

Assembly Bill No. 833

Passed the Assembly September 11, 2007

Chief Clerk of the Assembly

Passed the Senate September 10, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 4 (commencing with Section 25546) to Chapter 6.95 of Division 20 of the Health and Safety Code, relating to toxic chemicals.

LEGISLATIVE COUNSEL'S DIGEST

AB 833, Ruskin. California Toxic Release Inventory Program.

Existing law authorizes the California Environmental Protection Agency (Cal-EPA) to request any business to submit the information required to be submitted in the toxic chemical release form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Existing law prohibits the Cal-EPA from requiring the form from certain businesses or in an amount lower than the applicable threshold amount specified in EPCRA.

This bill would enact the California Toxic Release Inventory Program Act of 2007 to require the Department of Toxic Substances Control (department) to develop and implement, by January 1, 2009, the California Toxic Release Inventory Program to require a facility to submit a toxic chemical release form to the department, if the facility is not required to submit a toxic chemical release form containing that same information pursuant to the existing federal regulations, as defined.

The bill would require the information to be reported under the program to be reported retroactively to the effective date of the changes made to EPCRA or the existing federal regulations to ensure no gap in data collection. The bill would require the department to determine whether existing California-specific reporting requirements can substitute, in whole or in part, for the information that would be required under the program. The bill would require the facility to utilize the same reporting forms required by the existing regulations, unless the department determines that an alternative form is necessary to substitute chemical release data reported under existing California-specific programs.

The department would be authorized to adopt regulations to implement the program as emergency regulations and would

require the Office of Administrative Law to deem these regulations to be necessary for the immediate preservation of the public peace, health, safety, and general welfare. The bill would also prohibit the department, if there is a legal challenge to the changes made to a specified provision of the federal act or the federal regulations adopted pursuant to that provision, that result in the changes being stayed or enjoined by a court, from requiring a facility to submit a toxic chemical release form, until the department determines that the court action has been settled or adjudicated.

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

SECTION 1. Article 4 (commencing with Section 25546) is added to Chapter 6.95 of Division 20 of the Health and Safety Code, to read:

Article 4. California Toxic Release Inventory Program Act of
2007

25546. The Legislature finds and declares all of the following:

(a) The people of California have the right to know the hazards posed by toxic releases near their homes, schools, and workplaces. They have the right to know how much pollution is being released into the water, air, and soil.

(b) Since its inception in 1986, as part of the federal Emergency Planning and Community Right-to-Know Act of 1986, (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code), the Toxics Release Inventory (TRI) has supplied this essential information on toxic chemical releases to the public. The goal of the TRI is to empower citizens, through information, to hold companies and local governments accountable for how toxic chemicals are managed.

(c) It is the intent of the Legislature that California citizens do not lose access to the information necessary to understand the potential threats to public health and safety and the environment that is available through the Toxics Release Inventory as it existed on January 1, 2006, including the ease of accessibility.

25546.1. This article shall be known, and may be cited, as the “California Toxic Release Inventory Program Act of 2007.”

25546.2. For purposes of this article, the following definitions shall apply:

(a) “Department” means the Department of Toxic Substances Control.

(b) “Facility” means a facility subject to the federal act, as provided by Section 11002 of Title 42 of the United States Code, as that section read on January 1, 2006, and that is subject to the existing federal regulations.

(c) “Existing federal regulations” mean the regulations found in Part 372 (commencing with Section 372.1) of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, except as provided in subdivision (b) of Section 25546.3.

(d) “Federal act” means the federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code).

(e) “Federal regulations” mean the regulations found in Part 372 (commencing with Section 372.1) of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations may be revised or amended on or after January 1, 2006.

(f) “Program” means the California Toxic Release Inventory Program established pursuant to this article.

(g) “Toxic chemical” means a substance listed pursuant to Subpart D (commencing with Section 372.65) of Part 372 of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in subdivision (b) of Section 25546.3.

(h) “Toxic chemical release form” means the form required to be completed by the owner or operator of a facility pursuant to Section 11023 of Title 42 of the United States Code, as that section read on January 1, 2006.

(i) “Threshold quantity” means the amount of a toxic chemical specified in Sections 372.25, 372.27, and 372.28 of Title 40 of the Code of Federal Regulations as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in subdivision (b) of Section 25546.3.

25546.3. (a) On or before January 1, 2009, the department shall develop and implement the California Toxic Release Inventory Program pursuant to this article.

(b) Notwithstanding any other provision of this article, the department shall, when implementing the program, comply with the requirements of the federal act with regard to ensuring that any requirement imposed pursuant to this article is no less stringent than, or is not otherwise preempted by, any requirement imposed pursuant to the federal act, including any changes to the existing federal regulations that decrease the threshold quantity or include additional toxic chemicals subject to the federal act.

(c) If there is a legal challenge to changes made to Section 312 of the federal act (42 U.S.C. Sec. 11022) or the federal regulations adopted pursuant to that section, that result in the changes being stayed or enjoined by a federal court, the department shall not require a facility to submit a toxic chemical release form pursuant to Section 25546.4 until the department determines that the court action has been settled or adjudicated.

25546.4. (a) The program established pursuant to this article shall require a facility to submit a toxic chemical release form to the department, in accordance with the existing federal regulations, if the facility is not required by the federal regulations to submit a toxic chemical release form containing that same information.

(b) The program adopted pursuant to subdivision (a) shall require that the information be reported retroactively to the effective date of the change in the federal act or the existing federal regulations as to ensure no gap in data collection.

(c) The department shall evaluate California-specific reporting requirements and determine if this information can substitute, in whole or in part, for the information that would be required under the program. This review shall include, but not be limited to, reporting required pursuant to the Air Toxic “Hot Spot” Information and Assessment Act (Part 6 (commencing with Section 44300) of Division 26), the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5), and reporting required by the regional water quality control boards pursuant to the National Pollution Discharge Elimination System permits and waste discharge requirements.

(d) The department shall require the facility to utilize the same reporting forms in use, pursuant to the existing federal regulations, unless the department determines that an alternative form is necessary to substitute chemical release data reported under existing California-specific programs, to ensure that the information is consolidated. The department shall also prescribe the manner in which the information in the forms shall be transmitted.

(e) The department shall post a copy of each form received from each facility that is subject to the program on the department's publicly available Internet Web site.

25546.5. (a) The department may adopt regulations to implement the program as emergency regulations. The emergency regulations adopted pursuant to this section shall be adopted by the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is hereby deemed an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

Approved _____, 2007

Governor