

Introduced by Senator PavleyFebruary 1, 2010

An act to amend Sections 13350 and 13521 of, and to add Chapter 7.3 (commencing with Section 13560) to Division 7 of, the Water Code, relating to water recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 918, as introduced, Pavley. Water recycling.

Existing law establishes the State Water Resources Control Board and the California regional water quality control boards as the principal state agencies with authority over matters relating to water quality. Existing law requires the State Department of Public Health to establish uniform statewide recycling criteria for each varying type of use for recycled water where the use involves the protection of public health.

This bill would require the State Department of Public Health to develop and adopt uniform water recycling criteria for indirect potable water reuse, and investigate the feasibility of developing uniform water recycling criteria for direct potable reuse, consistent with a specified timeline. The bill, from July 1, 2011, to June 30, 2015, inclusive, would require funds generated by the imposition of specified liabilities for violations of water quality requirements to be made available, upon appropriation by the Legislature, to the State Department of Public Health for the purposes of developing and adopting the water recycling criteria.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13350 of the Water Code is amended to
2 read:

3 13350. (a) ~~Any~~A person who (1) violates ~~any~~ a cease and
4 desist order or cleanup and abatement order hereafter issued,
5 reissued, or amended by a regional board or the state board, or (2)
6 in violation of ~~any~~ a waste discharge requirement, waiver
7 condition, certification, or other order or prohibition issued,
8 reissued, or amended by a regional board or the state board,
9 discharges waste, or causes or permits waste to be deposited where
10 it is discharged, into the waters of the state, or (3) causes or permits
11 any oil or any residuary product of petroleum to be deposited in
12 or on any of the waters of the state, except in accordance with
13 waste discharge requirements or other actions or provisions of this
14 division, shall be liable civilly, and remedies may be proposed, in
15 accordance with subdivision (d) or (e).

16 (b) (1) ~~Any~~A person who, without regard to intent or
17 negligence, causes or permits ~~any~~ a hazardous substance to be
18 discharged in or on any of the waters of the state, except in
19 accordance with waste discharge requirements or other provisions
20 of this division, shall be strictly liable civilly in accordance with
21 subdivision (d) or (e).

22 (2) For purposes of this subdivision, the term “discharge”
23 includes only those discharges for which Section 13260 directs
24 that a report of waste discharge shall be filed with the regional
25 board.

26 (3) For purposes of this subdivision, the term “discharge” does
27 not include ~~any~~ an emission excluded from the applicability of
28 Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant
29 to Environmental Protection Agency regulations interpreting
30 Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec.
31 1321(a)(2)).

32 (c) There shall be no liability under subdivision (b) if the
33 discharge is caused solely by any one or combination of the
34 following:

35 (1) An act of war.

36 (2) An unanticipated grave natural disaster or other natural
37 phenomenon of an exceptional, inevitable, and irresistible

1 character, the effects of which could not have been prevented or
2 avoided by the exercise of due care or foresight.

3 (3) Negligence on the part of the state, the United States, or any
4 department or agency thereof; provided, that this paragraph shall
5 not be interpreted to provide the state, the United States, or any
6 department or agency thereof a defense to liability for any
7 discharge caused by its own negligence.

8 (4) An intentional act of a third party, the effects of which could
9 not have been prevented or avoided by the exercise of due care or
10 foresight.

11 (5) Any other circumstance or event ~~which~~ *that* causes the
12 discharge despite the exercise of every reasonable precaution to
13 prevent or mitigate the discharge.

14 (d) The court may impose civil liability either on a daily basis
15 or on a per gallon basis, but not *on* both.

16 (1) The civil liability on a daily basis ~~may~~ *shall* not exceed
17 fifteen thousand dollars (\$15,000) for each day the violation occurs.

18 (2) The civil liability on a per gallon basis ~~may~~ *shall* not exceed
19 twenty dollars (\$20) for each gallon of waste discharged.

20 (e) The state board or a regional board may impose civil liability
21 administratively pursuant to Article 2.5 (commencing with Section
22 13323) of Chapter 5 either on a daily basis or on a per gallon basis,
23 but not *on* both.

24 (1) The civil liability on a daily basis ~~may~~ *shall* not exceed five
25 thousand dollars (\$5,000) for each day the violation occurs.

26 (A) When there is a discharge, and a cleanup and abatement
27 order is issued, except as provided in subdivision (f), the civil
28 liability shall not be less than five hundred dollars (\$500) for each
29 day in which the discharge occurs and for each day the cleanup
30 and abatement order is violated.

