

AMENDED IN SENATE JUNE 11, 2002

AMENDED IN ASSEMBLY MAY 16, 2002

AMENDED IN ASSEMBLY APRIL 30, 2002

AMENDED IN ASSEMBLY APRIL 16, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2481

Introduced by Assembly Member Frommer

February 21, 2002

An act to amend Section 7058.7 of the Business and Professions Code, to amend Section 2929.5 of the Civil Code, to amend Sections 564, 726.5, and 736 of the Code of Civil Procedure, *to amend Sections 15399.15, 15399.15.2, and 15399.21 of the Government Code*, to amend Sections 25150.1, 25187, 25262, 25281, 25281.5, 25284, ~~25288~~ 25284.4, 25288, 25292.4, 25297.1, 25299, 25299.4, 25299.7, 25299.36, 25299.39.2, 25299.39.3, 25299.50.1, 25299.51, 25299.53, 25299.54, 25299.55, 25299.57, 25299.58, 25299.70, 25404, 25514.5, 25540, and 33459 of, to amend and renumber Sections 25299.37.1 and 25299.39.1 of, to add Sections ~~25290.1~~ 25284.2, 25290.1, 25292.5, 25296.10, 25296.20, 25296.25, 25296.30, 25296.40, 25299.8, 25299.38, 25404.1.1, and 25404.1.2 to, to repeal Sections 25299.37, 25299.37.2, 25299.38.1, 25299.39, and 25514.6 of, *to add and repeal Section 116367 of*, and to repeal and add Section 25292.3 of, the Health and Safety Code, and to amend Sections 13285, 13323, 13365, and 13391.5 of the Water Code, relating to the environment, *and making an appropriation therefor*.



LEGISLATIVE COUNSEL'S DIGEST

AB 2481, as amended, Frommer. Underground storage tanks: unified program agencies: Porter-Cologne Water Quality Control Act: administrative civil penalties: *drinking water*: enforcement.

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground storage tanks that are used to store hazardous substances and that are installed after January 1, 1984, to meet certain requirements, including that the primary containment be product tight and that the tank's secondary containment meet specified standards. These requirements are required to be implemented by the local agency. Under existing law, with specified exceptions, no person may own or operate an underground storage tank containing hazardous substances unless a permit for its operation has been issued. Existing law requires a permit issued for a petroleum underground storage tank system that meets specified requirements to include an upgrade compliance certificate and no person may deposit petroleum into an underground storage tank system unless the underground storage tank system meets those described requirements. A person depositing petroleum into an underground storage tank system is required to verify that the system meets those requirements by taking certain actions, including viewing the upgrade compliance certificate.

Existing law defines the term "product tight," for purposes of those requirements, as being impervious to the substance that is contained, so as to prevent the seepage of the substance from the primary containment and specifies that to be product tight, the tank not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank. *Existing law requires all tank integrity tests conducted with regard to these tanks to be performed by a tank tester with a valid tank testing license. Existing law requires owners or operators of an underground storage tank system with a single-walled component that is located within 1,000 feet of a public drinking water well to implement a program of enhanced leak detection or monitoring.*

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, owners and operators of petroleum underground storage tanks are required to take corrective action to an unauthorized release of petroleum, including requirements for the preparation of a work plan. The act provides for the issuance of a specified closure letter relative to the completion of an investigation and corrective action for a petroleum underground storage tank. The board



is authorized to suspend corrective action at a site, except for emergency sites.

This bill would revise and recast the provisions regulating the storage of hazardous substances in underground storage tanks and would make conforming changes in that regard. The bill would revise the definition of “product tight” to delete the reference to ~~see page seepage~~ from the primary containment and would delete the requirement that the tank not be subject to physical or chemical deterioration over the useful life of the tank. The bill would also define the term “compatible” for purpose of that act.

The bill would require the owner or operator of a single-walled tank system to take appropriate actions if the results of an enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, to correct the leakage, and retest the system. The bill additionally would require all other owners and operators of an underground storage tank system that is located within 1,000 feet of a public drinking water well to test the system once using enhanced leak detection before January 1, 2005, and if the results of the enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, the owner or operator would be required to take appropriate actions.

The bill would establish requirements for each underground storage tank installed on or after April 1, 2003, *including requirements for an enhanced leak detection test when the tank is installed.* The bill would define “product tight,” for purpose of those requirements, to mean impervious to the liquid and vapor of the substance that is contained.

The bill would delete the provisions requiring an upgraded certificate of compliance and would instead authorize a local agency, upon the discovery of a significant violation of any requirement *that poses an imminent threat to human health or safety*, to affix a red tag, in plain view, to the fill pipe of the noncompliant underground storage tank system. *The bill would also establish a procedure for the issuance of a notice of significant violation by a local agency and would allow a local agency to affix a red tag if the owner or operator does not correct the violation, as specified.* The bill would prohibit any person from depositing petroleum into, and would prohibit the owner or operator of a facility from depositing or allowing the deposit of petroleum into, an underground storage tank system that has a red tag affixed to its fill pipe.

The bill would require the owner or operator of an underground storage tank with a specified spill containment structure to annually test the spill



containment structure to demonstrate that it is capable of containing the substance until it is detected and cleaned up.

The bill would require a tank tester who conducts or supervises a tank or piping integrity test to prepare a report detailing the results of the tank test and to maintain a record of the report for at least three years, in a specified manner.

The bill would expand the corrective action requirements and related provisions for petroleum underground storage tanks to apply those requirements to all underground storage tanks and would make conforming changes. The bill would impose a civil penalty upon any person who violates a corrective action requirement.

The bill would prohibit a person who purchases or acquires real property on which an underground tank is located from being reimbursed for a claim, except under specified conditions.

Since the bill would impose new requirements upon local agencies with regard to the regulation of underground storage tanks, the bill would impose a state-mandated local program.

(2) Existing law, until January 1, 2004, requires the Trade and Commerce Agency to conduct a program to make loans to small businesses to upgrade, replace, or remove petroleum underground storage tanks to meet applicable local, state, or federal standards and to take corrective actions, and to conduct a grant program to assist small businesses to comply with the requirements regarding petroleum underground storage tanks and tanks with single-walled components that are located, as specified. Existing law specifies eligibility requirements for grant applicants and provides that the minimum amount of those grants is \$3,000. Under existing law, the funds in the Petroleum Underground Storage Tank Financing Account in the General Fund are continuously appropriated to the agency, without regard to fiscal year, for making these loans and the funds in the Petroleum Financing Collection Account are continuously appropriated to the agency to protect the state's position as a creditor-lender.

This bill would revise the requirements for issuance of a grants, would increase the minimum amount of the grant to \$10,000, and would authorize the grant funds to be used for specified requirements imposed by the bill. The bill would delay the repeal of the program until January 1, 2011, thereby making an appropriation by continuing the existence of continuously appropriated funds.



(3) Existing law authorizes the executive officer of a regional board to issue a complaint for an administrative civil penalty under the Porter-Cologne Water Quality Control Act.

This bill would revise the procedures for the service of a complaint for that penalty and the conduct of a hearing by the state board.

~~(3)~~

(4) *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, pursuant to a specified order of priority, to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks.*

This bill would additionally authorize the money in the fund to be expended to pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements regulating petroleum underground tanks.

(5) Existing law requires the Secretary for Environmental Protection to adopt regulations and implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program.

This bill would define the term “minor violation,” for purposes of the unified program, as the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the Unified Program Agency (UPA) is authorized to implement or enforce pursuant to the program, excluding certain types of violations.

This bill would authorize a unified program agency, if it determines that a person has committed, or is committing, a violation of any requirement that the UPA is authorized to enforce or implement pursuant to the unified program, to issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty. The bill would specify procedures for the



conduct of a hearing, upon the request of a person served with an order, pursuant to one of 2 specified hearing processes, except under certain conditions. The bill would require, if the Unified Program Agency conducts the hearing, that a decision be issued by the Unified Program Agency within 60 days after the hearing is conducted by the Unified Program Agency. The bill would provide that an order issued by the Unified Program Agency setting a penalty pursuant to the hearing by the Unified Program Agency is final upon issuance.

This bill would require all administrative penalties collected from actions brought by a UPA to be paid to the UPA that imposed the penalty, and to deposit the penalties into a special account that would be required to be expended to fund the activities of the UPA in enforcing the unified program.

This bill would require an authorized representative of the UPA, who, in the course of conducting an inspection, detects a minor violation, to issue a notice to comply detailing the violation, thereby imposing a state-mandated local program by imposing new duties upon local agencies. The bill would require a person who receives a notice to comply to take specified actions within 30 days from the date of the notice and would provide that a false certification that a violation has been corrected is punishable as a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The bill would provide that a notice to comply is the only means by which a UPA may cite a minor violation.

(4)

(6) Existing law requires businesses that handle hazardous materials to prepare a business plan and submit an annual inventory form to the administering agency. Existing law specifies procedures for the imposition of civil and administrative penalties for a violation of those provisions and requires the civil penalties collected to be apportioned in a specified manner, including \$200 for deposit in the Hazardous Materials Enforcement and Training Account, 75% to the administering agency, to reimburse specified local agencies for expenses, and 25% to the principal agency that assisted the administering agency. *Existing law provides for the imposition of civil penalties upon stationary sources with regard to the program to prevent accidental releases of regulated substances.*

This bill would require the issuance of an enforcement order or the imposition of an administrative penalty by an administering agency to instead be conducted using the procedures established by the bill. The



bill would also repeal those provisions requiring the apportionment of the civil penalty. *The bill would require the issuance of enforcement orders or administrative penalties for a violation of the accidental release prevention program to be conducted using the procedures established by the bill.*

(5)

(7) *Existing law provides that the repeal of the Drinking Water Treatment and Research Fund on January 1, 2002, did not terminate any rights, obligations or authorities, or any provisions necessary to carry out these rights or obligations and the filing and payment of claims in the fund, until the moneys in the fund are exhausted. Existing law requires the State Water Resources Control Board to annually transfer \$5,000,000 from the Underground Storage Tank Fund to the Drinking Water Treatment and Research Fund to be expended for specified purposes when a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that a release has occurred from an underground storage tank.*

This bill would reestablish the Drinking Water Treatment and Research Fund in the State Treasury and would continuously appropriate the money in the fund to the State Department of Health Services to make payments to public water systems for the costs of treating contaminated groundwater and surface water for drinking water purposes, investigating contamination, and acquiring alternate drinking water supplies. The bill would also authorize the department to expend not more than \$1,000,000 for research into treatment technologies and to pay the department's administrative costs, as specified. The bill would allow the department to make payments for treatment, investigation, or alternative water supplies without requiring the public water system to first incur expenditures, if the department makes a specified determination. The bill would also specify that these payments for treatment, investigation, or providing alternative water supplies may be made without regard to when the contamination occurred and would require the department, when evaluating these claims submitted for payment, to consider the findings of a specified report. The bill would provide for the repeal of the Drinking Water Treatment and Research Fund, except for specified rights and obligations on January 1, 2010.

