environmental Services, Inc.
San Gabriel Valley Economic Partnership
Southwest California Legislative Council

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 3220		
Author:	Committee on Environmental Safety and Toxic Materials		
Version:	7/21/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Maria Montchal		

SUBJECT: Hazardous materials: underground storage tanks: pesticides

DIGEST: Extends the sunset of two distinct programs. Expands and extends the eligibility for the Replacing, Removing, or Upgrading (RUST) program, which provides loans and grants to assist small businesses with complying with state and federal standards for underground storage tanks (USTs), and extends the sunset on a pesticide worker protection program known as the California Medical Supervision Program (Program).

ANALYSIS:

Existing law:

1) Requires, by December 31, 2025, the owner or operator to permanently close a UST if it does not meet certain requirements in state law and regulation (HSC § 25292.05).

2) The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program, until January 1, 2026, to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements (HSC § 25299.10).

3) Requires a person to furnish, under penalty of perjury, any information related to financial responsibility, costs related to grants, unauthorized releases as requested by the local agency or State or Regional Water Board. Subjects a person who fails to provide this information to civil liability not to exceed $10,000 per violation (HSC § 25299.78).

4) Provides that a person who makes a misrepresentation in a document relating to a grant or loan issued pursuant to the UST Cleanup Fund program that is submitted to the State Water Board, is subject to civil liability of not more than $500,000 per violation (HSC § 25299.80).

5) Provides that a person who knowingly makes or causes to be made a false statement, material misrepresentation, or false certification in support of a grant or loan under the UST Cleanup Fund Program is subject to a fine of not more than $10,000, or imprisonment in county jail up to one year (HSC § 25299.80.5).

6) Requires, until January 1, 2022, the State Water Resources Control Board (State Water Board) to conduct a loan and grant program to assist small businesses in upgrading, replacing, or removing USTs to meet applicable local, state, or federal standards (HSC § 25299.101).Requires each employer who has an employee who regularly handles organophosphate or carbamate pesticides (OP/CB pesticides) to contract with a physician to provide medical supervision of the employee (CCR, Title 3, § 6728 (b)).

7) Delineates the employer's responsibilities for medical supervision for employees who regularly handle OP/CB pesticides, including requiring baseline cholinesterase tests and follow-up tests after the employee has handled OP/CB pesticides, as specified. Requires the employer to follow the recommendations of the medical supervisor concerning matters of occupational health (CCR, Title 3, § 6728 (c)).

8) Requires an employer to investigate the work practices and remove an employee from exposure to OP/CB pesticides if the employee's cholinesterase level falls below specified baseline values (CCR, Title 3, § 6728 (d - e)).

9) Requires any physician and surgeon who knows, or has reasonable cause to believe, that a patient is suffering from pesticide poisoning or any disease or condition caused by a pesticide to promptly report that fact to the local health officer (HSC § 105200).

10) Requires an employer, in order to satisfy his or her responsibilities for medical supervision of his or her employees who regularly handle OP/CB pesticides, to contract with a medical supervisor registered with the Office of Environmental Health Hazard Assessment (OEHHA) (HSC § 105206 (a)).

11) Requires a laboratory that performs tests ordered by a medical supervisor to report specified information, including test results, to the Department of Pesticide Regulation (DPR), which then shares this information with OEHHA and the State Department of Public Health (HSC § 105206 (b)).

12) Requires OEHHA to establish a procedure for registering and deregistering medical supervisors for the purposes of outreach and training and authorizes OEHHA to establish reasonable requirements for performance (HSC § 105206 (f)).

13) Requires OEHHA to review the cholinesterase test results. Authorizes OEHHA to provide an appropriate medical or toxicological consultation to the medical supervisor, and, in consultation with DPR and the local health officer, to provide medical and toxicological consultation, as appropriate, to the county agricultural commissioner to address medical issues related to the investigation of cholinesterase inhibitor-related illness (HSC § 105206 (f)).

14) Requires DPR and OEHHA to prepare and publicly post an update on the effectiveness of the medical supervision program and the utility of laboratory-based reporting of cholinesterase testing for illness, surveillance, and prevention by January 1, 2021 (HSC § 105206 (g)).

15) Sunsets the reporting and registration provisions of the medical supervision program on January 1, 2021 (HSC § 105206 (h)).

This bill:

1) Extends the RUST program until January 1, 2026.