31 (B) When there is no discharge, but an order issued by the
32 regional board is violated, except as provided in subdivision (f),
33 the civil liability shall not be less than one hundred dollars (\$100)
34 for each day in which the violation occurs.

35 (2) The civil liability on a per gallon basis ~~may~~ *shall* not exceed
36 ten dollars (\$10) for each gallon of waste discharged.

37 (f) A regional board ~~may~~ *shall* not administratively impose civil
38 liability in accordance with paragraph (1) of subdivision (e) in an
39 amount less than the minimum amount specified, unless the
40 regional board makes express findings setting forth the reasons

1 for its action based upon the specific factors required to be
2 considered pursuant to Section 13327.

3 (g) The Attorney General, upon request of a regional board or
4 the state board, shall petition the superior court to impose, assess,
5 and recover ~~such~~ *the* sums. Except in the case of a violation of a
6 cease and desist order, a regional board or the state board shall
7 make ~~such~~ *the* request only after a hearing, with due notice of the
8 hearing given to all affected persons. In determining that amount,
9 the court shall be subject to Section 13351.

10 (h) Article 3 (commencing with Section 13330) and Article 6
11 (commencing with Section 13360) apply to proceedings to impose,
12 assess, and recover an amount pursuant to this article.

13 (i) ~~Any~~ A person who incurs any liability established under this
14 section shall be entitled to contribution for that liability from ~~any~~
15 a third party, in an action in the superior court and upon proof that
16 the discharge was caused in whole or in part by an act or omission
17 of the third party, to the extent that the discharge is caused by the
18 act or omission of the third party, in accordance with the principles
19 of comparative fault.

20 (j) Remedies under this section are in addition to, and do not
21 supersede or limit, any and all other remedies, civil or criminal,
22 except that no liability shall be recoverable under subdivision (b)
23 for any discharge for which liability is recovered under Section
24 13385.

25 (k) (1) Notwithstanding any other ~~provision~~ of law, all funds
26 generated by the imposition of liabilities pursuant to this section
27 shall be deposited into the Waste Discharge Permit Fund. These
28 moneys shall be separately accounted for, and, *except as otherwise*
29 *provided in paragraph (2)*, shall be expended by the state board,
30 upon appropriation by the Legislature, to assist regional boards,
31 and other public agencies with authority to clean up waste or abate
32 the effects of the waste, in cleaning up or abating the effects of the
33 waste on waters of the state or for the purposes authorized in
34 Section 13443.

35 (2) *From July 1, 2011, to June 30, 2015, inclusive, funds*
36 *generated by the imposition of liabilities pursuant to this section*
37 *shall be made available to the State Department of Public Health,*
38 *upon appropriation by the Legislature, for the purposes of Chapter*
39 *7.3 (commencing with Section 13560), in the following amounts:*

1 (A) Up to five hundred thousand dollars (\$500,000) in the
2 2011–12 fiscal year.

3 (B) Up to five hundred thousand dollars (\$500,000) in the
4 2012–13 fiscal year.

5 (C) Up to five hundred thousand dollars (\$500,000) in the
6 2013–14 fiscal year.

7 (D) Up to five hundred thousand dollars (\$500,000) in the
8 2014–15 fiscal year.

9 SEC. 2. Section 13521 of the Water Code is amended to read:

10 13521. The State Department of ~~Health Services~~ *Public Health*
11 shall establish uniform statewide recycling criteria for each varying
12 type of use of recycled water where the use involves the protection
13 of public health.

14 SEC. 3. Chapter 7.3 (commencing with Section 13560) is added
15 to Division 7 of the Water Code, to read:

16

17 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

18

19 13560. The Legislature finds and declares the following:

20 (a) In February 2009, the state board unanimously adopted, as
21 Resolution No. 2009-0011, an updated water recycling policy,
22 which includes the goal of increasing the use of recycled water in
23 the state over 2002 levels by at least 1,000,000 acre-feet per year
24 by 2020 and by at least 2,000,000 acre-feet per year by 2030.

25 (b) Section 13521 requires the department to establish uniform
26 statewide recycling criteria for each varying type of use of recycled
27 water where the use involves the protection of public health.

28 (c) The use of recycled water for indirect potable reuse is critical
29 to achieving the state board’s goals for increased use of recycled
30 water in the state. If direct potable reuse can be demonstrated to
31 be safe and feasible, implementing direct potable reuse would
32 further aid in achieving the state board’s recycling goals.

33 (d) Achievement of these goals depends on the timely
34 development of uniform statewide recycling criteria for indirect
35 and direct potable water reuse.

