

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~~ *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 to test the waste in order to determine whether the waste 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 historically has been exempt
5 from California hazardous waste management laws when disposed
6 of in class II commercial wastewater disposal wells and therefore
7 has been disposed of in these wells without prior testing for
8 hazardous content. As a result, no public agency has monitored or
9 collected comprehensive data on the volume or toxicity of
10 hazardous materials injected into class II commercial wastewater
11 disposal wells in California.

12 (b) Produced water from oil and gas wells may contain a variety
13 of chemicals that are hazardous. Well stimulation techniques often
14 inject hazardous chemicals into wells that return to the surface as
15 produced water. In addition, fluids emitted from wells may carry
16 dissolved hazardous elements from the underground rock
17 formation.

18 (c) A common form of well stimulation is hydraulic fracturing,
19 by which tens of thousands to millions of gallons of fluid are
20 injected into a well under pressure. Hydraulic fracturing uses a
21 variety of hazardous chemicals. A 2011 survey by the United States
22 House of Representatives Committee on Energy and Commerce

1 minority staff found 29 chemicals used in hydraulic fracturing are
2 (1) known or possible human carcinogens, (2) regulated under the
3 federal Safe Drinking Water Act for their risks to human health,
4 or (3) listed as hazardous air pollutants under the federal Clean
5 Air Act. These chemicals contaminate produced water and are
6 eventually disposed of, usually into a class II commercial
7 wastewater disposal well. Without proper handling and monitoring
8 of hazardous wastes from this process, the state does not have any
9 way to know of, or prevent, any contamination in case of a well
10 failure.

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

19 (e) Therefore, it is intent of the Legislature to ensure that oilfield
20 waste be regulated in the same manner as other forms of waste by
21 removing the exemption for produced water in the Health and
22 Safety Code. If the produced wastewater is hazardous, then well
23 operators should handle it in the same manner as other forms of
24 hazardous waste.

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

27 25159.12. For purposes of this article, the following definitions
28 apply:

29 (a) "Annulus" means the space between the outside edge of the
30 injection tube and the well casing.

31 (b) "State board" means the State Water Resources Control
32 Board.

33 (c) "Compatibility" means that waste constituents do not react
34 with each other, with the materials constituting the injection well,
35 or with fluids or solid geologic media in the injection zone or
36 confining zone in a manner as to cause leaching, precipitation of
37 solids, gas or pressure buildup, dissolution, or any other effect that
38 will impair the effectiveness of the confining zone or the safe
39 operation of the injection well.

1 (d) “Confining zone” means the geological formation, or part
2 of a formation, that is intended to be a barrier to prevent the
3 migration of waste constituents from the injection zone.

4 (e) “Constituent” means an element, chemical, compound, or
5 mixture of compounds that is a component of a hazardous waste
6 or leachate and that has the physical or chemical properties that
7 cause the waste to be identified as hazardous waste by the
8 department pursuant to this chapter.

9 (f) “Discharge” means to place, inject, dispose of, or store
10 hazardous wastes into, or in, an injection well owned or operated
11 by the person who is conducting the placing, disposal, or storage.

12 (g) “Drinking water” has the same meaning as “potential source
13 of drinking water,” as defined in subdivision (t) of Section 25208.2.

14 (h) “Facility” means the structures, appurtenances, and
15 improvements on the land, and all contiguous land, that are
16 associated with an injection well and are used for treating, storing,
17 or disposing of hazardous waste. A facility may consist of several
18 waste management units, including, but not limited to, surface
19 impoundments, landfills, underground or aboveground tanks,
20 sumps, pits, ponds, and lagoons that are associated with an injection
21 well.

22 (i) “Groundwater” means water, including, but not limited to,
23 drinking water, below the land surface in a zone of saturation.

24 (j) “Hazardous waste” means hazardous waste or extremely
25 hazardous waste, as defined in this chapter. A waste mixture
26 formed by mixing a waste or substance with a hazardous waste
27 shall be considered hazardous waste for the purposes of this article.

28 (k) “Hazardous waste facilities permit” means a permit issued
29 for an injection well pursuant to Sections 25200 and 25200.6.

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

36 (m) “Injection zone” means that portion of the receiving
37 formation that has received, is receiving, or is expected to receive,
38 over the lifetime of the well, waste fluid from the injection well.
39 “Injection zone” does not include that portion of the receiving

1 formation that exceeds the horizontal and vertical extent specified
2 pursuant to Section 25159.20.

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

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

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

10 (q) “Qualified person” means a person who has at least five
11 years of full-time experience in hydrogeology and who is a
12 professional geologist registered pursuant to Section 7850 of the
13 Business and Professions Code, or a registered petroleum engineer
14 registered pursuant to Section 6762 of the Business and Professions
15 Code. “Full-time experience” in hydrogeology may include a
16 combination of postgraduate studies in hydrogeology and work
17 experience, with each year of postgraduate work counted as one
18 year of full-time work experience, except that not more than three
19 years of postgraduate studies may be counted as full-time
20 experience.

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

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

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

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

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

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

36 SEC. 3. Section 3205.2 of the Public Resources Code is
37 amended to read:

38 3205.2. (a) Notwithstanding Section 3204, a person who
39 engages in the operation of a class II commercial wastewater
40 disposal well, as defined in subdivision (d), shall file an indemnity

1 bond with the supervisor for fifty thousand dollars (\$50,000) for
2 each well so used. The bond shall cover all operations of drilling,
3 redrilling, deepening, altering casing, maintaining, or abandoning
4 the well and attendant facilities. The bond shall be executed by
5 the person as the principal, and by an authorized surety company
6 as the surety, and, except for differences in the amount, shall be
7 in substantially the same language and upon the same conditions
8 as provided in Section 3204.

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

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

17 (d) (1) A class II commercial wastewater disposal well is a well
18 that is used to dispose of oilfield wastewater, as specified in
19 paragraph (2), for a fee and that is regulated by the division
20 pursuant to this chapter and Subpart F (commencing with Section
21 147.250) of Part 147 of Title 40 of the Code of Federal Regulations.

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

25 *SEC. 4. Section 3205.3 is added to the Public Resources Code,*
26 *to read:*

27 *3205.3. Notwithstanding paragraph (2) of subdivision (b) of*
28 *Section 66262.11 of Title 22 of the California Code of Regulations,*
29 *a generator of oil and gas exploration and production waste is*
30 *responsible for testing the waste as described in paragraph (1) of*
31 *subdivision (b) of Section 66262.11 of Title 22 of the California*
32 *Code of Regulations, for determining whether the waste is*
33 *hazardous waste within the meaning of Chapter 6.5 (commencing*
34 *with Section 25100) of Division 20 of the Health and Safety Code.*

35 ~~SEC. 4.~~

36 *SEC. 5.* No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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