

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2286

Introduced by Assembly Member Feuer

February 21, 2008

An act to amend Section 25404 of the Health and Safety Code, relating to aboveground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 2286, as amended, Feuer. Unified hazardous waste and hazardous materials.

Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program.

Existing law provides that as funding becomes available, the secretary shall maintain a statewide database. Existing law also requires each certified unified program agency to institute a single fee system to implement the consolidation of certain hazardous waste requirements and to ensure the coordination and consistency of any regulations adopted pursuant to those requirements. Existing law requires the single fee system to include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities in a unified hazardous waste and hazardous materials management regulatory program.

This bill would, instead, require that in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge by *an amount necessary to establish the data system, but not to exceed \$25 each year* for 3 years to establish the information data collection and exchange system, and would provide that not less than 60% of that funding shall be provided to certified unified program agencies and participating agencies through grant funds for the purposes of the system. *The bill would require the secretary to establish milestones to measure the implementation of the system and provide periodic status updates to interested parties.*

This bill would require certified unified program agencies and participating agencies to report program data electronically not later than 3 years after the information management system is established.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the implementation of the information management system.

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 25404 of the Health and Safety Code is
2 amended to read:
3 25404. (a) For purposes of this chapter, the following terms
4 shall have the following meanings:
5 (1) (A) “Certified Unified Program Agency” or “CUPA” means
6 the agency certified by the secretary to implement the unified
7 program specified in this chapter within a jurisdiction.
8 (B) “Participating Agency” or “PA” means a state or local
9 agency that has a written agreement with the CUPA pursuant to
10 subdivision (d) of Section 25404.3, and is approved by the
11 secretary, to implement or enforce one or more of the unified
12 program elements specified in subdivision (c), in accordance with
13 Sections 25404.1 and 25404.2.

1 (C) “Unified Program Agency” or “UPA” means the CUPA, or
2 its participating agencies to the extent each PA has been designated
3 by the CUPA, pursuant to a written agreement, to implement or
4 enforce a particular unified program element specified in
5 subdivision (c). The UPAs have the responsibility and authority
6 to implement and enforce the requirements listed in subdivision
7 (c), and the regulations adopted to implement the requirements
8 listed in subdivision (c), to the extent provided by Chapter 6.5
9 (commencing with Section 25100), Chapter 6.67 (commencing
10 with Section 25270), Chapter 6.7 (commencing with Section
11 25280), Chapter 6.95 (commencing with Section 25500), and
12 Sections 25404.1 and 25404.2. After a CUPA has been certified
13 by the secretary, the unified program agencies and the state
14 agencies carrying out responsibilities under this chapter shall be
15 the only agencies authorized to enforce the requirements listed in
16 subdivision (c) within the jurisdiction of the CUPA.

17 (2) “Department” means the Department of Toxic Substances
18 Control.

19 (3) “Minor violation” means the failure of a person to comply
20 with any requirement or condition of any applicable law,
21 regulation, permit, information request, order, variance, or other
22 requirement, whether procedural or substantive, of the unified
23 program that the UPA is authorized to implement or enforce
24 pursuant to this chapter, and that does not otherwise include any
25 of the following:

26 (A) A violation that results in injury to persons or property, or
27 that presents a significant threat to human health or the
28 environment.

29 (B) A knowing, willful, or intentional violation.

30 (C) A violation that is a chronic violation, or that is committed
31 by a recalcitrant violator. In determining whether a violation is
32 chronic or a violator is recalcitrant, the UPA shall consider whether
33 there is evidence indicating that the violator has engaged in a
34 pattern of neglect or disregard with respect to applicable regulatory
35 requirements.

36 (D) A violation that results in an emergency response from a
37 public safety agency.

38 (E) A violation that enables the violator to benefit economically
39 from the noncompliance, either by reduced costs or competitive
40 advantage.

1 (F) A class I violation as provided in Section 25117.6.

2 (G) A class II violation committed by a chronic or a recalcitrant
3 violator, as provided in Section 25117.6.

