

AMENDED IN ASSEMBLY APRIL 4, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1465

Introduced by Assembly Member Nation

February 23, 2001

An act to amend Sections 25284.1, 25299.13, 25299.24, 25299.37, 25299.52, 25299.56, 25299.57, 25299.58, 25299.62, 25299.78, and 25299.81 of the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1465, as amended, Nation. Underground Storage Tank Cleanup Fund.

(1) Existing law requires the State Water Resources Control Board to initiate a specified research program to quantify the probability and environmental significance of releases from petroleum underground storage tank systems that meet certain upgrade requirements and prohibits any person from taking specified actions with regard to monitoring equipment for an underground storage tank, unless the person meets specified requirements, including possessing specified licenses.

This bill would additionally allow the person to possess a tank-testing license issued by the board.

(2) Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the fund may

be expended by the State Water Resources Control Board, upon appropriation by the Legislature, for various purposes, including the payment of claims of up to \$1,500,000 per occurrence, as defined, to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks and the payment of claims for certain third party injuries and damages. Existing law defines the terms “claim” and “tank” for purposes of the act.

This bill would revise the definition of the term “claim” to mean the submittal to the fund for the reimbursement of costs incurred due to an occurrence and would revise the definition of the term “tank” to include a tank that contains *only petroleum, or, consistent with the federal laws regulating petroleum underground storage tanks, a mixture of petroleum, with de minimus quantities of other regulated substances, consistent with the federal laws regulating petroleum underground storage tanks.* The bill would revise the eligibility requirements for a claimant with regard to the payment of fees imposed by the act.

The bill would require an owner or operator to furnish information on the fees imposed under the act to a local agency, California regional water control board, or state board, under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime.

(3) Existing law repeals the act, by its own terms, on January 1, 2011, but provides that the repeal of the act does not terminate the filing and payment of claims against the fund, until the moneys in the fund are exhausted.

This bill would specify that the repeal does not terminate claims for costs for the cleanup and oversight at abandoned tank sites, *for corrective action*, or ~~for~~ commingled plumes, the recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the collection of unpaid fees.

(4) 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. Section 25284.1 of the Health and Safety Code
2 is amended to read:

3 25284.1. (a) The board shall take all of the following actions
4 with regard to the prevention of unauthorized releases from
5 petroleum underground storage tanks:

6 (1) On or before June 1, 2000, initiate a field-based research
7 program to quantify the probability and environmental
8 significance of releases from underground storage tank systems
9 meeting the 1998 upgrade requirements specified in subdivision
10 (e) of Section 25284. The research program shall do all of the
11 following:

12 (A) Seek to identify the source and causes of releases and any
13 deficiencies in leak detection systems.

14 (B) Include single-walled, double-walled, and hybrid tank
15 systems, and avoid bias toward known leaking underground
16 storage tank systems by including a statistically valid sample of all
17 operating underground storage tank systems.

18 (C) Include peer review.

19 (2) Complete the research program on or before June 1, 2002.

20 (3) Use the results of the research program to develop
21 appropriate changes in design, construction, monitoring,
22 operation, and maintenance requirements for tank systems.

23 (4) On or before January 1, 2001, adopt regulations to do all of
24 the following:

25 (A) (i) Require underground storage tank owners, operators,
26 service technicians, installers, and inspectors to meet minimum
27 industry-established training standards and require tank facilities
28 to be operated in a manner consistent with industry-established
29 best management practices.

30 (ii) The board shall implement an outreach effort to educate
31 small business owners or operators on the importance of the
32 regulations adopted pursuant to this subparagraph.

33 (B) Require testing of the secondary containment components,
34 including under-dispenser and pump turbine containment
35 components, upon initial installation of a secondary containment
36 component and periodically thereafter, to ensure that the system
37 is capable of containing releases from the primary containment
38 until a release is detected and cleaned up. The board shall consult



1 with the petroleum industry and local government to assess the
2 appropriate test or tests that would comply with this subparagraph.

3 (C) Require annual testing of release detection sensors and
4 alarms, including under-dispenser and pump turbine containment
5 sensors and alarms. The board shall consult with the petroleum
6 industry and local government to assess the appropriate test or tests
7 that would comply with this subparagraph.

8 (5) (A) Require an owner or operator of an underground
9 storage tank installed after July 1, 1987, if a tank is located within
10 1,000 feet of a public drinking water well, as identified pursuant
11 to the state GIS mapping data base, to have the underground
12 storage tank system fitted, on or before July 1, 2001, with
13 under-dispenser containment or a spill containment or control
14 system that is approved by the board as capable of containing any
15 accidental release.

16 (B) Require all underground storage tanks installed after
17 January 1, 2000, to have the tank system fitted with
18 under-dispenser containment or a spill containment system or
19 control system to meet the requirements of subparagraph (A).

20 (C) Require an owner or operator of an underground storage
21 tank that is not otherwise subject to subparagraph (A), and not
22 subject to subparagraph (B), to have the underground storage tank
23 system fitted to meet the requirements of subparagraph (A), on or
24 before December 31, 2003.

25 (D) On and after January 1, 2002, no person shall install, repair,
26 maintain, or calibrate monitoring equipment for an underground
27 storage tank unless that person satisfies both of the following
28 requirements:

29 (i) The person has fulfilled training standards identified by the
30 board in regulations adopted pursuant to this section.

