AMENDED IN SENATE APRIL 24, 2006

AMENDED IN SENATE APRIL 5, 2006

SENATE BILL No. 1478

Introduced by Senator Speier
(Principal coauthor: Assembly Member Ruskin)
(Coauthors: Senators Romero and Scott)
(Coauthors: Assembly Members Chan, *Evans*, Laird, Lieber, and Pavley)

February 23, 2006

An act to repeal Section 25507.3 of, and to add Article 4 (commencing with Section 25546) to Chapter 6.95 of Division 20 to, the Health and Safety Code, relating to toxic chemicals.

LEGISLATIVE COUNSEL'S DIGEST

SB 1478, as amended, Speier. Toxic chemicals: release form.

Existing law authorizes the California Environmental Protection Agency (Cal-EPA) to request any business to submit the information required to be submitted in the toxic chemical release form pursuant to the federal Emergency Planning and Community Right to Know Act of 1986 (EPCRA). Existing law prohibits Cal-EPA from requiring the form from certain businesses or in an amount lower than the applicable threshold amount specified in EPCRA.

This bill would repeal those provisions and would enact the "California Community Right To Know Act of 2006." The act would require the owner or operator of a covered facility, as defined, to complete and submit to Cal-EPA a toxic chemical release form for each toxic chemical that is manufactured, processed, or otherwise used in quantities exceeding the threshold quantity during the preceding calendar year at the facility.

The bill would define the term “threshold quantity” for purposes of the act as meaning the amount of a toxic chemical specified in the regulations adopted pursuant to EPCRA, as those regulations read on January 1, 2006, or as a lower amount that Cal-EPA would be authorized to establish. The bill would also define the term “toxic chemical” as meaning a substance listed pursuant to those regulations as those regulations read on January 1, 2006, or a chemical that Cal-EPA would be authorized to additionally list as a toxic chemical, pursuant to a specified procedure.

The bill would specify the categories of facilities that are covered facilities subject to the act and would authorize Cal-EPA additionally to include, as a covered facility for purposes of the act, any particular facility that manufactures, processes, or otherwise uses a toxic chemical for which Cal-EPA makes a specified determination.

The bill would require Cal-EPA to adopt, by June 1, 2007, a toxic chemical release form that would be required to be submitted annually by the owner or operator of a covered facility.

The bill would allow the information provided in a form submitted pursuant to the act to be available to any other state or local agency or member of the public and would require Cal-EPA to establish and maintain a state toxic chemical inventory in a computer database that includes the information submitted pursuant to the act. The bill would provide a procedure with regard to when an owner or operator believes that any information required be reported, submitted, or otherwise provided to Cal-EPA pursuant to the act involves the release of a trade secret.

The bill would authorize Cal-EPA to adopt a schedule of fees to be collected from each owner or operator of a covered facility who is required to submit a form, and would require the fees to be set in an amount sufficient only to pay the costs incurred by Cal-EPA in carrying out the act. The bill would authorize Cal-EPA to expend the fees, upon appropriation by the Legislature, to implement the act.

The bill would require Cal-EPA, when implementing the act, to comply with the requirements of EPCRA with regard to ensuring that any requirement imposed pursuant to the act is no less stringent than, and is not otherwise preempted by, any requirement imposed pursuant to EPCRA. The bill would require Cal-EPA to adopt regulations to implement the act, and would allow those regulations to impose requirements upon a facility manufacturing or processing a toxic

chemical that are in addition to, but no less stringent than, a requirement imposed pursuant to EPCRA.

The bill would make the owner or operator of a covered facility liable for a civil penalty of not less than $500 or more than $5,000 for violating any of the applicable requirements of the act or making any false statement, representation, or certification in any form, record, report, or other document submitted or required to be maintained pursuant to the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25507.3 of the Health and Safety Code is repealed.

SEC. 2. Article 4 (commencing with Section 25546) is added to Chapter 6.95 of Division 20 of the Health and Safety Code, to read:

Article 4. California Community Right to Know Act of 2006

25546. The Legislature finds and declares all of the following:

(a) The federal Emergency Planning and Community Right to Know Act of 1986 (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code), has dramatically increased the public's knowledge of chemical emissions and disposal within the United States through its establishment of the Toxics Release Inventory (TRI).

