

**ASSEMBLY BILL**

**No. 1075**

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**Introduced by Assembly Member Alejo**

February 27, 2015

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An act to amend Sections 25186 and 25186.2 of, and to add Section 25189.4 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1075, as introduced, Alejo. Hazardous waste: enforcement.

(1) The Hazardous Waste Control Law regulates the use and disposal of hazardous waste and authorizes the Department of Toxic Substances Control to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued to, a person or entity if that person or entity engaged in specified activities in violation of the Hazardous Waste Control Law or other laws. (PU RN20142004609 )

This bill, if a person or entity violates or fails to comply with specified provisions after that person or entity has been found liable for, or been convicted of, two or more previous violations of or noncompliance with those same provisions during a 5-year period, would require the department to consider, except under specified circumstances, the violation or noncompliance as compelling cause to deny, suspend, or revoke a permit, registration, or certificate applied for by, or issued to, that person.

(2) Existing law authorizes the department to temporarily suspend any permit, registration, or certificate prior to a hearing if the department determines that action is necessary to prevent or mitigate an imminent and substantial danger to the public health or safety or the environment.

This bill would instead authorize the department to temporarily suspend any permit, registration, or certificate prior to a hearing if the

department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment.

(3) Existing law provides for the imposition of civil and criminal penalties upon persons who violate the requirements of the hazardous waste control law or take other actions with regard to the handling of hazardous waste.

This bill would impose, upon a person who is subject to the imposition of those civil or criminal penalties, an additional civil penalty of not less than \$5,000 or more than \$50,000 for each day of each violation, if the person has been found liable for, or been convicted of, 2 or more previous violations of certain of these hazardous waste-related provisions within any consecutive 60 months.

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

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

1 SECTION 1. Section 25186 of the Health and Safety Code is  
2 amended to read:

3 25186. (a) The department may deny, suspend, or revoke any  
4 permit, registration, or certificate applied for, or issued, pursuant  
5 to this chapter in accordance with the procedures specified in  
6 Sections 25186.1 and 25186.2, where the applicant or holder of  
7 the permit, registration, or certificate, or in the case of a business  
8 concern, any trustee, officer, director, partner, or any person  
9 holding more than 5 percent of the equity in or debt liability of  
10 that business concern, has engaged in any of the following:

11 (a)  
12 (1) Any violation of, or noncompliance with, this chapter,  
13 Chapter 6.7 (commencing with Section 25280), Chapter 6.8  
14 (commencing with Section 25300), the Porter-Cologne Water  
15 Quality Control Act (Division 7 (commencing with Section 13000)  
16 of the Water Code), the Resource Conservation and Recovery Act  
17 of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous  
18 Materials Transportation Act (49 U.S.C. Sec. 1801 et seq.), the  
19 Comprehensive Environmental Response, Compensation, and  
20 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic  
21 Substances Control Act (15 U.S.C. Sec. 2601 et seq.) or any other  
22 equivalent federal or state statute or any requirement or regulation

1 adopted pursuant thereto relating to the generation, transportation,  
2 treatment, storage, recycling, disposal or handling of a hazardous  
3 waste, as defined in Section 25117, a hazardous substance, as  
4 defined in Section 25316, or a hazardous material, as defined in  
5 Section 353 of the Vehicle Code, if the violation or noncompliance  
6 shows a repeating or recurring pattern or may pose a threat to  
7 public health or safety or the environment.

8 ~~(b)~~

9 (2) The aiding, abetting, or permitting of any violation of, or  
10 noncompliance with, this chapter, Chapter 6.7 (commencing with  
11 Section 25280), Chapter 6.8 (commencing with Section 25300),  
12 the Porter-Cologne Water Quality Act (Division 7 (commencing  
13 with Section 13000) of the Water Code), the Resource  
14 Conservation and Recovery Act of 1976, as amended, (42 U.S.C.  
15 Sec. 6901 et seq.), the Hazardous Materials Transportation Act  
16 (49 U.S.C. Sec. 1801 et seq.), the Comprehensive Environmental  
17 Response, Compensation and Liability Act of 1980 (42 U.S.C.  
18 Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C.  
19 Sec. 2601 et seq.), or any other equivalent federal or state statute  
20 or any requirement or regulation adopted pursuant thereto relating  
21 to the generation, transportation, treatment, storage, recycling,  
22 disposal or handling of a hazardous waste, as defined in Section  
23 25117, a hazardous substance, as defined in Section 25316, or a  
24 hazardous material, as defined in Section 353 of the Vehicle Code,  
25 if the violation or noncompliance shows a repeating or recurring  
26 pattern or may pose a threat to public health or safety or the  
27 environment.

