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STATE CAPITOL

P.O. BOX 942849
SACRAMENTO, CA 94249-0097
(916) 319-3965

*Assembly
California Legislature*

**ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY
AND TOXIC MATERIALS**

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Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1980 (Quirk) – As Introduced January 31, 2018

SUBJECT: Statute of limitations: hazardous materials

SUMMARY: Extends the statute of limitations for commencing civil enforcement actions for Aboveground Petroleum Storage Act (APSA) violations from one to five years.

EXISTING LAW:

- 1) Governs the management of aboveground petroleum storage through the Aboveground Petroleum Storage Act (APSA). (Health and Safety Code (HSC) §25270 et seq.)
 - a. Requires each owner or operator of a facility with aboveground petroleum storage capacities above 1,320 gallons to prepare and implement a spill prevention control and countermeasure (SPCC) plan that is consistent with existing regulations. Requires owners or operators to conduct periodic inspections of the storage tank(s). (HSC §25270.4.5(a))
 - b. Defines an "aboveground storage tank" as a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground or in an underground area, such as a basement. (HSC §25270.2(a))
 - c. Identifies Certified Unified Program Agencies (CUPA) as the only bodies authorized to enforce APSA (HSC §25270.2) and requires CUPAs to inspect facilities with a storage capacity of 10,000 gallons or more of petroleum at least once every three years to ensure the owner or operator is in compliance with their SPCC plan. (HSC §25270.5)
 - d. Directs the Office of the State Fire Marshall to adopt regulations implementing APSA and oversee the implementation of APSA by the CUPAs. (HSC §25270.4.1)
 - e. Authorizes the State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) to oversee cleanup or abatement efforts resulting from a release from a petroleum storage tank. (HSC §25270.9)
- 2) Provides a one-year statute of limitations for commencing civil enforcement actions in the case of APSA violations. (Code of Civil Procedure (CCP) §340)
- 3) Provides a five-year statute of limitations for commencing civil enforcement actions in the case of violations for the following environmental laws:
 - a. Hazardous waste control;
 - b. Underground storage of hazardous substances;
 - c. Response to hazardous substance releases; and,
 - d. Hazardous material release response plans. (CCP §338.1)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Spills from petroleum storage tanks can lead to a host of problems—from contaminated soil and drinking water to increased fire risk. The Aboveground Petroleum Storage Act (APSA) was enacted in 1990 as a direct response to the spill of over 400,000 gallons of petroleum from the Shell Oil Refinery in the City of Martinez into sensitive marshes, the Suisun Bay, and the Bay Delta Estuary. Under APSA, owners and operators of aboveground storage tank facilities are required to take comprehensive steps to prevent, mitigate, and control any release from these tanks. Currently, there is a one-year statute of limitations for APSA but a five-year statute of limitations for hazardous material and underground storage tank violations. If the one-year clock has run out by the time an investigation is complete, the APSA violation component of a case cannot be fully prosecuted. AB 1980 extends the statute of limitations for APSA from one year to five years. This parity will enable prosecutors to effectively enforce these important laws in the same manner they currently enforce other areas of environmental law."

Storage tank facilities: Typical storage tank facilities regulated by APSA include large petroleum tank facilities, such as those operated by petroleum wholesalers; aboveground fuel tank stations, such as those operated for airports or light rail; and, vehicle repair shops with aboveground petroleum storage tanks.

Certified Unified Program Agencies: The Unified Program was created by SB 1082 (Calderon 1993), to unify administration, permits, inspections, and enforcement of hazardous waste and hazardous materials management programs across the state. Hazardous materials include petroleum. Local agencies (CUPAs) implementing these programs are certified by the California Environmental Protection Agency. Currently, there are 81 CUPAs in California. The Unified Program manages the following programs:

- 1) Hazardous Materials Release Response Plans and Inventories;
- 2) California Accidental Release Prevention Program;
- 3) Underground Storage Tank Program;
- 4) Aboveground Petroleum Storage Act;
- 5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; and,
- 6) California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

Statutes of limitations for CUPA programs: With the exception of APSA, the laws authorizing the programs under the Unified Program are listed in CCP §338.1, affording them a five-year statute of limitations for commencing civil enforcement actions.

History of APSA enforcement: Initially, the State Water Board was tasked with administering APSA, Regional Water Boards were responsible for conducting inspections, and, once created, CUPAs ensured completion of SPCCs plans, referring noncompliance to the State Water Board. However, all inspection and enforcement activities were stopped after the State Water Board's resources for the program were cut during the 2002-2003 financial crisis.

The aboveground storage tank compliance program was reactivated in 2008 when responsibility for administration, implementation, and enforcement of APSA was transferred from the State

Water Board and Regional Water Boards to the CUPAs (AB 1130 (Laird, Chapter 626, Statutes of 2007)). In 2013, California Department of Forestry and Fire Protection (CAL FIRE)-Office of the State Fire Marshal assumed regulatory authority and oversight responsibility of APSA to provide statewide consistency in implementation (AB 1566 (Wieckowski, Chapter 532, Statutes of 2012)).

CUPA inspections: When a CUPA discovers an APSA violation, the CUPA may give the entity in violation an opportunity to correct the problem. However CUPAs are only required to inspect every three years. If they do not have the resources to inspect more often, they may not discover that the entity has not come into compliance until after the one-year clock has run out. In such a case, prosecution of potentially hundreds of days of violations would be barred by the one-year statute of limitations.

Investigating APSA violations: According to the bill's sponsor, the Alameda County District Attorney's Office, it typically takes a year or more to investigate and prepare a case for these types of environmental violations. When a CUPA discovers an APSA violation, they may refer it to the district attorney (DA), city attorney, or Attorney General for prosecution. If the prosecutors take the case, they thoroughly investigate all potential violations. Where applicable, these include potential underground storage tank and hazardous material violations in addition to APSA violations. The investigations are complex and can require coordination throughout the state. As an example, a case settled in 2018 involved prosecution of environmental violations by eight California DA offices, including Alameda County's, against operators of 57 AutoNation owned California dealerships. The case began in 2013, when Santa Clara CUPA inspectors noticed hazardous waste violations in several AutoNation locations. The resulting DA investigation included undercover inspection of dealerships' trashcans and CUPA inspection reports in locations throughout the state. In addition to APSA, the final complaint included allegations of violations of two of the four CUPA-enforced provisions currently listed in CCP §338.1- hazardous waste control and hazardous material release response plans.

No justification identified: Research yielded no justification for why APSA's statute of limitations should be one year compared to the five years afforded other programs enforced by CUPAs. APSA's goal is primarily the same as the other laws in CCP §338.1- to prevent the unlawful release or spill of hazardous materials into the environment to protect the public and our natural resources.

Related legislation:

- 1) SB 1147 (Galgiani, 2016). This bill would have prohibited a city, county, or city and county from enforcing standards for aboveground storage tanks that are more stringent than state or federal standards for aboveground storage tanks unless the city, county, or city and county first adopts an ordinance establishing those standards. The bill was held in the Assembly Committee on Environmental Safety and Toxic Materials.
- 2) AB 1566 (Wieckowski, Chapter 532, Statutes of 2012). This bill transferred oversight responsibility of the CUPAs from the State Water Board to CAL FIRE-Office of the State Fire Marshall. It also revised the definition of "aboveground storage tank" to include tanks in underground areas, such as basements.

- 3) AB 305 (Nava, Chapter 429, Statutes of 2009). This bill extended from one to five years the statute of limitations for commencing civil enforcement actions in the case of violations of hazardous material release response plans. (HSC §25500) The bill also increased penalties for violations.
- 4) AB 1946 (Nava, 2008). This bill would have allowed DAs, upon request of the State Water Board or a Regional Water Board, to petition the superior court to recover civil penalties for violations of the Porter-Cologne Water Quality Control Act. In addition, the bill would have increased from one to five years the statute of limitations for commencing civil enforcement actions in the case of violations of hazardous material release response plans. (HSC §25500) This bill was vetoed by Governor Schwarzenegger.
- 5) AB 1130 (Laird, Chapter 626, Statutes of 2007). This bill transferred the responsibility for the implementation, enforcement, and administration of APSA from the State and Regional Water Boards to the CUPAs.

Double-referral: Should this bill pass the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Sponsor)
California Association of Environmental Health Administrators

Opposition

None on record

Analysis Prepared by: Amy Gilson / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2072 (Quirk) – As Amended March 13, 2018

SUBJECT: State Water Resources Control Board: constituents of emerging concern

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to establish and maintain a dedicated program to research the potential effects of constituents of emerging concern (CEC) in water sources on human and ecosystem health. Specifically, **this bill:**

- 1) Requires, to the extent that the State Water Board determines funds are available, the State Water Board to establish and maintain a dedicated program to research the potential effects of constituents of emerging concern in water sources on human and ecosystem health. Require the program to include, but not be limited to, all of the following:
 - a) Measuring occurrences of CECs and monitoring for the appropriate indicators and surrogate constituents in drinking water sources and recycled water as identified by the Science Advisory Panel for CECs in Recycled Water;
 - b) Measuring occurrences of CECs and monitoring for the appropriate indicators and surrogate constituents in water types, sediments, and organisms as identified by the Science Advisory Panel for CECs in California's Aquatic Ecosystems;
 - c) Developing and maintaining a list of target CECs, indicators and surrogate constituents to monitor, which may include grouping CECs into chemical families for efficiency in identification, and establishing ranking protocols for CECs for their half-life in the environment and their bioaccumulation factors;
 - d) Evaluating and implementing new monitoring approaches for CECs, particularly screening methods that may improve detection ability or reduce the cost of monitoring. Authorizes this to include, but is not limited to, non-targeted analytical methods, bioanalytical screening tools, and whole organism toxicity tests that better target biological responses associated with CECs;
 - e) Applying monitoring to drinking water sources or ambient receiving waters and CEC discharge scenarios and geographical regions;
 - f) Performing any other scientific or technical work that may be necessary, including, but not limited to, identifying the need for additional research, such as developing techniques to identify relevant degradation products of CECs, and convening Science Advisory Panels; and,
 - g) Providing opportunities for public participation. Authorizes the State Water Board to use models used by other panels or programs administered by the Board for community outreach pursuant to this subdivision. Requires public participation to include, but need not be limited to, conducting stakeholder meetings and workshops to solicit relevant

information, data, suggestions, and feedback for the development and implementation of the program.