2) Expands RUST grant eligibility to certain applicants with project tanks that are not in compliance with air and water quality requirements, if applicants provide evidence that these tanks will be in compliance after project completion.

3) Provides the State Water Board with authority to help prevent fraud in the RUST program and help recover monetary losses to the RUST program due to fraud as follows:

   a) Authorizes a representative of a local agency or board to conduct inspections where project tanks are or have been located that is within 2,000 feet of any place where project tanks are or have been located.

   b) Requires a person to furnish any information related to grants or loans issued or applied for. Subjects a person who fails to provide this information or who provides false information to a civil penalty of up to $10,000 per violation. Specifies that a person who knowingly makes a false

statement, material misrepresentation, or false certification in support of a grant or loan shall, upon conviction, be punished by a civil penalty of not more than $10,000 or by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, two years, or three years, or by both that fine and imprisonment.

c) Specifies that a person who makes a misrepresentation in a document related to a grant or loan that is submitted to the board is subject to a civil liability of not more than $500,000 per violation.

d) Requires a loan applicant to certify:
   i) That they are a small business;
   ii) That the principal office and officers of the applicant are in the state;
   iii) That the applicant owns or operates the project tanks;
   iv) An explanation of why the work is necessary for project tanks to be in compliance with relevant laws;
   v) Evidence that all tanks (except for project tanks) are in compliance and that project tanks are or will be in compliance after the project is completed;
   vi) Evidence that the facility is where the project tanks are located.

4) Expands eligibility for grants from the Petroleum Underground Storage Tank Financing Account to include applicants where the facility with the project tanks have sold less than 1,500,000 gallons of gasoline annually for the two years preceding the grant application.

5) Makes minor and technical changes to the RUST program for efficiency and clarification purposes.

6) Extends the sunset on the California Medical Supervision Program, a pesticide worker protection program, from January 1, 2021 to January 1, 2023.

Background

1) *USTs.* A UST is a tank that is used to store hazardous substances and that is substantially or totally underground. Gas stations often have USTs that contain gasoline, which can leak out of a UST if it is not properly maintained or if it is not in compliance with current regulations. According to the US EPA, the greatest threat from a leaking UST is contamination of groundwater, which is the source of drinking water for nearly half of all Americans. In order to

protect public health and the environment, US Congress and the state of California have created programs to make sure USTs are well maintained.

2) *Federal UST Program.* The purpose of the UST Program is to protect public health and safety and the environment from releases of petroleum and other hazardous substances from USTs. The program elements include leak prevention and detection, cleanup of leaking tanks, providing assistance to local agencies enforcing UST requirements, and tank tester licensing.

3) *California RUST Program.* Through the program, grants and loans are available to assist small business UST owners and operators to help them come into compliance with UST regulatory requirements by removing, replacing, or upgrading USTs. These funds assist small businesses with replacing single-walled USTs with safer double-walled USTs. Typical eligible costs are removing and replacing single-walled USTs and/or piping with double-walled USTs and/or piping, UST upgrades including installing containment sumps, under-dispenser containment boxes/pans, and electronic monitoring systems, and conducting enhanced leak detection tests.

4) *UST Cleanup Fund Program.* Funds from this program are expended through grants and loans in the RUST Program. The Fund also provides money to the Regional Water Boards and local regulatory agencies to abate emergency situations or to cleanup abandoned sites that pose a threat to human health and safety and the environment, as a result of a UST petroleum release. Federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs. The Cleanup Fund Program receives funding from fees paid by UST owners for every gallon of fuel that is placed into a UST. This program has been a critical resource for both cleaning up immediate impacts of UST releases, and preventing significant migration of petroleum products in groundwater and soil.

5) *The California Medical Supervision Program.* Established in 1974, the Program is designed to protect agricultural workers who mix, load, or apply organophosphate or carbamate pesticides (OPs/CBs) which are highly toxic pesticides. If an employee regularly works with such pesticides, blood levels of an enzyme called cholinesterase must be monitored.

   Cholinesterase is important for normal function of the nervous system, and high exposure to OPs/CBs can cause many medical issues, including slow heart rate, difficulty breathing, salivation, tearing, sweating, abdominal pain, diarrhea, confusion, seizures, loss of consciousness, and even death. Because

the acute symptoms of OB/CB overexposure can sometimes mimic other illnesses, and people can be affected without showing major symptoms, tests for the depression of cholinesterase are essential for identifying potential overexposure.

