

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 395

Introduced by Senator Jackson

February 20, 2013

An act to amend Section 25159.12 of the Health and Safety Code, and to amend Section 3205.2 of, and to add Section 3205.3 to, the Public Resources Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 395, as amended, Jackson. Hazardous waste: wells.

(1) Existing law, part of the hazardous waste control law, prohibits a person from discharging hazardous waste into an injection well unless certain conditions are met with regard to the location of the well and obtaining a hazardous waste facilities permit. Existing law also imposes other requirements upon the operator of an injection well and defines the term "injection well" for these purposes as excluding wells regulated by the Division of Oil and Gas, pursuant to specified federal regulations. A violation of the hazardous waste control law is a crime.

This bill would delete that exclusion of those regulated wells from the definition of "injection well," thereby subjecting those wells to the requirements imposed upon injection wells. The bill would also require a generator of ~~oil and gas exploration and production waste~~ *produced water* to test the ~~waste~~ *produced water* in order to determine whether ~~the waste~~ *it* is hazardous waste within the meaning of specified provisions.

Since a violation of these requirements would be a crime, the bill would impose a state-mandated local program.

(2) Existing law requires an operator of a class II commercial wastewater disposal well who engages in the drilling, redrilling, or deepening of, or any operation altering the casing of, the well, or in maintaining or abandoning the well or attendant facilities, to file with the State Oil and Gas Supervisor an indemnity bond in a specified amount. Existing law defines the term class II commercial wastewater disposal well for this purpose as a well that, among other things, is used to dispose of oilfield wastewater.

This bill would specify that, for this purpose, oilfield wastewater does not include hazardous waste.

(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 a specified reason.

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. The Legislature finds and declares all of the
2 following:

3 (a) Produced water is any fluid that is emitted from an oil or
4 gas production well. *Produced water meets the definition of a*
5 *waste, pursuant to Section 25124 of the Health and Safety Code,*
6 *and under Chapter 6.5 (commencing with Section 25100) of the*
7 *Health and Safety Code, a waste that meets the criteria and*
8 *guidelines adopted by the Department of Toxic Substances Control*
9 *pursuant to Chapter 6.5 (commencing with Section 25100) of*
10 *Division 20 of the Health and Safety Code, would*
11 *be a hazardous waste.* Produced water historically has been exempt
12 from California hazardous waste management laws when disposed
13 of in class II commercial wastewater disposal wells and therefore
14 has been disposed of in these wells without prior testing for
15 hazardous content. As a result, no public agency has monitored or
16 collected comprehensive data on the volume or toxicity of
17 hazardous materials injected into class II commercial wastewater
18 disposal wells in California.

1 (b) Produced water from oil and gas wells may contain a variety
2 of chemicals that are hazardous. Well stimulation techniques often
3 inject hazardous chemicals into wells that return to the surface as
4 produced water. In addition, fluids emitted from wells may carry
5 dissolved hazardous elements from the underground rock
6 formation.

7 (c) A common form of well stimulation is hydraulic fracturing,
8 by which tens of thousands to millions of gallons of fluid are
9 injected into a well under pressure. Hydraulic fracturing uses a
10 variety of hazardous chemicals. A 2011 survey by the United States
11 House of Representatives Committee on Energy and Commerce
12 minority staff found 29 chemicals used in hydraulic fracturing are
13 (1) known or possible human carcinogens, (2) regulated under the
14 federal Safe Drinking Water Act for their risks to human health,
15 or (3) listed as hazardous air pollutants under the federal Clean
16 Air Act. These chemicals contaminate produced water and are
17 eventually disposed of, usually into a class II commercial
18 wastewater disposal well. Without proper handling and monitoring
19 of hazardous wastes from this process, the state does not have any
20 way to know of, or prevent, any contamination in case of a well
21 failure.

22 (d) Class II commercial wastewater disposal wells may pierce
23 aquifers suitable for domestic or agricultural use. If the well casing
24 fails, materials may potentially leak into surrounding groundwater.
25 Once an aquifer is contaminated, it is virtually impossible to clean
26 it. Groundwater is a vital resource for human health, environmental
27 well-being, and economic productivity. Groundwater should be
28 protected for beneficial uses, including human consumption,
29 agriculture, surface water supply, and recreation.

