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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 698  
**Author:** Committee on Environmental Safety and Toxic Materials  
**Version:** 2/16/2021 **Hearing Date:** 6/14/2021  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Gabrielle Meindl

**SUBJECT:** Hazardous waste: small quantity generator

**DIGEST:** Updates terms within the state Hazardous Waste Control Law (HWCL) to conform to recent changes in federal hazardous waste regulation promulgated by the United States Environmental Protection Agency (US EPA) under their Generator Improvement Rule (GIR).

**ANALYSIS:**

Existing law:

- 1) Establishes the national hazardous waste management program under Subtitle C of the Resources Conservation and Recovery Act (RCRA). (42 United States Code § 6901 et seq.)
- 2) Creates the HWCL, which authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code § 25100 et. seq.)
- 3) Designates certain generators of hazardous waste in specified amounts as a “conditionally exempt small quantity generator (CESQG),” for certain regulations. The term CESQG is defined with reference to a specified federal regulation that provides that a generator is a conditionally exempt small quantity generator in a calendar month if it generates no more than 100 kilograms of hazardous waste in that month and that specifies which hazardous wastes are included in, or excluded from, that calculation. That federal regulation also exempts specified amounts of acute hazardous wastes and residues from cleanup of acute hazardous waste, as specified.
- 4) Defines the term “storage facility” for purposes of the hazardous waste control laws as including an onsite facility where the hazardous waste is held for more than 90 days and excludes certain generators of less than 1,000 kilograms of hazardous waste in a calendar month from this definition of storage facility subject to specified conditions, including compliance with specified federal

waste accumulation regulations. A violation of the hazardous waste control laws is a crime.

This bill:

- 1) Replaces the term CESQG with “very small quantity generator” with reference to a different federal regulation that recasts those provisions regarding the amount of hazardous waste and which hazardous wastes are included in, or excluded from, that calculation.
- 2) Changes the provision referencing compliance with certain federal waste accumulation regulations as a condition for certain generators of less than 1,000 kilograms of hazardous waste in a calendar month to be excluded from the definition of storage facility to conform to updated federal waste accumulation regulations.

## **Background**

- 1) *Federal hazardous waste regulation.* RCRA established three programs: hazardous waste management (RCRA Subtitle C), solid waste management (RCRA Subtitle D), and the underground storage tank program (RCRA Subtitle I). RCRA provides "cradle-to-grave" control of solid and hazardous waste by establishing management requirements for generators and transporters of hazardous waste treatment, storage, and disposal facilities. Most states have been authorized to implement some or all of the RCRA Subtitle C program. State RCRA programs must be at least as stringent as the federal program, but states also can adopt more stringent requirements.
- 2) *California Hazardous Waste Control Law.* The HWCL is the state's program that implements and enforces federal hazardous waste law in California. The HWCL covers the entire management of hazardous waste, from the point that the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility. Statute directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. DTSC's hazardous waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.
- 3) *Federal hazardous waste generator rule.* The federal hazardous waste generator regulatory program was originally promulgated in 1980. Over the course of the last several decades, the US EPA, through experience with

implementing the program, and in various meetings, correspondence, and discussions with the states and the regulated community, has become aware of the need for more clarity, consistency, and flexibility. Many of these issues were identified in a 2004 program evaluation of the hazardous waste generator program conducted by the US EPA. In 2013, a separate US EPA program evaluation addressing hazardous waste determinations also identified a number of concerns related to generators being able to make a proper hazardous waste determination.

After consolidating the feedback from the regulated community, states, and other stakeholders, the US EPA developed a proposal to improve the entire hazardous waste generator program to strengthen environmental protection while ensuring businesses have the flexibility and certainty they need to successfully operate. The proposed rule was published in the Federal Register (FR) on September 25, 2015 (80 FR 57918).

The US EPA Administrator signed the final Hazardous Waste Generator Improvements Rule (GIR) on October 28, 2016, and it was published in the FR on November 28, 2016. The GIR finalizes a much-needed update to the hazardous waste generator regulations to make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed, and close important gaps in the regulations. In addition to finalizing key flexibilities, the GIR enhances the safety of facilities, employees, and the general public by improving hazardous waste risk communication and ensuring that emergency management requirements meet today's needs.

- 4) *Implementing the GIR in California.* On May 30, 2017, the US EPA's Hazardous Waste GIR went into effect. However, because California is an authorized state, the GIR does not take effect in California until DTSC adopts the rule, or parts thereof, via the rulemaking process.

DTSC will adopt some portions of the GIR. To accomplish this, DTSC will conduct a non-substantive (Under the California Code of Regulations, Title 1, section 100(a)(1) or Section 100) rulemaking that will: adopt regulations from the GIR that are more stringent than California's hazardous waste generator regulations (these regulations are considered mandatory provisions) and re-organize California's hazardous waste generator regulations to align with the federal re-organization. DTSC is required to adopt provisions of the rule that are identified as more stringent than US EPA's previous regulations and are also more stringent than California's current hazardous waste laws and implementing regulations. These provisions are considered mandatory because

DTSC must adopt them to maintain authorization to administer California's hazardous waste program in lieu of the federal program pursuant to RCRA.

In addition to the changes in state regulation, state law needs to be updated to conform to the changes made by the GIR. AB 698 updates state law to conform to the US EPA's GIR and will conform to the changes to state regulations being adopted by DTSC that conform to the GIR.

### **Comments**

- 1) *Need for the bill.* In May 2017, the US EPA's GIR went into effect nationwide; however, it is not yet in effect in California. This is because, while California is authorized to implement RCRA, it must first adopt the GIR. DTSC is finalizing the regulatory changes needed to conform to the GIR and AB 698 makes the statutory changes necessary to conform to the federal changes. This bill is necessary to ensure that those generators of hazardous waste, especially those that operate in multiple states, have clear and consistent rules and regulations to follow.

### **Related/Prior Legislation**

AB 3261 (ESTM, 2020). Updates terms within the state HWCL to conform to recent changes in federal hazardous waste regulation promulgated by the US EPA under their GIR. This bill was held in the Senate Environmental Quality Committee.

AB 1597 (ESTM, Chapter 133, Statutes of 2019). Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA electronic manifest system.

**SOURCE:** Committee on Environmental Safety and Toxic Materials

**SUPPORT:**

None received

**OPPOSITION:**

None received