36 13561. For purposes of this chapter, the following terms have
37 the following meanings:

38 (a) “Department” means the State Department of Public Health.

39 (b) “Direct potable reuse” means the use of recycled water for
40 drinking purposes directly after treatment.

1 (c) “Indirect potable reuse” means the use of recycled water for
2 drinking purposes after replenishment of a groundwater basin or
3 aquifer, or after the placement of recycled water into a surface
4 water reservoir.

5 (d) “Uniform water recycling criteria” has the same meaning
6 as in Section 13521.

7 13562. (a) The department shall develop and adopt uniform
8 water recycling criteria for indirect potable water reuse in
9 accordance with the following subcategories of this use on the
10 following schedule:

11 (1) For groundwater recharge, by December 31, 2013.

12 (2) For surface water augmentation, by December 31, 2014.

13 (b) Adoption of uniform water recycling criteria by the
14 department is subject to the requirements of Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code.

17 13563. (a) (1) The department shall investigate and report to
18 the Legislature on the feasibility of developing uniform water
19 recycling criteria for direct potable reuse.

20 (2) The department shall complete a public review draft of its
21 report by September 30, 2015. The department shall provide the
22 public not less than 45 days to review and comment on the public
23 review draft.

24 (3) The department shall provide a final report to the Legislature
25 by December 31, 2015. The department shall make the final report
26 available to the public.

27 (b) In conducting the investigation pursuant to subdivision (a),
28 the department shall examine all of the following:

29 (1) The availability and reliability of recycled water treatment
30 technologies necessary to ensure the protection of public health.

31 (2) Multiple barriers and sequential treatment processes that
32 may be appropriate at wastewater and water treatment facilities.

33 (3) Available information on health effects.

34 (4) Mechanisms that should be employed to protect public health
35 if problems are found in recycled water that is being served to the
36 public as a potable water supply, including, but not limited to, the
37 failure of treatment systems at the recycled water treatment facility.

38 (5) Monitoring needed to ensure protection of public health,
39 including, but not limited to, the identification of appropriate
40 indicator and surrogate constituents.

1 (6) Any other scientific or technical issues that may be
2 necessary, including, but not limited to, the need for additional
3 research.

4 13564. (a) (1) The department shall convene and administer
5 an expert panel for the purposes of advising the department on
6 scientific and technical matters regarding the development of
7 uniform water recycling criteria for indirect potable water reuse,
8 and the investigation of the feasibility of developing uniform water
9 recycling criteria for direct potable reuse.

10 (2) The expert panel shall be comprised, at a minimum, of a
11 toxicologist, a certified engineering geologist or certified
12 hydrogeologist, an engineer licensed in the state with at least three
13 years experience in wastewater treatment and public water supply,
14 a microbiologist, and a chemist.

15 (3) Members of the expert panel may be reimbursed for
16 reasonable and necessary travel expenses.

17 (b) (1) The department may appoint an advisory group, task
18 force, or other group, comprised of no fewer than nine
19 representatives of water and wastewater agencies, local public
20 health officers, environmental organizations, environmental justice
21 organizations, and public health nongovernmental organizations.

22 (2) Environmental, environmental justice, and public health
23 nongovernmental organization representative members of the
24 advisory group, task force, or other group may be reimbursed for
25 reasonable and necessary travel expenses.

26 13565. In developing the uniform water recycling criteria for
27 indirect potable reuse and the investigation of the feasibility of
28 developing uniform water recycling criteria for direct potable
29 reuse, the department shall consider all of the following:

30 (a) Recommendations from the expert panel appointed pursuant
31 to subdivision (a) of Section 13564.

32 (b) Recommendations from an advisory group, task force, or
33 other group appointed by the department pursuant to subdivision
34 (b) of Section 13564.

35 (c) Regulations and guidelines for these activities from
36 jurisdictions in other states or countries.

37 (d) Research by the state board regarding unregulated pollutants,
38 as developed pursuant to Section 10 of the recycled water policy
39 adopted by state board Resolution No. 2009-0011.

1 13566. An action authorized pursuant to this chapter shall be
2 consistent, to the extent applicable, with the federal Clean Water
3 Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water
4 Act (42 U.S.C. Sec. 300f et seq.), this division, and the California
5 Safe Drinking Water Act (Chapter 4 (commencing with Section
6 116270) of Part 12 of Division 104 of the Health and Safety Code).

7 13569. The department may accept funds from any source, and
8 may expend these funds, upon appropriation by the Legislature,
9 for the purposes of this chapter.

O