(8) *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 specified reasons.

Vote: ~~majority~~ 2/3. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 7058.7 of the Business and Professions
2 Code is amended to read:

3 7058.7. (a) No contractor may engage in a removal or
4 remedial action, as defined in subdivision (d), unless the qualifier
5 for the license has passed an approved hazardous substance
6 certification examination.

7 (b) (1) The Contractors’ State License Board, the Division of
8 Occupational Safety and Health of the Department of Industrial
9 Relations, and the Department of Toxic Substances Control shall
10 jointly select an advisory committee, which shall be composed of
11 two representatives of hazardous substance removal workers in
12 California, two general engineering contractors in California, and
13 two representatives of insurance companies in California who
14 shall be selected by the Insurance Commissioner.

15 (2) The Contractors’ State License Board shall develop a
16 written test for the certification of contractors engaged in
17 hazardous substance removal or remedial action, in consultation
18 with the Division of Occupational Safety and Health, the State
19 Water Resources Control Board, the Department of Toxic
20 Substances Control, and the advisory committee.

21 (c) The Contractors’ State License Board may require
22 additional updated approved hazardous substance certification
23 examinations of licensees currently certified based on new public
24 or occupational health and safety information. The Contractors’
25 State License Board, in consultation with the Department of Toxic
26 Substances Control and the State Water Resources Control Board,
27 shall approve other initial and updated hazardous substance
28 certification examinations and determine whether to require an
29 updated certification examination of all current certificate holders.

30 (d) For purposes of this section “removal or remedial action”
31 has the same meaning as found in Chapter 6.8 (commencing with



1 Section 25300) of Division 20 of the Health and Safety Code, if
2 the action requires the contractor to dig into the surface of the earth
3 and remove the dug material and the action is at a site listed
4 pursuant to Section 25356 of the Health and Safety Code or any
5 other site listed as a hazardous substance release site by the
6 Department of Toxic Substances Control or a site listed on the
7 National Priorities List compiled pursuant to the Comprehensive
8 Environmental Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. Sec. 9601 et seq.). “Removal or remedial action”
10 does not include asbestos-related work, as defined in Section
11 6501.8 of the Labor Code, or work related to a hazardous
12 substance spill on a highway.

13 (e) (1) A contractor may not install or remove an underground
14 storage tank, unless the contractor has passed the hazardous
15 substance certification examination developed pursuant to this
16 section.

17 (2) A contractor who is not certified may bid on or contract for
18 the installation or removal of an underground tank, if the work is
19 performed by a contractor who is certified pursuant to this section.

20 (3) For purposes of this subdivision, “underground storage
21 tank” has the same meaning as defined in subdivision (y) of
22 Section 25281 of the Health and Safety Code.

23 SEC. 2. Section 2929.5 of the Civil Code is amended to read:

24 2929.5. (a) A secured lender may enter and inspect the real
25 property security for the purpose of determining the existence,
26 location, nature, and magnitude of any past or present release or
27 threatened release of any hazardous substance into, onto, beneath,
28 or from the real property security on either of the following:

29 (1) Upon reasonable belief of the existence of a past or present
30 release or threatened release of any hazardous substance into, onto,
31 beneath, or from the real property security not previously
32 disclosed in writing to the secured lender in conjunction with the
33 making, renewal, or modification of a loan, extension of credit,
34 guaranty, or other obligation involving the borrower.

35 (2) After the commencement of nonjudicial or judicial
36 foreclosure proceedings against the real property security.

37 (b) The secured lender shall not abuse the right of entry and
38 inspection or use it to harass the borrower or tenant of the property.
39 Except in case of an emergency, when the borrower or tenant of the
40 property has abandoned the premises, or if it is impracticable to do



1 so, the secured lender shall give the borrower or tenant of the
2 property reasonable notice of the secured lender’s intent to enter,
3 and enter only during the borrower’s or tenant’s normal business
4 hours. Twenty-four hours’ notice shall be presumed to be
5 reasonable notice in the absence of evidence to the contrary.

6 (c) The secured lender shall reimburse the borrower for the cost
7 of repair of any physical injury to the real property security caused
8 by the entry and inspection.

9 (d) If a secured lender is refused the right of entry and
10 inspection by the borrower or tenant of the property, or is
11 otherwise unable to enter and inspect the property without a breach
12 of the peace, the secured lender may, upon petition, obtain an order
13 from a court of competent jurisdiction to exercise the secured
14 lender’s rights under subdivision (a), and that action shall not
15 constitute an action within the meaning of subdivision (a) of
16 Section 726 of the Code of Civil Procedure.

17 (e) For purposes of this section:

18 (1) “Borrower” means the trustor under a deed of trust, or a
19 mortgagor under a mortgage, where the deed of trust or mortgage
20 encumbers real property security and secures the performance of
21 the trustor or mortgagor under a loan, extension of credit,
22 guaranty, or other obligation. The term includes any
23 successor-in-interest of the trustor or mortgagor to the real
24 property security before the deed of trust or mortgage has been
25 discharged, reconveyed, or foreclosed upon.

26 (2) “Hazardous substance” includes all of the following:

27 (A) Any “hazardous substance” as defined in subdivision (h)
28 of Section 25281 of the Health and Safety Code.

29 (B) Any “waste” as defined in subdivision (d) of Section
30 13050 of the Water Code.

31 (C) Petroleum, including crude oil or any fraction thereof,
32 natural gas, natural gas liquids, liquefied natural gas, or synthetic
33 gas usable for fuel, or any mixture thereof.

34 (3) “Real property security” means any real property and
35 improvements, other than a separate interest and any related
36 interest in the common area of a residential common interest
37 development, as the terms “separate interest,” “common area,”
38 and “common interest development” are defined in Section 1351,
39 or real property consisting of one acre or less which contains 1 to
40 15 dwelling units.



1 (4) “Release” means any spilling, leaking, pumping, pouring,
2 emitting, emptying, discharging, injecting, escaping, leaching,
3 dumping, or disposing into the environment, including continuing
4 migration, of hazardous substances into, onto, or through soil,
5 surface water, or groundwater.

6 (5) “Secured lender” means the beneficiary under a deed of
7 trust against the real property security, or the mortgagee under a
8 mortgage against the real property security, and any
9 successor-in-interest of the beneficiary or mortgagee to the deed
10 of trust or mortgage.

11 SEC. 3. Section 564 of the Code of Civil Procedure is
12 amended to read:

13 564. (a) A receiver may be appointed, in the manner
14 provided in this chapter, by the court in which an action or
15 proceeding is pending in any case in which the court is empowered
16 by law to appoint a receiver.

17 (b) A receiver may be appointed by the court in which an action
18 or proceeding is pending, or by a judge thereof, in the following
19 cases:

20 (1) In an action by a vendor to vacate a fraudulent purchase of
21 property, or by a creditor to subject any property or fund to the
22 creditor’s claim, or between partners or others jointly owning or
23 interested in any property or fund, on the application of the
24 plaintiff, or of any party whose right to or interest in the property
25 or fund, or the proceeds thereof, is probable, and where it is shown
26 that the property or fund is in danger of being lost, removed, or
27 materially injured.

28 (2) In an action by a secured lender for the foreclosure of a deed
29 of trust or mortgage and sale of property upon which there is a lien
30 under a deed of trust or mortgage, where it appears that the
31 property is in danger of being lost, removed, or materially injured,
32 or that the condition of the deed of trust or mortgage has not been
33 performed, and that the property is probably insufficient to
34 discharge the deed of trust or mortgage debt.

35 (3) After judgment, to carry the judgment into effect.

36 (4) After judgment, to dispose of the property according to the
37 judgment, or to preserve it during the pendency of an appeal, or
38 pursuant to the Enforcement of Judgments Law (Title 9
39 (commencing with Section 680.010)), or after sale of real property
40 pursuant to a decree of foreclosure, during the redemption period,



1 to collect, expend, and disburse rents as directed by the court or
2 otherwise provided by law.

3 (5) Where a corporation has been dissolved, as provided in
4 Section 565.

5 (6) Where a corporation is insolvent, or in imminent danger of
6 insolvency, or has forfeited its corporate rights.

7 (7) In an action of unlawful detainer.

8 (8) At the request of the Public Utilities Commission pursuant
9 to Section 855 or 5259.5 of the Public Utilities Code.

10 (9) In all other cases where necessary to preserve the property
11 or rights of any party.

12 (10) At the request of the Office of Statewide Health Planning
13 and Development, or the Attorney General, pursuant to Section
14 129173 of the Health and Safety Code.

15 (11) In an action by a secured lender for specific performance
16 of an assignment of rents provision in a deed of trust, mortgage,
17 or separate assignment document. The appointment may be
18 continued after entry of a judgment for specific performance if
19 appropriate to protect, operate, or maintain real property
20 encumbered by a deed of trust or mortgage or to collect rents
21 therefrom while a pending nonjudicial foreclosure under power of
22 sale in a deed of trust or mortgage is being completed.

23 (12) In a case brought by an assignee under an assignment of
24 leases, rents, issues, or profits pursuant to subdivision (g) of
25 Section 2938 of the Civil Code.