EXISTING LAW:

- 1) Requires, pursuant to the federal Safe Drinking Water Act (SDWA) and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels, or MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (Health & Safety Code (HSC) § 116270, et seq.)
- 2) Establishes the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code (WC) § 106.3)
- 3) Requires the State Water Board to establish uniform statewide recycling criteria for the various uses of recycled water where the use involves the protection of public health. (WC § 13521).
- 4) Requires the State Water Board, in conducting the investigation on direct potable reuse of recycled water, to conduct monitoring needed to ensure protection of public health, including, but not limited to, the identification of appropriate indicators and surrogate constituents. (WC § 13563 (b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Chemicals from flame retardants, cosmetics, pharmaceuticals, fragrances, sunscreens, detergents, synthetic hormones, pesticides, and other household products can wash down kitchen sinks and shower drains, get flushed by toilets, runoff down storm drains, and ultimately end up in our water sources. However, only a handful of chemicals entering our water sources have numeric water quality standards (MCLs) on which the state can regulate and for which public water systems can monitor.

Simply put, constituents of emerging concern are unregulated chemicals that originate from a variety of sources that are not currently being detected or regulated. With a dedicated team of scientist tasked with researching, understanding, and identifying contaminants entering our water supplies, we can get ahead of the curve and understand tomorrow's water quality challenges today.

AB 2072 will create a program focused on researching the potential effects of CECs on human and ecosystem health so our State Water Board can make water quality decisions based on sound science."

Regulating water quality: Water is California's most precious resource. With a growing population of more than 39 million people, a limited supply of fresh water, and a range of impacts on both terrestrial and marine habitats and resources, the protection of water for beneficial uses is of paramount concern for all Californians. Water quality is a concern for all

bodies of freshwater, both surface water and groundwater, and depends on a variety of chemical and biological factors regulated by a number of local, state, and federal agencies.

Risks to human health and the environment are managed by state and local standards for permissible levels of certain contaminants, known as MCLs. The State Water Board adopts MCLs for chemicals, which are health protective drinking water standards to be met by public water systems. MCLs take into account not only chemicals' health risks but also factors such as their detectability and treatability, as well as costs of treatment.

A drinking water contaminant's MCL is required to be established at a level as close to its public health goal (PHG) as is technologically and economically feasible, placing primary emphasis on the protection of public health. A PHG, which is established by the Office of Environmental Health and Hazard Assessment (OEHHA), is the level of a chemical contaminant in drinking water that does not pose a significant risk to health. The process for establishing a PHG for a chemical contaminant in drinking water is very rigorous. OEHHA scientists first compile all relevant scientific information available and perform health risk assessments, in which they determine the levels of the contaminant in drinking water that could be associated with various adverse health effects. The State Water Board then goes through a lengthy, public regulatory process to develop the PHG into an MCL.

The State Water Board has an MCL for about 100 chemicals, all of which have a PHG.

In addition, the State Water Board has notification levels, which are health-based advisory levels for chemicals in drinking water that do not have an MCL. When chemicals are found at concentrations greater than their notification levels, certain requirements and recommendations apply. The level at which the State Water Board's Division of Drinking Water (DDW) recommends removal of a drinking water source from service is called the "response level."

Since the early 1980s, notification levels for 93 contaminants have been established. Of those, 40 have gone through the formal regulatory process and now have MCLs.

Currently there are 29 chemicals with notification levels. In addition, another 24 chemicals have archived advisory (notification) levels.

There are tens of thousands of additional chemicals and constituents that do not have an MCL or a notification level and that we do not have enough information about to determine whether those constituents have a human health or environmental impact.

Constituents of Emerging Concern (CECs): There are tens of thousands of chemicals in commerce today, and many have the potential to be released into the environment. Most are not monitored in California's waters.

This class of unregulated chemicals, including, but not limited to personal care products; pharmaceuticals including antibiotics and antimicrobials; industrial, agricultural, and household chemicals; natural hormones; food additives (such as phytoestrogens, caffeine, sweeteners); and, nanomaterials are collectively referred to as CECs.

CECs are unregulated chemicals (in aquatic contexts) that originate from a variety of point and non-point source waste discharges. CECs, simply put, are the unknown class of constituents potentially impacting our water sources.

The US EPA maintains a Contaminant Candidate List (CCL) of drinking water contaminants, both chemical and microbial, that are known or anticipated to occur in public water systems and are not currently subject to US EPA drinking water regulations. Their CCL includes 97 chemicals or chemical groups and 12 microbial contaminants. The list includes, among others, chemicals used in commerce, pesticides, biological toxins, disinfection byproducts, pharmaceuticals, and waterborne pathogens.

The CCL does not impose any requirements on public water systems. The US EPA continues to collect data and encourage further research on listed contaminants to better understand potential health effects and at what levels they occur in drinking water, though it is unclear how this list is managed and maintained under the Trump Administration.

Similarly, AB 2072 would require the State Water Board to create and maintain "a list of target CECs, indicators and surrogate constituents to monitor, which may include grouping CECs into chemical families for efficiency in identification, establishing ranking protocols for CECs for their half-life in the environment, and their bioaccumulation factors." This list would not predetermine that any CEC listed will ultimately be regulated. As mentioned, the MCL (and PHG) process is time-intensive, and must be thorough and complete before any new constituent is regulated by the state and public water systems.

Efforts to understand CECs in California: To encourage expanded water reuse in a state that is experiencing water shortages, the State Water Board adopted a Recycled Water Policy in February 2009 intended to provide permitting clarity for recycled water projects, but CECs presented a policy challenge for recycled water use. Many CECs are potentially present in recycled water, but the detection of many of these chemicals is so recent that robust methods for their quantification and toxicological data for interpreting potential human or ecosystem health effects are unavailable.

Recognizing that consideration of CEC effects on human health and aquatic life is evolving, and that regulatory requirements need to be based on best available science, the State Water Board included a provision in the Recycled Water Policy to establish a Science Advisory Panel for Constituents of Emerging Concern in Recycled Water (Recycled Water Panel). The Recycled Water Panel's primary charge was to provide guidance for developing monitoring programs that assess potential CEC threats from various water recycling uses and update its recommendations every five years.

In June 2010, the Recycled Water Panel submitted a report titled *Monitoring Strategies for Chemicals of Emerging Concern (CECs) in Recycled Water*, which recommended a risk-based screening framework to identify CECs for monitoring and suggested development of bioanalytical screening and predictive modeling tools to improve assessment of the presence of CECs and their potential risk to the environment.

The Science Advisory Panel for Chemicals of Emerging Concern in California's Aquatic Ecosystems (Ecosystems Panel) was also convened at the request of the State Water Board to provide unbiased science-based recommendations for monitoring of CECs in oceanic, brackish and fresh waters across the state that receive discharge of treated municipal wastewater effluent and stormwater. Specifically, the Ecosystems Panel was directed to review existing scientific literature on CECs in aquatic ecosystems; determine the state of the current scientific knowledge regarding the risks that CECs in freshwater and marine water pose to human health and aquatic

ecosystems; and, provide recommendations on improving the understanding of CECs for the protection of public health and the environment.

The Ecosystems Panel's final report, *Monitoring Strategies for Chemicals of Emerging Concern (CECs) in California's Aquatic Ecosystems*, published April 2012, provided recommendations for the monitoring of CECs in aquatic ecosystems and stressed the need for further research on source contribution, occurrence, and toxicity of CECs. It also emphasized the need to evaluate the risk posed by CECs relative to other stressors, including priority pollutants and other currently monitored chemicals, to provide decision makers with the information needed to make efficient use of all monitoring resources.

Initiation of the Ecosystems Panel coincided with the final deliberations of the Recycled Water Panel, and was made up of 6 of the 7 members of the Recycled Water Panel.

Later in 2010, the State Water Board provided a grant to the Southern California Coastal Water Research Project to reconvene the Recycled Water Panel to review the conceptual framework from the 2010 report, evaluate the scientific literature since the Recycled Water Panel met last, assess potential health risks associated with CECs in various water recycling practices, and the use of recycled water for surface water augmentation. The Recycled Water Panel was charged with looking at the known toxicological information for the list of CECs, the indicators or surrogates that can be used to represent a suite of CECs, and the concentrations of CECs that should trigger enhanced monitoring, amongst other priorities. The Recycled Water Panel has done extensive research, data analysis, and bioanalytics on CECs in the context of recycled water.

