

Assembly Bill No. 1715

Passed the Assembly August 16, 2012

Chief Clerk of the Assembly

Passed the Senate August 9, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 25299.39.2 of the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, Smyth. Underground storage tanks: tank case closure.

Existing law requires an owner, operator, or other responsible party to take corrective action in response to an unauthorized release of petroleum from an underground storage tank. Under existing law, the State Water Resources Control Board, a regional board, or a local agency may undertake or contract for corrective action in response to that unauthorized release. The State Water Resources Control Board is authorized to close, or to require the closure of, an underground storage tank case where an unauthorized release has occurred, if the board determines that the corrective action at the site complies with specified requirements. Existing law requires the manager of the Underground Storage Tank Cleanup Fund to annually review certain tank cases and authorizes the manager, with the approval of the tank owner or operator, to make a recommendation to the board for closure of a tank case. If the manager recommends closing a tank case, existing law requires the board to limit reimbursement of subsequently incurred corrective action costs to \$10,000, except as specified.

This bill would require the manager, upon a determination that closure of the tank case is appropriate based upon that review, to provide a review summary report to the applicable regional board and local agency and provide opportunity for comment. The bill would prohibit the regional board or local agency from issuing a corrective action directive or enforcing an existing corrective action directive for a tank case for which the manager has provided this review summary report, until the board issues a decision regarding the closure of the tank case, except as specified. The bill would specify that the \$10,000 limit for corrective action costs after tank closure includes costs for groundwater monitoring.

The bill would make a statement of legislative intent regarding the board's actions regarding these tank cases.

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

SECTION 1. The Legislature finds and declares that the State Water Resources Control Board should expediently process underground storage tank cases subject to Section 25299.39.2 of the Health and Safety Code while ensuring the adequate protection of public health and safety, in accordance with Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

SEC. 2. Section 25299.39.2 of the Health and Safety Code is amended to read:

25299.39.2. (a) (1) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification.

(A) If the manager determines that closure of the tank case is appropriate based upon that review, the manager shall provide a review summary report to the applicable regional board and local agency summarizing the reasons for this determination and shall provide the applicable regional board and local agency with an opportunity for comment on the review summary report.

(B) If the manager determines that closure of the tank case is appropriate, the manager, with approval of the tank owner or operator, may make a recommendation to the board for closure.

(C) The board may close any tank case or require the closure of any tank case where an unauthorized release has occurred if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

(D) Before closing or requiring closure of an underground storage tank case, the board shall provide an opportunity for reviewing and providing responses to the manager's recommendation to the applicable regional board and local agency, and to the water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the underground storage tank case is located in the jurisdiction of that district.

(2) Except as provided in paragraph (3), if the manager recommends closing a tank case pursuant to paragraph (1), the board shall limit reimbursement of subsequently incurred corrective action costs, including costs for groundwater monitoring, to ten thousand dollars (\$10,000) per year.

(3) The board may allow reimbursement of corrective action costs in excess of the ten thousand dollar (\$10,000) limit specified in paragraph (2) if the board determines that corrective action costs related to the closure will exceed this amount, or that additional corrective action is necessary to meet the requirements specified in subdivisions (a) and (b) of Section 25296.10.

(4) After the manager provides a review summary report to the applicable regional board and local agency in accordance with subparagraph (A) of paragraph (1), the regional board or local agency shall not issue a corrective action directive or enforce an existing corrective action directive for the tank case until the board issues a decision on the closure of the tank case, unless one of the following applies:

(A) The regional board or local agency demonstrates to the satisfaction of the manager that there is an imminent threat to human health, safety, or the environment.

(B) The regional board or local agency demonstrates to the satisfaction of the manager that other site-specific needs warrant additional directives during the period that the board is considering case closure.

(C) After considering responses to the review summary report and other relevant information, the manager determines that case closure is not appropriate.

(D) The regional board or local agency closes the tank case but the directives are necessary to carry out case-closure activities.

(b) An aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subparagraph (C) of paragraph (1) of subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall

uphold the decision if the decision is based upon substantial evidence in light of the whole record.

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

Approved _____, 2012

Governor