26 (c) A receiver may be appointed, in the manner provided in this
27 chapter, including, but not limited to, Section 566, by the superior
28 court in an action brought by a secured lender to enforce the rights
29 provided in Section 2929.5 of the Civil Code, to enable the secured
30 lender to enter and inspect the real property security for the
31 purpose of determining the existence, location, nature, and
32 magnitude of any past or present release or threatened release of
33 any hazardous substance into, onto, beneath, or from the real
34 property security. The secured lender shall not abuse the right of
35 entry and inspection or use it to harass the borrower or tenant of
36 the property. Except in case of an emergency, when the borrower
37 or tenant of the property has abandoned the premises, or if it is
38 impracticable to do so, the secured lender shall give the borrower
39 or tenant of the property reasonable notice of the secured lender's
40 intent to enter and shall enter only during the borrower's or



1 tenant's normal business hours. Twenty-four hours' notice shall be
2 presumed to be reasonable notice in the absence of evidence to the
3 contrary.

4 (d) Any action by a secured lender to appoint a receiver
5 pursuant to this section shall not constitute an action within the
6 meaning of subdivision (a) of Section 726.

7 (e) For purposes of this section:

8 (1) "Borrower" means the trustor under a deed of trust, or a
9 mortgagor under a mortgage, where the deed of trust or mortgage
10 encumbers real property security and secures the performance of
11 the trustor or mortgagor under a loan, extension of credit,
12 guaranty, or other obligation. The term includes any successor in
13 interest of the trustor or mortgagor to the real property security
14 before the deed of trust or mortgage has been discharged,
15 reconveyed, or foreclosed upon.

16 (2) "Hazardous substance" means any of the following:

17 (A) Any "hazardous substance" as defined in subdivision (h)
18 of Section 25281 of the Health and Safety Code.

19 (B) Any "waste" as defined in subdivision (d) of Section
20 13050 of the Water Code.

21 (C) Petroleum including crude oil or any fraction thereof,
22 natural gas, natural gas liquids, liquefied natural gas, or synthetic
23 gas usable for fuel, or any mixture thereof.

24 (3) "Real property security" means any real property and
25 improvements, other than a separate interest and any related
26 interest in the common area of a residential common interest
27 development, as the terms "separate interest," "common area,"
28 and "common interest development" are defined in Section 1351
29 of the Civil Code, or real property consisting of one acre or less that
30 contains 1 to 15 dwelling units.

31 (4) "Release" means any spilling, leaking, pumping, pouring,
32 emitting, emptying, discharging, injecting, escaping, leaching,
33 dumping, or disposing into the environment, including continuing
34 migration, of hazardous substances into, onto, or through soil,
35 surface water, or groundwater.

36 (5) "Secured lender" means the beneficiary under a deed of
37 trust against the real property security, or the mortgagee under a
38 mortgage against the real property security, and any successor in
39 interest of the beneficiary or mortgagee to the deed of trust or
40 mortgage.

1 SEC. 4. Section 726.5 of the Code of Civil Procedure is
2 amended to read:

3 726.5. (a) Notwithstanding subdivision (a) of Section 726 or
4 any other provision of law, except subdivision (d) of this section,
5 a secured lender may elect between the following where the real
6 property security is environmentally impaired and the borrower's
7 obligations to the secured lender are in default:

8 (1) (A) Waiver of its lien against (i) any parcel of real property
9 security that is environmentally impaired or is an affected parcel,
10 and (ii) all or any portion of the fixtures and personal property
11 attached to the parcels; and

12 (B) Exercise of (i) the rights and remedies of an unsecured
13 creditor, including reduction of its claim against the borrower to
14 judgment, and (ii) any other rights and remedies permitted by law.

15 (2) Exercise of (i) the rights and remedies of a creditor secured
16 by a deed of trust or mortgage and, if applicable, a lien against
17 fixtures or personal property attached to the real property security,
18 and (ii) any other rights and remedies permitted by law.

19 (b) Before the secured lender may waive its lien against any
20 parcel of real property security pursuant to paragraph (1) of
21 subdivision (a) on the basis of the environmental impairment
22 contemplated by paragraph (3) of subdivision (e), (i) the secured
23 lender shall provide written notice of the default to the borrower,
24 and (ii) the value of the subject real property security shall be
25 established and its environmentally impaired status shall be
26 confirmed by an order of a court of competent jurisdiction in an
27 action brought by the secured lender against the borrower. The
28 complaint for a valuation and confirmation action may include
29 causes of action for a money judgment for all or part of the secured
30 obligation, in which case the waiver of the secured lender's liens
31 under paragraph (1) of subdivision (a) shall result only if and when
32 a final money judgment is obtained against the borrower.

33 (c) If a secured lender elects the rights and remedies permitted
34 by paragraph (1) of subdivision (a) and the borrower's obligations
35 are also secured by other real property security, fixtures, or
36 personal property, the secured lender shall first foreclose against
37 the additional collateral to the extent required by applicable law in
38 which case the amount of the judgment of the secured lender
39 pursuant to paragraph (1) of subdivision (a) shall be limited to the
40 extent Section 580a or 580d, or subdivision (b) of Section 726



1 apply to the foreclosures of additional real property security. The
2 borrower may waive or modify the foreclosure requirements of
3 this subdivision provided that the waiver or modification is in
4 writing and signed by the borrower after default.

5 (d) Subdivision (a) shall be inapplicable if all of the following
6 are true:

7 (1) The release or threatened release was not knowingly or
8 negligently caused or contributed to, or knowingly or willfully
9 permitted or acquiesced to, by any of the following:

10 (A) The borrower or any related party.

11 (B) Any affiliate or agent of the borrower or any related party.

12 (2) In conjunction with the making, renewal, or modification
13 of the loan, extension of credit, guaranty, or other obligation
14 secured by the real property security, neither the borrower, any
15 related party, nor any affiliate or agent of either the borrower or
16 any related party had actual knowledge or notice of the release or
17 threatened release, or if a person had knowledge or notice of the
18 release or threatened release, the borrower made written disclosure
19 thereof to the secured lender after the secured lender's written
20 request for information concerning the environmental condition of
21 the real property security, or the secured lender otherwise obtained
22 actual knowledge thereof, prior to the making, renewal, or
23 modification of the obligation.

24 (e) For purposes of this section:

25 (1) "Affected parcel" means any portion of a parcel of real
26 property security that is (A) contiguous to the environmentally
27 impaired parcel, even if separated by roads, streets, utility
28 easements, or railroad rights-of-way, (B) part of an approved or
29 proposed subdivision within the meaning of Section 66424 of the
30 Government Code, of which the environmentally impaired parcel
31 is also a part, or (C) within 2,000 feet of the environmentally
32 impaired parcel.

33 (2) "Borrower" means the trustor under a deed of trust, or a
34 mortgagor under a mortgage, where the deed of trust or mortgage
35 encumbers real property security and secures the performance of
36 the trustor or mortgagor under a loan, extension of credit,
37 guaranty, or other obligation. The term includes any
38 successor-in-interest of the trustor or mortgagor to the real
39 property security before the deed of trust or mortgage has been
40 discharged, reconveyed, or foreclosed upon.



1 (3) “Environmentally impaired” means that the estimated
2 costs to clean up and remediate a past or present release or
3 threatened release of any hazardous substance into, onto, beneath,
4 or from the real property security, not disclosed in writing to, or
5 otherwise actually known by, the secured lender prior to the
6 making of the loan or extension of credit secured by the real
7 property security, exceeds 25 percent of the higher of the aggregate
8 fair market value of all security for the loan or extension of credit
9 (A) at the time of the making of the loan or extension of credit, or
10 (B) at the time of the discovery of the release or threatened release
11 by the secured lender. For the purposes of this definition, the
12 estimated cost to clean up and remediate the contamination caused
13 by the release or threatened release shall include only those costs
14 that would be incurred reasonably and in good faith, and fair
15 market value shall be determined without giving consideration to
16 the release or threatened release, and shall be exclusive of the
17 amount of all liens and encumbrances against the security that are
18 senior in priority to the lien of the secured lender. Notwithstanding
19 the foregoing, the real property security for any loan or extension
20 of credit secured by a single parcel of real property which is
21 included in the National Priorities List pursuant to Section 9605
22 of Title 42 of the United States Code, or in any list published by
23 the Department of Toxic Substances Control pursuant to
24 subdivision (b) of Section 25356 of the Health and Safety Code,
25 shall be deemed to be environmentally impaired.

26 (4) “Hazardous substance” means any of the following:

27 (A) Any “hazardous substance” as defined in subdivision (h)
28 of Section 25281 of the Health and Safety Code.

29 (B) Any “waste” as defined in subdivision (d) of Section
30 13050 of the Water Code.

31 (C) Petroleum, including crude oil or any fraction thereof,
32 natural gas, natural gas liquids, liquefied natural gas, or synthetic
33 gas usable for fuel, or any mixture thereof.

34 (5) “Real property security” means any real property and
35 improvements, other than a separate interest and any related
36 interest in the common area of a residential common interest
37 development, as the terms “separate interest,” “common area,”
38 and “common interest development” are defined in Section 1351
39 of the Civil Code, or real property which contains only 1 to 15
40 dwelling units, which in either case (A) is solely used (i) for



1 residential purposes, or (ii) if reasonably contemplated by the
2 parties to the deed of trust or mortgage, for residential purposes as
3 well as limited agricultural or commercial purposes incidental
4 thereto, and (B) is the subject of an issued certificate of occupancy
5 unless the dwelling is to be owned and occupied by the borrower.

6 (6) “Related party” means any person who shares an
7 ownership interest with the borrower in the real property security,
8 or is a partner or joint venturer with the borrower in a partnership
9 or joint venture, the business of which includes the acquisition,
10 development, use, lease, or sale of the real property security.

11 (7) “Release” means any spilling, leaking, pumping, pouring,
12 emitting, emptying, discharging, injecting, escaping, leaching,
13 dumping, or disposing into the environment, including continuing
14 migration, of hazardous substances into, onto, or through soil,
15 surface water, or groundwater. The term does not include actions
16 directly relating to the incorporation in a lawful manner of
17 building materials into a permanent improvement to the real
18 property security.

19 (8) “Secured lender” means the beneficiary under a deed of
20 trust against the real property security, or the mortgagee under a
21 mortgage against the real property security, and any
22 successor-in-interest of the beneficiary or mortgagee to the deed
23 of trust or mortgage.

24 (f) This section shall not be construed to invalidate or otherwise
25 affect in any manner any rights or obligations arising under
26 contract in connection with a loan or extension of credit, including,
27 without limitation, provisions limiting recourse.

