

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 480 (Carrillo)
Version: June 16, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Hazardous materials

DIGEST

This bill 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.

EXECUTIVE SUMMARY

Although current law gives local health officials significant discretion to abate certain health risks, that discretion is, counterintuitively, circumscribed in cases of the risk of, or actual release of, hazardous waste or materials. Local health officials may declare a local emergency when hazardous material is being released and poses an imminent threat to public safety, and use its emergency powers to close or halt the source of the release; however, short of conditions warranting a local emergency, local health officials cannot order a company or entity to take steps to abate a release or risk of release of hazardous materials without a fully noticed hearing – by which time the released substance could have already done substantial damage to the community. This bill would authorize specified local health officials, in cases of a released or threatened release of hazardous materials that poses an imminent and substantial endangerment to public health due to factors including carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the air or environment, to issue orders requiring the responsible party to immediately suspend or discontinue the activity giving rise to the risk or release and take other curative actions. The bill provides procedures for the target of an order to appeal an order administratively and to seek review of the administrative decision through a writ of mandate.

This bill is sponsored by the California Association of Environmental Health Administrators and the County of Los Angeles, and supported by a number of local

health entities, municipalities, and health professionals. There is no known opposition. This bill passed out of the Senate Environmental Quality Committee with a vote of 5-1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes the Department of Toxic Substances Control (Department) to administer a unified hazardous waste regulatory program to coherently manage existing hazardous-waste related programs. (Health & Saf. Code, div. 20, ch. 6.5, §§ 25100 et seq. & ch. 6.11, §§ 25404 et seq.)
- 2) Authorizes the Department to temporarily suspend any permit, registration, or certificate issued by the Department prior to any hearing if it determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. (Health and Saf. Code, § 25186.2.)
- 3) Requires the Secretary of the California Environmental Protection Agency (CalEPA) to implement and adopt regulations for a unified hazardous waste and hazardous materials management regulatory program, which is known as the unified program. (Health & Saf. Code, § 25404(b).)
- 4) Defines the following relevant terms for purposes of the unified program:
 - a) "Certified Unified Program Agency" or "CUPA" is the agency certified by the Secretary of CalEPA to implement the unified program within a jurisdiction. (Health & Saf. Code, § 25404(a)(1)(A).)
 - b) "Unified Program Agency" or "UPA" is the CUPA to implement or enforce a particular element of the unified program. The UPAs have the responsibility and authority to implement and enforce the unified program requirements and the regulations adopted to implement those. (Health & Saf. Code, § 25404(a)(1)(C).)
 - c) A "unified program facility permit" is a permit issued pursuant to the unified program. (Health & Saf. Code, § 25404(a)(6).)
- 5) Requires each County Board of Supervisors to appoint a county health officer. (Health & Saf. Code, § 101000.)
- 6) Requires that the handler of hazardous material or substances, or the handler's employee or agent, upon discovery, of any release or threatened release of a hazardous material, or an actual release of a hazardous substance, as defined:
 - a) Immediately report the risk or release to the UPA and to the Office of Emergency Services in accordance with the regulations adopted by CalEPA.
 - b) Provide all state, city, or county fire or public health or safety personnel and emergency response personnel with access to the handler's services.

- c) In cases where the hazardous material is being transported on a highway, comply with alternative requirements set forth in the Vehicle Code. (Health & Saf. Code, § 25510.)
- 7) Authorizes a local health officer to declare a local health emergency in case of a release, spill, escape, or entry of waste that the local health officer determines the waste is or could become hazardous or medical waste, and the release or escape poses an imminent threat to public health or poses an imminent and proximate threat of the introduction of a communicable disease, chemical agent, biologic agent, toxin, or radioactive agent. Once the local health officer has declared such a local emergency, it may take any action to abate the emergency to protect the health of persons in the affected area. (Health & Saf. Code, §§ 101080, 101085.)

This bill:

- 1) Modifies the reporting requirement for threats of or actual releases of hazardous materials or substances to include hazardous wastes, and as follows:
 - a) For facilities subject to Chapter 6.95 of Division 20 of the Health and Safety Code (Chapter 6.95), the reporting shall be made immediately upon the discovery of a release or threatened release.
 - b) For facilities not subject to Chapter 6.95, the reporting shall be made upon the discovery of an actual release that results in an emergency response.
 - c) For purposes of the reporting requirement, "emergency response" means the activation of any public emergency response personnel, as defined, who are responsible for response, mitigation, or recovery activities in a hazardous material incident where public health, public safety, or the environment may be affected.
- 2) Authorizes a UPA, without a declaration of a local health emergency, if a release of hazardous material, hazardous waste, or a hazardous substance occurs and the UPA, 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.
- 3) Prohibits the UPA from issuing such an order if the release, spill, escape entry of the hazardous material, hazardous waste, or hazardous substance falls below a reporting threshold established by the office in any regulation.

