

AMENDED IN SENATE MARCH 17, 2010

SENATE BILL

No. 918

Introduced by Senator Pavley

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

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

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

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

30 ~~There shall be no liability~~ *A person shall not be liable* under
31 subdivision (b) if the discharge is caused solely by any one or
32 combination of the following:

33 (1) An act of war.

34 (2) An unanticipated grave natural disaster or other natural
35 phenomenon of an exceptional, inevitable, and irresistible
36 character, the effects of which could not have been prevented or
37 avoided by the exercise of due care or foresight.

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

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

9 (5) Any other circumstance or event that causes the discharge
10 despite the exercise of every reasonable precaution to prevent or
11 mitigate the discharge.

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

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

16 (2) The civil liability on a per gallon basis shall not exceed
17 twenty dollars (\$20) for each gallon of waste discharged.

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

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

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

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

33 (2) The civil liability on a per gallon basis shall not exceed ten
34 dollars (\$10) for each gallon of waste discharged.

35 (f) A regional board shall not administratively impose civil
36 liability in accordance with paragraph (1) of subdivision (e) in an
37 amount less than the minimum amount specified, unless the
38 regional board makes express findings setting forth the reasons
39 for its action based upon the specific factors required to be
40 considered pursuant to Section 13327.

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

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

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

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

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

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

38 (A) Up to five hundred thousand dollars (\$500,000) in the
39 2011–12 fiscal year.

1 (B) Up to five hundred thousand dollars (\$500,000) in the
2 2012–13 fiscal year.

3 (C) Up to five hundred thousand dollars (\$500,000) in the
4 2013–14 fiscal year.

5 (D) Up to five hundred thousand dollars (\$500,000) in the
6 2014–15 fiscal year.

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

8 13521. The State Department of Public Health shall establish
9 uniform statewide recycling criteria for each varying type of use
10 of recycled water where the use involves the protection of public
11 health.

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

14

15 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

16

17 13560. The Legislature finds and declares the following:

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

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

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

31 (d) *Although there has been much scientific research on public*
32 *health issues associated with indirect potable reuse through*
33 *groundwater recharge, there are a number of significant*
34 *unanswered questions regarding indirect potable reuse through*
35 *surface water augmentation and direct potable reuse.*

36 ~~(d)~~

37 (e) Achievement of these goals depends on the timely
38 development of uniform statewide recycling criteria for indirect
39 and direct potable water reuse.

1 13561. For purposes of this chapter, the following terms have
2 the following meanings:

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

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

6 (c) “Indirect potable reuse” means the use of recycled water for
7 drinking purposes after replenishment of a groundwater basin or
8 aquifer, or after the placement of recycled water into a surface
9 water reservoir.

10 (d) *“Surface water augmentation” means the placement of*
11 *recycled water into a surface water reservoir used as a source of*
12 *drinking water.*

13 ~~(d)~~

14 (e) “Uniform water recycling criteria” has the same meaning
15 as in Section 13521.

16 13562. (a) The department shall develop and adopt uniform
17 water recycling criteria for indirect potable water reuse in
18 accordance with the following subcategories of this use on the
19 following schedule:

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

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

22 (b) Adoption of uniform water recycling criteria by the
23 department is subject to the requirements of Chapter 3.5
24 (commencing with Section 11340) of Part 1 of Division 3 of Title
25 2 of the Government Code.

26 13563. (a) (1) The department shall investigate and report to
27 the Legislature on the feasibility of developing uniform water
28 recycling criteria for direct potable reuse.

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

33 (3) The department shall provide a final report to the Legislature
34 by December 31, 2015. The department shall make the final report
35 available to the public.

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

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

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

3 (3) Available information on health effects.

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

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

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

14 13564. (a) (1) The department shall convene and administer
15 an expert panel for the purposes of advising the department on
16 scientific and technical matters regarding the development of
17 uniform water recycling criteria for indirect potable water reuse
18 *through surface water augmentation*, and the investigation of the
19 feasibility of developing uniform water recycling criteria for direct
20 potable reuse.

21 (2) The expert panel shall be comprised, at a minimum, of a
22 toxicologist, a certified engineering geologist or certified
23 hydrogeologist, an engineer licensed in the state with at least three
24 ~~years~~ *years*' experience in wastewater treatment and public water
25 supply, a microbiologist, and a chemist.

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

28 (4) *Notwithstanding paragraphs (2) and (3), the department*
29 *may use the National Water Research Institute Independent*
30 *Advisory Panel for the City of San Diego Indirect Potable*
31 *Reuse/Reservoir Augmentation (IPR/RA) Demonstration Project*
32 *as the expert panel for the purposes of paragraph (1), if the*
33 *advisory panel agrees to be the expert panel for the purposes of*
34 *that paragraph.*

35 (b) (1) The department may appoint an advisory group, task
36 force, or other group, comprised of no fewer than nine
37 representatives of water and wastewater agencies, local public
38 health officers, environmental organizations, environmental justice
39 organizations, and public health nongovernmental organizations.

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

5 13565. In developing the uniform water recycling criteria for
6 indirect potable reuse and the investigation of the feasibility of
7 developing uniform water recycling criteria for direct potable
8 reuse, the department shall consider all of the following:

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

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

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

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

19 (e) *Recommendations from the National Water Research*
20 *Institute Independent Advisory Panel for the City of San Diego*
21 *Indirect Potable Reuse/Reservoir Augmentation (IPR/RA)*
22 *Demonstration Project.*

23 13566. An action authorized pursuant to this chapter shall be
24 consistent, to the extent applicable, with the federal Clean Water
25 Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water
26 Act (42 U.S.C. Sec. 300f et seq.), this division, and the California
27 Safe Drinking Water Act (Chapter 4 (commencing with Section
28 116270) of Part 12 of Division 104 of the Health and Safety Code).

29 13569. The department may accept funds from any source, and
30 may expend these funds, upon appropriation by the Legislature,
31 for the purposes of this chapter.