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*Assembly  
California Legislature*

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

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**AGENDA**

September 12, 2017

Upon Adjournment -- State Capitol, Room 444

**BILLS HEARD IN FILE ORDER**

1. SB 774 Leyva Hazardous substances: California Toxic Substances Board.



Date of Hearing: September 12, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 774 (Leyva) – As Amended September 11, 2017

**SENATE VOTE:** 27-13

**SUBJECT:** Hazardous substances: California Toxic Substances Board

**SUMMARY:** Creates the California Toxic Substances Board (Board) within the Department of Toxic Substances Control (DTSC) to provide effective, reliable, transparent, and accountable oversight of California's hazardous waste management and of the remediation of contaminated sites. Specifically, **this bill:**

- 1) Creates the Board within DTSC, consisting of five members appointed by the Governor and confirmed by the Senate. Requires membership to include an attorney admitted to practice law in California who is qualified in the field of environmental law pertaining to hazardous waste, hazardous substances, or site remediation; an environmental scientist qualified in the fields of toxicology, chemistry, geology, industrial hygiene, or engineering; a scientist or medical professional qualified in the area of toxic substances; one person qualified in the area of regulatory permitting; and, one member of the public.
- 2) Provides that three members of the Board shall constitute a quorum for the transaction of business of the Board.
- 3) Prohibits a member of the Board from participating in any Board action in which the Board member has a disqualifying financial interest in the decision.
- 4) Prohibits a member of the Board from participating in a proceeding before the Board as a consultant or in any other capacity on behalf of a waste discharger.
- 5) Requires that a member of the Board be appointed for a term of four years and a vacancy to be immediately filled by the Governor for the unexpired portion of the term.
- 6) Requires that the terms of the members of the Board are staggered, with the two initial members, as determined by the Governor, serving a two-year term, and the three initial members, as determined by the Governor, serving a four-year term.
- 7) Provides that a member of the Board may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty, corruption, or incompetency.
- 8) Requires the Board to hold monthly meetings and requires the first meeting of the Board to be held on or before August 1, 2018.
- 9) Requires the Board to conduct monthly public hearings to consider matters before the Board and to make public the agenda for those hearings no less than 30 days prior to the hearing.

- 10) Requires the Board, when setting the monthly agenda for a hearing, to prioritize hazardous waste facilities permits and sites to be reviewed based on criteria that include, but are not limited to, the following:
  - a) The status of the hazardous waste facilities permit;
  - b) The nature of the site and any remedial action on the site;
  - c) The proximity of the site or hazardous waste facility to vulnerable populations and sensitive receptors;
  - d) The potential for a release of a hazardous substance; and,
  - e) The amount of time the action has been pending.
- 11) Authorizes the Board to hear matters relating to a hazardous waste facility's permit or site upon receipt of a petition requesting a hearing. Based on documents submitted, information presented, and testimony taken at a hearing, authorizes the Board to direct the director of DTSC, through a Board action, to resolve outstanding issues relating to a hazardous waste facilities permit, including but not limited to setting a timeline for a resolution or permit decision, and requiring conditions be placed on a hazardous waste facilities permit to address hazards to public health or the environment. Requires the director of DTSC to comply with directives received by the Board through a Board action.
- 12) Authorizes the Board to hear matters relating to a site upon receipt of a petition requesting a hearing. Additionally, based on documents submitted, information presented, and testimony taken at a hearing, authorizes the Board to direct the director of DTSC, through a Board action, to resolve outstanding issues relating to site cleanup, require investigation of a site, identify potentially responsible parties, set a timeline for a resolution or investigation, seek corrective action, or any combination of these. Requires the director of DTSC to comply with directives received by the Board through a Board action.
- 13) Requires DTSC to prepare for the Board's hearing in consideration of the Board's agenda. Requires DTSC to provide any information requested by the Board and for DTSC to be prepared to respond to public comments that are submitted to the Board at least fourteen days before a Board hearing.
- 14) Authorizes the Board to adjourn to, or meet solely in, executive session to discuss legal matters, personnel matters, or matters relating to pending enforcement actions. Authorizes the Board to meet with the Attorney General, or his or her designee, the DTSC director, and DTSC legal counsel in executive session.
- 15) Requires the Board, in January of each year, to hold an annual meeting at which DTSC shall provide status reports on DTSC's priorities and work plans for hazardous waste management programs, site remediation programs, and regulation development from the previous year and shall present on its current and pending work plans and priorities. Requires the Board to set an annual agenda for DTSC's priorities and work plans for the current year.

