

AMENDED IN SENATE JUNE 21, 2011

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 358

Introduced by Assembly Member Smyth

February 10, 2011

An act to amend Section 25296.25 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 25295, 25296.35, 25296.40, and 25299.39.2 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing

(1) 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 tank owners and operators to report unauthorized releases to local agencies and requires the State Water Resources Control Board to continuously post and update on its Internet Web site reports of information concerning unauthorized releases.

~~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 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 require the board to adopt these regulations specifying the conditions under which a site is an emergency site on or before 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.~~

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

This bill would instead require each regional board and local agency to submit a report to the board for all unauthorized releases using the board's Internet-accessible database, thereby imposing a state-mandated local program by imposing new duties upon local agencies. The bill would require the board to annually post and update on its Internet Web site the information in those reports concerning unauthorized releases.

The bill would authorize the board to adopt regulations to specify electronic submission requirements for these reports. The bill would require the regulations to be adopted as emergency regulations and would exempt the adoption of these regulations from certain requirements regarding review by the Office of Administrative Law.

(2) Existing law authorizes the board to close a tank case if that tank case is under the jurisdiction of a regional board or a local agency

implementing a local oversight program and allows the board to recommend that a local agency close that tank case if the tank case is at a site of a local agency that is not implementing the local oversight program.

This bill would instead authorize the board to require closure of any underground storage tank case where an unauthorized release has occurred and would delete the board’s authority to recommend closure to a local agency that is not implementing the local oversight program.

(3) The bill would declare that it is to take effect immediately as an urgency statute

(4) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 25295 of the Health and Safety Code is
2 amended to read:
3 25295. (a) (1) ~~Any~~An unauthorized release ~~which~~ that escapes
4 from the secondary containment, or from the primary containment,
5 if no secondary containment exists, increases the hazard of fire or
6 explosion, or causes ~~any~~ deterioration of the secondary containment
7 of the underground tank system shall be reported by the owner or
8 operator to the local agency designated pursuant to Section 25283
9 within 24 hours after the release has been detected or should have
10 been detected. A full written report shall be transmitted by the
11 owner or operator of the underground tank system to the local
12 agency within five working days of the occurrence of the release.
13 The report shall describe the nature and volume of the unauthorized
14 release, any corrective or remedial actions undertaken, and any
15 further corrective or remedial actions, including investigative
16 actions, ~~which~~ that will be needed to clean up the unauthorized
17 release and abate the effects of the release and a time schedule for
18 implementing these actions.

1 (2) The local agency shall review the permit whenever there
2 has been an unauthorized release or when it determines that the
3 underground tank system is unsafe. In determining whether to
4 modify or terminate the permit, the local agency shall consider the
5 age of the tank, the methods of containment, the methods of
6 monitoring, the feasibility of any required repairs, the concentration
7 of the hazardous substances stored in the tank, the severity of
8 potential unauthorized releases, and the suitability of any other
9 long-term preventive measures which would meet the requirements
10 of this chapter.

11 ~~(b) The board shall continuously post and update on its Web~~
12 ~~site, but at a minimum, annually on or before December 1, a report~~
13 ~~of~~ *(1) Each regional board and local agency shall submit a report*
14 *to the board for all unauthorized releases, indicating for each*
15 *unauthorized release the responsible party, the site name, the*
16 *hazardous substance, the quantity of the unauthorized release if*
17 *known, and the actions taken to abate the problem, the source and*
18 *cause of the unauthorized release, the underground storage tank*
19 *system's record of compliance with this chapter, data on equipment*
20 *failures, and any other information that the board deems necessary*
21 *to implement this chapter, Chapter 6.75 (commencing with Section*
22 *25299.10), or the federal act.*

23 *(2) The information required by this subdivision shall be*
24 *submitted to the board and updated using the board's*
25 *Internet-accessible database that accepts data pursuant to Section*
26 *13196 of the Water Code.*

27 *(3) On and before December 1, 2012, and not less than annually*
28 *thereafter, the board shall post and update on its Internet Web*
29 *site, the information concerning unauthorized releases in the*
30 *reports submitted pursuant to this subdivision.*

31 *(4) The board may adopt regulations pursuant to Section*
32 *25299.3 that specify requirements for the electronic submission*
33 *of the information required in a report submitted pursuant to this*
34 *subdivision. If the board adopts these regulations, the board shall*
35 *adopt the regulations as emergency regulations in accordance*
36 *with Chapter 3.5 (commencing with Section 11340) of Part 1 of*
37 *Division 3 of Title 2 of the Government Code, and for the purposes*
38 *of that chapter, including Section 11349.6 of the Government Code,*
39 *the adoption of these regulations is an emergency and shall be*
40 *considered by the Office of Administrative Law as necessary to*

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

9 (c) The reporting requirements imposed by this section are in
10 addition to any requirements—~~which~~ *that* may be imposed by
11 Sections 13271 and 13272 of the Water Code.