In August 2016, the Expert Panel on the Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse (Expert Panel) was convened by the National Water Research Institute on behalf of the State Water Board to provide research recommendations related to the feasibility of developing uniform water recycling criteria per SB 918 (Pavley, Chapter 700, Statutes of 2010) for direct potable reuse. The Expert Panel is separate from the Recycled Water and Ecosystem Panels, but did include two of the same expert panelists that also served on the previous panels.

In the Expert Panel's final report, *Evaluation of the Feasibility of Developing Direct Potable Reuse Regulatory Criteria for the State of California*, it stated that no additional research was needed to establish uniform water recycling criteria for direct potable reuse, but recommended several areas of research on potential health risks of specific CECs likely to be present in recycled water, improving source control, improving monitoring of pathogens in raw wastewater and advanced treated water, improving treatment processes, and developing comprehensive analytical methods to identify unknown compounds.

Making CEC research permanent: The intent with this bill is to create a permanent program at the State Water Board dedicated to identifying, researching, and understanding CECs. The scope of the program is broad; it is estimated that there are more than 100,000 chemicals in commerce today that could be getting into our water sources one way or another, and just attempting to identify as many of those chemicals, or constituents, as possible is a big task. However, dedicating staff scientists to researching CECs at the State Water Board is a step closer to understanding the anthropogenic impacts on and naturally-occurring chemicals in our water supplies.

While the existing panels have done an incredible amount of work on CECs thus far, those panels are not permanent or permanently funded. Given the state's ever-changing sources of drinking water supplies and evolving water quality challenges, having dedicated state scientists monitoring for and identifying CECs is imperative to understanding our water quality.

AB 2072 recognizes the work the aforementioned science panels have done, and should AB 2072 be enacted, the State Water Board can use the work of the Recycled Water Panel and the Ecosystem Panel as a platform to build on, and can coordinate its efforts with those ongoing efforts of the Recycled Water Panel.

It is worth noting that nothing in this bill assumes that identification of a CEC will lead to regulation. Before the State Water Board can regulate any CEC, it must first approve an MCL.

Potential funding: The bill states that the State Water Board shall only enact a CEC program "to the extent that the State Water Board determines funds are available." According to a written Legislative Counsel opinion, waste discharge permit funds could legally fund the continuation of monitoring of water quality. There is a current fund balance of \$11 million in the Waste Discharge Permit Fund.

In addition, should the federal water pollution control grants from the US EPA (Section 106 grants) continue to be made available, this program would likely be eligible for those funds.

Concerns have been raised that newly raised drinking water fees paid by public water systems could be used to fund this program (California Code of Regulations sections 64305, 64310, 64315). Those fees are used to fund the State Water Board's regulation of public water systems.

Though those funds were not identified as legally permissible to use for this program, to address those concerns, the author may wish to consider amending the bill in the future to state that those fee revenues shall not be used to fund this program.

Arguments in support: According to the Erin Brockovich Foundation, "The sheer number of chemicals in commercial use makes it improbable to tackle them all. For this reason, AB 2072 has the potential to be especially important in the collection of adequate data on the source and effects of CECs."

REGISTERED SUPPORT / OPPOSITION:

Support

Clean Water Action
Breast Cancer Prevention Partners
Environmental Working Group
Environmental Justice Coalition for Water
Erin Brockovich Foundation

Opposition

None on file.

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2094 (Kalra) – As Introduced February 7, 2018

SUBJECT: Hazardous waste facilities: inspections

SUMMARY: Requires the Department of Toxic Substances Control (DTSC) to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters. Specifically, **this bill:**

- 1) Requires DTSC to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters.
- 2) Requires DTSC, when adopting regulations establishing inspection frequencies for hazardous waste facilities, generators, and transporters, to include criteria for increasing the frequency of inspections based on factors including, but not limited to, compliance history, the quantity of hazardous waste handled, the ignitability, corrosivity, reactivity, and toxicity of hazardous waste handled, and proximity to sensitive habitats, sensitive receptors, or disadvantaged communities.
- 3) Requires DTSC to set the inspection frequency for hazardous waste landfills at no less than two times per calendar year. Requires the inspection frequency for any other permitted hazardous waste facility to be no less than once per calendar year.
- 4) Defines "disadvantaged community" as an area that is a low-income area and is disproportionately affected by environmental pollution or other hazards that can lead to negative health effects, exposure, or environmental degradation.
- 5) Defines "low-income area" as an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits.

EXISTING LAW:

- 1) Requires DTSC to enforce the standards within the Hazardous Waste Control Law (HWCL) and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code Section (HSC) § 25180)
- 2) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect, and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)
- 3) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"Current law provides DTSC with complete discretion on when and what frequency to provide facility inspections. AB 2094 sets a mandatory minimum to ensure that department is effectively monitoring and enforcing compliance at the facilities in its charge. AB 2094 will help ensure that violations are discovered quickly and facilities are brought back into compliance, thereby minimizing harm to nearby communities.

Communities across the state have expressed concerns regarding the regulation of hazardous waste facilities. The situation at the Exide facility in Vernon, California—where lax permitting and enforcement allowed the plant to operate near a disadvantaged community and emit toxic metals like lead for over three decades on a temporary permit—is a prime example that validates the public's concerns. More frequent inspections may have addressed violations sooner. While the plant has closed down, other communities should not suffer the same fate.

Hazardous waste facilities that are not in compliance with state and federal laws and regulations pose a risk to public health and the environment. It is vital that permitted hazardous waste facilities be inspected on a regular basis to ensure compliance with state and federal laws and regulations. AB 2094 sets minimum inspection frequencies for DTSC for hazardous waste facilities to ensure compliance."

DTSC's hazardous waste management permitting program: DTSC is responsible for administering the hazardous waste facility permitting program established under the HWCL and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and, providing public involvement on issues related to permitted facilities.

DTSC's hazardous waste management enforcement program: DTSC's inspection and enforcement responsibilities include its delegated authority under RCRA, California's HWCL, and state laws pertaining to toxics in packaging, toxic substances in consumer products, and disposal of universal wastes such as electronic waste. Core activities of DTSC's hazardous waste management program include routine compliance inspections, which involve review of submitted data and reports as well as physical observation, testing, and evaluation of regulated facilities; and, targeted compliance inspections, which involve review of specific units or processes in response to focused concerns or to inform permitting decisions, as well as analysis of current and historical compliance to inform those decisions.

According to DTSC documents dated January 2016, the following are the current inspection frequencies based on facility type:

# of facilities	Type of facility	Frequency
11	Operating federal facility	every year
3	Operating landfill	every year
47	Operating treatment/storage facility	every 2 years
32	Operating treatment/storage state only or standardized permit	every 1-3 years
30	Post-closure facility	every 3-5 years

DTSC Independent Review Panel (IRP): In 2015, the Legislature passed and the Governor signed SB 83 (Budget Committee, Chapter 24, Statutes of 2015) which establishes within DTSC a three-member IRP to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. The IRP is required to submit recommendations to the Governor and Legislature at the time of each submission of the Governor's budget, 90 days after the IRP was initially appointed and every 90 days thereafter on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management.

The IRP's third report was issued in July 2016 and focused on DTSC's enforcement program. The IRP noted that DTSC met or exceeded its federal inspection targets under its federal grant under RCRA as well as nearly all of its state inspection commitments and targets during Fiscal Year 2015-16. Additionally, in this report the IRP recommended to the Governor and Legislature: to include inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and hazardous waste generators in statute. The IRP further recommended that the inspection frequencies should be based on facility compliance history, quantity of waste, toxicity risk, and proximity to sensitive habitats and populations at risk, including disadvantaged communities.

IRP concludes: Pursuant to SB 83, the IRP was authorized until January 1, 2018. Over the course of its term, the IRP conducted 24 public meetings and released 11 progress and annual reports. On January 8, 2018 the IRP released its final report and recommendations concluding: "The Department has implemented, or is working on, most of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics. However, there is more work to be done."

DTSC Enforcement Improvement Plan: In July 2017 DTSC released its Enforcement Improvement Plan (Plan) that details efforts to improve the efficiency, effectiveness, and transparency of DTSC's enforcement program. The objective of the Plan is to outline projects, associated milestones, and timelines DTSC is developing and implementing to meet or exceed program objectives. The Plan includes five main goals: (1) clearly define the inspection and enforcement process, and identify areas for streamlining and barriers to an efficient inspection and enforcement program; (2) establish clear metrics to evaluate performance in inspection and enforcement activities; (3) create a formal review process for enforcement case management; (4) clearly communicate the inspection and enforcement process to stakeholders and the community; and, (5) incorporate community engagement in setting inspection and enforcement priorities. The Plan is set up as an outline and will require extensive detail as it is implemented. Additionally, it is unclear if DTSC held any stakeholder workshops on its enforcement program to gain feedback prior to releasing this Plan. This, of course, has been one of the chief criticisms of

DTSC, that it acts before receiving input from stakeholders. The Plan includes multiple steps that DTSC can make internally to improve its enforcement program; however, it also includes a review and recommendation of needed statutory and regulatory changes. This is where AB 2094 could be used in order to assist DTSC with implementing its enforcement Plan.