(b) The TRI does not impose mandatory pollution controls on industry, but instead requires that certain industries report estimated levels of pollution and disposal of a list of 650 chemical compounds.

(c) The TRI reports detail waste disposal and chemical emissions for facilities that handle at least 10,000 pounds of certain listed chemicals per year, manufacture at least 25,000 pounds of certain listed chemicals per year, or discharge or dispose of at least 500 pounds of certain listed chemicals per year.

(d) The TRI is the only source of chemical-specific information on industrial pollution at the individual facility level and has been widely credited with spurring voluntary pollution reductions nationwide.

(e) On October 4, 2005, as published in the Federal Register, the United States Environmental Protection Agency published proposed regulations and announced its intent to initiate a rulemaking that would increase the reporting threshold and decrease the reporting frequency of all chemicals in the TRI (70 FR 57822 and 70 FR 57871).

(f) EPCRA preserves the right of states to adopt chemical reporting requirements that are more stringent than comparable federal requirements.

(g) This article's purpose is to ensure that future federal actions to weaken federal chemical reporting rules do not negatively impact Californians' access to information regarding their exposure to potentially harmful chemicals in their environment.

25546.1. This article shall be known, and may be cited as, the "California Community Right to Know Act of 2006."

25546.2. For purposes of this article, the following definitions shall apply:

(a) "Agency" means the California Environmental Protection Agency or the state agency, department, board, or office that is delegated the authority to implement this article pursuant to subdivision (c) of Section 25546.3.

(b) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

(c) "Covered facility" means a facility that meets the qualifications specified in Section 25546.4 or is designated by the agency pursuant to Section 25546.5.

(d) "Distribution in commerce" means the sale or offering for sale, in this state, of a toxic chemical or an article containing a toxic chemical.

(e) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or under common control with, that person.

(f) "Federal act" means the federal Emergency Planning and Community Right to Know Act of 1986 (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code).

(g) "Federal regulations" means the regulations adopted by the United States Environmental Protection Agency pursuant to the federal act, that are found in Subpart B (commencing with Section 372.22) of, and Subpart D (commencing with Section 372.65) of, Part 372 of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006 and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in Section 25546.12.

(h) "Manufacture" means to produce, prepare, import into the state, or compound a toxic chemical.

(i) "Operator" means a person responsible for the overall operation of a facility.

(j) "Owner" means a person who owns a facility or part of a facility.

(k) "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency of the federal government to the extent permitted by law.

(*l*) "Process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce, in one of the following:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing that chemical.

(2) As part of an article containing the toxic chemical.

(m) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles, of any toxic chemical.

(n) "SIC Code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses pursuant to the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(o) "Secretary" means the Secretary for Environmental Protection.

(p) "Threshold quantity" means either of the following:

(1) The amount of a toxic chemical specified in Sections 372.25, 372.27, and 372.28 of Title 40 of the Code of Federal Regulations as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in Section 25546.12.

(2) The amount established by the agency pursuant to Section 25546.7.

(q) "Toxic chemical" means either of the following:

(1) A substance listed pursuant to Subpart D (commencing with Section 372.65) of Part 372 of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in Section 25526.12.

(2) A chemical listed by the agency pursuant to Section 25546.6.

(r) "Toxic chemical release form" or "form" means the toxic chemical release form adopted by the agency pursuant to Section 25546.8.

25546.3. (a) The owner or operator of a covered facility ~~subject~~ shall complete a toxic chemical release form adopted pursuant to Section 25546.8 for each toxic chemical that was manufactured, processed, or otherwise used in quantities exceeding the threshold quantity during the preceding calendar year at the facility.

(b) On or before July 1, 2007, and on or before each July 1 thereafter, the owner or operator of a covered facility shall submit to the agency the form completed pursuant to subdivision (a), including any fee set pursuant to Section 25546.11.

(c) The secretary may designate another state agency, department, board, or office ~~department~~ to implement this article.

25546.4. (a) For purposes of this article, a facility is a covered facility if the facility meets both of the following requirements:

(1) The facility has 10 or more full-time employees and is engaged in an activity found in SIC Codes 20 to 39, inclusive, pursuant to the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(2) The facility manufactures, processes, or otherwise uses a toxic chemical listed in excess of the threshold quantity for that toxic chemical during the calendar year for which a form is required under this article.

