



General Assembly

Amendment

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LCO No. 4147

HB0544004147HDO

Offered by:

REP. ROY, 119th Dist.

REP. CARSON, 108th Dist.

To: Subst. House Bill No. 5440

File No. 389

Cal. No. 254

"AN ACT CONCERNING THE PRESENCE OF VOLATILE ORGANIC COMPOUNDS AND NOTICE OF POLLUTING EVENTS."

1 In line 47, after "flood hazards" insert "and, if the residence is or will
2 be served by well water, as defined in section 21a-150, the results of
3 any water test performed for volatile organic compounds"

4 In line 49, strike "and, if the residence is or will be served" and insert
5 a period in lieu thereof

6 Strike lines 50 to 52, inclusive, in their entirety

7 Strike section 2 in its entirety and insert the following in lieu thereof:

8 "Sec. 2. Section 22a-6u of the general statutes is repealed and the
9 following is substituted in lieu thereof (*Effective October 1, 2006*):

10 (a) For the purposes of this section:

11 (1) "Commissioner" means the Commissioner of Environmental

12 Protection, or his designee;

13 (2) "Parcel" means a piece, tract or lot of land, together with
14 buildings and other improvements situated thereon, a legal description
15 of which piece, parcel, tract or lot is contained in a deed or other
16 instrument of conveyance and which piece, tract or lot is not the
17 subject of an order or consent order of the commissioner which
18 involves requirements for investigation or reporting regarding
19 environmental contamination;

20 (3) "Person" means person, as defined in section 22a-2;

21 (4) "Pollution" means pollution, as defined in section 22a-423;

22 (5) "Release" means any discharge, uncontrolled loss, seepage,
23 filtration, leakage, injection, escape, dumping, pumping, pouring,
24 emitting, emptying or disposal of oil or petroleum or chemical liquids
25 or solids, liquid or gaseous products or hazardous wastes;

26 (6) "Residential activity" means any activity related to (A) a
27 residence or dwelling, including, but not limited to, a house,
28 apartment, or condominium, or (B) a school, hospital, day care center,
29 playground or outdoor recreational area;

30 (7) "Substance" means an element, compound or material which,
31 when added to air, water, soil or sediment, may alter the physical,
32 chemical, biological or other characteristics of such air, water, soil or
33 sediment;

34 (8) "Upgradient direction" means in the direction of an increase in
35 hydraulic head; and

36 (9) "Technical environmental professional" means an individual,
37 including, but not limited to, an environmental professional licensed
38 pursuant to section 22a-133v, who collects soil, water, vapor or air
39 samples for purposes of investigating and remediating sources of
40 pollution to soil or waters of the state and who may be directly
41 employed by, or retained as a consultant by, a public or private

42 employer.

43 (b) (1) If a technical environmental professional determines in the
44 course of investigating or remediating pollution after October 1, 1998,
45 which pollution is on or emanating from a parcel, that such pollution is
46 causing or has caused contamination of a public or private drinking
47 water well with a substance for which the Commissioner of
48 Environmental Protection has established a ground water protection
49 criterion in regulations adopted pursuant to section 22a-133k at a
50 concentration above the ground water protection criterion for such
51 substance, such professional shall notify his client and the owner of the
52 parcel, if the owner can reasonably be identified, not later than twenty-
53 four hours after determining that the contamination exists. If, seven
54 days after such determination, the owner of the subject parcel has not
55 notified the commissioner, the client of the professional shall notify the
56 commissioner. If the owner notifies the commissioner, the owner shall
57 provide documentation to the client of the professional which verifies
58 that the owner has notified the commissioner.

59 (2) The owner of a parcel on which exists a source of contamination
60 to soil or waters of the state shall notify the commissioner if such
61 owner becomes aware that such pollution is causing or has caused
62 contamination of a private or public drinking water well with a
63 substance for which the commissioner has established a ground water
64 protection criterion in regulations adopted pursuant to section 22a-
65 133k at a concentration at or above the ground water protection
66 criterion for such substance. Notice under this section shall be given to
67 the commissioner (A) orally, not later than one business day after such
68 person becomes aware that the contamination exists, and (B) in
69 writing, not later than five days after such oral notice.

