1990

TOXIC CHEMICAL DISCHARGE. PUBLIC AGENCIES. LEGISLATIVE STATUTE.

141 Toxic Chemical Discharge. Public Agencies. Legislative Statute

Official Title and Summary

TOXIC CHEMICAL DISCHARGE. PUBLIC AGENCIES.
LEGISLATIVE STATUTE

- The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits businesses from discharging or releasing into water chemicals known to cause cancer or reproductive toxicity, and requires warnings to persons exposed to such chemicals.
- This measure extends to public agencies, other than publicly owned water systems, the discharge and release prohibition and warning requirement.
- Exempts specified public agencies from discharge and release prohibition during public emergency, to protect public health, specified storm water or runoff situations, other circumstances.
- Exempts specified public agencies from clear and reasonable warning requirements during emergency.

Summary of Legislative Analyst's Estimate of State Net and Local Government Fiscal Impact:

- Beginning in 1991, unknown state and local government costs, which could exceed $1 million in first year, for posting signs and providing notices warning employees and public about exposures to toxic chemicals. Thereafter, ongoing state and local government costs, which may be less than the first year.
- Beginning in 1992, unknown costs could result from preventing discharges into drinking water.
- Amount of costs would depend upon extent existing waste discharge controls used at state and local governmental facilities are not sufficient to comply with discharge prohibitions of Proposition 65, and could be tens of millions of dollars.

Final Votes Cast by the Legislature on SB 65 (Proposition 141)

Assembly:	Ayes 52	Senate:	Ayes 34
	Noes 13		Noes 3

Analysis by the Legislative Analyst

Background

The Safe Drinking Water and Toxic Enforcement Act roposition 65), passed by the voters in 1986, imposes two requirements on the discharge of chemicals by businesses. Under these requirements, businesses are:

- Prohibited from knowingly releasing or discharging into a source of drinking water any chemical that causes cancer or "reproductive toxicity" (that is, reproduction-related problems like sterility or birth defects).
- Required to warn people before knowingly exposing them to chemicals that cause cancer or reproductive toxicity. Warnings may be provided in various ways such as labels on products, or notices in mailings or newspapers.

Businesses that violate these requirements are subject to civil penalties. Businesses are exempt from the requirements if the substances they discharge do not pose a significant health risk to the public. In addition, current law exempts from these requirements federal, state, and local government agencies, businesses employing fewer than 10 people, and water systems serving the public.

Proposal

This measure generally extends the requirements and civil penalty provisions of Proposition 65 to federal, state, and local government agencies and water systems serving the public. The warning requirements would go to effect in November 1991, and the prohibitions ainst discharges would go into effect in July 1992. The restrictions would not apply to public sewage treatment plants.

The measure provides certain exemptions to the drinking water requirement. These exemptions cover such cases, among others, as chemicals that are present due to storm water runoff, and chemicals put into drinking water for public health purposes.

In addition, the measure exempts chemical releases resulting from a public agency's response to an emergency, such as firefighting, from both the drinking water and the warning requirements.

Fiscal Effect

This measure would result in unknown state and local government costs, beginning in 1991, to post signs and provide notices warning employees and the general public about exposures to toxic chemicals. These costs could exceed $1 million in the first year. In following years, state and local governments would continue to experience costs to provide such warnings. These annual costs would be somewhat less than those in the first year.

The measure also could result in unknown costs to state and local governments, beginning in 1992, to prevent discharges into drinking water. The amount of these costs depends upon the extent to which existing waste discharge controls used at state and local government facilities, such as public landfills, are not sufficient to meet the discharge prohibitions of Proposition 65. These costs could be in the tens of millions of dollars.

For text of Proposition 141 see page 49

141 Toxic Chemical Discharge. Public Agencies. Legislative Statute

Argument in Favor of Proposition 141

When California voters overwhelmingly approved Proposition 65 in November 1986, they signaled their understandable demand that steps be taken to protect their drinking water supplies and their workplaces from toxic and cancer-causing materials.

Why, then, were public agencies exempted from the tough new rules being placed on the private sector?

Shouldn't public officials be prohibited from contaminating our water supply, too?

Shouldn't public employers be required to notify workers about the use of materials known to cause cancer or birth defects?

The answer to these questions, obviously, is "yes".

