

ASSEMBLY BILL

No. 711

**Introduced by Committee on Environmental Safety and Toxic
Materials (Jackson (Chair), Cohn, Longville, Lowenthal,
Strom-Martin, and Washington)**

February 22, 2001

An act to amend Section 25187 of the Health and Safety Code,
relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 711, as introduced, Committee on Environmental Safety and
Toxic Materials. Administrative orders.

(1) Under existing law, the Department of Toxic Substances
Control, a unified program agency, or a designated local public officer,
as prescribed, is authorized to issue an order specifying a schedule for
compliance or correction and imposing an administrative penalty if
there is a violation of the hazardous waste control laws, laws regulating
hazardous substances, or radioactive waste, or any permit, rule,
regulation, standard, or requirement issued or adopted pursuant to those
laws, or if the department, agency, or officer determines there has been
a release of hazardous waste or constituents from a hazardous waste
facility.

Existing law specifies procedures for the conduct of a hearing, upon
the request of a person served with a corrective action order, and
requires the hearing to be conducted within 90 days after receipt of the
notice of defense by an administrative law judge of the Office of
Administrative Hearings.

This bill would authorize a person served with a corrective action
order to request a hearing be conducted by the department, the

authorized unified program agency, or the public officer, as specified pursuant to a specified informal hearing procedure. The bill would require a decision to be issued within 60 days after the hearing is conducted. The bill would provide that an order setting a penalty pursuant to the hearing is final upon issuance and would require payment be made within 60 days of issuance. The bill would make conforming changes.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the enforcement of the hazardous waste control laws.

(2) Existing law requires that half of the penalties collected from actions brought by unified program agencies or designated local public officers pursuant to an order for corrective action be paid to the city or county whose agency or officer imposed the penalty, if the Director of Toxic Substances Control determines that the local agency enforcement is fair and reasonable. Existing law requires that half of those penalties collected from actions brought by those agencies or public officers be paid to the department and deposited in the Hazardous Waste Control Account.

This bill would instead require that all of the penalties collected from actions brought by unified program agencies or designated local public officers pursuant to an order for corrective action be paid to the city or county and would delete the requirement that the director make a determination regarding the enforcement action.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 25187 of the Health and Safety Code is
 2 amended to read:
 3 25187. (a) (1) ~~Whenever the~~ (A) The department, a unified
 4 program agency authorized pursuant to paragraph (2), local health
 5 officer authorized pursuant to Section 25187.7, or a local public



1 officer designated by the director pursuant to subdivision (a) of
2 Section 25180 and authorized pursuant to Section 25187.7 may
3 issue an order specifying a schedule for compliance or correction
4 and imposing an administrative penalty for any violation of this
5 chapter or any permit, rule, regulation, standard, or requirement
6 issued or adopted pursuant to this chapter; whenever the
7 department, CUPA, or designated public officer determines ~~that~~
8 any of the following:

9 (i) A person has violated, is in violation of, or threatens, as
10 defined in subdivision (e) of Section 13304 of the Water Code, to
11 violate, this chapter, Chapter 6.8 (commencing with Section
12 25300) ~~of this division~~, or Article 3 (commencing with Section
13 114990) of Chapter 8 of Part 9 of Division 104, or any permit, rule,
14 regulation, standard, or requirement issued or adopted pursuant to
15 this chapter, Chapter 6.8 (commencing with Section 25300) of this
16 division, or Article 3 (commencing with Section 114990) of
17 Chapter 8 of Part 9 of Division 104, ~~or the department, an~~
18 ~~authorized unified program agency, an authorized local health~~
19 ~~officer, or an authorized local public officer determines that there.~~

20 (ii) *There* is or has been a release, as defined in Chapter 6.8
21 (commencing with Section 25300), of hazardous waste or
22 constituents into the environment from a hazardous waste facility;
23 ~~the department, an authorized unified program agency, authorized~~
24 ~~local health officer, or authorized local public officer may issue an~~
25 ~~order specifying a schedule for compliance or correction and~~
26 ~~imposing an administrative penalty for any violation of this~~
27 ~~chapter or any permit, rule, regulation, standard, or requirement~~
28 ~~issued or adopted pursuant to this chapter. In.~~

29 (B) *In* the case of a release of hazardous waste or constituents
30 into the environment from a hazardous waste facility that is
31 required to obtain a permit pursuant to Article 9 (commencing
32 with Section 25200), the department shall pursue the remedies
33 available under this chapter, including the issuance of an order for
34 corrective action pursuant to this section, before using the legal
35 remedies available pursuant to Chapter 6.8 (commencing with
36 Section 25300), except in any of the following circumstances:

37 (A)–

38 (i) Where the person who is responsible for the release
39 voluntarily requests in writing that the department issue an order



1 to that person to take corrective action pursuant to Chapter 6.8
2 (commencing with Section 25300).

