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Code: Section:

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HEALTH AND SAFETY CODE - HSC

DIVISION 104. ENVIRONMENTAL HEALTH [106500 - 119406] (*Division 104 added by Stats. 1995, Ch. 415, Sec. 6.*)

PART 14. MEDICAL WASTE [117600 - 118360] (*Part 14 added by Stats. 1995, Ch. 415, Sec. 6.*)

CHAPTER 10. Enforcement [118325 - 118345] (*Chapter 10 added by Stats. 1995, Ch. 415, Sec. 6.*)

118325. (a) (1) An enforcement agency, district attorney, county counsel, city attorney, or city prosecutor may bring an action to enjoin the violation, or threatened violation, of this part or the regulations adopted pursuant to this part, in the superior court in the county where the violation occurred or is about to occur. Any proceeding under this section shall be in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the enforcement agency, district attorney, county counsel, city attorney, or city prosecutor is not required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or irreparable damage or loss.

(2) If a county counsel or the district attorney brings an action pursuant to paragraph (1), the county counsel or the district attorney shall, within seven days of the filing of the action, notify the district attorney or county counsel, as applicable, of the county where the violation occurred or is about to occur.

(b) With respect to any action brought pursuant to this section alleging actual violation of this part or the regulations adopted pursuant to this part, the court shall, if it finds the allegations to be true, issue its order enjoining the continuance of the violation.

(*Amended by Stats. 2023, Ch. 154, Sec. 15. (SB 642) Effective January 1, 2024.*)

118330. (a) Whenever the enforcement agency determines that a violation or threatened violation of this part or the regulations adopted pursuant to this part has resulted, or is likely to result, in a release of medical waste into the environment, the agency may issue an order to the responsible person specifying a schedule for compliance or imposing an administrative penalty of not more than five thousand dollars (\$5,000) per violation. A person who, after notice and an opportunity for hearing, violates an order issued pursuant to this section is guilty of a misdemeanor.

(1) If the department is the enforcement agency, the department shall provide notice, issue the order, and conduct the administrative hearing pursuant to subdivisions (d) and (f).

(2) If the department is not the enforcement agency, the provisions of subdivisions (b) to (e), inclusive, apply.

(b) (1) In establishing the amount of the administrative penalty and ordering that the violation be corrected pursuant to this section, the enforcement agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(2) If the amount of the administrative penalty is set after the person is served with the order pursuant to subdivision (c) or after the order becomes final, the person may request a hearing to dispute the amount of the administrative penalty and is entitled to the same process as provided in subdivision (c), whether or not the person disputed the facts of the violation through that process.

(3) An administrative penalty assessed pursuant to this section shall be in addition to any other penalties or sanctions imposed by law.

(c) (1) An order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing.

(2) A person served with an order pursuant to paragraph (1) and who has been unable to resolve the violation with the enforcement agency may, within 15 days after service of the order, request a hearing by filing with the enforcement agency a

notice of defense. The notice shall be filed with the agency that issued the order. A notice of defense shall be deemed filed within the 15-day period if it is postmarked within that 15-day period. If no notice of defense is filed within the 15-day time period, the order shall become final.

(3) Except as otherwise provided in paragraph (4), a person requesting a hearing on an order issued pursuant to this section may select the hearing officer specified in either subparagraph (A) or (B) of paragraph (4) in the notice of defense filed with the enforcement agency pursuant to paragraph (2). If a notice of defense is filed, but no hearing officer is selected, the enforcement agency may select the hearing officer.

(4) Within 90 days of receipt of the notice of defense by the enforcement agency, the hearing shall be scheduled using one of the following:

(A) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the enforcement agency shall have all the authority granted to an agency by those provisions.

(B) (i) A hearing officer designated by the enforcement agency, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the enforcement agency shall have all the authority granted to an agency by those provisions. When a hearing is conducted by an enforcement agency hearing officer pursuant to this clause, the enforcement agency shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by an enforcement agency shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(ii) An enforcement agency, or a person requesting a hearing on an order issued by an enforcement agency, may select the hearing process specified in this subparagraph in a notice of defense filed pursuant to paragraph (2) only if the enforcement agency has selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(5) The hearing decision issued pursuant to this subdivision shall be effective and final upon issuance by the enforcement agency. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(6) The person has a right to appeal the hearing decision if, within 30 days of the date of receipt of the final decision pursuant to paragraph (5), the person files a written notice of appeal with the enforcement agency. The appeal shall be in accordance with the Administrative Procedure Act (Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(7) A decision issued pursuant to paragraph (6) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the enforcement agency if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay an action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(d) A provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance of the order by the enforcement agency if the enforcement agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial danger to the public health or safety or the environment. A request for a hearing or appeal, as provided in subdivision (c) or (f) shall not stay the effect of that provision of the order pending a hearing decision. If the enforcement agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the enforcement agency. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(e) The enforcement agency shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the enforcement agency to issue orders.

(f) (1) The department shall serve an order issued pursuant to this section by personal service or certified mail and shall inform the person served of the right to a hearing.

(2) A person served with an order pursuant to paragraph (1) may appeal the order by sending a written request for hearing to the department within 20 days after service of the order. If a request for hearing is not made within the 20-day time period, the order shall become final. Payments of any administrative penalty shall be made within 30 days of the date the order becomes final.

(3) Any hearings conducted by the department pursuant to this section shall be conducted pursuant to the procedures specified in Section 131071.

(Amended by Stats. 2016, Ch. 86, Sec. 198. (SB 1171) Effective January 1, 2017.)

118335. (a) In order to carry out the purpose of this part, any authorized representative of the enforcement agency may do any of the following:

(1) Enter and inspect a facility for which a medical waste permit or registration has been issued, for which a medical waste permit or registration application has been filed, or that is subject to registration or permitting requirements pursuant to this part. Enter and inspect a vehicle for which a hazardous waste hauler registration has been issued, for which an application has been filed for a hazardous waste hauler registration, or that is subject to registration requirements pursuant to this part.

(2) Inspect and copy any records, reports, test results, or other information related to the requirements of this part or the regulations adopted pursuant to this part.

(b) The inspection shall be made with the consent of the owner or possessor of the facilities or, if consent is refused, with a warrant duly issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be made without consent or the issuance of a warrant.

(c) Any traffic officer, as defined in Section 625 of the Vehicle Code, and any peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, may enforce Chapter 6 (commencing with Section 118000) and this chapter, and for purposes of enforcing these chapters, traffic officers and these peace officers are authorized representatives of the department.

(Amended by Stats. 2014, Ch. 564, Sec. 81. (AB 333) Effective January 1, 2015.)

118340. (a) No person shall, transport, store, treat, dispose, or cause the treatment or disposal of medical waste in a manner not authorized by his or her permit or registration, this part, or the regulations adopted pursuant to this part.

(b) Any person who stores, treats, disposes, or causes the treatment or disposal of medical waste in violation of this part or the regulations adopted pursuant to this part is guilty of a public offense as follows:

(1) For a small quantity generator, a first offense is an infraction and is punishable by a fine of not more than one thousand dollars (\$1,000).

(2) For a person other than a small quantity generator, a first offense is a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000), or by up to one year in county jail, or by both the fine and imprisonment.

(c) A person who is convicted of a second or subsequent violation of subdivision (a) within three years of the prior conviction shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for one, two, or three years, or by a fine of not less than five thousand dollars (\$5,000), or more than twenty-five thousand dollars (\$25,000), or by both that fine and imprisonment. This section shall not apply unless any prior conviction is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. If the defendant is a corporation that operates medical facilities in more than one geographic location, this subdivision shall apply only if the offense involves an adjacent facility involved in the prior conviction.

(d) Any person who knowingly treats or disposes, or causes the treatment or disposal of, medical waste in violation of this part shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for one, two, or three years, or by a fine of not less than five thousand dollars (\$5,000), or more than twenty-five thousand dollars (\$25,000), or by both that fine and imprisonment.

(e) This section does not apply to a person transporting medical waste who is required to be a registered hazardous waste transporter. Those persons are subject to penalties for violations pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20.

(Amended by Stats. 2011, Ch. 15, Sec. 203. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

118345. (a) Any person who intentionally makes any false statement or representation in any application, label, tracking document, record, report, permit, registration, or other document filed, maintained, or used for purposes of compliance with this part that materially affects the health and safety of the public is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(b) Any person who fails to register or fails to obtain a medical waste permit in violation of this part, or otherwise violates any provision of this part, any order issued pursuant to Section 118330, or any regulation adopted pursuant to this part, is liable for a civil

penalty of not more than ten thousand dollars (\$10,000) for each violation of a separate provision of this part or, for continuing violations, for each day that the violation continues.

(Amended by Stats. 2015, Ch. 352, Sec. 9. (SB 225) Effective September 28, 2015.)