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AMENDED IN ASSEMBLY MAY 7, 2002
AMENDED IN ASSEMBLY APRIL 18, 2002
AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2436

**Introduced by Assembly Member Frommer
(Coauthors: Assembly Members Alquist and Cohn)**

February 21, 2002

An act to amend Section 1471 of the Civil Code, to amend Section 25220 of the Health and Safety Code, and to add ~~Section 13194~~ Sections 13194 and 13307.1 to the Water Code, relating to the environment, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2436, as amended, Frommer. Hazardous waste: land use restrictions: cleanup and abatement.

(1) Existing law requires the Department of Toxic Substances Control to notify the planning and building department of each city, county, or regional council of governments of certain land use restrictions imposed upon property designated as hazardous waste property or border zone property, sites listed for remedial or removal action, and remedial action land use controls. Existing law requires the planning department of those local agencies to file those restrictions and take specified actions and law authorizes the city, county, or ~~region~~ regional council to assess a fee to cover the costs of taking those actions.

Existing law requires the department to maintain this list of land use restrictions in a specified manner and to make the list available electronically, as specified.

This bill would additionally require the department to include, in the list, certain environmental land use restrictions reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.

The bill would authorize the department to enter into a contract with a third party, in accordance with the State Contract Act, for purposes of maintaining the list, ~~if~~ *and would require the department to enter into such a contract if* the department makes a specified ~~finding~~ *findings*. The bill would authorize the department to assess a property owner a fee for the reasonable costs of maintaining the list and would require the department to deposit the fees in the Hazardous Waste Control Account in the General Fund, which is available for expenditure by the department, upon appropriation by the Legislature, to carry out the regulation of hazardous waste.

The bill would authorize the department to expend the fees assessed pursuant to the bill, upon appropriation by the Legislature, to carry out the maintenance of the list, including entering into a contract with a third party.

(2) Existing law, the Porter-Cologne Water Quality Control Act, provides for the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund and provides for the expenditure of those funds by the State Water Resources Control Board for specified purposes regarding the implementation of the act.

This bill would require the board to post, on its Internet Web site, a list of all sites for which a California regional water quality control board has ~~imposed~~ *required* a land use restriction ~~contained in a cleanup or abatement order issued pursuant to the act~~. The bill would authorize the board to assess a fee upon a person subject to such an order for the reasonable costs of taking this action and would require the board to deposit the fee revenues in the State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund to carry out this action, thereby making an appropriation. *The bill would authorize the board to enter into a contract, in accordance with the State Contract Act, to maintain the list, and would require the board to enter into such a contract, if the board makes specified findings.*

(3) *The Porter-Cologne Water Quality Control Act prohibits the state and the regional boards from considering cleanup or site closure*



proposals from the primary or active responsible discharger, issuing a closure letter, or making a determination that no further action is required, with respect to a site subject to a cleanup or abatement order, unless all current record owners of fee title to the site of the proposed action have been notified, as specified.

This bill would additionally prohibit the board or regional board from taking those actions unless a land use restriction is recorded or required to be recorded, except if the board or regional board finds that the property is suitable for unrestricted use.

(4) Existing law provides for the recording of an instrument containing an Environmental Restriction covenant made by an owner of land or by the grantee of land to do or refrain from doing an act that is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.

This bill would require the office of the county recorder, if an instrument containing an Environmental Restriction covenant is recorded, to send a copy of the instrument to the department for posting on its Web site, unless the instrument indicates that the instrument is required by a regional board. Since the bill would impose new requirements upon county recorders, the bill would create a state-mandated local program.

(5) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Section 1471 of the Civil Code is amended to
2 read:



1 1471. (a) Notwithstanding Section 1468 or any other
 2 provision of law, ~~each~~ a covenant made by an owner of land or by
 3 the grantee of land to do or refrain from doing some act on his or
 4 her own land, which doing or refraining is expressed to be for the
 5 benefit of the covenantee, regardless of whether or not it is for the
 6 benefit of land owned by the covenantee, ~~runs~~ shall run with the
 7 land owned by or granted to the covenantor; ~~and, except as~~
 8 ~~provided by Section 1466 or as specifically provided in the~~
 9 ~~instrument creating the covenant, it shall be binding upon each~~
 10 ~~successive owner, during his or her ownership, of any portion of~~
 11 ~~the land affected thereby and upon each person having any interest~~
 12 ~~therein derived through any owner thereof, where if~~ all the
 13 following requirements are met:

14 ~~(a)~~

15 (1) The land of the covenantor ~~which~~ that is to be affected by
 16 the covenant is particularly described in the instrument containing
 17 the covenant.

