

AMENDED IN SENATE APRIL 12, 2016

SENATE BILL

No. 1325

Introduced by Senator De León

February 19, 2016

An act to amend Section ~~25355~~ 25247 of the Health and Safety Code, relating to hazardous ~~substances~~: waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as amended, De León. ~~Hazardous substances: removal or remedial actions: notifications.~~ Hazardous waste: facilities: postclosure plans.

Existing law requires the owner or operator of a hazardous waste facility to submit hazardous waste facility closure and postclosure plans to the Department of Toxic Substances Control and to the California regional water quality control board for the region in which the facility is located. Existing law requires the department to review those plans and to approve a plan if it finds that the plan complies with the regulations adopted by the department and all other applicable state and federal regulations. Existing law requires the department to impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of a postclosure permit, or, only until January 1, 2009, through an enforcement order or an enforceable agreement, except as specified.

This bill would restore the authority of the department to impose those requirements through an enforcement order or an enforceable agreement and would require the department, on or before January 1, 2018, to adopt regulations to impose postclosure plan requirements.

~~Existing law requires the Department of Toxic Substances Control, at least 30 days before initiating a removal or remedial action at a~~

~~hazardous substance release site, to make a reasonable effort to notify the persons identified by the department as potentially responsible parties and to also publish a notification of the action in a newspaper of general circulation.~~

~~This bill would instead require the department to make those notifications at least 45 days before initiating a removal or remedial action.~~

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

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

1 SECTION 1. Section 25247 of the Health and Safety Code is
2 amended to read:

3 25247. (a) The department shall review each plan submitted
4 pursuant to Section 25246 and shall approve the plan if it finds
5 that the plan complies with the regulations adopted by the
6 department and complies with all other applicable state and federal
7 regulations.

8 (b) The department shall not approve the plan until at least one
9 of the following occurs:

10 (1) The plan has been approved pursuant to Section 13227 of
11 the Water Code.

12 (2) Sixty days expire after the owner or operator of an interim
13 status facility submits the plan to the department. If the department
14 denies approval of a plan for an interim status facility, this 60-day
15 period shall not begin until the owner or operator resubmits the
16 plan to the department.

17 (3) The director finds that immediate approval of the plan is
18 necessary to protect public health, safety, or the environment.

19 (c) Any action taken by the department pursuant to this section
20 is subject to Section 25204.5.

21 (d) (1) To the extent consistent with the federal act, the
22 department shall impose the requirements of a hazardous waste
23 facility postclosure plan on the owner or operator of a facility
24 through the issuance of an enforcement order, entering into an
25 enforceable agreement, or issuing a postclosure permit.

26 (A) A hazardous waste facility postclosure plan imposed or
27 modified pursuant to an enforcement order, a permit, or an
28 enforceable agreement shall be approved in compliance with the

1 California Environmental Quality Act (Division 13 (commencing
2 with Section 21000) of the Public Resources Code).

3 (B) Before the department initially approves or significantly
4 modifies a hazardous waste facility postclosure plan pursuant to
5 this subdivision, the department shall provide a meaningful
6 opportunity for public involvement, which, at a minimum, shall
7 include public notice and an opportunity for public comment on
8 the proposed action.

9 (C) For the purposes of subparagraph (B), a “significant
10 modification” is a modification that the department determines
11 would constitute a class 3 permit modification if the change were
12 being proposed to a hazardous waste facilities permit. In
13 determining whether the proposed modification would constitute
14 a class 3 modification, the department shall consider the similarity
15 of the modification to class 3 modifications codified in Appendix
16 I of Chapter 20 (commencing with Section 66270.1) of Division
17 4.5 of Title 22 of the California Code of Regulations. In
18 determining whether the proposed modification would constitute
19 a class 3 modification, the department shall also consider whether
20 there is significant public concern about the proposed modification,
21 and whether the proposed change is so substantial or complex in
22 nature that the modification requires the more extensive procedures
23 of a class 3 permit modification.

24 (2) This subdivision does not limit or delay the authority of the
25 department to order any action necessary at a facility to protect
26 public health or safety.

27 (3) If the department imposes a hazardous waste facility
28 postclosure plan in the form of an enforcement order or enforceable
29 agreement, in lieu of issuing or renewing a postclosure permit, the
30 owner or operator who submits the plan for approval shall, at the
31 time the plan is submitted, pay the same fee specified in
32 subparagraph (F) of paragraph (1) of subdivision (d) of Section
33 25205.7, or enter into a cost reimbursement agreement pursuant
34 to subdivision (a) of Section 25205.7 and upon commencement
35 of the postclosure period shall pay the fee required by paragraph
36 (9) of subdivision (c) of Section 25205.4. For purposes of this
37 paragraph and paragraph (9) of subdivision (c) of Section 25205.4,
38 the commencement of the postclosure period shall be the effective
39 date of the postclosure permit, enforcement order, or enforceable
40 agreement.

1 (4) In addition to any other remedy available under state law to
2 enforce a postclosure plan imposed in the form of an enforcement
3 order or enforcement agreement, the department may take any of
4 the following actions:

5 (A) File an action to enjoin a threatened or continuing violation
6 of a requirement of the enforcement order or agreement.

7 (B) Require compliance with requirements for corrective action
8 or other emergency response measures that the department deems
9 necessary to protect human health and the environment.

10 (C) Assess or file an action to recover civil penalties and fines
11 for a violation of a requirement of an enforcement order or
12 agreement.

13 (e) Subdivision (d) does not apply to a postclosure plan for
14 which a final or draft permit has been issued by the department on
15 or before December 31, 2003, unless the department and the facility
16 mutually agree to replace the permit with an enforcement order or
17 enforceable agreement pursuant to the provisions of subdivision
18 (d).

19 ~~(f) (1) Except as provided in paragraphs (2) and (3), the~~
20 ~~department may only impose postclosure plan requirements through~~
21 ~~an enforcement order or an enforceable agreement pursuant to~~
22 ~~subdivision (d) until January 1, 2009.~~

23 ~~(2) This subdivision does not apply to an enforcement order or~~
24 ~~enforceable agreement issued prior to January 1, 2009, or an order~~
25 ~~or agreement for which a public notice is issued on or before~~
26 ~~January 1, 2009.~~

27 ~~(3) This subdivision does not apply to the modification on or~~
28 ~~after January 1, 2009, of an enforcement order or enforceable~~
29 ~~agreement that meets the conditions in paragraph (2).~~

30 *(f) On or before January 1, 2018, the department shall adopt*
31 *regulations to impose postclosure plan requirements pursuant to*
32 *subdivision (d).*

33 (g) If the department determines that a postclosure permit is
34 necessary to enforce a postclosure plan, the department may, at
35 any time, rescind and replace an enforcement order or an
36 enforceable agreement issued pursuant to this section by issuing
37 a postclosure permit for the hazardous waste facility, in accordance
38 with the procedures specified in the department's regulations for
39 the issuance of postclosure permits.

1 (h) Nothing in this section may be construed to limit or delay
2 the authority of the department to order any action necessary at a
3 facility to protect public health or safety, or the environment.

4 SECTION 1. ~~Section 25355 of the Health and Safety Code is~~
5 ~~amended to read:~~

6 ~~25355. (a) The Governor is responsible for the coordination~~
7 ~~of all state response actions for sites identified in Section 25356~~
8 ~~in order to assure the maximum use of available federal funds.~~

9 ~~(b) The director may initiate removal or remedial action~~
10 ~~pursuant to this chapter unless these actions have been taken, or~~
11 ~~are being taken properly and in a timely fashion, by a responsible~~
12 ~~party.~~

13 ~~(c) (1) At least 45 days before initiating removal or remedial~~
14 ~~actions, the department shall make a reasonable effort to notify~~
15 ~~the persons identified by the department as potentially responsible~~
16 ~~parties and shall also publish a notification of this action in a~~
17 ~~newspaper of general circulation pursuant to the method specified~~
18 ~~in Section 6061 of the Government Code. This subdivision does~~
19 ~~not apply to actions taken pursuant to subdivision (b) of Section~~
20 ~~25358.3 or immediate corrective actions taken pursuant to Section~~
21 ~~25354. A responsible party may be held liable pursuant to this~~
22 ~~chapter whether or not the person was given the notice specified~~
23 ~~in this subdivision.~~

24 ~~(2) (A) Notwithstanding subdivision (a) of Section 25317, a~~
25 ~~person may voluntarily enter into an enforceable agreement with~~
26 ~~the department pursuant to this subdivision that allows removal~~
27 ~~or remedial actions to be conducted under the oversight of the~~
28 ~~department at sites with petroleum releases from sources other~~
29 ~~than underground storage tanks, as defined in Section 25299.24.~~

30 ~~(B) If the department determines that there may be an adverse~~
31 ~~impact to water quality as a result of a petroleum release, the~~
32 ~~department shall notify the appropriate regional board prior to~~
33 ~~entering into the enforceable agreement pursuant to subparagraph~~
34 ~~(A). The department may enter into an enforceable agreement~~
35 ~~pursuant to subparagraph (A) unless, within 60 days of the~~
36 ~~notification provided by the department, the regional board~~
37 ~~provides the department with a written notice that the regional~~
38 ~~board will assume oversight responsibility for the removal or~~
39 ~~remedial action.~~

1 ~~(C) Agreements entered into pursuant to this paragraph shall~~
2 ~~provide that the party will reimburse the department for all costs~~
3 ~~incurred including, but not limited to, oversight costs pursuant to~~
4 ~~the enforceable agreement associated with the performance of the~~
5 ~~removal or remedial actions and Chapter 6.66 (commencing with~~
6 ~~Section 25269).~~

7 ~~(d) The department shall notify the owner of the real property~~
8 ~~of the site of a hazardous substance release within 30 days after~~
9 ~~listing a site pursuant to Section 25356, and at least 30 days before~~
10 ~~initiating a removal or remedial action pursuant to this chapter, by~~
11 ~~sending the notification by certified mail to the person to whom~~
12 ~~the real property is assessed, as shown upon the last equalized~~
13 ~~assessment roll of the county, at the address shown on the~~
14 ~~assessment roll. The requirements of this subdivision do not apply~~
15 ~~to actions taken pursuant to subdivision (b) of Section 25358.3 or~~
16 ~~to immediate corrective actions taken pursuant to Section 25354.~~