(b) The agency may include activities described by SIC Codes, in addition to those specified in paragraph (1) of subdivision (b), but only to the extent that the additional SIC Codes are relevant to the purposes of this article.

25546.5. In addition to the facilities subject to Section 25546.4, the agency may additionally include, as a covered facility for purposes of this article, any particular facility that manufactures, processes, or otherwise uses a toxic chemical for which the agency determines that this action is warranted based on the toxicity of the toxic chemical, proximity of that facility to other facilities that release the toxic chemical or to population centers, the history of releases of that toxic chemical at the facility, or any other factor that the agency deems appropriate.

25546.6. (a) In addition to a substance listed pursuant to paragraph (1) of subdivision (q) of Section 25546.2, the agency may list other chemicals as a toxic chemical for purposes of this article if the agency determines there is sufficient evidence to establish any one of the following:

(1) The chemical is known to cause, or can reasonably be anticipated to cause, significant adverse acute human health effects at concentration levels that ~~is~~ *are* reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(2) The chemical is known to cause or can reasonably be anticipated to cause, in humans, any of the following:

(A) Cancer or teratogenic effects.

(B) Serious or irreversible reproductive dysfunctions, neurological disorders, or heritable genetic mutations.

(C) Chronic health effects, other than those specified in subparagraph (A) or (B).

(3) The chemical is known to cause, or can reasonably be anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness to require reporting under this article.

(b) Of the total amount of toxic chemicals listed pursuant to this section, the agency may list a chemical pursuant to paragraph (3) of subdivision (a) only if those chemicals do not constitute in the aggregate more than 25 percent of the total number of toxic chemicals listed pursuant to this section.

(c) The agency shall make any determination pursuant to this section based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the agency.

(d) The agency may delete a chemical listed pursuant to this section if the agency determines the toxic chemical does not meet the criteria specified in subdivision (a).

(e) Any revision to the list of toxic chemicals made by the agency on or after January 1, and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision to the list of toxic chemicals made by the agency on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following the next calendar year.

(f) A person may petition the agency to list a toxic chemical pursuant to this section or to delete a toxic chemical from that list on the basis of the criteria specified in paragraph (1) or (2) of subdivision (a). Within 180 days after receiving a petition, the agency shall take one of the following actions:

(1) Adopt a regulation to add or delete the chemical to the list, in accordance with this section.

(2) Issue a written determination explaining why the petition is denied.

25546.7. The agency may establish a threshold quantity for a toxic chemical that is less than a threshold quantity established pursuant to the federal regulations. In establishing a lower

threshold quantity, the agency shall ensure that this revised threshold quantity will provide for the reporting of a substantial majority of total releases of the toxic chemical at all covered facilities subject to this article. The agency may establish a lower threshold quantity under this section for a class of toxic chemicals or a category of facilities.

25546.8. (a) On or before June 1, 2007, the agency shall adopt a toxic chemical release form that shall be submitted annually by the owner or operator of a covered facility. If the agency does not adopt a form on or before June 1, 2007, the owner or operator of a covered facility shall provide the information required pursuant to subdivision (b) by a letter postmarked on or before the date on which the form is due.

(b) The form adopted by the agency pursuant to this section shall include all of the elements required by Section 372.85 of Subpart E of Part 372 of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, including, but not limited to, all of the following:

(1) The name and location of, and principal business activities at, the facility.

(2) An appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy of the information provided in the form.

(3) The submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(A) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category of use of the chemical.

(B) An estimate of the maximum amounts, in ranges, of the toxic chemical present at the facility at any time during the preceding calendar year.

(C) For each hazardous or solid waste, the waste treatment, or disposal methods employed, and an estimate of the treatment efficiency typically achieved by those methods for that waste.

(D) The annual quantity of the toxic chemical entering each environmental medium.

(c) The form shall allow the owner or operator, when providing the information required under this section, to use readily available data, including monitoring data, collected pursuant to other provisions of law, or, if those data are not readily available, reasonable estimates of the amounts involved. The form shall not require the owner or operator to conduct any monitoring or take any measurements of the quantities, concentration, or frequency, of any toxic chemical released into the environment that is not otherwise required to be conducted under another provision of state or federal law or regulation.

