
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2059
Author: Carrillo
Version: 6/13/2022
Urgency: No
Consultant: Gabrielle Meindl

Hearing Date: 6/22/2022
Fiscal: Yes

SUBJECT: Hazardous materials business and area plans: consumer products: recordkeeping

DIGEST: Requires specified suppliers of hazardous materials to maintain electronic records of sales and provisions of hazardous materials of specified quantities to a business in the state for at least 5 years and immediately provide such records to a certified unified program agency (CUPA) upon request. Narrows the definition of retail establishment for purposes of hazardous material reporting and limits current exemptions of consumer products as specified from inclusion in a business plan for emergency response to a release or threatened release (Business Plan).

ANALYSIS:

Existing law:

- 1) Enacts the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 which was created to help communities plan for chemical emergencies. EPCRA requires industry to report on the storage, use, and release of hazardous substances to federal, state, and local governments. It also requires state and local governments, and Indian tribes to use this information to prepare their community for potential risks. (42 United States Code § 11001 et seq.)
- 2) Defines "consumer product" as a commodity used for personal, family, or household purposes, or is present in the same form, concentration, and quantity as a product prepackaged for distribution to and use by the general public. (Health & Safety Code (HSC) § 25501(j))
- 3) Requires a business to establish and implement a Business Plan of a hazardous material if the business meets specified criteria. (HSC § 25507(a))
- 4) Sets, as a requirement for the Business Plan, the reportable quantity threshold for hazardous materials present at any one time during the reporting year at 55

gallons for a liquid, 200 cubic feet for a gas, and 500 pounds for a solid. (HSC § 25507(a)(1)(A))

- 5) Exempts from the Business Plan a hazardous material contained solely in a consumer product, handled at, and found in, a retail establishment, and intended for sale to, and use by, the public. Excludes from the exemption a consumer product handled at a manufacturing facility, warehouse, or distribution center of that consumer product. (HSC § 25507(b)(5))

This bill:

- 1) Defines consumer product as a commodity that is used for personal, family, or household purposes, or present in the same form, concentration, and quantity as a product prepackaged for distribution to a consumer for these purposes; and specifically excludes products not used for such purposes from the definition.
- 2) Specifies that retail establishment means a business that sells consumer products prepackaged for direct distribution to, and intended for use by, the end user.
- 3) Defines a supplier as a manufacturer, distributor, wholesaler, or retailer in the state that sells or provides hazardous materials to a business in the state.
- 4) Specifies that a hazardous material is only exempt from inclusion in a Business Plan if that hazardous material meets the definition of a consumer product and is handled at, and found in, a retail establishment and intended for direct sale to the end user.
- 5) Specifies that the exemption for a hazardous material from the Business Plan does not apply to a consumer product handled at a manufacturing facility, warehouse, or distribution center where there are no direct sales to consumers.
- 6) Excludes from the exemption for a hazardous material from the Business Plan any consumer product sold at a retail establishment with specified National Fire Protection Association or Hazardous Materials Identification System ratings and stored in specified quantities.
- 7) Excludes from the exemption for a hazardous material from the Business Plan a consumer product stored at a retail establishment if a CUPA determines it to be stored at or above the reportable threshold as defined and to pose a significant potential hazard.

- 8) Requires specified suppliers of hazardous materials to maintain electronic records for the sale or provision of those hazardous materials to a business in the state within a 30-day period in quantities equivalent to, or exceeding, 165 gallons of a liquid, 600 cubic feet of a gas, or 1,500 pounds of a solid.
- 9) Requires suppliers to maintain records containing specified information about the sale or provision of hazardous materials for at least five years and make them immediately available to a CUPA upon request.
- 10) Requires handlers of hazardous materials to notify the CUPA, if any hazardous materials are to be removed from the storage or handling location and transferred to another location, and include specified information about the transfer, if so directed by the CUPA. Provides an exemption to this provision for household hazardous waste facilities.
- 11) Makes technical and conforming changes.