While the use of cholinesterase-inhibiting pesticides in California has declined by nearly three-quarters since 1995, according to the most recent data, growers still applied about 4 million pounds of OBs/CBs in 2017.

To monitor cholinesterase levels under the Program, employers must contract with a licensed physician as a "medical supervisor" to periodically test the cholinesterase level of workers who regularly handle these pesticides. To monitor each employee, the medical supervisor establishes baseline values of cholinesterase during non-exposure periods, and then periodically measures cholinesterase activity levels while the worker handles OPs/CBs. If the employee's cholinesterase is depressed below certain levels, the employer must take immediate specified actions to reduce continued exposure, such as promptly retesting the employee, evaluating the employee's work practices, or immediately removing the employee from further exposure.

In order for the state to ensure that the Program is effective and that workers are being protected, agricultural worker pesticide exposure data is transmitted to DPR, and OEHHA registers and provides outreach and consultation to the medical supervisors overseeing the workers' cases.

6) *Reporting requirements.* AB 1963 (Nava, Chapter 369, Statutes of 2010) required laboratories that conduct cholinesterase tests as a part of the Program to report test results to DPR. The results are then analyzed by DPR and OEHHA, in consultation with DPH, and then posted online. These provisions were meant to allow the state to determine whether workers are actually being protected in the field and whether the Program is working as intended.

7) *Program analysis.* AB 1963 also required, by December 31, 2015, DPR and OEHHA, in consultation with DPH, to prepare a report on the effectiveness of the Program. DPR and OEHHA submitted the resultant report, "The Report to the California Legislature: California's Cholinesterase Test Results," in December 2015, which found that overall the Program appears effective in protecting agricultural workers who handle cholinesterase-inhibiting pesticides. The report found some problems with the data submitted between 2011 and 2013, and DPR and OEHHA made several recommendations to enhance the effectiveness of the program.

8) *Program updates.* In response to DPR and OEHHA's report, AB 2892 (ESTM, Chapter 475, Statutes of 2016), was passed. This bill extended the sunset on the data reporting requirements from January 1, 2017, to January 1, 2021, updated the information that was required to be reported, transferred the responsibility of reporting the cholinesterase test results and related information from laboratories to medical supervisors, required OEHHA to establish a procedure for registering and deregistering medical supervisors and to establish requirements for their performance, codified the requirement that an employer of employees who regularly handle pesticides must contract with a medical supervisor registered with OEHHA, and required DPR and OEHHA to prepare and publicly post an update on the effectiveness of the medical supervision program and the utility of laboratory-based reporting of cholinesterase testing for illness surveillance and prevention by January 1, 2021.

   AB 3220 extends the sunset on the reporting and registration requirements under the Program from January 1, 2021, to January 1, 2023. This will give the legislature time to review DPR and OEHHA's update on the effectiveness of the program, which is due on January 1, 2021, before considering making programmatic updates or eliminating or further extending the sunset of the program.

Comments

1) *Purpose of Bill.* According to the Environmental Safety and Toxic Materials Committee, "This bill extends the sunsets of two essential public health programs. First, the Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) program, which provides grants and loans to small businesses to assist them with complying with underground storage tank (UST) laws and regulations, is scheduled to sunset on January 1, 2022. This sunset is three years before the statutory requirement for UST owners to replace single-walled USTs (December 31, 2025). AB 3220 extends the sunset of the RUST program until January 1, 2026, allowing a continuation of assistance for small businesses to comply with UST laws and regulations.

   "Second, the statutory reporting and registration requirements of the California Medical Supervision Program (Program), which protects workers who handle organophosphate and carbamate pesticides (OPs/CBs), sunset on January 1, 2021. Under the Program, employers must contract with a medical supervisor to monitor their workers for overexposure to OB/CB pesticides so that appropriate protective measure can be taken. In order for the state to ensure

that the Program is effectively protecting workers, exposure data is reported to DPR, and OEHHA registers and provides consultation to the medical supervisors overseeing the workers' cases. AB 3220 extends the sunset on the reporting and registration requirements to January 1, 2023, so that the state can continue to effectively evaluate and manage the Program."