- 4) Requires the UPA to support its order with written findings, including evidence of local health officer consultation, and be consistent with criteria developed by UPAs to determine whether an imminent and substantial endangerment to public health has occurred.
- 5) Provides procedures by which the UPA must notify the subject of the order and the right to a hearing and a notice of defense to any violations set forth in the order; a notice of defense must be served on the UPA within 15 days of service of the order, or the order becomes final.
- 6) Provides that an order issued by the UPA shall take effect upon issuance if the UPA finds that the violation or violations of law associated with the order, or a provision of the order, may pose an imminent and substantial endangerment to the public health or safety or the environment.
 - a) A request for a hearing shall not stay the effect of the order or that provision of the order pending a hearing decision.
 - b) If the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole shall take effect upon issuance by the UPA; in such case, a request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.
- 7) Provides that a person requesting a hearing may select their hearing officer as provided below, however, if the person fails to do so, the UPA may select as the hearing officer:
 - a) An administrative law judge of the Office of Administrative Hearings of the Department of General Services; or
 - b) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with the Administrative Procedure Act; this provision applies only if the UPA has elected to establish a program for conducting hearings according to the bill's requirements.
- 8) Provides that a decision by a hearing officer may be reviewed by a court in accordance with the procedures for judicial review set forth in the Administrative Procedure Act, Government Code section 11523. A court must uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole.
- 9) Provides that the filing of a writ of mandate does not stay any action required by an order, but a court may grant any appropriate relief within its jurisdiction.

COMMENTS

1. Author's comment

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.

2. This bill gives specified local and regional hazardous substance control agencies the ability to take immediate action to prevent or halt the release of hazardous substances

The Senate Environmental Quality Committee's analysis of this bill sets forth the following explanation of CUPAs and their current authority to take action in the face of an imminent hazard; the analysis is incorporated here by reference:

The Secretary of the CalEPA oversees the "unified hazardous waste and hazardous materials management" regulatory program (Unified Program). Currently, there are 81 CUPAs [administering the Unified Program] 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...

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 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.

The County of Los Angeles, a co-sponsor of the bill, has firsthand experience with being unable to immediately terminate the release of a hazardous substance:

In October 2016, [the South Coast Air Quality Management District (SCAQMD)] air monitors registered elevated levels of Chromium 6 emissions, a known carcinogen, in Los Angeles County. SCAQMD identified certain facilities as significant fugitive emissions sources to the elevated levels and promptly petitioned the SCAQMD Hearing Board for an abatement order to these facilities. At that time, SCAQMD did not have the legal authority to order the facilities in the interim to cease the operations until first holding a publicly noticed hearing before the district's Hearing Board. Since Chromium 6 is one of the very few chemicals that is scientifically proven to cause human cancer, Los Angeles County's Local Health Officer issued several public health directives to metalworking facilities in the City of Paramount. Additionally, Los Angeles County's CUPA, which is responsible for implementing and enforcing hazardous materials and waste laws, issued notices of violation to certain businesses that contributed to the high Chromium 6 levels.

Despite this, neither the local health officer nor the County's CUPA had the authority to direct the offending business to cease operations.

This bill grants a CUPA and LHO the authority to take immediate action against businesses whose actions are threatening the release of, or actually releasing, hazardous materials, substances, or waste that they have concluded poses an imminent and substantial danger to public health. Under this bill, a CUPA could issue an order to immediately cease an imminent hazardous threat, rather than having to go to court to obtain an injunction, aligning a CUPA's authority more closely with that of other bodies entitled to take immediate action against imminent dangers.

The terms "imminent and substantial danger" and "imminent and substantial endangerment" are not defined in case law, but they are terms of art used in connection

with state and federal statutes relating to toxic waste or environmental threats.¹ To ensure that the CUPA and reviewing bodies apply the terms consistently with how they are used in other laws, the bill includes a finding and declaration by the Legislature stating that it is the intent of the Legislature that a finding of “imminent and substantial endangerment” by a CUPA under the bill should be consistent with the meaning of the term as applied in federal and state statutes, regulations, and case law. This term should help ensure that parties working with hazardous materials and environmental hazards are on notice of what will constitute an “imminent and substantial endangerment” of the public that will trigger an order from a CUPA under this bill.

