

ASSEMBLY BILL

No. 1566

Introduced by Assembly Member Wieckowski

January 30, 2012

An act to amend Sections 25270.2, 25270.4, 25270.12, and 25281 of, and to add Sections 25270.4.1, 25270.12.1, and 25270.12.5 to, the Health and Safety Code, relating to aboveground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1566, as introduced, Wieckowski. Aboveground storage tanks: enforcement.

(1) The Aboveground Petroleum Storage Act (act) defines, for purposes of the act, an “aboveground storage tank” as a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground, except as specified. Existing law requires every county to apply to the Secretary for Environmental Protection to be certified to implement the unified hazardous waste and hazardous materials management regulatory program (unified program) and allows a city or local agency to implement the unified program. Existing law requires the unified program agencies (UPAs) to implement that act.

This bill would revise the definition of “aboveground storage tank” to delete the requirement that the tank be substantially or totally above the ground and to include tanks located in underground areas, as defined. The bill would require the UPAs to implement the act in accordance with the regulations adopted by the Office of the State Fire Marshal and would authorize the Office of the State Fire Marshal to adopt these regulations, thereby imposing a state-mandated local program by imposing new requirements upon local agencies with regard to the act.

The bill would also require the office to interpret the act and oversee the implementation of the act by the UPAs and would make conforming changes in that regard.

The bill would impose criminal penalties for a violation of the act, thereby imposing a state-mandated local program by creating new crimes, and would impose administrative penalties for a violation of the act.

(2) Existing law defines the term “underground storage tank” for purposes of the provisions regulating the storage of hazardous substances in underground storage tanks, and excludes certain tanks from that definition.

This bill would revise the definition of the term “underground storage tank” to additionally exclude a tank, and associated piping, in an underground area that is subject to the act.

(3) 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 specified reasons.

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

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

1 SECTION 1. Section 25270.2 of the Health and Safety Code
2 is amended to read:

3 25270.2. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Aboveground storage tank” or “storage tank” means a tank
6 that has the capacity to store 55 gallons or more of petroleum ~~and~~
7 ~~that is substantially or totally above the surface of the ground~~
8 *including, but not limited to, a tank located in an underground*
9 *area.* “Aboveground storage tank” does not include any of the
10 following:

11 (1) A pressure vessel or boiler that is subject to Part 6
12 (commencing with Section 7620) of Division 5 of the Labor Code.

13 (2) A tank containing hazardous waste, as described in
14 subdivision (g) of Section 25316, if the Department of Toxic
15 Substances Control has issued the person owning or operating the
16 tank a hazardous waste facilities permit for the storage tank.

1 (3) An aboveground oil production tank that is subject to Section
2 3106 of the Public Resources Code.

3 (4) Oil-filled electrical equipment, including, but not limited
4 to, transformers, circuit breakers, or capacitors, if the oil-filled
5 electrical equipment meets either of the following conditions:

6 (A) The equipment contains less than 10,000 gallons of dielectric
7 fluid.

8 (B) The equipment contains 10,000 gallons or more of dielectric
9 fluid with PCB levels less than 50 parts per million, appropriate
10 containment or diversionary structures or equipment are employed
11 to prevent discharged oil from reaching a navigable water course,
12 and the electrical equipment is visually inspected in accordance
13 with the usual routine maintenance procedures of the owner or
14 operator.

15 (5) A tank regulated as an underground storage tank under
16 Chapter 6.7 (commencing with Section 25280) of this division and
17 Chapter 16 (commencing with Section 2610) of Division 3 of Title
18 23 of the California Code of Regulations.

19 (6) A transportation-related tank facility, subject to the authority
20 and control of the United States Department of Transportation, as
21 defined in the Memorandum of Understanding between the
22 Secretary of Transportation and the Administrator of the United
23 States Environmental Protection Agency, dated November 24,
24 1971, set forth in Appendix A to Part 112 (commencing with
25 Section 112.1) of Subchapter D of Chapter I of Title 40 of the
26 Code of Federal Regulations.

