

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

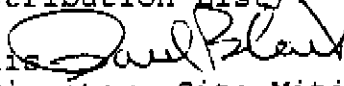
400 P STREET, 4TH FLOOR
P.O. BOX 806
SACRAMENTO, CA 95812-0806

(916) 323-3576



M E M O R A N D U M

TO: (See Distribution List)

FROM: Paul Blais 
Deputy Director, Site Mitigation Program

DATE: February 29, 1996

SUBJECT: LOCAL CLEANUP AGREEMENTS FACT SHEET

Senate Bill (SB) 1248 allows a Responsible Party (RP) and a local agency to enter into a written agreement for the supervision of the cleanup of a simple waste release. The Department of Toxic Substances Control's (DTSC) Site Mitigation Program is issuing the attached Fact Sheet to inform local agencies (and our staff) of the major provisions of this law, which became effective on January 1, 1996. It should be noted that SB 1248 does not prohibit DTSC from assuming jurisdiction over a release pursuant to Chapter 6.8 or a Regional Water Quality Control Board (RWQCB) from taking enforcement action pursuant to the Water Code.

SB 1248 requires local agencies to provide DTSC and the appropriate RWQCB with written notification at least 10 working days prior to entering into a remedial action agreement. At a minimum, these notices must include: the name and address of the RP; the name and address of the site owner; the address and location of the site where the remedial action will occur; and a description of any known or planned local, state, or federal regulatory involvement at the site.

SB 1248 written notifications should be directed to the appropriate DTSC Regional Cleanup Operations Branch Office where the site is located. The addresses and phone numbers of our Regional Offices are included in the Fact Sheet. The Site Mitigation Program will also be sending copies of the Fact Sheet to local environmental health directors.

Attachments





California Environmental Protection Agency
Department of Toxic Substances Control
Site Mitigation Program

FACT SHEET

LOCAL CLEANUP AGREEMENTS

NEW LEGISLATION: LOCAL CLEANUP AGREEMENTS

Senate Bill (SB) 1248 (O'Connell) became effective on January 1, 1996. SB 1248 enacted Health and Safety Code sections 512 through 512.4. (All statutory references herein are to the Health and Safety Code unless otherwise stated.) The purpose of SB 1248 is to allow a responsible party and a local health or environmental health agency (local agency) to enter into a written agreement for the supervision of the cleanup of a simple waste release.

SB 1248 establishes a cleanup program which allows a local health agency to supervise the remedial action taken at a site, set cleanup goals at a site, and issue a letter or other document that certifies that the cleanup goals were accomplished. While local regulatory agencies have supervised simple cleanups for many years, until enactment of SB 1248, there was no direct recognition of these activities in state law. SB 1248 was not intended to constitute a change in the status quo, but rather to acknowledge the legitimacy of local cleanup activities already being performed by qualified local agencies.

Key Elements of SB 1248:

- Sections 512 (a) (1) through (6) define the terms: local officer; person; release; remedial action; responsible party; and waste.

Section 512 (a) (6) states that "waste" has the same meaning as set forth in section 470 (b). However, SB 1360 (Stats. 1995, Chapter 415) repealed section 470 and replaced it with section 101075.

The full text of section 101075(b) is provided:

"(b) "Waste" means either of the following:

- 1) Any material for which no use or reuse is intended and that is to be discarded.
 - 2) Any material that spills, escapes, or is released from any manufacturing, industrial, commercial, or other plant, facility, or process, or that escapes or is released during the transporting or transferring from one place to another, or during the pumping, processing, storing, or packaging of any material in, to, or from such a plant, facility, or process, or that enters or may enter an uncontained air space or a surface water course that is not totally contained on the contiguous property of the plant, facility, or process, or which enters, or may enter, the groundwater underlying such plant, facility, or process."
- Based on available information, a local agency officer may agree to supervise a remedial action if the agency has adequate staff resources, technical expertise, and capabilities to adequately supervise the remedial action.
 - The written remedial action agreement must specify the testing, monitoring, and analysis the responsible party will carry out to determine the type and extent of the contamination, specify the remedial actions that will be

taken, and establish the cleanup goals to be accomplished.

- The responsible party must agree to meet the cleanup goals that the local health agency determines necessary.
- The local agency officer must provide written notification to the Department of Toxic Substances Control (DTSC) and the appropriate Regional Water Quality Control Board (RWQCB) at least 10 days before entering into a remedial action agreement. (These written notices are referred to in this Fact Sheet as "SB 1248 notifications.")
- Upon project completion, the local agency may provide the responsible party with a letter or other documentation that certifies that the cleanup goals in the written agreement were completed.

[The full text of SB 1248 is attached to the Fact Sheet.]

DETERMINING ELIGIBILITY

SB 1248 establishes criteria for determining whether a site is eligible for local agency supervision. Generally, SB 1248 provides that local agencies should not supervise sites that involve complex hazardous substance or hazardous waste releases that are more appropriately handled by a state agency.

A local agency is authorized to withdraw from a written remedial action agreement if:

- The release is "sufficiently" complex or if it may present a "significant" potential human health or environmental hazard. Local agencies are expected to refer releases of this nature to DTSC or a RWQCB. (See sections 512(d)(1), (2), and (3).)

A local agency shall not enter into a written remedial action agreement, and SB 1248 does not apply to:

- A site listed pursuant to section 25356.

- A site subject to a DTSC order or enforceable agreement pursuant to section 25355.5 or 25358.3, or a site where DTSC has initiated an action pursuant to section 25355.
- A site subject to a DTSC corrective action order issued pursuant to sections 25187 or 25187.7.
- A site subject to a RWQCB cleanup and abatement order issued pursuant to section 13304 of the Water Code.
- A facility that is subject to the requirements of section 25200.10 or 25200.14.

PROCEDURE FOR SB 1248 NOTIFICATIONS

Local agencies are required to provide DTSC and the appropriate RWQCB with written notification at least 10 working days prior to entering into a remedial action agreement, pursuant to section 512.3. At a minimum, these notices must include the name and address of the responsible party; the name and address of the site owner; the address and location of the site where the remedial action will occur; and a description of any known or planned local, state, or federal regulatory involvement at the site.

Local agencies should direct their SB 1248 notifications to the appropriate DTSC regional office to avoid any unnecessary delays.

The addresses and phone numbers of DTSC's Regional Offices are shown below. The completed SB 1248 notifications must be mailed to DTSC's Regional Office (in the region) where the site is located, addressed as follows:

Attention: Site Mitigation Program
Senate Bill 1248 NOTIFICATION -- LOCAL
CLEANUP AGREEMENT

Region 1 (Central California Cleanup Operations)
Department of Toxic Substances Control
Site Mitigation Program
10151 Croydon Way, Suite 3
Sacramento, California 95827-2106
(916) 255-3709

(For Northern California and Central Valley Counties)

Region 2 (North Coast Cleanup Operations)
Department of Toxic Substances Control
Site Mitigation Program
700 Heinz Avenue, Building F, 2nd Floor
Berkeley, California 94710
(510) 540-3843

(For North Coast and Bay Area Counties)

Regions 3 & 4 (Southern California Cleanup Operations)
Department of Toxic Substances Control
Site Mitigation Program
1011 Grandview Avenue
Glendale, California 91201
(818) 551-2812

(For Region 3: Santa Barbara and Ventura Counties and Los Angeles County North of Highway 91)

(For Region 4: Riverside, San Bernardino, Orange, San Diego, and Imperial Counties and Los Angeles County South of Highway 91)

PROCESSING SB 1248 NOTIFICATIONS

Upon receipt of SB 1248 notifications, Regional Site Mitigation Program (SMP) should:

- 1) Review all written notifications from a local agency to determine if DTSC has past involvement or is currently involved at the site (pursuant to both Chapters 6.8 and 6.5).
- 2) Check the CalSites database to see if DTSC is aware of the site and/or has an interest in overseeing remedial actions at the site.
- 3) Set-up a file or binder for SB 1248 notifications, preferably by city and/or county where the release occurred.
- 4) If SMP determines that a site is not appropriate for local agency supervision, a letter to

the local agency and the responsible parties will be prepared for the Branch Chief's signature which states that DTSC will be asserting its authority at the site.

[NOTE: The appropriate RWQCB should receive a copy of this letter.]

Attachment: SB 1248, Chapter 671

Article 4.2. Released Waste

512. (a) For purposes of this article, the following definitions apply:

- (1) "Local officer" means a county health officer, city health officer, or county director of environmental health.
- (2) "Person" has the same meaning as set forth in Section 25118.
- (3) "Release" has the same meaning as set forth in Section 25320.
- (4) "Remedial action" means any action taken by a responsible party to clean up a released waste, to abate the effects of a released waste, or to prevent, minimize, or mitigate damages that may result from the release of a waste. "Remedial action" includes the restoration, rehabilitation, or replacement of any natural resource damaged or lost as a result of the release of a waste.
- (5) "Responsible party" means a person who, pursuant to this section, requests the local officer to supervise remedial action with respect to a released waste.
- (6) "Waste" has the same meaning as set forth in subdivision (b) of Section 470.
- (b) Whenever a release of waste occurs and remedial action is required, the responsible party for the release may request the local officer to supervise the remedial action. The local officer may agree to supervise the remedial action if he or she determines, based on available information, that adequate staff resources and the requisite technical expertise and capabilities are available to adequately supervise the remedial action.
- (c) Remedial action carried out under this section shall be carried out only pursuant to a remedial action agreement entered into by the local officer and the responsible party. The remedial action agreement shall specify the testing, monitoring, and analysis the responsible party will carry out to determine the type and extent of the contamination caused by the released waste that is the subject of the remedial action, the remedial actions that will be taken, and the cleanup goals that the local officer determines are necessary to protect human health or safety or the environment, and that, if met, constitute a permanent remedy to the release of the waste.
- (d) A local officer who enters into a remedial action agreement, as described in subdivision (c), may, after giving the responsible party adequate notice, withdraw from the agreement at any time after making one of the following findings:
 - (1) The responsible party is not in compliance with the remedial action agreement.
 - (2) Appropriate staff resources, technical expertise, or technical capabilities are not available to adequately supervise the remedial action.
 - (3) The release of the waste that is the subject of the remedial action is of a sufficiently complex nature or may present such a

significant potential hazard to human health or the environment that it should be referred to the Department of Toxic Substances Control or a California regional water quality control board.

(e) After determining that a responsible party has completed the actions required by the remedial action agreement and that a permanent remedy for the release of waste has been achieved, the local officer may provide the responsible party with a letter or other document that describes the release of waste that occurred and the remedial action taken, and certifies that the cleanup goals embodied in the remedial action agreement were accomplished.

512.1. This article shall not apply to any of the following:

(a) A hazardous substance release site listed pursuant to Section 25356, a site subject to an order or enforceable agreement issued pursuant to Section 25355.5 or 25358.3, or a site where the Department of Toxic Substances Control has initiated action pursuant to Section 25355.

(b) A site subject to a corrective action order issued pursuant to Section 25187 or 25187.7.

(c) A site subject to a cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

512.2. Nothing in this article shall be construed as prohibiting the Department of Toxic Substances Control from assuming jurisdiction over a release pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20, or a California regional water quality control board or the State Water Resources Control Board from taking enforcement action against a release pursuant to Division 7 (commencing with Section 13000) of the Water Code.

512.3. A local officer shall provide written notification to the Department of Toxic Substances Control and the appropriate California regional water quality control board and the appropriate days prior to entering into a remedial action agreement with a responsible party pursuant to subdivision (c) of Section 512. The written notification shall include all of the following:

(a) The name and address of the responsible party.

(b) The name and address of the site owner.

(c) The address and location of the site to which the remedial action agreement will apply.

(d) A description of any known or planned local, state, or federal regulatory involvement at the site.

512.4. A local officer may charge the responsible party a fee to recover the reasonable and necessary costs incurred in carrying out this article.

CHAPTER 671

An act to add Article 4.2 (commencing with Section 512) to Chapter 1 of Part 2 of Division 1 of the Health and Safety Code, relating to waste.

[Approved by Governor October 8, 1995. Filed with Secretary of State October 10, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1248, O'Connell. Local officers: released waste.

Existing law requires the Department of Toxic Substances Control and any local health officer or a local public officer designated by the Director of Toxic Substances Control to enforce the standards and regulations concerning hazardous waste.

Existing law allows a responsible party for a hazardous materials release site to make one request to the Site Designation Committee, which is within the California Environmental Protection Agency, to designate an administering agency to oversee a site investigation and remedial action at that hazardous materials release site.

This bill would authorize a party responsible for the release of waste, as defined, to request that a local officer, as defined, supervise a remedial action, as defined, for the cleanup of that waste, under prescribed circumstances. The bill would require that remedial actions be carried out pursuant to a remedial action agreement entered into by the local officer and the responsible party. The bill would specify the contents of the remedial action agreement, and would prescribe the duties and responsibilities of the local officer with regard to the remedial action agreement.

The bill would specify that it does not apply to certain described hazardous substance release sites or hazardous waste facilities.

The bill would authorize local officers to charge responsible parties a fee to recover the reasonable and necessary costs incurred in supervising the remedial action.

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

SECTION 1. Article 4.2 (commencing with Section 512) is added to Chapter 1 of Part 2 of Division 1 of the Health and Safety Code, to read: