

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 25, 2004

To: The Commission
(Meeting of May 27, 2004)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2528 (Lowenthal): Public Water Systems.**
As Amended April 12, 2004

Legislative Subcommittee Recommendation: Support, if amended.

Summary: This bill would require a retail water system to notify the Commission when a water contaminant in excess of various defined levels is discovered.

Digest: Existing law, the California Constitution, Art. XII, sec. 3, provides that private corporations and persons that own, operate, control, or manage "the production, ..., transmission, or furnishing of ... water ... are public utilities subject to control by the Legislature.

Existing law, P.U. Code sec. 768, provides that the Commission "may, after a hearing, require every public utility to construct, maintain, and operate its ... plant, system, equipment, apparatus, ... and premises in a manner so as to promote and safeguard the health and safety of its employees, ... customers, and the public. Existing law, P.U. Code sec. 770(b), further provides that no standard of the Commission applicable to any water corporation shall be inconsistent with the regulations and standards of the State Department of Health. Pursuant to this authority, the Commission has adopted General Order (G.O.) 103 prescribing specified water quality standards for water corporations, which among other things, requires water corporations to promptly notify the Commission when water quality matters are under review by state or local health agencies for not meeting specified water quality regulations.

This bill would recast portions of the California Safe Drinking Water Act to expand mandatory reporting of contaminated water sources.

Analysis: This bill provides clarity on the term "action level". Currently, the Department of Health Services (DHS) uses "action level" to signify that a drinking water

contaminant is concentrated high enough to merit public notification but low enough in concentration to fall within an acceptable threshold of safe drinking water standards. The current statute requires that a public water system operator (supplied from drinking water wells) notify a local municipality when a source of drinking water contains a contaminant in excess of an “action level”. Some water utility operators contend that the term “action level” implies that a specific action must be taken in order to address a contaminant beyond notification. Compounding this problem further, some water utility operators note that the Federal drinking water standards also use the term “action level” to describe a regulatory limit for certain contaminants. This circumstance suggests that “action level” may be confusing to some water utilities depending on how they interpret the different state and federal meanings.

Accordingly, AB 2528 would change the term “action level” to “notification level” to indicate when a water utility should inform the public that a contaminant has been detected in the drinking water supply at a concentration that is well below a remediation level. Historically, when DHS adopted an “action level” it also established a threshold where it recommended that a water utility take steps to reduce a contamination level. This bill now provides clarity to the water utilities by determining that the level where remediation is necessary as a “response level”. For example, when a contaminant reaches a high enough concentration a “response level” could entail installing equipment to clean the contaminated water, removing the contaminated water source from service, or blending the contaminated water with clean water sources.

The current statute only requires a public water system that uses drinking water supplies from wells to notify a local governing body (where the water utility customer resides) when a contamination is high enough in concentration to warrant notification or when the concentration exceeds a “maximum contaminant level”. To remedy this discrepancy, the bill would require action when there are “notification levels”, “response levels”, or “maximum contaminant levels” from drinking water supplies both from wells and surface water. It is believed that by extending the notification requirements to public water systems that use surface water it is likely that public awareness will be expanded. This increased awareness may in turn spur increased protection of all drinking water supplies.

The Legislative Subcommittee recommends support of AB 2528, if amended to a water utility will notify the Commission when it has reached a “notification level”, “response level”, and a “maximum contamination level”, if a retail water system is under the jurisdiction of the Commission. The amendment notes that the Commission in its discretion may take further action to ensure that the drinking water supply is safe for public consumption as long as said action is not inconsistent with the standards and regulations of the Department of Health Services as required by existing Public Utilities law. (See section 770(b) of the Public Utilities Code.)

Proposed Amendment:

By amending the bill on page 2, lines 5-18 of the bill, as follows:

116455. (a) When a drinking water source that is used by a **delivered by** a public water system **for human consumption** is **first** discovered to contain a contaminant in excess of a maximum contaminant level, a response level, or a notification level established by the department, then the following shall occur within 30 days of the discovery:

(1) If the public water system is a wholesale water system, then the person operating the wholesale water system shall notify the wholesale water system's governing body and the water systems that are directly supplied **that drinking water** by the wholesale water system and that receive blended, or raw water from that source. **If the wholesale water system is a water company regulated by the California Public Utilities Commission, then the wholesale water system shall also notify the commission. The commission, may, in the exercise of its general and specific powers to ensure the health, safety and availability of drinking water served by the utilities subject to its jurisdiction, may order further action, in its discretion, that is not inconsistent with the standards and regulations of the Department of Health Services to ensure a potable water supply.**

