Legislative Mandates 2014

A compilation of new mandates and statutory changes affecting DTSC programs

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Department of Toxic Substances Control
Miriam Barcellona Ingenito
Acting Director

INTRODUCTION

This publication serves to inform Department of Toxic Substances Control (DTSC) staff of new legislatively mandated activities and important statutory changes resulting from legislation enacted in the second half of the 2013–2014 Legislative Session.

Some of the described changes are provided for information only, such as noting new or revised requirements or procedures that affect applied standards or the way DTSC operates. Other changes describe more direct requirements, such as mandates upon DTSC to develop regulations, prepare a report, establish a new program, or modify an existing program.

The descriptions provided in this publication are not binding. Staff should consult the actual bill language (which can be accessed through the Internet links provided) for exact changes to the statutes.

Bills with an urgency clause take effect on the date they are chaptered; bills without an urgency clause take effect on January 1, 2014. Bills may also specify that their provisions take effect at a later date or designate a specific date by which an activity must be completed.

Questions about specific implementation plans and activities should be referred to the affected programs identified in this publication. Questions regarding the information in this publication can be referred to any of the legislative staff in DTSC's Office of Legislation (see below). Suggested changes to this publication are also welcome.

LEGISLATIVE STAFF

Josh Tooker	Deputy Director	916.324.7663
Jacqueline Pecor	Manager for Legislative Affairs	916.322.2004
Brandon Chapin	Legislative Analyst	916.324.3149
Erin Mincks	Legislative Analyst	916.324.0912
John Casillas	Executive Assistant	916.322.3902

INDEX OF BILLS AFFECTING DTSC PROGRAMS BY BILL NUMBER

Bill No.	Author	Description	Chapter Number	Affected Program(s)
AB 52	Gatto	Native Americans: California Environmental Quality Act	Chapter 532	Cleanup, Legal/CEQA
AB 1043	Chau	Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006: groundwater contamination.	Chapter 349	Cleanup, Admin
AB 1190	Bloom	Hazardous waste: transportation	Chapter 793	HWMP
SB 712	Lara			
SB 1019	Leno	Upholstered furniture: flame retardant chemicals	Chapter 862	HWMP, ECL
SB 1249	Hill	Hazardous waste: shredder waste	Chapter 756	HWMP
SB 1261	Jackson	Hazardous materials: business plans	Chapter 715	CUPA
SB 1458	Senate EQ Committee	Hazardous substances	Chapter 544	HWMP, Cleanup

Legend

Admin	Administrative Services
OEIM	Office of Environmental Information Management
Cleanup	Brownfields and Environmental Restoration Program
CUPA	Certified Unified Program Agency
HWMP	Hazardous Waste Management Program
ECL	Environmental Chemistry Lab
Legal	Office of Legal Affairs
SCP&W	Safer Consumer Products and Workplaces Program

SUMMARIES OF BILLS AFFECTING DTSC

AB 52 (Gatto) Chapter 532, Statutes of 2014 – Native Americans: California Environmental Quality Act

AFFECTED PROGRAM(S): Cleanup, Legal/CEQA

☐ New Program or Requirements

☑ Additional Requirements for an Existing Program

☐ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52

Summary:
AB 52 will specify that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. The bill will require a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project.

Specifically, this bill:

- Defines "California Native American tribe" as a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission (NAHC);
- Defines "Tribal Cultural Resources (TCRs)" to mean either of the following:
  - Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources; or
  - A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant, as specified. The lead agency shall consider the significance of the resource to a California Native American tribe;
- Provides that California Native American tribes, which are traditionally and culturally affiliated with a geographic area, may have expertise concerning TCRs;
- Authorizes California Native American tribes to assist the lead agency in identifying, interpreting, and determining significance of TCRs and whether as impact of a proposed project to a TCR is significant;
- Requires the NAHC to provide each California Native American tribe, as defined, on or before July 1, 2016, with a list of all public agencies that may be a lead agency within

the geographic area in which the tribe is traditionally and culturally affiliated, the contact information of those agencies, and information on how the tribe may request those public agencies to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation;

