

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY MARCH 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 356

**Introduced by Assembly Member Williams
(Coauthors: Assembly Members Nazarian and Mark Stone)**

February 17, 2015

An act to amend Sections 3106 and 3401 of, and to add Article 2.5 (commencing with Section 3130) to Chapter 1 of Division 3 of, the Public Resources Code, and to add Section 13227.5 to the Water Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 356, as amended, Williams. Oil and gas: groundwater monitoring.

(1) Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production. Existing law authorizes the supervisor to require a well operator to implement a monitoring program, designed to detect releases to the soil and water, for aboveground oil production tanks and facilities. Under existing law, a person who fails to comply with specified requirements relating to the regulation of oil or gas operation is guilty of a misdemeanor.

This bill would additionally authorize the supervisor to require a well operator to implement a monitoring program for belowground oil production tanks and facilities, and disposal and injection wells. Because

a failure to comply with this requirement would be a crime, this bill would impose a state-mandated local program.

(2) The federal Safe Drinking Water Act regulates certain wells as Class II wells. Under existing federal law, the authority to regulate Class II wells in California is delegated to the Division of Oil, Gas, and Geothermal Resources. Under existing regulations, a well operator is required to obtain approval from the supervisor or a district deputy for a subsurface injection or disposal project, including Class II wells, or any change in a project, as provided.

This bill would require the division to annually review underground injection or disposal projects approved by the division that use Class II wells. The bill would require the operator of the project, as a part of its application or the annual review process, to submit to the State Water Resources Control Board or appropriate regional water quality control board for its review *and concurrence* a groundwater monitoring plan containing certain information, including, among other things, a schedule for monitoring and reporting groundwater quality data, as provided. *The bill would authorize the state board or appropriate regional water quality control board to periodically require the modification of the plan to reflect changing conditions.* The bill would require the data be submitted to the state board in an electronic format compatible with the state board's geotracker database. Because a violation of this requirement would be a crime, this bill would impose a state-mandated local program. ~~The bill would require the state board or regional water quality control board to review and authorize them to provide a written concurrence for the plan.~~

(3) Existing federal law prohibits certain well activities that affect underground sources of drinking water unless those sources are located in an exempted aquifer. Existing federal law authorizes a state delegated with the responsibility of regulating Class II wells to propose that an aquifer or a portion of an aquifer be an exempted aquifer and authorizes the United States Environmental Protection Agency to approve the proposal if the aquifer or a portion of the aquifer meets certain criteria.

This bill would require the division, prior to proposing to the United States Environmental Protection Agency an aquifer for exemption, to hold a public hearing on the proposal and to submit the proposal to the state board for review and written concurrence. The bill would authorize the state board to concur with the proposal if certain conditions are met.

(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: 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 3106 of the Public Resources Code is
2 amended to read:

3 3106. (a) The supervisor shall so supervise the drilling,
4 operation, maintenance, and abandonment of wells and the
5 operation, maintenance, and removal or abandonment of tanks and
6 facilities attendant to oil and gas production, including pipelines
7 not subject to regulation pursuant to Chapter 5.5 (commencing
8 with Section 51010) of Part 1 of Division 1 of Title 5 of the
9 Government Code that are within an oil and gas field, so as to
10 prevent, as far as possible, damage to life, health, property, and
11 natural resources; damage to underground oil and gas deposits
12 from infiltrating water and other causes; loss of oil, gas, or reservoir
13 energy; and damage to underground and surface waters suitable
14 for irrigation or domestic purposes by the infiltration of, or the
15 addition of, detrimental substances.

16 (b) The supervisor shall also supervise the drilling, operation,
17 maintenance, and abandonment of wells so as to permit the owners
18 or operators of the wells to utilize all methods and practices known
19 to the oil industry for the purpose of increasing the ultimate
20 recovery of underground hydrocarbons and which, in the opinion
21 of the supervisor, are suitable for this purpose in each proposed
22 case. To further the elimination of waste by increasing the recovery
23 of underground hydrocarbons, it is hereby declared as a policy of
24 this state that the grant in an oil and gas lease or contract to a lessee
25 or operator of the right or power, in substance, to explore for and
26 remove all hydrocarbons from any lands in the state, in the absence
27 of an express provision to the contrary contained in the lease or
28 contract, is deemed to allow the lessee or contractor, or the lessee's
29 or contractor's successors or assigns, to do what a prudent operator
30 using reasonable diligence would do, having in mind the best

1 interests of the lessor, lessee, and the state in producing and
2 removing hydrocarbons, including, but not limited to, the injection
3 of air, gas, water, or other fluids into the productive strata, the
4 application of pressure heat or other means for the reduction of
5 viscosity of the hydrocarbons, the supplying of additional motive
6 force, or the creating of enlarged or new channels for the
7 underground movement of hydrocarbons into production wells,
8 when these methods or processes employed have been approved
9 by the supervisor, except that nothing in this section imposes a
10 legal duty upon the lessee or contractor, or the lessee's or
11 contractor's successors or assigns, to conduct these operations.