4 (H) A violation that hinders the ability of the UPA to determine
5 compliance with any other applicable local, state, or federal rule,
6 regulation, information request, order, variance, permit, or other
7 requirement.

8 (4) “Secretary” means the Secretary for Environmental
9 Protection.

10 (5) “Unified program facility” means all contiguous land and
11 structures, other appurtenances, and improvements on the land
12 that are subject to the requirements listed in subdivision (c).

13 (6) “Unified program facility permit” means a permit issued
14 pursuant to this chapter. For the purposes of this chapter, a unified
15 program facility permit encompasses the permitting requirements
16 of Section 25284, and any permit or authorization requirements
17 under any local ordinance or regulation relating to the generation
18 or handling of hazardous waste or hazardous materials, but does
19 not encompass the permitting requirements of a local ordinance
20 that incorporates provisions of the Uniform Fire Code or the
21 Uniform Building Code.

22 (b) The secretary shall adopt implementing regulations and
23 implement a unified hazardous waste and hazardous materials
24 management regulatory program, which shall be known as the
25 unified program, after holding an appropriate number of public
26 hearings throughout the state. The unified program shall be
27 developed in close consultation with the director, the Director of
28 the Office of Emergency Services, the State Fire Marshal, the
29 executive officers and chairpersons of the State Water Resources
30 Control Board and the California regional water quality control
31 boards, the local health officers, local fire services, and other
32 appropriate officers of interested local agencies, and affected
33 businesses and interested members of the public, including
34 environmental organizations.

35 (c) The unified program shall consolidate the administration of
36 the following requirements, and shall, to the maximum extent
37 feasible within statutory constraints, ensure the coordination and
38 consistency of any regulations adopted pursuant to those
39 requirements:

1 (1) (A) Except as provided in subparagraphs (B) and (C), the
2 requirements of Chapter 6.5 (commencing with Section 25100),
3 and the regulations adopted by the department pursuant thereto,
4 are applicable to all of the following:

5 (i) Hazardous waste generators, persons operating pursuant to
6 a permit-by-rule, conditional authorization, or conditional
7 exemption, pursuant to Chapter 6.5 (commencing with Section
8 25100) or the regulations adopted by the department.

9 (ii) Persons managing perchlorate materials.

10 (iii) Persons subject to Article 10.1 (commencing with Section
11 25211) of Chapter 6.5.

12 (B) The unified program shall not include the requirements of
13 paragraph (3) of subdivision (c) of Section 25200.3, the
14 requirements of Sections 25200.10 and 25200.14, and the authority
15 to issue an order under Sections 25187 and 25187.1, with regard
16 to those portions of a unified program facility that are subject to
17 one of the following:

18 (i) A corrective action order issued by the department pursuant
19 to Section 25187.

20 (ii) An order issued by the department pursuant to Chapter 6.8
21 (commencing with Section 25300) or Chapter 6.85 (commencing
22 with Section 25396).

23 (iii) A remedial action plan approved pursuant to Chapter 6.8
24 (commencing with Section 25300) or Chapter 6.85 (commencing
25 with Section 25396).

26 (iv) A cleanup and abatement order issued by a California
27 regional water quality control board pursuant to Section 13304 of
28 the Water Code, to the extent that the cleanup and abatement order
29 addresses the requirements of the applicable section or sections
30 listed in this subparagraph.

31 (v) Corrective action required under subsection (u) of Section
32 6924 of Title 42 of the United States Code or subsection (h) of
33 Section 6928 of Title 42 of the United States Code.

34 (vi) An environmental assessment pursuant to Section 25200.14
35 or a corrective action pursuant to Section 25200.10 or paragraph
36 (3) of subdivision (c) of Section 25200.3, that is being overseen
37 by the department.

38 (C) The unified program shall not include the requirements of
39 Chapter 6.5 (commencing with Section 25100), and the regulations
40 adopted by the department pursuant thereto, applicable to persons

1 operating transportable treatment units, except that any required
2 notice regarding transportable treatment units shall also be provided
3 to the CUPAs.