18 ~~(b)~~

19 (2) The successive owners of the land are expressed to be bound
 20 thereby for the benefit of the covenantee in the instrument
 21 containing the covenant.

22 ~~(c)~~

23 (3) Each ~~such~~ act that the owner or grantee will do or refrain
 24 from doing relates to the use of land and each ~~such~~ act is reasonably
 25 necessary to protect present or future human health or safety or the
 26 environment as a result of the presence on the land of hazardous
 27 materials, as defined in Section 25260 of the Health and Safety
 28 Code.

29 ~~(d)~~

30 (4) The instrument containing the covenant is recorded in the
 31 office of the recorder of each county in which the land or some
 32 portion thereof is situated and the instrument includes in its title the
 33 words: "Environmental Restriction."

34 ~~Where~~

35 (b) *Except as provided by Section 1466 or as specifically*
 36 *provided in the instrument creating a covenant made pursuant to*
 37 *this section, the covenant shall be binding upon each successive*
 38 *owner, during his or her ownership, of any portion of the land*
 39 *affected thereby and upon each person having any interest therein*
 40 *derived through any owner thereof.*



1 (c) If several persons are subject to the burden of ~~any such a~~
2 covenant recorded pursuant to this section, it shall be apportioned
3 among them pursuant to Section 1467, except ~~that where~~ if only
4 a portion of the land is so affected thereby, the apportionment shall
5 be only among the several owners of that portion. ~~This~~

6 (d) This section shall apply to the mortgagee, trustee, or
7 beneficiary of a mortgage or deed of trust upon the land or any part
8 thereof while but only while he or she, in ~~such~~ that capacity, is in
9 possession thereof.

10 (e) If an instrument containing a covenant is recorded pursuant
11 to paragraph (4) of subdivision (a) as an “Environmental
12 Restriction,” in accordance with this section, the office of the
13 recorder of the county shall send a copy of the instrument to the
14 Department of Toxic Substances Control, for posting on its Web
15 site pursuant to Section 25220 of the Health and Safety Code,
16 unless the instrument indicates that it is required by a California
17 regional water quality control board.

18 SEC. 2. Section 25220 of the Health and Safety Code is
19 amended to read:

20 25220. (a) For purposes of this article, unless the context
21 clearly requires a different meaning:

22 (1) “Determination” means a decision by the department as to
23 whether land should be designated as hazardous waste property or
24 border zone property and that is reached after an analysis and an
25 evaluation of the information obtained by the department.

26 (2) “Designation” means imposition of the requirements
27 specified in Section 25230 after a determination, a public hearing,
28 and a decision by the director has occurred pursuant to Section
29 25229.

30 (b) Whenever there is reasonable cause for the department to
31 believe that any land may be a hazardous waste property or border
32 zone property, the department may, by certified mail, request any
33 person who owns, leases, or occupies the land, or any other person
34 who has information relating to the land, to provide any or all of
35 the following information:

36 (1) A description of the present use of the land.

37 (2) The types and volumes of hazardous waste or extremely
38 hazardous waste contained therein or thereon.

39 (3) The date or dates the hazardous waste or extremely
40 hazardous waste was deposited into or onto the land.



1 (4) A map or maps of the property that they own and that
 2 contains or overlies hazardous waste or extremely hazardous
 3 waste, drawn to a scale of not more than 200 feet to the inch, that
 4 shows the area or areas where the hazardous waste or extremely
 5 hazardous waste is contained or was deposited. The provision of
 6 a map pursuant to this paragraph shall not be required if the
 7 respondent to the request asserts in writing that the respondent has
 8 no knowledge or insufficient knowledge of the existence or
 9 location of the wastes to comply with this subdivision.

10 (5) Any other information that relates to the disposal of
 11 hazardous waste on or within 2,000 feet of the property or the
 12 potential for the migration of those wastes.

13 (c) Any person who is requested to provide information
 14 pursuant to subdivision (b) shall submit the information to the
 15 department within 90 calendar days of receipt of the request.