28 (g) This section shall only apply to loans, extensions of credit,
29 guaranties, or other obligations secured by real property security
30 made, renewed, or modified on or after January 1, 1992.

31 SEC. 5. Section 736 of the Code of Civil Procedure is
32 amended to read:

33 736. (a) Notwithstanding any other provision of law, a
34 secured lender may bring an action for breach of contract against
35 a borrower for breach of any environmental provision made by the
36 borrower relating to the real property security, for the recovery of
37 damages, and for the enforcement of the environmental provision,
38 and that action or failure to foreclose first against collateral shall
39 not constitute an action within the meaning of subdivision (a) of
40 Section 726, or constitute a money judgment for a deficiency or a



1 deficiency judgment within the meaning of Section 580a, 580b, or
2 580d, or subdivision (b) of Section 726. No injunction for the
3 enforcement of an environmental provision may be issued after (1)
4 the obligation secured by the real property security has been fully
5 satisfied, or (2) all of the borrower’s rights, title, and interest in and
6 to the real property security has been transferred in a bona fide
7 transaction to an unaffiliated third party for fair value.

8 (b) The damages a secured lender may recover pursuant to
9 subdivision (a) shall be limited to reimbursement or
10 indemnification of the following:

11 (1) If not pursuant to an order of any federal, state, or local
12 governmental agency relating to the cleanup, remediation, or other
13 response action required by applicable law, those costs relating to
14 a reasonable and good faith cleanup, remediation, or other
15 response action concerning a release or threatened release of
16 hazardous substances which is anticipated by the environmental
17 provision.

18 (2) If pursuant to an order of any federal, state, or local
19 governmental agency relating to the cleanup, remediation, or other
20 response action required by applicable law which is anticipated by
21 the environmental provision, all amounts reasonably advanced in
22 good faith by the secured lender in connection therewith, provided
23 that the secured lender negotiated, or attempted to negotiate, in
24 good faith to minimize the amounts it was required to advance
25 under the order.

26 (3) Indemnification against all liabilities of the secured lender
27 to any third party relating to the breach and not arising from acts,
28 omissions, or other conduct which occur after the borrower is no
29 longer an owner or operator of the real property security, and
30 provided the secured lender is not responsible for the
31 environmentally impaired condition of the real property security
32 in accordance with the standards set forth in subdivision (d) of
33 Section 726.5. For purposes of this paragraph, the term “owner or
34 operator” means those persons described in Section 101(20)(A)
35 of the Comprehensive Environmental Response, Compensation,
36 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et
37 seq.).

38 (4) Attorneys’ fees and costs incurred by the secured lender
39 relating to the breach.



1 The damages a secured lender may recover pursuant to
2 subdivision (a) shall not include (i) any part of the principal
3 amount or accrued interest of the secured obligation, except for
4 any amounts advanced by the secured lender to cure or mitigate the
5 breach of the environmental provision that are added to the
6 principal amount, and contractual interest thereon, or (ii) amounts
7 which relate to a release which was knowingly permitted, caused,
8 or contributed to by the secured lender or any affiliate or agent of
9 the secured lender.

10 (c) A secured lender may not recover damages against a
11 borrower pursuant to subdivision (a) for amounts advanced or
12 obligations incurred for the cleanup or other remediation of real
13 property security, and related attorneys' fees and costs, if all of the
14 following are true:

15 (1) The original principal amount of, or commitment for, the
16 loan or other obligation secured by the real property security did
17 not exceed two hundred thousand dollars (\$200,000).

18 (2) In conjunction with the secured lender's acceptance of the
19 environmental provision, the secured lender agreed in writing to
20 accept the real property security on the basis of a completed
21 environmental site assessment and other relevant information
22 from the borrower.

23 (3) The borrower did not permit, cause, or contribute to the
24 release or threatened release.

25 (4) The deed of trust or mortgage covering the real property
26 security has not been discharged, reconveyed, or foreclosed upon.

27 (d) This section is not intended to establish, abrogate, modify,
28 limit, or otherwise affect any cause of action other than that
29 provided by subdivision (a) that a secured lender may have against
30 a borrower under an environmental provision.

31 (e) This section shall apply only to environmental provisions
32 contracted in conjunction with loans, extensions of credit,
33 guaranties, or other obligations made, renewed, or modified on or
34 after January 1, 1992. Notwithstanding the foregoing, this section
35 shall not be construed to validate, invalidate, or otherwise affect
36 in any manner the rights and obligations of the parties to, or the
37 enforcement of, environmental provisions contracted before
38 January 1, 1992.

39 (f) For purposes of this section:

1 (1) “Borrower” means the trustor under a deed of trust, or a
2 mortgagor under a mortgage, where the deed of trust or mortgage
3 encumbers real property security and secures the performance of
4 the trustor or mortgagor under a loan, extension of credit,
5 guaranty, or other obligation. The term includes any
6 successor-in-interest of the trustor or mortgagor to the real
7 property security before the deed of trust or mortgage has been
8 discharged, reconveyed, or foreclosed upon.

9 (2) “Environmental provision” means any written
10 representation, warranty, indemnity, promise, or covenant relating
11 to the existence, location, nature, use, generation, manufacture,
12 storage, disposal, handling, or past, present, or future release or
13 threatened release, of any hazardous substance into, onto, beneath,
14 or from the real property security, or to past, present, or future
15 compliance with any law relating thereto, made by a borrower in
16 conjunction with the making, renewal, or modification of a loan,
17 extension of credit, guaranty, or other obligation involving the
18 borrower, whether or not the representation, warranty, indemnity,
19 promise, or covenant is or was contained in or secured by the deed
20 of trust or mortgage, and whether or not the deed of trust or
21 mortgage has been discharged, reconveyed, or foreclosed upon.

22 (3) “Hazardous substance” means any of the following:

23 (A) Any “hazardous substance” as defined in subdivision (h)
24 of Section 25281 of the Health and Safety Code.

25 (B) Any “waste” as defined in subdivision (d) of Section
26 13050 of the Water Code.

27 (C) Petroleum, including crude oil or any fraction thereof,
28 natural gas, natural gas liquids, liquefied natural gas, or synthetic
29 gas usable for fuel, or any mixture thereof.

30 (4) “Real property security” means any real property and
31 improvements, other than a separate interest and any related
32 interest in the common area of a residential common interest
33 development, as the terms “separate interest,” “common area,”
34 and “common interest development” are defined in Section 1351
35 of the Civil Code, or real property which contains only 1 to 15
36 dwelling units, which in either case (A) is solely used (i) for
37 residential purposes, or (ii) if reasonably contemplated by the
38 parties to the deed of trust or mortgage, for residential purposes as
39 well as limited agricultural or commercial purposes incidental



1 thereto, and (B) is the subject of an issued certificate of occupancy
2 unless the dwelling is to be owned and occupied by the borrower.

3 (5) “Release” means any spilling, leaking, pumping, pouring,
4 emitting, emptying, discharging, injecting, escaping, leaching,
5 dumping, or disposing into the environment, including continuing
6 migration, of hazardous substances into, onto, or through soil,
7 surface water, or groundwater. The term does not include actions
8 directly relating to the incorporation in a lawful manner of
9 building materials into a permanent improvement to the real
10 property security.

11 (6) “Secured lender” means the beneficiary under a deed of
12 trust against the real property security, or the mortgagee under a
13 mortgage against the real property security, and any
14 successor-in-interest of the beneficiary or mortgagee to the deed
15 of trust or mortgage.

16 SEC. 6. *Section 15399.15 of the Government Code is*
17 *amended to read:*

18 15399.15. (a) The agency shall make grant funds available
19 from the Petroleum Underground Storage Tank Financing
20 Account to eligible grant applicants who meet all of the following
21 eligibility requirements:

22 (1) The grant applicant is a small business, pursuant to the
23 following requirements:

24 (A) The grant applicant meets the conditions for a small
25 business as defined in Section 632 of Title 15 of the United States
26 Code, and in the federal regulations adopted to implement that
27 section, as specified in ~~Section 121.2~~ *Part 121 (commencing with*
28 *Section 121.101) of Chapter I of Title 13 of the Code of Federal*
29 *Regulations.*

30 (B) The grant applicant employs fewer than 20 full-time and
31 part-time employees, is independently owned and operated, and is
32 not dominant in its field of operation.

33 (2) The principal office of the grant applicant is domiciled in
34 the state, and the officers of the grant applicant are domiciled in
35 this state.

36 (3) The grant applicant, the applicant’s family, or an affiliated
37 entity, has owned or operated the project tank since January 1,
38 1997.

39 (4) All tanks owned and operated by the grant applicant are
40 subject to compliance with Chapter 6.7 (commencing with Section



1 25280) of Division 20 of the Health and Safety Code, and the
2 regulations adopted pursuant to that chapter.

3 (5) The facility where the project tank is located has sold at
4 retail less than 900,000 gallons of gasoline annually for each of the
5 two years preceding the submission of the grant application. The
6 numbers of gallons sold shall be based upon taxable sales figures
7 provided to the State Board of Equalization for that facility.

8 (6) The grant applicant owns or operates a tank that is in
9 compliance with Section 25290.1 or 25291 of the Health and
10 Safety Code, or subdivisions (d) and (e) of Section 25292, of the
11 Health and Safety Code, and the regulations adopted to implement
12 those sections.

13 ~~(7) The grant applicant has acquired debt, or is currently~~
14 ~~making payments on a preexisting loan, to upgrade the grant~~
15 ~~applicant's underground storage tanks to meet state and federal~~
16 ~~requirements prior to the December 22, 1998, deadline.~~

17 ~~(8) The facility where the project tank is located was legally in~~
18 ~~business retailing gasoline after January 1, 1999.~~

19 (b) Grant funds may only be used to pay the costs necessary to
20 comply with the requirements of Section 25284.1 ~~or~~, 25292.4, or
21 ~~both~~, 25292.5 of the Health and Safety Code.

22 (c) If the total amount of grant requests by eligible grant
23 applicants to the agency pursuant to this section exceed, or are
24 anticipated to exceed, the amount in the Petroleum Underground
25 Storage Tank Financing Account, the agency may adopt a priority
26 ranking list to award grants based upon the level of demonstrated
27 financial hardship of the eligible grant applicant, or the relative
28 impact upon the local community where the project tank is located
29 if the claim is denied.

30 *SEC. 7. Section 15399.15.2 of the Government Code is*
31 *amended to read:*

32 15399.15.2. (a) (1) The minimum amount that the agency
33 may grant an applicant is ~~ten thousand dollars (\$10,000)~~ *three*
34 *thousand dollars (\$3,000)*, and the maximum amount that the
35 agency may grant an applicant is fifty thousand dollars (\$50,000).

36 (b) Grant funds may be used to finance up to 100 percent of the
37 costs necessary ~~to upgrade project tanks~~ to comply with Sections
38 25284.1 ~~and~~, 25292.4, ~~and~~ 25292.5 of the Health and Safety
39 Code. No person or entity is eligible to receive more than fifty
40 thousand dollars (\$50,000) in grant funds pursuant to this chapter.



1 SEC. 8. Section 15399.21 of the Government Code is
2 amended to read:

3 15399.21. This chapter is repealed as of January 1, 2004
4 2011, unless a later enacted statute that is enacted on or before
5 January 1, 2004 2011, deletes or extends that date.

6 SEC. 9. Section 25150.1 of the Health and Safety Code is
7 amended to read:

8 25150.1. The requirements in Sections ~~25291~~ 25290.1,
9 25291, and 25292 apply to the construction, operation,
10 maintenance, monitoring, and testing of underground storage
11 tanks, as defined in subdivision (y) of Section 25281, that are
12 required to obtain hazardous waste facilities permits from the
13 department. The department shall adopt regulations implementing
14 the requirements of Sections ~~25291~~ 25290.1, 25291, and 25292,
15 for regulating the construction, operation, maintenance,
16 monitoring, and testing of underground storage tanks used for the
17 storage of hazardous wastes that are necessary to protect against
18 hazards to the public health, domestic livestock, wildlife, or the
19 environment.

20 ~~SEC. 7.~~

21 SEC. 10. Section 25187 of the Health and Safety Code is
22 amended to read:

23 25187. (a) (1) The department or a unified program agency,
24 in accordance with subdivision (l), may issue an order requiring
25 that the violation be corrected and imposing an administrative
26 penalty, for any violation of this chapter or any permit, rule,
27 regulation, standard, or requirement issued or adopted pursuant to
28 this chapter, whenever the department or unified program agency
29 determines that a person has violated, is in violation of, or
30 threatens, as defined in subdivision (e) of Section 13304 of the
31 Water Code, to violate, this chapter or Chapter 6.8 (commencing
32 with Section 25300), or any permit, rule, regulation, standard, or
33 requirement issued or adopted pursuant to this chapter or Chapter
34 6.8 (commencing with Section 25300).

35 (2) In an order proposing a penalty pursuant to this section, the
36 department or unified program agency shall take into
37 consideration the nature, circumstances, extent, and gravity of the
38 violation, the violator's past and present efforts to prevent, abate,
39 or clean up conditions posing a threat to the public health or safety
40 or the environment, the violator's ability to pay the proposed



1 penalty, and the prophylactic effect that the imposition of the
2 proposed penalty would have on both the violator and the
3 regulated community as a whole.

4 (b) The department or a unified program agency, in accordance
5 with subdivision (l), may issue an order requiring corrective action
6 whenever the department or unified program agency determines
7 that there is or has been a release, as defined in Chapter 6.8
8 (commencing with Section 25300), of hazardous waste or
9 constituents into the environment from a hazardous waste facility.

10 (1) In the case of a release of hazardous waste or constituents
11 into the environment from a hazardous waste facility that is
12 required to obtain a permit pursuant to Article 9 (commencing
13 with Section 25200), the department shall pursue the remedies
14 available under this chapter, including the issuance of an order for
15 corrective action pursuant to this section, before using the legal
16 remedies available pursuant to Chapter 6.8 (commencing with
17 Section 25300), except in any of the following circumstances:

18 (A) Where the person who is responsible for the release
19 voluntarily requests in writing that the department issue an order
20 to that person to take corrective action pursuant to Chapter 6.8
21 (commencing with Section 25300).

22 (B) Where the person who is responsible for the release is
23 unable to pay for the cost of corrective action to address the
24 release. For purposes of this subparagraph, the inability of a person
25 to pay for the cost of corrective action shall be determined in
26 accordance with the policies of the Environmental Protection
27 Agency for the implementation of Section 9605 of Title 42 of the
28 United States Code.

29 (C) Where the person responsible for the release is unwilling
30 to perform corrective action to address the release. For purposes
31 of this subparagraph, the unwillingness of a person to take
32 corrective action shall be determined in accordance with the
33 policies of the Environmental Protection Agency for the
34 implementation of Section 9605 of Title 42 of the United States
35 Code.

36 (D) Where the release is part of a regional or multisite
37 groundwater contamination problem that cannot, in its entirety, be
38 addressed using the legal remedies available pursuant to this
39 chapter and for which other releases that are part of the regional
40 or multisite groundwater contamination problem are being



1 addressed using the legal remedies available pursuant to Chapter
2 6.8 (commencing with Section 25300).

3 (E) Where an order for corrective action has already been
4 issued against the person responsible for the release, or the
5 department and the person responsible for the release have, prior
6 to January 1, 1996, entered into an agreement to address the
7 required cleanup of the release pursuant to Chapter 6.8
8 (commencing with Section 25300).

9 (F) Where the hazardous waste facility is owned or operated by
10 the federal government.

11 (2) The order shall include a requirement that the person take
12 corrective action with respect to the release of hazardous waste or
13 constituents, abate the effects thereof, and take any other necessary
14 remedial action.

15 (3) If the order requires corrective action at a hazardous waste
16 facility, the order shall require that corrective action be taken
17 beyond the facility boundary, where necessary to protect human
18 health or the environment.

19 (4) The order shall incorporate, as a condition of the order, any
20 applicable waste discharge requirements issued by the State Water
21 Resources Control Board or a California regional water quality
22 control board, and shall be consistent with all applicable water
23 quality control plans adopted pursuant to Section 13170 of the
24 Water Code and Article 3 (commencing with Section 13240) of
25 Chapter 4 of Division 7 of the Water Code and state policies for
26 water quality control adopted pursuant to Article 3 (commencing
27 with Section 13140) of Chapter 3 of Division 7 of the Water Code
28 existing at the time of the issuance of the order, to the extent that
29 the department or unified program agency determines that those
30 plans and policies are not less stringent than this chapter and
31 regulations adopted pursuant to this chapter. The order may
32 include any more stringent requirement that the department or
33 unified program agency determines is necessary or appropriate to
34 protect water quality.

35 (5) Persons who are subject to an order pursuant to this
36 subdivision include present and prior owners, lessees, or operators
37 of the property where the hazardous waste is located, present or
38 past generators, storers, treaters, transporters, disposers, and
39 handlers of hazardous waste, and persons who arrange, or have



1 arranged, by contract or other agreement, to store, treat, transport,
2 dispose of, or otherwise handle hazardous waste.

3 (6) For purposes of this subdivision, “hazardous waste
4 facility” includes the entire site that is under the control of an
5 owner or operator engaged in the management of hazardous waste.

6 (c) Any order issued pursuant to this section shall be served by
7 personal service or certified mail and shall inform the person so
8 served of the right to a hearing. If the unified program agency
9 issues the order pursuant to this section, the order shall state
10 whether the hearing procedure specified in paragraph (2) of
11 subdivision (f) may be requested by the person receiving the order.

12 (d) Any person served with an order pursuant to this section
13 who has been unable to resolve any violation or deficiency on an
14 informal basis with the department or unified program agency
15 may, within 15 days after service of the order, request a hearing
16 pursuant to subdivision (e) or (f) by filing with the department or
17 unified program agency a notice of defense. The notice shall be
18 filed with the office that issued the order. A notice of defense shall
19 be deemed filed within the 15-day period provided by this
20 subdivision if it is postmarked within that 15-day period. If no
21 notice of defense is filed within the time limits provided by this
22 subdivision, the order shall become final.

23 (e) Any hearing requested on an order issued by the department
24 shall be conducted within 90 days after receipt of the notice of
25 defense by an administrative law judge of the Office of
26 Administrative Hearings of the Department of General Services in
27 accordance with Chapter 4.5 (commencing with Section 11400) of
28 Part 1 of Division 3 of Title 2 of the Government Code, and the
29 department shall have all the authority granted to an agency by
30 those provisions.

31 (f) Except as provided in subparagraph (B) of paragraph (2), a
32 person requesting a hearing on an order issued by a unified
33 program agency may select the hearing process specified in either
34 paragraph (1) or (2) in the notice of defense filed with the unified
35 program agency pursuant to subdivision (d). Within 90 days of
36 receipt of the notice of defense by the unified program agency, the
37 hearing shall be conducted using one of the following procedures:

38 (1) An administrative law judge of the Office of Administrative
39 Hearings of the Department of General Services shall conduct the
40 hearing in accordance with Chapter 4.5 (commencing with



1 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
2 Code.

3 (2) (A) A hearing officer designated by the unified program
4 agency shall conduct the hearing in accordance with Chapter 4.5
5 (commencing with Section 11400) of Part 1 of Division 3 of Title
6 2 of the Government Code, and the unified program agency shall
7 have all the authority granted to an agency by those provisions.
8 When a hearing is conducted by a unified program agency
9 pursuant to this paragraph, the unified program agency shall,
10 within 60 days of the hearing, issue a decision.

11 (B) A person requesting a hearing on an order issued by a
12 unified program agency may select the hearing process specified
13 in this paragraph in a notice of defense filed pursuant to
14 subdivision (d) only if the unified program agency has, as of the
15 date the order is issued pursuant to subdivision (c), selected a
16 designated hearing officer and established a program for
17 conducting a hearing in accordance with this paragraph.

18 (g) The hearing decision issued pursuant to subdivision (f)
19 shall be effective and final upon issuance. Copies of the decision
20 shall be served by personal service or by certified mail upon the
21 party served with the order and upon other persons who appeared
22 at the hearing and requested a copy.