Uncertainty creating chaos: Given the testimony at the numerous meetings held by the IRP and testimony given at various legislative hearings on DTSC bills over the past few years, one consistent theme is raised by community members that live near hazardous waste facilities and the operators of those facilities: no one is really sure how DTSC is making decisions or what criteria is used for those decisions. This lack of clarity is apparent when looking at the recent regulations proposed by DTSC regarding implementation of SB 673 (Lara, Chapter 611, Statutes of 2015). SB 673 requires DTSC by January 1, 2018, to adopt regulations establishing criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous waste facilities permit. While a draft of the regulations has been released, DTSC has not released the final regulations and it not clear at this time when the final regulations will be released. Clearly by the comments submitted on these draft regulations one thing is obvious, the regulated entities and the community members agree that DTSC got it all wrong. Additionally the stakeholders seem very concerned that their comments will fall on deaf ears, thus creating a wider chasm than what currently divides DTSC and stakeholders. Also, DTSC's recent permitting fee for service has caused great consternation with the permitted facilities, with one of the chief concerns being that the facility will not have a rough cost estimate of the permit before they begin the permitting process. All of these issues are connected in that they continue to add uncertainty for both the regulated facilities and the communities that live near them. This uncertainty is precisely why a consistent set of inspection frequencies, adopted via regulation, as envisioned within AB 2094, are needed.

Considerations for the author: DTSC's enforcement improvement plan provides an outline of how DTSC can improve its enforcement of hazardous waste facilities. This Plan also suggests that statutory changes will be needed to address enforcement issues and implement this Plan. The author may wish to consider reaching out to DTSC to learn what statutory changes the department is contemplating as those changes could be a perfect fit for what AB 2094 is seeking to accomplish. The author also may wish to consider any additional changes that could provide for improved stakeholder input before and during the regulatory process.

Similar legislation to AB 2094: AB 1179 (Kalra) would have required DTSC to adopt regulations setting inspection frequencies for hazardous waste facilities, was passed by the Legislature in 2017 and was vetoed by the Governor. Here is the Governor's veto message:

"This bill would require the Department of Toxic Substances Control to adopt regulations establishing the frequency of inspections for permitted hazardous waste facilities.

There is no question that comprehensive reform of the Department's operations is needed and the Administration is committed to working with the Legislature on that task. When it comes to protecting the public health of our communities, government cannot afford to make promises it cannot keep.

Adding new responsibilities to the Department must be undertaken holistically while considering the resources and funding available. Doing anything less robs the community of a real solution and sets government up for failure.

Addressing the structural problems at the Department, both fiscal and administrative, will not be an easy task, but one that is achievable if the Administration and the Legislature work together. I look forward to the partnership."

The Governor makes a good point and, with a partnership between the Administration and the Legislature, policy changes recommended by the IRP, such as those contained in AB 2094, could move forward.

Final thoughts: Managing hazardous waste is a complex and potentially dangerous task; incorrect handling of certain hazardous wastes could pose significant threats to human health and safety and the environment. Ensuring compliance with state and federal hazardous waste laws is one of DTSC's core regulatory functions. Inspecting hazardous waste facilities is a vital tool to ensure that these hazardous waste facilities are in compliance or have returned to compliance from recent violations. Current law does not impose minimum inspection frequencies for hazardous waste facilities. Given the potential hazards associated with the mismanagement of these wastes it is appropriate to direct DTSC to adopt regulations for inspection frequencies for hazardous waste facilities, generators, and transporters. The approach in AB 2094 provides DTSC flexibility on how best set inspection targets via a public rulemaking process.

Related legislation:

- 1) AB 2345 (Reyes). Requires an applicant for a hazardous waste facilities permit to submit their application two years before their permit expires. This bill is set for hearing in the Assembly Environmental Safety and Toxic Materials Committee on March 20, 2018.
- 2) AB 2130 (Brough). Requires an entity that is responsible for paying the hazardous waste disposal fee, hazardous waste facility fee, or hazardous waste generator fee, to remit that fee to the Department of Tax and Fee Administration within 45 days of the fee being assessed. This bill is pending referral by the Assembly Rules Committee.
- 3) AB 2606 (Fong). Deems a hazardous waste facility permit renewal application approved within 90 days of submittal by the applicant if DTSC has not taken action on the application. Caps the amount DTSC can be reimbursed for processing a hazardous waste permit application at an unspecified amount. Amends the same section of law as AB 2345. This bill was referred to the Assembly Environmental Safety and Toxic Materials Committee on March 8, 2018.
- 4) AB 245 (Quirk, Chapter 499, Statutes of 2017). Increased the maximum penalties for hazardous waste violations to make them equivalent to the federal penalties for the same violations.
- 5) AB 248 (Reyes, 2017). Would have required an applicant for a hazardous waste facilities permit to submit their application two years before their permit expires. This bill was vetoed by the Governor.

- 6) AB 1179 (Kalra, 2017). Would have established frequencies for DTSC to adhere to when inspecting permitted hazardous waste facilities. This bill is was vetoed by the Governor.
- 7) SB 774 (Leyva). Creates the California Toxic Substances Board (Board) within DTSC to provide effective, reliable, transparent, and accountable oversight of California's hazardous waste management and of the remediation of contaminated sites. This bill is on the inactive file on the Assembly Floor.
- 8) SB 673 (Lara, Chapter 611, Statutes of 2015). Requires DTSC, by July 1, 2018, to adopt criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous waste facilities permit, and to develop and implement programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of DTSC's permitting program.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Pacific Environmental Network (APEN)
AZUL
Breast Cancer Prevention Partners
California Environmental Justice Alliance
California League of Conservation Voters
Center for Environmental Health
Center on Race, Poverty and the Environment
Clean Water Action
Environmental Working Group
Friends Committee on Legislation of California
Friends of the Earth
Natural Resources Defense Council
Sierra Club California
The Trust For Public Lands

Opposition

California Chamber of Commerce
California Business Properties Association
California Cement Manufacturers Environmental Coalition (CCMEC)
California Manufacturers & Technology Association
California Metals Coalition
California Small Business Alliance
Camarillo Chamber of Commerce
Chemical Industry Council of California
Clean Harbors Environmental Services, Inc.
El Dorado County Chamber of Commerce
Greater Fresno Area Chamber of Commerce
Industrial Environmental Association
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California

National Federation of Independent Business
North Orange County Chamber
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce & Visitors Bureau
Safety-Kleen, Inc.
San Diego Regional Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Simi Valley Chamber of Commerce
Torrance Chamber of Commerce
West Coast Lumber & Building Material Association
Western Plant Health Association
Western States Petroleum Association
Western Independent Refiners Association

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2345 (Reyes) – As Introduced February 13, 2018

SUBJECT: Hazardous waste: facilities: permits

SUMMARY: Makes statutory changes to improve the permitting process for the permitting of hazardous waste facilities. Specifically, **this bill:**

- 1) Requires an owner or operator of a permitted hazardous waste facility who plans to submit a renewal application for a hazardous waste facility permit (permit), that expires prior to July 1, 2021 to submit a complete Part A and Part B application six months before the permit expires.
- 2) Requires an owner or operator of a permitted hazardous waste facility who plans to submit a renewal application for a permit, that expires after July 1, 2021 to submit a complete Part A and Part B application at least two years before the permit expires.
- 3) Requires the Department of Toxic Substances Control (DTSC), within 90 days of receiving a complete application for a permit, to post on its internet website an estimated timeline, including key milestones, for DTSC's review process of the application for the permit.

EXISTING LAW:

- 1) Authorizes DTSC to issue permits for the use and operation of one or more hazardous waste management units at a facility that meets the standards adopted pursuant to the Hazardous Waste Control Law. (Health and Safety Code (HSC) § 25200 (a))
- 2) Requires DTSC to impose conditions on each permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))
- 3) Requires a permit issued by DTSC to be for a fixed term, not to exceed ten years. (HSC § 25200 (c) (1)(A))
- 4) Requires an owner or operator of a hazardous waste facility who intends to extend the term of the permit, before the fixed term expires, to submit a complete Part A application. (HSC § 25200 (c) (1)(B))
- 5) States that when a complete Part A renewal application has been submitted before the end of the permit's fixed term, the permit is deemed extended until the renewal application is approved or denied and the owner or operator has exhausted all applicable rights of appeal. (HSC § 25200 (c)(1)(B))
- 6) Requires an owner or operator of a permitted hazardous waste facility to submit an application for permit renewal at least 180 days before the expiration date of the permit. (22 CCR § 66270.10)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "DTSC has a long standing failure to protect California's disadvantaged communities through its lack of enforcement and oversight of its hazardous waste facilities permitting process. The current process has created a class of facilities who continue operation without adequate review of the facilities operation. The 2015-2016 Budget Act created a three-person Independent Review Panel (IRP) to oversee DTSC's permitting, enforcement, and fiscal management. The IRP is tasked to report every 90-days for a defined period of time on DTSC's performance, specifically related to permitting, enforcement, backlog reductions, and meeting legislative mandates. The IRP released multiple reports in 2016, and provided various recommendations on the aforementioned categories. Included in these recommendations to 'require applicants to submit application information on a timely basis, and establish accountability mechanisms.'"

