

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2748

Introduced by Assembly Member Gatto

February 19, 2016

An act to add ~~Section~~ *Sections 1544 and 3484.5* to the Civil Code, and to amend *Section 340.8 of*, and to add *Section 1021.3 to, the Code of Civil Procedure*, relating to ~~natural gas~~: *environmental disaster*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2748, as amended, Gatto. Aliso Canyon Gas Storage Facility: leak: claims for damage to property.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including gas corporations. The Public Utilities Act prohibits any gas corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require that construction. Pursuant to existing law, the commission issued a certificate of public convenience and necessity to Southern California Gas Company for the Aliso Canyon Gas Storage Facility.~~

~~Existing law establishes the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation and authorizes the State Oil and Gas Supervisor, with the approval of the Director of Conservation, to adopt rules and regulations that may be necessary to carry out the purposes for which the division was established. Pursuant~~

~~to its existing authority, the supervisor has adopted onshore well regulations that are applicable, in part, to gas storage facilities.~~

Existing law provides that an obligation is extinguished by a release given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration. A general release does not extend to claims the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This bill would prohibit a payment or reimbursement, made in connection with an environmental disaster by the responsible polluter or any agent or entity related to the responsible polluter to any recipient, from being conditioned upon the release by the recipient of any claim unrelated to the environmental disaster or all future claims, or both.

Existing law defines a nuisance as anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, as specified. Existing law defines a public nuisance as a nuisance that affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and makes every public nuisance a private nuisance as to those affected by it. Existing law provides that the abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

This bill would create a right of action against Southern California Gas Company for any person owning real property in the Porter Ranch area, as defined, on October 23, 2015, who suffers a diminution in value of that real property resulting from the leakage of natural gas from the Aliso Canyon Gas Storage Facility during 2015 and 2016. ~~The right of action would accrue when the claimant first offers the property for sale or seeks refinancing of the property.~~ The bill would specify a mechanism for measuring the diminution in value.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Aliso Canyon Gas Storage Facility leak.

Existing law establishes statutes of limitations for civil actions for injury or illness or wrongful death based upon exposure to a hazardous material or toxic substance other than asbestos, as specified. For injury or illness, the statute of limitations is 2 years from the date of injury, or 2 years after the plaintiff becomes aware of, or reasonably should

have become aware of, an injury, the physical cause of the injury, and sufficient facts to put a reasonable person on inquiry notice that the injury was caused or contributed to by the wrongful act of another, whichever occurs later. For wrongful death, the statute of limitations is no later than either 2 years from the date of the death of the plaintiff's decedent, or 2 years from the first date on which the plaintiff is aware of, or reasonably should have become aware of, the physical cause of the death and sufficient facts to put a reasonable person on inquiry notice that the death was caused or contributed to by the wrongful act of another, whichever occurs later.

This bill would change all those dates from 2 to 3 years.

Under existing law, except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys is left to the agreement of the parties.

This bill would authorize the court, in any action for private nuisance against an environmental polluter defendant arising out of an environmental disaster for which the defendant has been adjudged civilly liable, upon motion, to award reasonable attorneys' fees to a prevailing plaintiff against the defendant.

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

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

1 SECTION 1. Section 1544 is added to the Civil Code, to read:
2 1544. A payment or reimbursement made in connection with
3 an environmental disaster by the responsible polluter or any agent
4 or entity related to the responsible polluter to any recipient shall
5 not be conditioned upon the release by the recipient of any claim
6 unrelated to the environmental disaster or all future claims, or
7 both.

8 SECTION 1.

9 SEC. 2. Section 3484.5 is added to the Civil Code, to read:

10 3484.5. (a) As used in this section, "Porter Ranch area" has
11 the same meaning as defined in the document titled "SS-25 Incident
12 Aliso Canyon Gas Leak Odorous Emissions Mitigation Plan and
13 Temporary Relocation Plan," dated December 15, 2015, included
14 as Exhibit A in the stipulation and order, filed December 24, 2015,
15 with the superior court of the County of Los Angeles in the People
16 of the State of California v. Southern California Gas Company,

1 Case No. BC602973, and including, but not limited to, the map
2 titled “SoCalGas Complaints and SCAQMD Air Sampling
3 Locations” located in ~~attachment~~ Attachment B of the plan
4 document.