23 (h) Any provision of an order issued under this section, except
24 the imposition of an administrative penalty, shall take effect upon
25 issuance by the department or unified program agency if the
26 department or unified program agency finds that the violation or
27 violations of law associated with that provision may pose an
28 imminent and substantial endangerment to the public health or
29 safety or the environment, and a request for a hearing shall not stay
30 the effect of that provision of the order pending a hearing decision.
31 However, if the department or unified program agency determines
32 that any or all provisions of the order are so related that the public
33 health or safety or the environment can be protected only by
34 immediate compliance with the order as a whole, then the order as
35 a whole, except the imposition of an administrative penalty, shall
36 take effect upon issuance by the department or unified program
37 agency. A request for a hearing shall not stay the effect of the order
38 as a whole pending a hearing decision.

39 (i) A decision issued pursuant to this section may be reviewed
40 by the court pursuant to Section 11523 of the Government Code.



1 In all proceedings pursuant to this section, the court shall uphold
2 the decision of the department or unified program agency if the
3 decision is based upon substantial evidence in the whole record.
4 The filing of a petition for writ of mandate shall not stay any action
5 required pursuant to this chapter or the accrual of any penalties
6 assessed pursuant to this chapter. This subdivision does not
7 prohibit the court from granting any appropriate relief within its
8 jurisdiction.

9 (j) All administrative penalties collected from actions brought
10 by the department pursuant to this section shall be placed in a
11 separate subaccount in the Toxic Substances Control Account and
12 shall be available only for transfer to the Site Remediation
13 Account or the Expedited Site Remediation Trust Fund and for
14 expenditure by the department upon appropriation by the
15 Legislature.

16 (k) All administrative penalties collected from an action
17 brought by a unified program agency pursuant to this section shall
18 be paid to the unified program agency that imposed the penalty,
19 and shall be deposited into a special account that shall be expended
20 to fund the activities of the unified program agency in enforcing
21 this chapter pursuant to Section 25180.

22 (l) The authority granted under this section to a unified
23 program agency is limited to both of the following:

24 (1) The issuance of orders to impose penalties and to correct
25 violations of the requirements of this chapter and its implementing
26 regulations, only when the violations are violations of
27 requirements applicable to hazardous waste generators and
28 persons operating pursuant to a permit-by-rule, conditional
29 authorization, or conditional exemption, when the violations
30 occur at a unified program facility within the jurisdiction of the
31 CUPA.

32 (2) The issuance of orders to require corrective action when
33 there has been a release of hazardous waste or constituents only
34 when the unified program agency is authorized to do so pursuant
35 to Section 25404.1.

36 (m) The CUPA shall annually submit a summary report to the
37 department on the status of orders issued by the unified program
38 agencies under this section and Section 25187.1.

39 (n) The CUPA shall consult with the district attorney for the
40 county on the development of policies to be followed in exercising



1 the authority delegated pursuant to this section and Section
2 25187.1, as they relate to the authority of unified program agencies
3 to issue orders.

4 (o) The CUPA shall arrange to have appropriate legal
5 representation in administrative hearings that are conducted by an
6 administrative law judge of the Office of Administrative Hearings
7 of the Department of General Services, and when a decision issued
8 pursuant to this section is appealed to the superior court.

9 (p) The department may adopt regulations to implement this
10 section and paragraph (2) of subdivision (a) of Section 25187.1 as
11 they relate to the authority of unified program agencies to issue
12 orders. The regulations shall include, but not be limited to, all of
13 the following requirements:

14 (1) Provisions to ensure coordinated and consistent application
15 of this section and Section 25187.1 when both the department and
16 the unified program agency have or will be issuing orders under
17 one or both of these sections at the same facility.

18 (2) Provisions to ensure that the enforcement authority granted
19 to the unified program agencies will be exercised consistently
20 throughout the state.

21 (3) Minimum training requirements for staff of the unified
22 program agency relative to this section and Section 25187.1.

23 (4) Procedures to be followed by the department to rescind the
24 authority granted to a unified program agency under this section
25 and Section 25187.1, if the department finds that the unified
26 program agency is not exercising that authority in a manner
27 consistent with this chapter and Chapter 6.11 (commencing with
28 Section 25404) and the regulations adopted pursuant thereto.

29 (q) Except for an enforcement action taken pursuant to this
30 chapter or Chapter 6.8 (commencing with Section 25300), this
31 section does not otherwise affect the authority of a local agency to
32 take any action under any other provision of law.

33 ~~SEC. 8.—~~

34 *SEC. 11.* Section 25262 of the Health and Safety Code is
35 amended to read:

36 25262. (a) A responsible party for a hazardous materials
37 release site may request the committee at any time to designate an
38 administering agency to oversee a site investigation and remedial
39 action at the site. The committee shall designate an administering
40 agency as responsible for the site within 45 days of the date the



1 request is received. A request to designate an administering agency
2 may be denied only if the committee makes one of the following
3 findings:

4 (1) No single agency in state or local government has the
5 expertise needed to adequately oversee a site investigation and
6 remedial action at the site.

7 (2) Designating an administering agency will have the effect of
8 reversing a regulatory or enforcement action initiated by an
9 agency that has jurisdiction over the site, a facility on the site, or
10 an activity at the site.

11 (3) Designating an administering agency will prevent a
12 regulatory or enforcement action required by federal law or
13 regulations.

14 (4) The administering agency and the responsible party are
15 local agencies formed, in whole or in part, by the same political
16 subdivision.

17 (b) A responsible party who requests the designation of an
18 administering agency for a hazardous materials release site shall
19 provide the committee with a brief description of the site, an
20 analysis of the known or suspected nature of the release or
21 threatened release that is the subject of required site investigation
22 or remedial action, a description of the type of facility from which
23 the release occurred or the type of activity that caused the release,
24 a specification of the regulatory or enforcement actions that have
25 been taken, or are pending, with respect to the release, and a
26 statement of which agency the responsible party believes should
27 be designated as administering agency for the site.

28 (c) (1) The committee shall take all of the following factors
29 into account in determining which agency to designate as
30 administering agency for a site:

31 (A) The type of release that is the subject of site investigation
32 and remedial action.

33 (B) The nature of the threat that the release poses to human
34 health and safety or to the environment.

35 (C) The source of the release, the type of facility or activity
36 from which the release occurred, the regulatory programs that
37 govern the facility or activity involved, and the agency or agencies
38 that administer those regulatory programs.

39 (D) The regulatory history of the site, the types of regulatory
40 actions or enforcement actions that have been taken with respect



1 to the site or the facility or activity from which the release
2 occurred, and the experience and involvement that various
3 agencies have had with the site.

4 (E) The capabilities and expertise of the agencies that are
5 candidates for designation as the administering agency for the site
6 and the degree to which those capabilities and that expertise are
7 applicable to the type of release at the site, the nature of the threat
8 that the release poses to health and safety or the environment and
9 the probable remedial measures that will be required.

10 (2) After weighing the factors described in paragraph (1) as
11 they apply to the site, the committee shall use the criteria specified
12 in subparagraphs (A), (B), (C), and (D) as guidelines for
13 designating the administering agency. If more than one of the
14 criteria apply to the site, the committee shall use its best judgment,
15 taking into account the known facts concerning the hazardous
16 materials release at the site and its regulatory history, in
17 determining which agency may best serve as the administering
18 agency. The criteria are as follows:

19 (A) The administering agency shall be the Department of Toxic
20 Substances Control if one of the following applies:

21 (i) The department has issued an order, or otherwise initiated
22 action, with respect to the release at the site pursuant to Section
23 25355, 25355.5, or 25358.3.

24 (ii) The department has issued an order for corrective action at
25 the site pursuant to Section 25187.

26 (iii) The source of the release is a facility or hazardous waste
27 management unit or an activity that is, or was, regulated by the
28 department pursuant to Chapter 6.5 (commencing with Section
29 25100).

30 (iv) The department is conducting, or has conducted, oversight
31 of the site investigation and remedial action at the site at the request
32 of the responsible party.

33 (B) The administering agency shall be the California regional
34 water quality control board for the region in which the site is
35 located, if one of the following applies:

36 (i) The California regional water quality control board has
37 issued a cease and desist order pursuant to Section 13301, or a
38 cleanup and abatement order pursuant to Section 13304 of the
39 Water Code in connection with the release at the site.



1 (ii) The source of the release is a facility or an activity that is
2 subject to waste discharge requirements issued by the California
3 regional water quality control board pursuant to Section 13263 of
4 the Water Code or that is regulated by the California regional water
5 quality control board pursuant to Article 5.5 (commencing with
6 Section 25159.10) of, or Article 9.5 (commencing with Section
7 25208) of, Chapter 6.5, or pursuant to Chapter 6.67 (commencing
8 with Section 25270).

9 (iii) The California regional water quality control board has
10 jurisdiction over the site pursuant to Chapter 5.6 (commencing
11 with Section 13390) of Division 7 of the Water Code.

12 (C) The administering agency shall be the Department of Fish
13 and Game if the release has polluted or contaminated the waters
14 of the state and the department has taken action against the
15 responsible party pursuant to Section 2014 or 12015 of, or Article
16 1 (commencing with Section 5650) of Chapter 2 of Part 1 of
17 Division 6 of, the Fish and Game Code, subsection (f) of Section
18 107 of the Comprehensive Environmental Response,
19 Compensation, and Liability Act, as amended, (42 U.S.C. Sec.
20 9607 (f)), or Section 311 of the Federal Water Pollution Act, as
21 amended (33 U.S.C. Sec. 1321).

22 (D) The administering agency shall be a local agency if any one
23 of the following circumstances is applicable:

24 (i) The source of the release at the site is an underground
25 storage tank, as defined in subdivision (y) of Section 25281, the
26 local agency is the agency described in subdivision (i) of Section
27 25281, and there is no evidence of any extensive groundwater
28 contamination at the site.

29 (ii) The local agency has accepted responsibility for overseeing
30 the site investigation or remedial action at the site and a state
31 agency is not involved.

32 (iii) The local agency has agreed to oversee the site
33 investigation or remedial action at the site and is certified, or has
34 been approved, by a state agency to conduct that oversight.

35 (d) A responsible party for a hazardous materials release site
36 may request the designation of an administering agency for the site
37 pursuant to this section only once. The action of the committee on
38 the request is a final action and is not subject to further
39 administrative or judicial review.