DTSC's hazardous waste management permitting program: DTSC is responsible for administering the hazardous waste facility permitting program established under the California Hazardous Waste Control Law and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include: review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and providing public involvement on issues related to permitted facilities. In general, DTSC issues permits for complex and large facilities, such as Class I landfills, large treatment facilities, and facilities managing RCRA hazardous waste.

A hazardous waste facility permit granted by DTSC authorizes a facility to transfer, treat, store, or dispose of hazardous waste. Presently there are 119 permitted hazardous waste facilities in California. In order for a facility to gain authorization to treat, store, transfer, or dispose of hazardous waste, its permit application must include a detailed description of the facility's activities, units, equipment, operation plans, recordkeeping system, procedures for response to accidental release of toxic substances or other emergencies, and training. The application will also contain engineering and structural specifications, closure plans, closure cost estimates, and the mechanism for financial assurance in the event of closure. Ultimately, the applicant must demonstrate the ability to manage the waste in a protective manner. DTSC permit applications must also address requirements beyond hazardous waste laws and regulations. For example, the permit process must adhere to the California Environmental Quality Act (CEQA) requirements, which involves a comprehensive review of impacts of the facility on public health and the environment.

At any point in the permit application review process, if DTSC finds that the facility does not meet applicable standards, it can deny the permit application. Either an approval or denial by DTSC is considered a permit decision. Federal and state law allows facilities with expired permits to continue to operate if the facility has submitted an application for renewal that is administratively complete in advance of the permit expiration date. These types of permits (i.e., expired permits for a facility that has submitted an administratively complete application for a permit renewal) are referred to as "continued permits."

Over the past decade or so, DTSC had received complaints from the public about its permitting program and held meetings with the public, the regulated community, and stakeholders to identify and understand concerns about its permitting program.

In 2012, DTSC commissioned CPS HR Consulting, a non-profit corporation established under the California Joint Powers Authority, to conduct an external review of the permitting program. The review found that permitting decisions were not timely, taking upwards of four years to complete on average and that the permitting program restructuring from Fiscal Year 08-09 had resulted in a lack of management structure. The review found that the lack of management structure was a factor in the poor performance of the program; lacked consistent processes for making permitting decisions; resulted in deficient training of staff; lead to a lack of clarity around when to deny or revoke a permit; and, resulted in a lack of performance metrics.

In early 2014, DTSC developed a Permitting Enhancement Work Plan (Work Plan) to significantly upgrade and strengthen DTSC's permitting program and to ensure that the problems of the past would not resurface in the future. The Work Plan serves as a comprehensive roadmap to guide DTSC's efforts to improve the permitting program's ability to issue protective, timely, and enforceable permits using more transparent standards and consistent procedures. In addition, DTSC mapped, for the first time, the entire permitting process and memorialized it in the form of a baseline flow chart that staff can work from and incorporate future improvements.

Beginning in Fiscal Year 15-16, DTSC's permitting program established a performance management approach similar to that used by the DTSC cleanup program. One of the essential elements to the implementation of this performance management approach is the development of an annual work plan. The annual work plan specifies due dates for major milestones in the permitting process on permitting projects, tracks completion of permitting activities, increases communication between staff and management on permit progress, and measures planned versus completed milestones as a performance measure of the permitting program.

DTSC Independent Review Panel (IRP): In 2015, the Legislature passed and the Governor signed, SB 83 (Budget Committee, Chapter 24, Statutes of 2015) which establishes within DTSC a three-member IRP to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. The statute stipulates that IRP membership shall be comprised of a community representative, a person with scientific experience related to toxic materials, and a local government management expert. The following individuals subsequently received appointments to serve on the IRP: Gideon Kracov, J.D. (community representative and appointee of the Senate Committee on Rules), Dr. Arezoo Campbell (panelist with scientific experience related to toxic materials and appointee of the Speaker of the Assembly), and Mike Vizzier (local government management expert and appointee of the Governor).

The IRP is required to submit recommendations to the Governor and Legislature at the time of each submission of the Governor's budget, 90 days after the IRP was initially appointed and every 90 days thereafter on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. The IRP remains in effect until January 1, 2018.

Beginning with the IRP's first meeting on November 18, 2015, and including its most recent meeting on December 9, 2016, the Panel has convened 20 public meetings to discuss its work

and hear testimony from stakeholders, subject matter experts, elected officials, and representatives of DTSC, and the California Environmental Protection Agency (Cal/EPA).

Also, within its December 2016 report to the Governor and Legislature, the IRP made several recommendations that would require a change in statute. One of those recommendations, requiring that permit applicants submit their applications two years prior to their permit expiring, is contained in AB 2345.

Permit processing time: Ensuring that hazardous waste facilities are managed safely begins with proper and timely permitting by DTSC. These facilities handle dangerous substances and involve complex processes, making the review of permit applications challenging, yet extremely important. Before DTSC embarked upon improving the permitting program, the average time it took to process an application was 4.4 years, with some applications continuing 10-20 years past the expiration of their permit. Given the dangerous nature of substances at these facilities, it is very important that the public be kept informed about these facilities, including the siting, permit process, and enforcement actions taken at these facilities. Currently the only time the public is involved in the permit process is when there is a draft permit decision released by DTSC. If a permit application takes 10 years to review, that means it could have been 20 years since the public has been provided information about the hazardous waste facility in their backyard. DTSC's permit improvements have a stated goal of being able to process 90% of the permit applications within 2 years, however under current law; this means that even if DTSC achieves this goal, all of these permits will exceed their expiration by a year and a half. AB 2345 rectifies that situation by requiring the permit applicant to submit their application two years in advance of their permit expiring, thereby creating a situation where the vast majority of these permits are processed before they reach their expiration date.

Transparency: The DTSC IRP held numerous meetings during its two year existence and heard frequently from community members that live near these hazardous waste facilities. One of the biggest criticisms of DTSC has been a lack of transparency, meaning the community members feel that information goes into DTSC and years later a decision is announced. AB 2345 adds transparency to DTSC's permitting process by requiring DTSC to post an estimated timeline of the permit review process on their website. This will provide all stakeholders, including the community that lives near the facility, as well as the permitted facility, with an ability to see the permit review process unfold. This transparency will also allow stakeholders to hold DTSC accountable if the permit review process begins to drag on without a permit decision.

IRP concludes: Pursuant to SB 83, the IRP was authorized until January 1, 2018. Over the course of its term, the IRP conducted 24 public meetings and released 11 progress and annual reports. On January 8, 2018 the IRP released its final report and recommendations concluding: "The Department has implemented, or is working on, most of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics. However, there is more work to be done."

Similar legislation to AB 2345: AB 248 (Reyes) which set up a similar two year application submittal process as envisioned in AB 2345, was passed by the Legislature in 2017 and was vetoed by the Governor. Here is the Governor's veto message:

"This bill would require the owner or operator of a hazardous waste facility to submit an application for a permit renewal either six months or two years prior to expiration, depending on the expiration date of the permit.

There is no question that comprehensive reform of the Department's operation is needed and the Administration is committed to working with the Legislature on that task. When it comes to protecting the public health of our communities, government cannot afford to make promises it cannot keep.

Adding new responsibilities to the Department must be undertaken holistically while considering the resources and funding available. Doing anything less robs the community of a real solution and sets government up for failure.

Addressing the structural problems at the Department, both fiscal and administrative, will not be an easy task, but one that is achievable if the Administration and the Legislature work together. I look forward to the partnership."

The Governor makes a good point, and with a partnership between the Administration and the Legislature, policy changes recommended by the IRP, such as those contained in AB 2345, could move forward.

Related legislation:

- 1) AB 2094 (Kalra). Establishes frequencies for DTSC to adhere to when inspecting permitted hazardous waste facilities. This bill is set for hearing in the Assembly Environmental Safety and Toxic Materials Committee on March 20, 2018.
- 2) AB 2130 (Brough). Requires an entity that is responsible for paying the hazardous waste disposal fee, hazardous waste facility fee, or hazardous waste generator fee, to remit that fee to the Department of Tax and Fee Administration within 45 days of the fee being assessed. This bill is pending referral by the Assembly Rules Committee.
- 3) AB 2606 (Fong). Deems a hazardous waste facility permit renewal application approved within 90 days of submittal by the applicant if DTSC has not taken action on the application. Caps the amount DTSC can be reimbursed for processing a hazardous waste permit application at an unspecified amount. Amends the same section of law as AB 2345. This bill was referred to the Assembly Environmental Safety and Toxic Materials Committee on March 8, 2018.
- 4) AB 245 (Quirk, Chapter 499, Statutes of 2017). Increased the maximum penalties for hazardous waste violations to make them equivalent to the federal penalties for the same violations.
- 5) AB 248 (Reyes, 2017). Would have required an applicant for a hazardous waste facilities permit to submit their application two years before their permit expires. This bill was vetoed by the Governor.
- 6) AB 1179 (Kalra, 2017). Would have established frequencies for DTSC to adhere to when inspecting permitted hazardous waste facilities. This bill was vetoed by the Governor.

