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AB-480 Hazardous materials. (2021-2022)

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Assembly Bill No. 480

CHAPTER 743

An act to amend Section 25510 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 09, 2021. Filed with Secretary of State October 09, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 480, Carrillo. Hazardous materials.

(1) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program, known as the unified program. Existing law requires every county to apply to the secretary to be certified to implement the unified program, and authorizes a city or local agency that meets specified requirements to apply to the secretary to be certified to implement the unified program, as a certified unified program agency, or CUPA. Existing law authorizes a state or local agency that has a written agreement with a CUPA, and is approved by the secretary, to implement or enforce one or more of the unified program elements as a participating agency. Existing law defines "unified program agency," or UPA, to mean the CUPA or its participating agencies, as provided.

Existing law requires a business that handles a hazardous material (handler), or an employee, authorized representative, agent, or designee of the handler, to, upon discovery, immediately report any release or threatened release of a hazardous material, or an actual release of a hazardous substance, as defined, to the UPA and the Office of Emergency Services, as provided. Existing law requires the office to adopt regulations implementing this requirement on or before January 1, 2022.

This bill would revise that reporting requirement to require, for regulated facilities, a handler, or an employee, authorized representative, agent, or designee of the handler, to report a release or threatened release of a hazardous material, hazardous waste, or hazardous substance to the UPA and the office immediately upon discovery of the release or threatened release. The bill would require, for unregulated facilities, that reporting to be made upon the discovery of an actual release that results in an emergency response, as defined. The bill would require a handler, or an employee, authorized representative, agent, or their designee, to provide state, city, or county fire or public health or safety personnel and emergency response personnel with access to the handler's facility if there is a release or threatened release of a hazardous material, hazardous waste, or hazardous substance at the facility.

(2) Under existing law, whenever a release, spill, escape, or entry of waste occurs, as specified, and the Director of Public Health or the local health officer makes specified determinations as to that waste, the director is authorized to declare a health emergency and the local health officer is authorized to declare a local health emergency in the jurisdiction or any area thereof affected by the threat to the public health.

This bill would authorize, without a declaration of a local health emergency, a UPA, if a release, spill, escape, or entry, as described, of a hazardous material, hazardous waste, or hazardous substance occurs, which the UPA, in consultation with the local health officer, reasonably determines poses an imminent and substantial endangerment to public health due to specified

factors, to take specified actions to protect the health and safety of the public, including, among others, issuing an order to the responsible party to immediately suspend or discontinue the activity causing or contributing to the release, spill, escape, or entry of the hazardous material, hazardous waste, or hazardous substance. The bill would preclude the UPA from issuing an order if the release, spill, escape, or entry of a hazardous material, hazardous waste, or hazardous substance falls below a reporting threshold established by the office in any regulation. The bill would require that the UPA support its order with written findings, including evidence of local health officer consultation, and that the order be consistent with criteria developed by UPAs to determine whether an imminent and substantial endangerment to public health has occurred. The bill would provide a responsible party with an opportunity to appeal the order, as provided.

(3) Because the bill would make changes to provisions enforced by unified program agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

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

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

SECTION 1. (a) The Legislature finds and declares both of the following:

(1) There is no statutory definition of “imminent or substantial endangerment” in California law.

(2) The meaning of “imminent or substantial endangerment” has been developed by the courts through case law, which continues to evolve.

(b) It is the intent of the Legislature that, in making a determination or finding of an imminent and substantial endangerment pursuant to Section 25510 of the Health and Safety Code, a unified program agency act consistent with all federal and state statutes, regulations, and case law.

SEC. 2. Section 25510 of the Health and Safety Code is amended to read:

25510. (a) (1) Except as provided in subdivision (b), a hazardous material, hazardous waste, or hazardous substance release or threatened release shall be reported by the handler, or an employee, authorized representative, agent, or designee of the handler, to the UPA and to the Office of Emergency Services in accordance with the regulations adopted pursuant to this section, as follows:

(A) For facilities subject to this chapter, the reporting shall be made immediately upon the discovery of a release or threatened release.

(B) (i) For facilities not subject to this chapter, the reporting shall be made upon the discovery of an actual release that results in an emergency response.

(ii) For purposes of this subparagraph, “emergency response” means the activation of any public emergency response personnel, as defined in Section 25501, who are responsible for response, mitigation, or recovery activities in a hazardous material incident where public health, public safety, or the environment may be affected.

(2) Except as provided in subdivision (b), the handler, or an employee, authorized representative, agent, or designee of those entities, shall provide state, city, or county fire or public health or safety personnel and emergency response personnel with access to the handler’s facility if there is a release or threatened release of a hazardous material, hazardous waste, or hazardous substance.

