SENATE RULES COMMITTEE AB 2920
Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 2920
Author: Obernolte (R)
Amended: 6/29/20 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 8/11/20
AYES: Allen, Dahle, Hill, Stern, Wieckowski
NO VOTE RECORDED: Bates, Skinner

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/20/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

ASSEMBLY FLOOR: 76-0, 6/8/20 (Consent) - See last page for vote

SUBJECT: Hazardous waste: transportation: consolidated manifesting procedure

SOURCE: Author

DIGEST: This bill authorizes hazardous waste generators and transporters to use consolidated manifesting procedures for retail hazardous waste, as defined, collected from retailers engaged in business in the state.

ANALYSIS:

Existing law:

1) Establishes the federal Resource Conservation and Recovery Act (RCRA) to authorize the United States Environmental Protection Agency (US EPA) to manage hazardous wastes throughout its life cycle. (42 United States Code (USC) § 6901 et seq.)

2) Establishes the Hazardous Waste Control Law (HWCL) to authorize the Department of Toxic Substances Control (DTSC) to regulate the management

of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

3) Requires, under the HWCL, any person who generates, transports, or receives hazardous waste in California to use the Uniform Hazardous Waste Manifest. (HSC § 25160)

4) Defines "manifest" as a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by DTSC and that complies with all applicable federal and state regulations. (HSC § 25160)

5) Permits transporters and generators of hazardous waste to use consolidated manifesting procedures, as defined, to consolidate shipments of specified waste streams collected from multiple generators onto a single consolidated manifest. (HSC § 25160.2)

6) Requires anyone who submits incomplete or erroneous information on a completed manifest to correct the information and to submit a $20 fee to DTSC. (HSC § 25160.5)

7) Authorizes the US EPA to implement a national electronic manifest (e-manifest) system under the Hazardous Waste Electronic Manifest Establishment Act. (42 USC § 6939g)

8) Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system. (HSC § 25160.01)

This bill:

1) Allows retail hazardous waste generators and transporters to use consolidated manifesting procedures for retail hazardous waste, as defined, collected from retailers engaged in business in the state.

2) Defines "retail hazardous waste" as unsold consumer products in the original retail sales packaging determined by the retailer to be waste, and includes, but is not limited to, bleach and other cleaning products, pool chemicals, laundry detergent, cosmetics, personal hygiene products, nail polish, aerosol products, herbicides, and fertilizers.

3) Requires incompatible materials transported in the same transport vehicle be managed pursuant to specified provisions that govern the transportation of hazardous waste.

4) Provides that a transporter is not required to send DTSC a copy of an electronic manifest processed completely through a specified electronic manifest system.

5) Makes other minor technical changes to the consolidated manifesting code.

Background

1) *Hazardous waste management*. Hazardous waste is a waste with properties that make it potentially dangerous or harmful to human health or the environment. The Resource Conservation and Recovery Act (RCRA) is the federal statute that regulates generators, transporters, and facilities that treat, store, or dispose of hazardous wastes. In regulatory terms, a waste is hazardous if it appears on a RCRA hazardous waste list or exhibits one of the four characteristics of a hazardous waste: ignitability, corrosivity, reactivity, or toxicity. However, materials can be hazardous wastes even if they are not specifically listed or don't exhibit any characteristic of a hazardous waste. For example, "used oil" and contaminated soil generated from a "clean up" can also be hazardous wastes. These wastes are referred to as "Non-RCRA hazardous wastes" and are also regulated as hazardous wastes in the state of California. Hazardous wastes are prohibited from being disposed of in the trash, and must be properly transported and disposed of at a permitted treatment, storage, and disposal facility (TSDF) or at a recycling facility.

   The Hazardous Waste Control Law (HWCL) is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federally authorized facility. Under the HWCL, the generator of a waste is responsible for determining how a waste is classified and for managing it accordingly. Once a hazardous waste determination is made, the generator is required to manifest, transport by a certified hauler, and arrange for disposal at a permitted TSDF, or other authorized facility. 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.