- 7) SB 774 (Leyva). Creates the California Toxic Substances Board (Board) within DTSC to provide effective, reliable, transparent, and accountable oversight of California's hazardous waste management and of the remediation of contaminated sites. This bill is on the inactive file on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Pacific Environmental Network (APEN)

AZUL

Breast Cancer Prevention Partners

California Environmental Justice Alliance

California League of Conservation Voters

Center for Environmental Health

Center on Race, Poverty and the Environment

Clean Water Action

Environmental Working Group

Friends Committee on Legislation of California

Friends of the Earth

Natural Resources Defense Council

Sierra Club California

The Trust For Public Lands

Opposition

Clean Harbors Environmental Services, Inc.

Safety-Kleen, Inc.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2660 (Quirk) – As Amended March 13, 2018

SUBJECT: Hazardous waste: surplus household consumer products

SUMMARY: Allows a retailer, without having to make a waste determination, to ship a surplus household consumer product, as defined, to a reverse distributor, who will then either re-sell or donate the product, and then be responsible for making a waste determination for that surplus consumer product if it becomes a waste. Specifically, **this bill:**

- 1) Defines a "reverse distributor" as a location or part of a location, where surplus household consumer products are received and evaluated for the following purposes: selling the products; donating the products; determining a manufacturer's, vendor's, or supplier's bona fide financial credit for the product; transferring the product to a manufacturer, distributor, or vender; undertaking recalls for the product; and, transferring the product for recycling or disposal.
- 2) Defines a "surplus household consumer product" as a consumer product packaged for personal, family, or household use that meets all of the following conditions: has reasonable potential for re-use; is subject to a contractual agreement providing for the return of the product to the manufacturer, vendor or supplier; has been recalled pursuant to a directive of a manufacturer, retailer, wholesaler, or government agency; is packaged in its original packaging or a package of similar strength and integrity; and, is not a drug as defined under the federal Food, Drug, and Cosmetic Act (FD&C Act), that is offered for sale with a prescription.
- 3) Provides that a surplus household consumer product is not a waste, until a reverse distributor receives the product and makes a decision to either recycle or dispose of the product.
- 4) Requires a retailer or manufacturer who transfers or ships a surplus household consumer product, from a location within California, to a reverse distributor to do all of the following: package, transfer, and ship the surplus household consumer product in accordance with all applicable California and federal regulations relating to packaging and shipping consumer products; maintain for five year the date of the shipment, records of each shipment, and demonstrate that the product was received; require an out-of-state reverse distributor, as a condition of receiving the consumer products, to provide the retailer annually the percentage of surplus consumer products that were donated, salvaged, or disposed of as solid, medical, or hazardous waste; and, make all of the records maintained under the bill available for inspection by any enforcement agency with jurisdiction upon request.

EXISTING LAW:

- 1) Defines "drug" under the FD&C Act as any article recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them. (21 United States Code (USC) Sec. 231 (g)(1))

- 2) Creates the Hazardous Waste Control Law (HWCL), which authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)
- 3) Defines "waste" as any solid, liquid, semisolid, or contained gaseous discarded material. (Health & Safety Code (HSC) § 25124)
- 4) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)
- 5) Establishes the Medical Waste Management Act (MWMA) to govern medical waste management at any facility where waste is generated, at transfer stations, and at treatment facilities. (HSC § 117600, et seq.)
- 6) Defines pharmaceutical waste as a prescription or over-the-counter human or veterinary drug, including, but not limited to, a drug as defined in Section 109925 of the FD&C Act. (HSC § 117747 (a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Some surplus household consumer products may be regulated as hazardous or medical waste upon discard. Due to the uncertainty within the retail industry as to when they are considered discarded, some retailers and manufacturers have decided to avoid the risk of an enforcement action by establishing conservative waste management policies – opting to manage various surplus consumer products as hazardous waste or medical waste regardless of whether they could be donated, salvaged, returned to the vendor, or recycled. The result is that many products that could otherwise be donated or salvaged are not. AB 2660 allows a reverse distributor to receive a surplus consumer product and evaluate it for donation, salvage, credit, return to the vendor, and then if it determines that it's a waste, recycle or dispose of the consumer product appropriately."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility. DTSC's hazardous waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.

Medical Waste Management Act (MWMA): The MWMA was created to comprise a single, integrated, and complementary approach to the storage, treatment, transportation, and disposal of medical waste. Medical waste is defined as waste materials generated at health care facilities, such as hospitals, clinics, physician's offices, dental practices, blood banks, and veterinary hospitals/clinics, as well as medical research facilities and laboratories. Medical waste includes pharmaceutical waste, including prescription or over-the-counter human or veterinary drugs. Under the MWMA, pharmaceutical waste has to be incinerated at a permitted medical waste

treatment facility; treated at temperatures in excess of 1300 degrees Fahrenheit; or, steam sterilized at a permitted medical waste treatment facility. The MWMA is administered by the California Department of Public Health (CDPH).

Consumer products, through the supply chain: There are more than 400,000 retail locations in California. They handle a very large number of diverse consumer products, from household pesticides, to batteries, to toothpaste, or even candy. Some of which remain unsold for a variety of reasons, such as lack of consumer demand, change of seasons, changes in packaging, availability of new products, customer/member returns, or recalls. Surplus products may be donated, sold at a discount through secondary markets (salvaged), returned to the vendor, or discarded (through recycling or disposal). This process is sometimes managed by "reverse distributors" who also may assist in arranging for California retailers to obtain financial credit from manufacturers for unsold products. When discarded, surplus products that exhibit hazardous waste characteristics or are identified as medical wastes are subject to regulations that govern how hazardous and medical wastes are generated, transported, treated, stored, and disposed.

Challenges for the retail sector in managing their wastes: Regulation of hazardous waste generated by the retail sector under the HWCL and regulation of medical wastes under the state's MWMA present unique challenges to the retail sector, which handles a large number and ever-changing mix of products. Some products, such as ibuprofen, fungicides, sunscreen, and toothpaste are considered medical waste when they become a waste. Other products, such as garden chemicals, batteries, and certain fluorescent light bulbs are hazardous waste and are required to be managed as hazardous waste. These challenges stem from the fact that the retail sector is unlike most other industries regulated by these statutes. Some retailers report that they sell over 25 million to 55 million different products which, if not sold and become surplus, could be identified as hazardous or medical waste. In the retail sector, the surplus household consumer products that may become wastes change all the time, as many products are "seasonal", and manufacturers continually introduce new products. The constant change increases the challenges retailers face in making waste determination decisions.

Under the HWCL and the MWMA, the generator of a waste is responsible for determining how a waste is classified (i.e., as solid, hazardous, or medical waste) and manage it accordingly. These waste management responsibilities attach at the point the product becomes a waste and is considered to be generated – known as the "point of generation." Once a product is determined to be a hazardous waste, proper management requires the generator to manifest, transport (under United States Department of Transportation regulations) by a certified hauler, and arrange for disposition at a permitted treatment, storage, and disposal facility, or other authorized facility for proper management. Because some surplus household consumer products may be regulated as hazardous or medical waste, and there is uncertainty as to when they become subject to regulation, some retailers have decided to avoid the risk of an enforcement action by establishing conservative waste management policies – opting to manage surplus consumer products as hazardous waste regardless of whether they could be donated, salvaged, or recycled. The result is that many products that could otherwise be donated or salvaged are not. This also impacts manufacturers' and retailers' efforts to conduct safety recalls for defective products, or to assign and receive financial credit for unsold products.

Consequences of not managing waste according to the HWCL: Since 2007, state and local prosecutors and many large retailers have settled enforcement actions for alleged

mismanagement of hazardous waste. Recognizing the complexity associated with retail hazardous waste issues, the uniqueness of the retail sector, and important opportunities to minimize waste generation in California, many of these settlements include provisions requiring retailers to work with the United States Environmental Protection Agency (US EPA), the United States Food and Drug Administration (FDA), and DTSC to promote regulatory reform. Pursuant to these settlements, retailers and other stakeholders have participated in US EPA data collection regarding retail hazardous waste practices, generator requirements, and proposed rulemaking activities related to pharmaceutical wastes, which are ongoing.

When a product is a medical waste in California: The FD&C Act defines "drug" as an article recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. (FD&C Act § 201(g)(1)) In California, a "pharmaceutical" is a prescription or over-the-counter human or veterinary "drug", including, but not limited to, a drug as defined under federal law.

Simply put, federal law defines what a drug is and dictates drug labeling requirements, and the state's MWMA dictates how pharmaceuticals, which is anything considered a drug under federal law, should be managed at the time of disposal. Under the MWMA, pharmaceutical waste has to be incinerated at a permitted medical waste treatment facility.

Retail Waste Working Group: SB 423 (Bates, Chapter 771, Statutes of 2016) required DTSC to convene a Retail Waste Workgroup (Workgroup) tasked with identifying regulatory and policy directives that need clarification for managing consumer products. The Workgroup was comprised of representatives of large retailers, small retailers, district attorneys, certified unified program agencies, non-government organizations, local governments, other relevant state agencies as determined by DTSC (such as CDPH and the California Department of Resources Recycling and Recovery), manufacturers, reverse distributors, and other interested stakeholders.

The Workgroup was required to adopt consensus recommendations for waste reduction opportunities and completed its work in the summer of 2017. DTSC facilitated and hosted the Workgroup meetings and provided public access to information and meetings on their Web site. The Workgroup discussed numerous topics related to the management of surplus household consumer products. Over an eight-month period (October 2016 through May 2017), the Workgroup identified seven topics in an effort to define the scope of problems faced by the retail industry in applying the hazardous waste management standards in California and to identify possible solutions. The primary topics discussed were: salvage and donation of surplus products; management of products that are recalled; assignment of credit/financial reconciliation for surplus products by product manufacturers; and, appropriate requirements to regulate surplus pharmaceuticals and products with drug facts.