- 16) Authorizes the Board to review the law on hazardous waste management and site remediation and make recommendations to the Legislature for changes to the law that will enhance management of hazardous waste.
- 17) Authorizes the Board to create a subcommittee of three board members to review and decide matters before the Board pertaining to petitions for hearings received by the Board. Requires the meetings of the subcommittees to be held in compliance with the Bagley-Keene Open Meeting Act.
- 18) Requires the Board to maintain its headquarters in Sacramento.
- 19) Requires the Governor to designate the chairperson of the Board and hold the office of chairperson at the pleasure of the Governor.
- 20) Authorizes the Board to direct the director of DTSC to conduct investigations in the state as necessary to carry out the powers vested in the Board.
- 21) Requires the Board to adopt rules for the conduct of its affairs in conformity, as nearly as practicable with the Administrative Procedures Act (Chapter 3.5 commencing with Section 11340 of Part 1 of Division 3 of Title 2 of the Government Code).
- 22) Authorizes the Board to direct the director of DTSC to use and direct administrative staff, regulatory staff, legal counsel, and other personnel employed by DTSC in order to carry out actions by the Board, consistent with all applicable state human resources laws.
- 23) Requires the director of DTSC to collaborate with the Board.
- 24) Requires DTSC, by January 1, 2019, to adopt regulations setting a fee schedule for the Disposal Fee, Facility Fee, Generator Fee, Manifest Fee and Environmental Protection Agency Identification (EPA ID) Fee, at a rate that is sufficient to reimburse the DTSC's regulatory costs. In adopting the regulations, DTSC may consolidate existing fees to facilitate administrative efficiencies. Requires, the regulation to include a provision allowing any permitted hazardous waste facility operator to petition the Board to establish a cap on their permitting fees. Authorizes DTSC to adopt the regulations establishing the fee schedule via an emergency regulation.
- 25) Repeals the existing Disposal Fee, Facility Fee, Generator Fee, Manifest Fee and EPA ID Fee, once DTSC adopts a regulation setting a fee schedule for these fees.
- 26) Authorizes the Board to expend moneys appropriated for the administration of the Board and all powers and duties granted to it pursuant to the Hazardous Waste Control Law (HWCL) and Hazardous Substances Account Act (HSAA).
- 27) Requires the Board to publish biennial progress reports relating to activities of the Board.

**EXISTING LAW:**

- 1) Creates the HWCL which authorizes DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)

- 2) Establishes the HSAA, a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment. (HSC § 25300 et seq.)
- 3) Authorizes DTSC to issue hazardous waste facilities 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 HWCL. (HSC § 25200 (a))
- 4) Requires DTSC to impose conditions on each hazardous waste facility permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))
- 5) 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)
- 6) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)
- 7) Creates a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (U.S.C.) § 9601 et seq.)

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, enactment of this bill could result in increased costs to DTSC of approximately \$3 million annually for the creation and operation of the Board in addition to tens of thousands of dollars in meeting and travel expenses associated with the Board and the required Board meetings.

**COMMENTS:**

*Need for the bill:* According to the author,

"SB 774 ensures lasting accountability and transparency within DTSC by creating the California Toxic Substances Board. This board will oversee the responsibilities of the current DTSC and provide general policy direction. The Board will have five members appointed by the Governor and each will possess qualifications in environmental law and science. Over the last several years, DTSC has been criticized across the state for neglected permitting, cleanup and cost recovery and financial management activities.

Most notably, the Exide facility in the City of Vernon had a hazardous waste facility permit that languished in continued status for nearly 30 years with numerous permit violations. This failure to complete the permitting process came at the price of decades-long severe, on-going and highly-toxic lead pollution of the surrounding community and ultimately resulted in the closure of the facility. The Exide facility is just one of numerous sites that have drawn public attention and legislative scrutiny to DTSC, resulting in oversight hearings, statutory changes and budget augmentations.