30 (e) Therefore, it is intent of the Legislature to ensure that oilfield
31 waste be regulated in the same manner as other forms of waste by
32 removing the exemption for produced water in the Health and
33 Safety Code. If the produced wastewater is hazardous, then well
34 operators should handle it in the same manner as other forms of
35 hazardous waste.

36 SEC. 2. Section 25159.12 of the Health and Safety Code is
37 amended to read:

38 25159.12. For purposes of this article, the following definitions
39 apply:

- 1 (a) “Annulus” means the space between the outside edge of the
2 injection tube and the well casing.
- 3 (b) “State board” means the State Water Resources Control
4 Board.
- 5 (c) “Compatibility” means that waste constituents do not react
6 with each other, with the materials constituting the injection well,
7 or with fluids or solid geologic media in the injection zone or
8 confining zone in a manner as to cause leaching, precipitation of
9 solids, gas or pressure buildup, dissolution, or any other effect that
10 will impair the effectiveness of the confining zone or the safe
11 operation of the injection well.
- 12 (d) “Confining zone” means the geological formation, or part
13 of a formation, that is intended to be a barrier to prevent the
14 migration of waste constituents from the injection zone.
- 15 (e) “Constituent” means an element, chemical, compound, or
16 mixture of compounds that is a component of a hazardous waste
17 or leachate and that has the physical or chemical properties that
18 cause the waste to be identified as hazardous waste by the
19 department pursuant to this chapter.
- 20 (f) “Discharge” means to place, inject, dispose of, or store
21 hazardous wastes into, or in, an injection well owned or operated
22 by the person who is conducting the placing, disposal, or storage.
- 23 (g) “Drinking water” has the same meaning as “potential source
24 of drinking water,” as defined in subdivision (t) of Section 25208.2.
- 25 (h) “Facility” means the structures, appurtenances, and
26 improvements on the land, and all contiguous land, that are
27 associated with an injection well and are used for treating, storing,
28 or disposing of hazardous waste. A facility may consist of several
29 waste management units, including, but not limited to, surface
30 impoundments, landfills, underground or aboveground tanks,
31 sumps, pits, ponds, and lagoons that are associated with an injection
32 well.
- 33 (i) “Groundwater” means water, including, but not limited to,
34 drinking water, below the land surface in a zone of saturation.
- 35 (j) “Hazardous waste” means hazardous waste or extremely
36 hazardous waste, as defined in this chapter. A waste mixture
37 formed by mixing a waste or substance with a hazardous waste
38 shall be considered hazardous waste for the purposes of this article.
- 39 (k) “Hazardous waste facilities permit” means a permit issued
40 for an injection well pursuant to Sections 25200 and 25200.6.

1 (l) “Injection well” or “well” means any bored, drilled, or driven
2 shaft, dug pit, or hole in the ground the depth of which is greater
3 than the circumference of the bored hole and any associated
4 subsurface appurtenances, including, but not limited to, the casing.
5 For the purposes of this article, injection well does not include a
6 well exempted pursuant to Section 25159.24.

7 (m) “Injection zone” means that portion of the receiving
8 formation that has received, is receiving, or is expected to receive,
9 over the lifetime of the well, waste fluid from the injection well.
10 “Injection zone” does not include that portion of the receiving
11 formation that exceeds the horizontal and vertical extent specified
12 pursuant to Section 25159.20.

13 (n) “Owner” means a person who owns a facility or part of a
14 facility.

15 (o) “Perched water” means a localized body of groundwater
16 that overlies, and is hydraulically separated from, an underlying
17 body of groundwater.

18 (p) “pH” means a measure of a sample’s acidity expressed as a
19 negative logarithm of the hydrogen ion concentration.

20 (q) “Qualified person” means a person who has at least five
21 years of full-time experience in hydrogeology and who is a
22 professional geologist registered pursuant to Section 7850 of the
23 Business and Professions Code, or a registered petroleum engineer
24 registered pursuant to Section 6762 of the Business and Professions
25 Code. “Full-time experience” in hydrogeology may include a
26 combination of postgraduate studies in hydrogeology and work
27 experience, with each year of postgraduate work counted as one
28 year of full-time work experience, except that not more than three
29 years of postgraduate studies may be counted as full-time
30 experience.

