

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 358**

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**Introduced by Assembly Member Smyth**

February 10, 2011

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An act to amend Section 25296.25 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 358, as amended, Smyth. Hazardous substances: underground storage tanks: corrective action suspension.

Existing law generally regulates the storage of hazardous substances in underground storage tanks, including requiring underground storage tanks that are used to store hazardous substances to meet certain requirements.

Existing law requires owners and operators of underground storage tanks to take corrective action to an unauthorized release. The State Water Resources Control Board is authorized to suspend corrective action at a site, unless the board, in consultation with local agencies and ~~the~~ a California regional water quality control board (regional board), determines that a site is an emergency site, as defined. The board is prohibited from suspending certain activities pursuant to that authority and is required to continue the suspension under certain conditions. The board is required to adopt regulations to specify the conditions under which a site is an emergency site, in that it poses either an imminent threat to public health or safety or to the environment or a substantial

probability of causing a condition of contamination, nuisance, or pollution.

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, the board is authorized to expend moneys from the Underground Storage Tank Cleanup Fund to pay claims to aid eligible owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks.

~~This bill would instead authorize the board to suspend corrective action if reimbursement of a claim has been suspended pursuant to the act, unless the board determines, without the requirement to consult with local agencies and the regional board, that the site presents an imminent threat to public health or safety or to the environment. The bill would delete the prohibition on the board from suspending those activities, would revise the conditions under which suspension is required to be continued, and would delete the requirement that the board adopt regulations to specify the conditions under which a site is an emergency site require the board to adopt these regulations specifying the conditions under which a site is an emergency site on January 1, 2012, as emergency regulations. The bill would exempt the adoption of these regulations from certain requirements regarding review by the Office of Administrative Law.~~

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

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

- 1     SECTION. 1. Section 25296.25 of the Health and Safety Code
- 2     is amended to read:
- 3     25296.25. (a) (1) Unless the board, in consultation with local
- 4     agencies and the regional board, determines that a site is an
- 5     emergency site, the board, at the request of a responsible party
- 6     who is eligible for reimbursement of corrective action costs under
- 7     Chapter 6.75 (commencing with Section 25299.10), may suspend
- 8     additional corrective action or investigation work at a site, based
- 9     on a preliminary site assessment conducted in accordance with the
- 10    corrective action regulations adopted by the board, but the board
- 11    shall not suspend any of the following activities pursuant to this
- 12    section:
- 13    (A) Removal of, or approved modifications of, existing tanks.

1 (B) Excavation of petroleum saturated soil or removal of excess  
2 petroleum from saturated soil.

3 (C) Removal of free product from the saturated and unsaturated  
4 zones.

5 (D) Periodic monitoring to ensure that released petroleum is  
6 not migrating in an uncontrolled manner that will cause the site to  
7 become an emergency site.

8 (2) For purposes of this subdivision, “emergency site” means  
9 a site that, because of an unauthorized release of petroleum, meets  
10 one of the following conditions:

11 (A) The site presents an imminent threat to public health or  
12 safety or the environment.

13 (B) The site poses a substantial probability of causing a  
14 condition of contamination or nuisance, as defined in Section  
15 13050 of the Water Code, or of causing pollution of a source of  
16 drinking water at a level that is a violation of a primary or  
17 secondary drinking water standard adopted by the State Department  
18 of *Public Health Services* pursuant to Chapter 4 (commencing  
19 with Section 116270) of Part 12 of Division 104.

20 (b) The suspension shall continue until one of the following  
21 occurs:

22 (1) The board provides the eligible responsible party with a  
23 letter of commitment pursuant to Chapter 6.75 (commencing with  
24 Section 25299.10) that the party will receive reimbursement for  
25 the corrective action.

26 (2) The responsible party requests in writing that the suspension  
27 be terminated and that the work continue.

28 (3) The fund established pursuant to Article 6 (commencing  
29 with Section 25299.50) of Chapter 6.75 is no longer in existence.

30 (c) ~~The~~ (1) *On January 1, 2012, the board shall adopt*  
31 *emergency regulations pursuant to Section 25299.3 that specify*  
32 *the conditions under which a site is an imminent threat to public*  
33 *health or safety or to the environment or poses a substantial*  
34 *probability of causing a condition of contamination, nuisance, or*  
35 *pollution, as specified in paragraph (2) of subdivision (a). ~~The~~*

36 (2) *These emergency regulations shall be adopted in accordance*  
37 *with Chapter 3.5 (commencing with Section 11340) of Part 1 of*  
38 *Division 3 of Title 2 of the Government Code, and for the purposes*  
39 *of that chapter, including Section 11349.6 of the Government Code,*  
40 *the adoption of these regulations is an emergency and shall be*

1 *considered by the Office of Administrative Law as necessary for*  
2 *the immediate preservation of the public peace, health and safety,*  
3 *and general welfare. Notwithstanding Chapter 3.5 (commencing*  
4 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*  
5 *Government Code, including subdivision (e) of Section 11346.1*  
6 *of the Government Code, the emergency regulations adopted*  
7 *pursuant to this subdivision shall be filed with, but shall not be*  
8 *repealed by, the Office of Administrative Law and shall remain in*  
9 *effect until revised by the board.*

10 (3) The board shall not suspend corrective action or investigation  
11 work at any site pursuant to this section until the effective date of  
12 the *emergency* regulations adopted by the board pursuant to this  
13 subdivision.

14 ~~SECTION 1. Section 25296.25 of the Health and Safety Code~~  
15 ~~is amended to read:~~

16 ~~25296.25. (a) The board may suspend additional corrective~~  
17 ~~action or investigation work at a site, at the request of a responsible~~  
18 ~~party who is eligible for reimbursement of corrective action costs~~  
19 ~~under Chapter 6.75 (commencing with Section 25299.10), if~~  
20 ~~reimbursement of a claim has been suspended pursuant to Chapter~~  
21 ~~6.75 (commencing with Section 25299.10), unless the board~~  
22 ~~determines that the site presents an imminent threat to public health~~  
23 ~~or safety or to the environment, based on a preliminary site~~  
24 ~~assessment conducted in accordance with the corrective action~~  
25 ~~regulations adopted by the board pursuant to subdivision (a) of~~  
26 ~~Section 25296.10.~~

27 ~~(b) The suspension shall continue until one of the following~~  
28 ~~occurs:~~

29 ~~(1) The board provides the eligible responsible party with notice~~  
30 ~~that the suspension of funding is lifted and that reimbursement~~  
31 ~~payments are available pursuant to a letter of commitment issued~~  
32 ~~pursuant to Chapter 6.75 (commencing with Section 25299.10).~~

33 ~~(2) The responsible party requests in writing that the suspension~~  
34 ~~be terminated and that the work continue.~~

35 ~~(3) The fund established pursuant to Article 6 (commencing~~  
36 ~~with Section 25299.50) of Chapter 6.75 is no longer in existence.~~