



California
Air Resources Board
Compliance Division

Advisory

REGULATION CHANGE

Number 45

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Building Permit Requirements

Attached is a copy of Assembly Bill 3205 which adds Section 65850.5 to the Government Code. Section 65850.5 requires that city and county agencies gather additional information from all building permit applicants. This rule advisory supplements Rule Advisory Number 42; issued by the Compliance Division on April 13, 1989.

Beginning July 1, 1989, no city or county shall issue a final certificate of occupancy unless the applicant has met or is meeting local air pollution control district permit requirements, or has provided proof from the district that the permit requirements do not apply to the project. This provision exempts residential construction.

On and after July 1, 1989, no city or county shall permit a facility to be constructed within 1000 feet of a school's outer boundary unless HSC Section 42303 is met. The information required by HSC Section 42303 (disclosure of the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source) must be certified by the Air Pollution Control Officer. Cities and Counties, after considering the recommendations of the air quality management district, shall decide whether, and under what conditions, to allow construction at the site.

The requirements of Government Code 65850.5 should provide a mechanism for local air pollution control districts to identify sources which may otherwise be constructed without district knowledge. For more information, please see the specific code sections for detailed requirements. If you have any questions regarding this bill, please call the Air Resources Board, Compliance Division at (800) 952-5588.

Attachment

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Assembly Bill No. 3205

CHAPTER 1589

An act to add Section 65850.2 to the Government Code, to amend Sections 25535 and 25540 of, and to add Sections 13872.5, 25534.1, 25534.5, 42301.6, 42301.7, 42301.8, 42301.9, and 42450.1 to, the Health and Safety Code, and to add Sections 21151.3 and 21151.4 to the Public Resources Code, relating to hazardous materials and emissions.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3205, M. Waters. Hazardous materials and emissions.

(1) Existing law requires any business that handles a hazardous material to establish a business plan for emergency response to a release or threatened release of the material and may be required to prepare a risk management and prevention program.

This bill would prohibit a city or county, after January 1, 1989, from issuing a final certificate of occupancy unless these requirements are met. The bill would also prohibit a city or county, after July 1, 1989, from permitting a facility to be constructed within 1,000 feet of a school without first requiring a risk management and prevention plan and additional information, as specified.

(2) Existing law authorizes the boards of directors of fire protection districts to issue written orders to correct or eliminate a fire or life hazard, and to issue citations, as specified.

This bill would grant similar authority to the fire chief of a city, a city and county, or a county fire department.

(3) Existing law requires every business, except as specified, which handles specified amounts of an acutely hazardous material to file an acutely hazardous materials registration form with the administering agency and, if the agency determines there is an accident risk, to submit a risk management and prevention program, and provides civil penalties for violations.

This bill would permit review of the program by the air pollution control district or air quality management district as well as by the agency, would increase the applicable civil penalties, and would impose criminal penalties on any person who violates these provisions, thereby imposing a state-mandated local program by creating a new crime.

(4) Existing law allows an air pollution control district or air quality management district to establish and enforce a system whereby a permit is required for any article, machine, equipment, or contrivance which may emit air contaminants.

This bill would require a specified public notice and review by the

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district air pollution control officer of any comments received after distribution of the notice before approving an application for a permit to construct or alter a source within 1,000 feet of a school, hospital, or long-term care facility which may emit these emissions. The bill would, if the officer determines there is a reasonably foreseeable threat of a release of an air contaminant within 1,000 feet of a school, require the officer to notify the administering agency, as defined, and the fire department within 24 hours. The bill would specify the actions the officer and the administering agency could take in response to the release or threatened release. The bill would authorize a district to issue an order of abatement in this regard. By imposing these requirements on districts, the bill would impose a state-mandated local program.

(5) Existing law generally requires all state agencies and local agencies to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. In other cases, a negative declaration is required.

This bill would prohibit the approval of an environmental impact report or a negative declaration for a school construction project unless the lead agency has consulted with the city or county to identify potential nearby facilities that might emit hazardous air emissions, and the school district has made specified findings. The bill would prohibit construction of a facility within $\frac{1}{4}$ mile of a school unless the school district is notified and consulted, as specified.

