

Assembly Bill No. 1075

CHAPTER 460

An act to amend Sections 25186 and 25186.2 of, and to add Sections 25186.05 and 25189.4 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 2, 2015. Filed with
Secretary of State October 2, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1075, Alejo. Hazardous waste: enforcement.

(1) The Hazardous Waste Control Law regulates the use and disposal of hazardous waste and authorizes the Department of Toxic Substances Control to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued to, a person or entity if that person or entity engaged in specified activities in violation of the Hazardous Waste Control Law or other laws.

This bill would require the department to consider, except under specified circumstances, 3 or more violations of, or noncompliance with, specified provisions for which a person or entity has been found liable or has been convicted, with respect to a single hazardous waste facility within a 5-year period, as compelling cause to deny, suspend, or revoke a permit, registration, or certificate applied for by, or issued to, that person or entity.

(2) Existing law authorizes the department to temporarily suspend any permit, registration, or certificate prior to a hearing if the department determines that action is necessary to prevent or mitigate an imminent and substantial danger to the public health or safety or the environment. Existing law requires the department, upon receipt of a notice of defense to the accusation from the holder of the permit, registration, or certificate, to set the matter for hearing within 15 days and to hold the hearing as soon as possible, but not later than 30 days after receipt of the notice. Existing law requires the hearing to be held without delay and completed as soon as possible.

This bill would instead authorize the department to temporarily suspend any permit, registration, or certificate prior to a hearing if the department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. The bill would repeal the requirement that the hearing be held without delay and completed as soon as possible.

(3) Existing law provides for the imposition of civil and criminal penalties upon persons who violate the requirements of the hazardous waste control law or take other actions with regard to the handling of hazardous waste.

This bill would impose, upon a person who is subject to the imposition of those civil or criminal penalties, an additional civil penalty of not less than \$5,000 or more than \$50,000 for each day of each violation, if the person has been found liable for, or been convicted of, 2 or more previous violations of certain of these hazardous waste-related provisions within any consecutive 60 months.

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

SECTION 1. Section 25186 of the Health and Safety Code is amended to read:

25186. The department may deny, suspend, or revoke any permit, registration, or certificate applied for, or issued, pursuant to this chapter in accordance with the procedures specified in Sections 25186.1 and 25186.2, where the applicant or holder of the permit, registration, or certificate, or in the case of a business concern, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern, has engaged in any of the following:

(a) Any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.8 (commencing with Section 25300), the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(b) The aiding, abetting, or permitting of any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.8 (commencing with Section 25300), the Porter-Cologne Water Quality Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a

hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(c) Any violation of, or noncompliance with, any order issued by a state or local agency or by a hearing officer or a court relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code.

(d) Any misrepresentation or omission of a significant fact or other required information in the application for the permit, registration, or certificate, or in information subsequently reported to the department or to a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(e) (1) Activities resulting in any federal or state conviction that are significantly related to the fitness of the applicant or holder of the permit, registration, or certificate to perform the applicant's duties or activities under the permit, registration, or certificate.

(2) For the purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(3) An action that the department may take pursuant to this paragraph relating to the denial, suspension, or revocation of a permit, registration, or certificate may be based upon a conviction for which any of the following has occurred:

(A) The time for appeal has elapsed.

(B) The judgment of conviction has been affirmed on appeal.

(C) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the person's plea of guilty, and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(f) Activities resulting in the revocation or suspension of a license, permit, registration, or certificate held by the applicant or holder of the permit, registration, or certificate or, if the applicant or holder of the permit, registration, or certificate is a business concern, by any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern relating to, the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code.

SEC. 2. Section 25186.05 is added to the Health and Safety Code, to read:

25186.05. (a) For the purposes of this section, "violation" and "noncompliance" mean only the following:

(1) A violation or noncompliance pursuant to Section 25186 that creates a significant risk of harm to the public health or safety of the environment resulting from acute or chronic exposure to hazardous waste or hazardous waste constituents, and that threat makes it reasonably necessary to take action to prevent, reduce, or mitigate that exposure.

(2) A violation of, or noncompliance with, any order issued by the department to the applicant or holder of the permit.

(3) A federal or state felony conviction for a violation of this chapter or its equivalent in the federal act, or of any requirement or regulation adopted pursuant to that authority relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste, as described in subdivision (e) of Section 25186.

(b) A violation or noncompliance by a federal hazardous waste facility, pursuant to Section 6961 of Title 42 of the United States Code, shall, for purposes of this section, be limited to a violation or noncompliance caused by an action or inaction within the boundaries identified in Part B of the federal hazardous waste permit application, pursuant to Section 270.14 of Title 40 of the Code of Federal Regulations, for that facility.

(c) "Violation" and "noncompliance" shall not include a minor violation as defined in Section 25117.6.

(d) (1) Except as provided in paragraph (2), the department shall consider three or more incidents of violation of, or noncompliance with, a requirement specified in subdivision (a) or (b) of Section 25186 for which a person or entity has been found liable or has been convicted, with respect to a single facility within a five-year period, as compelling cause to deny, suspend, or revoke the permit, registration, or certificate.

(2) This subdivision does not apply to a third violation or noncompliance if the department finds that extraordinary circumstances exist, including that a denial, suspension, or revocation would endanger the public health or safety or the environment.

(3) This subdivision does not limit or modify the department's authority to deny, suspend, or revoke any permit, registration, or certificate pursuant to Section 25186 or any other law.

SEC. 3. Section 25186.2 of the Health and Safety Code is amended to read:

25186.2. The department may temporarily suspend any permit, registration, or certificate issued pursuant to this chapter prior to any hearing if the department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. In making this determination, the department may rely on any information, including, but not limited to, information concerning an actual, threatened, or potential harm to the public health or safety or the environment, information concerning a release or threat of a release, or a human health or ecological risk assessment. The department shall notify the holder of the permit, registration, or certificate of the temporary suspension and the effective date thereof and at the same time shall serve the person with an accusation. Upon receipt by the department of a notice of defense to the

accusation from the holder of the permit, registration, or certificate, the department shall, within 15 days, set the matter for a hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits, which shall be made within 60 days after the completion of the hearing. If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

SEC. 4. Section 25189.4 is added to the Health and Safety Code, to read:

25189.4. (a) In addition to any penalty imposed under any other law, a person who is subject to the imposition of civil or criminal penalties pursuant to the provisions specified in subdivision (b) shall also be subject to an additional civil penalty of not less than five thousand dollars (\$5,000) or more than fifty thousand dollars (\$50,000) for each day of each violation, if the person has been found liable for, or has been convicted of, two or more previous violations subject to the penalties specified in subdivision (b) and those violations or convictions occurred within any consecutive 60 months.

(b) The additional liability specified in subdivision (a) shall apply to a penalty imposed pursuant to, or a conviction under, paragraph (2) of subdivision (g) of Section 25187.8, or Section 25189, 25189.2, 25189.3, 25189.5, 25189.6, or 25189.7.