(d) The agency shall require that the data in the form be expressed in common units to assure consistency.

25546.9. (a) Except as provided in Section 25546.10, the agency shall make the information provided in a form submitted pursuant to this article available to any other state or local agency or member of the public, including, but not limited to, a resident of a community surrounding or adjacent to, a covered facility. The agency shall make the information in the form available to inform persons about releases of toxic chemicals into the environment, to assist state and local agencies, researchers, and other persons in the conduct of research and data gathering, to aid in the development of appropriate regulations, guidelines, and standards, and for any other similar purpose.

(b) The agency shall establish and maintain a state toxic chemical inventory in a computer database that includes the information submitted pursuant to this article. The agency shall make the database accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

25546.10. (a) (1) If an owner or operator believes that any information required be reported, submitted, or otherwise provided to the agency pursuant to this article involves the release of a trade secret, the owner or operator shall provide the information to the agency and shall notify the agency in writing of that belief. Upon receipt of a claim of trade secret, the agency shall review the claim and shall segregate properly substantiated trade secret information from information that shall be made available to the public upon request in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) As used in this section, "trade secret" has the same meaning as defined in subdivision (d) of Section 6254.7 of the Government Code and in Section 1060 of the Evidence Code.

(b) Except as otherwise specified in this section, the agency may not disclose any properly substantiated trade secret that is so designated by the owner or operator.

(c) The agency may disclose a trade secret received by the agency pursuant to this article to an authorized officer or employee of another governmental agency only in connection with the official duties of that officer or employee pursuant to any law for the protection of health and safety.

(d) An officer or employee or former officer or employee of the agency or any other government agency who, because of that employment or official position, has possession~~, of~~ *of,* or access to, information designated as a trade secret pursuant to this section shall not knowingly and willfully disclose the information in any manner to a person not authorized to receive the information pursuant to this section.

(e) Any information prohibited from disclosure pursuant to any federal statute or regulation shall not be disclosed.

(f) This section does not authorize an owner or operator to refuse to disclose to the agency any information required pursuant to this article.

(g) (1) If the agency receives a request for the release of information to the public that includes information that the owner or operator has notified the agency is a trade secret pursuant to subdivision (a), the agency shall notify the owner or operator source in writing of the request by certified mail, return receipt requested. The owner or operator shall provide the agency with any materials or information that supplements the information submitted pursuant to subdivision (a) and substantiates the claim of a trade secret within 30 days of the date that the owner or operator receives that notice from the agency. The agency shall review the owner's or operator's claim of trade secret and shall determine whether the claim is properly substantiated.

(2) The agency shall inform the owner or operator in writing, by certified mail, return receipt requested, of any determination by the agency that some, or all, of a claim of trade secret has not been substantiated. Not earlier than 30 days after the receipt by an owner or operator of that notice of determination, the agency

shall release the information that is not determined to be a trade secret to the public, unless, prior to the expiration of the 30-day period, the owner or operator files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) or for an injunction prohibiting disclosure of the information to the public, and promptly notifies the agency of that action.

25546.11. The agency shall adopt a schedule of fees to be collected from each owner or operator of a covered facility required to submit a form pursuant to this article. The fees shall be set in an amount sufficient only to pay the costs incurred by the agency in carrying out this article. The agency may expend the fees, upon appropriation by the Legislature, to implement this article.

25546.12. (a) Notwithstanding any other provision of this article, the agency shall, when implementing this article, comply with the requirements of the federal act with regard to ensuring that any requirement imposed pursuant to this article is no less stringent than, and is not otherwise preempted by, any requirement imposed pursuant to the federal act.

(b) The agency shall adopt regulations to implement this article. The regulations may impose requirements upon a facility manufacturing or processing a toxic chemical that are in addition to, but no less stringent than, a requirement imposed pursuant to the federal act.

25546.13. (a) The owner or operator of a covered facility shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each day of violation for any of the following violations:

(1) Violation of any of the applicable requirements of this article.

(2) Making any false statement, representation, or certification in any form, report, or other document submitted or required to be maintained pursuant to this article.

(b) The agency may waive the imposition of a civil penalty pursuant to this section if the agency determines the violation was the result of circumstances beyond the reasonable control of the owner or operator.

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