2) *Uniform Hazardous Waste Manifest*. The Uniform Hazardous Waste Manifest is the shipping document that travels with hazardous waste from the point of generation, through transportation, to the final TSDF. Each party in the chain of shipping hazardous waste, including the generator, signs and keeps one of the manifest copies, creating a "cradle-to-grave" tracking of hazardous waste.

Hazardous waste transporters (a person engaged in the offsite transportation or movement of hazardous waste by air, rail, highway, or water) in California must be registered with DTSC.

The Hazardous Waste Electronic Manifest Establishment Act was signed into law by President Obama on October 5, 2012, authorizing the US EPA to implement a national e-manifest system. The US EPA worked with states, industry, and related stakeholders to develop a national e-manifest system to facilitate the electronic transmission of the uniform manifest form and to make the use of the manifest much more effective and convenient for users. The e-manifest extends to all federally and state-regulated wastes requiring manifests. The US EPA fully implemented the e-manifest system on June 30, 2018. AB 1597 (Committee on Environmental Safety and Toxic Materials, Chapter 133, Statutes of 2019) authorized the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system. Under the HWCL, requirements for manifest signatures are satisfied by an electronic signature and requirements to retain manifest copies are satisfied by the retention of a signed e-manifest. Transporters may continue to use paper manifests.

3) *Consolidated manifesting*. SB 271 (O'Connell, Chapter 319, Statutes of 2001) replaced milk run operations and modified manifesting with consolidated manifesting. Consolidated manifesting allows certain registered hazardous waste transporters to combine specified wastes from multiple eligible generators on a single manifest, rather than having to use a separate manifest from each generator. The generators using the consolidated manifesting procedure are exempt from filling out a hazardous waste manifest. Instead, the consolidated transporter (hazardous waste transporter who has notified DTSC of its intent to use the consolidated manifesting procedures) completes both the generator and transporter section of the manifest. Consolidated manifesting does not exempt generators from the requirements to properly characterize, handle, label, manage, and accumulate hazardous waste, and does not authorize transporters to commingle different types of hazardous wastes into the same tank or container, in accordance with US Department of Transportation regulations. The total volume or quantity of each waste stream and units of measure must be entered on the manifest at the change of each date, driver, or transport vehicle. Consolidated manifesting requires all hazardous waste generators, transporters, and permitted TSDFs to have identification numbers, which are used to identify the hazardous waste handler and track the waste from its point of origin to its final disposal.

Current non-RCRA (California-only) wastes eligible for consolidated manifesting include used oil, brake fluid, antifreeze, "paint-related" wastes, spent photographic solutions, dry cleaning solvents, asbestos, and chemicals and laboratory packs collected from K-12 schools, among others. DTSC may also specify in regulations other wastes eligible for consolidated manifesting. In order to use consolidated manifesting, the generator cannot generate more than 1,000 kilograms of hazardous waste per month. Consolidated manifesting procedures may be used for RCRA hazardous waste only if the waste is not required to be manifested pursuant to RCRA or federal regulations, and the waste is transported by a registered hazardous waste transporter.

To operate under consolidated manifesting procedures, generators are required to use only transporters that have registered and notified DTSC of their intent to operate under the consolidated manifesting procedure. The transporter must agree in writing (on a consolidated manifest receipt or a separate document) to confirm to the generator that the hazardous wastes were transported to an authorized facility for appropriate treatment, except for asbestos, asbestos-containing materials, and chemicals and laboratory packs from K-12 schools, which must be transported to an authorized facility. Transporters using consolidated manifesting are required to report detailed information from each receipt on a quarterly basis to DTSC.

4) *Retail hazardous waste*. Over 400,000 retail locations in California handle a large number of diverse consumer products, some of which are not sold to consumers for a variety of reasons. These products may be donated, liquidated through secondary markets, returned through the vendor, or discarded. The process of consolidating, aggregating, and segregating retail products is sometimes managed through reverse logistics centers (RLCs) who may also facilitate financial reconciliation between the retailer and manufacturer prior to return, resale, or disposal. When discarded, the retail products that exhibit hazardous waste characteristics are subject to hazardous waste regulations.

5) *Challenges in managing retail waste*. Since 2007, state and local prosecutors and large retailers have settled enforcement actions for alleged mishandling of hazardous waste, including provisions in the settlements to promote regulatory reform. DTSC and stakeholders formed an informal Retail Waste Working Group in 2013 to facilitate dialogue and information sharing between the state and retail industry.

