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SB-1502 Nonvehicular air pollution. (2017-2018)

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Date Published: 06/28/2018 09:00 PM

Senate Bill No. 1502

CHAPTER 59

An act to amend Section 2782.6 of the Civil Code, to amend Section 42301.6 of, and to add Section 40006 to, the Health and Safety Code, and to amend Section 7856 of the Labor Code, relating to nonvehicular air pollution.

[Approved by Governor June 28, 2018. Filed with Secretary of State June 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1502, Committee on Environmental Quality. Nonvehicular air pollution.

(1) Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources.

This bill would authorize air districts to send electronically instead of by mail any required public notice. The bill would require air districts to send a public notice by mail to any person who has requested the notices to be sent by mail. The bill would require an air district governing board, if the air district opts to send public notices electronically, to adopt, and update as needed, procedures for a person to request public notices to be sent by mail and to update an electronic mail address.

This bill also would delete references to an obsolete definition and make other nonsubstantive changes.

(2) Existing law requires an air pollution control officer to prepare a public notice prior to approving an application for a permit to construct or modify a source that emits hazardous air emissions, as defined, and that is located within 1,000 feet of a school.

This bill would authorize air districts to send electronically instead of by mail that public notice. The bill would require air districts to send a public notice by mail to any person who has requested those public notices to be sent by mail. The bill would require an air district governing board, if the air district opts to send those public notices electronically, to adopt, and update as needed, procedures for a person to request public notices to be sent by mail and to update an electronic mail address.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. Section 2782.6 of the Civil Code is amended to read:

2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer or geologist or the agents, servants, independent contractors, subsidiaries, or employees of that engineer or geologist from liability as described in Section 2782 in providing hazardous materials identification, evaluation, preliminary assessment, design, remediation services,

or other services of the types described in Sections 25322 and 25323 of the Health and Safety Code or the federal National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are satisfied:

(1) The services in whole or in part address subterranean contamination or other concealed conditions caused by the hazardous materials.

(2) The promisor is responsible, or potentially responsible, for all or part of the contamination.

(b) The indemnification described in this section is valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and is not applicable to the first two hundred fifty thousand dollars (\$250,000) of liability or a greater amount as is agreed to by the parties.

(c) This section does not authorize contracts for indemnification, by promisors specified in paragraph (2) of subdivision (a), of any liability of a promisee arising from the gross negligence or willful misconduct of the promisee.

(d) "Hazardous materials," as used in this section, means any hazardous or toxic substance, material, or waste that is or becomes subject to regulation by any agency of the state, any municipality or political subdivision of the state, or the United States. "Hazardous materials" includes, but is not limited to, any material or substance that is any of the following:

(1) A hazardous substance, as defined in Section 25316 of the Health and Safety Code.

(2) Hazardous material, as defined in subdivision (j) of Section 25501 of the Health and Safety Code.

(3) A regulated substance, as defined in subdivision (j) of Section 25532 of the Health and Safety Code.

(4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.

(5) Extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code.

(6) Petroleum.

(7) Asbestos.

(8) Designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

(9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903).

(10) A hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601).

(11) A regulated substance, as defined by subsection (2) of Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

(e) Nothing in this section shall be construed to alter, modify, or otherwise affect the liability of the promisor or promisee, under an indemnity agreement meeting the criteria of this section, to third parties for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense.

(f) This section does not apply to public entities, as defined by Section 811.2 of the Government Code.

SEC. 2. Section 40006 is added to the Health and Safety Code, to read:

40006. (a) A district may send electronically instead of by mail a public notice required pursuant to this division.

(b) A district shall send a public notice by mail to any person who has requested the notices to be sent by mail.

(c) If a district does send a public notice electronically pursuant to subdivision (a), the district board shall adopt, and update as needed, procedures for a person to request public notices to be sent by mail and to update an electronic mail address.

SEC. 3. Section 42301.6 of the Health and Safety Code is amended to read:

42301.6. (a) Prior to approving an application for a permit to construct or modify a source that emits hazardous air emissions, and that source is located within 1,000 feet from the outer boundary of a schoolsite, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described. The notice may be prepared whether or not the material is or would be subject to subdivision (a) of Section 25536, if the air pollution control officer determines and the administering agency concurs that hazardous air emissions of the material may result from an

air release, as defined by Section 44303. The notice may be combined with any other notice on the project or permit that is required by law.

(b) The air pollution control officer shall, at the permit applicant's expense, distribute or mail the public notice to the parents or guardians of children enrolled in a school that is located within one-quarter mile of the proposed new or modified source and to each address within a radius of 1,000 feet of the source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final action on the application.

(1) Notwithstanding Section 49073 of the Education Code, or any other law, the information necessary to mail notices required by this section shall be made available by the school district to the air pollution control officer.

(2) Nothing in this subdivision precludes, at the discretion of the air pollution control officer and with the permission of the school, the distribution of the notices to the children to be given to their parents or guardians.

(c) Notwithstanding subdivision (b), an air pollution control officer may require the applicant to distribute the notice if the district had such a rule in effect prior to January 1, 1989.

(d) The requirements for public notice pursuant to subdivision (b) or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in these circumstances, failure of a person to receive the notice shall not affect the validity of a permit subsequently issued by the officer.

(e) This section shall not be deemed to limit an existing authority of a district.

(f) An applicant for a permit shall certify whether the proposed new or modified source is located within 1,000 feet of a schoolsite. Misrepresentation of this fact may result in the denial of a permit.

(g) The notice requirements of this section shall not apply if the air pollution control officer determines that the application to construct or modify a source will result in a reduction or equivalent amount of air contaminants, as defined in Section 39013, that are hazardous air emissions.

(h) As used in this section, "hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the state board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from a substance identified in subdivisions (a) to (f), inclusive, of Section 44321.

(i) (1) For the purposes of this section, a district may send a required notice electronically instead of by mail.

(2) A district shall send a notice by mail to any person who has requested the notices to be sent by mail.

(3) If a district does send a public notice electronically pursuant to paragraph (1), the district board shall adopt, and update as needed, procedures for a person to request notices to be sent by mail and to update an electronic mail address.

SEC. 4. Section 7856 of the Labor Code is amended to read:

7856. By March 31, 2014, the board shall adopt process safety management standards for refineries, chemical plants, and other manufacturing facilities, as specified in Codes 28 (Chemical and Allied Products) and 29 (Petroleum Refining and Related Industries) of the Manual of Standard Industrial Classification Codes, published by the United States Office of Management and Budget, 1987 Edition, that handle regulated substances as defined in subdivision (j) of Section 25532 of the Health and Safety Code and pose a significant likelihood of accident risk, as determined by the board. Alternately, upon making a finding that there is a significant likelihood of risk to employees at a facility not included in Codes 28 and 29 resulting from the presence of acutely hazardous materials or explosives as identified in Part 172 (commencing with Section 172.1) of Title 49 of the Code of Federal Regulations, the board may require that these facilities be subject to the jurisdiction of the standards provided for in this section. When adopting these standards, the board shall give priority to facilities and areas of facilities where the potential is greatest for preventing severe or catastrophic accidents because of the size or nature of the process or business. The standards adopted pursuant to this section shall require that injury prevention programs of employers subject to this part and implemented pursuant to Section 6401.7 include the requirements of this part.