
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 304
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Urgency: No
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Fiscal: Yes

SUBJECT: Contaminated sites: waste releases or surface or groundwater contamination: local oversight: remedial actions

DIGEST: Provides state oversight and sets requirements for local officers overseeing remedial investigation and remedial action at sites with released hazardous waste.

ANALYSIS:

Existing law:

- 1) Authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request a local officer to supervise the remedial action. Authorizes the local officer to supervise the remedial action if the local officer determine that adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. (Health & Safety Code (HSC) § 101480 (b))
- 2) Prohibits a local officer from overseeing remedial action at specified sites determined by the Department of Toxic Substances Control (DTSC). (HSC § 101483)
- 3) Requires a local officer to provide written notice with specified information to DTSC and the appropriate regional water board at least 10 working days prior to entering into an agreement with a responsible party. (HSC § 101487)
- 4) Authorizes the California Environmental Protection Agency (CalEPA) to certify Unified Program Agencies (CUPAs) to carry out environmental programs on behalf of the state, including programs related to the regulation of hazardous waste generators and onsite hazardous waste treatment, and the regulation of petroleum underground storage tanks. (HSC § 25404 - 25404.9)
- 5) Authorizes the State Water Resources Control Board (State Water Board) to certify local agencies as qualified to clean up or oversee a responsible party to clean up soil and groundwater contamination from leaking underground

storage tanks. Prohibits local agencies from overseeing the cleanup of leaking underground storage tank sites unless they have been certified by the State Water Board. (HSC § 25297.01)

This bill:

- 1) Amends the requirements for reimbursement of remediation costs from the Site Cleanup Subaccount to include costs from investigation and cleanup operations required by unified program agencies and local health officers under any section of the Water Code.
- 2) Amends the definition of "local officer" to mean a county health officer, city health officer, or county director of environmental health who has been granted authority by their jurisdiction to enter into remedial action agreements and oversee remedial action at sites with released hazardous waste.
- 3) Permits a responsible party for the release of hazardous waste to request a local officer oversee the remedial investigation, as defined, remedial action, as defined, or both, if the local officer complies with notification requirements and has provided DTSC and regional water quality control board (regional water board) with the following in the past twelve months:
 - a) A description of the technical expertise and staff resources available to oversee the investigation and remediation of the release site, including resumes of appropriately licensed professionals;
 - b) Certification that all applicable statutory requirements will be adhered to, and that if enforcement action is necessary, it will be conducted or promptly referred to DTSC or the regional water board; and,
 - c) Attestation that accurate records will be maintained and kept up to date, including through the use of the State Water Board's GeoTracker electronic data management system (GeoTracker), and kept in compliance with electronic reporting requirements.
- 4) Requires the remedial action agreement, as defined, to specify the testing, monitoring and analysis that the responsible party will carry out, proposed remedial actions, required reporting and public notifications, and enforcement actions or referrals in the event of noncompliance.
- 5) Permits a local officer who enters into a remedial action agreement to withdraw from the agreement after giving the responsible party at least 30 days' notice and making one or more of the specified findings.

- 6) Authorizes DTSC or the regional water board to inform the local officer that they will retain oversight authority for the waste release during the notification period. Prohibits a local officer from entering into a remedial action agreement if they are informed DTSC or the regional water board will retain oversight authority.
- 7) Requires a local officer entering into a remedial action agreement to establish a global identification number and public record for the State Water Board's GeoTracker and upload a copy of the remedial action agreement under their global identification number. Requires local officers to comply with electronic reporting requirements, and include these reporting requirements as provisions of the remedial action agreement.
- 8) Prohibits DTSC or the regional water board from assuming regulatory oversight authority of a waste release after a remedial action agreement has been entered into unless DTSC or the regional water board make one or more of the specified determinations. Requires notification to occur with a minimum 30 day notice after which the remedial action agreement is no longer valid.
- 9) Requires local officers, at least 30 days before certifying the cleanup goals in the remedial action agreement were accomplished, to conduct a public notification process that must include, at a minimum, notifying DTSC, the regional water board, agencies with authority to issue building permits on land affected by the waste release, and owners and occupants of the property impacted by the waste release and adjacent to the waste release. Requires the public notice to be posted on GeoTracker under the global identification number for the site.
- 10) Requires the local officer to provide the responsible party with a document describing the release of waste, remedial action taken, and certification that the cleanup goals were accomplished after the local officer determines a permanent remedy for the release of waste has been achieved. Requires the document be posted on GeoTracker under the global identification number established for the site.
- 11) Provides that nothing prohibits DTSC, the State Water Board, or regional water board from assuming jurisdiction over a waste release or taking enforcement action.
- 12) Requires a local officer to provide written notification to DTSC and the regional water board at least 30 days before entering into a remedial action agreement. Requires the written notification to include:

- a) Names and addresses of current site owners if different from the responsible party;
- b) Address and location of site or sites to which the remedial action agreement will apply;
- c) A description of any known local, state, or federal regulatory involvement at the site;
- d) A preliminary description of the release, and the anticipated investigation or remediation, if known; and,
- e) The name, phone number and email address of the local officer's technical staff who are available to oversee the remediation of the release site.

Background

- 1) *Remedial actions for waste releases.* There are currently thousands of contaminated sites across the state and the unauthorized releases of pollutants pose a risk to public health and the environment. These sites are complex and vary widely. They can include pesticide manufacturing facilities, rail yards, ports, dry cleaners, and refineries where pollutants were released to the soil, groundwater, surface water, and/or sediment. The types of pollutants encountered at these sites are plentiful and diverse and can include solvents, heavy metals, and petroleum. Some of these pollutants can persist in the environment, meaning that today's contaminated sites may be due to historical or recent unauthorized releases of pollutants.

The State Water Board and DTSC both have authority to do hazardous waste cleanup, but have different jurisdictions. The State Water Board oversees remediation where hazardous waste impacts surface or ground waters of the state, as well as underground storage tank contamination. There are nine regional water boards that exercise rulemaking and regulatory activities in regions defined by watersheds. DTSC oversees all other hazardous waste release cleanup.

The regional water boards and DTSC are charged with identifying parties that are responsible for the contamination, setting cleanup standards and requirements, and overseeing the cleanup of contaminated sites to ensure that they are properly remediated and do not continue to pose a threat to public health and the environment. State law specifies requirements for cleaning up contaminated sites, and the regional water boards and DTSC have developed extensive policies and procedures for determining the extent and type of contamination, and processes and standards for the proper remediation of contaminated sites.

- 2) *Local oversight of hazardous waste cleanup*: Historically, the California legislature has acknowledged that local agencies, when provided sufficient resources and information, can help the state address, through oversight or abatement efforts, the sites that require cleanup. AB 3193 (Polanco, Chapter 1113, Statutes of 1990), the Polanco Redevelopment Act, was enacted as part of the Community Redevelopment Act to assist redevelopment agencies in responding to brownfield properties (properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation cost and liability concerns) in their redevelopment areas. Under the law, redevelopment agencies could take action to remediate releases of hazardous substances on a property that was part of a redevelopment project. The redevelopment agencies were granted qualified immunity from liability under state or local law, provided that the cleanup was conducted in accordance with a remedial action plan approved by DTSC or a regional water board.

The CUPAs were created through the enactment of SB 1082 (Calderon, Chapter 418, Statutes of 1993) to be regulated under the unified hazardous waste and hazard materials management regulatory program (Unified Program). The Unified Program ensures consistency throughout the state for the implementation of administrative requirements, permits, inspections, and enforcement at the local regulatory level. CalEPA oversees the statewide implementation of the Unified Program and its 81 CUPAs, which apply regulatory standards established by the Governor's Office of Emergency Services, DTSC, the Office of the State Fire Marshal, the State Water Board, and CalEPA. DTSC may certify CUPAs to oversee the cleanup of contaminated sites, if DTSC determines they are qualified to do so. Under the Unified Program, CUPAs are certified to do corrective action on a limited number of tiered permitted hazardous waste facility sites. These CUPAs may be certified by DTSC as approved for "Tier 1 cleanup oversight" for less complex sites, or "Tier 2 cleanup oversight" for complex or high risk sites.

The Site Designation Process was enacted by AB 2061 (Umberg, Chapter 1184, Statutes of 1993) to allow a responsible party to request CalEPA to designate a local agency to oversee the cleanup action. AB 1248 (O'Connell, Chapter 671, Statutes of 1995) authorizes a responsible party, whenever a release of waste occurs and remedial action is required, to request the local health officer to supervise the remedial action. The law authorizes the local health officer to supervise the remedial action if the officer determines adequate staff resources and the requisite technical expertise and capabilities are available to supervise the remedial action. This program, commonly referred to as the "voluntary cleanup program," requires local health officers to enter into a remedial action agreement with the responsible party which specifies the testing, monitoring, and analysis that the responsible party will

undertake to determine the extent and type of contamination at the site and the remedial actions that will be undertaken by the responsible party.

In 2001, the California Land Environmental Restoration & Reuse Act (SB 32, Escutia, Chapter 764, Statutes of 2001) established a new hazardous materials investigation and cleanup program to be administered by local agencies with oversight from DTSC or the regional water board, and would provide cost reimbursement.

When the Legislature dissolved local redevelopment agencies (AB 1X 26, Blumenfield, Chapter 5, Statutes of 2011), it created problems regarding local access to brownfield remediation tools previously granted under the authority of the Polanco Redevelopment Act. AB 1X 26 required successor agencies to expeditiously dispose of assets and properties of former redevelopment agencies. However, there was a concern that many of those properties would either be difficult for successor agencies to sell or maximize the value of in the sale due to the actual or perceived contamination of the site. Therefore, the Legislature subsequently enacted AB 440 (Gatto, Chapter 588, Statutes of 2013) to authorize a local agency (a county, city, or housing authority) to take any action, similar to that under the Polanco Redevelopment Act, to remedy or remove a release of hazardous material on or under a "blighted property" within a "blighted area." AB 440 also provides immunity from further liability to the local agency, any person who enters into an agreement with that local agency to develop the property, and any future property owners.

Under the State Water Board's Local Oversight Program (LOP), the State Water Board certifies local agencies (regardless of whether they are local health agencies) as qualified to clean up or oversee a responsible party cleanup of soil and groundwater contamination from leaking underground storage tanks. Local agencies are prohibited from overseeing the cleanup of leaking underground storage tank cleanup sites unless they have been certified by the State Water Board.

- 3) *Status of the voluntary cleanup program.* Local health officers currently oversee remediation sites pursuant to a voluntary agreement for any sites where there is no lead agency (i.e. DTSC or regional water board) providing oversight and where local health officers determine they have the appropriate level of expertise. These sites include redevelopment with various previous site uses, such as gas stations, dry cleaners, industrial sites, gun range contamination, large spills from truck accidents, spills from aboveground tanks, contaminated soils associated with disposal sites, and spills from machinery or other equipment, including transformers.

The United State Environmental Protection Agency estimates that there are between 96,000 and 212,000 contaminated sites in California. DTSC has identified approximately 9,800 contaminated sites statewide. Current law authorizing local health officers to oversee site remediation helps to fill the gap where state agencies may not have the bandwidth to address the large number of contaminated sites in a timely manner.

In order to enter into a voluntary cleanup agreement with a responsible party, a local health officer is required to first provide written notification to DTSC and the appropriate regional water board(s) within 10 working days prior to entering into an agreement with a responsible party to ensure the state is aware of the site remediation and who is conducting it. There are a number of sites where local health officers are prohibited from using the voluntary cleanup agreement authority, including, but not limited to, any State Response, federal Superfund, military, and backlog sites designated by DTSC; sites subject to a cleanup and abatement order for a violation of any waste discharge requirement into a water source; or, sites that are under Phase I Environmental Assessment. The notification required to the state before entering into a voluntary agreement provides the opportunity for the state and local health officer to determine the applicability of the local health officer's authority to oversee the site remediation.

Current law allows the local health officer to determine whether they have the staff resources, technical expertise, and capabilities to oversee site remediation, and if not, they can refer the cleanup to the state. Local health officers can also refer voluntary cleanups to DTSC or the regional water board if the site becomes large or more complex than first expected, or if the responsible party is not in compliance with the remedial action agreement.

The State Water Board's LOP certifies local health officers to oversee the cleanup of sites contaminated by leaking underground storage tanks. However, current law does not provide state oversight or certification of local health officers implementing the voluntary cleanup program. There is relatively little data available on cleanups of contaminated sites under the voluntary cleanup program because local agencies are not required to upload their cleanup data to the State Water Board and DTSC's websites and most do not do so voluntarily. Regional water boards have found instances in which cleanups of contaminated sites overseen by a local health officer under the voluntary cleanup program have been inadequate. Specifically, problems have arisen including: inconsistent cleanup oversight practices, under-qualified personnel conducting highly specialized technical oversight, lack of data entry, lack of public access to case records, poorly documented sites, and approval of site closures that may

not meet the regional water board or DTSC requirements even though the site has been certified by the local agency as "clean."

