

AMENDED IN SENATE APRIL 21, 2015

SENATE BILL

No. 654

Introduced by Senator De León

February 27, 2015

An act to amend Section ~~25245~~ 25200 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 654, as amended, De León. Hazardous waste: ~~facility closure.~~ *facilities permitting.*

(1) Existing law, as part of the hazardous waste control law, requires the Department of Toxic Substances Control to adopt, and revise when appropriate, standards and regulations to, among other things, specify the financial assurances to be provided by an owner or operator of a hazardous waste facility that are necessary to provide for the cost of closure and subsequent maintenance of the facility. *facilities handling hazardous waste to obtain a permit from the Department of Toxic Substances Control. Existing law requires an owner or operator of a facility intending to renew the facility's permit to submit a complete Part A application for a permit renewal prior to the expiration of the permit. Existing law requires the owner or operator to submit a complete Part B application when requested by the department. Existing law requires the department to issue a permit if the facility meets specified requirements.* A violation of a regulation adopted pursuant to the hazardous waste control law is a crime.

This bill would ~~additionally require the standards and regulations to specify the financial assurances to be provided to respond to the cost of closure, cleanup, and subsequent maintenance of the facility.~~ *instead require the owner or operator of a facility to submit complete Part A*

and Part B applications for a permit renewal at least 2 years prior to the expiration date of the permit. The bill would require the department to issue a final permit decision for an application for permit renewal within 36 months of the expiration of the facility’s permit. The bill would provide that a facility that has not been issued a final permit within 36 months following the expiration of the permit’s fixed term shall be deemed in violation of the hazardous waste control law. Since a violation of a regulation adopted pursuant to the hazardous waste control law would be is a crime, the bill would impose a state-mandated local program.

(2) 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 25245 of the Health and Safety Code is~~
 2 ~~amended to read:~~
 3 ~~25245. (a) The department shall adopt, and revise when~~
 4 ~~appropriate, standards and regulations that shall do both of the~~
 5 ~~following:~~
 6 ~~(1) Specify the financial assurances to be provided by the owner~~
 7 ~~or operator of a hazardous waste facility that are necessary to~~
 8 ~~respond adequately to damage claims arising out of the operation~~
 9 ~~of that type of facility and to provide for the cost of closure,~~
 10 ~~cleanup, and subsequent maintenance of the facility, including,~~
 11 ~~but not limited to, the monitoring of groundwater and other aspects~~
 12 ~~of the environment after closure. If the facility is required to obtain~~
 13 ~~a permit under the federal act, the financial assurance shall be a~~
 14 ~~trust fund, surety bond, letter of credit, insurance, or any other~~
 15 ~~mechanism authorized under the federal act and the regulations~~
 16 ~~adopted pursuant to the federal act. If the facility is not required~~
 17 ~~to obtain a permit under the federal act, the financial assurance~~
 18 ~~may include any other equivalent financial arrangement acceptable~~
 19 ~~to the department.~~

1 ~~(2) Provide that every hazardous waste facility can be closed~~
2 ~~and maintained for at least 30 years subsequent to its closure in a~~
3 ~~manner that protects human health and the environment and~~
4 ~~minimizes or eliminates the escape of hazardous waste constituents,~~
5 ~~leachate, contaminated rainfall, and waste decomposition products~~
6 ~~to ground and surface waters and to the atmosphere.~~

7 ~~(b) In adopting regulations pursuant to subdivision (a), to carry~~
8 ~~out the purposes of this chapter, the department may specify policy~~
9 ~~or other contractual terms, conditions, or defenses that are~~
10 ~~necessary or are unacceptable in establishing evidence of financial~~
11 ~~responsibility.~~

12 ~~(1) If an owner or operator is in bankruptcy pursuant to Title~~
13 ~~11 of the United States Code, or where, with reasonable diligence,~~
14 ~~jurisdiction in any state or federal court cannot be obtained over~~
15 ~~an owner or operator likely to be solvent at the time of judgment,~~
16 ~~a claim arising from conduct for which this section requires~~
17 ~~evidence of financial responsibility may be asserted directly against~~
18 ~~the guarantor who provided the evidence of financial responsibility.~~

19 ~~(2) The total liability of any guarantor is limited to the aggregate~~
20 ~~amount that the guarantor has provided as evidence of financial~~
21 ~~responsibility to the owner or operator under this chapter.~~

22 ~~(3) This subdivision does not limit any other state or federal~~
23 ~~statutory, contractual, or common law liability of a guarantor to~~
24 ~~the owner or operator, including, but not limited to, the liability~~
25 ~~of the guarantor for bad faith in either negotiating or in failing to~~
26 ~~negotiate the settlement of a claim.~~

27 ~~(4) This subdivision does not diminish the liability of any person~~
28 ~~under Section 107 or 111 of the federal Comprehensive~~
29 ~~Environmental Response, Compensation, and Liability Act of 1980~~
30 ~~(42 U.S.C. Secs. 9607 and 9611).~~