28 ~~(c)~~

29 (3) Any violation of, or noncompliance with, any order issued  
30 by a state or local agency or by a hearing officer or a court relating  
31 to the generation, transportation, treatment, storage, recycling,  
32 disposal or handling of a hazardous waste, as defined in Section  
33 25117, a hazardous substance, as defined in Section 25316, or a  
34 hazardous material, as defined in Section 353 of the Vehicle Code.

35 ~~(d)~~

36 (4) Any misrepresentation or omission of a significant fact or  
37 other required information in the application for the permit,  
38 registration, or certificate, or in information subsequently reported  
39 to the department or to a local officer or agency authorized to  
40 enforce this chapter pursuant to subdivision (a) of Section 25180.

1     ~~(e)~~  
2     (5) (A) Activities resulting in any federal or state conviction  
3 ~~which~~ *that* are significantly related to the fitness of the applicant  
4 or holder of the permit, registration, or certificate to perform the  
5 applicant’s duties or activities under the permit, registration, or  
6 certificate. ~~For~~  
7     (B) ~~For the purposes of this subdivision paragraph,~~ “conviction”  
8 means a plea or verdict of guilty or a conviction following a plea  
9 of nolo contendere. ~~Any~~  
10    (C) ~~An action which~~ *that* the department may take pursuant to  
11 ~~this subdivision paragraph~~ relating to the denial, ~~suspension~~  
12 *suspension*, or revocation of a permit, registration, or certificate  
13 may be based upon a conviction for which any of the following  
14 has occurred:  
15     ~~(1)~~  
16     (i) The time for appeal has elapsed.  
17     ~~(2)~~  
18     (ii) The judgment of conviction has been affirmed on appeal.  
19     ~~(3)~~  
20     (iii) Any order granting probation is made suspending the  
21 imposition of sentence, notwithstanding a subsequent order  
22 pursuant to Section 1203.4 of the Penal Code permitting that person  
23 to withdraw the person’s plea of guilty, and to enter a plea of not  
24 guilty, or setting aside the verdict of guilty, or dismissing the  
25 accusation, information, or indictment.  
26     ~~(f)~~  
27     (6) Activities resulting in the revocation or suspension of ~~any~~  
28 *a* license, permit, registration or certificate held by the applicant  
29 or holder of the permit, registration or certificate or, if the applicant  
30 or holder of the permit, registration, or certificate is a business  
31 concern, by any trustee, officer, director, partner, or any person  
32 holding more than 5 percent of the equity in, or debt liability of  
33 that business concern relating to, the generation, transportation,  
34 treatment, storage, recycling, disposal, or handling of a hazardous  
35 waste, as defined in Section 25117, a hazardous substance, as  
36 defined in Section 25316, or a hazardous material, as defined in  
37 Section 353 of the Vehicle Code.  
38     (b) (1) *For the purposes of this section, the following terms*  
39 *have the following meanings:*

1 (A) *“Repeating or recurring pattern of violation or*  
2 *noncompliance” means a violation of, or noncompliance with a*  
3 *requirement specified in paragraph (1) or (2) of subdivision (a)*  
4 *by a person or entity that has previously been found to be liable*  
5 *for, or convicted of, two or more violations of, or noncompliance*  
6 *with, any of those requirements within a five-year period.*

7 (B) *“Violation or noncompliance” means any of the following:*

8 (i) *A violation or noncompliance that creates a significant threat*  
9 *of immediate and acute exposure to hazardous waste or hazardous*  
10 *waste constituents at a facility or offsite from a facility and that*  
11 *threat makes it reasonably necessary to take action to prevent,*  
12 *reduce, or mitigate that exposure.*