27 (b) “Board” means the State Water Resources Control Board.

28 (c) (1) “Certified Unified Program Agency” or “CUPA” means
29 the agency certified by the Secretary for Environmental Protection
30 to implement the unified program specified in Chapter 6.11
31 (commencing with Section 25404) within a jurisdiction.

32 (2) “Participating Agency” or “PA” means an agency that has
33 a written agreement with the CUPA pursuant to subdivision (d)
34 of Section 25404.3, and is approved by the secretary, to implement
35 and enforce the unified program element specified in paragraph
36 (2) of subdivision (c) of Section 25404, in accordance with Sections
37 25404.1 and 25404.2.

38 (3) (A) “Unified Program Agency” or “UPA” means the CUPA,
39 or its participating agencies to the extent that each PA has been
40 designated by the CUPA, pursuant to a written agreement, to

1 implement and enforce the unified program element specified in
2 paragraph (2) of subdivision (c) of Section 25404. The UPAs have
3 the responsibility and authority, to the extent provided by this
4 chapter and Sections 25404.1 and 25404.2, to implement and
5 enforce the requirements of this chapter.

6 (B) After a CUPA has been certified by the secretary, the unified
7 program agency shall be the only agency authorized to enforce the
8 requirements of this chapter.

9 (C) This paragraph does not limit the authority or responsibility
10 granted to the *office, the* board, and the regional boards by this
11 chapter.

12 (d) *“Office” means the Office of the State Fire Marshal.*

13 ~~(d)~~

14 (e) “Operator” means the person responsible for the overall
15 operation of a tank facility.

16 ~~(e)~~

17 (f) “Owner” means the person who owns the tank facility or
18 part of the tank facility.

19 ~~(f)~~

20 (g) “Person” means an individual, trust, firm, joint stock
21 company, corporation, including a government corporation,
22 partnership, limited liability company, or association. “Person”
23 also includes any city, county, district, the University of California,
24 the California State University, the state, any department or agency
25 thereof, and the United States, to the extent authorized by federal
26 law.

27 ~~(g)~~

28 (h) “Petroleum” means crude oil, or a fraction thereof, that is
29 liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per
30 square inch absolute pressure.

31 ~~(h)~~

32 (i) “Regional board” means a California regional water quality
33 control board.

34 ~~(i)~~

35 (j) “Release” means any spilling, leaking, pumping, pouring,
36 emitting, emptying, discharging, escaping, leaching, or disposing
37 into the environment.

38 ~~(j)~~

39 (k) “Secretary” means the Secretary for Environmental
40 Protection.

1 ~~(k)~~

2 (l) “Storage” or “store” means the containment, handling, or
3 treatment of petroleum, for a period of time, including on a
4 temporary basis.

5 ~~(t)~~

6 (m) “Storage capacity” means the aggregate capacity of all
7 aboveground tanks at a tank facility.

8 ~~(m)~~

9 (n) “Tank facility” means one or more aboveground storage
10 tanks, including any piping that is integral to the tanks, that contain
11 petroleum and that are used by an owner or operator at a single
12 location or site. For purposes of this chapter, a pipe is integrally
13 related to an aboveground storage tank if the pipe is connected to
14 the tank and meets any of the following:

15 (1) The pipe is within the dike or containment area.

16 (2) The pipe is between the containment area and the first flange
17 or valve outside the containment area.

18 (3) The pipe is connected to the first flange or valve on the
19 exterior of the tank, if state or federal law does not require a
20 containment area.

21 (o) “Underground area” means an underground room or space,
22 including, but not limited to, a basement, cellar, shaft, pit, or vault,
23 providing enough space for physical inspection of the exterior of
24 the tank situated on or above the surface of the floor.

25 SEC. 2. Section 25270.4 of the Health and Safety Code is
26 amended to read:

27 25270.4. This chapter shall be implemented by the Unified
28 Program Agency, *in accordance with the regulations adopted by*
29 *the office pursuant to Section 25270.4.1.* If there is no UPA, the
30 agency authorized pursuant to subdivision (f) of Section 25404.3
31 shall be deemed to be the UPA for purposes of this chapter and
32 shall implement this chapter.

33 SEC. 3. Section 25270.4.1 is added to the Health and Safety
34 Code, to read:

35 25270.4.1. (a) The office may adopt regulations implementing
36 this chapter. The office shall also provide interpretation of this
37 chapter to the UPAs, and oversee the implementation of this
38 chapter by the UPAs.

39 (b) Any regulation adopted by the office pursuant to this section
40 shall ensure consistency with the requirements for spill prevention,

1 control, and countermeasure plans under Part 112 (commencing
2 with Section 112.1) of Subchapter D of Chapter I of Title 40 of
3 the Code of Federal Regulations, and shall include any more
4 stringent requirements necessary to implement this chapter.

5 SEC. 4. Section 25270.12 of the Health and Safety Code is
6 amended to read:

7 25270.12. (a) Any owner or operator of a tank facility who
8 fails to prepare a spill prevention control and countermeasure plan
9 in compliance with subdivision (a) of Section 25270.4.5, to file a
10 tank facility statement pursuant to subdivision (a) of Section
11 25270.6, to submit the fee required by subdivision (b) of Section
12 25270.6, *or* to report spills as required by Section 25270.8, or *who*
13 otherwise *fails* to comply with the requirements of this chapter, is
14 subject to a civil penalty of not more than five thousand dollars
15 (\$5,000) for each day on which the violation continues. If the
16 owner or operator commits a second or subsequent violation, a
17 civil penalty of not more than ten thousand dollars (\$10,000) for
18 each day on which the violation continues may be imposed.

19 (b) (1) The civil penalties provided by this section may be
20 assessed and recovered in a civil action brought by the city attorney
21 or district attorney on behalf of the UPA.

22 (2) Fifty percent of all penalties assessed and recovered in a
23 civil action brought on behalf of a UPA pursuant to this subdivision
24 shall be deposited into a unified program account established by
25 the UPA for the purpose of carrying out the functions of the unified
26 program and 50 percent shall be paid to the office of the city
27 attorney or district attorney, whoever brought that action.

28 (c) (1) The civil penalties provided in this section may be
29 assessed and recovered in a civil action brought by the Attorney
30 General on behalf of the *office, the* board, or a regional board, or
31 on behalf of the people of the State of California.

32 (2) All penalties assessed and recovered in a civil action brought
33 pursuant to this subdivision shall be deposited in the Waste
34 Discharge Permit Fund *created pursuant to Section 13260 of the*
35 *Water Code*. These moneys shall be separately accounted for, and
36 shall be expended by the board, upon appropriation by the
37 Legislature, to assist regional boards and other public agencies
38 with authority to clean up waste or abate the effects of the waste,
39 in cleaning up or abating the effects of the waste on waters of the
40 state, or for the *same purposes* ~~authorized in~~ *for which the State*

1 *Water Pollution Cleanup and Abatement Account may be expended*
2 *pursuant to Section 13443 of the Water Code.*

3 (d) The city attorney, district attorney, or the Attorney General
4 may seek to enjoin, in any court of competent jurisdiction, any
5 person believed to be in violation of this chapter.

6 (e) The penalties specified in this section are in addition to any
7 other penalties provided by law.