31 ~~(5) For purposes of this subdivision, “guarantor” means a person,~~
32 ~~other than the owner or operator, who provides evidence of~~
33 ~~financial responsibility for an owner or operator under this section.~~

34 *SECTION 1. Section 25200 of the Health and Safety Code is*
35 *amended to read:*

36 25200. (a) The department shall issue hazardous waste
37 facilities permits to use and operate one or more hazardous waste
38 management units at a facility that in the judgment of the
39 department meet the building standards published in the State
40 Building Standards Code relating to hazardous waste facilities and

1 the other standards and requirements adopted pursuant to this
2 chapter. The department shall impose conditions on each hazardous
3 waste facilities permit specifying the types of hazardous wastes
4 that may be accepted for transfer, storage, treatment, or disposal.
5 The department may impose any other conditions on a hazardous
6 waste facilities permit that are consistent with the intent of this
7 chapter.

8 (b) The department may impose, as a condition of a hazardous
9 waste facilities permit, a requirement that the owner or operator
10 of a hazardous waste facility that receives hazardous waste from
11 more than one producer comply with any order of the director that
12 prohibits the facility operator from refusing to accept a hazardous
13 waste based on geographical origin that is authorized to be accepted
14 and may be accepted by the facility without extraordinary hazard.

15 (c) (1) (A) ~~Any~~ A hazardous waste facilities permit issued by
16 the department shall be for a fixed term, which shall not exceed
17 10 years for any land disposal facility, storage facility, incinerator,
18 or other treatment facility.

19 (B) ~~Before the fixed term of a permit expires, the~~ *The* owner or
20 operator of a facility intending to extend the term of the facility's
21 permit shall submit ~~a complete Part A application and Part B~~
22 ~~applications~~ for a permit renewal. ~~At any time following renewal~~
23 ~~at least two years prior to the submittal expiration date of the Part~~
24 ~~A application, the owner or operator of a facility shall submit a~~
25 ~~complete Part B application, or any portion thereof, as well as any~~
26 ~~permit. Any other relevant information, information shall be~~
27 ~~submitted as and when requested by the department. To the extent~~
28 ~~not inconsistent with the federal act, when a complete Part A~~
29 ~~renewal application, and any other requested information, has been~~
30 ~~submitted before the end of the permit's fixed term, the permit is~~
31 ~~deemed extended until the renewal application is approved or~~
32 ~~denied and the owner or operator has exhausted all applicable~~
33 ~~rights of appeal.~~

34 (C) *To the extent not inconsistent with the federal act, for an*
35 *owner or operator in compliance with subparagraph (B), the permit*
36 *shall be deemed extended until the renewal application is approved*
37 *or denied and all applicable rights of appeal have been exhausted.*

38 (D) *The department shall issue a final permit decision for permit*
39 *renewal for a facility within 36 months following the expiration*
40 *of the permit's fixed term. A facility that has not been issued a*

1 *final permit within 36 months following the expiration of the*
2 *permit's fixed term shall be deemed in violation of this chapter.*

3 ~~(E)~~

4 (E) This section does not limit or restrict the department's
5 authority to impose any additional or different conditions on an
6 extended permit that are necessary to protect human health and
7 the environment.

8 ~~(F)~~

9 (F) In adopting new conditions for an extended permit, the
10 department shall follow the applicable permit modification
11 procedures specified in this chapter and the regulations adopted
12 pursuant to this chapter.

13 ~~(G)~~

14 (G) When prioritizing pending renewal applications for
15 processing and in determining the need for any new conditions on
16 an extended permit, the department shall consider any input
17 received from the public.

18 (2) The department shall review each hazardous waste facilities
19 permit for a land disposal facility five years after the date of
20 issuance or reissuance, and shall modify the permit, as necessary,
21 to ~~assure~~ ensure that the facility continues to comply with the
22 currently applicable requirements of this chapter and the regulations
23 adopted pursuant to this chapter.

24 (3) This subdivision does not prohibit the department from
25 reviewing, modifying, or revoking a permit at any time during its
26 term.

27 (d) (1) When reviewing ~~any~~ an application for a permit renewal,
28 the department shall consider improvements in the state of control
29 and measurement technology as well as changes in applicable
30 regulations.

31 (2) Each permit issued or renewed under this section shall
32 contain the terms and conditions that the department determines
33 necessary to protect human health and the environment.

34 (e) A permit issued pursuant to the federal act by the
35 Environmental Protection Agency in the state for which no state
36 hazardous waste facilities permit has been issued shall be deemed
37 to be a state permit enforceable by the department until a state
38 permit is issued. In addition to complying with the terms and
39 conditions specified in a federal permit deemed to be a state permit
40 pursuant to this section, an owner or operator who holds that permit

1 shall comply with the requirements of this chapter and the
2 regulations adopted by the department to implement this chapter.
3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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