

AMENDED IN SENATE SEPTEMBER 1, 2015

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, 25186.1, 25186~~ and 25186.2 of, and to add 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.~~

~~(4)~~

(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. 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~~ *in*, or debt liability ~~of~~
10 *of*, that business concern, has engaged in any of the following:

11 (a) Any violation of, or noncompliance with, this chapter,
12 Chapter 6.7 (commencing with Section 25280), Chapter 6.8
13 (commencing with Section 25300), the Porter-Cologne Water
14 Quality Control Act (Division 7 (commencing with Section 13000)
15 of the Water Code), the Resource Conservation and Recovery Act
16 of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous
17 Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the
18 Comprehensive Environmental Response, Compensation, and
19 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic
20 Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other
21 equivalent federal or state statute or any requirement or regulation
22 adopted pursuant thereto relating to the generation, transportation,
23 treatment, storage, recycling, disposal, or handling of a hazardous
24 waste, as defined in Section 25117, a hazardous substance, as
25 defined in Section 25316, or a hazardous material, as defined in
26 Section 353 of the Vehicle Code, if the violation or noncompliance
27 shows a repeating or recurring pattern or may pose a threat to
28 public health or safety or the environment.

29 (b) The aiding, abetting, or permitting of any violation of, or
30 noncompliance with, this chapter, Chapter 6.7 (commencing with
31 Section 25280), Chapter 6.8 (commencing with Section 25300),
32 the Porter-Cologne Water Quality Act (Division 7 (commencing
33 with Section 13000) of the Water Code), the Resource
34 Conservation and Recovery Act of 1976, as amended, (42 U.S.C.
35 Sec. 6901 et seq.), the Hazardous Materials Transportation Act
36 (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental
37 Response, Compensation, and Liability Act of 1980 (42 U.S.C.
38 Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C.

1 Sec. 2601 et seq.), or any other equivalent federal or state statute
2 or any requirement or regulation adopted pursuant thereto relating
3 to the generation, transportation, treatment, storage, recycling,
4 disposal, or handling of a hazardous waste, as defined in Section
5 25117, a hazardous substance, as defined in Section 25316, or a
6 hazardous material, as defined in Section 353 of the Vehicle Code,
7 if the violation or noncompliance shows a repeating or recurring
8 pattern or may pose a threat to public health or safety or the
9 environment.

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

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

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

25 (2) For the purposes of this paragraph, "conviction" means a
26 plea or verdict of guilty or a conviction following a plea of nolo
27 contendere.

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

32 (A) The time for appeal has elapsed.

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

34 (C) Any order granting probation is made suspending the
35 imposition of sentence, notwithstanding a subsequent order
36 pursuant to Section 1203.4 of the Penal Code permitting that person
37 to withdraw the person's plea of guilty, and to enter a plea of not
38 guilty, or setting aside the verdict of guilty, or dismissing the
39 accusation, information, or indictment.

1 (f) Activities resulting in the revocation or suspension of a
2 license, permit, registration, or certificate held by the applicant or
3 holder of the permit, registration, or certificate or, if the applicant
4 or holder of the permit, registration, or certificate is a business
5 concern, by any trustee, officer, director, partner, or any person
6 holding more than 5 percent of the equity in, or debt liability ~~of~~
7 *of*, that business concern relating to, the generation, transportation,
8 treatment, storage, recycling, disposal, or handling of a hazardous
9 waste, as defined in Section 25117, a hazardous substance, as
10 defined in Section 25316, or a hazardous material, as defined in
11 Section 353 of the Vehicle Code.

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

14 25186.05. (a) For the purposes of this section, “violation” and
15 “noncompliance” mean only the following:

16 (1) A violation or noncompliance *pursuant to Section 25186*
17 *that creates a significant threat of acute or chronic exposure to*
18 *hazardous waste or hazardous waste ~~constituents within the~~*
19 *boundaries of a hazardous waste facility or offsite from a facility,*
20 *constituents, and that threat makes it reasonably necessary to take*
21 *action to prevent, reduce, or mitigate that exposure.*

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

24 (3) A federal or state felony conviction for a violation of this
25 chapter or its equivalent in the federal act, or of any requirement
26 or regulation adopted pursuant to that authority relating to the
27 generation, transportation, treatment, storage, recycling, disposal,
28 or handling of hazardous waste, as described in subdivision ~~(h)~~
29 *(e)* of Section 25186.

