
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 480
Author: Carrillo and Muratsuchi
Version: 6/16/2021 **Hearing Date:** 6/28/2021
Urgency: No **Fiscal:** Yes
Consultant: Gabrielle Meindl

SUBJECT: Hazardous materials

DIGEST: Authorizes a Unified Program Agency (UPA), in the event of a hazardous waste spill or release that the UPA reasonably determines poses an imminent and substantial endangerment to public health, to take actions to protect the health and safety of the public.

ANALYSIS:

Existing law:

- 1) Authorizes the Department of Toxic Substances Control (DTSC) to temporarily suspend any permit, registration, or certificate issued by DTSC prior to any hearing if DTSC determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. (Health and Safety Code (HSC) § 25186.2)
- 2) Defines "Certified Unified Program Agency" or "CUPA" as the agency certified by the Secretary of the California Environmental Protection Agency (CalEPA) to implement the unified program within a jurisdiction. (HSC § 25404 (a)(1)(A))
- 3) Defines "Unified Program Agency" or "UPA" as the CUPA to implement or enforce a particular Unified Program element. The UPAs have the responsibility and authority to implement and enforce the unified program requirements and the regulations adopted to implement those. (HSC § 25404 (a)(1)(C))
- 4) Defines a "unified program facility permit" as a permit issued pursuant to the unified program. (HSC § 25404 (a)(6))
- 5) Requires the Secretary of CalEPA to adopt implementing regulations and implement a unified hazardous waste and hazardous materials management

regulatory program, which shall be known as the unified program. (HSC § 25404 (b))

- 6) Authorizes the Director of Public Health (Director) to declare a health emergency or local health officer to declare a local health emergency in the jurisdiction or any area thereof affected by the threat to the public health, if a release, spill, escape, or entry of waste occurs and the Director or the local health officer reasonably determines that the waste is a hazardous waste or medical waste, or that it may become a hazardous waste or medical waste because of a combination or reaction with other substances or materials, and the Director or local health officer reasonably determines that the release or escape is an immediate threat to the public health, or whenever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent. (HSC § 101080)
- 7) Requires each County Board of Supervisors to appoint a county health officer. (HSC §101000)

This bill:

- 1) Requires the reporting by a handler of a hazardous material, hazardous waste, or hazardous substance release or threatened release to the CUPA as follows:
 - a) For facilities subject to the Hazardous Materials Release Response Plans and Inventory statute, upon discovery of any release or threatened release, the reporting shall be made immediately upon discovery; and,
 - b) For facilities not subject to the Hazardous Materials Release Response Plans and Inventory statute, upon the discovery of an actual release that results in an emergency response. Defines "emergency response."
- 2) Requires the handler, an employee, authorized representative, agent, or designee of those entities, to provide access to the handler's facility if there is a release or threatened release of hazardous material, hazardous waste, or a hazardous substance.
- 3) Authorizes a CUPA, without a declaration of a local health emergency, if a release of hazardous material, hazardous waste, or a hazardous substance occurs and the CUPA, in consultation with the local health officer, reasonably determines that the release poses an imminent and substantial endangerment to public health, to take 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.
 - b) Coordinate with other appropriate regulatory agencies that may take any other action necessary to protect the public health.
- 4) Specifies that an action taken by the CUPA under this section shall be supported by written findings.
 - 5) Prohibits the CUPA from issuing such 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 of Emergency Services (OES) in any regulation. Specifies that if OES has not established a reporting threshold in any regulation, the CUPA be guided by the Department of Industrial Relations' Hazardous Waste Operations and Emergency Response regulations.
 - 6) Requires the facility or responsible party to be provided an opportunity to appeal an order pursuant to this section and establishes hearing processes for an appeal.
 - 7) Declares Legislative intent that, in making a determination or finding of an imminent or substantial endangerment pursuant to these provisions, a CUPA act consistent with all federal and state statutes, regulations, and case law.

Background

- 1) *Certified Unified Program Agencies (CUPAs)*. The Secretary of the CalEPA oversees the "unified hazardous waste and hazardous materials management" regulatory program (Unified Program). Currently, there are 81 CUPAs in California. The Unified Program coordinates the following six existing programs:
 - Hazardous Materials Release Response Plans and Inventories (Business Plans);
 - California Accidental Release Prevention (CalARP) Program;
 - Underground Storage Tank Program (USTP);
 - Aboveground Petroleum Storage Act (APSA);
 - Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; and,

- California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

State agencies involved in the implementation of the Unified Program are responsible for setting program element standards, working with CalEPA to ensure program consistency, and providing technical assistance to the CUPAs. The following state agencies are involved with the Unified Program:

- CalEPA: The Secretary of the CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying UPAs. CUPAs are accountable for carrying out responsibilities previously handled by approximately 1,300 different state and local agencies.
 - OES: The OES evaluates and provides technical assistance for the Hazardous Material Release Response Plan (Business Plan) and the Area Plans for Hazardous Materials Emergencies.
 - Office of the State Fire Marshal (Office): The Office evaluates and provides technical assistance for the APSA Program.
 - State Water Resources Control Board (State Water Board): The State Water Board evaluates and provides technical assistance for the USTP under the USTA.
 - DTSC: DTSC evaluates and provides technical assistance for the Hazardous Waste Generator Program, including Onsite Treatment (Tiered Permitting).
- 2) *Roles of CUPAs.* CUPAs regulate thousands of businesses and respond to a variety of urgent and emergency situations dealing with hazardous substances and chemicals that pose an immediate risk to human health and safety. UPAs have the authority to issue an administrative enforcement order to require businesses to comply with regulations, make corrective actions and quarantine waste, among other actions. However, UPAs do not have the enforcement authority to require businesses to immediately discontinue or close facilities or portions of facilities when that business operates outside the regulatory framework by failing to obtain, renew or pay for their unified program permits and even if they know the facility poses an imminent danger to public health and safety.

Current law only authorizes local health officers (LHOs) to take *any* preventive measure that may be necessary to protect the public from any health hazard during a declared state of emergency. However, in the absence of a declared emergency, LHOs do not have the statutory authority to enforce public health directives against violators and require those violators to take immediate action

to stop the release of hazardous substances that threaten public health. This is not aligned with LHOs current authority to immediately order a temporary closure of a restaurant for confirmed or even suspected case of food-borne illness or any other violation of restaurant codes that may put the public's health at risk.

- 3) *Legislative history.* Over the last couple of years, the Legislature has considered iterations of the proposed policy in AB 480. The first was AB 1500 (Carrillo, 2019), which would have authorized a UPA to temporarily suspend a facilities permit, including shutting down a facility, if conditions at the facility pose an imminent or substantial threat to public health and safety, and it would have authorized a local health officer to take necessary protective action to protect public health and safety from specified releases of hazardous substances that pose an imminent or substantial endangerment to the public. AB 1500 was heard in this committee, but was ultimately held on the Senate Appropriations Committee Suspense File.

AB 2298 (Carrillo, 2020) was subsequently introduced in 2020 as a reintroduction of AB 1500. It was referred to this committee, but not heard due to the pandemic. Which brings us to AB 480: AB 480 has been revised to address concerns raised over AB 1500 and AB 2298.

- 8) *This bill.* AB 480 provides CUPAs and LHOs with authority similar to other agencies with similar responsibilities, such as DTSC and local air pollution control districts. Absent this authority, a CUPA or LHO would need to persuade a local district attorney to go to court to seek an injunction against the offending business, even while the dangerous conditions persist. This bill also contains a number of provisions to ensure due process, including: requiring that actions taken by CUPAs be supported by written findings, prohibiting CUPAs from issuing orders if the release is below a reporting threshold established by OES, and providing a responsible party with an opportunity to appeal the order. Finally, recent amendments include Legislative intent stipulating that in making a determination or finding of an "imminent or substantial" endangerment pursuant to these provisions, a CUPA act consistent with all federal and state statutes, regulations, and case law.

Comments

- 1) *Purpose of Bill.* According to the author, "AB 480 will strengthen local authority to take immediate action against local threats to the public's health and safety, including the ability for local jurisdictions to direct a facility or a portion of a facility to temporarily discontinue the operations that caused an exposure.

“AB 480 is a direct response to concerns and frustrations expressed by community members who are impacted by toxic pollution. This bill is imperative to ensure that local authorities, closest to our communities, can expeditiously act in the interest of our constituents and better protect the public's health and safety.”

Related/Prior Legislation

AB 2298 (Carrillo, 2020) would have authorized a UPA to temporarily suspend a facilities permit, including shutting down a facility, if conditions at the facility pose an imminent or substantial threat to public health and safety. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

AB 1500 (Carrillo, 2019) would have authorized a UPA to temporarily suspend a facilities permit, including shutting down a facility, if conditions at the facility pose an imminent or substantial threat to public health and safety. This bill was held on the suspense file in the Senate Appropriations Committee.

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.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

SOURCE: California Association of Environmental Health Administrators and County of Los Angeles Board of Supervisors

SUPPORT:

California Association of Environmental Health Administrators (CAEHA)

California Fire Chiefs Association (CFCA)

California State Association of Counties

Clean Water Action

Contra Costa County

County of Los Angeles Board of Supervisors (CO-SPONSOR)

Fire Districts Association of California (FDAC)

Health Officers Association of California

Los Angeles County
Physicians for Social Responsibility - Los Angeles

OPPOSITION:

None received

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