3 ~~(B)~~

4 (ii) Where the person who is responsible for the release is
5 unable to pay for the cost of corrective action to address the
6 release. For purposes of this ~~subparagraph~~ *clause*, the inability of
7 a person to pay for the cost of corrective action shall be determined
8 in accordance with the policies of the Environmental Protection
9 Agency for the implementation of Section 9605 of Title 42 of the
10 United States Code.

11 ~~(C)~~

12 (iii) Where the person responsible for the release is unwilling
13 to perform corrective action to address the release. For purposes
14 of this ~~subparagraph~~ *clause*, the unwillingness of a person to take
15 corrective action shall be determined in accordance with the
16 policies of the Environmental Protection Agency for the
17 implementation of Section 9605 of Title 42 of the United States
18 Code.

19 ~~(D)~~

20 (iv) Where the release is part of a regional or multisite
21 groundwater contamination problem that cannot, in its entirety, be
22 addressed using the legal remedies available pursuant to this
23 chapter and for which other releases that are part of the regional
24 or multisite groundwater contamination problem are being
25 addressed using the legal remedies available pursuant to Chapter
26 6.8 (commencing with Section 25300).

27 ~~(E)~~

28 (v) Where an order for corrective action has already been issued
29 against the person responsible for the release, or the department
30 and the person responsible for the release have, prior to January 1,
31 1996, entered into an agreement to address the required cleanup of
32 the release pursuant to Chapter 6.8 (commencing with Section
33 25300).

34 ~~(F)~~

35 (vi) Where the hazardous waste facility is owned or operated by
36 the federal government.

37 (2) The authority granted under this section to a unified
38 program agency is limited to the issuance of orders to correct
39 releases from, and violations of the requirements of this chapter
40 listed in paragraph (1) of subdivision (c) of Section 25404



1 occurring at, a unified program facility within the jurisdiction of
2 the CUPA, and is subject to ~~the provisions of~~ Section 25404.1.

3 (A) Notwithstanding paragraph (1) ~~and Section 25187.7,~~
4 within the jurisdiction of a CUPA, the unified program agencies
5 shall be the only local agencies authorized to issue orders under
6 this section to correct releases from, and violations of the
7 requirements of this chapter listed to paragraph (1) of subdivision
8 (c) of Section 25404 occurring at, a unified program facility.

9 (B) The CUPA shall annually submit a summary report to the
10 department on the status of orders issued by the unified program
11 agencies under this section and Section 25187.1.

12 (C) *The CUPA shall consult with the district attorney for the*
13 *county on the development of policies to be followed in exercising*
14 *the authority delegated pursuant to this section and Section*
15 *25187.1.*

16 (D) The department shall adopt regulations to implement this
17 paragraph and paragraph (2) of subdivision (a) of Section 25187.1.
18 The regulations shall include, but not be limited to, all of the
19 following requirements:

20 ~~(i) A requirement that the unified program agency shall consult~~
21 ~~with the district attorney for the county on the development of~~
22 ~~policies to be followed by the unified program agency in~~
23 ~~exercising the authority delegated pursuant to this section and~~
24 ~~Section 25187.1.~~

25 ~~(ii) Provisions to ensure coordinated and consistent application~~
26 ~~of this section and Section 25187.1 when both the department and~~
27 ~~the unified program agency have or will be issuing orders under~~
28 ~~one or both of these sections at the same facility.~~

29 ~~(iii)–~~

30 (ii) Provisions to ensure that the enforcement authority granted
31 to the unified program agencies will be exercised consistently
32 throughout the state.

33 ~~(iv)–~~

34 (iii) A requirement that the unified program agency have the
35 ability to represent itself in administrative appeal hearings.

36 ~~(v)–~~

37 (iv) Minimum training requirements for staff of the unified
38 program agency relative to this section and Section 25187.1.

39 ~~(vi)–~~



1 (v) Procedures to be followed by the department to rescind the
 2 authority granted to a unified program agency under this section
 3 and Section 25187.1, if the department finds that the unified
 4 program agency is not exercising that authority in a manner
 5 consistent with the provisions of this chapter and Chapter 6.11
 6 (commencing with Section 25404) and the regulations adopted
 7 pursuant thereto.

8 ~~(3)~~

9 (b) (1) An order issued pursuant to this section shall *meet all*
 10 *of the following requirements:*

11 (A) *The order shall* include a requirement that the person take
 12 corrective action with respect to hazardous waste, including the
 13 cleanup of the hazardous waste, abatement of the effects thereof,
 14 and any other necessary remedial action. ~~An order issued pursuant~~
 15 ~~to this section that~~

16 (B) *If the order* requires corrective action at a hazardous waste
 17 facility, *the order* shall require that corrective action be taken
 18 beyond the facility boundary, where necessary to protect human
 19 health or the environment. ~~The~~

20 (C) *The order* shall incorporate, as a condition of the order, any
 21 applicable waste discharge requirements issued by the State Water
 22 Resources Control Board or a California regional water quality
 23 control board, and shall be consistent with all applicable water
 24 quality control plans adopted pursuant to Section 13170 of the
 25 Water Code and Article 3 (commencing with Section 13240) of
 26 Chapter 4 of Division 7 of the Water Code and state policies for
 27 water quality control adopted pursuant to Article 3 (commencing
 28 with Section 13140) of Chapter 3 of Division 7 of the Water Code
 29 existing at the time of the issuance of the order, to the extent that
 30 the department, authorized unified program agency, ~~authorized~~
 31 ~~local health officer,~~ or ~~authorized local~~ public officer determines
 32 that those plans and policies are not less stringent than this chapter
 33 and regulations adopted pursuant to this chapter. ~~The~~

34 (2) *The department, authorized unified program agency,*
 35 ~~authorized local health officer,~~ or ~~authorized local~~ public officer
 36 also may include any more stringent requirement *in an order*
 37 *issued pursuant to this section* that the department, authorized
 38 unified program agency, ~~authorized local health officer,~~ or
 39 ~~authorized local~~ public officer determines is necessary or
 40 appropriate to protect water quality. ~~Persons~~



1 (3) *Persons* who are subject to an order pursuant to this section
2 include present and prior owners, lessees, or operators of the
3 property where the hazardous waste is located, present or past
4 generators, storers, treaters, transporters, disposers, and handlers
5 of hazardous waste, and persons who arrange, or have arranged,
6 by contract or other agreement, to store, treat, transport, dispose
7 of, or otherwise handle hazardous waste.

8 (4) In an order proposing a penalty pursuant to this section, the
9 department, authorized unified program agency, ~~authorized local~~
10 ~~health officer~~, or ~~authorized local~~ public officer shall take into
11 consideration the nature, circumstances, extent, and gravity of the
12 violation, the violator’s past and present efforts to prevent, abate,
13 or clean up conditions posing a threat to the public health or safety
14 or the environment, the violator’s ability to pay the proposed civil
15 penalty, and the prophylactic effect that imposition of the proposed
16 penalty would have on both the violator and the regulated
17 community as a whole.

18 ~~(b)–~~

19 (5) For purposes of subdivision (a), “hazardous waste facility”
20 includes the entire site that is under the control of an owner or
21 operator engaged in the management of hazardous waste.

22 (c) Any order issued pursuant to subdivision (a) shall be served
23 by personal service or certified mail and shall inform the person
24 so served of the right to a hearing.

25 (d) (1) Any person served with an order pursuant to
26 subdivision (c) who has been unable to resolve any violation or
27 deficiency on an informal basis with the department, authorized
28 unified program agency, ~~authorized local health officer~~, or
29 ~~authorized local~~ public officer may, within 15 days after service of
30 the order, request a hearing *pursuant to subdivision (e) or (f)* by
31 filing with the department, authorized unified program agency,
32 ~~authorized local health officer~~, or ~~authorized local~~ public officer
33 a notice of defense. The notice shall be filed with the office that
34 issued the order. A notice of defense shall be deemed filed within
35 the 15-day period provided by this subdivision if it is postmarked
36 within that 15-day period. If no notice of defense is filed within the
37 time limits provided by this subdivision, the order shall become
38 final.

39 (2) If a person served with an order pursuant to subdivision (c)
40 chooses to resolve the content, terms, or conditions of the order



1 directly with the department, authorized unified program agency,
2 ~~authorized local health officer~~, or ~~authorized local public officer~~
3 and does not file an administrative or judicial appeal, the person
4 may request, and the department, authorized unified program
5 agency, ~~authorized local health officer~~, or ~~authorized local public~~
6 ~~officer~~ shall prepare, a written statement, that the department,
7 authorized unified program agency, ~~authorized local health~~
8 ~~officer~~, or authorized local public officer shall amend into the
9 order, that explains the violation and the penalties applied,
10 including the nature, extent, and gravity of the violations, and that
11 includes a brief description of any mitigating circumstances and
12 any explanations by the respondent. Any amendment to include
13 the written statement prepared pursuant to this subdivision does
14 not constitute a new order and does not create new appeal rights.

15 (e) Except as provided in ~~subdivision~~ *subdivisions (f) and (h)*,
16 any hearing requested under subdivision (d) shall be conducted
17 within 90 days after receipt of the notice of defense by an
18 administrative law judge of the Office of Administrative Hearings
19 of the Department of General Services in accordance with Chapter
20 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
21 2 of the Government Code, and the department, authorized unified
22 program agency, ~~authorized local health officer~~, or authorized
23 local public officer shall have all the authority granted to an agency
24 by those provisions.