31 (ii) The person possesses a tank testing license issued by the
32 board pursuant to Section 25284.4, or a Class "A" General
33 Engineering Contractor License, C-10 Electrical Contractor
34 License, C-34 Pipeline Contractor License, C-36 Plumbing
35 Contractor License, or C-61 (D40) Limited Specialty Service
36 Station Equipment and Maintenance Contractor License issued by
37 the Contractors' State License Board.

38 (E) Loans and grants for the installation of under-dispenser
39 containment or a spill containment or control system shall be made
40 available pursuant to Chapter 8.5 (commencing with Section



1 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government
2 Code.

3 (6) Convene a panel of local agency and regional board
4 representatives to review existing enforcement authority and
5 procedures and to advise the board of any changes that are needed
6 to enable local agencies to take adequate enforcement action
7 against owners and operators of noncompliant underground
8 storage tank facilities. The panel shall make its recommendations
9 to the board on or before September 30, 2001. Based on the
10 recommendations of the panel, the board shall also establish
11 effective enforcement procedures in cases involving fraud.

12 (b) On or before July 1, 2001, the Contractors State License
13 Board, in consultation with the board, the petroleum industry, air
14 pollution control districts, air quality management districts, and
15 local government, shall review its requirements for petroleum
16 underground storage tank system installation and removal
17 contractors and make changes, where appropriate, to ensure these
18 contractors are qualified.

19 SEC. 2. Section 25299.13 of the Health and Safety Code is
20 amended to read:

21 25299.13. "Claim" means a submittal to the fund for the
22 reimbursement of costs incurred due to an occurrence. A claim
23 consists of several documents, including, but not limited to, the
24 fund application, reimbursement requests, and verification
25 documents.

26 SEC. 3. Section 25299.24 of the Health and Safety Code is
27 amended to read:

28 25299.24. "Tank," "underground storage tank,"
29 "underground tank system," and "tank system" have the same
30 meaning as defined in Chapter 6.7 (commencing with Section
31 25280), except that these terms mean only those tanks that contain
32 ~~petroleum or only petroleum or, consistent with the federal act, a~~ a
33 mixture of petroleum with de minimis quantities of other regulated
34 substances, ~~consistent with the definition of "petroleum~~
35 ~~underground storage tank system" specified in the federal act and~~
36 ~~the regulations adopted to implement the federal act.~~

37 SEC. 4. Section 25299.37 of the Health and Safety Code is
38 amended to read:

39 25299.37. (a) Each owner, operator, or other responsible
40 party shall take corrective action in response to an unauthorized



1 release in compliance with this article and regulations adopted
2 pursuant to Section 25299.77. In adopting regulations pursuant to
3 Section 25299.77, the board shall develop corrective action
4 requirements for health hazards and protection of the
5 environment, based on the severity of the health hazards and the
6 other factors listed in subdivision (b).

7 (b) Any corrective action conducted pursuant to this chapter
8 shall ensure protection of human health, safety, and the
9 environment. The corrective action shall be consistent with any
10 applicable waste discharge requirements or other order issued
11 pursuant to Division 7 (commencing with Section 13000) of the
12 Water Code, all applicable state policies for water quality control
13 adopted pursuant to Article 3 (commencing with Section 13140)
14 of Chapter 3 of Division 7 of the Water Code, and all applicable
15 water quality control plans adopted pursuant to Section 13170 of
16 the Water Code and Article 3 (commencing with Section 13240)
17 of Chapter 4 of Division 7 of the Water Code.

18 (c) (1) When a local agency, the board, or a regional board
19 requires an owner, operator, or other responsible party to
20 undertake corrective action, including preliminary site assessment
21 and investigation, pursuant to an oral or written order, direction,
22 notification, or approval issued pursuant to this section, or
23 pursuant to a cleanup and abatement order or other oral or written
24 directive issued pursuant to Division 7 (commencing with Section
25 13000) of the Water Code, the owner, operator, or other
26 responsible party shall prepare a work plan that details the
27 corrective action the owner, operator, or other responsible party
28 shall take to comply with the requirements of subdivisions (a) and
29 (b) and the corrective action regulations adopted pursuant to
30 Section 25299.77.

31 (2) The work plan required by paragraph (1) shall be prepared
32 in accordance with the regulations adopted pursuant to Section
33 25299.77. The work plan shall include a schedule and timeline for
34 corrective action.

35 (3) At the request of the owner, operator, or other responsible
36 party, the local agency, the board, or the regional board shall
37 review a work plan prepared pursuant to paragraph (1) and either
38 accept the work plan, if it meets the requirements of this section,
39 or disapprove the work plan if it does not meet those requirements.
40 If the local agency, board, or the regional board accepts the work



1 plan, it shall indicate to the owner, operator, or other responsible
2 party, the actions or other elements of the work plan that are, in all
3 likelihood, adequate and necessary to meet the requirements of
4 this section, and the actions and elements that may be unnecessary.
5 If the local agency, board, or regional board disapproves the work
6 plan, it shall state the reasons for the disapproval.

7 (4) In the interests of minimizing environmental contamination
8 and promoting prompt cleanup, the responsible party may begin
9 implementation of the proposed actions after the work plan has
10 been submitted but before the work plan has received regulatory
11 agency acceptance, except that implementation of the work plan
12 may not begin until 60 calendar days from the date of submittal,
13 unless the responsible party is otherwise directed in writing by the
14 regulatory agency. However, before beginning implementation
15 pursuant to this paragraph, the responsible party shall notify the
16 regulatory agency of the intent to initiate proposed actions set forth
17 in the submitted work plan.