12 (c) The supervisor may require an operator to implement a
13 monitoring program, designed to detect releases to the soil and
14 water, including both groundwater and surface water, for
15 aboveground and belowground oil production tanks and facilities,
16 and disposal and injection wells.

17 (d) To best meet the oil and gas needs in this state, the supervisor
18 shall administer this division so as to encourage the wise
19 development of oil and gas resources.

20 SEC. 2. Article 2.5 (commencing with Section 3130) is added
21 to Chapter 1 of Division 3 of the Public Resources Code, to read:

22
23 Article 2.5. Underground Injection Control
24

25 3130. For purposes of this article, the following terms mean
26 the following:

27 (a) "Beneficial use" has the same meaning as set forth in
28 subdivision (f) of Section 13050 of the Water Code.

29 (b) "Class II well" ~~means a well that injects brine and other~~
30 ~~fluids associated with oil and gas production or a well that injects~~
31 ~~hydrocarbons for the purposes of storage.~~ *has the same meaning*
32 *as set forth in Section 144.6 of Title 40 of the Code of Federal*
33 *Regulations.*

34 (c) "Exempted aquifer" has the same meaning as set forth in
35 Section 144.3 of Title 40 of the Code of Federal Regulations.

36 (d) "Project" means an underground injection or disposal project
37 that uses a Class II well.

38 (e) "State board" means the State Water Resources Control
39 Board.

1 (f) “Underground source of drinking water” has the same
2 meaning as set forth in Section 144.3 of Title 40 of the Code of
3 Federal Regulations.

4 (g) “UIC program” means a program covering Class II wells
5 for which the division has received primacy from the United States
6 Environmental Protection Agency pursuant to Section 1425 of the
7 federal Safe Drinking Water Act (42 U.S.C. Sec. 300h-4).

8 3131. (a) Prior to proposing to the United States Environmental
9 Protection Agency an aquifer as an exempted aquifer, the division
10 shall do both of the following:

11 (1) Conduct a public hearing on the proposal.

12 (2) Submit the proposal to the state board for written
13 concurrence.

14 (b) The state board may concur on the proposal if all of the
15 following conditions are met:

16 (1) The division has included in the proposal all data necessary
17 to meet the aquifer exemption criteria set forth in Section 146.4
18 of Title 40 of the Code of Federal Regulations and necessary for
19 the state board to make the determinations required pursuant to
20 paragraphs (2) and (3).

21 (2) The state board determines that the proposed aquifer cannot
22 now, and will not in the future, serve as a source of drinking water
23 or for other beneficial use.

24 (3) The state board determines that injection into the proposed
25 aquifer will stay in the proposed area and will not impact the ability
26 of nearby nonexempted aquifers to be a source of drinking water
27 or for other beneficial use.

28 3132. ~~The~~ *By July 1, 2018, and annually thereafter, the division*
29 ~~shall review annually~~ *provide an annual project review for all*
30 *projects approved pursuant to this chapter for compliance with*
31 *applicable law.*

32 3133. (a) As a part of an application for approval of a project
33 or as a part of the annual review conducted pursuant to Section
34 3132, the operator of the project shall submit to the state board or
35 appropriate regional water quality control board for review and
36 concurrence a groundwater monitoring plan meeting the
37 requirements of Section 3134.

38 (b) *(1) By July 1, 2018, all projects shall have a monitoring*
39 *plan submitted to the state board or an appropriate regional water*
40 *quality control board.*

1 (2) *Each project shall only be required to have one monitoring*
2 *plan for the life of the project.*

3 (c) *The state board or appropriate regional water quality control*
4 *board may periodically require modification of the monitoring*
5 *plan to reflect changing conditions.*

6 3134. (a) The groundwater monitoring plan required pursuant
7 to Section 3133 shall include, at a minimum, all of the following:

8 (1) Information demonstrating that the aquifer or area into which
9 the injection occurs or the proposed injection will occur is one of
10 the following:

11 (A) An exempted aquifer.

12 (B) An aquifer that is not an underground source of drinking
13 water.