   SB 423 (Bates, Chapter 771, Statutes of 2016) required DTSC to convene a Retail Waste Workgroup (Workgroup) tasked with identifying regulatory and

policy directives that need clarification for managing consumer products. In the Workgroup's report to the Legislature, *Surplus Household Consumer Products and Wastes*, they identify a number of challenges with the regulation of hazardous waste generated by the retail sector, including: the number and variety of waste streams (some retailers report they sell 24-55 million different products); the large number of retail locations; the nature of consumer products as constantly changing (seasonal and new products); limited product and ingredient information for making a hazardous waste determination; and, limited workforce expertise to make these waste determinations.

Under current law, when retailers dispose of retail waste that is hazardous, transporters servicing California retailers must place each individual retail waste item on its own manifest and in its own container on the transporter truck. This may lead to inefficient transport of retail hazardous waste. Most states currently allow for consolidation of retail waste on a transporter truck or at a 10-day transfer station. Consolidated manifesting is unique to California non-RCRA hazardous waste, so other states are not subject to similar statewide hazardous waste laws.

AB 2920 adds retail hazardous waste collected from a retailer engaged in business in the state to the eligible wastes for consolidated manifesting. "Retail hazardous waste" is defined as unsold consumer products in its original retail sales packaging that is determined by the retailer to be hazardous waste. Once the waste determination has been made by the retailer, as required, and the retail waste has been placed on a hazardous waste manifest, the waste is subject to proper handling under the HWCL, including transportation to a certified TSDF or other authorized facility. Consolidated manifesting would not permit retail hazardous waste to be resold through an RLC.

The retail hazardous waste products eligible for consolidated manifesting under AB 2920 include, but are not limited to, bleach and other cleaning products, pool chemicals, laundry detergent, cosmetics, personal hygiene products, nail polish, aerosol products, herbicides, and fertilizers. This bill specifies that if consolidated manifesting procedures are used, the retail hazardous waste must be properly managed and incompatible materials transported in the same vehicle must be appropriately segregated.

Comments

Purpose of Bill. According to the author, "AB 2920 is a common sense bill that would allow hazardous waste transporters the ability to consolidate some commonly expired household items that are currently considered ‘California only’

hazardous waste items. In 2002, California enacted SB 271, which consolidated and simplified the state's hazardous waste manifest laws and regulations governing the collection and transport of certain types of California regulated hazardous wastes. The items included were used oil, antifreeze, inks, paint, dry cleaning solvents, chemical and laboratory packs. This bill seeks to expand that original list to include household bleach/cleaning products, light bulbs, pool chemicals, laundry detergent, and fertilizers, among others. These items are routinely picked up at retailers throughout California and transported for disposal but must be individually listed on the manifest and in its own container. This causes extra vehicle trips and other inefficiencies on both retailers and waste drivers. The passage of this bill would ensure the safe, efficient and cost-effective management of these California regulated retail hazardous wastes in a manner that is both environmentally and economically beneficial."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, DTSC anticipates that the increased number of transporter quarterly reports that result from AB 2920 would result in a minor, but absorbable, increase in work and responsibilities in DTSC's Office of Environmental Information Management. Further, DTSC anticipates that Manifest Fee revenues would decrease by between $270,000 and $320,000 per year beginning in Fiscal Year 2022-23 for manifests used by retailers generating hazardous waste offered for transportation in 2021. The Manifest Fee is collected in July for manifests used in the prior year (e.g., manifests used in 2021 would be assessed the Manifest Fee in July 2022). This estimate is based on 2019 data from DTSC's HWTS for hazardous wastes manifested by retailers.

SUPPORT: (Verified 8/20/20)

California Chamber of Commerce
California Retailers Association
Clean Harbors Environmental Services, Inc.
San Gabriel Valley Economic Partnership
Southwest California Legislative Council

OPPOSITION: (Verified 8/20/20)

None received

ASSEMBLY FLOOR: 76-0, 6/8/20
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau,

Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon
NO VOTE RECORDED: Low, Muratsuchi, Quirk

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