

AMENDED IN ASSEMBLY AUGUST 16, 2010

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. 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 would require the department, in consultation with the State Water Resources Control Board, to report to the Legislature from 2011 to 2016, inclusive, as part of the annual budget process, on the progress towards developing and adopting the water recycling criteria for surface water augmentation and its investigation of the feasibility of developing water recycling criteria for direct potable reuse.* 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.

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).

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

5 (3) For purposes of this subdivision, the term “discharge” does
6 not include an emission excluded from the applicability of Section
7 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to
8 Environmental Protection Agency regulations interpreting Section
9 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

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

13 (1) An act of war.

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

18 (3) Negligence on the part of the state, the United States, or any
19 department or agency thereof. However, this paragraph shall not
20 be interpreted to provide the state, the United States, or any
21 department or agency thereof a defense to liability for any
22 discharge caused by its own negligence.

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

26 (5) Any other circumstance or event that causes the discharge
27 despite the exercise of every reasonable precaution to prevent or
28 mitigate the discharge.

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

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

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

35 (e) The state board or a regional board may impose civil liability
36 administratively pursuant to Article 2.5 (commencing with Section
37 13323) of Chapter 5 either on a daily basis or on a per gallon basis,
38 but not on both.

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

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

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

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

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

18 (g) The Attorney General, upon request of a regional board or
19 the state board, shall petition the superior court to impose, assess,
20 and recover the sums. Except in the case of a violation of a cease
21 and desist order, a regional board or the state board shall make the
22 request only after a hearing, with due notice of the hearing given
23 to all affected persons. In determining the amount to be imposed,
24 assessed, or recovered, the court shall be subject to Section 13351.

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

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

35 (j) Remedies under this section are in addition to, and do not
36 supersede or limit, any and all other remedies, civil or criminal,
37 except that no liability shall be recoverable under subdivision (b)
38 for any discharge for which liability is recovered under Section
39 13385.

1 (k) (1) Notwithstanding any other law, all funds generated by
2 the imposition of liabilities pursuant to this section shall be
3 deposited into the Waste Discharge Permit Fund. These moneys
4 shall be separately accounted for, and, except as otherwise provided
5 in paragraph (2), shall be expended by the state board, upon
6 appropriation by the Legislature, to assist regional boards, and
7 other public agencies with authority to clean up waste or abate the
8 effects of the waste, in cleaning up or abating the effects of the
9 waste on waters of the state or for the purposes authorized in
10 Section 13443.

11 (2) From July 1, 2011, to June 30, 2017, inclusive, funds
12 generated by the imposition of liabilities pursuant to this section
13 shall be made available to the State Department of Public Health,
14 upon appropriation by the Legislature, for the purposes of Chapter
15 7.3 (commencing with Section 13560).

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

17 13521. The State Department of Public Health shall establish
18 uniform statewide recycling criteria for each varying type of use
19 of recycled water where the use involves the protection of public
20 health.

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

23

24 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

25

26 13560. The Legislature finds and declares the following:

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

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

35 (c) The use of recycled water for indirect potable reuse is critical
36 to achieving the state board's goals for increased use of recycled
37 water in the state. If direct potable reuse can be demonstrated to
38 be safe and feasible, implementing direct potable reuse would
39 further aid in achieving the state board's recycling goals.

1 (d) Although there has been much scientific research on public
2 health issues associated with indirect potable reuse through
3 groundwater recharge, there are a number of significant unanswered
4 questions regarding indirect potable reuse through surface water
5 augmentation and direct potable reuse.

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

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

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

17 13561. For purposes of this chapter, the following terms have
18 the following meanings:

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

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

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

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

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

34 13562. (a) (1) On or before December 31, 2013, the
35 department shall adopt uniform water recycling criteria for indirect
36 potable reuse for groundwater recharge.

37 (2) (A) Except as provided in subparagraph (C), on or before
38 December 31, 2016, the department shall develop and adopt
39 uniform water recycling criteria for surface water augmentation.