By imposing additional requirements on local agencies, the bill would impose a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

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

SECTION 1. The Legislature finds and declares that there have been incidents of health threats and nuisances at schoolsites throughout the state causing children to evacuate schools, report ill, and require medical attention. These incidents have been caused in large part by the inappropriate siting of schools and certain facilities with the potential for routine and accidental releases of hazardous and acutely hazardous air emissions.

It is the intent of the Legislature to do all of the following:

- (a) Correct deficiencies in existing law, and strengthen, clarify, and expand the law in order to protect the public health and safety.
- (b) Provide a mechanism for local governmental agencies to

determine and mitigate risks posed by routine and accidental hazardous and acutely hazardous emissions from new and existing sources with regard to the siting of new schools and new and existing facilities.

(c) Strengthen the enforcement mechanisms and correct other deficiencies in laws effecting acutely hazardous air emissions.

(d) Provide a means to prevent the release of hazardous or acutely hazardous air emissions that could adversely affect the health and safety of persons at a schoolsite.

(e) Improve coordination among agencies regarding the siting of schools and certain facilities near schools.

(f) Clarify and augment the authority of local agencies and not to restrict or preempt existing local authority.

SEC. 2. Section 65850.2 is added to the Government Code, to read:

65850.2. (a) Not later than July 1, 1989, each city and each county shall include in its application for a building permit a place for the applicant to indicate whether the applicant or future building occupant will need to comply with the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code and the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county. This subdivision does not apply to applications for residential construction.

(b) Not later than July 1, 1989, no city or county shall issue a final certificate of occupancy unless the applicant has met or is meeting the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code and the requirements for a permit from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the applicant. This section shall not apply to applications for residential construction.

(c) On and after July 1, 1989, no city or county shall permit a facility to be constructed within 1,000 feet from the outer boundary of a school without meeting the requirements of Sections 25534 and 42303 of the Health and Safety Code. The risk management and prevention program and information required by Section 42303 shall not be accepted by the city or county unless approved by the administering agency. The information required by Section 42303 shall not be accepted by the city or county unless the air pollution control officer certifies that the applicant is in compliance with the required disclosures.

(d) The city or county, after considering the recommendations of the air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction at the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for building permit applications sufficient to recover their reasonable costs of carrying out this section.

SEC. 3. Section 13872.5 is added to the Health and Safety Code, to read:

13872.5. The fire chief of a city, city and county, or county fire department, or his or her authorized representative, has the same authority as specified in Sections 13870 to 13872, inclusive, to issue a written order to correct or eliminate a fire hazard or life hazard, hold hearings and modify, vacate, or affirm those orders, and issue citations if so authorized by ordinance of the city, city and county, or county. This section does not limit or affect any authority of a fire chief or authorized representative of a fire chief under any local ordinance.

SEC. 4. Section 25534.1 is added to the Health and Safety Code, to read:

25534.1. Every RMPP prepared pursuant to Section 25534 shall give consideration to the proximity of the facility to schools, general acute care hospitals, and long-term health care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250 and "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418.

SEC. 5. Section 25534.5 is added to the Health and Safety Code, to read:

25534.5. In reviewing an RMPP pursuant to subdivision (a) of Section 25535, the administering agency may have access to and review all technical information in the handler's possession which is reasonably necessary to allow the administering agency to make a determination regarding the sufficiency of the RMPP. That information may include any study or analysis conducted pursuant to subdivision (d) of Section 25534. Information conducted pursuant to subdivision (d) of Section 25534 shall not be disclosed by the administering agency except as provided in Section 25511.

SEC. 6. Section 25535 of the Health and Safety Code is amended to read:

25535. (a) An owner or operator of a facility submitting an RMPP pursuant to Section 25534 shall submit the RMPP to the administering agency after the RMPP is certified as complete by a qualified person and the facility operator. The administering agency may authorize the air pollution control district or air quality management district in which the facility is located to conduct a technical review of the RMPP. If, after review by the administering agency or the air pollution control district or air quality management district exercising jurisdiction in the area of the facility, the administering agency determines that the handler's RMPP is

deficient in any way, the administering agency shall notify the handler of these defects. The handler shall submit a corrected RMPP within 60 days of the notice.

(b) Upon implementation of a risk management and prevention program pursuant to subdivision (k) of Section 25534, the handler shall notify the administering agency that the RMPP has been implemented and shall summarize the steps taken in preparation and implementation of the RMPP.

