

## Assembly Bill No. 2144

### CHAPTER 562

An act to amend Section 25395.96 of, and to add Section 57013 to, the Health and Safety Code, and to add Sections 13307.5 and 13307.6 to the Water Code, relating to hazardous materials.

[Approved by Governor September 28, 2006. Filed with  
Secretary of State September 28, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2144, Montanez. Hazardous materials: land use.

(1) Existing law, the California Land Reuse and Revitalization Act of 2004, until January 1, 2010, provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for specified immunity from liability for response costs or damage claims with regard to a site in an urban infill area, if the innocent landowner, bona fide purchaser, or contiguous property owner meets specified conditions. The act defines the term "agency" as meaning the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality control board.

The act requires a bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by the act to enter into an agreement with an agency, including the performance of a site assessment, and if the agency determines that a response plan is necessary, the preparation and implementation of a response plan. The act requires the response plan to include an opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, and requires the regional board, if a regional board is the agency, to undertake specified actions for public participation and information. The act requires the department, if it is the agency, to undertake other specified actions for public participation and information.

This bill would revise the public participation procedures that are required to be included in the response plan, including requiring the agency, 30 days before taking action on the response plan, to notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, the regional board, or a redevelopment agency, that is not party to the response plan regarding the proposed response action. The bill would also require the agency to place a notice in a newspaper of general circulation, as specified, and post notice of the proposed response plan on the site.

The bill would delete the different requirements for a regional board and the department, depending on which entity is the agency, and would

require the same actions for public participation and information, regardless of which entity, including a regional board or the State Water Resources Control Board, is the agency.

The bill would require the agency to consider the issue of environmental justice, as defined, for communities most impacted, including low-income and racial minority populations and to provide certain information regarding the site decision process.

(2) Existing law, the Porter-Cologne Water Quality Control Act, requires a California regional water quality control board to give due notice of any hearing relating to investigating the quality of the waters of the state, prescribing waste discharge requirements, issuing cease and desist orders, requiring the cleanup or abatement of waste, or imposing administrative civil liabilities or penalties. The act requires a person who has discharged or discharges waste into the waters of the state, as specified, or who has caused or permitted, causes or permits, or threatens to cause or permit, waste to be discharged into the waters of the state, as specified, to, upon order of a regional board, clean up the waste or abate the effects of the waste, or take other necessary remedial action, as specified.

This bill would require a regional board to take specified actions when reviewing or approving a cleanup proposal from a primary or active responsible discharger with respect to a site issued a cleanup and abatement order, if the site meets the definition of a site under the California Land Reuse and Revitalization Act of 2004. The bill would require these actions to include providing notice of the proposed decision to approve a cleanup proposal for the site, providing timely access to written material, as specified, providing not less than 30 days to comment on the cleanup proposal regarding the site, and conducting a public meeting in the area of the site during the public comment period if certain conditions apply. The bill would authorize the regional board to develop and use specified means for public communications and input, to disseminate information and to assist the regional board in gathering public input regarding a site, if the regional board makes certain determinations.

(3) Existing law requires certain reports to be submitted to the Department of Toxic Substances Control.

The bill would authorize the Department of Toxic Substances Control to require a person submitting a report to the department or a unified program agency to submit the report in electronic format. The bill would require the department to adopt standards for the electronic submission of reports, including analytical and environmental compliance data, and would require the department, when adopting the format, to consider only formats that meet specified criteria. The bill would require the department, in adopting the standards, to ensure the security of electronically submitted information.

The bill would authorize the department to adopt the standards as emergency regulations and would provide that these emergency

regulations would be repealed one year after the effective date of the regulations, unless the Department of Toxic Substances Control readopts those regulations. The bill would also provide that until the effective date of those regulations, the department would be authorized to implement those standards using specified regulations adopted by the State Water Resources Control Board or the Secretary for Environmental Protection for the electronic submission of reports.

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

SECTION 1. Section 25395.96 of the Health and Safety Code is amended to read:

25395.96. (a) If, upon review of the site assessment prepared pursuant to this article, the agency determines that a response action is necessary to prevent or eliminate an unreasonable risk, the bona fide purchaser, innocent landowner, or contiguous property owner shall submit a response plan to the agency to conduct a response action at the site, in conformance with the agreement entered into pursuant to Section 25395.92. The response plan shall include all of the following:

(1) The response plan shall provide for an opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, taking into consideration the nature of the community interest, and shall include all of the following:

(A) Thirty days before taking action pursuant to the response plan, the agency shall take all of the following actions:

(i) Notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, the regional board, or a redevelopment agency, that is not a party to the response plan regarding the proposed response plan.