There was general agreement among the Workgroup members that these issues pose challenges to the retail industry, in some instances leading to unintended consequences. However, some stakeholders continued to assert that current statutes and regulatory guidance are adequate and appropriate to govern hazardous and medical wastes generated by the retail industry. Some members of the Workgroup that represented government agencies, although offering information and their perspectives to the discussion, could not take a position on any particular proposal, especially one requiring statutory change. Among those Workgroup members who agreed that

some action was warranted, there was a range of views as to the best approach to address the issues, and consensus on definitive policy proposals was not achieved.

AB 2660 seeks to build on the Workgroup's efforts by setting up a process whereby a retailer can ship an unsold surplus consumer product to a reverse distributor, ideally to be resold or donated, without the retailer having to manage the product as a hazardous or medical waste. Ultimately, any product that is shipped via the bill's provisions and becomes a waste must be managed appropriately as a solid waste, medical waste or hazardous waste, as determined by the reverse distributor. However, as the bill is drafted, the reverse distributor will be required to manage the waste under the state law in which the reverse distributor is physically located. AB 2660 is tackling a very complex problem, one that has vexed stakeholders for many years. The bill is making significant progress; however, the opportunity for refinement remains. The author may wish to consider the following issues when working with stakeholders: ensure regulators in California have access to the relevant information they need to ensure compliance with the provisions of the bill; refine language in the bill to be clear that the intent is to allow for products to be shipped to a reverse distributor and that this is not a process to be used solely for shipping wastes; and, clarify that the surplus consumer products are those that are re-sellable and not broken.

Related legislation:

- 1) AB 514 (Salas). Exempts specified personal care products from the Medical Waste Management Act (MWMA). This bill is pending action in the Senate Environmental Quality Committee.
- 2) SB 423 (Bates, Chapter 771, Statutes of 2016). Required DTSC to convene a Retail Waste Working Group to identify regulatory and policy directives that need clarification for managing consumer products, and adopt consensus recommendations for waste reduction opportunities.

REGISTERED SUPPORT / OPPOSITION:

Support

American Cleaning Institute
California Chamber of Commerce
California Grocers Association
California Manufacturers & Technology Association
California Retailers Association
Grocery Manufacturers Association
Household & Commercial Products Association
Personal Care Products Counsel

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2900 (Committee on Environmental Safety and Toxic Materials) – As Introduced February 16, 2018

SUBJECT: Proposed new public water system: preliminary technical report

SUMMARY: Makes technical changes to statute enacted under Senate Bill (SB) 1263 (Wieckowski, Chapter 843, Statutes of 2016) related to preliminary technical report requirements for proposed new public water systems. Specifically, **this bill:**

- 1) Authorizes the State Water Resources Control Board (State Water Board) to approve the statutory preliminary technical report and allow construction to proceed before the end of the statutory six-month waiting period.
- 2) Authorizes, for a proposed new public water system that would be regulated by a local primacy agency (LPA), the State Water Board and the LPA to approve the statutory preliminary technical report and allow construction to proceed before the end of the statutory six-month period.
- 3) Adds, as information that must be included in the preliminary technical report, the type of each public water system that has a service area boundary within three miles of the proposed project.
- 4) Limits, for the preliminary technical report, the requirement for evaluation, as described, of each adjacent public water system to an evaluation of each adjacent community water system.

EXISTING LAW:

- 1) Defines "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (Health and Safety Code (HSC) § 116275 (h))
- 2) Defines "community water system" as a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. (HSC § 116275 (i))
- 3) Defines "noncommunity water system" as a public water system that is not a community water system. (HSC § 116275 (j))
- 4) Defines "water-related improvement" as including, but not limited to, a water pipe, a water pump, or drinking water infrastructure. (HSC § 116527(a))
- 5) Requires that, before a person submits an application for a permit for a proposed new public water system, she or he first submit a preliminary technical report to the State Water Board at

least six months before initiating construction of any water-related improvement. (HSC § 116527(b)(1))

- 6) Requires the preliminary technical report to include, among other components, all of the following:
- a) A discussion of the feasibility of each of the adjacent public water systems (within three miles, as defined, of the proposed public water system) annexing, connecting, or otherwise supplying domestic water to the applicant's proposed new public water system's service area;
 - b) A discussion of all actions taken by the applicant to secure a supply of domestic water from an existing public water system for the proposed new public water system's service area; and,
 - c) A comparison of the costs associated with the construction, operation and maintenance, and long-term sustainability of the proposed new public water system to the costs associated with providing water to the proposed new public water system's service area through annexation by, consolidation with, or connection to an existing public water system. (HSC § 116527 (c))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: In 2016, the Legislature passed and the Governor signed SB 1263 (Wieckowski, Chapter 843, Statutes of 2016) to limit the proliferation of new, unsustainable public water systems by creating a strengthened review process for new public water system applications. SB 1263 requires a person submitting an application for a permit for a proposed new public water system to first submit a preliminary technical report to the State Water Board at least six months prior to initiating construction of any water-related development. The preliminary technical report must include, among other components, a discussion of the feasibility of public water systems within three miles of the proposed public water system annexing, connecting, or otherwise supplying domestic water to the proposed new public water system's service area. The goal of the technical report is to help foster long-range planning to ensure sustainability of new public water systems.

This bill makes technical changes to statute enacted by SB 1263 that relate to both the six-month waiting period required after submission of the preliminary technical report before initiating water-related construction and to the types of water systems required to be evaluated in the preliminary technical report.

Six-month waiting period: Statute requires any person submitting an application for a proposed new public water system to first submit a preliminary technical report to the State Water Board evaluating the feasibility of connection to any existing public water system within a three mile radius. The technical report must be submitted at least six months before initiating water-related construction.

Statute does not allow for water-related construction to occur before the end of the six-month window, even if the State Water Board and, when applicable, the LPA has approved the

preliminary technical report. The State Water Board provided the example of a small restaurant located far from any public water system that submits and completes an acceptable preliminary technical report. This restaurant must wait six months to begin any water-related construction, even though the State Water Board approved the preliminary technical report and no potential for consolidation with an existing public water system exists.

AB 2900 authorizes the State Water Board to approve a preliminary technical report and allow construction to proceed before the end of the current statutory six-month waiting period, if the State Water Board's Division of Drinking Water, and the LPA if applicable, conclude that there is not another water system nearby that could provide the drinking water in lieu of establishing a new public water system.

Public versus community water systems: Statute requires applicants for a proposed new public water system to conduct an evaluation of the feasibility of consolidation with each public water system located within a three mile radius. The definition of "public water system" encompasses several classifications of water systems, including "community water systems," which are defined as a public water system that serves at least 15 year round service connections or regularly serves at least 25 yearlong residents, and "noncommunity" water systems, such as schools, restaurants, and gas stations.

Noncommunity water systems do not typically possess adequate technical, managerial, and financial capacity, or source capacity, to support a community water system. Therefore, proposed new public water systems should only be required in the preliminary technical report to evaluate community water systems for consolidation potential.

AB 2900 narrows the scope of the preliminary technical report to require an evaluation of the feasibility of connecting to nearby community water systems, rather than an evaluation of the feasibility of connecting to all public water systems. It accomplishes this by striking the word "public" and inserting "community", where appropriate.

REGISTERED SUPPORT / OPPOSITION:

Support

None received.

Opposition

None received.

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2901 (Committee on Environmental Safety and Toxic Materials) – As Introduced February 16, 2018

SUBJECT: Cleaning Product Right to Know Act of 2017

SUMMARY: Makes technical changes and necessary updates to statute enacted under Senate Bill (SB) 258 (Lara, Chapter 830, Statutes of 2017), which created the Cleaning Product Right to Know Act of 2017 (Act). Specifically, **this bill:**

- 1) Corrects typographical errors to the names of chemicals listed as part of the definition of "nonfunctional constituent."
- 2) Corrects an inaccurate code reference for the definition of "confidential business information."
- 3) Updates statute to include the new name of the Consumer Specialty Products Association: the Household and Commercial Products Association.
- 4) Makes other technical and conforming changes.

EXISTING LAW: Creates the Act, which, among other requirements, requires a manufacturer of a cleaning product that is sold in the state to disclose on the product label and on the product's website information related to chemicals contained in the cleaning product; authorizes a cleaning product manufacturer to protect certain chemicals from disclosure; and prohibits the sale of cleaning products in the state that do not satisfy these disclosure requirements. (Health and Safety Code (HSC) § 108952 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS: Statute enacted by SB 258 was carefully negotiated, but contained technical errors that need to be corrected. Additionally, the Consumer Specialty Products Association, the dictionary of which is named in statute as a potential source for the formal name of an ingredient as it should be listed for disclosure, changed its name to the Household and Commercial Products Association. This name needs to be updated in statute.

REGISTERED SUPPORT / OPPOSITION:

Support

Breast Cancer Prevention Partners
California Chamber of Commerce
Clean Water Action
Environmental Working Group
Household & Commercial Products Association
International Fragrance Association, North America
Natural Resources Defense Council

Women's Voices for the Earth

Opposition

None received.