12 *SEC. 2. Section 25296.35 of the Health and Safety Code is*
13 *amended to read:*

14 25296.35. (a) The board shall develop, implement, and
15 maintain a system for storing and retrieving data from cases
16 involving discharges of petroleum from underground storage tanks
17 to allow regulatory agencies and the general public to use historic
18 data in making decisions regarding permitting, land use, and other
19 matters. The system shall be accessible to government agencies
20 and the general public *and shall include the reports submitted to*
21 *the board by regional boards or local agencies pursuant to Section*
22 *25295. A site included in the data system shall be clearly*
23 *designated as having no residual contamination if, at the time a*
24 *closure letter is issued for the site pursuant to Section 25296.10*
25 *or at any time after that closure letter is issued, the board*
26 *determines that no residual contamination remains on the site.*

27 (b) For purposes of this section, “residual contamination” means
28 the petroleum that remains on a site after a corrective action has
29 been carried out and the cleanup levels established by the corrective
30 action plan for the site, pursuant to subdivision (g) of Section 2725
31 of Title 23 of the California Code of Regulations, have been
32 achieved.

33 *SEC. 3. Section 25296.40 of the Health and Safety Code is*
34 *amended to read:*

35 25296.40. (a) (1) Any owner or operator, or other responsible
36 party who has—~~a~~ *an underground storage tank case and who*
37 *believes that the corrective action plan for the site has been*
38 *satisfactorily implemented, but where closure has not been granted,*
39 *may petition the board for a review of the case.*

1 (2) Upon receipt of a petition pursuant to paragraph (1), the
 2 board may close ~~the any underground storage tank case or require~~
 3 ~~closure, if the tank case is at a site under the jurisdiction of a~~
 4 ~~regional board or a local agency that is implementing a local~~
 5 ~~oversight program under Section 25297.1 and of any underground~~
 6 ~~storage tank case where an unauthorized release has occurred, if~~
 7 the board determines that corrective action at the site is in
 8 compliance with all of the requirements of subdivisions (a) and
 9 (b) of Section 25296.10 and the corrective action regulations
 10 adopted pursuant to Section 25299.3. ~~If a tank case is at a site~~
 11 ~~under the jurisdiction of a local agency that is not implementing~~
 12 ~~a local oversight program pursuant to Section 25297.1, the board~~
 13 ~~may recommend to the local agency that the tank case be closed.~~

14 (b) ~~Any~~ An aggrieved person may, not later than 30 days from
 15 the date of final action by the board, pursuant to subdivision (a),
 16 file with the superior court a petition for writ of mandate for review
 17 of the decision. If the aggrieved person does not file a petition for
 18 writ of mandate within the time provided by this subdivision, a
 19 board decision shall not be subject to review by any court. Section
 20 1094.5 of the Code of Civil Procedure shall govern proceedings
 21 for which petitions are filed pursuant to this subdivision. For
 22 purposes of subdivision (c) of Section 1094.5 of the Code of Civil
 23 Procedure, the court shall uphold the decision if the decision is
 24 based upon substantial evidence in light of the whole record.

25 (c) The authority provided under this section does not limit a
 26 person’s ability to petition the board for review under any other
 27 state law.

28 *SEC. 4. Section 25299.39.2 of the Health and Safety Code is*
 29 *amended to read:*

30 25299.39.2. (a) The manager responsible for the fund shall
 31 notify tank owners or operators who have an active letter of
 32 commitment that has been in an active status for five years or more
 33 and shall review the case history of their tank case on an annual
 34 basis unless otherwise notified by the tank owner or operator within
 35 30 days of the notification. The manager, with approval of the tank
 36 owner or operator, may make a recommendation to the board for
 37 closure. The board may close ~~the any~~ tank case or require the
 38 closure of ~~a any~~ tank case ~~at a site under the jurisdiction of a~~
 39 ~~regional board or a local agency implementing a local oversight~~
 40 ~~program under Section 25297.1 where an unauthorized release~~

1 *has occurred* if the board determines that corrective action at the
2 site is in compliance with all of the requirements of subdivisions
3 (a) and (b) of Section 25296.10 and the corrective action
4 regulations adopted pursuant to Section 25299.3. ~~If a tank case is~~
5 ~~at a site under the jurisdiction of a local agency that is not~~
6 ~~implementing a local oversight program under Section 25297.1,~~
7 ~~the board may recommend to the local agency that the case be~~
8 ~~closed.~~

9 (b) ~~Any~~ An aggrieved person may, not later than 30 days from
10 the date of final action by the board, pursuant to subdivision (a),
11 file with the superior court a petition for writ of mandate for review
12 of the decision. If the aggrieved person does not file a petition for
13 writ of mandate within the time provided by this subdivision, a
14 board decision shall not be subject to review by any court. Section
15 1094.5 of the Code of Civil Procedure shall govern proceedings
16 for which petitions are filed pursuant to this subdivision. For
17 purposes of subdivision (c) of Section 1094.5 of the Code of Civil
18 Procedure, the court shall uphold the decision if the decision is
19 based upon substantial evidence in light of the whole record.