(ii) Place a notice in a newspaper of general circulation, in the area of the site, including, but not limited to, a community-based newspaper, as appropriate.

(iii) Post notice of the proposed response plan on the site.

(B) All of the following methods for public participation shall be included in the response plan:

(i) Thirty days' prior public notice in a factsheet format of the proposed response plan, in English and in any other language commonly spoken in the area of the site.

(ii) Access, at both the agency and at local repositories, to the proposed response plan, site assessment, addenda, and any other supporting documentation, including materials listed as references in the response plan and site assessment.

(iii) Procedures for providing a reasonable opportunity to comment on the plan and related documents specified in clause (ii).

(iv) If a public meeting is requested, the holding of a public meeting by the agency in the area to receive comments.

(v) The agency's consideration of any comments received before taking any action regarding the response plan.

(C) The response plan may also provide for, but is not limited to, proposing the use of other methods for public participation, including the use of public notices, direct notification of interested parties, electronic copies of the response plan, site assessment addenda, and other supporting documentation, including materials listed as references in the response plan and site assessment, electronic comment forms, forming advisory groups, as appropriate, to disseminate information and assist the agency in gathering public input, additional public meetings or public hearings, and an opportunity to comment on the proposed response plan prior to approval.

(D) The agency, as part of its communications with affected communities, shall provide information regarding the process by which decisions about the site are made and the recourse that is available for those who may disagree with an agency decision.

(E) The agency shall consider the issue of environmental justice, as defined in subdivision (e) of Section 65040.12 of the Government Code, for communities most impacted, including low-income and racial minority populations before taking action on the response plan.

(F) To the extent possible, the agency shall coordinate its public participation activities with those undertaken by the host jurisdiction and other agencies associated with the development of the property, to avoid duplication to the extent feasible.

(G) It is the intent of the Legislature that the public participation process established pursuant to this paragraph ensures full and robust participation of a community affected by this chapter.

(2) Identification of the release or threatened release that is the subject of the response plan and documentation that the plan is based on an adequate characterization of the site.

(3) An identification of the response plan objectives and the proposed remedy, and an identification of the reasonably anticipated future land uses of the site and of the current and projected land use and zoning designations. This identification shall include confirmation by the host jurisdiction that the anticipated future land uses and current and projected land uses and zoning designations are accurate.

(4) A description of activities that will be implemented to control any endangerment that may occur during the response action at the site.

(5) A description of any land use control that is part of the response action.

(6) A description of wastes other than hazardous materials at the site and how they will be managed in conjunction with the response action.

(7) Provisions for the removal of containment or storage vessels and other sources of contamination, including soils and free product, that cause an unreasonable risk.

(8) Provisions for the agency to require further response actions based on the discovery of hazardous materials that pose an unreasonable risk to

human health and safety or the environment that are discovered during the course of the response action or subsequent development of the site.

(9) Any other information that the agency determines is necessary.

(b) The agency shall evaluate the adequacy of the plan submitted pursuant to subdivision (a) and shall approve the plan if the agency makes all of the following findings:

(1) The plan contains the information required by subdivision (a).

(2) When implemented, the plan will place the site in a condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment.

(3) The plan addresses any public comments.

(4) If applicable, the plan provides for long-term operation and maintenance, including land use and engineering controls, that are part of the remedy contained in the response plan.

(c) (1) On or before 60 days after the date an agency receives a response plan, the agency shall make a written determination that proper completion of the response plan constitutes “appropriate care” for purposes of subdivision (a) of Section 25395.67.

(2) Upon approval of the response plan by the agency, the agency shall notify all appropriate persons, including the host jurisdiction.

(d) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(e) The owner of a site shall not make any change in use of a site inconsistent with any land use control recorded for the site, unless the change is approved by the agency in accordance with subdivision (f) of Section 25395.99.

SEC. 2. Section 57013 is added to the Health and Safety Code, to read:

57013. (a) The Department of Toxic Substances Control may require a person submitting a report or data to submit the report or data in an electronic format, if the report is submitted to either of the following:

(1) The Department of Toxic Substances Control.

(2) A unified program agency implementing the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20.

(b) The Department of Toxic Substances Control may require that a report or data submitted in electronic format include the latitude and longitude, which shall be accurate to within at least one meter, of the location where a sample analyzed in the report or data was collected.

(c) The Department of Toxic Substances Control shall adopt standards, that include electronic formats, for the submission of reports, which shall include formats for the submission of analytical and environmental compliance data. When adopting these standards, the Department of Toxic Substances Control shall only consider electronic formats that meet all of the following criteria:

(1) Are available at no cost.

- (2) Are available in the public domain.
- (3) Have available public domain means to import, manipulate, and store data.
- (4) Allow importation of data into tables that indicate relational distances.
- (5) Allow verification of data submission consistency.
- (6) Allow inclusion of all of the following information:
  - (A) The physical site address from which the sample was taken, and information required for permitting and reporting an unauthorized release.
  - (B) Environmental assessment data taken during the initial site investigation phase, as well as the continuing monitoring and evaluation phases.
  - (C) The latitude and longitude, which shall be accurate to within at least one meter, of the location where a sample was collected.
  - (D) A description of all tests performed on the sample, the results of the testing, quality assurance and quality control information, available narrative information regarding the collection of the sample, and available information concerning the laboratory's analysis of the sample.
- (7) Fulfill any additional criteria that the Department of Toxic Substances Control determines are appropriate for an effective electronic report submission program.
  - (d) In adopting standards pursuant to this section, the Department of Toxic Substances Control shall ensure the security of electronically submitted information.
  - (e) (1) The regulations adopted by the Department of Toxic Substances Control pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare.
    - (2) Notwithstanding the time limitation in subdivision (e) of Section 11346.1 of the Government Code, an emergency regulation adopted or amended pursuant to this section shall not be repealed until one year after the effective date of the regulation, unless the Department of Toxic Substances Control readopts the regulation, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
    - (3) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, until the effective date of the regulations adopted pursuant to this section, the Department of Toxic Substances Control may implement this section using the following regulations adopted by the State Water Resources Control Board or the Secretary for Environmental Protection for the electronic submission of reports:

(A) Chapter 30 (commencing with Section 3900) of Division 3 of Title 23 of the California Code of Regulations.

(B) Subdivision 4 (commencing with Section 15100) of Division 1 of Title 27 of the California Code of Regulations.

(C) Subdivision 2 of Division 3 of Title 27 of the California Code of Regulations.

SEC. 3. Section 13307.5 is added to the Water Code, to read:

13307.5. (a) The regional board shall take all of the following actions when reviewing or approving a cleanup proposal from a primary or active responsible discharger with respect to a site issued a cleanup and abatement order pursuant to Section 13304:

(1) Provide to all of the following, notification, in a factsheet format or another appropriate format, in English and any other languages commonly spoken in the area, as appropriate, of the proposed decision to approve the cleanup proposal for the site, including a contact list of appropriate regional board staff:

(A) An affected or potentially affected property owner, resident, or occupant in the area of the site.

(B) An appropriate governmental entity, including a local governmental entity with jurisdiction over the site.

(2) Provide timely access to written material, including reports and plans, addenda, and other supporting documentation, including materials listed as references, at the regional board's office and at a local repository in the area of the site, and, to the maximum extent possible, by posting on the Internet and acting in accordance with subdivision (a) of Section 13196.

(3) Provide no less than 30 days for an interested person to review and comment on the cleanup proposal regarding the site. The regional board shall consider any comments received before taking final action on a cleanup proposal regarding the site.

(4) Conduct a public meeting in the area of the site during the public comment period pursuant to paragraph (3), if any of the following conditions applies:

(A) A public meeting is requested by an affected or potentially affected property owner, resident, or occupant, in the area of the site.

(B) The level of expressed public interest warrants the conduct of a public meeting.

(C) A public meeting is specifically mandated by statute.

(D) The regional board determines that the existing site contamination poses a significant public health threat.

(b) In undertaking the requirements of this section, a regional board shall, to the extent possible, coordinate and integrate the public participation activities described in this section with those undertaken by the host jurisdiction and other public entities associated with development, investigation, or the response action at the site, in order to avoid unnecessary duplication and to integrate the public participation efforts of local government.

(c) For purposes of this section, “site” has the same meaning as defined in Section 25395.79.2 of the Health and Safety Code.

SEC. 4. Section 13307.6 is added to the Water Code, to read:

13307.6. (a) In addition to the requirements of Section 13307.5, the regional board may develop and use any of the following procedures to disseminate information and assist the regional board in gathering community input regarding a site, if the regional board determines there is expressed community interest in the site, or the existing site contamination poses a significant public health threat:

- (1) An annual factsheet.
- (2) Internet posting or electronic distribution of an electronic copy of a document or report.
- (3) An electronic comment or electronic feedback form.
- (4) Formation and facilitation of an advisory group.
- (5) An additional public meeting or workshop.
- (6) Extension of a public comment period.
- (7) Preparation of a public participation plan.
- (8) Creation of a mailing list for notifying an interested party of a major regional board decision and the regional board’s proposed or planned activity regarding the site.

(b) For purposes of this section, “site” has the same meaning as defined in Section 25395.79.2 of the Health and Safety Code.