There should be *no double standard* when it comes to the health and safety of Californians. If private industry must abide by the provisions of Proposition 65, then so should government agencies. As the saying goes, "What's good for the goose is good for the gander".

That's the reason for Proposition 141. This measure will hold public agencies and public officials to the same rules that Proposition 65—the Safe Drinking Water and Toxic Enforcement Act—requires private industry and companies to obey.

Proposition 141 will *plug the monumental loophole* created by Proposition 65's failure to hold cities, counties, special districts, and state agencies as accountable as private industry. It lets you decide that government should be held to the same standards as everyone else.

VOTE "YES" ON PROPOSITION 141

During the time this measure was undergoing intense scrutiny by state legislators, it gained *bipartisan support* for its common-sense approach to the issue of environmental pollution enforcement. Assembly members and Senators wisely decided that government officials should not be permitted to pollute and escape the penalties that are imposed on private industry. Proposition 141 was approved by huge margins in both the Senate and the Assembly.

While acknowledging that there should be no double standard in the enforcement of Proposition 65, this prudent measure also recognizes that there should be exclusions for certain activities over which government officials have no control, such as the waste that enters city sewage systems.

VOTE "YES" ON PROPOSITION 141

We sincerely urge you to ensure that government agencies and employers are held to the same standard of conduct as private industry by voting "yes" on Proposition 141. It is the right way, the judicious way to protect the health and safety of over 29,000,000 Californians.

SENATOR QUENTIN L. KOPP
State Senator, Independent—8th District

ASSEMBLYMAN LLOYD G. CONNELLY
Member of the Assembly, 6th District

RICHARD GANN
President, Paul Gann's Citizens Committee

Rebuttal to Argument in Favor of Proposition 141

Don't be fooled by the Sacramento politicians! Prop. 141 passed the Legislature, despite the opposition of the California Department of Health Services. It passed because of intense lobbying by the large industrial polluters who opposed Prop. 65. The big polluters pushed this measure because they hope Prop. 141 will destroy Prop. 65. They want to overload the Prop. 65 enforcement system and sink it!

Public agencies and drinking water suppliers were exempted from Prop. 65 because they *already* protect public health. Public agencies don't threaten your health and safety; they protect your health and safety by enforcing the laws—including Prop. 65.

There is no "double standard" when it comes to the health and safety of Californians.

- *The law already requires public agencies to tell their workers about ALL chemicals on the job, not just the ones that cause cancer or birth defects.*
- *State and federal laws already prohibit public agencies from polluting the drinking water supply.*
- *State law already requires your drinking water supplier to tell you about what's in your water.*

That's the law.

Prop. 141 adds unnecessary taxpayer costs and bureaucratic paper work, but it won't add safety.

Don't be fooled! Vote "NO" on Prop. 141.

STANLEY E. SPRAGUE
Chairman, California Water Resources Association

LE VAL LUND
Chairman, Water Quality Task Force
Association of California Water Agencies

JOHN M. GASTON
Chairman, Safe Drinking Water Committee
California-Nevada Section, American Water Works Association

Toxic Chemical Discharge. Public Agencies. Legislative Statute 141

Argument Against Proposition 141

Question: Who is the special interest group responsible for Prop. 141 being on the ballot?

Answer: Large Industrial Polluters. They know it will make enforcement of Prop. 65 difficult and shift attention from industry.

In 1986, the drafters of Prop. 65, which requires toxics warnings everywhere, had good reason for not including public water systems. For example:

- *The Federal Environmental Protection Agency and California Department of Health Services already require public water systems to meet all drinking water standards.*
- *California already has some of the nation's strictest drinking water safety standards.*
- *The law already requires public water systems to provide yearly reports to the consumer about the quality of their water.*
- *Public water systems already have to answer to the public for their actions and the State can shut down your public water system if it doesn't meet the State's tough standards.*

That's the law.

Proposition 141 would restrict or prohibit the use of chlorine in your drinking water. Public water systems use chlorine to destroy germs, viruses, and parasites. Chlorine has virtually eliminated cholera and typhoid fever, which claimed hundreds of thousands of American lives in the 1800's.

