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AB-3138 Hazardous materials: management: civil liability. (2017-2018)

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Assembly Bill No. 3138

CHAPTER 308

An act to amend Section 25540 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 07, 2018. Filed with Secretary of State September 07, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3138, Muratsuchi. Hazardous materials: management: civil liability.

Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. Existing law requires every county to apply to the secretary to be certified to implement the unified program and allows a city or local agency to implement the unified program as a unified program agency, or UPA.

Existing law requires a stationary source, as defined, with one or more processes that have certain substances present in more than a threshold quantity to prepare and submit a risk management plan, if the UPA makes a specified determination. Existing law requires the owner or operator of a stationary source submitting a risk management plan to submit the plan to the UPA after the plan is certified as complete, and requires the UPA to review the plan. Existing law imposes various requirements related to the submission and contents of a risk management plan. Existing law imposes civil or administrative liability on a person or stationary source that violates these provisions in an amount of not more than \$2,000 for each day in which the violation occurs, and in an amount of not more than \$25,000 for each day in which the violation occurs if the person or stationary source knowingly violates these provisions after reasonable notice of the violation.

This bill, for violations of those provisions that occur on or after January 1, 2019, would increase the lesser maximum amount of civil or administrative liability imposed on a person or stationary source for a violation to \$5,000 for each day in which the violation occurs, and would authorize the greater maximum civil or administrative liability to be imposed on a person or stationary source that knowingly violates those provisions regardless of whether the violation was committed after reasonable notice.

Existing law requires a local implementing agency, as defined, to develop an integrated alerting and notification system that includes specified components to be used to notify the community surrounding a petroleum refinery in the event of an incident at the refinery warranting the use of the automatic notification system. Existing law requires the owner or operator of a petroleum refinery or a petrochemical manufacturing facility, as provided, with one or more covered processes requiring a risk management plan, when contracting for the performance of certain work, to require that its contractors and any subcontractors use a skilled and trained workforce to perform all onsite work within an apprenticeable occupation in the building and construction trades. Existing law exempts from that requirement contracts awarded before January 1, 2014, and requires the owner or operator claiming that exemption to file with the administering agency a complete copy of the contract, as provided.

This bill would exempt a violation of those provisions that occurs on or after January 1, 2019, from the civil and administrative liability described above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) A person or stationary source that violates this article shall be civilly or administratively liable to the unified program agency in one of the following amounts, as applicable:

(1) For a violation that occurs on or before December 31, 2018, not more than two thousand dollars (\$2,000) for each day in which the violation occurs, unless paragraph (3) applies.

(2) For a violation that occurs on or after January 1, 2019, not more than five thousand dollars (\$5,000) for each day in which the violation occurs, unless paragraph (4) applies.

(3) For a violation committed knowingly after reasonable notice on or before December 31, 2018, not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(4) For a violation committed knowingly on or after January 1, 2019, not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(b) If a violation of this article results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials, in addition to the applicable amount require pursuant to subdivision (a).

(c) Subdivisions (a) and (b) shall not apply for a violation of Section 25536.6, 25536.7, or 25536.9 that occurs on or after January 1, 2019.

(d) When a unified program agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this article, the unified program agency shall utilize the administrative enforcement procedures, including the hearing procedures, specified in Sections 25404.1.1 and 25404.1.2.