

ASSEMBLY BILL

No. 2748

**Introduced by Committee on Environmental Safety and Toxic
Materials (Assembly Members Alejo (Chair), Bloom, Stone, and
Ting)**

March 6, 2014

An act to amend Sections 25217.2, 25507, and 25513 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2748, as introduced, Committee on Environmental Safety and Toxic Materials. Hazardous waste: business plans.

(1) Existing law generally prohibits any person from disposing of latex paint, unless authorized, but allows recyclable latex paint to be accepted at any location if certain requirements are met, including that the owners or operators of the location have a business plan that meets specified requirements.

This bill would repeal the requirement that the owner or operator of the location have such a business plan in order to accept recyclable latex paint.

(2) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program, including a statewide information management system, for purposes of receiving data collected by unified program agencies. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program and be certified as a certified unified program agency (CUPA), and every county is required to apply to the secretary to be certified to implement the unified program. Existing law also requires

each CUPA to institute a single-fee system, with a surcharge on each person regulated by the unified program to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities in the unified hazardous waste and hazardous materials management regulatory program.

Existing law requires the CUPA to implement and enforce provisions that require a business that handles a hazardous material to establish and implement a business plan. Existing law requires a business that handles 5,000 pounds of solids or 550 gallons of liquids that are classified as a hazard solely as an irritant or sensitizer to establish and implement a business plan for emergency response to a release, or threatened release, of the hazardous material, as specified, unless the CUPA finds, and notifies the business, that the handling of lesser quantities of that hazardous material requires the submission of a business plan or any portion of a business plan. Existing law requires the business plan to be electronically submitted to the statewide information management system and requires the local agency to review and determine whether the business plan satisfies certain requirements. A person who knowingly violates this provision is guilty of a misdemeanor.

This bill would repeal the requirement that a business submit a business plan or any portion of the business plan if the CUPA finds that the handling of lesser quantities requires the submission of the business plan. This bill would also require a business that handles 10,000 pounds of solids or 1,000 gallons of liquids that are hazardous materials to establish and implement a business plan if the solid or liquid is a paint that will be recycled or managed under a stewardship program, as specified. By requiring additional businesses to submit business plans subject to review by a local agency, this bill would increase the duties of local officials and impose a state-mandated local program. By changing the scope of a crime, this bill would impose a state-mandated local program. The bill would authorize the CUPA to charge a one-time fee, not to exceed \$100, to a business that handles less than the above-described amounts of paint that is recycled or otherwise managed under a stewardship program. The bill would provide that these fees shall not exceed the CUPA's costs of carrying out its responsibilities relating to these businesses.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 25217.2 of the Health and Safety Code
2 is amended to read:

3 25217.2. (a) Recyclable latex paint may be accepted at any
4 location including, but not limited to, a permanent household
5 hazardous waste collection facility in accordance with subdivision
6 (b), if all of the following conditions are met:

7 (1) The location manages the recyclable latex paint in
8 accordance with all applicable latex paint product management
9 procedures specified by federal, state, or local law or regulation
10 that include, at a minimum, that the recyclable latex paint is stored
11 and handled in a manner that minimizes the chance of exposing
12 the handler and the environment to potentially hazardous
13 constituents that may be in, or have been incidentally added to,
14 the recyclable latex paint.

15 (2) The recyclable latex paint is still in liquid form and is in its
16 original packaging or is in a closed container that is clearly labeled.

17 (3) Any latex paint that is accepted as recyclable by the location
18 and that is later discovered to be nonrecyclable shall be deemed
19 to be a waste generated at the location where ~~this~~ *the* discovery is
20 made and ~~this~~ *the* latex paint shall be managed as a waste in
21 accordance with this chapter.

22 ~~(4) The owner or operator of the location has a business plan
23 that meets the requirements of Section 25504, if required by the
24 administrating agency, including, but not limited to, emergency
25 response plans and procedures, as described in subdivision (b) of
26 Section 25504. The plans and procedures shall specifically address
27 recyclable latex paint or meet the department's emergency response
28 and contingency requirements which are applicable to generators
29 of hazardous waste.~~

1 ~~(5)~~
 2 (4) If the recyclable latex paint is not excluded or exempted
 3 from regulation under Chapter I (commencing with Section 1.1)
 4 of Title 40 of the Code of Federal Regulations, the location meets
 5 all applicable federal requirements.

6 ~~(6)~~
 7 (5) The recyclable latex paint is stored for no longer than 180
 8 days.

9 (b) (1) For purposes of this subdivision the following definitions
 10 shall apply:

11 (A) “CESQG” means a conditionally exempt small quantity
 12 generator, as specified in subdivision (a) of Section 25218.1.

13 (B) “Permanent household hazardous waste collection facility”
 14 has the same meaning as defined in subdivision (h) of Section
 15 25218.1.

16 (2) A permanent household hazardous waste collection facility
 17 that is authorized to accept hazardous waste from a CESQG
 18 pursuant to Section 25218.3 may accept recyclable latex paint
 19 from any generator in accordance with this article if the permanent
 20 household hazardous waste collection facility does all of the
 21 following:

22 (A) Complies with subdivision (a).