(c) The handler shall continue to carry out the program and activities specified in the risk management and prevention program at the business after the administering agency has been notified pursuant to subdivision (b).

(d) The owner or operator shall implement all programs and activities in the RMPP before operations commence, in the case of a new facility, or before any new activities involving acutely hazardous materials are taken, in the case of a modified facility.

SEC. 7. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any business that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the business shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any business that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the county jail for not more than one year.

SEC. 8. Section 42301.6 is added to the Health and Safety Code, to read:

42301.6. (a) Prior to approving an application for a permit to construct or modify a source that may emit air contaminants located within 1,000 feet from the outer boundary of a school, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described.

(b) The air pollution control officer shall, at the permit applicant's expense, distribute the public notice to the parents of children in any school within one-quarter mile of the source and to each address within a radius of 750 feet from the outer property line of the proposed new or modified source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final

action on the application.

(c) Notwithstanding subdivision (b), an air pollution control officer may require the applicant to distribute the notice if the district had such a rule in effect prior to January 1, 1989.

(d) The requirements for public notice pursuant to subdivision (b) or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in such circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

(e) Nothing in this section shall be deemed to limit any existing authority of any district.

SEC. 9. Section 42301.7 is added to the Health and Safety Code, to read:

42301.7. (a) If the air pollution control officer determines there is a reasonably foreseeable threat of a release of an air contaminant from a source within 1,000 feet of the boundary of a school that would result in a violation of Section 41700 and impact persons at the school, the officer shall, within 24 hours, notify the administering agency and the fire department having jurisdiction over the school.

(b) The administering agency may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) Review the facility's risk management and prevention plan prepared pursuant to Section 25534 to determine whether the program should be modified, and, if so, require submission of appropriate modifications. Notwithstanding any other provision of law, the administering agency may order modification and implementation of a revised risk management and prevention plan at the earliest feasible date.

(2) If the facility has not filed a risk management and prevention plan with the administering agency, require the preparation and submission of a plan to the administering agency pursuant to Section 25534. Notwithstanding any other provision of law, the administering agency may require the filing of a risk management and prevention plan and its implementation at the earliest feasible date.

(c) The air pollution control officer may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) If necessary, issue an immediate order to prevent the release or mitigate the reasonably foreseeable threat of a release in violation of Section 41700 pending a hearing pursuant to Section 42450 when there is a substantial probability of an injury to persons at a school resulting from a release that makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate that injury. The officer may not issue such an order unless there is written concurrence to issue the order by a representative of the administering agency.

(2) Apply to the district board for issuance of an order for

abatement pursuant to Section 42450.

(d) Nothing in this section limits any existing authority of any district.

SEC. 10. Section 42301.8 is added to the Health and Safety Code, to read:

42301.8. Upon receiving a request, for good cause, from the principal or an authorized representative of the principal of a school, the district shall, within 24 hours, respond to the request and notify the administering agency and the fire department having jurisdiction over the school. The administering agency, upon receiving such a request, shall notify the district within 24 hours.

SEC. 11. Section 42301.9 is added to the Health and Safety Code, to read:

42301.9. For the purposes of Sections 42301.4 to 42301.8, inclusive:

(a) "School" means any school used for purposes of the education of children in kindergarten or any of grades 1 to 12, inclusive.

(b) "Air contaminant" has the same meaning as provided in Section 39013.

(c) "Administering agency" means an administering agency as defined in subdivision (c) of Section 25532.

SEC. 12. Section 42450.1 is added to the Health and Safety Code, to read:

42450.1. This article applies to any order for abatement issued pursuant to a determination made under Section 42301.7.

SEC. 13. Section 21151.3 is added to the Public Resources Code, to read:

21151.3. No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or with the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions.

(b) The governing board of the school district makes either of the following written findings:

(1) Consultation identified no such facilities.

(2) Those facilities exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(c) As used in this section:

(1) "Hazardous air emissions" means any substance released into

the ambient air which is on the list required to be prepared pursuant to subdivision (a) of Section 25532 and Section 44321 of the Health and Safety Code.

(2) "Acutely hazardous air emissions" means any substance released into the ambient air which is an acutely hazardous material as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

SEC. 14. Section 21151.4 is added to the Public Resources Code, to read:

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions as defined in Section 21151.3 unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 16. If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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