

AMENDED IN SENATE JUNE 18, 2015

AMENDED IN ASSEMBLY MAY 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1075

Introduced by Assembly Member Alejo

February 27, 2015

An act to amend Sections ~~25186~~ 25186, 25186.1, and 25186.2 of, and to add ~~Section~~ Sections 25186.05 and 25189.4 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1075, as amended, 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.

This bill would require the department to consider, except under specified circumstances, 3 or more violations of, or noncompliance with, specified provisions for which a person or entity has been found liable or has been convicted, with respect to a single hazardous waste facility within a 5-year period, as compelling cause to deny, suspend, or revoke a permit, registration, or certificate applied for by, or issued to, that person or entity.

(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. Existing law requires the department, upon receipt of a notice of defense to the accusation from the holder of the permit, registration, or certificate, to set the matter for hearing within 15 days and to hold the hearing as soon as possible, but not later than 30 days after receipt of the notice. Existing law requires the hearing to be held without delay and completed as soon as possible.

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. The bill would repeal the requirement that the hearing be held without delay and completed as soon as possible.

(3) Existing law requires a petition for judicial review of a final decision of the department to grant, issue, modify, or deny a permit, registration, or certificate be filed no later than 90 days after the date that the notice of final decision is served.

This bill would authorize a person who filed comments on a draft permit or participated in the public hearing on the draft permit to appeal the department's decision to the Secretary for Environmental Protection within 30 days, and would authorize the secretary to sustain, reverse, or modify the decision of the department if it was based on a finding of fact or conclusion of law that was clearly erroneous, or if it was based on an important policy consideration that the secretary determines he or she should review. The bill would require that a petition for judicial review be filed within 90 days of the secretary's final decision.

(3)

(4) 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 ~~(1)~~

12 (a) 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. 5101 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
23 adopted pursuant thereto relating to the generation, transportation,
24 treatment, storage, recycling, disposal, or handling of a hazardous
25 waste, as defined in Section 25117, a hazardous substance, as
26 defined in Section 25316, or a hazardous material, as defined in
27 Section 353 of the Vehicle Code, if the violation or noncompliance
28 shows a repeating or recurring pattern or may pose a threat to
29 public health or safety or the environment.

30 ~~(2)~~

31 (b) The aiding, abetting, or permitting of any violation of, or
32 noncompliance with, this chapter, Chapter 6.7 (commencing with
33 Section 25280), Chapter 6.8 (commencing with Section 25300),
34 the Porter-Cologne Water Quality Act (Division 7 (commencing
35 with Section 13000) of the Water Code), the Resource
36 Conservation and Recovery Act of 1976, as amended, (42 U.S.C.
37 Sec. 6901 et seq.), the Hazardous Materials Transportation Act
38 (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental

1 Response, Compensation, and Liability Act of 1980 (42 U.S.C.
 2 Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C.
 3 Sec. 2601 et seq.), or any other equivalent federal or state statute
 4 or any requirement or regulation adopted pursuant thereto relating
 5 to the generation, transportation, treatment, storage, recycling,
 6 disposal, or handling of a hazardous waste, as defined in Section
 7 25117, a hazardous substance, as defined in Section 25316, or a
 8 hazardous material, as defined in Section 353 of the Vehicle Code,
 9 if the violation or noncompliance shows a repeating or recurring
 10 pattern or may pose a threat to public health or safety or the
 11 environment.

12 ~~(3)~~

13 (c) Any violation of, or noncompliance with, any order issued
 14 by a state or local agency or by a hearing officer or a court relating
 15 to the generation, transportation, treatment, storage, recycling,
 16 disposal, or handling of a hazardous waste, as defined in Section
 17 25117, a hazardous substance, as defined in Section 25316, or a
 18 hazardous material, as defined in Section 353 of the Vehicle Code.

19 ~~(4)~~

20 (d) Any misrepresentation or omission of a significant fact or
 21 other required information in the application for the permit,
 22 registration, or certificate, or in information subsequently reported
 23 to the department or to a local officer or agency authorized to
 24 enforce this chapter pursuant to subdivision (a) of Section 25180.

25 ~~(5)(A)~~

26 (e) (1) Activities resulting in any federal or state conviction
 27 that are significantly related to the fitness of the applicant or holder
 28 of the permit, registration, or certificate to perform the applicant's
 29 duties or activities under the permit, registration, or certificate.

30 ~~(B)~~

31 (2) For the purposes of this paragraph, "conviction" means a
 32 plea or verdict of guilty or a conviction following a plea of nolo
 33 contendere.