40 ~~SEC. 9.—~~



1 SEC. 12. Section 25281 of the Health and Safety Code is
2 amended to read:

3 25281. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Automatic line leak detector” means any method of leak
6 detection, as determined in regulations adopted by the board, that
7 alerts the owner or operator of an underground storage tank to the
8 presence of a leak. “Automatic line leak detector” includes, but
9 is not limited to, any device or mechanism that alerts the owner or
10 operator of an underground storage tank to the presence of a leak
11 by restricting or shutting off the flow of a hazardous substance
12 through piping, or by triggering an audible or visual alarm, and
13 that detects leaks of three gallons or more per hour at 10 pounds
14 per square inch line pressure within one hour.

15 (b) “Board” means the State Water Resources Control Board.
16 “Regional board” means a California regional water quality
17 control board.

18 (c) “Compatible” means the ability of two or more substances
19 to maintain their respective physical and chemical properties upon
20 contact with one another for the design life of the tank system
21 under conditions likely to be encountered in the tank system.

22 (d) (1) “Certified Unified Program Agency” or “CUPA”
23 means the agency certified by the Secretary for Environmental
24 Protection to implement the unified program specified in Chapter
25 6.11 (commencing with Section 25404) within a jurisdiction.

26 (2) “Participating Agency” or “PA” means an agency that has
27 a written agreement with the CUPA pursuant to subdivision (d) of
28 Section 25404.3, and is approved by the secretary to implement or
29 enforce the unified program element specified in paragraph (3) of
30 subdivision (c) of Section 25404, in accordance with Sections
31 25404.1 and 25404.2.

32 (3) “Unified Program Agency” or “UPA” means the CUPA,
33 or its participating agencies to the extent each PA has been
34 designated by the CUPA, pursuant to a written agreement, to
35 implement or enforce the unified program element specified in
36 paragraph (3) of subdivision (c) of Section 25404. For purposes of
37 this chapter, a UPA has the responsibility and authority, to the
38 extent provided by this chapter and Sections 25404.1 and 25404.2,
39 to implement and enforce only those requirements of this chapter
40 listed in paragraph (3) of subdivision (c) of Section 25404 and the



1 regulations adopted to implement those requirements. After a
2 CUPA has been certified by the secretary, the UPA shall be the only
3 local agency authorized to enforce the requirements of this chapter
4 listed in paragraph (3) of subdivision (c) of Section 25404 within
5 the jurisdiction of the CUPA. This paragraph shall not be construed
6 to limit the authority or responsibility granted to the board and the
7 regional boards by this chapter to implement and enforce this
8 chapter and the regulations adopted pursuant to this chapter.

9 (e) “Department” means the Department of Toxic Substances
10 Control.

11 (f) “Facility” means any one, or combination of, underground
12 storage tanks used by a single business entity at a single location
13 or site.

14 (g) “Federal act” means Subchapter IX (commencing with
15 Section 6991) of Chapter 82 of Title 42 of the United States Code,
16 as added by the Hazardous and Solid Waste Amendments of 1984
17 (P.L. 98-616), or as it may subsequently be amended or
18 supplemented.

19 (h) “Hazardous substance” means either of the following:

20 (1) All of the following liquid and solid substances, unless the
21 department, in consultation with the board, determines that the
22 substance could not adversely affect the quality of the waters of the
23 state:

24 (A) Substances on the list prepared by the Director of Industrial
25 Relations pursuant to Section 6382 of the Labor Code.

26 (B) Hazardous substances, as defined in Section 25316.

27 (C) Any substance or material that is classified by the National
28 Fire Protection Association (NFPA) as a flammable liquid, a class
29 II combustible liquid, or a class III-A combustible liquid.

30 (2) Any regulated substance, as defined in subsection (2) of
31 Section 6991 of Title 42 of the United States Code, as that section
32 reads on January 1, 1989, or as it may subsequently be amended
33 or supplemented.

34 (i) “Local agency” means the local agency authorized,
35 pursuant to Section 25283, to implement this chapter.

36 (j) “Operator” means any person in control of, or having daily
37 responsibility for, the daily operation of an underground storage
38 tank system.

39 (k) “Owner” means the owner of an underground storage tank.



1 (l) “Person” means an individual, trust, firm, joint stock
2 company, corporation, including a government corporation,
3 partnership, limited liability company, or association. “Person”
4 also includes any city, county, district, the state, another state of the
5 United States, any department or agency of this state or another
6 state, or the United States to the extent authorized by federal law.

7 (m) “Pipe” means any pipeline or system of pipelines that is
8 used in connection with the storage of hazardous substances and
9 that is not intended to transport hazardous substances in interstate
10 or intrastate commerce or to transfer hazardous materials in bulk
11 to or from a marine vessel.

12 (n) “Primary containment” means the first level of
13 containment, such as the portion of a tank that comes into
14 immediate contact on its inner surface with the hazardous
15 substance being contained.

16 (o) “Product tight” means impervious to the substance that is
17 contained, or is to be contained, so as to prevent the seepage of the
18 substance from the containment.

19 (p) “Release” means any spilling, leaking, emitting,
20 discharging, escaping, leaching, or disposing from an
21 underground storage tank into or on the waters of the state, the
22 land, or the subsurface soils.

23 (q) “Secondary containment” means the level of containment
24 external to, and separate from, the primary containment.

25 (r) “Single walled” means construction with walls made of
26 only one thickness of material. For the purposes of this chapter,
27 laminated, coated, or clad materials are considered single walled.

28 (s) “Special inspector” means a professional engineer,
29 registered pursuant to Chapter 7 (commencing with Section 6700)
30 of Division 3 of the Business and Professions Code, who is
31 qualified to attest, at a minimum, to structural soundness, seismic
32 safety, the compatibility of construction materials with contents,
33 cathodic protection, and the mechanical compatibility of the
34 structural elements of underground storage tanks.

35 (t) “Storage” or “store” means the containment, handling, or
36 treatment of hazardous substances, either on a temporary basis or
37 for a period of years. “Storage” or “store” does not include the
38 storage of hazardous wastes in an underground storage tank if the
39 person operating the tank has been issued a hazardous waste



1 facilities permit by the department pursuant to Section 25200 or
2 granted interim status under Section 25200.5.

3 (u) “Tank” means a stationary device designed to contain an
4 accumulation of hazardous substances which is constructed
5 primarily of nonearthen materials, including, but not limited to,
6 wood, concrete, steel, or plastic that provides structural support.

7 (v) “Tank integrity test” means a test method capable of
8 detecting an unauthorized release from an underground storage
9 tank consistent with the minimum standards adopted by the board.

10 (w) “Tank tester” means an individual who performs tank
11 integrity tests on underground storage tanks.

12 (x) “Unauthorized release” means any release of any
13 hazardous substance that does not conform to this chapter,
14 including, but not limited to, an unauthorized release specified in
15 Section 25295.5, unless this release is authorized by the board or
16 a regional board pursuant to Division 7 (commencing with Section
17 13000) of the Water Code.

18 (y) (1) “Underground storage tank” means any one or
19 combination of tanks, including pipes connected thereto, that is
20 used for the storage of hazardous substances and that is
21 substantially or totally beneath the surface of the ground.
22 “Underground storage tank” does not include any of the
23 following:

24 (A) A tank with a capacity of 1,100 gallons or less that is
25 located on a farm and that stores motor vehicle fuel used primarily
26 for agricultural purposes and not for resale.

27 (B) A tank that is located on a farm or at the residence of a
28 person, that has a capacity of 1,100 gallons or less, and that stores
29 home heating oil for consumptive use on the premises where
30 stored.

31 (C) Structures, such as sumps, separators, storm drains, catch
32 basins, oil field gathering lines, refinery pipelines, lagoons,
33 evaporation ponds, well cellars, separation sumps, lined and
34 unlined pits, sumps and lagoons. A sump that is a part of a
35 monitoring system required under Section 25290.1, 25291, or
36 25292 and sumps or other structures defined as underground
37 storage tanks under the federal act are not exempted by this
38 subparagraph.



1 (D) A tank holding hydraulic fluid for a closed loop mechanical
2 system that uses compressed air or hydraulic fluid to operate lifts,
3 elevators, and other similar devices.

4 (2) Structures identified in subparagraphs (C) and (D) of
5 paragraph (1) may be regulated by the board and any regional
6 board pursuant to the Porter-Cologne Water Quality Control Act
7 (Division 7 (commencing with Section 13000) of the Water Code)
8 to ensure that they do not pose a threat to water quality.

9 (z) “Underground tank system” or “tank system” means an
10 underground storage tank, connected piping, ancillary equipment,
11 and containment system, if any.

12 (aa) (1) “Unified program facility” means all contiguous land
13 and structures, other appurtenances, and improvements on the land
14 that are subject to the requirements of paragraph (3) of subdivision
15 (c) of Section 25404.

16 (2) “Unified program facility permit” means a permit issued
17 pursuant to Chapter 6.11 (commencing with Section 25404), and
18 that encompasses the permitting requirements of Section 25284.

19 (3) “Permit” means a permit issued pursuant to Section 25284
20 or a unified program facility permit as defined in paragraph (2).

21 ~~SEC. 10.—~~

22 *SEC. 13.* Section 25281.5 of the Health and Safety Code is
23 amended to read:

24 25281.5. (a) Notwithstanding subdivision (m) of Section
25 25281, for purposes of this chapter “pipe” means all parts of any
26 pipeline or system of pipelines, used in connection with the storage
27 of hazardous substances, including, but not limited to, valves and
28 other appurtenances connected to the pipe, pumping units,
29 fabricated assemblies associated with pumping units, and
30 metering and delivery stations and fabricated assemblies therein,
31 but does not include any of the following:

32 (1) An interstate pipeline subject to Part 195 (commencing
33 with Section 195.0) of Subchapter D of Chapter 1 of Title 49 of the
34 Code of Federal Regulations.

35 (2) An intrastate pipeline subject to Chapter 5.5 (commencing
36 with Section 51010) of Part 1 of Division 1 of Title 5 of the
37 Government Code.

38 (3) Unburied delivery hoses, vapor recovery hoses, and nozzles
39 that are subject to unobstructed visual inspection for leakage.