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /

Date of Hearing: March 20, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair

AB 2902 (Committee on Environmental Safety and Toxic Materials) – As Introduced February 16, 2018

SUBJECT: Hazardous substances

SUMMARY: Makes various technical changes to the Aboveground Petroleum Storage Tank Act (APSA), the Underground Storage Tank Act (USTA), and the Hazardous Materials Business Plan (HMBP) Program. Specifically, **this bill:**

- 1) Requires, under the APSA, the containment structure to be monitored to detect a release from the storage tank if the structure in which the tank is located does not provide enough space for direct viewing of the exterior of the tank.
- 2) Exempts an emergency vent from APSA that is solely designed to relieve excessive internal pressure.
- 3) Clarifies that a tank in an underground area is not subject to the provisions of APSA if the tank holds hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, or other similar devices; or, if the tank is a heating oil tank.
- 4) Authorizes the owner or operator of a tank in an underground area that is subject to APSA to use the format adopted by the Office of the State Fire Marshal (Office) to prepare a spill prevention control and countermeasure plan as required under APSA.
- 5) Provides that an emergency generator tank system that provides power supply in the event of a commercial power failure, that stores kerosene, and is used solely in connection with an emergency system, is not an underground storage tank under the UST.
- 6) Prohibits a local agency from issuing or renewing a permit to operate an underground storage tank if a person is operating an underground storage tank while a red tag is affixed to the tank or if a facility is subject to an enforcement action.
- 7) Requires a handler (a business that handles a hazardous material) to, upon discovery, immediately report any release or threatened release of a hazardous material or an actual release of a hazardous substance to the Unified Program Agency (UPA).
- 8) Makes numerous technical changes.

EXISTING LAW:

- 1) Defines "aboveground storage tank" as a tank that has the capacity to store 55 gallons or more of petroleum that is substantially or totally above the surface of the ground. (Health and Safety Code (HSC) § 25270.2 (a))

- 2) Authorizes the UPA to implement APSA in accordance with regulations adopted by the Office. (HSC § 25270.4)
- 3) Requires the Office to adopt regulations implementing APSA, provide interpretation of APSA to the UPAs, and oversee the implementation of APSA by the UPAs. (HSC § 25270.4.1)
- 4) Finds and declares that underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment. Declares that it is in the public interest to establish a continuing program for the purpose of preventing contamination from, and improper storage of hazardous substances stored underground. (HSC § 25280 (a))
- 5) Defines "tank" to mean a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of non-earthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support. (HSC § 25281 (u))
- 6) Defines "underground storage tank" as any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. (HSC § 25281 (y)(1))
- 7) Provides that an emergency generator tank system that provides power supply in the event of a commercial power failure, that stores diesel fuel, and is used solely in connection with an emergency system is not an underground storage tank under the UST. (HSC § 25281.5(c))
- 8) Prohibits a local agency from issuing or renewing a permit to operate an underground storage tank if the local agency inspects the tank and determines that the tank does not comply with the requirements of the UST. (HSC § 25285 (b))
- 9) Defines "handler" as a business that handles a hazardous material. (HSC § 25501 (m))
- 10) Requires a business to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material if the business meets specified criteria. (HSC § 25507 (a))
- 11) Requires a handler to, upon discovery, immediately report any release or threatened release of a hazardous material to the UPA. (HSC 25510 (a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: Californians are protected from hazardous waste and hazardous materials by a Unified Program that ensures consistency throughout the state in regard to administrative requirements, permits, inspections, and enforcement. The California Environmental Protection Agency (CalEPA) oversees the statewide implementation of the Unified Program and its 81 certified local government agencies, known as Certified Unified Program Agencies (CUPAs), which apply regulatory standards established by five different state agencies.

There has been some confusion with the definition of "aboveground storage tank," which is problematic for implementing, complying, and enforcing the APSA. Additionally, some tanks that are currently regulated under the UST program (USTP) will be regulated under APSA due to recently adopted regulations, which has also created some uncertainty and confusion for those tanks.

Certified Unified Program Agencies (CUPAs): The Secretary of the CalEPA oversees the "unified hazardous waste and hazardous materials management" regulatory program (Unified Program). Currently, there are 81 Certified Unified Program Agencies (CUPAs) in California. The Unified Program consolidates, coordinates the following six existing programs:

- 1) Hazardous Materials Release Response Plans and Inventories (Business Plans);
- 2) California Accidental Release Prevention (CalARP) Program;
- 3) Underground Storage Tank Program;
- 4) Aboveground Petroleum Storage Act;
- 5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; and,
- 6) California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

State agencies involved in the implementation of the Unified Program are responsible for setting program element standards, working with CalEPA to ensure program consistency, and providing technical assistance to the CUPAs. The following state agencies are involved with the Unified Program:

- 1) CalEPA: The Secretary of the CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying UPAs. CUPAs are accountable for carrying out responsibilities previously handled by approximately 1,300 different state and local agencies.
- 2) Governor's Office of Emergency Services (Cal OES): The Cal OES evaluates and provides technical assistance for the Hazardous Material Release Response Plan (Business Plan) and the Area Plans for Hazardous Materials Emergencies.
- 3) Office of the State Fire Marshal (Office): The Office evaluates and provides technical assistance for the APSA Program.
- 4) State Water Resources Control Board (State Water Board): The State Water Board evaluates and provides technical assistance for the USTP under the USTA.

Regulation of Underground Storage Tanks (USTs): The State Water Board has established regulations governing the prevention of leaks from USTs. There are standards and requirements for installation, tank construction, tank testing, leak detection, spill containment, and overfill protection. California USTA and regulations give local agencies (counties, cities, or other local agencies) authority throughout the state to issue permits for tank operation and to enforce tank testing requirements within their jurisdiction.

The purpose of the USTP is to protect public health and safety and the environment from releases of petroleum and other hazardous substances from tanks. Leaking underground storage tanks are a significant source of petroleum impacts to groundwater and may pose the following potential threats to health and safety: exposure from impacts to soil and/or groundwater, contamination of drinking water aquifers, contamination of public or private drinking water wells, and inhalation of vapors.

Regulation of aboveground storage tanks: The Office is responsible for the implementation of the APSA program. APSA regulates facilities with aggregate aboveground petroleum storage capacities of 1,320 gallons or greater, which include aboveground storage containers or tanks with petroleum storage capacities of 55 gallons or greater. These facilities typically include large petroleum tank facilities, aboveground fuel tank stations, and vehicle repair shops with aboveground petroleum storage tanks. The APSA does not regulate non-petroleum products. Facilities with total petroleum storage quantities at or in exceedance of 10,000 gallons are inspected at least once every three years and have reporting and fee requirements, while facilities with petroleum storage quantities equal to or greater than 1,320 gallons but less than 10,000 gallons have reporting and fee requirements only.

Hazardous Materials Business Plan (HMBP) program: The HMBP was established in 1986. Its purpose is to prevent or minimize the damage to public health and safety and the environment from a release or threatened release of hazardous materials. It also satisfies community right-to-know laws. This is accomplished by requiring businesses that handle hazardous materials in quantities equal to or greater than 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas, or extremely hazardous substances above the threshold planning quantity to: inventory their hazardous materials; develop a site map; develop an emergency plan; and, implement a training program for employees.

AB 2902 provides important technical changes to the APSA, UST, and HMBP. Specifically, AB 2902:

- Clears up confusion with the definition of "aboveground storage tank" in the (APSA);
- Resolves confusion related to Tanks in Underground Areas (TIUGAs);
- Modifies the definition of a TIUGA to provide clarification consistent with the Office piping regulations;
- Helps establish a clear path for compliance for aboveground petroleum tanks that qualify as TIUGAs as they transition from the UST program to APSA;
- Provides compliance assistance to small facilities with less than 1,320 gallons of petroleum that are now subject to APSA solely because they have a TIUGA; and,
- Makes clarifying changes to the UTSP by modifying the definition of "pipe" and updating the exclusions for Emergency Generator Tank System.

Technical clarification: The bill is proposing to clarify when a local agency is prohibited from issuing a permit to operate an underground storage tank; however, the current approach is a little confusing and therefore the committee may wish to consider striking this item and working to clarify the language. Specifically, on page 12, strike lines 26-30.

~~(2) A facility while that facility is subject to an enforcement action seeking to impose administrative civil liability, civil liability, or criminal liability pursuant to this chapter or any regulation implementing this chapter, unless the underlying violations that are the subject of that enforcement action have been corrected.~~

Related legislation:

- 1) AB 1689 (ESTM, Chapter 159, Statutes of 2017). Adds combustible metal or metal alloy to the list of materials a business must include in its hazardous materials business plan.

- 2) SB 612 (Jackson, Chapter 452, Statutes of 2015). Modifies the statute related to Certified Unified Program Agencies (CUPA) administration to clarify the provisions of the Health and Safety Code related to CUPAs in order to provide consistent interpretation of the statute statewide.
- 3) SB 1261 (Jackson, Chapter 715, Statutes of 2014). Revised and recasted the area and business plan requirements for CUPAs.
- 4) SB 483 (Jackson, Chapter 419, Statutes of 2013). Made various changes to update, rearrange, and clarify provisions of the Health and Safety Code related to CUPAs.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Environmental Health Associates (Sponsor)

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /