



1-1-1990

# Environmental Protection

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## Recommended Citation

University of the Pacific; McGeorge School of Law, *Environmental Protection*, 21 PAC. L. J. 479 (1990).

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# Environmental Protection

## Environmental Protection; environmental impact reports— notice requirements

Public Resources Code §§ 21092, 21151.1 (amended).

AB 58 (Roybal-Allard); 1989 STAT. Ch. 141

Support: Bay Area Air Quality Management District; California Public Interest Research Groups; City of Bell; City of Dixon; City of Duarte; City of Modesto; City of San Dimas; Planning and Conservation League; South Coast Air Management District

Opposition: County Sanitation Districts of Los Angeles

Existing law requires a lead agency<sup>1</sup> to prepare an environmental impact report (EIR)<sup>2</sup> or a negative declaration<sup>3</sup> for certain waste burning projects.<sup>4</sup> Chapter 141 expands existing law by requiring an EIR to be prepared for all projects which involve the burning of specified waste materials.<sup>5</sup>

Existing law mandates that a lead agency, required to prepare an EIR or negative declaration, provide public notice by placing an advertisement in a local paper or posting a notice both at and near the project site, or by direct mailing to the owners of lots contiguous to the project site.<sup>6</sup> Under Chapter 141, a lead agency must provide notice by all three methods if the project involves the burning of waste materials.<sup>7</sup> In addition, direct mailing must include both the owners and occupants of lots contiguous to the project site.<sup>8</sup> Where an EIR is required of a new project that burns hazardous waste, or

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1. See CAL. PUB. RES. CODE § 21067 (West 1979). A lead agency is a public agency responsible for the approval or implementation of a project. *Id.*

2. See *id.* § 21061 (definition of environmental impact report).

3. A negative declaration is a brief written statement prepared by a public agency declaring that a proposed project will not have a significant impact on the environment and an environmental impact report is not necessary. *Id.* § 21064.

4. *Id.* § 21151.1 (West Supp. 1989). See *id.* § 21065 (West 1979) (definition of project).

5. 1989 Cal. Stat. ch. 141, sec. 2, at \_\_\_\_ (amending CAL. PUB. RES. CODE § 21151.1). Waste materials include municipal wastes, hazardous wastes, or refuse-derived fuels. *Id.*

6. CAL. PUB. RES. CODE § 21092(a) (amended by 1989 Cal. Stat. ch. 141, sec. 1, at \_\_\_\_).

7. 1989 Cal. Stat. ch. 141, sec. 1, at \_\_\_\_ (amending CAL. PUB. RES. CODE § 21092(b)).

8. *Id.* (amending CAL. PUB. RES. CODE § 21092(c)).

where an existing project expands by more than ten percent, notice must be provided by direct mail to both owners and occupants of parcels located within a quarter mile radius of the project site.<sup>9</sup>

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9. *Id.*

### **Environmental Protection; environmental impact reports— transportation impact**

Public Resources Code §§ 21081.7, 21092.4 (new).

AB 40 (Eastin); 1989 STAT. Ch. 626

Support: California Transit Association; City of Sunnyvale

Existing law prohibits a lead agency<sup>1</sup> from undertaking a project<sup>2</sup> which requires an environmental impact report,<sup>3</sup> unless it has taken measures to mitigate any significant<sup>4</sup> environmental effects identified in the report and adopted a reporting or monitoring program to ensure compliance.<sup>5</sup> Chapter 626 requires transportation information, gathered pursuant to such a reporting or monitoring program, to be submitted to transportation planning agencies in the region if the project is determined to have statewide, regional, or areawide environmental significance.<sup>6</sup> The lead agency must consult with transportation planning agencies and other public agencies having jurisdiction over transportation facilities<sup>7</sup> impacted by the project for information relating to the projects effect on transportation.<sup>8</sup>

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1. See CAL. PUB. RES. CODE § 21067 (West 1979) (definition of lead agency). See also *id.* § 21165 (procedure for determining whether an entity is a lead agency in disputed cases).

2. See *id.* § 21065 (definition of project).

3. See *id.* § 21061 (definition of environmental impact report).

4. See *id.* § 21068 (definition of significant effect).

5. *Id.* § 21081.6 (West Supp. 1989).

6. 1989 Cal. Stat. ch. 626, sec 1, at \_\_\_\_ (enacting PUB. RES. CODE § 21081.7). See PUB. RES. CODE § 21083(c) (Office of Planning and Research must adopt procedure for evaluating statewide, regional or areawide environmental significance).

7. See 1989 Cal. Stat. ch. 626, sec. 2, at \_\_\_\_ (enacting PUB. RES. CODE § 21092.4(b)) (transportation facilities includes major local arterials and public transit services within five miles of the project site and freeways, highways; and rail transit services within ten miles of the project site).

8. *Id.* sec. 2, at \_\_\_\_ (enacting PUB. RES. CODE § 21092.4(a)). The lead agency must provide copies of environmental documents to any transportation planning agency or other public agency that provides the lead with information. *Id.*

## Environmental Protection; hazardous waste—forfeiture of vehicles

Health and Safety Code §§ 25196.1, 25196.2, 25196.3, 25196.4, 25196.5, 25196.6 (new).

AB 1488 (Katz); 1989 STAT. Ch. 946

Existing law makes it a crime to dispose of or to transport hazardous waste to an unauthorized point or facility.<sup>1</sup> Under Chapter 946, a vehicle used for the purpose of unlawfully transporting or disposing of hazardous waste will be forfeited to the state if the vehicle owner has previously been convicted of unlawful transportation or disposal, and either there is a court order prohibiting the owner from transporting or disposing of hazardous waste, or the owner is not registered as a hauler of hazardous waste.<sup>2</sup> Chapter 946 authorizes any peace officer making an arrest for the unlawful transportation or disposal of hazardous waste to appropriate the vehicle being used.<sup>3</sup> Once a vehicle is seized, if it is determined that the owner was in violation of the law concerning transportation and disposal of hazardous waste, a petition of forfeiture shall be filed by the Attorney General or the district attorney with the superior court within one year.<sup>4</sup> If the court determines the vehicle is subject to forfeiture, the state will be granted title to the vehicle;<sup>5</sup> however,

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1. CAL. HEALTH & SAFETY CODE § 25162(a) (West Supp. 1989).

2. 1989 Cal. Stat. ch. 946, sec. 1, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.1(b)(1)-(2)).

3. *Id.* sec. 2, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.2(a)).

4. *Id.* sec. 3, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.3(a)(1)-(2)). The petition must be filed in the county in which the vehicle is seized, or in the county where the property is located if it has not been seized. *Id.* Notice of the pending action must be served upon all parties with an interest in the vehicle. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25196.3(c)(2)). If any person claiming a prior interest in the vehicle files a claim with the court, a hearing must be set to determine whether the vehicle is subject to forfeiture. *Id.* sec. 4, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.4(a)-(b)). In addition, any person claiming that there is no probable cause for believing the vehicle is subject to forfeiture may petition the court for return of the vehicle. *Id.* sec. 3, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.3(g)). The burden of proof is on the prosecution to show, by a preponderance of the evidence, that the vehicle is subject to forfeiture. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25196.3(i)(1)). Persons claiming an interest in the vehicle who were not served with notice of the seizure may file a claim with the court within 30 days of the published notification of the action. *Id.* sec. 4, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.4(a)). If no claim is filed, the court will declare the vehicle forfeited to the state. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25196.4(b)). If a claim is filed, a hearing before a jury will be held, and a decision on forfeiture of the vehicle made. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25196.4(c)).

5. *Id.* sec. 1, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.1(a)).

a prior claim held by a bona fide purchaser or encumbrancer may not be defeated.<sup>6</sup> Once the state has title to the vehicle, any costs incurred in the handling of the hazardous waste will be paid by the person violating the provisions regarding transportation or disposal of the material.<sup>7</sup>

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6. *Id.* sec. 1, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.1(c)). The interest must have arisen before the vehicle was seized or the petition for forfeiture filed. *Id.* A vehicle forfeited to the state will be sold, and the proceeds must be distributed: (1) to any innocent or bona fide purchaser or encumbrancer; (2) 10% of the remaining balance to the Asset Forfeiture Distribution Fund; (3) 85% to the local law enforcement agency conducting the seizure; and (4) 15% to the agency which handles the forfeiture action. *Id.* sec. 6, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.6(a)-(b)).

7. *Id.* sec. 1, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25196.1(d)). See J. SLOBODIN, P. WEINER & R. WILLIAMS, *TOXIC TORTS: LIABILITY AND DEFENSES* (Continuing Education of the Bar Program Material) (1984) (overall perspective on legislation concerning hazardous waste, with specific discussion on California's hazardous substances control law); J. COLLINS, *THE COMPLETE GUIDE TO HAZARDOUS WASTE MATERIALS ENFORCEMENT AND LIABILITY* (California District Attorney's Association) (1985) (comprehensive guide to local, state and federal toxic substances legislation).

**Environmental Protection; underground storage tanks**

Health and Safety Code §§ 25299.10, 25299.11, 25299.12, 25299.13, 25299.14, 25299.15, 25299.16, 25299.18, 25299.19, 25299.20, 25299.21, 25299.22, 25299.24, 25299.25, 25299.30, 25299.31, 25299.32, 25299.33, 25299.34, 25299.36, 25299.37, 25299.40, 25299.41, 25299.42, 25299.50, 25299.51, 25299.52, 25299.53, 25299.54, 25299.55, 25299.56, 25299.57, 25299.58, 25299.59, 25299.60, 25299.61, 25299.62, 25299.63, 25299.64, 25299.65, 25299.66, 25299.67, 25299.68, 25299.80, 25299.81 (repealed and new); § 25285.1 (new); §§ 25285, 25299.01 (amended); Government Code §§ 15399.10, 15399.11, 15399.12, 15399.13, 15399.14, 15399.15, 15399.16, 15399.17, 15399.18, 15399.19, 15399.20, 15399.21 (new); Revenue and Taxation Code §§ 50101, 50102, 50103, 50104, 50105, 50106, 50107, 50108, 50109, 50110, 50111, 50112, 50113, 50114, 50115, 50116, 50117, 50118, 50119, 50120, 50121, 50122, 50123, 50124, 50125, 50126, 50127, 50128, 50129, 50130, 50131, 50132, 50133, 50134, 50135, 50136, 50137, 50138, 50139, 50140, 50141, 50142, 50143, 50144, 50145, 50146, 50147, 50148, 50149, 50150, 50151, 50152, 50153, 50154, 50155, 50157, 50158, 50159, 50160, 50161 (new).

SB 299 (Keene); 1989 STAT. Ch. 1442

Sponsor: Les Cohen & Associates

Support: California Car Wash Association, California Service Station and Auto Repair Association, Association of California Water Agencies, Siskiyou County Board of Supervisors, California Dump Truck Owner's Association, American Insurance Association, Small Businesses of America Inc., Seashell Oil & Chemical, Jim Little Petroleum Inc., Humbolt Petroleum Inc., L & M Renner Inc.

Opposition: Department of Finance

**FINANCIAL RESPONSIBILITY**

Chapter 1442 is intended to protect the public from the hazards of unauthorized releases<sup>1</sup> (leaks) from underground petroleum tanks (tanks),<sup>2</sup> by requiring tank owners and operators to meet minimum

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1. See CAL. HEALTH & SAFETY CODE § 25281(t) (West Supp. 1989) (definition of unauthorized release).

2. 1989 Cal. Stat. ch. 1442, sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25299.24).

financial responsibility requirements<sup>3</sup> set by the State Water Resources Control Board (Board).<sup>4</sup> Financial responsibility may be demonstrated by any means specified in the Federal Solid Waste Act.<sup>5</sup>

Under Chapter 1442, a tank owner or operator must take corrective action in response to a leak.<sup>6</sup> A regional board or local agency<sup>7</sup> may take or contract for corrective action if the action is required to protect human health or the environment.<sup>8</sup> A regional board or local agency may order the tank owner or operator to take corrective actions.<sup>9</sup> Before taking corrective action, the regional board or local agency must notify the owner or operator of the planned action, and determine that the owner or operator is not taking appropriate corrective action.<sup>10</sup>

### UNDERGROUND STORAGE TANK CLEANUP FUND

Chapter 1442 requires tank owners and operators to pay an annual fee of \$200 per tank.<sup>11</sup> These funds are paid to the Board of Equalization for deposit in the Underground Storage Tank Cleanup Fund (Fund).<sup>12</sup> The Fund may be used to pay the Board of Equal-

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3. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.10).

4. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.32(b), (c)). "Owner" and "operator" does not include any department or agency of the federal or state government. *Id.* (enacting CAL. HEALTH & SAFETY CODE §§ 25299.19, 25299.20). If the owner and operator are separate persons, either may demonstrate financial responsibility, but if neither meet the requirements, both are liable. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.31(c)). The minimum coverage for corrective action that the Board may set is \$50,000 per occurrence and \$50,000 annually. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.32(a)).

5. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.33(a)). See 42 U.S.C.S. § 6991b(d) (Law. Co-op 1989) (means for establishing financial responsibility).

6. 1989 Cal. Stat. ch. 1442, sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25299.37(a)). The corrective action taken must comply with regulations established by the Board. *Id.*

7. See CAL. HEALTH & SAFETY CODE § 25281(a), (e) (defining regional board and local agency).

8. 1989 Cal. Stat. ch. 1442, sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25299.36(b)).

9. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.37(c)). All corrective action procedures must comply with California Water Code sections 13000 to 14075 (state water quality control). *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.37(b)). Until the Board adopts appropriate regulations, corrective action procedures must comply with California Health and Safety Code sections 25280 to 25299.6 (underground storage of hazardous substances) and United States Code title 42, sections 6901 to 6992k (solid waste disposal). *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.37(e)).

10. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.53(a)). The regional board or local agency must submit cost estimates to the Board for approval in order to qualify for reimbursement. *Id.*

11. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.40(a)).

12. *Id.* (enacting CAL. HEALTH & SAFETY CODE §§ 25299.41, 25299.42).

zation's costs in administrating the Fund, reasonable and necessary costs of corrective action incurred by a regional board or local agency, costs of cleanup at abandoned tank sites, claims by tank owners or operators for reimbursement of costs for taking corrective actions, and costs pursuant to any agreements with local agencies for leak abatement.<sup>13</sup> Payments to claimants from the Claims Account are made in the following priority: (1) Payments to owners of tanks that have been closed down and are located on residential property; (2) payments to owners or operators of tanks that qualify for upgrading, replacement or removal; (3) payments to tank owners or operators who own an independent business that is not dominant in its field, employs fewer than 500 employees, and has all of its business operations located within California; and lastly, (4) to all other tank owners and operators.<sup>14</sup>

Tank owners and operators who have satisfied the financial responsibility requirements may file a claim with the Board for the reimbursement of costs incurred while taking corrective actions.<sup>15</sup> An owner or operator who fails to take corrective action is liable for all the costs of corrective action, and is ineligible to file a claim for reimbursement.<sup>16</sup> The Board may pay a claim if the Board determines that: (1) A leak has occurred; (2) the claimant was required to take corrective action; (3) the claimant has met the financial responsibility requirements; and (4) the claimant has properly certified that the costs of corrective action were reasonable and necessary.<sup>17</sup>

#### LIABILITY FOR CLEANUP COSTS

Tank owners and operators are liable for all costs of corrective action if they have not satisfied the financial responsibility or corrective action requirements of Chapter 1442.<sup>18</sup> The tank owner or operator is also liable for civil penalties of up to \$10,000 per day

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13. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.51).

14. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.52(b)).

15. 1989 Cal. Stat. ch. 1442, sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 25299.54(a)). The claimant may be reimbursed to the extent the costs of corrective action exceed the financial responsibility requirements, but may not receive more than \$1,000,000 per occurrence. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.57(a)). Owners who knew there was a leak prior to January 1, 1988, and failed to take corrective action, are ineligible for reimbursement. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.54(c)).

16. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.54(d)).

17. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.57(b)).

18. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.60(b)).



per tank for a violation of either the financial responsibility or corrective action requirements.<sup>19</sup>

### LOANS

The Department of Commerce (Department) will make loans to eligible<sup>20</sup> applicants to upgrade, replace or remove tanks.<sup>21</sup> The maximum loan available is \$50,000 per tank, up to a total loan of \$350,000 for each applicant.<sup>22</sup> Local agencies will determine if the proposed project will result in the tank meeting local, state or federal standards.<sup>23</sup>

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19. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 25299.66(a)).

20. In order to be eligible to receive a loan, the applicant must: (1) Qualify as a small business; (2) own a tank that requires upgrading, replacement, or removal under local, state, or federal regulations; (3) not be able to obtain funds on reasonable terms from other sources; (4) demonstrate an ability to repay the loan and provide sufficient collateral; (5) own a tank which is subject to regulation under Chapter 6.7 of California Health and Safety Code; and (6) comply with the financial responsibility requirements of California Health and Safety Code section 25299.31. *Id.* sec. 1, at \_\_\_\_ (enacting CAL. GOV'T CODE § 15399.12). See CAL. GOV'T CODE § 14837 (West Supp. 1989) (definition of small business).

21. 1989 Cal. Stat. ch. 1442, sec. 1, at \_\_\_\_ (enacting CAL. GOV'T CODE § 15399.11). The loan application must include evidence of eligibility, an environmental audit, financial data to demonstrate the ability to repay the loan and to provide sufficient collateral, an explanation of why the tank is not in compliance with applicable regulations, an estimate of the costs to bring the tank into compliance with the applicable regulations, and any other information required by the Department. *Id.* (enacting CAL. GOV'T CODE § 15399.13).

22. *Id.* (enacting CAL. GOV'T CODE § 15399.14(a)). The minimum loan is \$30,000. *Id.*

23. *Id.* (enacting CAL. GOV'T CODE § 15399.15). Loans will only be made to upgrade, replace, or remove a tank to permit the tank to meet applicable requirements. *Id.* (enacting CAL. GOV'T CODE § 15399.11).