3. This bill provides a person subject to a CUPA order with notice, an opportunity to be heard, and the right to seek review in court

This bill provides due process protections to persons who are subject to the CUPA orders authorized in the bill. First, the bill provides for notice: the bill requires that the order be served on any person subject to it via personal service or certified mail. The order being served must inform the recipient of their right to request a hearing and whether the person has an option of receiving a hearing from a UPA hearing officer.

Next, the bill provides an opportunity for the person subject to the order to be heard by an administrative judge or, if the UPA has elected to establish a hearing officer program, by a UPA officer. If both options are available, the bill gives the person requesting the hearing the right to choose between the administrative law judge or the UPA hearing officer; if the person fails to make an election, the UPA may do so. Both the administrative law judge and the UPA hearing officer must conduct the hearing consistent with the requirements of the Administrative Procedure Act.²

Finally, the bill provides for review of the administrative decision in court by filing a writ of mandate, consistent with the Administrative Procedure Act’s provision for judicial review.³ The reviewing court will review the entire record of the administrative decision⁴ and uphold the UPA’s order if the decision is based upon substantial evidence in the record as a whole. The bill provides that filing a petition for review does not stay the order issued by the CUPA, but nothing in the bill prohibits a court from granting any appropriate relief within its jurisdiction.

The procedures set forth in this bill are virtually identical to the notice, hearing, and review procedures provided in existing hazardous materials laws.⁵

¹ *E.g.*, 14 U.S.C. § 318; 33 U.S.C. § 1511; 42 U.S.C. §§ 9121, 9606(a); Health & Saf. Code, §§ 24149, 25187.5, 116675, 116730(a)(4).

² Gov. Code, tit. 2, div. 3, pt. 1, §§ 11400 et seq.

³ *See* Gov. Code, § 11523.

⁴ *Ibid.*

⁵ *See, e.g.*, Health & Saf. Code, §§ 25404.1.1, 118330.

4. Arguments in support

According to bill co-sponsor County of Los Angeles:

Los Angeles County regulates over 24,000 businesses that handle hazardous materials and substances. While CUPAs have the authority to issue administrative enforcement orders to require businesses to comply with regulations, make corrective actions and quarantine waste, they lack the statutory enforcement authority to immediately suspend or revoke permits from businesses that pose an imminent and substantial danger to public health and safety.

AB 480 is a simple fix to this public health threat: it will allow CUPAs to temporarily cease operations of a facility that poses an imminent threat and substantial endangerment to public health and safety by strengthening the obligation for reporting the release of a hazardous material or substance to CUPA or another regulatory agency; and, in consultation with the local health officer, provide authority to CUPAs to issue orders against any parties responsible.

SUPPORT

California Association of Environmental Health Administrators (sponsor)
County of Los Angeles (co-sponsor)
California Fire Chiefs Association
California State Association of Counties
Clean Water Action
County of Contra Costa
Environmental Working Group
Fire Districts Association of California
Friends Committee on Legislation of California
Health Officers Association of California
Physicians for Social Responsibility

OPPOSITION

None known⁶

⁶ The organizations that had opposed prior versions of the bill withdrew their opposition and took a neutral position following the June 16, 2021, amendments to the bill.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2298 (Carrillo, 2020) was substantially the same as AB 1500 (Carrillo, 2019). AB 2298 was held in the Assembly Environmental Safety and Toxic Materials Committee due to COVID-19-related bill restrictions.

AB 1500 (Carrillo, 2019) would have authorized a UPA to suspend, revoke, or withhold issuance of a unified program facility permit if conditions exist at the unified program facility that the UPA considers to pose an imminent or substantial endangerment to public health, safety, or the environment. AB 1500 died in the Senate Appropriations Committee.

AB 1646 (Muratsuchi, Ch. 588, Stats. 2017) required specified local agencies to develop an integrated alerting and notification system, in coordination with local emergency management agencies, UPAs, local first response agencies, petroleum refineries, and the public, to be used to notify the community surrounding a petroleum refinery in the event of an incident at the refinery warranting the use of the notification system.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 5, Noes 1)

Assembly Floor (Ayes 48, Noes 14)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Environmental Safety and Toxic Materials Committee (Ayes 6, Noes 1)