Including water suppliers under Prop. 65 will result in water shortages in a drought-stricken state. Public water systems also use chlorine to keep the public's pipelines and canals free flowing. Without regular use of chlorine, the Colorado River Aqueduct in Southern California would lose 10% or more of its capacity, or enough water for 240,000 families (approximately the water needs of the County of Sacramento or the City of San Diego). This water must be replaced somehow. With shrinking water supplies and the need to protect our environment, substitute water supplies are not available.

In addition, the California Department of Health Services (the agency that regulates public water systems and implements the existing Prop. 65) strongly opposed this ballot measure when it was a bill in the Legislature.

Proposition 141 *won't* make your drinking water cleaner. Proposition 141 *won't* make your drinking water safer. Prop. 141 *will* open the deep pockets of your public water suppliers to bounty-hunting lawsuits, which *you* will pay for in higher water bills.

Exempting public water systems from Prop. 65 was a good idea in 1986 and it remains so today. *Don't* weaken Prop. 65. *Don't* jeopardize our water supplies. *Don't* be manipulated by large industrial polluters. Vote *NO* on Prop. 141.

STANLEY E. SPRAGUE
Chairman, California Water Resources Association

LE VAL LUND
Chairman, Water Quality Task Force
Association of California Water Agencies

JOHN M. GASTON
Chairman, Safe Drinking Water Committee
California-Nevada Section, American Water Works Association

Rebuttal to Argument Against Proposition 141

Our opponents ask the question: "Who is the special interest group responsible for Prop. 141 being on the ballot?"

We're glad they asked. The "special interest group" responsible for Proposition 141 is its author, State Senator Quentin Kopp, California's only Independent legislator and the San Francisco Co-Chairman of the original Proposition 65 campaign. And environmental leaders like Assemblyman Lloyd Connelly. And taxpayer advocates like Richard Gann.

VOTE "YES" ON PROPOSITION 141

Our opponents complain that federal and state law already require public water systems to meet certain safe drinking water standards. So what's the big deal in complying with the voter-approved Proposition 65, too?

Our opponents contend that California's toxics and clean water initiative, Proposition 65, should apply to everyone *except* the public agencies that deliver your drinking water. *That's crazy.* Toxic discharges by public agencies are no less harmful than those by private corporations!

VOTE "YES" ON PROPOSITION 141

Our opponents say that Proposition 141 would "restrict or prohibit the use of chlorine in your drinking water". *That's a lie.* In fact, Proposition 141 specifically allows the use of chlorine to disinfect drinking water. But some by-products of chlorination—like chloroform—are known to cause cancer. That's why Proposition 141 requires water suppliers to *notify* their customers of exposure to toxic by-products. *Californians have a right to know what's in their drinking water.*

Proposition 141 closes a gaping loophole in California's toxics and clean water initiative. Our environment, and *your* health, deserve nothing less.

SENATOR QUENTIN L. KOPP
State Senator, Independent—8th District

RON LINDEN
Chairman, Citizens for Safe Drinking Water—Sacramento

MARK S. POLLOCK
Past Chairman, Consumer & Environmental Protection Council, California District Attorneys Association

Proposition 141: Text of Proposed Law

This law proposed by Senate Bill 65 (Statutes of 1990, Ch. 407) is submitted to the people in accordance with the provisions of Article II, ion 10 of the Constitution.

his proposed law amends and adds sections to the Health and Safety Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 25249.5 of the Health and Safety Code is amended to read:

25249.5. ~~Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity.~~ No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where ~~such~~ *the* chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in ~~Section~~ *Sections* 25249.9, *25249.15, and 25249.17*.

SEC. 2. Section 25249.6 of the Health and Safety Code is amended to read:

25249.6. ~~Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity.~~ No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to ~~such~~ *the* individual, except as provided in ~~Section~~ *Sections* 25249.10 *and 25249.16*.

SEC. 3. Section 25249.11 of the Health and Safety Code is amended to read:

25249.11. Definitions.

For purposes of this chapter:

(a) *"Business" means the conduct of activity, including, but not limited to, commercial or proprietary activities.*

(b) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, ~~and~~ association, *or public agency.*

~~(b)~~ *(c)* "Person in the course of doing business" does not include any person employing fewer than ~~ten~~ *10* employees in ~~his~~ *the person's* ness *or a publicly owned treatment works*; ~~any city, county, or rict or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof, or any entity in its operation of a public water system as defined in Section 4010.1~~.