- Creates the first of two consultation processes, which requires the lead agency to begin consultation with a California Native American tribe if: (a) the tribe requests the lead agency to be informed through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe and (b) the tribe responds within 30 days of receipt of the formal notification and requests consultation;
- Creates a second consultation process authorizing the parties to propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a TCR or alternatives that would avoid significant impacts to a TCR;
- Requires any mitigation measures agreed upon in the second consultation to be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact and shall be fully enforceable;
- Prohibits information submitted by a tribe during the consultation or environmental review process from being included in the environmental document or otherwise disclosed by the lead agency or other public agency to the public without prior consent of the tribe. If the lead agency does publish such information, requires that it shall be in a confidential appendix to the environmental document unless the tribe consents to disclosure. The information may be described in general terms in the environmental document;
- Provides that this act does not prohibit any California Native American tribe or individual from participating in CEQA on any issue of concern as an interested California Native American tribe person, citizen, or member of the public;
- Provides that this act does not apply only to a project that has a notice of preparation or a notice of negative declaration or mitigated negative declaration filed on or after July 1, 2015; and
- On or before July 1, 2016, requires the Office of Planning and Research to prepare and develop revisions to the Guidelines Appendix G to:
    - Separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions; and
    - Add consideration of TCRs with relevant sample questions.

Departmental Mandate(s):

- AB 52 amends CEQA to require a lead agency to consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe has requested to be involved. As DTSC is greatly considered to be a lead agency in most cases, DTSC is responsible for contacting, collaborating, and mediating with the tribes, preparing CEQA documents, conducting and assessing CEQA reports and conflicts, and handling mitigation and litigation between DTSC and the tribes, to name a few. AB 52 will require DTSC to be involved on a larger and more significant scale.

AB 1043 (Chau) Chapter 349, Statutes of 2014 – Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006: groundwater contamination

AFFECTED PROGRAM(S): Cleanup

☐ New Program or Requirements

☑ Additional Requirements for an Existing Program

☐ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1043

Summary:
AB 1043 allows local agencies that have been awarded funds from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84) by the Department of Public Health for groundwater projects to retain money recovered from responsible parties and continue to re-invest recovered funds in additional groundwater cleanup activities.

Specifically, this bill:

- Creates the Groundwater Contamination Cleanup Project Fund (Cleanup Project Fund), which is created by this bill in the State Treasury;
- Eliminates the requirement for the Department of Public Health to adopt regulations, and instead would require that costs recovered from responsible parties be repaid to the State Water Resources Control Board (Water Board);
- Requires moneys in the Cleanup Project Fund to be available, upon appropriation by the Legislature, to the Water Board for additional grants for groundwater cleanup; and
- Requires the Water Board to consult with DTSC when considering expenditures on orphan groundwater cleanup projects.

Departmental Mandate(s):

- None.

AB 1190 (Bloom) Chapter 793, Statutes of 2014 – Hazardous waste: transportation

AFFECTED PROGRAM(S): HWMP

☐ New Program or Requirements

☐ Additional Requirements for an Existing Program

☑ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1190

Summary:
AB 1190 allows a public utility, local publicly owned utility, or municipal utility district to transport up to 5,000 gallons of hazardous wastewater from the dewatering of a single utility vault in an emergency situation without a manifest to a consolidation location.

Specifically, this bill:

- Increases the limit on the volume of certain types of hazardous waste that may be transported, without a manifest, in a single shipment, for a public utility, local publicly owned utility, or municipal utility district, from 1,600 gallons to 5,000 gallons from the dewatering of a single utility vault in an emergency situation; and
- Prohibits the consolidation of hazardous waste from multiple sites.

Departmental Mandate(s):

- While manifesting requirements are important to DTSC's regulatory program, the exemption created by AB 1190 only in cases of an emergency would not compromise DTSC's ability to ensure that hazardous wastes are properly managed, as the handling and management requirements for hazardous waste are still in place and this bill does not change authorities or practices for DTSC.

SB 712 (Lara) Chapter 833, Statutes of 2014 – Hazardous waste facility: permitting: interim status

AFFECTED PROGRAM(S): HWMP

☐ New Program or Requirements

☑ Additional Requirements for an Existing Program

☐ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB712

Summary:
SB 712 Senate Bill (SB) 712 would require the Department of Toxic Substances Control (DTSC), by December 31, 2015, to take a final action on an application for a hazardous waste facility permit that is submitted by a facility operating under a grant of interim status on or before January 1, 1986, either by issuing a final permit or a final denial of the application.

Specifically, this bill:

- Requires DTSC, by December 31, 2015, to issue a final permit decision on an application for a hazardous waste facilities permit that is submitted by a facility operating under a grant of interim status on or before January 1, 1986, by either issuing a final permit or a final denial of the application;
- Terminates the grant of interim status for such a facility on December 31, 2015, or the date on which DTSC issues a final permit decision on the application – whichever is earlier;
- Sets conditions for termination of the interim status of other facilities granted that status; and
- And authorizes the temporary suspension of a facility operating under an expired permit that has been extended because of a pending renewal application or under an interim status, if DTSC determines that the action is necessary to prevent or mitigate a risk to the public health and the environment.

Departmental Mandate(s):

- DTSC must issue a final permit decision on the Exide battery recycling facility in the City of Vernon, California, by December 31, 2015.

AB 1019 (Leno) Chapter 862, Statutes of 2014 – Upholstered furniture: flame retardant chemicals

AFFECTED PROGRAM(S): HWMP, ECL

☐ New Program or Requirements

☑ Additional Requirements for an Existing Program

☑ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1019

Summary:
SB 1019 requires a manufacturer of covered furniture products to disclose whether or not those products contain flame retardant chemicals. Such information will be provided as part of a clear and identifiable product label, which is already required by CA regulations.

Specifically, this bill:

- Requires a manufacturer of covered products to indicate whether or not a product contains added flame retardant chemicals, by including a specified statement on the product label;
- Defines the term "covered products" to mean any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that must meet the test requirements of TB-117;
- Provides that a written statement by the supplier of each component covered by TB-117 attesting either that flame retardant chemicals were added or not added shall be sufficient documentation;
- Requires, within 30 days of a request by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau), a manufacturer of a product sold in California to provide the Bureau with the documentation establishing the accuracy of the flame retardant chemical statement on the label;
- Requires the Bureau to provide DTSC with a selection of samples from covered products marked "contain NO added flame retardant chemicals" for testing for the presence of added flame retardant chemicals. The samples shall be from the components identified in this bill. The Bureau shall select samples based on consultation with DTSC, taking into account a range of manufacturers and types of covered products. The Bureau and DTSC shall consult on the tests to be conducted by DTSC. DTSC shall provide the results of any completed test to the Bureau;

- Require the Bureau to reimburse DTSC for the cost of testing for the presence of added flame retardant chemicals in covered products marked “contain NO added flame retardant chemicals;” and
- Require, no later than August 1 of each fiscal year, the Bureau to assess available resources and determine the number of tests to be conducted in the corresponding fiscal year, as specified.

Departmental Mandate(s):

- The Bureau is required to provide DTSC with a selection of samples from covered for testing for the presence of added flame retardant chemicals. The samples shall be from the components identified in this bill. The Bureau shall select samples based on consultation with DTSC, taking into account a range of manufacturers and types of covered products. The Bureau and DTSC shall consult on the tests to be conducted and DTSC shall provide the results of any completed test to the Bureau.

SB 1249 (Hill) Chapter 756, Statutes of 2014 – Hazardous waste: shredder waste

AFFECTED PROGRAM(S): HWMP

☑ New Program or Requirements

☑ Additional Requirements for an Existing Program

☐ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1249

Summary:
SB 1249 authorizes, until January 1, 2018, DTSC, in consultation with CalRecycle and the State Water Resources Control Board (SWRCB), to adopt regulations establishing alternative management standards (including generation, storage, transportation, and disposal of metal shredder residues) for a metal shredding facility. The bill will also authorize DTSC to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs to implement these provisions.

Specifically, this bill:

- Defines "metal shredding facility" as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials;
- Authorizes DTSC, in consultation with CalRecycle, SWRCB, and affected local air quality management districts, until January 1, 2018, to adopt regulations establishing management standards for metal shredding facilities for hazardous waste management activities as an alternative to current statutory hazardous waste management requirements and regulations;
- Requires DTSC, before adopting regulations to establish alternative management standards, to first prepare an analysis evaluating the hazardous waste management activities to which alternative management standards will apply;
- Prohibits DTSC from adopting management standards that are less stringent than applicable standards under federal law;
- Authorizes the alternative management standards, to the extent it is consistent with the standards that will otherwise apply under the federal act, to allow for treated metal shredder waste to be classified and managed as nonhazardous waste;
- Allows treated metal shredder waste being classified as nonhazardous waste pursuant to the alternative management standards to be managed as either alternative daily cover, or for beneficial reuse, or placed in a unit that meet specified state waste discharge requirements;

- Determines all hazardous waste determinations and policies, procedures or guidance issued by DTSC before January 1, 2014, governing treated metal shredder waste to be inoperative if or when DTSC completes its analysis and either adopts new regulations establishing alternative management standards or rescinds the existing conditional nonhazardous waste classifications;
- Authorizes DTSC to collect an annual fee from all metal shredding facilities that are subject to the regulation to cover DTSC's costs for implementation. This bill also establishes a separate subaccount in the Hazardous Waste Control Account and requires the fees to be deposited into the account, to be available upon appropriation by the Legislature, and authorizes regulations relating to fee provisions to be adopted as emergency regulations;
- Allows treated metal shredder waste to be deemed a solid waste if managed pursuant to the alternative management standards adopted by DTSC and is accepted by a solid waste landfill or other authorized location for disposal or for use as alternative daily cover or other beneficial reuses; and
- Repeals a provision of existing law that required specified regional water quality control boards to prepare a list of specified types of landfills that are authorized to accept and dispose of shredder waste.

Departmental Mandate(s):

- Under SB 1249, DTSC is mandated to first prepare an analysis evaluating the hazardous waste practices of metal shredder facilities. Afterwards, DTSC will be authorized to adopt regulations, which would establish alternative management standards for facilities in place of current hazardous waste management standards. This authorization gives DTSC the authority to classifya metal shredder facility as containing hazardous waste, or whether that waste is exempt under the new regulations. Once that process is finished, the consulting agencies and local air quality boards can enforce and/or proceed with the provided information.

SB 1261 (Jackson) Chapter 715, Statutes of 2014 – Hazardous materials: business plans

AFFECTED PROGRAM(S): CUPA

☐ New Program or Requirements

☑ Additional Requirements for an Existing Program

☐ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1251-1300/sb_1261_bill_20140928_chaptered.htm

Summary:
Senate Bill (SB) 1261 revises the information that is required to be included in a hazardous materials business plan and makes other updates and revisions to the unified hazardous waste and hazardous materials management regulatory program. It specifically requires the Department of Toxic Substances Control (DTSC), as the Certified Unified Program Agency (CUPA) for two counties, to make information in the statewide information management system available to the public and to exempt unstaffed structures from certain business plan requirements.

Specifically, this bill:

- Requires the Secretary of the California Environmental Protection Agency, in coordination with the Office of Emergency Services, to specify the hazardous materials inventory requirements to be submitted by handlers. Local CUPAs can also adopt an ordinance that designates a material as a hazardous material, only if the CUPA has a reasonable basis to believe the material is harmful;
- Requires handlers to submit business plans annually to the statewide information management system by March 1 of each year (or another date established by the local CUPA), and requires a business to at least annually review and verify that the business plan information in the statewide information management system meets specified requirements; and
- Requires the California Environmental Protection Agency to adopt regulations by January 1, 2016, to implement these requirements.

Departmental Mandate(s):
As the managing CUPA for two counties, SB 1261 would specifically require DTSC to:

- Exempt from certain submittal requirements any unstaffed facility located at least one-half mile from the nearest occupied structure, unless required by a local ordinance. Instead these facilities would make a one-time business plan submittal; and
- Make the information in the statewide information management system available to the public.

SB 1458 (Senate Committee on Environmental Quality) Chapter 544, Statutes of 2014 – Hazardous substances

AFFECTED PROGRAM(S): HWMP, Cleanup

☐ New Program or Requirements

☑ Additional Requirements for an Existing Program

☐ Information Only

☐ Report to the Governor/Legislature

Link to Legislation:
http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1451-1500/sb_1458_bill_20140925_chaptered.htm

Summary:
Senate Bill (SB) 1458 reinstates limits on hazardous waste management activities that can be performed in close proximity to homes, schools, hospitals, and day care centers. In order to be consistent with the land use restrictions near those sensitive sites, the bill also creates specific restrictions on the allowable property uses in those instances where a land use restriction has been recorded due to the presence of, or proximity to, hazardous materials or hazardous waste.

Specifically, this bill:

- Reinstates limits on the transfer of hazardous waste containers between vehicles that can be performed within 500 feet of homes, schools, hospitals, and day care centers;
- Recreates specific limitations on the uses of property where a land use restriction has been recorded and only allows the use of such land with specific approval in writing from the Department of Toxic Substances Control;
- Establishes penalties for those who violate the limitations on uses for property where a land use restriction has been recorded; and
- Deletes Health and Safety Code Section 25150.6, which allowed the Department of Toxic Substances Control, via regulation, to exempt certain hazardous waste management activities. This section of law sunset in 2008. However, the bill maintains the regulations promulgated under this deleted section.

Departmental Mandate(s):

- Enforce the reinstated limits on the transfer of hazardous waste containers between vehicles that can be performed within 500 feet of homes, schools, hospitals, and day care centers; and
- Review requests for the use of such land by providing specific approval in writing.