16 (d) The department shall notify the planning and building
 17 department of each city, county, or regional council of
 18 governments of any recorded land use restriction imposed
 19 pursuant to Section 25202.5, 25222.1, 25229, 25230, 25355.5, or
 20 25398.7 within the jurisdiction of the local agency. Upon receiving
 21 this notification, the planning and building department shall do
 22 both of the following:

23 (1) File all recorded land use restrictions in the property files
 24 of the city, county, or regional council of government.

25 (2) Require that any person requesting a land use which differs
 26 from those filed land use restrictions on the property apply to the
 27 department for a variance or a removal of the land use restrictions
 28 pursuant to Section 25233 or 25234.

29 (e) (1) A planning and building department of a city, county,
 30 or regional council of governments may assess a property owner
 31 a reasonable fee to cover the costs of taking the actions required
 32 by subdivision (d).

33 (2) The department may assess a property owner a fee for the
 34 reasonable costs of taking the actions required by paragraph (1) of
 35 subdivision (f), regardless of the time when the land use ~~deed~~
 36 restriction is recorded. The department shall deposit the fee
 37 revenues in the Hazardous Waste Control Account, for
 38 expenditure by the department, pursuant to subdivision (b) of
 39 Section 25174, to carry out the requirements of paragraph (1) of



1 subdivision (f), including entering into a contract pursuant to
2 subdivision (g).

3 (3) For purposes of this subdivision, “property owner” does
4 not include a person who holds evidence of ownership solely to
5 protect a security interest in the property, unless the person
6 participates, or has a legal right to participate, in the management
7 of the property.

8 (f) (1) The department shall maintain a list of all ~~recorded land~~
9 ~~use restrictions, including deed restrictions, instruments and~~
10 ~~agreements restricting land uses~~ recorded pursuant to Section
11 1471 of the Civil Code and pursuant to Sections 25200, 25200.10,
12 25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7 in
13 accordance with all of the following requirements:

14 (A) The list shall, at a minimum, provide the street address, ~~or,~~
15 ~~if a street address is not available, an equivalent description of~~
16 ~~location for a rural location or the latitude and longitude, of each~~
17 ~~property. and the assessor’s parcel number of each property. If a~~
18 ~~street address is not available, the list shall include an equivalent~~
19 ~~description of location or the location’s latitude and longitude.~~

20 (B) The description of location shall contain any restricted uses
21 of the property, contaminants known to be present, and any
22 remediation of the property that is required.

23 (C) The department shall update the list as new ~~deed land use~~
24 restrictions are recorded and as ~~deed land use~~ restrictions on
25 properties are changed.

26 (D) The department shall make the list available to the public,
27 upon request, and shall make the list available on the department’s
28 Internet Web site. The department shall maintain a hyperlink on its
29 Internet Web site that links this information to the information
30 maintained by the State Water Resources Control Board pursuant
31 to Section 13194 of the Water Code.

32 ~~(E) The list shall also be incorporated into the list of sites~~
33 ~~compiled pursuant to Section 65962.5 of the Government Code.~~

34 (2) The obligation of the department to maintain a list of
35 restrictions recorded pursuant to Section 1471 of the Civil Code
36 is limited to listing those deed restrictions that are reported to the
37 department.

38 (3) For purposes of this subdivision, “hyperlink” means a
39 colored and underlined text or a graphic that a person may select



1 to connect to a file, a location in a file, or a page on the World Wide
2 Web.

3 (g) ~~The (1) Except as provided in paragraph (2), the~~
4 department may enter into a contract with a third party, in
5 accordance with the State Contract Act (Part 2 (commencing with
6 Section 10100) of Division 2 of the Public Contract Code) for
7 purposes of maintaining the list required by paragraph (1) of
8 subdivision (f), ~~if the department makes a finding that entering into~~
9 ~~this contract is more cost effective than the maintenance of the list~~
10 ~~by the department or that the contract will be part of a~~
11 ~~comprehensive effort to assure the dissemination of knowledge~~
12 ~~and compliance with deed use restrictions or other institutional~~
13 ~~controls imposed pursuant to other provisions of law.~~

14 ~~SEC. 2.~~ subdivision (f).