34 ~~(C)~~

35 (3) An action that the department may take pursuant to this
 36 paragraph relating to the denial, suspension, or revocation of a
 37 permit, registration, or certificate may be based upon a conviction
 38 for which any of the following has occurred:

39 ~~(i)~~

40 (A) The time for appeal has elapsed.

1 ~~(ii)~~

2 (B) The judgment of conviction has been affirmed on appeal.

3 ~~(iii)~~

4 (C) Any order granting probation is made suspending the
5 imposition of sentence, notwithstanding a subsequent order
6 pursuant to Section 1203.4 of the Penal Code permitting that person
7 to withdraw the person's plea of guilty, and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the
9 accusation, information, or indictment.

10 ~~(6)~~

11 (f) Activities resulting in the revocation or suspension of a
12 license, permit, registration, or certificate held by the applicant or
13 holder of the permit, registration, or certificate or, if the applicant
14 or holder of the permit, registration, or certificate is a business
15 concern, by any trustee, officer, director, partner, or any person
16 holding more than 5 percent of the equity in, or debt liability of
17 that business concern relating to, the generation, transportation,
18 treatment, storage, recycling, disposal, or handling of a hazardous
19 waste, as defined in Section 25117, a hazardous substance, as
20 defined in Section 25316, or a hazardous material, as defined in
21 Section 353 of the Vehicle Code.

22 ~~(b) (1) (A) For the purposes of this subdivision, "violation"~~
23 ~~and "noncompliance" mean only the following:~~

24 ~~(i) A violation or noncompliance that creates a significant threat~~
25 ~~of immediate and acute exposure to hazardous waste or hazardous~~
26 ~~waste constituents at a facility or offsite from a facility and that~~
27 ~~threat makes it reasonably necessary to take action to prevent,~~
28 ~~reduce, or mitigate that exposure.~~

29 ~~(ii) A violation or noncompliance that includes, or results in,~~
30 ~~any of the following:~~

31 ~~(I) Fire, explosion, or uncontrolled chemical reaction.~~

32 ~~(II) Serious or acute injury or illness.~~

33 ~~(III) Violation of any order issued by the department to the~~
34 ~~applicant or holder of the permit.~~

35 ~~(IV) Federal or state felony conviction for violations of this~~
36 ~~chapter or its equivalent in the federal act or any requirement or~~
37 ~~regulation adopted pursuant to that authority relating to the~~
38 ~~generation, transportation, treatment, storage, recycling, disposal,~~
39 ~~or handling of hazardous waste, as described in paragraph (6) of~~
40 ~~subdivision (a).~~

1 (B) “Violation” and “noncompliance” shall not include a minor
2 violation as defined in Section 25117.6.

3 (2) Except as provided in paragraph (3), the department shall
4 consider three or more violations of, or noncompliance with, a
5 requirement specified in paragraph (1) or (2) of subdivision (a)
6 for which a person or entity has been found liable or has been
7 convicted, with respect to a single facility within a five-year period,
8 as compelling cause to deny, suspend, or revoke the permit,
9 registration, or certificate.

10 (3) This subdivision does not apply to a third violation or
11 noncompliance if the department finds that extraordinary
12 circumstances exist, including that a denial, suspension, or
13 revocation would endanger the public health or safety or the
14 environment.

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

18 SEC. 2. Section 25186.05 is added to the Health and Safety
19 Code, to read:

20 25186.05. (a) For the purposes of this section, “violation”
21 and “noncompliance” mean only the following:

22 (1) A violation or noncompliance that creates a significant
23 threat of acute or chronic exposure to hazardous waste or
24 hazardous waste constituents within the boundaries of a hazardous
25 waste facility or offsite from a facility, and that threat makes it
26 reasonably necessary to take action to prevent, reduce, or mitigate
27 that exposure.

28 (2) A violation of, or noncompliance with, any order issued by
29 the department to the applicant or holder of the permit.

30 (3) A federal or state felony conviction for a violation of this
31 chapter or its equivalent in the federal act, or of any requirement
32 or regulation adopted pursuant to that authority relating to the
33 generation, transportation, treatment, storage, recycling, disposal,
34 or handling of hazardous waste, as described in subdivision (h)
35 of Section 25186.

36 (b) “Violation” and “noncompliance” shall not include a minor
37 violation as defined in Section 25117.6.

38 (c) (1) Except as provided in paragraph (2), the department
39 shall consider three or more incidents of violation of, or
40 noncompliance with, a requirement specified in subdivision (a) or

1 *(b) of Section 25186 for which a person or entity has been found*
2 *liable or has been convicted, with respect to a single facility within*
3 *a five-year period, as compelling cause to deny, suspend, or revoke*
4 *the permit, registration, or certificate.*

5 *(2) This subdivision does not apply to a third violation or*
6 *noncompliance if the department finds that extraordinary*
7 *circumstances exist, including that a denial, suspension, or*
8 *revocation would endanger the public health or safety or the*
9 *environment.*

10 *(3) This subdivision does not limit or modify the department's*
11 *authority to deny, suspend, or revoke any permit, registration, or*
12 *certificate pursuant to subdivision (a) of 25186 or any other law.*

13 *SEC. 3. Section 25186.1 of the Health and Safety Code is*
14 *amended to read:*

15 25186.1. (a) Except as specified in Section 25186.2,
16 proceedings for the suspension or revocation of a permit,
17 registration, or certificate under this chapter shall be conducted in
18 accordance with Chapter 5 (commencing with Section 11500) of
19 Part 1 of Division 3 of Title 2 of the Government Code, and the
20 department shall have all the powers granted by those provisions.
21 In the event of a conflict between this chapter and Chapter 5
22 (commencing with Section 11500) of Part 1 of Division 3 of Title
23 2 of the Government Code, the provisions of the Government Code
24 shall prevail.

25 (b) (1) Proceedings to determine whether to grant, issue,
26 modify, or deny a permit, registration, or certificate shall be
27 conducted in accordance with the regulations adopted by the
28 department.

29 (2) *Within 30 days after a final permit decision has been issued,*
30 *a person who filed comments on that draft permit or participated*
31 *in the public hearing may petition the secretary to review the*
32 *permit decision.*

33 (3) *On an appeal pursuant to paragraph (2), the secretary may*
34 *sustain, reverse, or modify the decision of the department consistent*
35 *with procedures, including notice procedures, adopted by*
36 *regulation by the California Environmental Protection Agency,*
37 *based on either of the following:*

38 (A) *A finding of fact or a conclusion of law that is clearly*
39 *erroneous.*

1 (B) An important policy consideration that the secretary, in his
2 or her discretion, should review.

3 ~~(2) The~~

4 (c) A petition for judicial review of a final decision of the
5 department to grant, issue, modify, or deny a permit, registration,
6 or ~~certificate~~ certificate, or of the secretary's final decision to
7 sustain, reverse, or modify the decision of the department on appeal
8 pursuant to paragraph (2) of subdivision (b), shall not be filed
9 later than 90 days after the date that the notice of the final decision
10 is served.

11 ~~SEC. 2.~~

12 SEC. 4. Section 25186.2 of the Health and Safety Code is
13 amended to read:

14 25186.2. The department may temporarily suspend any permit,
15 registration, or certificate issued pursuant to this chapter prior to
16 any hearing if the department determines that conditions may
17 present an imminent and substantial endangerment to the public
18 health or safety or the environment. In making this determination,
19 the department may rely on any information, including, but not
20 limited to, an actual, threatened, or potential harm to the public
21 health or safety, or the environment, a release or threat of a release,
22 or a human health or ecological risk assessment. The department
23 shall notify the holder of the permit, registration, or certificate of
24 the temporary suspension and the effective date thereof and at the
25 same time shall serve the person with an accusation. Upon receipt
26 by the department of a notice of defense to the accusation from
27 the holder of the permit, registration, or certificate, the department
28 shall, within 15 days, set the matter for a hearing, which shall be
29 held as soon as possible, but not later than 30 days after receipt of
30 the notice. The temporary suspension shall remain in effect until
31 the hearing is completed and the department has made a final
32 determination on the merits, which shall be made within 60 days
33 after the completion of the hearing. If the determination is not
34 transmitted within this period, the temporary suspension shall be
35 of no further effect.

36 ~~SEC. 3.~~

37 SEC. 5. Section 25189.4 is added to the Health and Safety
38 Code, to read:

39 25189.4. (a) In addition to any penalty imposed under any
40 other law, a person who is subject to the imposition of civil or

1 criminal penalties pursuant to the provisions specified in
2 subdivision (b) shall also be subject to an additional civil penalty
3 of not less than five thousand dollars (\$5,000) or more than fifty
4 thousand dollars (\$50,000) for each day of each violation, if the
5 person has been found liable for, or has been convicted of, two or
6 more previous violations subject to the penalties specified in
7 subdivision (b) and those violations or convictions occurred within
8 any consecutive 60 months.

9 (b) The additional liability specified in subdivision (a) shall
10 apply to a penalty imposed pursuant to, or a conviction under,
11 paragraph (2) of subdivision (g) of Section 25187.8, or Section
12 25189, 25189.2, 25189.3, 25189.5, 25189.6, or 25189.7.

O