8 SEC. 5. Section 25270.12.1 is added to the Health and Safety
9 Code, to read:

10 25270.12.1. (a) An owner or operator of a tank facility who
11 fails to prepare a spill prevention control and countermeasure plan
12 in compliance with subdivision (a) of Section 25270.4.5, to file a
13 tank facility statement pursuant to subdivision (a) of Section
14 25270.6, to submit the fee required by subdivision (b) of Section
15 25270.6, or to report spills as required by Section 25270.8, or who
16 otherwise fails to comply with the requirements of this chapter is
17 liable to the UPA for an administrative penalty of not more than
18 five thousand dollars (\$5,000) for each day on which the violation
19 continues. If the owner or operator commits a second or subsequent
20 violation, an administrative penalty of not more than ten thousand
21 dollars (\$10,000) for each day on which the violation continues
22 may be imposed.

23 (b) The administrative penalties assessed by a UPA shall be
24 deposited into a unified program account established by the UPA
25 for the purpose of carrying out the functions of the unified program.

26 (c) The penalties specified in this section are in addition to any
27 other penalties provided by law.

28 (d) When a UPA issues an enforcement order or assesses an
29 administrative penalty, or both, for a violation of this chapter, the
30 administering agency shall utilize the administrative enforcement
31 procedures specified in Sections 25404.1.1 and 25404.1.2.

32 SEC. 6. Section 25270.12.5 is added to the Health and Safety
33 Code, to read:

34 25270.12.5. (a) A person who knowingly violates Section
35 25270.4.5, 25270.6, or 25270.8 after reasonable notice of the
36 violation is, upon conviction, guilty of a misdemeanor.

37 (b) This section does not preempt any other applicable criminal
38 or civil penalties.

39 SEC. 7. Section 25281 of the Health and Safety Code is
40 amended to read:

1 25281. For purposes of this chapter, the following definitions
2 apply:

3 (a) “Automatic line leak detector” means any method of leak
4 detection, as determined in regulations adopted by the board, that
5 alerts the owner or operator of an underground storage tank to the
6 presence of a leak. “Automatic line leak detector” includes, but is
7 not limited to, any device or mechanism that alerts the owner or
8 operator of an underground storage tank to the presence of a leak
9 by restricting or shutting off the flow of a hazardous substance
10 through piping, or by triggering an audible or visual alarm, and
11 that detects leaks of three gallons or more per hour at 10 pounds
12 per square inch line pressure within one hour.

13 (b) “Board” means the State Water Resources Control Board.
14 “Regional board” means a California regional water quality control
15 board.

16 (c) “Compatible” means the ability of two or more substances
17 to maintain their respective physical and chemical properties upon
18 contact with one another for the design life of the tank system
19 under conditions likely to be encountered in the tank system.

20 (d) (1) “Certified Unified Program Agency” or “CUPA” means
21 the agency certified by the Secretary for Environmental Protection
22 to implement the unified program specified in Chapter 6.11
23 (commencing with Section 25404) within a jurisdiction.

24 (2) “Participating Agency” or “PA” means an agency that has
25 a written agreement with the CUPA pursuant to subdivision (d)
26 of Section 25404.3, and is approved by the secretary to implement
27 or enforce the unified program element specified in paragraph (3)
28 of subdivision (c) of Section 25404, in accordance with Sections
29 25404.1 and 25404.2.

30 (3) “Unified Program Agency” or “UPA” means the CUPA, or
31 its participating agencies to the extent each PA has been designated
32 by the CUPA, pursuant to a written agreement, to implement or
33 enforce the unified program element specified in paragraph (3) of
34 subdivision (c) of Section 25404. For purposes of this chapter, a
35 UPA has the responsibility and authority, to the extent provided
36 by this chapter and Sections 25404.1 and 25404.2, to implement
37 and enforce only those requirements of this chapter listed in
38 paragraph (3) of subdivision (c) of Section 25404 and the
39 regulations adopted to implement those requirements. Except as
40 provided in Section 25296.09, after a CUPA has been certified by

1 the secretary, the UPA shall be the only local agency authorized
2 to enforce the requirements of this chapter listed in paragraph (3)
3 of subdivision (c) of Section 25404 within the jurisdiction of the
4 CUPA. This paragraph shall not be construed to limit the authority
5 or responsibility granted to the board and the regional boards by
6 this chapter to implement and enforce this chapter and the
7 regulations adopted pursuant to this chapter.