2) *Need for the bill.* This bill extends the sunset of two distinct programs. The first is the RUST program, which sunsets on January 1, 2022. However, existing law requires single-walled USTs to be removed by December 31, 2025. Extending the sunset of the RUST program until January 1, 2026 would allow small businesses to continue receiving loans and grants to help them comply with UST laws and regulations.

   The second is the California Medical Supervision Program, a pesticide worker protection program, which sunsets on January 1, 2021. Extending the sunset to January 1, 2023 would give the legislature time to review DPR and OEHHA's update on the effectiveness of the program, which is due on January 1, 2021, before considering making programmatic updates or eliminating or further extending the sunset of the program.

Related/Prior Legislation

SB 445 (Hill, Chapter 547, Statutes of 2014) required all single-walled USTs to be permanently closed by December 31, 2025 and extended the State Water Resources Control Board (State Water Board) program for the cleanup of USTs from 2016 to 2020.

AB 282 (Wieckowski, 2014) would have extended the sunset date of the UST Cleanup Program from 2016 until 2018, and would have extended the sunset of a $0.006 surcharge on petroleum stored in an UST from 2014 until 2016. This bill was held in the Senate Appropriations Committee.

AB 120 (Committee on Environmental Safety and Toxic Materials, Chapter 635, Statutes of 2013) permitted a school district to qualify for funding from the UST Cleanup Fund School District Account, even if they have not continuously maintained a permit for their underground storage tanks, if the school district meets certain conditions.

AB 291 (Wieckowski, Chapter 569, Statutes of 2011) increased a temporary fee each UST owner must pay per gallon of motor vehicle fuel placed in the tank, from 1.4 mils to 2 mils per gallon through January 1, 2014.

AB 358 (Smyth, Chapter 571, Statutes of 2011) streamlined the State Water Board process for completing the cleanup of USTs by establishing authority for the State Water Board to close sites overseen by local government as part of the State Water Board existing five-year review process.

AB 2892 (ESTM, Chapter 475, Statutes of 2016) updated and enhanced the Program by extending the sunset on the requirement for laboratories to transmit cholinesterase test results to the state until January 1, 2021, requiring OEHHA to register medical supervisors, and requiring medical supervisors to report depressions in cholinesterase levels as a pesticide illness.

AB 1963 (Nava, Chapter 369, Statutes of 2010) required clinical laboratories that perform cholinesterase testing for the purpose of determining workers' pesticide exposure to electronically report test results to DPR.

AB 1530 (Lieber, 2007) would have required clinical laboratories that perform cholinesterase testing for the purpose of determining workers' pesticide exposure to electronically report test results to DPR. This bill was held in the Senate Appropriations Committee.

SOURCE: Committee on Environmental Safety and Toxic Materials

SUPPORT:

Metropolitan Water District of Southern California
Natural Resources Defense Council (NRDC)

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 3279		
Author:	Friedman		
Version:	7/27/2020	**Hearing Date:**	8/11/2020
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: administrative and judicial procedures

DIGEST: Requires the court to schedule a case management conference within 30 days of filing a complaint or petition pursuant to the California Environmental Quality Act (CEQA), and authorizes the public agency to deny the request of a plaintiff or petitioner to prepare the record of proceedings if the public agency or real party in interest bears the costs of preparation and certification of the record without the ability to recover those costs from the plaintiff or petitioner.

ANALYSIS:

Existing law, under the California Environmental Quality Act:

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines. (Public Resources Code (PRC) 21000 et seq.)

2) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determinations that a project may have a significant effect on the environment, or alleging an EIR doesn't comply with CEQA, must be filed with the Superior Court within 30 days of filing of the notice of approval (PRC §21167).

3) Establishes that a record of proceeding includes, but is not limited to, all application materials, staff reports, transcripts or minutes of public proceedings, notices, written comments, and written correspondence prepared by or submitted to the public agency regarding the proposed project (PRC §21167.6).

4) Establishes a procedure for the preparation, certification, and lodging of the record of proceedings (PRC §21167.6). Specifically:

   a) Requires the plaintiff to file a request that the respondent public agency prepare the record of proceedings, and serve this request, together with the complaint or petition, personally upon the public agency within 10 days of the date the action or proceeding was filed.

   b) Requires the respondent public agency to prepare and certify the record of proceedings not later than 60 days from the date that plaintiff served the request; lodge a copy of the certified record with the court; and serve on the parties a notice that the record of proceedings has been certified and lodged with the court.

   c) Authorizes the plaintiff to elect to prepare the record subject to certification by the respondent public agency, or the parties may agree to an alternative method of preparing the record of proceedings, within the time limits specified in the law.

   d) Requires the parties to pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

   e) Authorizes the plaintiff to move the court for sanctions, and the court to grant the plaintiff's motion for sanctions, if the public agency fails to prepare and certify the record within the time limits specified in the law.

This bill:

1) Requires that an electronic copy of the record of proceedings be lodged with the court upon certification.

2) Requires the court to schedule a case management conference within 30 days of the compliant or petition being filed. Authorizes the parties to stipulate to a partial record of proceedings if approved by the court.

3) Authorizes the plaintiff or petition to provide notice of election to the public agency if it elects to prepare the record of proceedings. Authorizes the public agency, within five business days, to deny the plaintiff or petitioner's request, in which case the public agency or real party in interest is required to bear the costs of preparation and certification of the record and cannot recover those

costs from the plaintiff or petitioner.

4) Repeals several obsolete provisions.

Background

1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR).

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

   What is analyzed in an environmental review? An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the project because many environmental impacts of a development extend beyond the identified project boundary. Also, CEQA stipulates that the environmental impacts must be measured against existing physical conditions within the project area, not future, allowable conditions.

   CEQA provides hub for multi-disciplinary regulatory process. An environmental review provides a forum for all the described issue areas to be

considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

2) *CEQA's litigation process*. CEQA is a self-executing statute and in order to enforce compliance with CEQA, actions taken by public agencies can be challenged in superior court once the agency approves the project.

   Filing an action. The time limit for filing an action challenging a public agency's CEQA decision is dictated by statute and the applicable statute of limitations depends on the type of agency decision that is challenged. Under current law, CEQA lawsuits generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing. Courts are required to commence hearings on CEQA appeals within one year of filing, to the extent feasible.

   The administrative record. CEQA also establishes procedures for the preparation and certification of the record of proceedings, also commonly referred to as the administrative record. The administrative record contains documents such as application materials, staff reports, transcripts or minutes of public proceedings, notices, written comments, and written correspondence prepared by or submitted to the public agency regarding the proposed project.

   Generally, the respondent agency is required to prepare and certify the record within 60 days of the petitioner's request. However, the petitioner may elect to prepare the record subject to certification by the respondent agency, or the parties may agree to an alternative method of preparing the record. The petitioner is responsible for covering the costs of preparing the record; however, a prevailing party who had covered the costs the preparing the record

previously is able to later recover those costs.

CEQA noncompliance. Upon finding a public agency's actions are not in compliance with CEQA, a court is required to order one or more of the following:

a) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
b) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to comply with CEQA.
c) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with CEQA.

Any order is required to include only those mandates that are necessary to achieve compliance with CEQA and only those specific project activities in noncompliance with CEQA.

Comments

1) *Purpose of Bill.* According to the author, "AB 3279 addresses common delays in litigation over CEQA actions to promote swifter and more efficient resolution of lawsuits regarding all projects."

2) *Preparation of the administrative record.* Preparation of the administrative record can be time-consuming and expensive. Typically, the respondent public agency will prepare the record. However, because a public agency may use the entire allotted time to prepare the record, the petitioner, to expedite the preparation and reduce costs, will sometimes elect to prepare the record instead, subject to the certification of accuracy by the public agency. In either scenario, the petitioner is responsible for covering the costs of preparing the record; however, a prevailing party who had covered the costs of preparing the record previously is able to later recover those costs.

   Both petitioners and public agencies have argued the necessity of their group needing to prepare the administrative record in the interests of time and managing costs.

Under AB 3279, if a petitioner elects to prepare the record, the public agency is authorized to deny that request and, in which case, the public agency or real party in interest is required to assume the costs of preparation and certification of the administrative record and may not recover those costs from the plaintiff or petitioner.

While this process would, at least partially, address stakeholder group concerns about cost management, some argue that this process would not allow a petitioner to ensure that the record is complete and accurate, which could lead to increased disputes over the content of the record. And others have expressed concern that a savvy petitioner may elect to prepare the record, betting on the public agency denying that request and therefore also forfeiting any rights the public agency has to recover costs.