5 (b) Any person owning real property in the Porter Ranch area
6 on October 23, 2015, who suffers a diminution in value of that
7 real property resulting from the leakage of natural gas from the
8 Aliso Canyon Gas Storage Facility during 2015 and 2016 shall
9 have a right of action against Southern California Gas Company
10 for that diminution in value. ~~The cause of action shall accrue when~~
11 ~~the owner first offers the property for sale or seeks refinancing of~~
12 ~~the property.~~ The diminution in value shall be calculated by
13 determining the value of the real property on October 22, 2015,
14 identifying similarly priced real property in neighboring
15 communities on that date, then comparing the value of the owner’s
16 real property ~~at the time the action accrues~~ *on June 1, 2016*, to the
17 value of the properties in the neighboring communities that had
18 been similarly ~~priced.~~ *priced, regardless of whether the owner has*
19 *sold or refinanced the real property.* The diminution in value shall
20 be the value of the property in the Porter Ranch area ~~on the date~~
21 ~~the action accrues~~ *June 1, 2016*, subtracted from an average value
22 ~~on the date the action accrues~~ *June 1, 2016*, of properties in
23 neighboring communities that were priced similarly to the Porter
24 Ranch area property as of October 22, 2015.

25 (c) This section shall apply only to actions filed on and after
26 January 1, 2017.

27 *SEC. 3. Section 340.8 of the Code of Civil Procedure is*
28 *amended to read:*

29 340.8. (a) In any civil action for injury or illness based upon
30 exposure to a hazardous material or toxic substance, the time for
31 commencement of the action shall be no later than either ~~two~~ *three*
32 years from the date of injury, or ~~two~~ *three* years after the plaintiff
33 becomes aware of, or reasonably should have become aware of,
34 (1) an injury, (2) the physical cause of the injury, and (3) sufficient
35 facts to put a reasonable person on inquiry notice that the injury
36 was caused or contributed to by the wrongful act of another,
37 whichever occurs later.

38 (b) In an action for the wrongful death of any plaintiff’s
39 decedent, based upon exposure to a hazardous material or toxic
40 substance, the time for commencement of an action shall be no

1 later than either (1)~~two~~ *three* years from the date of the death of
2 the plaintiff's decedent, or (2)~~two~~ *three* years from the first date
3 on which the plaintiff is aware of, or reasonably should have
4 become aware of, the physical cause of the death and sufficient
5 facts to put a reasonable person on inquiry notice that the death
6 was caused or contributed to by the wrongful act of another,
7 whichever occurs later.

8 (c) For purposes of this section:

9 (1) A "civil action for injury or illness based upon exposure to
10 a hazardous material or toxic substance" does not include an action
11 subject to Section 340.2 or 340.5.

12 (2) Media reports regarding the hazardous material or toxic
13 substance contamination do not, in and of themselves, constitute
14 sufficient facts to put a reasonable person on inquiry notice that
15 the injury or death was caused or contributed to by the wrongful
16 act of another.

17 (d) Nothing in this section shall be construed to limit, abrogate,
18 or change the law in effect on ~~the effective date of this section~~
19 *January 1, 2004*, with respect to actions not based upon exposure
20 to a hazardous material or toxic substance.

21 *SEC. 4. Section 1021.3 is added to the Code of Civil Procedure,*
22 *to read:*

23 *1021.3. In any action for private nuisance against an*
24 *environmental polluter defendant arising out of an environmental*
25 *disaster for which the defendant has been adjudged civilly liable,*
26 *the court, upon motion, may award reasonable attorneys' fees to*
27 *a prevailing plaintiff against the defendant.*

28 ~~SEC. 2.~~

29 *SEC. 5.* The Legislature finds and declares that a special law
30 is necessary and that a general law cannot be made applicable
31 within the meaning of Section 16 of Article IV of the California
32 Constitution in order to achieve just results while reducing court
33 congestion as a result of the unique circumstances involving a
34 major leak of natural gas from the Aliso Canyon Gas Storage
35 Facility during 2015 and 2016.

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