25 (f) *If a person served with an order pursuant to subdivision (c)*
26 *requests a hearing to be conducted pursuant to this subdivision,*
27 *the department, the authorized unified program agency, or the*
28 *public officer shall conduct the hearing pursuant to Article 10*
29 *(commencing with Section 11445.10) of Chapter 4.5 of Part 1 of*
30 *Division 3 of Title 2 of the Government Code. After conducting the*
31 *hearing requested pursuant to subdivision (d), the department,*
32 *authorized unified program agency, or public officer shall, within*
33 *60 days of the hearing, issue a decision, including an order setting*
34 *the amount of penalty imposed.*

35 (g) *An order setting a penalty issued pursuant to a hearing*
36 *conducted in accordance with subdivision (f) shall be effective and*
37 *final upon issuance and payment shall be made within 30 days of*
38 *issuance. Copies of the order shall be served by personal service*
39 *or by certified mail upon the party served with the order and upon*
40 *other persons who appeared at the hearing and requested a copy.*



1 (h) Any provision of an order issued under subdivision (a),
2 except the imposition of an administrative penalty *or an order*
3 *issued pursuant to subdivision (g)*, shall take effect upon issuance
4 by the department ~~or~~, unified program agency, *or public officer*
5 if the department ~~or~~, unified program agency *or public officer*
6 finds that the violation or violations of law associated with that
7 provision may pose an imminent and substantial endangerment to
8 the public health or safety or the environment, and a request for a
9 hearing shall not stay the effect of that provision of the order
10 pending a decision by the ~~department~~ *hearing officer* under
11 subdivision (e). However, ~~in the event that~~ *if* the department ~~or~~,
12 unified program agency, *or public officer* determines that any or
13 all provisions of the order are so related that the public health or
14 safety or the environment can be protected only by immediate
15 compliance with the order as a whole, then the order as a whole,
16 except the imposition of an administrative penalty, shall take effect
17 upon issuance by the department ~~or~~, unified program agency *or*
18 *public officer*. A request for a hearing shall not stay the effect of
19 the order as a whole pending a decision by the hearing officer
20 under subdivision (e). Any order issued after a hearing ~~requested~~
21 ~~under subdivision (d)~~ *conducted pursuant to subdivision (e)* shall
22 take effect upon issuance by the department ~~or~~, unified program
23 agency *or public officer*.

24 ~~(g)~~
25 (i) A decision issued pursuant to this section may be reviewed
26 by the court pursuant to Section 11523 of the Government Code.
27 In all proceedings pursuant to this subdivision, the court shall
28 uphold the decision of the department, authorized unified program
29 agency, ~~authorized local health officer~~, or ~~authorized local~~ public
30 officer if the decision is based upon substantial evidence in the
31 whole record. The filing of a petition for writ of mandate shall not
32 stay any corrective action required pursuant to this chapter or the
33 accrual of any penalties assessed pursuant to this chapter. This
34 subdivision does not prohibit the court from granting any
35 appropriate relief within its jurisdiction.

36 ~~(h)~~
37 (j) Except as otherwise provided in ~~subdivisions (i) and (j)~~
38 *subdivision (k)*, all administrative penalties collected under this
39 section shall be placed in a separate subaccount in the Toxic
40 Substances Control Account and shall be available only for



1 transfer to the Site Remediation Account or the Expedited Site
2 Remediation Trust Fund and for expenditure by the department
3 upon appropriation by the Legislature.

4 ~~(i) Fifty percent of the~~

5 *(k) The penalties collected from actions brought by unified*
6 *program agencies, local health officers or designated local public*
7 *officers pursuant to this section shall be paid to the city or county*
8 *whose unified program agency, local health officer, or designated*
9 *local public officer imposed the penalty, and shall be deposited*
10 *into a special account that may be expended to fund the activities*
11 *of the unified program agency, local health officer, or designated*
12 *local public officer in enforcing this chapter pursuant to Section*
13 *25180, after the director determines that the local agency*
14 *enforcement of this section is fair and reasonable.*

15 ~~(j) Fifty percent of the penalties collected from actions brought~~
16 ~~by unified program agencies, local health officers, or designated~~
17 ~~local public officers pursuant to this section shall be paid to the~~
18 ~~department and deposited in the Hazardous Waste Control~~
19 ~~Account for expenditure by the department, upon appropriation by~~
20 ~~the Legislature, in connection with activities of unified program~~
21 ~~agencies, local health officers, or designated local public officers~~
22 *For purposes of this section “public officer” means a local health*
23 *officer or local public officer designated by the director pursuant*
24 *to subdivision (a) of Section 25180.*

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 a local agency or school district has the authority to levy service
28 charges, fees, or assessments sufficient to pay for the program or
29 level of service mandated by this act, within the meaning of
30 Section 17556 of the Government Code.