18 (5) The owner, operator, or other responsible party shall
19 conduct corrective actions in accordance with the work plan
20 approved pursuant to the section.

21 (6) (A) The local agency, the board, or the regional board shall
22 advise and work with the owner, operator, or other responsible
23 party on the opportunity to seek preapproval of corrective action
24 costs pursuant to Section 2811.4 of Title 23 of the California Code
25 of Regulations or any successor regulation. Regional board staff
26 and local agency staff shall work with the responsible party and
27 fund staff to obtain preapproval for the responsible party. The fund
28 staff shall grant or deny a request for preapproval within 30
29 calendar days after the date a request is received. If fund staff
30 denies a request for preapproval or fails to act within 30 calendar
31 days after receiving the request, an owner, operator, or other
32 responsible party who has prepared a work plan that has been
33 reviewed and accepted pursuant to paragraph (3), and is denied
34 preapproval of corrective action costs for one or more of the
35 actions required by the work plan, may petition the board for
36 review of the request for preapproval. The board shall review the
37 petition pursuant to Section 25299.56, and for that purpose the
38 petition for review of a request for preapproval of corrective action
39 costs shall be reviewed by the board in the same manner as a
40 petition for review of an unpaid claim.



1 (B) If the board receives a petition for review pursuant to
2 subparagraph (A), the board shall review the request for
3 preapproval and grant or deny the request pursuant to this
4 subparagraph and subparagraph (C). The board shall deny the
5 request for preapproval if the board makes one of the following
6 findings:

7 (i) The petitioner is not eligible to file a claim pursuant to
8 Article 6 (commencing with Section 25299.50).

9 (ii) The petitioner failed to submit one or more of the
10 documents required by the regulations adopted by the board
11 governing preapproval.

12 (iii) The petitioner failed to obtain three bids or estimates for
13 corrective action costs and, under the circumstances pertaining to
14 the corrective action, there is no valid reason to waive the three-bid
15 requirement pursuant to the regulations adopted by the board.

16 (C) If the board does not deny the request for preapproval
17 pursuant to subparagraph (B), the board shall grant the request for
18 preapproval. However, the board may modify the request by
19 denying preapproval of corrective action costs or reducing the
20 preapproved amount of those costs for any action required by the
21 work plan, if the board finds that the fund staff has demonstrated
22 either of the following:

23 (i) The amount of corrective action reimbursement requested
24 for the action is not reasonable. In determining if the fund staff has
25 demonstrated that the amount of reimbursement requested for an
26 action is not reasonable, the board shall use, when available, recent
27 experience with bids or estimates for similar actions.

28 (ii) The action required in the work plan is, in all likelihood, not
29 necessary for the corrective action to comply with the
30 requirements of subdivisions (a) and (b) and the corrective action
31 regulations adopted pursuant to Section 25299.77.

32 (7) When the local agency, the board, or the regional board
33 requires a responsible party to conduct corrective action pursuant
34 to this article, it shall inform the responsible party of its right to
35 request the designation of an administering agency to oversee the
36 site investigation and remedial action at its site pursuant to Section
37 25262 and, if requested to do so by the responsible party, the local
38 agency shall provide assistance to the responsible party in
39 preparing and processing a request for that designation.



1 (d) Notwithstanding Section 25297.1, the board shall
2 implement a procedure that does not assess an owner, operator, or
3 responsible party taking corrective action pursuant to this chapter
4 for the costs of a local oversight program pursuant to paragraph (4)
5 of subdivision (d) of Section 25297.1. The board shall institute an
6 internal procedure for assessing, reviewing, and paying those costs
7 directly between the board and the local agency. At least 15 days
8 before the board proposes to disapprove the reimbursement of
9 corrective action costs which have been incurred on the grounds
10 that the costs were unreasonable or unnecessary, the board shall
11 issue a notice advising the claimant and the lead agency of the
12 proposed disallowance, to allow review and comment.

13 (e) A person to whom an order is issued pursuant to subdivision
14 (c), shall have the same rights of administrative and judicial appeal
15 and review as are provided by law for cleanup and abatement
16 orders issued pursuant to Section 13304 of the Water Code.

17 (f) Until the board adopts regulations pursuant to Section
18 25299.77, the owner, operator, or other responsible party shall take
19 corrective action in accordance with Chapter 6.7 (commencing
20 with Section 25280) and the federal act.

21 (g) If a person to whom an order is issued pursuant to
22 subdivision (c) does not comply with the order, the board, a
23 regional board, or the local agency may undertake or contract for
24 corrective action and recover costs pursuant to Section 25299.70.

25 (h) The following uniform closure letter shall be issued to the
26 owner, operator or other responsible party taking corrective action
27 at an underground storage tank site by the local agency or the
28 regional board with jurisdiction over the site, or the board, upon
29 a finding that the underground storage tank site is in compliance
30 with the requirements of subdivisions (a) and (b) and with any
31 corrective action regulations adopted pursuant to Section
32 25299.77 and that no further corrective action is required at the
33 site:

34
35
36
37

“[Case File Number]
Dear [Responsible Party] :



1 This letter confirms the completion of a site investigation and
 2 corrective action for the underground storage tank(s) formerly
 3 located at the above-described location. Thank you for your
 4 cooperation throughout this investigation. Your willingness
 5 and promptness in responding to our inquiries concerning the
 6 former underground storage tank(s) are greatly appreciated.