4 (2) The requirements of Chapter 6.67 (commencing with Section
5 25270) concerning aboveground storage tanks.

6 (3) (A) Except as provided in subparagraphs (B) and (C), the
7 requirements of Chapter 6.7 (commencing with Section 25280)
8 concerning underground storage tanks and the requirements of any
9 underground storage tank ordinance adopted by a city or county.

10 (B) The unified program may not include the responsibilities
11 assigned to the State Water Resources Control Board pursuant to
12 Section 25297.1.

13 (C) The unified program may not include the corrective action
14 requirements of Sections 25296.10 to 25296.40, inclusive.

15 (4) The requirements of Article 1 (commencing with Section
16 25500) of Chapter 6.95 concerning hazardous material release
17 response plans and inventories.

18 (5) The requirements of Article 2 (commencing with Section
19 25531) of Chapter 6.95, concerning the accidental release
20 prevention program.

21 (6) The requirements of subdivisions (b) and (c) of Section
22 80.103 of the Uniform Fire Code, as adopted by the State Fire
23 Marshal pursuant to Section 13143.9 concerning hazardous material
24 management plans and inventories.

25 (d) To the maximum extent feasible within statutory constraints,
26 the secretary shall consolidate, coordinate, and make consistent
27 these requirements of the unified program with other requirements
28 imposed by other federal, state, regional, or local agencies upon
29 facilities regulated by the unified program.

30 (e) (1) The secretary shall establish standards applicable to
31 CUPAs, participating agencies, state agencies, and businesses
32 specifying the data to be collected and submitted by unified
33 program agencies in administering the programs listed in
34 subdivision (c). Those standards shall incorporate any standard
35 developed under Section 25503.3.

36 (2) (A) No later than January 1, 2010, the secretary shall
37 establish an electronic geographic information management system
38 capable of receiving all data collected by the unified program
39 agencies and reported by regulated businesses pursuant to this
40 subdivision and Section 25504.1, *in a manner that is most cost*

1 *efficient and effective for both the regulated businesses and state*
2 *and local agencies.* The secretary shall prescribe an XMetaL or
3 other compatible Web-based format for the transfer of data from
4 CUPAs and regulated businesses and make all nonconfidential
5 data available on the Internet.

6 *(B) The secretary shall establish milestones to measure the*
7 *implementation of the data system and shall provide periodic status*
8 *updates to interested parties.*

9 (3) (A) (i) In addition to any other funding that becomes
10 available, the secretary shall increase the oversight surcharge
11 provided for in subdivision (b) of Section 25404.5 by *an amount*
12 *necessary to meet the requirements of this subdivision, but not to*
13 *exceed twenty-five dollars (\$25) each year* for three years, to
14 establish the information data collection and exchange system,
15 consistent with paragraph (2). The secretary shall thereafter
16 maintain this system.

17 (ii) No less than 60 percent of the additional funding raised
18 pursuant to clause (i) shall be provided to CUPAs and PAs through
19 grant funds in the amounts determined by the secretary to assist
20 these local agencies meet these information data collection and
21 exchange system requirements.

22 (B) The secretary, or one or more of the boards, departments,
23 or offices within the California Environmental Protection Agency,
24 shall seek available federal funding for purposes of implementing
25 this subdivision.

26 (4) No later than three years after the statewide information
27 management system is established, each CUPA, PA, and regulated
28 business shall report program data electronically. The secretary
29 shall work with the CUPAs to develop a phased-in schedule for
30 the electronic collection and submittal of information to be included
31 in the statewide information management system, giving first
32 priority to information relating to those chemicals determined by
33 the secretary to be of greatest concern. The secretary, in making
34 this determination shall consult with the CUPAs, the Office of
35 Emergency Services, the State Fire Marshal, and the boards,
36 departments, and offices within the California Environmental
37 Protection Agency. The information initially included in the
38 statewide database shall include, but is not limited to, the hazardous
39 materials inventory information required to be submitted pursuant
40 to Section 25504.1 for perchlorate materials.

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

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