(d) "Person in the course of doing business" includes, but is not limited to, a public agency regardless of the number of its employees.

(e) "Public agency" means a city, county, district, government corporation, the state, or any department or agency thereof, and, to the extent permitted by law, the federal government, or any department or agency thereof.

(f) "Publicly owned treatment works" means treatment works, as defined in Section 1292 of Title 33 of the United States Code, which are owned and operated by a public agency.

~~(c)~~ *(g)* "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water.

~~(d)~~ *(h)* "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.

~~(e)~~ *(i)* "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

~~(f)~~ *(j)* "Warning" within the meaning of Section 25249.6 ~~need~~ *is* not *required to* be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity the consumer product in question.

EC. 4. Section 25249.15 is added to the Health and Safety Code, to read:

25249.15. Section 25249.5 does not apply to any discharge or release by a public agency if any of the following apply:

(a) The discharge or release is a substance, or the byproducts of a substance, which is intentionally placed into water by a public water system, as defined in Section 4010.1, for the purpose of protecting or promoting public health.

(b) The discharge or release is by a public water system, as defined in Section 4010.1, if the public water system did not cause the presence of the substance in the water which is discharged or released.

(c) The discharge or release is surface runoff from a watershed where the substance is naturally present in geological formations and is present in the surface runoff.

(d) The discharge or release is stormwater runoff drained from underground vaults, chambers, manholes, storm drains, or detention basins into gutters or other flood control or drainage systems.

(e) The discharge or release is governed by a federal law in a manner which preempts state authority.

(f) The discharge or release results from activities undertaken in response to a public emergency, including, but not limited to, firefighting, or activities undertaken for public health purposes.

(g) The discharge or release takes place less than 20 months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8 or before July 6, 1992, whichever date is later.

SEC. 5. Section 25249.16 is added to the Health and Safety Code, to read:

25249.16. Section 25249.6 does not apply to any exposure by a public agency, or by a public water system, as defined in Section 4010.1, owned or operated by an entity which is not a public agency, if either of the following apply:

(a) The exposure takes place less than 12 months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8 or before November 6, 1991, whichever date is later.

(b) The exposure results from activities undertaken in response to a public emergency, including, but not limited to, firefighting. For purposes of this subdivision, a response to a public emergency does not include the routine disinfection of drinking water.

SEC. 6. Section 25249.17 is added to the Health and Safety Code, to read:

25249.17. Section 25249.5 does not apply to any discharge or release by a public water system, as defined in Section 4010.1, owned or operated by an entity which is not a public agency if any of the following apply:

(a) The discharge or release takes place less than 20 months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8 or before July 6, 1992, whichever is later.

(b) The discharge or release is a substance, or the byproducts of a substance, which is intentionally placed into water by a public water system, as defined in Section 4010.1, for the purpose of protecting or promoting public health.

(c) The public water system did not cause the presence of the substance in the water which is discharged or released.

(d) The discharge or release is surface runoff from a watershed were the substance is naturally present in geological formations and is present in the surface runoff.

SEC. 7. Section 25249.18 is added to the Health and Safety Code, to read:

25249.18. It is the intent of the Legislature in amending Section 25249.11 by the act adding this section and of the people in approving the act adding this section, to include public agencies, except for publicly owned treatment works, within the prohibitions of Sections 25249.5 and 25249.6, except as provided in Sections 25249.15 and 25249.16. It is not, however, the intent of the Legislature in enacting the act adding this section, and of the people in approving the act adding this section, to affect in any manner existing statutory law with respect to the prohibition of Section 25249.5 as it applies to any person who, in the course of doing business, knowingly discharges or releases a chemical known to the state to cause cancer or reproductive toxicity into a publicly owned treatment works. A state agency, when implementing this chapter pursuant to Section 25249.12, and a court, when interpreting this chapter, shall not construe the amendment by the act adding this section, of subdivision (c) of Section 25249.11, which excludes publicly owned treatment works from the definition of person in the course of doing business, as affecting in any manner existing statutory law with respect to the prohibition of Section 25249.5 as it applies to any person who, in the course of doing business, knowingly discharges or releases a chemical known to the state to cause cancer or reproductive toxicity into a publicly owned treatment works.