

AMENDED IN SENATE JUNE 20, 2002

AMENDED IN SENATE JUNE 11, 2002

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**

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

February 21, 2002

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An act to amend Section 1471 of the Civil Code, to amend Section 25220 of the Health and Safety Code, and to ~~add Sections 13194 and 13307.1 to~~ *amend Section 13307.1 of*, and to *add Section 13194 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 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 and would require the department to ~~enter~~ *consider specified qualifications of the contractor before entering* into such a contract ~~if the department makes specified 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~~ *Toxic Substances 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~~ *Carpenter-Presley-Tanner Hazardous Substance Account Act to remediate hazardous substance release sites*.

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 required a land use restriction. 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~~ *consider specified qualifications of the contractor before entering* 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 *not* 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 *electronically* 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: 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:

3 1471. (a) Notwithstanding Section 1468 or any other  
 4 provision of law, a covenant made by an owner of land or by the  
 5 grantee of land to do or refrain from doing some act on his or her  
 6 own land, which doing or refraining is expressed to be for the  
 7 benefit of the covenantee, regardless of whether or not it is for the  
 8 benefit of land owned by the covenantee, shall run with the land  
 9 owned by or granted to the covenantor if all the following  
 10 requirements are met:

11 (1) The land of the covenantor that is to be affected by the  
 12 covenant is particularly described in the instrument containing the  
 13 covenant.

14 (2) The successive owners of the land are expressed to be bound  
 15 thereby for the benefit of the covenantee in the instrument  
 16 containing the covenant.

17 (3) Each act that the owner or grantee will do or refrain from  
 18 doing relates to the use of land and each act is reasonably necessary  
 19 to protect present or future human health or safety or the  
 20 environment as a result of the presence on the land of hazardous  
 21 materials, as defined in Section 25260 of the Health and Safety  
 22 Code.

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

27 (b) Except as provided by Section 1466 or as specifically  
 28 provided in the instrument creating a covenant made pursuant to  
 29 this section, the covenant shall be binding upon each successive  
 30 owner, during his or her ownership, of any portion of the land  
 31 affected thereby and upon each person having any interest therein  
 32 derived through any owner thereof.

33 (c) If several persons are subject to the burden of a covenant  
 34 recorded pursuant to this section, it shall be apportioned among  
 35 them pursuant to Section 1467, except if only a portion of the land



1 is so affected thereby, the apportionment shall be only among the  
2 several owners of that portion.

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

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

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

18 25220. (a) For purposes of this article, unless the context  
19 clearly requires a different meaning:

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

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

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

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

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

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

39 (4) A map or maps of the property that they own and that  
40 contains or overlies hazardous waste or extremely hazardous



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

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

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

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

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

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

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

31 (2) The department may assess a property owner a fee for the  
32 reasonable costs of taking the actions required by paragraph (1) of  
33 subdivision (f), regardless of the time when the land use restriction  
34 is recorded. The department shall deposit the fee revenues in the  
35 ~~Hazardous Waste Control Account~~ *Toxic Substances Control*  
36 *Account*, for expenditure by the department, pursuant to  
37 subdivision (b) of Section ~~25174~~ 25174.6, to carry out the  
38 requirements of paragraph (1) of subdivision (f), including  
39 entering into a contract pursuant to subdivision (g).



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

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

11 (A) The list shall, at a minimum, provide the street address and  
12 the assessor’s parcel number of each property. If a street address  
13 is not available, the list shall include an equivalent description of  
14 location or the location’s latitude and longitude.

15 (B) The description of location shall contain *a description of*  
16 any restricted uses of the property, contaminants known to be  
17 present, and any remediation of the property that is required. *The*  
18 *department may post the recorded land use restriction document*  
19 *on the Internet Web site in lieu of providing the description*  
20 *required by this subparagraph.*

21 (C) The department shall update the list as new land use  
22 restrictions are recorded and as land use restrictions on properties  
23 are changed.

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

30 (2) The obligation of the department to maintain a list of  
31 restrictions recorded pursuant to Section 1471 of the Civil Code  
32 is limited to listing those deed restrictions that are reported to the  
33 department *and is for informational purposes only.*

34 (3) For purposes of this subdivision, “hyperlink” means a  
35 colored and underlined text or a graphic that a person may select  
36 to connect to a file, a location in a file, or a page on the World Wide  
37 Web.

38 ~~(g) (1) Except as provided in paragraph (2), the~~

39 (g) *The department may enter into a contract with a third party,*  
40 *in accordance with the State Contract Act (Part 2 (commencing*



1 with Section 10100) of Division 2 of the Public Contract Code) for  
2 purposes of maintaining the list required by paragraph (1) of  
3 subdivision (f).

4 (2) ~~The department shall~~ *In determining whether to enter into*  
5 *a contract with a third party to maintain the list required by*  
6 *paragraph (1) of subdivision (f) if the department makes all of the*  
7 ~~following findings:~~, *the department shall consider the extent to*  
8 *which the third party meets all of the following conditions:*

9 (A)

10 (1) The third party is a nonprofit entity.

11 (B)

12 (2) The third party will integrate the list required by this section  
13 and the list developed pursuant to Section 13194 of the Water  
14 Code, so that the integrated list may be published on the Web site  
15 of the Environmental Protection Agency or on the Web sites of the  
16 department and the State Water Resources Control Board.

17 (C)

18 (3) The third party is part of a comprehensive effort to assist in  
19 the dissemination of knowledge about, and compliance with, land  
20 use restrictions and other institutional controls imposed pursuant  
21 to any other provision of law.

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

23 13194. (a) (1) The state board shall post, on its Internet Web  
24 site, a list of all sites for which a regional board has required a land  
25 use restriction pursuant to Section 1471 of the Civil Code. The  
26 state board shall maintain a hyperlink on its Internet Web site that  
27 links this information to the information maintained by the  
28 Department of Toxic Substances Control pursuant to subdivision  
29 (f) of Section 25220 of the Health and Safety Code.

30 (2) For purposes of this subdivision, “hyperlink” means a  
31 colored and underlined text or a graphic that a person may select  
32 to connect to a file, a location in a file, or a page on the World Wide  
33 Web.

34 (b) The state board may assess a fee upon a person subject to  
35 a land use restriction required pursuant to Section 1471 of the Civil  
36 Code, for the reasonable costs of taking the actions required by  
37 subdivision (a). The state board shall deposit the fee revenues in  
38 the State Water Pollution Cleanup and Abatement Account of the  
39 State Water Quality Control Fund, for expenditure by the state



1 board, pursuant to Section 13341, to carry out the requirements of  
2 subdivision (a).

3 ~~(c) Except as provided in subdivision (d), the~~ *The* state board  
4 may enter into a contract with a third party, in accordance with the  
5 State Contract Act (Part 2 (commencing with Section 10100) of  
6 Division 2 of the Public Contract Code) for purposes of  
7 maintaining the list required by subdivision (a).

8 ~~(d) The state board shall~~ *In determining whether to enter into*  
9 a contract with a third party to maintain the list required by  
10 subdivision (a) ~~if the state board makes all of the following~~  
11 ~~findings~~, *the state board shall consider the extent to which the*  
12 *third party meets all of the following conditions:*

- 13 (1) The third party is a nonprofit entity.
- 14 (2) The third party integrates the list required by this section  
15 and the list developed pursuant to Section 25220 of the Health and  
16 Safety Code so that the integrated list may be published on the Web  
17 site of the Environmental Protection Agency or on the Web sites  
18 of the state board and the Department of Toxic Substances Control.
- 19 (3) The third party is part of a comprehensive effort to assist in  
20 the dissemination of knowledge about, and compliance with, land  
21 use restrictions and other institutional controls imposed pursuant  
22 to any other provision of law.

23 SEC. 4. Section 13307.1 of the Water Code is amended to  
24 read:

25 13307.1. (a) The state board and the regional boards shall not  
26 consider cleanup or site closure proposals from the primary or  
27 active responsible discharger, issue a closure letter, or make a  
28 determination that no further action is required with respect to a  
29 site subject to a cleanup or abatement order pursuant to Section  
30 13304, unless both of the following conditions are met:

31 (1) All current record owners of fee title to the site of the  
32 proposed action have been notified of the proposed action by the  
33 state board or regional board.

34 (2) A land use restriction is recorded or required to be recorded  
35 pursuant to Section 1471 of the Civil Code, ~~unless if~~ the state board  
36 or the regional board finds that the property is *not* suitable for  
37 unrestricted use.

38 (b) The state board and regional boards shall take all reasonable  
39 steps necessary to accommodate responsible landowner  
40 participation in the cleanup or site closure process and shall



1 consider all input and recommendations from any responsible  
2 landowner wishing to participate.  
3 SEC. 5. Notwithstanding Section 17610 of the Government  
4 Code, if the Commission on State Mandates determines that this  
5 act contains costs mandated by the state, reimbursement to local  
6 agencies and school districts for those costs shall be made pursuant  
7 to Part 7 (commencing with Section 17500) of Division 4 of Title  
8 2 of the Government Code. If the statewide cost of the claim for  
9 reimbursement does not exceed one million dollars (\$1,000,000),  
10 reimbursement shall be made from the State Mandates Claims  
11 Fund.

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