8 (e) “Department” means the Department of Toxic Substances
9 Control.

10 (f) “Facility” means any one, or combination of, underground
11 storage tanks used by a single business entity at a single location
12 or site.

13 (g) “Federal act” means Subchapter IX (commencing with
14 Section 6991) of Chapter 82 of Title 42 of the United States Code,
15 as added by the Hazardous and Solid Waste Amendments of 1984
16 (P.L. 98-616), or as it may subsequently be amended or
17 supplemented.

18 (h) “Hazardous substance” means either of the following:

19 (1) All of the following liquid and solid substances, unless the
20 department, in consultation with the board, determines that the
21 substance could not adversely affect the quality of the waters of
22 the state:

23 (A) Substances on the list prepared by the Director of Industrial
24 Relations pursuant to Section 6382 of the Labor Code.

25 (B) Hazardous substances, as defined in Section 25316.

26 (C) Any substance or material that is classified by the National
27 Fire Protection Association (NFPA) as a flammable liquid, a class
28 II combustible liquid, or a class III-A combustible liquid.

29 (2) Any regulated substance, as defined in subsection ~~(2)~~ (7) of
30 Section 6991 of Title 42 of the United States Code, as that section
31 reads on January 1, ~~1989~~ 2012, or as it may subsequently be
32 amended or supplemented.

33 (i) “Local agency” means the local agency authorized, pursuant
34 to Section 25283, to implement this chapter.

35 (j) “Operator” means any person in control of, or having daily
36 responsibility for, the daily operation of an underground storage
37 tank system.

38 (k) “Owner” means the owner of an underground storage tank.

39 (l) “Person” means an individual, trust, firm, joint stock
40 company, corporation, including a government corporation,

1 partnership, limited liability company, or association. “Person”
2 also includes any city, county, district, the state, another state of
3 the United States, any department or agency of this state or another
4 state, or the United States to the extent authorized by federal law.

5 (m) “Pipe” means any pipeline or system of pipelines that is
6 used in connection with the storage of hazardous substances and
7 that is not intended to transport hazardous substances in interstate
8 or intrastate commerce or to transfer hazardous materials in bulk
9 to or from a marine vessel.

10 (n) “Primary containment” means the first level of containment,
11 such as the portion of a tank that comes into immediate contact on
12 its inner surface with the hazardous substance being contained.

13 (o) “Product tight” means impervious to the substance that is
14 contained, or is to be contained, so as to prevent the seepage of
15 the substance from the containment.

16 (p) “Release” means any spilling, leaking, emitting, discharging,
17 escaping, leaching, or disposing from an underground storage tank
18 into or on the waters of the state, the land, or the subsurface soils.

19 (q) “Secondary containment” means the level of containment
20 external to, and separate from, the primary containment.

21 (r) “Single walled” means construction with walls made of only
22 one thickness of material. For the purposes of this chapter,
23 laminated, coated, or clad materials are considered single walled.

24 (s) “Special inspector” means a professional engineer, registered
25 pursuant to Chapter 7 (commencing with Section 6700) of Division
26 3 of the Business and Professions Code, who is qualified to attest,
27 at a minimum, to structural soundness, seismic safety, the
28 compatibility of construction materials with contents, cathodic
29 protection, and the mechanical compatibility of the structural
30 elements of underground storage tanks.

31 (t) “Storage” or “store” means the containment, handling, or
32 treatment of hazardous substances, either on a temporary basis or
33 for a period of years. “Storage” or “store” does not include the
34 storage of hazardous wastes in an underground storage tank if the
35 person operating the tank has been issued a hazardous waste
36 facilities permit by the department pursuant to Section 25200 or
37 granted interim status under Section 25200.5.