(2) If the public water system is a retail water system, then the person operating the retail water system shall notify the retail water system's governing body and the governing body of **any** the local agency in which users of the drinking water reside. **If the retail water system is a water company regulated by the California Public Utilities Commission, then the water system shall also notify the commission. The commission, in coordination with the department, in the exercise of its general and specific powers to ensure the health, safety and availability of drinking water served by the utilities subject to its jurisdiction, may order such further action, in its discretion, that is not inconsistent with the standards and regulations of the Department of Health Services to ensure a potable water supply.**

LEGISLATIVE HISTORY

Assembly Floor: 72-0 (Pass) (4/29/04)

Assembly APPR.: 20-0 (Do pass) (4/21/04)

Assembly E.S. & T.M.: 7-0 (Do pass as amended) (3/30/04)

SUPPORT/OPPOSITION

Support: California Municipal Utilities Association, Calleguas Municipal Water District, Central Basin Municipal Water District, City of Burbank, City of Pasadena, Clean Water Action, Coachella Valley Water District, County Sanitation Districts of Los Angeles County, Environment California, Foothill Municipal Water District, Inland Empire Utilities Agency, League of Cities, Long Beach Water Department, Metropolitan Water District of Southern California, Mono Lake Committee, Municipal Water District of Orange County, Orange County Water District, Park Water Company, San Francisco Public

Utilities Commission, San Diego County Water Authority, Sierra Club California, Southern California Water Committee, West Basin Municipal Water District, Western Municipal Water District .

Opposition: Association of California Water Agencies.

LEGISLATIVE STAFF CONTACT

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Date: May 25, 2004

BILL LANGUAGE:

BILL NUMBER: AB 2528 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 12, 2004

INTRODUCED BY Assembly Member Lowenthal

FEBRUARY 20, 2004

An act to repeal and add Section 116455 of the Health and Safety Code, relating to public water systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2528, as amended, Lowenthal. Public water systems.

Existing law, the California Safe Drinking Water Act, requires the State Department of Health Services to administer provisions relating to the regulation of drinking water and public water systems and, among other things, to adopt primary drinking water standards for contaminants in drinking water and to monitor regulated and unregulated contaminants. Existing law requires every public water system serving more than 10,000 service connections and that detect one or more contaminants in drinking water that exceed the public health goal to prepare a brief written report.

Existing law requires the person operating a public water system to, within 30 days of the closure of a well or of discovery of a contaminant exceeding the maximum containment level or action level, as defined, in a well that is used for drinking water, notify the governing body of the local agency in which users of drinking water reside.

This bill would delete this requirement and would, instead, require the operator of wholesale or retail public water systems, as defined, to provide notice relating to contamination of any drinking water source, as defined, that exceeds the maximum containment level, a response level, or a notification level, as defined.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 116455 of the Health and Safety Code is repealed.

SEC. 2. Section 116455 is added to the Health and Safety Code, to read:

116455. (a) When a drinking water source that is used by a public water system is discovered to contain a contaminant in excess of a maximum contaminant level, a response level, or a notification level established by the department, then the following shall occur within 30 days of the discovery:

(1) If the public water system is a wholesale water system, then the person operating the wholesale water system shall notify the wholesale water system's governing body and the water systems that are directly supplied by the wholesale water system and that receive treated, blended, or raw water from that source.

(2) If the public water system is a retail water system, then the person operating the retail water system shall notify the retail water system's governing body and the governing body of the local agency in which users of the drinking water reside.

(b) The notification required by subdivision (a) shall identify the drinking water source, its type, the origin, if known, of the contaminant, the maximum contaminant level, response level, or notification level, the concentration of the detected contaminant, and the operational status of the drinking water source.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Drinking water source" means an individual groundwater source, an individual surface water intake, or in the case of water purchased from another water system, the water at the service connection.

(2) "Local agency" means a city or county, or a city and county.

(3) "Notification level" means the concentration level of a contaminant in a drinking water source that the department has determined, based on available scientific information, does not pose a significant health risk but warrants notification of the governing body of the area in which the water is served. Notification levels are nonregulatory, health-based advisory levels established by the department for contaminants in drinking water for which maximum contaminant levels have not been established and which have been found in a drinking water source. Notification levels are established as precautionary measures for contaminants that may be considered candidates for establishment of maximum contaminant levels, but have not yet undergone ~~the rigorous scientific and~~ or completed the regulatory ~~evaluation~~ *standard setting process* prescribed for the development of maximum contaminant levels.

(4) "Response level" means the concentration of a contaminant in a drinking water source at which the department recommends that additional steps, beyond notification of the governing body by the operator of the retail public water system, be taken to reduce public exposure to the contaminant. Response levels are established in conjunction with notification levels for contaminants that may be considered candidates for establishment of maximum contaminant levels, but have not yet undergone ~~the rigorous scientific and~~ or completed the regulatory ~~evaluation~~ *standard setting process* prescribed for the development of maximum contaminant levels.

(5) "Retail water system" means a public water system that supplies water directly to the end user.

(6) "Wholesale water system" means a public water system that supplies water to other public water systems for resale.