However, having the respondent public agency prepare the record is sometimes preferred, according to stakeholders. Since the public agency is responsible for certifying the record, it is argued, it also makes sense to have the public agency prepare it. It can promote efficiency in the certification process by reducing discussions regarding what information will be required for the public agency to certify the record as complete.

Related/Prior Legislation

SB 950 (Jackson) made various changes to the California Environmental Quality Act (CEQA) including, among other things, an exemption for emergency shelters, supportive housing, and transitional housing projects; changes to translation guidelines of CEQA documents; an optional, alternate process for receiving public comments; and requiring a report be submitted to the Attorney General if an action or proceeding is settled and involves the payment of money. SB 950 failed to pass out of this committee.

SOURCE: Author

SUPPORT:

American Planning Association, California Chapter
Association of California Water Agencies (ACWA)
Auto Care Association
Bay Area Council
Bay Area Housing Advocacy Coalition
Building Owners and Managers Association of California

California Apartment Association
California Association of Realtors
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Community Builders
California Native Plant Society
California Port Authority
California YIMBY
CAWA
Central City Association of Los Angeles
Council of Infill Builders
Defenders of Wildlife
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Habitat for Humanity California
Humboldt Redwood Company, LLC
International Council of Shopping Centers
Los Angeles Business Council
Mayor Eric Garcetti, City of Los Angeles
Mendocino-Humboldt Redwood Companies
Murrieta Wildomar Chamber of Commerce
NAIOP of California
Natural Resources Defense Council
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
Orange County Business Council
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Roseville Area Chamber of Commerce
Roseville Chamber of Commerce
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Housing Action Coalition
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Silicon Valley @ Home
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce
The Two Hundred

Torrance Area Chamber of Commerce
United Chamber Advocacy Network
West Coast Lumber & Building Material Association
Western Electrical Contractors Association
Yuba Sutter Chamber of Commerce

OPPOSITION:

ACLU California
Advocates for The Environment
Alliance for Environmental Leadership
Alliance for Regional Solutions to Airport Congestion
Asian Pacific Environmental Network
Berkeley Partners for Parks
California Native Plant Society - San Diego Chapter
California River Watch
California Sportsfishing Protection Alliance
California Teamsters Public Affairs Council
California Water Impact Network
Californians for Pesticide Reform
Center for Community Action and Environmental Justice
Center for Food Safety
Central California Environmental Justice Network
Citizens Advocating for Roblar Rural Quality
Citizens Committee to Complete the Refuge
Citizens for The Preservation of Parks & Beaches
Cleveland National Forest Foundation
Climate Action Campaign
Climate First Replacing Oil & Gas
Coachella Valley Waterkeeper
Comite Progreso De Lamont
Committee for A Better Arvin
Committee for A Better Shafter
Communities for A Better Environment
East Yard Communities for Environmental Justice
Elfin Forest/Harmony Grove Town Council
Environmental Center of San Diego
Environmental Center of San Luis Obispo
Environmental Defense Center
Environmental Water Caucus
Escondido Creek Conservancy, the
Foothill Conservancy
Friends of Harbors, Beaches and Parks
Friends of Lafferty Park

Friends of Loma Alta Creek
Friends of Rose Canyon
Friends of Rose Creek
Friends of The Eel River
Green Foothills
Greenfield Walking Group
Greenfire Law, PC
Grow the San Diego Way
Hills for Everyone
Inland Empire Waterkeeper
Landwatch San Luis Obispo County
Landwatch Monterey County
Los Cerritos Wetlands Land Trust
Los Padres Forest Watch
Mountain Area Preservation
National Audubon Society
North County Watch
Orange County Coastkeeper
People Organizing to Demand Environmental & Economic Rights
Pesticide Action Network
Preserve Calavera
Preserve Our Rural Communities - San Benito County
Preserve Rural Sonoma County
Preserve Wild Santee
Protect Rural Placer
Public Advocates
Public Interest Coalition
Public Law Center
Resource Renewal Institute
Russian River Watershed Protection Committee
San Luis Obispo Mothers for Peace
Save Mount Diablo
Save Our Forest and Ranchlands
Save Our Seashore
Save the American River Association
Sierra Nevada Alliance
State Building & Construction Trades Council of California
United Neighborhoods for Los Angeles (UN4LA)
Ventura Citizens for Hillside Preservation
Wine & Water Watch

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