70 (c) (1) If a technical environmental professional determines in the
71 course of investigating or remediating pollution after October 1, 1998,
72 which pollution is on or emanating from a parcel, that such pollution is
73 causing or has caused contamination of a public or private drinking
74 water well with: (A) A substance for which the commissioner has

75 established a ground water protection criterion in regulations adopted
76 pursuant to section 22a-133k at a concentration less than such ground
77 water protection criterion for such substance; or (B) any other
78 substance resulting from the release which is the subject of the
79 investigation or remediation, such professional shall notify his client
80 and the owner of the parcel, if the owner can reasonably be identified,
81 not later than seven days after determining that the contamination
82 exists.

83 (2) The owner of a parcel on which exists a source of pollution to
84 soil or the waters of the state shall notify the commissioner if such
85 owner becomes aware that such pollution is causing or has caused
86 contamination of a private or public drinking water well with: (A) A
87 substance for which the commissioner has established a ground water
88 protection criterion in regulations adopted pursuant to section 22a-
89 133k at a concentration less than such ground water protection
90 criterion for such substance; or (B) any other substance which was part
91 of the release which caused such pollution. Notice under this
92 subdivision shall be given in writing not later than seven days after the
93 time such person becomes aware that the contamination exists.

94 (d) (1) If a technical environmental professional determines in the
95 course of investigating or remediating pollution after October 1, 1998,
96 which pollution is on or emanating from a parcel, that such pollution
97 of soil within two feet of the ground surface contains a substance,
98 except for total petroleum hydrocarbon, at a concentration at or above
99 thirty times the industrial/commercial direct exposure criterion for
100 such substance if the parcel is in industrial or commercial use, or the
101 residential direct exposure criterion if the parcel is in residential use,
102 which criteria are specified in regulations adopted pursuant to section
103 22a-133k, such professional shall notify his client and the owner of the
104 parcel, if such owner is reasonably identified, not later than seven days
105 after determining that the contamination exists, except that notice will
106 not be required if the land-use of such parcel is not residential activity
107 and the substance is one of the following: Acetone, 2-butanone,
108 chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-

109 dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene,
110 ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene,
111 toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene,
112 butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl
113 phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene,
114 phenanthrene, phenol and pyrene.

115 (2) The owner of the subject parcel, shall notify the commissioner in
116 writing not later than ninety days after the time such owner becomes
117 aware that the contamination exists except that notification will not be
118 required if not later than ninety days: (A) The contaminated soil is
119 remediated in accordance with regulations adopted pursuant to
120 section 22a-133k; (B) the contaminated soil is inaccessible soil as that
121 term is defined in regulations adopted pursuant to section 22a-133k; or
122 (C) the contaminated soil which exceeds thirty times such criterion is
123 treated or disposed of in accordance with all applicable laws and
124 regulations.

125 (e) (1) If a technical environmental professional determines in the
126 course of investigating or remediating pollution after October 1, 1998,
127 which pollution is on or emanating from a parcel, that such pollution is
128 causing or has caused ground water within fifteen feet beneath an
129 industrial or commercial building to be contaminated with a volatile
130 organic substance at a concentration at or above thirty times the
131 industrial/commercial volatilization criterion for ground water for
132 such substance or, if such contamination is beneath a residential
133 building, at a concentration at or above thirty times the residential
134 volatilization criterion, which criteria are specified in regulations
135 adopted pursuant to section 22a-133k, such professional shall, not later
136 than seven days after determining that the contamination exists, notify
137 his client and the owner of the subject parcel, if such owner can
138 reasonably be identified.

139 (2) The owner of such parcel shall notify the commissioner in
140 writing not later than thirty days after such person becomes aware that
141 the contamination exists except that notification is not required if: (A)

142 The concentration of such substance in the soil vapor beneath such
143 building is at or below thirty times the soil vapor volatilization
144 criterion, appropriate for the land-use for the parcel, for such
145 substance as specified in regulations adopted pursuant to section 22a-
146 133k; (B) the concentration of such substance in groundwater is below
147 thirty times a site-specific volatilization criterion for ground water for
148 such substance calculated in accordance with regulations adopted
149 pursuant to section 22a-133k; (C) ground water volatilization criterion,
150 appropriate for the land-use of the parcel, for such substance specified
151 in regulations adopted pursuant to section 22a-133k is fifty thousand
152 parts per billion; or (D) not later than thirty days after the time such
153 person becomes aware that the contamination exists, an indoor air
154 monitoring program is initiated in accordance with subdivision (3) of
155 this subsection.

156 (3) An indoor air quality monitoring program for the purposes of
157 this subsection shall consist of sampling of indoor air once every two
158 months for a duration of not less than one year, sampling of indoor air
159 immediately overlying such contaminated ground water, and analysis
160 of air samples for any volatile organic substance which exceeded thirty
161 times the volatilization criterion as specified in or calculated in
162 accordance with regulations adopted pursuant to section 22a-133k. The
163 owner of the subject parcel shall notify the commissioner if: (A) The
164 concentration in any indoor air sample exceeds thirty times the target
165 indoor air concentration, appropriate for the land-use of the parcel, as
166 specified in regulations adopted pursuant to section 22a-133k; or (B)
167 the indoor air monitoring program is not conducted in accordance
168 with this subdivision. Notice shall be given to the commissioner in
169 writing not later than seven days after the time such person becomes
170 aware that such a condition exists.

171 (f) (1) If a technical environmental professional determines in the
172 course of investigating or remediating pollution after October 1, 1998,
173 which pollution is on or emanating from a parcel, that such pollution is
174 causing or has caused contamination of ground water which is
175 discharging to surface water and such ground water is contaminated

176 with a substance for which an acute aquatic life criterion is listed in
177 appendix D of the most recent water quality standards adopted by the
178 commissioner at a concentration which exceeds ten times (A) such
179 criterion for such substance in said appendix D, or (B) such criterion
180 for such substance times a site specific dilution factor calculated in
181 accordance with regulations adopted pursuant to section 22a-133k,
182 such professional shall notify his client and the owner of such parcel, if
183 such owner can reasonably be identified, not later than seven days
184 after determining that the contamination exists.

185 (2) The owner of such parcel shall notify the commissioner in
186 writing not later than seven days after the time such person becomes
187 aware that the contamination exists except that notice shall not be
188 required if such person knows that the polluted discharge at that
189 concentration has been reported to the commissioner in writing within
190 the preceding year.

191 (g) (1) If a technical environmental professional determines in the
192 course of investigating or remediating pollution after October 1, 1998,
193 which pollution is on or emanating from a parcel, that such pollution is
194 causing or has caused contamination of ground water within five
195 hundred feet in an upgradient direction of a private or public drinking
196 water well which ground water is contaminated with a substance
197 resulting from a release for which the commissioner has established a
198 ground water protection criterion in regulations adopted pursuant to
199 section 22a-133k at a concentration at or above the ground water
200 protection criterion for such substance, such technical environmental
201 professional shall notify his client and the owner of the subject parcel,
202 if such owner can reasonably be identified, not later than seven days
203 after determining that the contamination exists.

204 (2) The owner of the subject parcel shall notify the commissioner in
205 writing not later than seven days after the time such owner becomes
206 aware that the contamination exists.

207 (h) (1) If a technical environmental professional determines in the

208 course of investigating or remediating pollution after October 1, 1998,
209 which pollution is on or emanating from a parcel, that such pollution is
210 causing or has caused polluted vapors emanating from polluted soil,
211 groundwater or free product which vapors are migrating into
212 structures or utility conduits and which vapors pose an explosion
213 hazard, such technical environmental professional shall immediately
214 notify his client and the owner of the subject parcel, if such owner can
215 reasonably be identified, not later than twenty-four hours after
216 determining that the vapor condition exists. If the owner of such parcel
217 fails to notify the commissioner in accordance with this subsection,
218 such client shall notify the commissioner. If the owner notifies the
219 commissioner, the owner shall provide documentation to the client of
220 the professional which verifies that the owner has notified the
221 commissioner.

222 (2) The owner of such parcel shall orally notify the commissioner
223 and the local fire department immediately and under all circumstances
224 not later than two hours after the time a technical environmental
225 professional notifies the owner that the vapor condition exists, and
226 shall notify the commissioner in writing not later than five days after
227 such oral notice.

