

AMENDED IN SENATE APRIL 26, 2010
AMENDED IN SENATE APRIL 12, 2010
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 adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge, as defined, by December 31, 2013, and develop and adopt uniform water recycling criteria for ~~indirect potable reuse through reservoir~~ *surface water* augmentation, as defined, by December 31, 2016. The bill would require the department to investigate the feasibility of developing uniform water recycling criteria for direct potable reuse and to provide a final report on that investigation to the Legislature by December 31, 2016. The bill, from July 1, 2011, to June 30, 2017, 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 department for purposes of developing and adopting the water recycling criteria, in accordance with a specified schedule.

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)).

1 (c) A person shall not be liable under subdivision (b) if the
2 discharge is caused solely by any one or combination of the
3 following:

4 (1) An act of war.

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

9 (3) Negligence on the part of the state, the United States, or any
10 department or agency thereof. However, this paragraph shall not
11 be interpreted to provide the state, the United States, or any
12 department or agency thereof a defense to liability for any
13 discharge caused by its own negligence.

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

17 (5) Any other circumstance or event that causes the discharge
18 despite the exercise of every reasonable precaution to prevent or
19 mitigate the discharge.

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

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

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

26 (e) The state board or a regional board may impose civil liability
27 administratively pursuant to Article 2.5 (commencing with Section
28 13323) of Chapter 5 either on a daily basis or on a per gallon basis,
29 but not on both.

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

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

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

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

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

9 (g) The Attorney General, upon request of a regional board or
10 the state board, shall petition the superior court to impose, assess,
11 and recover the sums. Except in the case of a violation of a cease
12 and desist order, a regional board or the state board shall make the
13 request only after a hearing, with due notice of the hearing given
14 to all affected persons. In determining that amount, the court shall
15 be subject to Section 13351.

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

19 (i) A person who incurs any liability established under this
20 section shall be entitled to contribution for that liability from a
21 third party, in an action in the superior court and upon proof that
22 the discharge was caused in whole or in part by an act or omission
23 of the third party, to the extent that the discharge is caused by the
24 act or omission of the third party, in accordance with the principles
25 of comparative fault.

26 (j) Remedies under this section are in addition to, and do not
27 supersede or limit, any and all other remedies, civil or criminal,
28 except that no liability shall be recoverable under subdivision (b)
29 for any discharge for which liability is recovered under Section
30 13385.

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

1 (2) From July 1, 2011, to June 30, 2017, inclusive, funds
2 generated by the imposition of liabilities pursuant to this section
3 shall be made available to the State Department of Public Health,
4 upon appropriation by the Legislature, for the purposes of Chapter
5 7.3 (commencing with Section 13560), in the following amounts:

6 (A) Up to five hundred thousand dollars (\$500,000) in the
7 2011–12 fiscal year.

8 (B) Up to five hundred thousand dollars (\$500,000) in the
9 2012–13 fiscal year.

10 (C) Up to five hundred thousand dollars (\$500,000) in the
11 2013–14 fiscal year.

12 (D) Up to five hundred thousand dollars (\$500,000) in the
13 2014–15 fiscal year.

14 (E) Up to five hundred thousand dollars (\$500,000) in the
15 2015–16 fiscal year.

16 (F) Up to five hundred thousand dollars (\$500,000) in the
17 2016–17 fiscal year.

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

19 13521. The State Department of Public Health shall establish
20 uniform statewide recycling criteria for each varying type of use
21 of recycled water where the use involves the protection of public
22 health.

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

25
26 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

27
28 13560. The Legislature finds and declares the following:

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

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

37 ~~(c) Recycled water has been used in California since 1962 for
38 indirect potable reuse for groundwater recharge with the approval
39 of the State Department of Public Health and the State Water
40 Resources Control Board.~~

1 ~~(d)~~

2 (c) The use of recycled water for indirect potable reuse is critical
3 to achieving the state board’s goals for increased use of recycled
4 water in the state. If direct potable reuse can be demonstrated to
5 be safe and feasible, implementing direct potable reuse would
6 further aid in achieving the state board’s recycling goals.

7 ~~(e) There~~

8 (d) *Although there* has been much scientific research on public
9 health issues associated with indirect potable reuse through
10 groundwater ~~recharge~~. ~~However, recharge~~, there are a number of
11 significant unanswered questions regarding indirect potable reuse
12 through surface water augmentation and direct potable reuse.

13 ~~(f)~~

14 (e) Achievement of the ~~state board’s~~ *state’s* goals depends on
15 the timely development of uniform statewide recycling criteria for
16 indirect and direct potable water reuse.

17 ~~(g)~~

18 (f) This chapter is not intended to delay, invalidate, or reverse
19 any study or project, or development of regulations by the
20 department, the state board, or the regional boards regarding the
21 use of recycled water for indirect potable reuse for groundwater
22 recharge, ~~indirect potable reuse through reservoir~~ *surface water*
23 augmentation, or direct potable reuse.

24 ~~(h)~~

25 (g) This chapter shall not be construed to delay, invalidate, or
26 reverse the department’s ongoing review of projects consistent
27 with Section 116551 of the Health and Safety Code.

28 13561. For purposes of this chapter, the following terms have
29 the following meanings:

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

31 (b) “Direct potable reuse” means the planned introduction of
32 recycled water either directly into a public water system, as defined
33 in Section 116275 of the Health and Safety Code, or into a raw
34 water supply immediately upstream of a water treatment plant.