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

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

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

16 13563. (a) (1) The department shall investigate and report to
17 the Legislature on the feasibility of developing uniform water
18 recycling criteria for direct potable reuse.

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

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

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

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

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

32 (3) Available information on health effects.

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

37 (5) Monitoring needed to ensure protection of public health,
38 including, but not limited to, the identification of appropriate
39 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 (c) (1) Notwithstanding Section 10231.5 of the Government
5 Code, the requirement for submitting a report imposed under
6 paragraph (3) of subdivision (a) is inoperative on December 31,
7 2020.

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

11 *13563.5. (a) The department, in consultation with the state
12 board, shall report to the Legislature as part of the annual budget
13 process, in each year from 2011 to 2016, inclusive, on the progress
14 towards developing and adopting uniform water recycling criteria
15 for surface water augmentation and its investigation of the
16 feasibility of developing uniform water recycling criteria for direct
17 potable reuse.*

18 *(b) (1) A written report submitted pursuant to subdivision (a)
19 shall be submitted in compliance with Section 9795 of the
20 Government Code.*

21 *(2) Pursuant to Section 10231.5 of the Government Code, this
22 section is repealed on January 1, 2017.*

23 13564. In developing uniform recycling criteria for surface
24 water augmentation, the department shall consider all of the
25 following:

26 (a) The final report from the National Water Research Institute
27 Independent Advisory Panel for the City of San Diego Indirect
28 Potable Reuse/Reservoir Augmentation (IPR/RA) Demonstration
29 Project.

30 (b) Monitoring results of research and studies regarding surface
31 water augmentation.

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

34 (d) Epidemiological studies and risk assessments associated
35 with projects using surface water augmentation.

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

39 (f) Water quality, limnology, and health risk assessments
40 associated with existing potable water supplies subject to

1 discharges from municipal wastewater, stormwater, and agricultural
2 runoff.

3 (g) Recommendations of the State of California Constituents
4 of Emerging Concern Recycled Water Policy Science Advisory
5 Panel.

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

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

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

12 13565. (a) (1) The department shall convene and administer
13 an expert panel for the purposes of advising the department on
14 public health issues and scientific and technical matters regarding
15 development of uniform water recycling criteria for indirect potable
16 reuse through surface water augmentation and investigation of the
17 feasibility of developing uniform water recycling criteria for direct
18 potable reuse.

19 (2) The expert panel shall be comprised, at a minimum, of a
20 toxicologist, an engineer licensed in the state with at least three
21 years' experience in wastewater treatment, an engineer licensed
22 in the state with at least three years' experience in treatment of
23 drinking water supplies and knowledge of drinking water standards,
24 an epidemiologist, a microbiologist, and a chemist.

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

27 (b) (1) The department may appoint an advisory group, task
28 force, or other group, comprised of no fewer than nine
29 representatives of water and wastewater agencies, local public
30 health officers, environmental organizations, environmental justice
31 organizations, public health nongovernmental organizations, and
32 the business community, to advise the department regarding the
33 development of uniform water recycling criteria for direct potable
34 reuse.

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

1 13566. In performing its investigation of the feasibility of
2 developing the uniform water recycling criteria for direct potable
3 reuse, the department shall consider all of the following:

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

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

9 (c) Regulations and guidelines for these activities from
10 jurisdictions in other states, the federal government, or other
11 countries.

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

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

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

19 13567. An action authorized pursuant to this chapter shall be
20 consistent, to the extent applicable, with the federal Clean Water
21 Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water
22 Act (42 U.S.C. Sec. 300f et seq.), this division, and the California
23 Safe Drinking Water Act (Chapter 4 (commencing with Section
24 116270) of Part 12 of Division 104 of the Health and Safety Code).

25 13569. The department may accept funds from any source, and
26 may expend these funds, upon appropriation by the Legislature,
27 for the purposes of this chapter.