38 (u) “Tank” means a stationary device designed to contain an
39 accumulation of hazardous substances which is constructed

1 primarily of nonearthen materials, including, but not limited to,
2 wood, concrete, steel, or plastic that provides structural support.

3 (v) “Tank integrity test” means a test method capable of
4 detecting an unauthorized release from an underground storage
5 tank consistent with the minimum standards adopted by the board.

6 (w) “Tank tester” means an individual who performs tank
7 integrity tests on underground storage tanks.

8 (x) “Unauthorized release” means any release of any hazardous
9 substance that does not conform to this chapter, including an
10 unauthorized release specified in Section 25295.5.

11 (y) “Underground area” means an underground room or space,
12 including, but not limited to, a basement, cellar, shaft, pit, or vault,
13 providing enough space for physical inspection of the exterior of
14 the tank situated on or above the surface of the floor.

15 (~~y~~)

16 (z) (1) “Underground storage tank” means any one or
17 combination of tanks, including pipes connected thereto, that is
18 used for the storage of hazardous substances and that is
19 substantially or totally beneath the surface of the ground.
20 “Underground storage tank” does not include any of the following:

21 (A) A tank with a capacity of 1,100 gallons or less that is located
22 on a farm and that stores motor vehicle fuel used primarily for
23 agricultural purposes and not for resale.

24 (B) A tank that is located on a farm or at the residence of a
25 person, that has a capacity of 1,100 gallons or less, and that stores
26 home heating oil for consumptive use on the premises where stored.

27 (C) Structures, such as sumps, separators, storm drains, catch
28 basins, oil field gathering lines, refinery pipelines, lagoons,
29 evaporation ponds, well cellars, separation sumps, lined and
30 unlined pits, sumps and lagoons. A sump that is a part of a
31 monitoring system required under Section 25290.1, 25290.2,
32 25291, or 25292 and sumps or other structures defined as
33 underground storage tanks under the federal act are not exempted
34 by this subparagraph.

35 (D) A tank holding hydraulic fluid for a closed loop mechanical
36 system that uses compressed air or hydraulic fluid to operate lifts,
37 elevators, and other similar devices.

38 (E) A tank, and associated piping, in an underground area that
39 is subject to Chapter 6.67 (commencing with Section 25270).

1 (2) Structures identified in subparagraphs (C) and (D) of
2 paragraph (1) may be regulated by the board and any regional
3 board pursuant to the Porter-Cologne Water Quality Control Act
4 (Division 7 (commencing with Section 13000) of the Water Code)
5 to ensure that they do not pose a threat to water quality.

6 ~~(z)~~

7 (aa) “Underground tank system” or “tank system” means an
8 underground storage tank, connected piping, ancillary equipment,
9 and containment system, if any.

10 ~~(aa)~~

11 (bb) (1) “Unified program facility” means all contiguous land
12 and structures, other appurtenances, and improvements on the land
13 that are subject to the requirements of paragraph (3) of subdivision
14 (c) of Section 25404.

15 (2) “Unified program facility permit” means a permit issued
16 pursuant to Chapter 6.11 (commencing with Section 25404), and
17 that encompasses the permitting requirements of Section 25284.

18 (3) “Permit” means a permit issued pursuant to Section 25284
19 or a unified program facility permit as defined in paragraph (2).

20 SEC. 8. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 a local agency or school district has the authority to levy service
23 charges, fees, or assessments sufficient to pay for the program or
24 level of service mandated by this act or because costs that may be
25 incurred by a local agency or school district will be incurred
26 because this act creates a new crime or infraction, eliminates a
27 crime or infraction, or changes the penalty for a crime or infraction,
28 within the meaning of Section 17556 of the Government Code, or
29 changes the definition of a crime within the meaning of Section 6
30 of Article XIII B of the California Constitution.