- 4) *Standards for local health officers.* AB 432 (Quirk, 2019) would have required the State Water Board and DTSC to develop and implement a program to certify local officers to enter into remedial action agreements for the oversight and abatement of hazardous wastes. AB 432 would have been similar to the State Water Board's existing LOP program for certifying local agencies to oversee the cleanup of sites contaminated by leaking underground storage tanks.

There were several concerns with the certification program proposed in AB 432, including that the certification program could become too onerous, timely, and costly for local health officers, making them less likely to apply for the authority due to limited local resources. If local health officers were to opt out of the proposed certification program, there would have been a greater burden on DTSC and the regional water boards to oversee more cleanup sites. AB 432 was held on suspense in the Assembly Appropriations Committee.

AB 2333 (Quirk, 2020) would have taken a different approach than AB 432, instead setting a number of requirements for local health officers overseeing the cleanup of contaminated sites. AB 2333 died in the Senate Environmental Quality Committee due to time constraints imposed on hearings due to the COVID-19 pandemic. AB 304 is a re-introduction of AB 2333 and takes the same approach. In order to enhance oversight and transparency, AB 304 sets forth requirements for local health officers, including: providing more detailed written notification to DTSC and the regional water board before entering into a remedial action agreement; specifying proposed remedial actions, required reporting and public notifications, and enforcement actions or referrals in the event of noncompliance in remedial action agreements; and, establishing a global identification number for the site through the State Water Board's GeoTracker and complying with electronic reporting requirements. In order to provide more consistency for the certification of cleanups, AB 304 requires local health officers to provide public notification and documents outlining the remedial action and certification of cleanup goals to the responsible party.

The requirements for local health officers described above would apply to remedial action agreements entered into on or after January 1, 2022. For open cases where remedial action agreements have been entered into before January 1, 2022, only the certification requirements of providing public notification and documents to the responsible party, and posting both of these on GeoTracker would apply.

In addition to the requirements for entering into remedial action agreements and certifying cleanups, AB 304 authorizes DTSC or the regional water board to retain oversight authority before or after entering into a remedial action agreement. AB 304 prohibits DTSC or the regional water board from assuming oversight authority over a release where a remedial action agreement has already been entered into unless DTSC or the regional water board makes one or more of the specified determinations related to insufficient resources to oversee the remedial action or insufficient enforcement authority to ensure the responsible party is in compliance with the remedial action agreement. If DTSC or the regional water board do assume regulatory oversight authority, they are required to provide a minimum 30-day notice, and local health officers will still be able to recover costs from the responsible party for their work up until that point.

Comments

- 1) *Purpose of Bill.* According to the author, "AB 304 will help to ensure that local health officers who oversee the cleanup of contaminated sites have the necessary expertise, knowledge, and resources to carry out remediation responsibilities in a manner that is protective of public health. This bill sets certain requirements for local health officers overseeing a contaminated site cleanup including electronic reporting, public notification, and written notice to DTSC and the State Water Board detailing technical and fiscal resources available for the cleanup. AB 304 will provide consistency to cleanups throughout the state and reduce the likelihood that cleanups will have be re-opened due to ongoing contamination."

Related/Prior Legislation

AB 2333 (Quirk, 2020), Would require local health officers who oversee contaminated sites to provide DTSC and the State Water Board with written notice detailing the technical and fiscal resources available for the cleanup. This bill was held in the Senate Environmental Quality Committee due to the COVID-19 pandemic.

AB 432 (Quirk, 2019). Would require the State Water Board and DTSC to develop and implement a certification program for local health officers who enter into remedial action agreements. This bill was held on suspense in the Assembly Appropriations Committee.

AB 440 (Gatto, Chapter 588, Statutes of 2013). Authorizes a local agency to take any action, similar to that under the Polanco Redevelopment Act, to remedy or remove a release of hazardous material on or under a "blighted property" within a "blighted area."

AB 1701 (Wieckowski, Chapter 536, Statutes of 2012). Requires the State Water Board to establish a program for certifying cities and counties to oversee the cleanup of leaking underground storage tanks and prohibits cities and counties from overseeing the cleanup unless they have been certified by the State Water Board.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received

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