In 2015, an Independent Review Panel (IRP) was established (pursuant to SB 83, Chapter 24, Statutes of 2015). The IRP's purpose is to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management.

The work of the IRP has been invaluable to providing thoughtful and comprehensive improvements for the DTSC. Unfortunately, the IRP will sunset on January 1, 2018." To increase accountability, the IRP recommended the creation of a board to decide on hazardous waste facility permits that DTSC does not timely process, provide improved oversight, and other structural changes. SB 774 creates the Board to oversee DTSC as recommended by the IRP."

*Potential impacts of hazardous waste:* The potential public health and environmental harm that can be caused by various hazardous substances used in industrial, manufacturing, and other processes has drawn widespread national attention. Information provided by the United States Environmental Protection Agency (US EPA) advises that over the next several decades, federal, state, and local governments, and private industry will commit billions of dollars annually to clean up sites contaminated with hazardous waste and petroleum products from a variety of industrial sources. There could be as many as 355,000 contaminated sites that will require cleanup over the next 30 years and that the cost of this cleanup may amount to as much as \$250 billion. Given that there are more than 100,000 entities in California that handle hazardous waste, it is important to ensure that these entities handle the waste safely and according to state and federal law and regulation. Many of our contaminated sites have come from entities that poorly managed or mis-managed the hazardous waste at their sites. The current laws on the books are intended to prevent those types of contamination from happening in the future.

*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.

DTSC is responsible for ensuring that hazardous wastes generated and handled in California are managed safely and legally to prevent harm to public health and the environment. There are currently 118 facilities permitted by DTSC to store, treat, or landfill hazardous waste in California. Additionally, there are more than 100,000 businesses that generate hazardous waste, and approximately 900 transporters registered with DTSC to transport hazardous waste. Many hazardous waste generators and facilities are located near communities who look to DTSC to protect them from the threats posed by potential releases of harmful chemicals into their air, land, and water. Effective permitting and enforcement of these hazardous waste facilities is paramount to protecting human health and safety and the environment. Many of these permitted hazardous waste facilities are located in communities with vulnerable populations, and inadequate permits or lax enforcement could severely impact the quality of their life.

*Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA):* State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to

public health or the environment. DTSC uses the HSAA for cleanup of contaminated sites and the HWCL for the regulation of hazardous waste sites. The HSAA is intended to provide compensation for out-of-pocket medical expenses and lost wages or business incomes resulting from injuries caused by exposure to hazardous substances. Additionally, DTSC ensures that the state meets the federal requirements that California pay 10-percent of cleanup costs for federal Superfund sites and 100-percent of the operation and maintenance costs after cleanup is complete. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

*Recent criticism of DTSC:* Over the past several years, there have been many criticisms levied at DTSC. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or have numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit.

*Recent oversight of DTSC:* These concerns about DTSC have also reached the Legislature, leading to several legislative oversight hearings of DTSC's programs by this committee, oversight hearings over DTSC's budget, and more than ten pieces of legislation aiming to address the issues of DTSC's permitting and enforcement programs. In 2015, the Legislature passed and the Governor signed SB 83 (Chapter 24, Statutes of 2015), which created a three person Independent Review Panel (IRP) to make recommendations to the Legislature and Governor on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. DTSC has responded to these concerns by conducting reviews of its programs, both internally and with outside expertise, requesting additional staff through the budget process, and implementing significant programmatic changes.

*Legislative Analyst Office (LAO) overview of DTSC:* In May 2017 the LAO posted a summary of recent oversight of DTSC, including progress DTSC has made regarding its permitting and enforcement programs. The post concludes, "Over the past few years, the Legislature has approved funding and personnel resources to address specific deficiencies in DTSC's programs. Even with these new resources, DTSC's own projections show that for some programs it will be years before the deficiencies are fully remedied. Therefore, it will be important for the Legislature to continue to oversee DTSC's progress and hold DTSC accountable for producing results over the next several years. In addition, in cases where the department is not achieving its performance goals, the Legislature may wish to consider further oversight measures. These could include holding hearings to determine the reason for the lack of progress and whether funding and personnel continue to be justified. It could also include having an independent entity—such as the Bureau of State Audits—conduct program reviews to better understand why the program continues to underperform. In our view, such continued oversight is necessary to ensure that the department continues to improve its performance in several key programs."

