

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN SENATE APRIL 12, 2016

SENATE BILL

No. 1325

Introduced by Senator De León

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as amended, De León. 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.

This bill would incorporate additional changes to Section 25247 of the Health and Safety Code proposed by AB 1611 and SB 839 that

would become operative if this bill and one or both of those bills are enacted and this bill is chaptered last.

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

31 (B) Before the department initially approves or significantly
32 modifies a hazardous waste facility postclosure plan pursuant to
33 this subdivision, the department shall provide a meaningful

1 opportunity for public involvement, which, at a minimum, shall
2 include public notice and an opportunity for public comment on
3 the proposed action.

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

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

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

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

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

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

6 (C) Assess or file an action to recover civil penalties and fines
7 for a violation of a requirement of an enforcement order or
8 agreement.

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

15 (f) On or before January 1, 2018, the department shall adopt
16 regulations to impose postclosure plan requirements pursuant to
17 subdivision (d).

18 (g) If the department determines that a postclosure permit is
19 necessary to enforce a postclosure plan, the department may, at
20 any time, rescind and replace an enforcement order or an
21 enforceable agreement issued pursuant to this section by issuing
22 a postclosure permit for the hazardous waste facility, in accordance
23 with the procedures specified in the department’s regulations for
24 the issuance of postclosure permits.

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

28 *SEC. 1.5. Section 25247 of the Health and Safety Code is*
29 *amended to read:*

30 25247. (a) The department shall review each plan submitted
31 pursuant to Section 25246 and shall approve the plan if it finds
32 that the plan complies with the regulations adopted by the
33 department and complies with all other applicable state and federal
34 regulations.

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

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

39 (2) Sixty days expire after the owner or operator of an interim
40 status facility submits the plan to the department. If the department

1 denies approval of a plan for an interim status facility, this 60-day
2 period shall not begin until the owner or operator resubmits the
3 plan to the department.

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

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

8 (d) (1) To the extent consistent with the federal act, the
9 department shall impose the requirements of a hazardous waste
10 facility postclosure plan on the owner or operator of a facility
11 through the issuance of an enforcement order, entering into an
12 enforceable agreement, or issuing a postclosure permit.

13 (A) A hazardous waste facility postclosure plan imposed or
14 modified pursuant to an enforcement order, a permit, or an
15 enforceable agreement shall be approved in compliance with the
16 California Environmental Quality Act (Division 13 (commencing
17 with Section 21000) of the Public Resources Code).

18 (B) Before the department initially approves or significantly
19 modifies a hazardous waste facility postclosure plan pursuant to
20 this subdivision, the department shall provide a meaningful
21 opportunity for public involvement, which, at a minimum, shall
22 include public notice and an opportunity for public comment on
23 the proposed action.

24 (C) For the purposes of subparagraph (B), a “significant
25 modification” is a modification that the department determines
26 would constitute a class 3 permit modification if the change were
27 being proposed to a hazardous waste facilities permit. In
28 determining whether the proposed modification would constitute
29 a class 3 modification, the department shall consider the similarity
30 of the modification to class 3 modifications codified in Appendix
31 I of Chapter 20 (commencing with Section 66270.1) of Division
32 4.5 of Title 22 of the California Code of Regulations. In
33 determining whether the proposed modification would constitute
34 a class 3 modification, the department shall also consider whether
35 there is significant public concern about the proposed modification,
36 and whether the proposed change is so substantial or complex in
37 nature that the modification requires the more extensive procedures
38 of a class 3 permit modification.

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

4 (3) If the department imposes a hazardous waste facility
5 postclosure plan in the form of an enforcement order or enforceable
6 agreement, in lieu of issuing or renewing a postclosure permit, the
7 owner or operator who submits the plan for approval shall, at the
8 time the plan is submitted, ~~pay the same fee specified in~~
9 ~~subparagraph (F) of paragraph (1) of subdivision (d) of Section~~
10 ~~25205.7, or enter into a cost reimbursement agreement pursuant~~
11 ~~to subdivision (a) of Section 25205.7 and upon commencement~~
12 ~~of the postclosure period shall pay the fee required by paragraph~~
13 ~~(9) of subdivision (c) of Section 25205.4. For purposes of this~~
14 ~~paragraph and paragraph (9) of subdivision (c) of Section 25205.4,~~
15 ~~the commencement of the postclosure period shall be the effective~~
16 ~~date of the postclosure permit, enforcement order, or enforceable~~
17 ~~agreement.~~

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

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

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

27 (C) Assess or file an action to recover civil penalties and fines
28 for a violation of a requirement of an enforcement order or
29 agreement.

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

36 (f) ~~(1) Except as provided in paragraphs (2) and (3), the~~
37 ~~department may only~~ *On or before January 1, 2018, the department*
38 *shall adopt regulations to impose postclosure plan requirements*
39 *through an enforcement order or an enforceable agreement pursuant*
40 *to subdivision (d) until January 1, 2009: (d).*

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

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

8 (g) If the department determines that a postclosure permit is
9 necessary to enforce a postclosure plan, the department may, at
10 any time, rescind and replace an enforcement order or an
11 enforceable agreement issued pursuant to this section by issuing
12 a postclosure permit for the hazardous waste facility, in accordance
13 with the procedures specified in the department's regulations for
14 the issuance of postclosure permits.

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

18 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
19 *Section 25247 of the Health and Safety Code proposed by this bill,*
20 *Assembly Bill 1611, and Senate Bill 839. It shall only become*
21 *operative if (1) this bill and Assembly Bill 1611 or Senate Bill 839,*
22 *or both of those bills, are enacted and become effective on or*
23 *before January 1, 2017, (2) Assembly Bill 1611, Senate Bill 839,*
24 *or both, as enacted, amend Section 25247 of the Health and Safety*
25 *Code, and (3) this bill is enacted last of these bills that amend*
26 *Section 25247 of the Health and Safety Code, in which case Section*
27 *25247 of the Health and Safety Code, as amended by Assembly*
28 *Bill 1611 or Senate Bill 839, shall remain operative only until the*
29 *operative date of this bill, at which time Section 1.5 of this bill*
30 *shall become operative, and Section 1 of this bill shall not become*
31 *operative.*