14 (C) An area that does not contain an aquifer.

15 (2) Information regarding the current water quality of the
16 groundwater basin through which the well passes sufficient to
17 characterize the quality of the aquifer.

18 (3) The identification of all injection, production, water wells,
19 including abandoned, partially abandoned, or inactive wells, located
20 within one mile of the boundaries of the injection zone or evidence
21 showing that there are no public supply or domestic water wells
22 located within the one mile zone.

23 (4) A demonstration that the proposed injection well is located
24 in an area that is geologically suitable, including an appropriate
25 confining and injection zone.

26 (5) Chemical and physical analyses of, and data regarding,
27 identities and concentrations of all constituents present in the
28 injected fluid or gas. Subdivision (j) of Section 3160 shall apply
29 to a claim of trade secret for information described in this
30 paragraph.

31 ~~(6) (A) Sites for monitoring wells that will allow for the~~
32 ~~detection of contamination or degradation associated with~~
33 ~~underground injection projects during and after the period of its~~
34 ~~active use.~~

35 ~~(B)~~

36 (6) Sites for monitoring wells that demonstrate that the injection
37 fluid is confined to the intended injection zone or ~~zones of~~
38 ~~injection zones.~~

39 (7) (A) A schedule for monitoring and reporting data that
40 provides, at a minimum, groundwater quality data semiannually

1 during the active life of the well and at least annually after the well
2 has been closed and abandoned until such time as justified by the
3 operator and concurred with by the state board. The operator shall
4 provide the state board access to its monitoring sites and well data
5 for further testing and analysis.

6 (B) Groundwater quality data collected shall be submitted to
7 the state board in an electronic format that is compatible with the
8 state board's geotracker database, following the guidelines detailed
9 in Chapter 30 (commencing with Section 3890) of Division 3 of
10 Title 23 of the California Code of Regulations.

11 (8) A contingency plan that will be implemented in the case of
12 a well failure or other event that has the potential to degrade
13 groundwater.

14 ~~(b) Subparagraph (A) of paragraph (7) of subdivision (a) does~~
15 ~~not apply to a well if the state board or appropriate regional water~~
16 ~~quality board has determined that the well does not and could not~~
17 ~~inject into, or pass through, an aquifer with a beneficial use.~~

18 (e)

19 (b) (1) The state board or appropriate regional water quality
20 control board may revise the monitoring plan *submitted by the*
21 *operator* to avoid duplication and reduce the number of monitoring
22 wells needed to accomplish the purposes of the monitoring plan.

23 (2) The state board or appropriate regional water quality board
24 may authorize the well operator to submit one monitoring plan
25 with adjacent operators so that injection projects in an aquifer or
26 portions of an aquifer can be considered as a whole.

27 SEC. 3. Section 3401 of the Public Resources Code is amended
28 to read:

29 3401. (a) The proceeds of charges levied, assessed, and
30 collected pursuant to this article upon the properties of every person
31 operating or owning an interest in the production of a well shall
32 be used exclusively for the support and maintenance of the
33 department charged with the supervision of oil and gas operations.

34 (b) Notwithstanding subdivision (a), the proceeds of charges
35 levied, assessed, and collected pursuant to this article upon the
36 properties of every person operating or owning an interest in the
37 production of a well undergoing a well stimulation treatment, may
38 be used by public entities, subject to appropriation by the
39 Legislature, for all costs associated with both of the following:

1 (1) Well stimulation treatments, including rulemaking and
2 scientific studies required to evaluate the treatment, inspections,
3 any air and water quality sampling, monitoring, and testing
4 performed by public entities.

5 (2) The costs of the State Water Resources Control Board and
6 the regional water quality control boards in carrying out their
7 responsibilities pursuant to Section 3160 and Section 10783 of the
8 Water Code.

9 (c) Notwithstanding subdivision (a), the proceeds of charges
10 levied, assessed, and collected pursuant to this article upon the
11 properties of every person operating or owning an interest in an
12 injection or disposal well subject to Article 2.5 (commencing with
13 Section 3130), may be used, subject to appropriation by the
14 Legislature, for all costs of the State Water Resources Control
15 Board or appropriate regional water quality control board in
16 carrying out their responsibilities pursuant to that article and
17 Section 13227.5 of the Water Code.

18 SEC. 4. Section 13227.5 is added to the Water Code, to read:

19 13227.5. The state board or appropriate regional board shall
20 review and may provide a written concurrence for a groundwater
21 monitoring plan submitted pursuant to Section 3133 of the Public
22 Resources Code to ensure that groundwater quality is protected.

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.