7
 8 Based on information in the above-referenced file and with
 9 the provision that the information provided to this agency was
 10 accurate and representative of site conditions, this agency finds
 11 that the site investigation and corrective action carried out at
 12 your underground storage tank(s) site is in compliance with the
 13 requirements of subdivisions (a) and (b) of Section 25299.37 of
 14 the Health and Safety Code and with corrective action
 15 regulations adopted pursuant to Section 25299.77 of the Health
 16 and Safety Code and that no further action related to the
 17 petroleum release(s) at the site is required.

18
 19 This notice is issued pursuant to subdivision (h) of Section
 20 25299.37 of the Health and Safety Code.

21
 22 Please contact our office if you have any questions regarding
 23 this matter.

24
 25 Sincerely,

26
 27
 28 [Name of Board Executive Director, Regional Board Executive
 29 Officer, or Local Agency Director]”

30
 31 SEC. 5. Section 25299.52 of the Health and Safety Code is
 32 amended to read:

33 25299.52. (a) The board shall adopt a priority ranking list at
 34 least annually for awarding claims pursuant to Section 25299.57
 35 or 25299.58. Any owner or operator eligible for payment of a
 36 claim pursuant to Section 25299.54 shall file an application with
 37 the board within a reasonable period, to be determined by the
 38 board, prior to adoption of the priority ranking list.



1 (b) Except as provided in subdivision (c), in awarding claims
2 pursuant to Section 25299.57 or 25299.58, the board shall pay
3 claims in accordance with the following order of priority:

4 (1) Owners of tanks who are eligible to file a claim pursuant to
5 subdivision (e) of Section 25299.54.

6 (2) Owners and operators of tanks that are either of the
7 following:

8 (A) An owner or operator of a tank that is a small business, by
9 meeting the requirements of subdivision (d) of Section 14837 of
10 the Government Code. An owner or operator that meets that
11 definition of small business, but who is domiciled or has its
12 principal office outside of the state, shall be classified in this
13 category if the owner or operator otherwise meets the
14 requirements of subdivision (d) of Section 14837 of the
15 Government Code with regard to the number of employees and the
16 total annual revenues received.

17 (B) An owner or operator that is a city, county, district, or
18 nonprofit organization that receives total annual revenues of not
19 more than seven million dollars (\$7,000,000). In determining the
20 amount of a nonprofit organization's annual revenues, the board
21 shall calculate only those revenues directly attributable to the
22 particular site at which the tank or tanks for which the claim is
23 submitted are located.

24 (3) Owners or operators of tanks that are either of the
25 following:

26 (A) The owner or operator owns and operates a business that
27 employs fewer than 500 full-time and part-time employees, is
28 independently owned and operated, and is not dominant in its field
29 of operation.

30 (B) The owner or operator is a city, county, district, or nonprofit
31 organization that employs fewer than 500 full-time and part-time
32 employees. In determining the number of employees employed by
33 a nonprofit organization, the board shall calculate only those
34 employees employed at the particular site at which a tank for
35 which the claim is being submitted is located.

36 (4) All other tank owners and operators.

37 (c) (1) In any year in which the board is not otherwise
38 authorized to award at least 15 percent of the total amount of funds
39 committed for that year to tank owners or operators in those
40 categories set forth in paragraph (3) or (4) of subdivision (b) due



1 to the priority ranking list award limitations set forth in
2 subdivision (b), the board shall allocate between 14 and 16 percent
3 of the total amount of funds committed for that year to each
4 category that is not otherwise entitled to at least that level of
5 committed funding for that year.

6 (2) If the total amount of claims outstanding in one or more of
7 the priority categories specified in paragraph (3) or (4) of
8 subdivision (b) is less than 15 percent of the total amount annually
9 appropriated from the fund for the purpose of awarding claims, the
10 board shall reserve for making claims in that category only the
11 amount that is necessary to satisfy the outstanding claims in that
12 category.

13 (d) The board shall give priority to a claim that is filed before
14 September 24, 1993, by a city, county, or district that is eligible for
15 payment pursuant to Section 25299.54 in the following manner:

16 (1) The board shall determine whether the priority category
17 specified for a city, county, or district pursuant to subparagraph (B)
18 of paragraph (2), or pursuant to subparagraph (B) of paragraph (3),
19 of subdivision (b) requires that the priority ranking of the claim be
20 changed.

21 (2) If the priority ranking of the claim is changed and the claim
22 is placed into either the priority category specified in subparagraph
23 (B) of paragraph (2), or specified in subparagraph (B) of paragraph
24 (3), of subdivision (b), the board shall pay all other claims that
25 were assigned to that priority category prior to January 1, 2000,
26 before paying the claim of the city, county, or district.

27 (e) The board may, to carry out the intent specified in paragraph
28 (1) of subdivision (b) of Section 25299.10 and to expedite the
29 processing and awarding of claims pursuant to Sections 25299.57
30 and 25299.58, implement the contracting procedures required by
31 Chapter 10 (commencing with Section 4525) of Division 5 of Title
32 1 of the Government Code, as may be necessary, to alleviate the
33 claims processing and award backlog. If, at the conclusion of any
34 fiscal year, 25 percent or more of the funds appropriated annually
35 for awards to claimants during that year have not actually been
36 obligated by the board, the board shall, at its next regularly
37 scheduled meeting, determine, in a public hearing, whether, given
38 the circumstances of the awards backlog, it is appropriate to
39 implement those contracting procedures for some, or all, of the
40 claims filed with the board.



1 (f) For purposes of this section, the following definitions shall
2 apply:

3 (1) “Nonprofit organization” means a nonprofit public benefit
4 organization incorporated pursuant to Part 2 (commencing with
5 Section 5110) of Division 2 of Title 1 of the Corporations Code.

6 (2) “Annual revenue,” with respect to public entities, means
7 the total annual general purpose revenues, excluding all restricted
8 revenues over which the governing agency has no discretion, as
9 reported in the Annual Report of Financial Transactions submitted
10 to the Controller, for the latest fiscal year ending prior to the date
11 the fund application was filed.

12 (3) “Annual revenue,” with respect to nonprofit organizations,
13 means the total annual revenues, as shown in an annual fiscal
14 report filed with the Registry of Charitable Trusts of state and
15 federal tax records, based on the latest fiscal year ending prior to
16 the date the fund application was filed.

17 (4) “General purpose revenues,” as used in paragraph (2),
18 means revenues consisting of all of the following: secured and
19 unsecured revenues; less than countywide funds, secured and
20 unsecured; prior year secured and unsecured penalties and
21 delinquent taxes; sales and use taxes; transportation taxes
22 (nontransit); property transfer taxes; transient lodging taxes;
23 timber yield taxes; aircraft taxes; franchise taxes; fines,
24 forfeitures, and penalties; revenues from use of money and
25 property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes;
26 homeowner property tax relief; open-space tax relief; and cigarette
27 taxes.

28 SEC. 6. Section 25299.56 of the Health and Safety Code is
29 amended to read:

30 25299.56. (a) The board shall determine an applicant’s
31 eligibility for a claim for corrective action costs or third-party
32 compensation costs pursuant to Section 25299.57 or 25299.58 and
33 notify the applicant of that determination within 60 days from the
34 date of the receipt of the fund application. The board may classify
35 the claimant’s application pursuant to Section 25299.52 after that
36 60-day period. If the board sends an applicant a determination of
37 eligibility pursuant to this subdivision, the board shall not revoke
38 that determination of eligibility, unless the application contained
39 fraudulent information or a misrepresentation. However, the
40 board may suspend making a reimbursement for a claim until the



1 claimant corrects any deficiencies that are the basis for the
2 suspension. Reinstatement of reimbursement shall occur when
3 funds are available and that reinstatement shall be made ahead of
4 any new letters of commitment issued as of the date of
5 reinstatement.

6 (b) A claimant may request review of any claim or portion of
7 a claim not paid. The review shall be conducted and a decision
8 rendered within 30 days from the date of receipt of the request.

9 (c) A claimant may file a petition for review, in writing, with
10 the board with regard to any unpaid claim that is unresolved to the
11 satisfaction of the claimant upon expiration of the 30-day period
12 specified in subdivision (b) and the board shall take final action on
13 the petition within 90 days of the board's receipt of a complete
14 petition for review, except that if the board initiates an adjudicative
15 proceeding on the petition, the board shall take final action within
16 270 days of the board's receipt of a complete petition for review.

17 (d) Final action on a petition taken by the board is a final agency
18 action for the purposes of judicial review of a board decision.

19 (e) A claimant may, not later than 30 days from the date of final
20 action by the board pursuant to subdivision (c), file with the
21 superior court a petition for writ of mandate for review of the
22 decision. If the claimant does not file a petition for writ of mandate
23 within the time provided by this subdivision, a board decision shall
24 not be subject to review by the court. Section 1094.5 of the Code
25 of Civil Procedure shall govern the proceeding for a petition filed
26 pursuant to this subdivision. For purposes of subdivision (c) of
27 Section 1094.5 of the Code of Civil Procedure, the court shall
28 uphold the decision if the decision is based upon substantial
29 evidence in light of the whole record.

30 (f) Except as specified in subdivision (g), the procedures in
31 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of
32 Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the
33 Government Code apply to any adjudicative proceedings
34 conducted by the board pursuant to this article.

35 (g) (1) Notwithstanding subdivision (f), Sections 801, 802,
36 803, 804, and 805 of the Evidence Code apply to any adjudicative
37 proceeding conducted by the board pursuant to this article.

38 (2) This section is not a limitation on the authority of the board
39 to authorize the use of the procedure provided in Article 10



1 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of
2 Division 3 of Title 2 of the Government Code.

3 SEC. 7. Section 25299.57 of the Health and Safety Code is
4 amended to read:

5 25299.57. (a) If the board makes the determination specified
6 in subdivision (d), the board may only pay for the costs of a
7 corrective action that exceeds the level of financial responsibility
8 required to be obtained pursuant to Section 25299.32, but not more
9 than one million five hundred thousand dollars (\$1,500,000) for
10 each occurrence. In the case of an owner or operator who, as of
11 January 1, 1988, was required to perform corrective action, who
12 initiated that corrective action in accordance with Division 7
13 (commencing with Section 13000) of the Water Code or Chapter
14 6.7 (commencing with Section 25280), and who is undertaking the
15 corrective action in compliance with waste discharge
16 requirements or other orders issued pursuant to Division 7
17 (commencing with Section 13000) of the Water Code or Chapter
18 6.7 (commencing with Section 25280), the owner or operator may
19 apply to the board for satisfaction of a claim filed pursuant to this
20 article. It is the intent of the Legislature that claimants applying for
21 satisfaction of claims from the fund be notified of eligibility for
22 reimbursement in a prompt and timely manner and that a letter of
23 credit or commitment that will obligate funds for reimbursement
24 follow the notice of eligibility as soon thereafter as possible.

25 (b) (1) For claims eligible for reimbursement pursuant to
26 subdivision (c) of Section 25299.55, the claimant shall submit the
27 actual cost of corrective action to the board, which shall either
28 approve or disapprove the costs incurred as reasonable and
29 necessary.

30 (2) The board shall not reject any actual costs of corrective
31 action in a claim solely on the basis that the invoices submitted fail
32 to sufficiently detail the actual costs incurred, if all of the
33 following applies:

34 (A) Auxiliary documentation is provided which documents to
35 the board's satisfaction that the invoice is for necessary corrective
36 action work.

37 (B) The costs of corrective action work in the claim are
38 reasonably commensurate with similar corrective action work
39 performed during the same time period covered by the invoice for
40 which reimbursement is sought.



1 (C) The invoices include a brief description of the work
2 performed, the date that the work was performed, the vendor, and
3 the amount.

4 (c) For claims eligible for prepayment pursuant to subdivision
5 (c) of Section 25299.55, the claimant shall submit the estimated
6 cost of the corrective action to the board, which shall approve or
7 disapprove the reasonableness of the cost estimate.

8 (d) Except as provided in subdivision (j), a claim specified in
9 subdivision (a) may be paid if the board makes all of the following
10 findings:

11 (1) There has been an unauthorized release of petroleum into
12 the environment from an underground storage tank.

13 (2) The claimant is required to undertake or contract for
14 corrective action pursuant to Section 25299.37, or, as of January
15 1, 1988, the claimant has initiated corrective action in accordance
16 with Division 7 (commencing with Section 13000) of the Water
17 Code.

18 (3) (A) Except as provided in subparagraph (B), the claimant
19 has complied with Section 25299.31 and the permit requirements
20 of Chapter 6.7 (commencing with Section 25280).

21 (B) All claimants who file their claim on or after January 1,
22 1994, and all claimants who filed their claim prior to that date but
23 are not eligible for a waiver of the permit requirement pursuant to
24 board regulations in effect on the date of the filing of the claim, and
25 who did not obtain or apply for any permit required by subdivision
26 (a) of Section 25284 by January 1, 1990, shall be subject to
27 subparagraph (A) regardless of the reason or reasons that the
28 permit was not obtained or applied for. However, on and after
29 January 1, 1994, the board may waive the provisions of
30 subparagraph (A) as a condition for payment from the fund if the
31 board finds all of the following:

32 (i) The claimant was unaware of the permit requirement prior
33 to January 1, 1990, and there was no intent to intentionally avoid
34 the permit requirement or the fees associated with the permit.

35 (ii) Prior to submittal of the application to the fund, the
36 claimant has complied with Section 25299.31 and has obtained
37 and paid for all permits currently required by this paragraph.

38 (iii) Prior to submittal of the application to the fund, the
39 claimant has paid all fees, interest, and penalties imposed pursuant
40 to Article 5 (commencing with Section 25299.40) and Part 26



1 (commencing with Section 50101) of Division 2 of the Revenue
2 and Taxation Code for the underground storage tank that is the
3 subject of the claim.

4 (C) (i) A claimant exempted pursuant to subparagraph (B)
5 shall obtain a level of financial responsibility twice as great as the
6 amount which the claimant is otherwise required to obtain
7 pursuant to subdivision (a) of Section 25299.32.

8 (ii) The board may waive the requirements of clause (i) if the
9 claimant can demonstrate that the conditions specified in clauses
10 (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the
11 causing of any contamination. That demonstration may be made
12 through a certification issued by the permitting agency based on
13 site and tank tests at the time of permit application or in any other
14 manner acceptable to the board.

15 (D) The board shall rank all claims resubmitted pursuant to
16 subparagraph (B) lower than all claims filed before January 1,
17 1994, within their respective priority classes specified in
18 subdivision (b) of Section 25299.52.

19 (4) The board has approved either the costs incurred for the
20 corrective action pursuant to subdivision (b) or the estimated costs
21 for corrective action pursuant to subdivision (c).

22 (5) The claimant has paid all fees, interest, and penalties
23 imposed pursuant to Article 5 (commencing with Section
24 29299.40) and Part 26 (commencing with Section 50101) of
25 Division 2 of the Revenue and Taxation Code for the underground
26 storage tank that is the subject of the claim.

27 (e) The board shall provide the claimant, whose cost estimate
28 has been approved, a letter of credit authorizing payment of the
29 costs from the fund.

30 (f) The claimant may submit a request for partial payment to
31 cover the costs of corrective action performed in stages, as
32 approved by the board.

33 (g) (1) Any claimant who submits a claim for payment to the
34 board shall submit multiple bids for prospective costs as
35 prescribed in regulations adopted by the board pursuant to Section
36 25299.77.

37 (2) Any claimant who submits a claim to the board for the
38 payment of professional engineering and geologic work shall
39 submit multiple proposals and fee estimates, as required by the
40 regulations adopted by the board pursuant to Section 25299.77.



1 The claimant's selection of the provider of these services is not
2 required to be based on the lowest estimated fee, if the fee estimate
3 conforms with the range of acceptable costs established by the
4 board.

5 (3) Any claimant who submits a claim for payment to the board
6 for remediation construction contracting work shall submit
7 multiple bids, as required in the regulations adopted by the board
8 pursuant to Section 25299.77.

9 (4) Paragraphs (1), (2), and (3) do not apply to a tank owned or
10 operated by a public agency if the prospective costs are for private
11 professional services within the meaning of Chapter 10
12 (commencing with Section 4525) of Division 5 of Title 1 of the
13 Government Code and those services are procured in accordance
14 with the requirements of that chapter.

15 (h) The board shall provide, upon the request of a claimant,
16 assistance to the claimant in the selection of contractors retained
17 by the claimant to conduct reimbursable work related to corrective
18 actions. The board shall develop a summary of expected costs for
19 common remedial actions. This summary of expected costs may
20 be used by claimants as a guide in the selection and supervision of
21 consultants and contractors.

22 (i) The board shall pay, within 60 days from the date of receipt
23 of an invoice of expenditures, all costs specified in the work plan
24 developed pursuant to Section 25299.37, and all costs which are
25 otherwise necessary to comply with an order issued by a local,
26 state, or federal agency.

27 (j) (1) The board shall pay a claim of not more than three
28 thousand dollars (\$3,000) per occurrence for regulatory technical
29 assistance to an owner or operator who is otherwise eligible for
30 reimbursement under this chapter.

31 (2) For the purposes of this subdivision, regulatory technical
32 assistance is limited to assistance from a person, other than the
33 claimant, in the preparation and submission of a claim to the fund.
34 Regulatory technical assistance does not include assistance in
35 connection with proceedings under Section 25299.39.2 or
36 25299.56 or any action in court.

37 (k) (1) Notwithstanding any other provision of this section, the
38 board shall pay a claim for the costs of corrective action to a person
39 who owns property on which is located a release from a petroleum
40 underground storage tank which has been the subject of a



1 completed corrective action and for which additional corrective
2 action is required because of additionally discovered
3 contamination from the previous release, only if the person who
4 carried out the earlier and completed corrective action was eligible
5 for, and applied for, reimbursement pursuant to subdivision (b),
6 and only to the extent that the amount of reimbursement for the
7 earlier corrective action did not exceed the amount of
8 reimbursement authorized by subdivision (a). Reimbursement to
9 a claimant on a reopened site shall occur when funds are available,
10 and reimbursement commitment shall be made ahead of any new
11 letters of commitment to be issued, as of the date of the reopening
12 of the claim, if funding has occurred on the original claim, in which
13 case funding shall occur at the time it would have occurred under
14 the original claim.

15 (2) For purposes of this subdivision, a corrective action is
16 completed when the local agency or regional board with
17 jurisdiction over the site or the board issues a closure letter
18 pursuant to subdivision (h) of Section 25299.37.

19 SEC. 8. Section 25299.58 of the Health and Safety Code is
20 amended to read:

21 25299.58. (a) Except as provided in subdivision (d), if the
22 board makes the determination specified in subdivision (b), the
23 board may only reimburse those costs which are related to the
24 compensation of third parties for bodily injury and property
25 damages and which exceed the level of financial responsibility
26 required to be obtained pursuant to Section 25299.32, but not more
27 than one million dollars (\$1,000,000) for each occurrence.

28 (b) A claim may be paid if the board makes all of the following
29 findings:

30 (1) There has been an unauthorized release of petroleum into
31 the environment from an underground storage tank.

32 (2) The claimant has been ordered to pay a settlement or final
33 judgment for third-party bodily injury or property damage arising
34 from operating an underground storage tank.

35 (3) (A) Except as provided in subparagraph (B), the claimant
36 has complied with Section 25299.31 and the permit requirements
37 of Chapter 6.7 (commencing with Section 25280).

38 (B) All claimants who file their claim on or after January 1,
39 1994, and all claimants who filed their claim prior to that date but
40 are not eligible for a waiver of the permit requirement pursuant to



1 board regulations in effect on the date of the filing of the claim, and
2 who did not obtain or apply for any permit required by subdivision
3 (a) of Section 25284 by January 1, 1990, shall be subject to
4 subparagraph (A) regardless of the reason or reasons that the
5 permit was not obtained or applied for. However, on and after
6 January 1, 1994, the board may waive the provisions of
7 subparagraph (A) as a condition for payment from the fund if the
8 board finds all of the following:

9 (i) The claimant was unaware of the permit requirement prior
10 to January 1, 1990, and there was no intent to intentionally avoid
11 the permit requirement or the fees associated with the permit.

12 (ii) Prior to submittal of the application to the fund, the
13 claimant has complied with Section 25299.31 and has obtained
14 and paid for all permits currently required by this paragraph.

15 (iii) Prior to submittal of the application to the fund, the
16 claimant has paid all fees, interest, and penalties imposed pursuant
17 to Article 5 (commencing with Section 25299.40) and Part 26
18 (commencing with Section 50101) of Division 2 of the Revenue
19 and Taxation Code for the underground storage tank that is the
20 subject of the claim.

21 (C) (i) A claimant exempted pursuant to subparagraph (B)
22 shall obtain a level of financial responsibility in an amount twice
23 as great as the amount which the claimant is otherwise required to
24 obtain pursuant to subdivision (a) of Section 25299.32.

25 (ii) The board may waive the requirements of clause (i) if the
26 claimant can demonstrate that the conditions specified in clauses
27 (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to
28 any contamination having been caused. That demonstration may
29 be made through a certification issued by the permitting agency
30 based on site and tank tests at the time of permit application or in
31 any other manner as may be acceptable to the board.

32 (D) The board shall rank all claims resubmitted pursuant to
33 subparagraph (B) lower than all claims filed before January 1,
34 1994, within their respective priority classes specified in
35 subdivision (b) of Section 25299.52.

36 (4) The claimant is required to undertake or contract for
37 corrective action pursuant to Section 25299.37, or, as of January
38 1, 1988, the claimant has initiated corrective action in accordance
39 with Division 7 (commencing with Section 13000) of the Water
40 Code or Chapter 6.7 (commencing with Section 25280).



1 (5) The claimant has paid all fees, interest, and penalties
2 imposed pursuant to Article 5 (commencing with Section
3 29299.40) and Part 26 (commencing with Section 50101) of
4 Division 2 of the Revenue and Taxation Code for the underground
5 storage tank that is the subject of the claim.

6 (c) A claimant may be reimbursed by the fund for
7 compensation of third parties for only the following:

8 (1) Medical expenses.

9 (2) Actual lost wages or business income.

10 (3) Actual expenses for remedial action to remedy the effects
11 of damage to the property of the third party caused by the
12 unauthorized release of petroleum from an underground storage
13 tank.

14 (4) The fair market value of the property rendered permanently
15 unsuitable for use by the unauthorized release of petroleum from
16 an underground storage tank.

17 (d) The board shall pay a claim submitted pursuant to
18 subdivision (e) of Section 25299.54 for the costs related to the
19 compensation of third parties for bodily injury and property
20 damages which exceed the level of financial responsibility
21 required to be obtained pursuant to paragraph (2) of subdivision
22 (a) of Section 25299.32, but not more than one million dollars
23 (\$1,000,000) for each occurrence.

24 SEC. 9. Section 25299.62 of the Health and Safety Code is
25 amended to read:

26 25299.62. All reimbursement requests that are approved shall
27 be forwarded to the Controller within 10 days from the date of
28 approval, for payment by the Controller.

29 SEC. 10. Section 25299.78 of the Health and Safety Code is
30 amended to read:

31 25299.78. (a) To carry out the purposes of this chapter, any
32 authorized representative of the local agency, regional board, or
33 board shall have the authority specified in Section 25185, with
34 respect to any place where underground storage tanks are located,
35 and in Section 25185.5, with respect to any real property which is
36 within 2,000 feet of any place where underground storage tanks are
37 located.

38 (b) An owner or operator shall furnish, under penalty of
39 perjury, any information on fees imposed pursuant to ~~Section~~
40 ~~25299.40~~ Article 5 (commencing with Section 25299.40),



1 financial responsibility, unauthorized releases, or corrective
2 action as the local agency, regional board, or board may require.

3 SEC. 11. Section 25299.81 of the Health and Safety Code is
4 amended to read:

5 25299.81. (a) Except as provided in subdivisions (b) and (c),
6 this chapter shall remain in effect only until January 1, 2011, and
7 as of that date is repealed, unless a later enacted statute, which is
8 enacted before January 1, 2011, deletes or extends that date.

9 (b) Notwithstanding subdivision (a), Article 1 (commencing
10 with Section 25299.10), Article 2 (commencing with Section
11 25299.11), and Article 4 (commencing with Section 25299.36)
12 shall not be repealed and shall remain in effect on January 1, 2011.

13 (c) The repeal of certain portions of this chapter does not
14 terminate any of the following rights, obligations, or authorities,
15 or any provision necessary to carry out these rights and
16 obligations:

17 (1) The filing and payment of claims against the fund,
18 including the costs specified in ~~subdivision (e)~~ subdivisions (c),
19 (e), and (h) of Section 25299.51, and claims for commingled
20 plumes, as specified in ~~Section 25299.93~~ Article 11 (commencing
21 with Section 25299.90), until the moneys in the fund are
22 exhausted. Upon exhaustion of the fund, any remaining claims
23 shall be invalid.

24 (2) The repayment of loans, outstanding as of January 1, 2011,
25 due and payable to the board under the terms of Chapter 8.5
26 (commencing with Section 15399.10) of Part 6.7 of Division 3 of
27 Title 2 of the Government Code.

28 (3) The recovery of moneys reimbursed to a claimant to which
29 the claimant is not entitled, or the resolution of any cost recovery
30 action.

31 (4) The collection of unpaid fees that are imposed pursuant to
32 ~~Section 25299.40, as that section~~ Article 5 (commencing with
33 Section 25299.40), as that article read on December 31, 2010, or
34 have become due before January 1, 2011, including any interest or
35 penalties that accrue before, on, or after January 1, 2011,
36 associated with those unpaid fees.

37 (d) The board shall annually, on or before September 30,
38 prepare and submit a report to the Legislature which describes the
39 status of the fund and sets forth recommendations for legislative
40 changes to improve the efficiency of the program established



1 pursuant to this chapter, with a special emphasis on expediting
2 environmental cleanup and the distribution of money from the
3 fund, including alternative methods for the distribution of that
4 money.

5 SEC. 12. No reimbursement is required by this act pursuant
6 to Section 6 of Article XIII B of the California Constitution
7 because the only costs that may be incurred by a local agency or
8 school district will be incurred because this act creates a new crime
9 or infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.

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