23 (B) Sends the recyclable latex paint, for recycling, to a latex
 24 paint recycling facility operating pursuant to this article.

25 (C) Maintains a monthly log of the volume of latex paint
 26 collected from each generator and submits that information
 27 annually with the report submitted pursuant to Section 25218.9
 28 for household hazardous waste collected from household hazardous
 29 waste generators.

30 (3) A permanent household hazardous waste collection facility
 31 that takes the actions specified in paragraph (2) is not subject to
 32 subdivision (b) of Section 25218.3.

33 (4) A permanent household waste collection facility may take
 34 the action specified in paragraph (2) notwithstanding any permit
 35 condition imposed upon the facility, a regulation adopted by the
 36 department to ensure a household hazardous waste collection
 37 facility does not accept hazardous waste from a commercial
 38 generator other than a CESQG, or the status of the generator.

39 SEC. 2. Section 25507 of the Health and Safety Code is
 40 amended to read:

1 25507. (a) Except as provided in this article, a business shall
2 establish and implement a business plan for emergency response
3 to a release or threatened release of a hazardous material in
4 accordance with the standards prescribed in the regulations adopted
5 pursuant to Section 25503 if the business meets any of the
6 following conditions:

7 (1) The business handles a hazardous material or a mixture
8 containing a hazardous material that has a quantity at any one time
9 during the reporting year that is equal to, or greater than, 55 gallons
10 for materials that are liquids, 500 pounds for solids, or 200 cubic
11 feet for compressed gas. The physical state and quantity present
12 of mixtures shall be determined by the physical state of the mixture
13 as whole, not individual components, at standard temperature and
14 pressure.

15 (2) The business is required to submit chemical inventory
16 information pursuant to Section 11022 of Title 42 of the United
17 States Code.

18 (3) The business handles at any one time during the reporting
19 year an amount of a hazardous material that is equal to, or greater
20 than the threshold planning quantity, under both of the following
21 conditions:

22 (A) The hazardous material is an extremely hazardous substance,
23 as defined in Section 355.61 of Title 40 of the Code of Federal
24 Regulations.

25 (B) The threshold planning quantity for that extremely hazardous
26 substance listed in Appendices A and B of Part 355 (commencing
27 with Section 355.1) of Subchapter J of Chapter I of Title 40 of the
28 Code of Federal Regulations is less than 500 pounds.

29 (4) (A) The business handles at any one time during the
30 reporting year a total weight of 5,000 pounds for solids or a total
31 volume of 550 gallons for liquids, if the hazardous material is a
32 solid or liquid substance that is classified as a hazard for purposes
33 of Section 5194 of Title 8 of the California Code of Regulations
34 solely as an irritant or sensitizer, ~~unless the unified program agency
35 finds, and provides notice to the business handling the product,
36 that the handling of lesser quantities of that hazardous material
37 requires the submission of a business plan, or any portion of a
38 business plan, in response to public health, safety, or environmental
39 concerns~~ *sensitizer*.

1 (B) ~~The unified program agency shall make the findings required~~
 2 ~~by subparagraph (A) in consultation with the local fire chief~~
 3 *business handles at any one time during the reporting year a total*
 4 *weight of 10,000 pounds for solids or a total volume of 1,000*
 5 *gallons for liquids if the hazardous material is a solid or liquid*
 6 *substance that is a paint that will be recycled or otherwise*
 7 *managed under a stewardship program approved by the*
 8 *department.*

9 (5) (A) The business handles at any one time during the
 10 reporting year a total of 1,000 cubic feet, if the hazardous material
 11 is a compressed gas and is classified as a hazard for the purposes
 12 of Section 5194 of Title 8 of the California Code of Regulations
 13 solely as a compressed gas, unless the unified program agency
 14 finds, and provides notice to the business handling the product,
 15 that the handling of lesser quantities of that hazardous material
 16 requires the submission of a business plan, or any portion thereof,
 17 in response to public health, safety, or environmental concerns.

18 (B) The unified program agency shall make the findings required
 19 by subparagraph (A) in consultation with the local fire chief.

20 (C) The hazardous materials subject to subparagraph (A) include
 21 a gas for which the only health and physical hazards are simple
 22 asphyxiation and the release of pressure.

23 (D) The hazardous materials subject to subparagraph (A) do
 24 not include gases in a cryogenic state.

25 (6) The business handles a radioactive material at any one time
 26 during the reporting year that is handled in quantities for which
 27 an emergency plan is required to be adopted pursuant to Part 30
 28 (commencing with Section 30.1), Part 40 (commencing with
 29 Section 40.1), or Part 70 (commencing with Section 70.1), of
 30 Chapter 1 of Title 10 of the Code of Federal Regulations, or
 31 pursuant to any regulations adopted by the state in accordance with
 32 those regulations.

33 (7) The business handles perchlorate material, as defined in
 34 subdivision (c) of Section 25210.5, in a quantity at any one time
 35 during the reporting year that is equal to, or greater than, the
 36 thresholds listed in paragraph (1).