SB 774 is designed to add transparency and accountability to DTSC's decisions on hazardous waste permits and on cleanup sites. State departments and state boards have positive and negative aspects. Adding transparency, such as requiring public meetings is helpful for the public. This bill also provides DTSC with the authority to adjust its fees in a manner that covers

their regulatory costs, and thus enables them to have the resources necessary to effectively and efficiently enforce state and federal hazardous waste laws and regulations.

*Related legislation:*

- 1) AB 245 (Quirk) adjusts the maximum allowable penalty for violations of the hazardous waste control law to be consistent with the federal penalties for hazardous waste violations. AB 245 is pending concurrence in Senate Amendments in the Assembly.
- 2) AB 248 (Reyes) makes several statutory changes to improve the permitting process for the permitting of hazardous waste facilities. AB 248 is pending in the Senate.
- 3) SB 1325 (de León, Chapter 676, Statutes of 2016) requires DTSC to, on or before January 1, 2018, adopt regulations to impose post-closure plan requirements on the owner or operator of a hazardous waste facility through the issuance of an enforcement order, an enforceable agreement, or a post-closure permit and deletes a January 1, 2009 sunset date which authorized DTSC to impose post closure plan requirements through an enforcement order or an enforceable agreement.
- 4) AB 1075 (Alejo, Chapter 460, Statutes of 2015) establishes standards for what constitutes a repeat serious hazardous waste facility violation and specifies the enforcement or permit revocation action to be taken by DTSC.
- 5) SB 673 (Lara, Chapter 611, Statutes of 2015) requires DTSC, by January 1, 2018, to establish or update criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous facilities permit, and to develop and implement, by July 1, 2018, programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of DTSC's permitting program.
- 6) SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2015) establishes the IRP at DTSC to make recommendations regarding improvements to the department's permitting, enforcement, public outreach, and fiscal management. Also establishes an assistant director for environmental justice to serve as an ombudsperson for disadvantaged communities.
- 7) SB 712 (Lara, Chapter 833, Statutes of 2014) requires the DTSC, on or before December 31, 2015, to issue a final permit decision on an application for a hazardous waste facilities permit that is submitted by a facility operating under a grant of interim status on or before January 1, 1986, by either issuing a final permit or a final denial of the application.
- 8) SB 812 (de León, 2014) would have provided permit standards and community involvement in the DTSC permitting process. SB 812 was vetoed by Governor Brown. In his veto message the Governor stated:

"The delay and complexity that has plagued the Department's permit process over the last few decades has resulted in an inadequate and unresponsive regulatory program.

"Unfortunately, there are provisions in the bill that will unintentionally delay the Department's current plan to revise its program and complete its review of expired permits



over the next two years. Instead of risking further delay and confusion, I would like to personally work with the author on modifications to the language, including providing the Department the necessary authority and adequate resources to fulfill our shared objectives of improving the performance of this critically important state program."

- 9) AB 1329 (V. Manuel Pérez, Chapter 598, Statutes of 2013) requires DTSC to prioritize an enforcement action affecting communities that have been identified by Cal/EPA as being the most impacted environmental justice communities.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Environmental Justice Alliance  
Californians Against Waste  
Center for Community Action and Environmental Justice (CCA EJ)  
Center on Race, Poverty & the Environment  
Clean Water Action  
Environmental Working Group

##### **Opposition**

American Chemistry Council  
California Chamber of Commerce  
California Council for Environmental and Economic Balance  
California Manufacturer's and Technology Association  
Camarillo Chamber of Commerce  
Chemical Industry Council of California  
CleanHarbors  
Department of the Navy  
Rancho Cordova Chamber of Commerce  
Safety-Kleen  
Southwest California Legislative Council  
West Coast Lumber and Building Material Association  
Western States Petroleum Association

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