13 (ii) *A violation or noncompliance that includes, or results in,*  
14 *any of the following:*

15 (I) *Fire, explosion, or uncontrolled chemical reaction.*

16 (II) *Serious or acute injury or illness.*

17 (III) *Violation of any order issued by the department to the*  
18 *applicant or holder of the permit.*

19 (IV) *Federal or state felony conviction for violations of this*  
20 *chapter or its equivalent in the federal act or any requirement or*  
21 *regulation adopted pursuant to that authority relating to the*  
22 *generation, transportation, treatment, storage, recycling, disposal,*  
23 *or handling of hazardous waste, as described in paragraph (6) of*  
24 *subdivision (a).*

25 (2) *Except as provided in paragraph (3), the department shall*  
26 *consider a repeating or recurring pattern of violation or*  
27 *noncompliance as compelling cause to deny, suspend, or revoke*  
28 *the permit, registration, or certificate.*

29 (3) *This subdivision does not apply to a third violation or*  
30 *noncompliance if the department finds that extraordinary*  
31 *circumstances exist, including that a denial, suspension, or*  
32 *revocation would endanger the public health or safety or the*  
33 *environment.*

34 (4) *This subdivision does not limit or modify the department’s*  
35 *authority to deny, suspend, or revoke any permit, registration, or*  
36 *certificate pursuant to subdivision (a) or any other law.*

37 SEC. 2. Section 25186.2 of the Health and Safety Code is  
38 amended to read:

39 25186.2. The department may temporarily suspend any permit,  
40 registration or certificate issued pursuant to this chapter prior to

1 any hearing if the department determines that ~~the action is~~  
 2 ~~necessary to prevent or mitigate~~ *conditions may present* an  
 3 imminent and substantial ~~danger~~ *endangerment* to the public health  
 4 or safety or the environment. *In making this determination, the*  
 5 *department may rely on any information, including, but not limited*  
 6 *to, an actual, threatened, or potential harm to the public health*  
 7 *or safety, or the environment, a release or threat of a release, or*  
 8 *a human health or ecological risk assessment.* The department  
 9 shall notify the holder of the permit, registration, or certificate of  
 10 the temporary suspension and the effective date thereof and at the  
 11 same time shall serve the person with an accusation. Upon receipt  
 12 by the department of a notice of defense to the accusation from  
 13 the holder of the permit, registration, or certificate, the department  
 14 shall, within 15 days, set the matter for a hearing, which shall be  
 15 held as soon as possible, but not later than 30 days after receipt of  
 16 the notice. *The hearing shall be held without delay and completed*  
 17 *as soon as possible.* The temporary suspension shall remain in  
 18 effect until the hearing is completed and the department has made  
 19 a final determination on the merits, which shall be made within  
 20 60 days after the completion of the hearing. If the determination  
 21 is not transmitted within this period, the temporary suspension  
 22 shall be of no further effect.

23 SEC. 3. Section 25189.4 is added to the Health and Safety  
 24 Code, to read:

25 25189.4. (a) In addition to any penalty imposed under any  
 26 other law, a person who is subject to the imposition of civil or  
 27 criminal penalties pursuant to the provisions specified in  
 28 subdivision (b) shall also be subject to an additional civil penalty  
 29 of not less than five thousand dollars (\$5,000) or more than fifty  
 30 thousand dollars (\$50,000) for each day of each violation, if the  
 31 person has been found liable for, or has been convicted of, two or  
 32 more previous violations subject to the penalties specified in  
 33 subdivision (b) and those violations or convictions occurred within  
 34 any consecutive 60 months.

35 (b) The additional liability specified in subdivision (a) shall  
 36 apply to a penalty imposed pursuant to, or a conviction under,  
 37 paragraph (2) of subdivision (g) of Section 25187.8, or Section  
 38 25189, 25189.2, 25189.3, 25189.5, 25189.6, or 25189.7.

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