

AMENDED IN SENATE JUNE 1, 2010
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~~. *The bill would require the department to develop and adopt uniform water recycling criteria for surface water augmentation, as defined, by December 31, 2016, if a specified expert panel convened pursuant to the bill finds that the criteria would adequately protect public health.* 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

1 Environmental Protection Agency regulations interpreting Section
2 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

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

6 (1) An act of war.

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

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

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

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

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

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

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

28 (e) The state board or a regional board may impose civil liability
29 administratively pursuant to Article 2.5 (commencing with Section
30 13323) of Chapter 5 either on a daily basis or on a per gallon basis,
31 but not on both.

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

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

39 (B) When there is no discharge, but an order issued by the
40 regional board is violated, except as provided in subdivision (f),

1 the civil liability shall not be less than one hundred dollars (\$100)
2 for each day in which the violation occurs.

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

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

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

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

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

29 (j) Remedies under this section are in addition to, and do not
30 supersede or limit, any and all other remedies, civil or criminal,
31 except that no liability shall be recoverable under subdivision (b)
32 for any discharge for which liability is recovered under Section
33 13385.

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

1 effects of the waste, in cleaning up or abating the effects of the
2 waste on waters of the state or for the purposes authorized in
3 Section 13443.

4 (2) From July 1, 2011, to June 30, 2017, inclusive, funds
5 generated by the imposition of liabilities pursuant to this section
6 shall be made available to the State Department of Public Health,
7 upon appropriation by the Legislature, for the purposes of Chapter
8 7.3 (commencing with Section ~~13560~~), in the following amounts:
9 ~~13560~~).

10 (A) ~~Up to five hundred thousand dollars (\$500,000) in the~~
11 ~~2011-12 fiscal year.~~

12 (B) ~~Up to five hundred thousand dollars (\$500,000) in the~~
13 ~~2012-13 fiscal year.~~

14 (C) ~~Up to five hundred thousand dollars (\$500,000) in the~~
15 ~~2013-14 fiscal year.~~

16 (D) ~~Up to five hundred thousand dollars (\$500,000) in the~~
17 ~~2014-15 fiscal year.~~

18 (E) ~~Up to five hundred thousand dollars (\$500,000) in the~~
19 ~~2015-16 fiscal year.~~

20 (F) ~~Up to five hundred thousand dollars (\$500,000) in the~~
21 ~~2016-17 fiscal year.~~

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

23 13521. The State Department of Public Health shall establish
24 uniform statewide recycling criteria for each varying type of use
25 of recycled water where the use involves the protection of public
26 health.

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

29

30 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

31

32 13560. The Legislature finds and declares the following:

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

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

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

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

11 (e) Achievement of the state's goals depends on the timely
12 development of uniform statewide recycling criteria for indirect
13 and direct potable water reuse.

14 (f) This chapter is not intended to delay, invalidate, or reverse
15 any study or project, or development of regulations by the
16 department, the state board, or the regional boards regarding the
17 use of recycled water for indirect potable reuse for groundwater
18 recharge, surface water augmentation, or direct potable reuse.

19 (g) This chapter shall not be construed to delay, invalidate, or
20 reverse the department's ongoing review of projects consistent
21 with Section 116551 of the Health and Safety Code.

22 13561. For purposes of this chapter, the following terms have
23 the following meanings:

24 (a) "Department" means the State Department of Public Health.

25 (b) "Direct potable reuse" means the planned introduction of
26 recycled water either directly into a public water system, as defined
27 in Section 116275 of the Health and Safety Code, or into a raw
28 water supply immediately upstream of a water treatment plant.

29 (c) "Indirect potable reuse for groundwater recharge" means
30 the planned use of recycled water for replenishment of a
31 groundwater basin or an aquifer that has been designated as a
32 source of water supply for a public water system, as defined in
33 Section 116275 of the Health and Safety Code.

34 (d) "Surface water augmentation" means the planned placement
35 of recycled water into a surface water reservoir used as a source
36 of domestic drinking water supply.

37 (e) "Uniform water recycling criteria" has the same meaning
38 as in Section 13521.

39 13562. (a) (1) On or before December 31, 2013, the
40 department shall adopt uniform water recycling criteria for indirect

1 ~~potable reuse for groundwater recharge.~~ *potable reuse for*
2 *groundwater recharge.*

3 (2) ~~On~~(A) *Except as provided in subparagraph (C), on or before*
4 *December 31, 2016, the department shall develop and adopt*
5 *uniform water recycling criteria for surface water augmentation.*

6 (B) *Prior to adopting uniform water recycling criteria for*
7 *surface water augmentation, the department shall submit the*
8 *proposed criteria to the expert panel convened pursuant to*
9 *subdivision (a) of Section 13565. The expert panel shall review*
10 *the proposed criteria and shall adopt a finding as to whether, in*
11 *its expert opinion, the proposed criteria would adequately protect*
12 *public health.*

13 (C) *The department shall not adopt uniform water recycling*
14 *criteria for surface water augmentation pursuant to subparagraph*
15 *(A), unless and until the expert panel adopts a finding that the*
16 *proposed criteria would adequately protect public health.*

17 (b) Adoption of uniform water recycling criteria by the
18 department is subject to the requirements of Chapter 3.5
19 (commencing with Section 11340) of Part 1 of Division 3 of Title
20 2 of the Government Code.

21 13563. (a) (1) The department shall investigate and report to
22 the Legislature on the feasibility of developing uniform water
23 recycling criteria for direct potable reuse.

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

28 (3) The department shall provide a final report to the Legislature
29 by December 31, 2016. The department shall make the final report
30 available to the public.

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

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

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

37 (3) Available information on health effects.

38 (4) Mechanisms that should be employed to protect public health
39 if problems are found in recycled water that is being served to the

1 public as a potable water supply, including, but not limited to, the
2 failure of treatment systems at the recycled water treatment facility.

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

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

9 (c) (1) Notwithstanding Section 10231.5 of the Government
10 Code, the requirement for submitting a report imposed under
11 paragraph (3) of subdivision (a) is inoperative on December 31,
12 2020.

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

16 13564. In developing uniform recycling criteria for surface
17 water augmentation, the department shall consider all of the
18 following:

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

23 (b) Monitoring results of research and studies regarding surface
24 water augmentation.

25 (c) Results of demonstration studies conducted for purposes of
26 approval of projects using surface water augmentation.

27 (d) Epidemiological studies and risk assessments associated
28 with projects using surface 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 *development of uniform water recycling criteria for indirect potable*
9 *reuse through surface water augmentation and investigation of*
10 *the feasibility of developing uniform water recycling criteria for*
11 *direct potable reuse.*

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

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

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

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

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

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

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

1 (c) Regulations and guidelines for these activities from
2 jurisdictions in other states, the federal government, or other
3 countries.

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

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

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

11 13567. An action authorized pursuant to this chapter shall be
12 consistent, to the extent applicable, with the federal Clean Water
13 Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water
14 Act (42 U.S.C. Sec. 300f et seq.), this division, and the California
15 Safe Drinking Water Act (Chapter 4 (commencing with Section
16 116270) of Part 12 of Division 104 of the Health and Safety Code).

17 13569. The department may accept funds from any source, and
18 may expend these funds, upon appropriation by the Legislature,
19 for the purposes of this chapter.