228 (i) In the event the commissioner orders the testing of any private
229 drinking well, and such testing indicates that the water exceeds a
230 maximum contaminant level applicable to public water supply
231 systems for any contaminant listed in the public health code or for any
232 contaminant listed on the state drinking water action level list
233 established pursuant to section 22a-471, the commissioner shall require
234 the respondent to such order to provide written notification of the
235 results of any testing conducted pursuant to such order not later than
236 twenty-four hours after said respondent receives such results to the
237 following: (1) The owner of record of the property upon which any
238 such private drinking well is located, (2) the local director of public
239 health, (3) any person that files a request with the local director of
240 public health to receive such notification, and (4) any other person the
241 commissioner specifically identifies in such order. Not later than

242 twenty-four hours after receiving such notification, such owner shall
243 forward a copy of such notification to at least one tenant of each unit of
244 any leased or rented dwelling unit located on such property and each
245 lessee of such property. Not later than three days after receiving such
246 notification, the local director of public health shall take all reasonable
247 steps to verify that such owner forwarded the notice required pursuant
248 to this subsection.

249 [(i)] (j) All notices, oral or written, provided under this section shall
250 include the nature of the contamination or condition, the address of the
251 property where the contamination or condition is located, the location
252 of such contamination or condition, any property known to be affected
253 by such contamination or condition, any steps being taken to abate,
254 remediate or monitor such contamination or condition, and the name
255 and address of the person making such notification. Written
256 notification shall be clearly marked as notification required by this
257 section and shall be either personally delivered to the Water
258 Management Bureau of the Department of Environmental Protection
259 or sent certified mail, return receipt requested, to the Water
260 Management Bureau of the Department of Environmental Protection.

261 [(j)] (k) The commissioner shall provide written acknowledgment of
262 receipt of a written notice pursuant to this section not later than ten
263 days of receipt of such notice. Such acknowledgment shall be
264 accompanied by (1) a statement that the owner of the parcel has up to
265 ninety days within which to submit to the commissioner a plan to
266 remediate or abate the contamination or condition. If such plan is not
267 submitted or is not approved by the commissioner, the commissioner
268 shall prescribe the action to be taken, or (2) a directive as to action
269 required to remediate or abate the contamination or condition. If a
270 plan is submitted which details actions to be taken, or a report is
271 submitted which details actions taken, to mitigate the contamination or
272 conditions such that notice under this section would not be required,
273 and such plan or report is acceptable to the commissioner, the
274 commissioner shall approve such plan or report in writing. When
275 actions implementing an approved plan are completed, the

276 commissioner shall issue a certificate of compliance.

277 [(k)] (l) An owner who has submitted written notice pursuant to this
278 section shall, not later than five days after the commencement of an
279 activity by any person that increases the likelihood of human exposure
280 to known contaminants, including, but not limited to, construction,
281 demolition, significant soil disruption or the installation of utilities,
282 post such notice in a conspicuous place on such property and, in the
283 case of a place of business, in a conspicuous place inside the place of
284 business. An owner who violates this subsection shall pay a civil
285 penalty of one hundred dollars for each offense. Each violation shall be
286 a separate and distinct offense and, in the case of a continuing
287 violation, each day's continuance thereof shall be deemed to be a
288 separate and distinct offense. The Attorney General, upon complaint of
289 the commissioner, shall institute an action in the superior court for the
290 judicial district of Hartford to recover such penalty.

291 [(l)] (m) Not later than ten days after receipt of any written notice
292 received under this section, the commissioner shall: (1) Forward a copy
293 of such notice to the chief elected official of the municipality in which
294 the subject pollution was discovered by the technical environmental
295 professional, (2) forward a copy of such notice to the state senator and
296 state representative representing the area in which the subject
297 pollution was discovered by the technical environmental professional,
298 (3) forward a copy of such notice to the Labor Commissioner where the
299 Division of Occupational Safety and Health, within the Labor
300 Department, has jurisdiction over the employers, employees and
301 places of employment on the subject property, (4) forward a copy of
302 such notice to the employee representatives who request such reports,
303 (5) forward a copy of such notice to the federal Occupational Safety
304 and Health Administration, and [(3)] (6) maintain a list on the
305 department's Internet [website] web site of all the notices received
306 under this section.

307 [(m)] (n) Nothing in this section and no action taken by any person
308 pursuant to this section shall affect the commissioner's authority under

309 any other statute or regulation.

310 [(n)] (o) Nothing in this section shall excuse a person from
311 complying with the requirements of any statute or regulation except
312 the commissioner may waive the requirements of the regulations
313 adopted under section 22a-133k if he determines that it is necessary to
314 ensure that timely and appropriate action is taken to mitigate or
315 minimize any of the conditions described in subsections (b) to (h),
316 inclusive, of this section."