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HEALTH AND SAFETY CODE - HSC

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE [78000 - 81050] (*Division 45 added by Stats. 2022, Ch. 257, Sec. 2.*)

PART 2. HAZARDOUS SUBSTANCE ACCOUNT [78000 - 81050] (*Part 2 added by Stats. 2022, Ch. 257, Sec. 2.*)

CHAPTER 3. General Powers and Duties [78400 - 78620] (*Chapter 3 added by Stats. 2022, Ch. 257, Sec. 2.*)

ARTICLE 4. Investigatory Powers [78435 - 78470] (*Article 4 added by Stats. 2022, Ch. 257, Sec. 2.*)

78435. The department, a representative of the department, or any person designated by the director may take the actions specified in this article only if there is a reasonable basis to believe that there has been or may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this part the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this part.

(*Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.*)

78440. (a) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any person who has or may have information relevant to any of the following matters to furnish the information, upon reasonable notice:

(1) The identification, nature, and quantity of materials that have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or that have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(3) The ability of a person to pay for or to perform a response action, consistent with Section 104(e) of the federal act (42 U.S.C. Sec. 9604(e)).

(b) Any person required to furnish information pursuant to this article shall pay any costs of photocopying or transmitting the information.

(c) A person who is required to provide information pursuant to subdivision (a) shall, in accordance with Section 78455, allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for a response action.

(*Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.*)

78445. (a) The department may disclose information submitted pursuant to this article to authorized representatives, contractors, or other governmental agencies only in connection with the department's responsibilities pursuant to this part. The department shall establish procedures to ensure that information submitted pursuant to this article is used only in connection with these responsibilities and is not otherwise disseminated without the consent of the person who provided the information to the department.

(b) The department may also make available to the United States Environmental Protection Agency any information required by law to be furnished to that agency. The sharing of information between the department and that agency pursuant to this article does not constitute a waiver by the department or of any affected person of any privilege or confidentiality provided by law that pertains to the information.

(*Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.*)

78450. (a) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with Section 78455, enter, at reasonable times, any of the following properties:

- (1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.
- (2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.
- (3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.
- (4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this part.
- (5) Any residential place or property that, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(b) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with Section 78455, carry out any of the following activities:

- (1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (a) or from any location of any suspected hazardous substance.
- (2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (a).
- (3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.
- (4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.
- (5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.
- (6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5), inclusive.

(c) (1) If photographs are to be taken pursuant to paragraph (6) of subdivision (b), the department shall do all of the following:

- (A) Comply with all procedures established pursuant to Section 78490.
- (B) Notify the person whose facility is photographed prior to public disclosure of the photographs.
- (C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 78480, or facility security, would be revealed by the photograph.

(2) "Disclosure," as used in Section 78485, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(d) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this article shall make a reasonable effort to inform the owner or the owner's authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78455. If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this article, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an

immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78460. The department, and any person authorized by the department to enter upon any lands for the purpose of taking a response action pursuant to this part, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts that are necessary to carry out the response action.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78465. If a person intentionally or negligently fails to furnish and transmit to any officer or employee of the department, a representative of the director, or a person designated by the director any information required to be disclosed pursuant to this article, the department may issue an order directing compliance with the request. The order shall be issued only after notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)

78470. Any person who commits any of the following acts shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation, or for continuing violations, for each day during which that violation continues:

- (a) Intentionally or negligently makes any false statement or representation in any report or information furnished pursuant to this article.
- (b) Intentionally or negligently fails to provide any information requested pursuant to this article.
- (c) Refuses or prevents, without sufficient cause, any activity authorized pursuant to this article.

(Added by Stats. 2022, Ch. 257, Sec. 2. (AB 2293) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 4 of Stats. 2022, Ch. 257.)