Background

- 1) *Certified Unified Program Agencies (CUPAs)*. CUPAs are local agencies certified by the Secretary of CalEPA to implement and enforce specific local and state hazardous waste and hazardous materials regulatory programs. Currently, there are 81 CUPAs in California.
- 2) *Hazardous Materials Business Plan (business plan) Program*. The business plan program was enacted in 1986 to prevent or minimize damage to public health and safety and the environment from a release or threatened release of hazardous materials. An individual business plan satisfies federally required community right-to-know laws, which help increase the public's knowledge and access to information on chemicals at individual facilities, their uses and releases into the environment. Business plans also enables first responders to make informed decisions in the event of an emergency. The business plan program requires an owner or operator of a specific business that handles or stores hazardous materials or waste at or above specified amounts to maintain a business plan.
- 3) *The California Environmental Reporting System (CERS)*. CERS is a statewide online system that supports the electronic exchange of information among businesses, CUPAs, and the United States Environmental Protection Agency (US EPA). This information includes facility data regarding hazardous material regulatory activities (such as the business plans of individual businesses),

hazardous waste generation and inspection data, and compliance and enforcement actions. AB 2059 expands electronic reporting requirements to include the sale or provision of specified hazardous materials by a supplier, and requires suppliers to maintain these records for at least five years, allowing CUPAs to better understand the hazardous materials and waste present in their jurisdictions and better assess compliance of businesses. The bill also gives CUPAs the authority to request limited information from handlers on the transfer of any hazardous material from one location to another.

- 4) *Reigning in the retail exemption.* The current exemption from reporting of certain quantity thresholds of hazardous materials was meant to apply to retail locations. However, some distribution facilities that move consumer products in bulk may be using this exemption. AB 2059 seeks to address the lack of clarity with the definition of a consumer product to specify it must be sold to the end user. This way, a warehouse distributing consumer products in bulk to other businesses would be aware that they are not eligible to claim an exemption for the hazardous material simply based on the prepackaging or intended final sale to the general public. The bill further authorizes CUPAs to determine, at their discretion, that a consumer product stored at or above specified levels during the reporting year may be deemed a hazardous material and therefore qualifies for reporting requirements by a retail establishment.

Comments

- 1) *Purpose of Bill.* According to the author, “This bill will give our first responders and Certified Unified Program Agencies additional tools to identify caches of hazardous materials that have not been properly reported, by requiring sellers and shippers to make records available as to where those potentially dangerous materials are being shipped and moved from. Additionally, it will get rid of a loophole that allows individuals to store large quantities of flammable materials if it is classified as available for the general public to purchase.”

Related/Prior Legislation

AB 1429 (Chen, Chapter 66, Statutes of 2019) authorizes a business that handles hazardous materials to submit their Business Plan to the CERS once every three years, instead of annually, if that business is not required to submit Tier II chemical inventory information under the federal EPCRA of 1986.

AB 1500 (Carrillo, 2019) would have authorized a CUPA or a local health officer to temporarily suspend a facility permit, including the shutdown of a facility, if conditions at the facility pose an imminent or substantial endangerment to public health and safety. Clarifies the authority of a CUPA, subject to its jurisdiction, to fine or penalize a facility that is operating without a permit.

AB 1646 (Muratsuchi, Chapter 588, Statutes of 2017) requires an implementing agency to, in coordination with local emergency management agencies, unified program agencies, local first response agencies, and the public, develop an integrated alerting and notification system to be used to notify the community surrounding a petroleum refinery in the event of an incident at the refinery.

AB 1689 (ESTM Committee, Chapter 159, Statutes of 2017) adds combustible metals and metal alloys to the list of materials a business must include in its hazardous materials business plan.

SOURCE: California Association of Environmental Health Administrators

SUPPORT:

California Association of Environmental Health Administrators (CAEHA)
California Professional Firefighters

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: The sponsor of the bill, the California Association of Environmental Health Administrators, writes, "This measure will strengthen local authority to identify unpermitted hazardous materials handlers and provide enhanced transparency in the movement and storage of hazardous materials throughout the state. These measures will enhance public safety, protect our first responders and support enforcement of hazardous materials inventory disclosures and community-right-to-know laws without establishing a whole new routine reporting obligation on businesses."

"The United Firefighters of Los Angeles City Local 112 write in support, "This issue is especially important to our LAFD Inspectors here in the City of Los Angeles, where we serve as an international hub for commerce and the handling of hazardous materials. Just two years ago more than a dozen LAFD Firefighters were sent to the Grossman Burn Center after an explosion [...] caused by illegally stored and undisclosed hazardous materials. It is our hope that statewide

legislation will help to address these issues and prevent future catastrophic accidents from taking place that put our firefighters and the public in danger."

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