30 *(b) A violation or noncompliance by a federal hazardous waste*
31 *facility, pursuant to Section 6961 of Title 42 of the United States*
32 *Code, shall, for purposes of this section, be limited to a violation*
33 *or noncompliance caused by an action or inaction within the*
34 *boundaries identified in Part B of the federal hazardous waste*
35 *permit application, pursuant to Section 270.14 of Title 40 of the*
36 *Code of Federal Regulations, for that facility.*

37 ~~(b)~~

38 (c) “Violation” and “noncompliance” shall not include a minor
39 violation as defined in Section 25117.6.

40 ~~(e)~~

1 (d) (1) Except as provided in paragraph (2), the department
2 shall consider three or more incidents of violation of, or
3 noncompliance with, a requirement specified in subdivision (a) or
4 (b) of Section 25186 for which a person or entity has been found
5 liable or has been convicted, with respect to a single facility within
6 a five-year period, as compelling cause to deny, suspend, or revoke
7 the permit, registration, or certificate.

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

13 (3) This subdivision does not limit or modify the department’s
14 authority to deny, suspend, or revoke any permit, registration, or
15 certificate pursuant to ~~subdivision (a) of Section 25186~~ or any
16 other law.

17 ~~SEC. 3. Section 25186.1 of the Health and Safety Code is~~
18 ~~amended to read:~~

19 ~~25186.1. (a) Except as specified in Section 25186.2,~~
20 ~~proceedings for the suspension or revocation of a permit,~~
21 ~~registration, or certificate under this chapter shall be conducted in~~
22 ~~accordance with Chapter 5 (commencing with Section 11500) of~~
23 ~~Part 1 of Division 3 of Title 2 of the Government Code, and the~~
24 ~~department shall have all the powers granted by those provisions.~~
25 ~~In the event of a conflict between this chapter and Chapter 5~~
26 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
27 ~~2 of the Government Code, the provisions of the Government Code~~
28 ~~shall prevail.~~

29 ~~(b) (1) Proceedings to determine whether to grant, issue,~~
30 ~~modify, or deny a permit, registration, or certificate shall be~~
31 ~~conducted in accordance with the regulations adopted by the~~
32 ~~department.~~

33 ~~(2) Within 30 days after a final permit decision has been issued,~~
34 ~~a person who filed comments on that draft permit or participated~~
35 ~~in the public hearing may petition the secretary to review the permit~~
36 ~~decision.~~

37 ~~(3) On an appeal pursuant to paragraph (2), the secretary may~~
38 ~~sustain, reverse, or modify the decision of the department consistent~~
39 ~~with procedures, including notice procedures, adopted by regulation~~

1 ~~by the California Environmental Protection Agency, based on~~
2 ~~either of the following:~~

3 ~~(A) A finding of fact or a conclusion of law that is clearly~~
4 ~~erroneous.~~

5 ~~(B) An important policy consideration that the secretary, in his~~
6 ~~or her discretion, should review.~~

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

13 ~~SEC. 4.~~

14 ~~SEC. 3.~~ Section 25186.2 of the Health and Safety Code is
15 amended to read:

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

1 ~~SEC. 5.~~

2 *SEC. 4.* Section 25189.4 is added to the Health and Safety
3 Code, to read:

4 25189.4. (a) In addition to any penalty imposed under any
5 other law, a person who is subject to the imposition of civil or
6 criminal penalties pursuant to the provisions specified in
7 subdivision (b) shall also be subject to an additional civil penalty
8 of not less than five thousand dollars (\$5,000) or more than fifty
9 thousand dollars (\$50,000) for each day of each violation, if the
10 person has been found liable for, or has been convicted of, two or
11 more previous violations subject to the penalties specified in
12 subdivision (b) and those violations or convictions occurred within
13 any consecutive 60 months.

14 (b) The additional liability specified in subdivision (a) shall
15 apply to a penalty imposed pursuant to, or a conviction under,
16 paragraph (2) of subdivision (g) of Section 25187.8, or Section
17 25189, 25189.2, 25189.3, 25189.5, 25189.6, or 25189.7.

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