15 (2) *The department shall enter into a contract with a third party*
16 *to maintain the list required by paragraph (1) of subdivision (f) if*
17 *the department makes all of the following findings:*

18 (A) *The third party is a nonprofit entity.*

19 (B) *The third party will integrate the list required by this section*
20 *and the list developed pursuant to Section 13194 of the Water*
21 *Code, so that the integrated list may be published on the Web site*
22 *of the Environmental Protection Agency or on the Web sites of the*
23 *department and the State Water Resources Control Board.*

24 (C) *The third party is part of a comprehensive effort to assist in*
25 *the dissemination of knowledge about, and compliance with, land*
26 *use restrictions and other institutional controls imposed pursuant*
27 *to any other provision of law.*

28 SEC. 3. Section 13194 is added to the Water Code, to read:

29 13194. (a) (1) *The state board shall post, on its Internet Web*
30 *site, a list of all sites for which a regional board has imposed*
31 *required a land use restriction contained in a cleanup or abatement*
32 *order issued pursuant to Section 13304. The state board shall*
33 *maintain a restriction pursuant to Section 1471 of the Civil Code.*
34 *The state board shall maintain a hyperlink on its Internet Web site*
35 *that links this information to the information maintained by the*
36 *Department of Toxic Substances Control pursuant to subdivision*
37 *(f) of Section 25220 of the Health and Safety Code.*

38 (2) *For purposes of this subdivision, “hyperlink” means a*
39 *colored and underlined text or a graphic that a person may select*



1 *to connect to a file, a location in a file, or a page on the World Wide*
2 *Web.*

3 (b) The state board may assess a fee upon a person subject to
4 a land use restriction ~~imposed pursuant to Section 13304~~ *required*
5 *pursuant to Section 1471 of the Civil Code*, for the reasonable costs
6 of taking the actions required by subdivision (a). The state board
7 shall deposit the fee revenues in the State Water Pollution Cleanup
8 and Abatement Account of the State Water Quality Control Fund,
9 for expenditure by the state board, pursuant to Section 13341, to
10 carry out the requirements of subdivision (a).

11 (c) *Except as provided in subdivision (d), the state board may*
12 *enter into a contract with a third party, in accordance with the*
13 *State Contract Act (Part 2 (commencing with Section 10100) of*
14 *Division 2 of the Public Contract Code) for purposes of*
15 *maintaining the list required by subdivision (a).*

16 (d) *The state board shall enter into a contract with a third party*
17 *to maintain the list required by subdivision (a) if the state board*
18 *makes all of the following findings:*

19 (1) *The third party is a nonprofit entity.*

20 (2) *The third party integrates the list required by this section*
21 *and the list developed pursuant to Section 25220 of the Health and*
22 *Safety Code so that the integrated list may be published on the Web*
23 *site of the Environmental Protection Agency or on the Web sites of*
24 *the state board and the Department of Toxic Substances Control.*

25 (3) *The third party is part of a comprehensive effort to assist in*
26 *the dissemination of knowledge about, and compliance with, land*
27 *use restrictions and other institutional controls imposed pursuant*
28 *to any other provision of law.*

29 *SEC. 4. Section 13307.1 of the Water Code is amended to*
30 *read:*

31 13307.1. (a) The state board and the regional boards shall not
32 consider cleanup or site closure proposals from the primary or
33 active responsible discharger, issue a closure letter, or make a
34 determination that no further action is required with respect to a
35 site subject to a cleanup or abatement order pursuant to Section
36 13304, unless ~~at~~ *both of the following conditions are met:*

37 (1) *All current record owners of fee title to the site of the*
38 *proposed action have been notified of the proposed action by the*
39 *state board or regional board.*



1 (2) A land use restriction is recorded or required to be recorded
2 pursuant to Section 1471 of the Civil Code, unless the state board
3 or the regional board finds that the property is suitable for
4 unrestricted use.

5 (b) The state board and regional boards shall take all reasonable
6 steps necessary to accommodate responsible landowner
7 participation in the cleanup or site closure process and shall
8 consider all input and recommendations from any responsible
9 landowner wishing to participate.

10 SEC. 5. Notwithstanding Section 17610 of the Government
11 Code, if the Commission on State Mandates determines that this
12 act contains costs mandated by the state, reimbursement to local
13 agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code. If the statewide cost of the
16 claim for reimbursement does not exceed one million dollars
17 (\$1,000,000), reimbursement shall be made from the State
18 Mandates Claims Fund.