(b) Subdivision (a) does not apply to a person engaged in the transportation of a hazardous material on a highway that is subject to Sections 2453 and 23112.5 of the Vehicle Code.

(c) On or before January 1, 2022, the Office of Emergency Services shall adopt regulations to implement this section. In developing these regulations, the Office of Emergency Services shall closely consult with representatives from regulated entities, appropriate trade associations, fire service organizations, federal, state, and local organizations, including UPAs, and other interested parties. The Office of Emergency Services shall define what releases and threatened releases are required to be reported pursuant to this section and consider the existing federal reporting requirements in determining a definition of reporting releases.

(d) A UPA shall maintain one or more nonemergency contact numbers for release reports that do not require immediate agency response. The UPA shall promptly communicate changes to this information to regulated facilities, to the secretary, and to the Office of Emergency Services.

(e) (1) Notwithstanding any other law, and except as provided in paragraph (2), if a release, spill, escape, or entry, as described in paragraph (2) of subdivision (b) of Section 101075, of a hazardous material, hazardous waste, as defined in Section 101075, or hazardous substance, as defined in Section 25316, occurs and a UPA, in consultation with the local health officer, reasonably determines that the release, spill, escape, or entry poses an imminent and substantial endangerment to public health due to factors, including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the air or environment, the UPA may take either or both of the following actions to protect the health and safety of the public:

(A) Issue an order to the responsible party to immediately suspend or discontinue the activity causing or contributing to the release, spill, escape, or entry of the hazardous material, hazardous waste, or hazardous substance. The order shall remain in effect until the UPA determines that the imminent and substantial endangerment to public health has been abated or the order is overturned pursuant to the appeal procedures described in subdivision (g).

(B) Coordinate with other appropriate regulatory agencies that may take any other action necessary to protect the public health, including, but not limited to, environmental investigations and temporary relief to, or relocation of, affected individuals.

(2) (A) The UPA shall not issue an order pursuant to paragraph (1) if the release, spill, escape, or entry of the hazardous material, hazardous waste, or hazardous substance falls below a reporting threshold established by the Office of Emergency Services in any regulation.

(B) If the Office of Emergency Services has not established a reporting threshold in any regulation, the UPA shall be guided by Section 5192, and the appendices to that section, of Title 8 of the California Code of Regulations.

(f) An order issued by the UPA pursuant to subparagraph (A) of paragraph (1) of subdivision (e) shall be supported by written findings, including evidence of local health officer consultation, and be consistent with criteria developed by UPAs to determine whether an imminent and substantial endangerment to public health has occurred.

(g) (1) Any order issued by a UPA pursuant to subparagraph (A) of paragraph (1) of subdivision (e) shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. The order shall state whether the hearing procedure specified in subparagraph (B) of paragraph (3) may be requested by the person receiving the order.

(2) A person served with an order issued by a UPA pursuant to subparagraph (A) of paragraph (1) of subdivision (e) who has been unable to resolve any violation with the UPA, may, within 15 days after service of the order, request a hearing pursuant to this subdivision by filing with the UPA a notice of defense. The notice shall be filed with the UPA office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this paragraph if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this paragraph, the order shall become final.

(3) Except as provided in clause (ii) of subparagraph (B), a person requesting a hearing on an order issued pursuant to subparagraph (A) of paragraph (1) of subdivision (e) may select the hearing officer specified in either subparagraph (A) or (B) in the notice of defense filed with the UPA pursuant to this subdivision. If a notice of defense is filed, but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, 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 UPA shall have all the authority granted to an agency by those provisions.

(B) (i) A hearing officer designated by the UPA, 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 UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this clause, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(ii) A UPA, or a person requesting a hearing on an order issued by a UPA, may select the hearing process specified in this subparagraph in a notice of defense filed pursuant to this subdivision only if the UPA has, as of the date the order is issued pursuant to subparagraph (A) of paragraph (1) of subdivision (e), selected a designated hearing officer and established a program for conducting a hearing in accordance with this subparagraph.

(4) The hearing decision issued pursuant to subparagraph (B) of paragraph (3) shall be effective and final upon issuance by the UPA. 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.

(5) The order issued pursuant to subparagraph (A) of paragraph (1) of subdivision (e), or a provision of the order, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with the order, or a provision of the order, may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of the order or that provision of the order pending a hearing decision. However, if the UPA 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 shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(6) A decision issued pursuant to subparagraph (B) of paragraph (3) 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 UPA 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 any action required pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.