31 (r) “Receiving formation” means the geologic strata that are
32 hydraulically connected to the injection well.

33 (s) “Regional board” means the California regional water quality
34 control board for the region in which the injection well is located.

35 (t) “Report” means the hydrogeological assessment report
36 specified in Section 25159.18.

37 (u) “Safe Drinking Water Act” means Subchapter XII
38 (commencing with Section 300f) of Chapter 6A of Title 42 of the
39 United States Code.

1 (v) “Strata” means a distinctive layer or series of layers of earth
2 materials.

3 (w) “Waste management unit” means that portion of a facility
4 used for the discharge of hazardous waste into or onto land,
5 including all containment and monitoring equipment associated
6 with that portion of the facility.

7 SEC. 3. Section 3205.2 of the Public Resources Code is
8 amended to read:

9 3205.2. (a) Notwithstanding Section 3204, a person who
10 engages in the operation of a class II commercial wastewater
11 disposal well, as defined in subdivision (d), shall file an indemnity
12 bond with the supervisor for fifty thousand dollars (\$50,000) for
13 each well so used. The bond shall cover all operations of drilling,
14 redrilling, deepening, altering casing, maintaining, or abandoning
15 the well and attendant facilities. The bond shall be executed by
16 the person as the principal, and by an authorized surety company
17 as the surety, and, except for differences in the amount, shall be
18 in substantially the same language and upon the same conditions
19 as provided in Section 3204.

20 (b) A blanket bond submitted under subdivision (a) or (c) of
21 Section 3205 may be used in lieu of the bond required in
22 subdivision (a), except that the termination and cancellation shall
23 be in accordance with subdivision (c) of this section.

24 (c) Notwithstanding Section 3207, a bond issued in compliance
25 with this section may be terminated and canceled and the surety
26 relieved of all obligations under the bond when the well is properly
27 abandoned or another valid bond has been substituted for the bond.

28 (d) (1) A class II commercial wastewater disposal well is a well
29 that is used to dispose of oilfield wastewater, as specified in
30 paragraph (2), for a fee and that is regulated by the division
31 pursuant to this chapter and Subpart F (commencing with Section
32 147.250) of Part 147 of Title 40 of the Code of Federal Regulations.

33 (2) For purposes of paragraph (1), oilfield wastewater does not
34 include hazardous waste, as defined in Chapter 6.5 (commencing
35 with Section 25100) of Division 20 of the Health and Safety Code.

36 SEC. 4. Section 3205.3 is added to the Public Resources Code,
37 to read:

38 3205.3. (a) Notwithstanding paragraph (2) of subdivision (b)
39 of Section 66262.11 of Title 22 of the California Code of
40 Regulations, *and except as provided in subdivision (b)*, a generator

1 of oil and gas exploration and production waste *produced water*
2 is responsible for testing the waste as described in paragraph (1)
3 of subdivision (b) of Section 66262.11 of Title 22 of the California
4 Code of Regulations, for determining whether the waste *produced*
5 *water* is hazardous waste within the meaning of Chapter 6.5
6 (commencing with Section 25100) of Division 20 of the Health
7 and Safety Code.

8 (b) *For systems that meet the following requirements, the*
9 *generator of the produced water may apply knowledge pursuant*
10 *to paragraph (2) of subdivision (b) of Section 66262.11 of Title*
11 *22 of the California Code of Regulations in testing to determine*
12 *whether produced water is hazardous waste if there has been*
13 *sufficient prior testing pursuant to paragraph (1) of subdivision*
14 *(b) of Section 66262.11 of Title 22 of the California Code of*
15 *Regulations that illustrates that the produced water is not*
16 *hazardous and there is a reasonable expectation that the produced*
17 *water will continue to have the same characteristics it had at the*
18 *time of that prior testing.*

19 (1) *The produced water is produced by a system in which no*
20 *materials are added before being disposed or reused.*

21 (2) *The produced water is immediately reinjected back into a*
22 *well after oil and gas is removed.*

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 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.