20 (c) The authority provided under this section does not limit a
21 person's ability to petition the board for review under any other
22 state law.

23 *SEC. 5. No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *a local agency or school district has the authority to levy service*
26 *charges, fees, or assessments sufficient to pay for the program or*
27 *level of service mandated by this act, within the meaning of Section*
28 *17556 of the Government Code.*

29 *SEC. 6. This act is an urgency statute necessary for the*
30 *immediate preservation of the public peace, health, or safety within*
31 *the meaning of Article IV of the Constitution and shall go into*
32 *immediate effect. The facts constituting the necessity are:*

33 *In order to clarify as soon as possible existing oversight authority*
34 *regarding the remediation of releases from underground storage*
35 *tanks, thereby protecting public health and safety and the*
36 *environment, it is necessary that this act take effect immediately*
37 *as an urgency statute.*

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

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

11 ~~(A) Removal of, or approved modifications of, existing tanks.~~

12 ~~(B) Excavation of petroleum saturated soil or removal of excess~~
13 ~~petroleum from saturated soil.~~

14 ~~(C) Removal of free product from the saturated and unsaturated~~
15 ~~zones.~~

16 ~~(D) Periodic monitoring to ensure that released petroleum is~~
17 ~~not migrating in an uncontrolled manner that will cause the site to~~
18 ~~become an emergency site.~~

19 ~~(2) For purposes of this subdivision, “emergency site” means~~
20 ~~a site that, because of an unauthorized release of petroleum, meets~~
21 ~~one of the following conditions:~~

22 ~~(A) The site presents an imminent threat to public health or~~
23 ~~safety or the environment.~~

24 ~~(B) The site poses a substantial probability of causing a~~
25 ~~condition of contamination or nuisance, as defined in Section~~
26 ~~13050 of the Water Code, or of causing pollution of a source of~~
27 ~~drinking water at a level that is a violation of a primary or~~
28 ~~secondary drinking water standard adopted by the State Department~~
29 ~~of Public Health pursuant to Chapter 4 (commencing with Section~~
30 ~~116270) of Part 12 of Division 104.~~

31 ~~(b) The suspension shall continue until one of the following~~
32 ~~occurs:~~

33 ~~(1) The board provides the eligible responsible party with a~~
34 ~~letter of commitment pursuant to Chapter 6.75 (commencing with~~
35 ~~Section 25299.10) that the party will receive reimbursement for~~
36 ~~the corrective action.~~

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

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

1 ~~(e) (1) On or before January 1, 2012, the board shall adopt~~
 2 ~~emergency regulations pursuant to Section 25299.3 that specify~~
 3 ~~the conditions under which a site is an imminent threat to public~~
 4 ~~health or safety or to the environment or poses a substantial~~
 5 ~~probability of causing a condition of contamination, nuisance, or~~
 6 ~~pollution, as specified in paragraph (2) of subdivision (a).~~

7 ~~(2) These emergency regulations shall be adopted in accordance~~
 8 ~~with Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
 9 ~~Division 3 of Title 2 of the Government Code, and for the purposes~~
 10 ~~of that chapter, including Section 11349.6 of the Government~~
 11 ~~Code, the adoption of these regulations is an emergency and shall~~
 12 ~~be considered by the Office of Administrative Law as necessary~~
 13 ~~for the immediate preservation of the public peace, health and~~
 14 ~~safety, and general welfare. Notwithstanding Chapter 3.5~~
 15 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
 16 ~~2 of the Government Code, including subdivision (e) of Section~~
 17 ~~11346.1 of the Government Code, the emergency regulations~~
 18 ~~adopted pursuant to this subdivision shall be filed with, but shall~~
 19 ~~not be repealed by, the Office of Administrative Law and shall~~
 20 ~~remain in effect until revised by the board.~~

21 ~~(3) The board shall not suspend corrective action or investigation~~
 22 ~~work at any site pursuant to this section until the effective date of~~
 23 ~~the emergency regulations adopted by the board pursuant to this~~
 24 ~~subdivision.~~

25 ~~SEC. 2. This act is an urgency statute necessary for the~~
 26 ~~immediate preservation of the public peace, health, or safety within~~
 27 ~~the meaning of Article IV of the Constitution and shall go into~~
 28 ~~immediate effect. The facts constituting the necessity are:~~

29 ~~In order to better protect public health and safety and the~~
 30 ~~environment by clarifying the procedures for corrective actions,~~
 31 ~~it is necessary that this act take effect immediately.~~