37 (b) Oxygen, nitrogen, and nitrous oxide, ordinarily maintained
 38 by a physician, dentist, podiatrist, veterinarian, or pharmacist, at
 39 his or her office or place of business, stored at each office or place
 40 of business in quantities of not more than 1,000 cubic feet of each

1 material at any one time, are exempt from this section and from
2 Section 25506. The unified program agency may require a one-time
3 inventory of these materials for a fee not to exceed fifty dollars
4 (\$50) to pay for the costs incurred by the agency in processing the
5 inventory forms.

6 (c) (1) Lubricating oil is exempt from this section and Sections
7 25506 and 25508, for a single business facility, if the total volume
8 of each type of lubricating oil handled at that facility does not
9 exceed 55 gallons and the total volume of all types of lubricating
10 oil handled at that facility does not exceed 275 gallons, at any one
11 time.

12 (2) For purposes of this paragraph, “lubricating oil” means oil
13 intended for use in an internal combustion crankcase, or the
14 transmission, gearbox, differential, or hydraulic system of an
15 automobile, bus, truck, vessel, airplane, heavy equipment, or other
16 machinery powered by an internal combustion or electric powered
17 engine. “Lubricating oil” does not include used oil, as defined in
18 subdivision (a) of Section 25250.1.

19 (d) Oil-filled electrical equipment that is not contiguous to an
20 electric facility is exempt from this section and Sections 25506
21 and 25508 if the aggregate capacity is less than 1,320 gallons.

22 (e) Hazardous material contained solely in a consumer product
23 for direct distribution to, and use by, the general public is exempt
24 from the business plan requirements of this article unless the
25 unified program agency has found, and has provided notice to the
26 business handling the product, that the handling of certain
27 quantities of the product requires the submission of a business
28 plan, or any portion thereof, in response to public health, safety,
29 or environmental concerns.

30 (f) In addition to the authority specified in subdivision (h), the
31 governing body of the unified program agency may, in exceptional
32 circumstances, following notice and public hearing, exempt a
33 hazardous substance specified in subdivision (o) of Section 25501
34 from Section 25506, if it is found that the hazardous substance
35 would not pose a present or potential danger to the environment
36 or to human health and safety if the hazardous substance was
37 released into the environment. The unified program agency shall
38 send a notice to the office and the secretary within 15 days from
39 the effective date of any exemption granted pursuant to this
40 subdivision.

1 (g) The unified program agency, upon application by a handler,
2 may exempt the handler, under conditions that the unified program
3 agency determines to be proper, from any portion of the
4 requirements to establish and maintain a business plan, upon a
5 written finding that the exemption would not pose a significant
6 present or potential hazard to human health or safety or to the
7 environment, or affect the ability of the unified program agency
8 and emergency rescue personnel to effectively respond to the
9 release of a hazardous material, and that there are unusual
10 circumstances justifying the exemption. The unified program
11 agency shall specify in writing the basis for any exemption under
12 this subdivision.

13 (h) The unified program agency, upon application by a handler,
14 may exempt a hazardous material from the inventory provisions
15 of this article upon proof that the material does not pose a
16 significant present or potential hazard to human health and safety
17 or to the environment if released into the workplace or
18 environment. The unified program agency shall specify in writing
19 the basis for any exemption under this subdivision.

20 (i) The unified program agency shall adopt procedures to provide
21 for public input when approving applications submitted pursuant
22 to subdivisions (g) and (h).

23 SEC. 3. Section 25513 of the Health and Safety Code is
24 amended to read:

25 25513. (a) Each administering county or city may, upon a
26 majority vote of the governing body, adopt a schedule of fees to
27 be collected from each business required to submit a business plan
28 pursuant to this article that is within its jurisdiction. The governing
29 body may provide for the waiver of fees when a business, as
30 defined in paragraph (3), (4), or (5) of subdivision (c) of Section
31 25501, submits a business plan. The fee shall be set in an amount
32 sufficient to pay only those costs incurred by the unified program
33 agency in carrying out this article. In determining the fee schedule,
34 the unified program agency shall consider the volume and degree
35 of hazard potential of the hazardous materials handled by the
36 businesses subject to this article.

37 (b) *A unified program agency may charge a one-time fee, not*
38 *to exceed one hundred dollars (\$100), to a business described in*
39 *subparagraph (B) of paragraph (4) of subdivision (a) of Section*
40 *25507. The fees collected pursuant to this subdivision shall not*

1 *exceed the administrative costs of the unified program agency in*
2 *carrying out its responsibilities relating to these businesses.*

3 SEC. 4. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for certain
5 costs that may be incurred by a local agency or school district
6 because, in that regard, this act creates a new crime or infraction,
7 eliminates a crime or infraction, or changes the penalty for a crime
8 or infraction, within the meaning of Section 17556 of the
9 Government Code, or changes the definition of a crime within the
10 meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 However, if the Commission on State Mandates determines that
13 this act contains other costs mandated by the state, reimbursement
14 to local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.