35 (c) “Indirect potable reuse for groundwater recharge” means
36 the planned use of recycled water for replenishment of a
37 groundwater basin or an aquifer that has been designated as a
38 source of water supply for a public water system, as defined in
39 Section 116275 of the Health and Safety Code.

1 (d) ~~“Indirect potable reuse through reservoir”~~ *“Surface water*
2 *augmentation”* means the planned placement of recycled water
3 into a surface water reservoir used as a source of domestic drinking
4 water supply.

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

7 13562. (a) (1) On or before December 31, 2013, the
8 department shall adopt uniform water recycling criteria for indirect
9 potable

10 reuse for groundwater recharge.

11 (2) On or before December 31, 2016, the department shall
12 develop and adopt uniform water recycling criteria for ~~indirect~~
13 ~~potable reuse through reservoir~~ *surface water* augmentation.

14 (b) Adoption of uniform water recycling criteria by the
15 department is subject to the requirements of Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code.

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

21 (2) The department shall complete a public review draft of its
22 report by June 30, 2016. The department shall provide the public
23 not less than 45 days to review and comment on the public review
24 draft.

25 (3) The department shall provide a final report to the Legislature
26 by December 31, 2016. The department shall make the final report
27 available to the public.

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

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

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

34 (3) Available information on health effects.

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

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

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

7 (c) (1) Notwithstanding Section 10231.5 of the Government
8 Code, the requirement for submitting a report imposed under
9 paragraph (3) of subdivision (a) is inoperative on December 31,
10 2020.

11 (2) A report to be submitted pursuant to paragraph (3) of
12 subdivision (a) shall be submitted in compliance with Section 9795
13 of the Government Code.

14 13564. In developing uniform recycling criteria for ~~indirect~~
15 ~~potable reuse through reservoir~~ *surface water* augmentation, the
16 department shall consider all of the following:

17 (a) The final report from the National Water Research Institute
18 Independent Advisory Panel for the City of San Diego Indirect
19 Potable Reuse/Reservoir Augmentation (IPR/RA) Demonstration
20 Project.

21 (b) Monitoring results of research and studies regarding ~~indirect~~
22 ~~potable reuse through reservoir~~ *surface water* augmentation.

23 (c) Results of demonstration studies conducted for purposes of
24 approval of projects using ~~indirect potable reuse through reservoir~~
25 *surface water* augmentation.

26 (d) Epidemiological studies and risk assessments associated
27 with projects using ~~indirect potable reuse through reservoir~~ *surface*
28 *water* augmentation.

29 (e) Applicability of the advanced treatment technologies required
30 for recycled water projects, including, but not limited to, indirect
31 potable reuse for groundwater recharge projects.

32 (f) Water quality, limnology, and health risk assessments
33 associated with existing potable water supplies subject to
34 discharges from municipal wastewater, stormwater, and agricultural
35 runoff.

36 (g) Recommendations of the State of California Constituents
37 of Emerging Concern Recycled Water Policy Science Advisory
38 Panel.

39 (h) State funded research pursuant to Section 79144 and
40 subdivision (b) of Section 79145.

1 (i) Research and recommendations from the United States
2 Environmental Protection Agency Guidelines for Water Reuse.

3 (j) Other relevant research and studies regarding indirect potable
4 reuse of recycled water.

5 13565. (a) (1) The department shall convene and administer
6 an expert panel for the purposes of advising the department on
7 public health issues and scientific and technical matters regarding
8 the feasibility of developing uniform water recycling criteria for
9 direct potable reuse.

10 (2) The expert panel shall be comprised, at a minimum, of a
11 toxicologist, an engineer licensed in the state with at least three
12 years' experience in wastewater treatment, an engineer licensed
13 in the state with at least three years' experience in treatment of
14 drinking water supplies and knowledge of drinking water standards,
15 an epidemiologist, a microbiologist, and a chemist.

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

18 (b) (1) The department may appoint an advisory group, task
19 force, or other group, comprised of no fewer than nine
20 representatives of water and wastewater agencies, local public
21 health officers, environmental organizations, environmental justice
22 organizations, public health nongovernmental organizations, and
23 the business community, to advise the department regarding the
24 development of uniform water recycling criteria for direct potable
25 reuse.

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

30 13566. In performing its investigation of the feasibility of
31 developing the uniform water recycling criteria for direct potable
32 reuse, the department shall consider all of the following:

33 (a) Recommendations from the expert panel appointed pursuant
34 to subdivision (a) of Section 13565.

35 (b) Recommendations from an advisory group, task force, or
36 other group appointed by the department pursuant to subdivision
37 (b) of Section 13565.

38 (c) Regulations and guidelines for these activities from
39 jurisdictions in other states, the federal government, or other
40 countries.

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

4 (e) Results of investigations pursuant to Section 13563.

5 (f) Water quality and health risk assessments associated with
6 existing potable water supplies subject to discharges from
7 municipal wastewater, stormwater, and agricultural runoff.

8 13567. An action authorized pursuant to this chapter shall be
9 consistent, to the extent applicable, with the federal Clean Water
10 Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water
11 Act (42 U.S.C. Sec. 300f et seq.), this division, and the California
12 Safe Drinking Water Act (Chapter 4 (commencing with Section
13 116270) of Part 12 of Division 104 of the Health and Safety Code).

14 13569. The department may accept funds from any source, and
15 may expend these funds, upon appropriation by the Legislature,
16 for the purposes of this chapter.