1 (4) Vent lines, vapor recovery lines, and fill pipes which are
2 designed to prevent, and do not hold, standing fluid in the pipes or
3 lines.

4 (b) In addition to the exclusions specified in subdivision (y) of
5 Section 25281, “underground storage tank” does not include
6 either of the following:

7 (1) Vent lines, vapor recovery lines, and fill pipes that are
8 designed to prevent, and do not hold, standing fluid in the pipes or
9 lines.

10 (2) Unburied fuel delivery piping at marinas if the owner or
11 operator conducts daily visual inspections of the piping and
12 maintains a log of inspection results for review by the local agency.
13 The exclusion provided by this paragraph shall not be applicable
14 if the board adopts regulations pursuant to Section 25299.3 that
15 address the design, construction, upgrade, and monitoring of
16 unburied fuel delivery piping at marinas.

17 ~~SEC. 11.~~

18 *SEC. 14.* Section 25284 of the Health and Safety Code is
19 amended to read:

20 25284. (a) (1) Except as provided in subdivision (c), no
21 person may own or operate an underground storage tank unless a
22 permit for its operation has been issued by the local agency to the
23 owner or operator of the tank, or a unified program facility permit
24 has been issued by the local agency to the owner or operator of the
25 unified program facility on which the tank is located.

26 (2) If the operator is not the owner of the tank, or if the permit
27 is issued to a person other than the owner or operator of the tank,
28 the permittee shall ensure that both the owner and the operator of
29 the tank are provided with a copy of the permit.

30 (3) If the permit is issued to a person other than the operator of
31 the tank, that person shall do all of the following:

32 (A) Enter into a written agreement with the operator of the tank
33 to monitor the tank system as set forth in the permit.

34 (B) Provide the operator with a copy or summary of Section
35 25299 in the form that the board specifies by regulation.

36 (C) Notify the local agency of any change of operator.

37 (b) Each local agency shall prepare a form that provides for the
38 acceptance of the obligations of a transferred permit by any person
39 who is to assume the ownership of an underground storage tank
40 from the previous owner and is to be transferred the permit to



1 operate the tank. That person shall complete the form accepting the
2 obligations of the permit and submit the completed form to the
3 local agency within 30 days from the date that the ownership of the
4 underground storage tank is to be transferred. A local agency may
5 review and modify, or terminate, the transfer of the permit to
6 operate the underground storage tank, pursuant to the criteria
7 specified in subdivision (a) of Section 25295, upon receiving the
8 completed form.

9 (c) Any person assuming ownership of an underground storage
10 tank used for the storage of hazardous substances for which a valid
11 operating permit has been issued shall have 30 days from the date
12 of assumption of ownership to apply for an operating permit
13 pursuant to Section 25286 or, if accepting a transferred permit,
14 shall submit to the local agency the completed form accepting the
15 obligations of the transferred permit, as specified in subdivision
16 (b). During the period from the date of application until the permit
17 is issued or refused, the person shall not be held to be in violation
18 of this section.

19 (d) A permit issued pursuant to this section shall apply and
20 require compliance with all applicable regulations adopted by the
21 board pursuant to Section 25299.3.

22 ~~SEC. 12.—~~

23 *SEC. 15. Section 25284.2 is added to the Health and Safety*
24 *Code to read:*

25 *25284.2. The owner or operator of an underground storage*
26 *tank with a spill containment structure designed to prevent a*
27 *release in the event of a spill or overflow while a hazardous*
28 *substance is being placed in the tank shall annually test the spill*
29 *containment structure to demonstrate that it is capable of*
30 *containing the substance until it is detected and cleaned up.*

31 *SEC. 16. Section 25284.4 of the Health and Safety Code is*
32 *amended to read:*

33 25284.4. (a) All tank integrity tests required by this chapter
34 or pursuant to any local ordinance in compliance with Section
35 25299.1 shall be performed only by, or under the direct and
36 personal supervision of, a tank tester with a currently valid tank
37 testing license issued pursuant to this section. No person shall
38 engage in the business of tank integrity testing, or act in the
39 capacity of a tank tester, within this state without first obtaining a
40 tank testing license from the board. Any person who violates this



1 subdivision is guilty of a misdemeanor and may be subject to civil
2 liability pursuant to subdivision (g).

3 (b) Any person proposing to conduct tank integrity testing
4 within the state shall apply to the board for a tank testing license,
5 and shall pay the appropriate fee established by the board. A
6 license issued pursuant to this section shall expire three years after
7 the date of issuance and shall be subject to renewal, except as
8 specified in this section. If the tank tester fails to renew the tank
9 tester's license within three years of the license's expiration date,
10 the license shall lapse and the person shall apply for a new tank
11 testing license and shall meet the same requirements of this section
12 for a new applicant. A tank tester shall pay a fee to the board at the
13 time of licensing and at the time of renewal. The board shall adopt
14 a fee schedule for the issuance and renewal of tank testing licenses
15 to cover the necessary and reasonable costs of administering and
16 enforcing this section.

17 (c) (1) The board may establish any additional qualifications
18 and standards for the licensing of tank testers. Each applicant for
19 licensing as a tank tester shall pass an examination specified by the
20 board and shall have completed a minimum of either of the
21 following:

22 (A) One year of qualifying field experience by personally
23 testing a number of underground storage tanks specified by the
24 board.

25 (B) Completed six months of field experience by personally
26 testing a number of underground storage tanks specified by the
27 board and have successfully completed a course of study
28 applicable to tank testing ~~which~~ *that* is satisfactory to the board.

29 (2) The examination required by paragraph (1) shall, at a
30 minimum, test the applicant's knowledge of all of the following:

31 (A) General principles of tank and pipeline testing.

32 (B) Basic understanding of the mathematics relating to tank
33 testing.

34 (C) Understanding of the specific test procedures, principles,
35 and equipment for which the tank tester will be qualified to
36 operate.

37 (D) Knowledge of the regulations and laws governing the
38 regulation of underground storage tanks.

39 (E) Proper safety procedures.



1 (d) The board shall maintain a current list of all persons
2 licensed pursuant to this section, including a record of
3 enforcement actions taken against these persons. This list shall be
4 made available to local agencies and the public on request.

5 (e) A tank tester may be liable civilly in accordance with
6 subdivision (g) and, in addition, may be subject to administrative
7 sanctions pursuant to subdivision (f) for performing or causing
8 another to perform, any of the following actions:

9 (1) Willfully or negligently violating, or causing, or allowing
10 the violation of, this chapter or any regulations adopted pursuant
11 to this chapter.

12 (2) Willfully or negligently failing to exercise direct and
13 personal control over an unlicensed employee, associate, assistant,
14 or agent during any phase of tank integrity testing.

15 (3) Without regard to intent or negligence, using or permitting
16 a licensed or unlicensed employee, associate, assistant, or agent to
17 use any method or equipment ~~which~~ *that* is demonstrated to be
18 unsafe or unreliable for tank integrity testing.

19 (4) Submitting false or misleading information on an
20 application for license.

21 (5) Using fraud or deception in the course of doing business as
22 a tank tester.

23 (6) Failing to use reasonable care, or judgment, while
24 performing tank integrity tests.

25 (7) Failing to maintain competence in approved tank testing
26 procedures.

27 (8) Failing to use proper tests or testing equipment to conduct
28 tank integrity tests.

29 (9) Any other action ~~which~~ *that* the board may, by regulation,
30 prescribe.

31 (f) (1) The board may suspend the license of a tank tester for
32 a period of up to one year, and may revoke, or refuse to grant or
33 renew, a license and may place on probation, or reprimand, the
34 licensee upon any reasonable ground, including, but not limited to,
35 those violations specified in subdivision (e). The board may
36 investigate any licensed tank tester after receiving a written
37 request from a local agency.

38 (2) The board shall notify the tank tester of any alleged
39 violations and of proposed sanctions, before taking any action
40 pursuant to this subdivision. The tank tester may request a hearing,



1 or submit a written response within 30 days of the date of notice.
2 Any hearing conducted pursuant to this subdivision shall be
3 conducted in accordance with the hearing procedure specified in
4 subdivision (g). After the hearing, or at a time after the 30-day
5 response period, the board may impose the appropriate
6 administrative sanctions authorized by this subdivision if it finds
7 that the tank tester has committed any of the alleged violations
8 specified in the notice.

9 (g) (1) The board may impose civil liability for a violation of
10 subdivision (a) or (e) in accordance with Article 2.5 (commencing
11 with Section 13323) of Chapter 5 of Division 7 of the Water Code,
12 in an amount ~~which~~ *that* shall not exceed five hundred dollars
13 (\$500) for each day in which the violation occurs, except that the
14 chief of the division of water quality of the board or any other
15 person designated by the board shall issue the complaint to the
16 violator. The complaint shall be issued based on information
17 developed by board staff or local agencies. Any hearing on the
18 complaint shall be made before the board, or a panel thereof,
19 consisting of one or more board members. The decision of the
20 board shall be final upon issuance and may be reviewed pursuant
21 to Section ~~13325~~ *Article 3 (commencing with Section 13330)* of
22 *Chapter 5 of Division 7* of the Water Code within 30 days
23 following issuance of the order.

24 (2) Civil liability for a violation of subdivision (a) or (e) may
25 be imposed by a superior court at the request of the board in an
26 amount which shall not exceed two thousand five hundred dollars
27 (\$2,500) for each day in which the violation occurs.

28 (h) Any fees or civil liability collected pursuant to this section
29 shall be deposited in the Underground Storage Tank Tester
30 Account which is hereby created in the General Fund. The money
31 in this account is available for expenditure by the board, upon
32 appropriation by the Legislature, for purposes of implementing the
33 tank tester licensing program established by this section and for
34 repayment of the loan made by Section 13 of Chapter 1372 of the
35 Statutes of 1987.

36 (i) *A tank tester who conducts or supervises a tank or piping*
37 *integrity test shall prepare a report detailing the results of the tank*
38 *test and shall maintain a record of the report for at least three*
39 *years, or as otherwise required by the board. The tank tester shall*
40 *type or print his or her name and include his or her license number*



1 *on the report and shall endorse the report under penalty of perjury*
2 *by original signature.*

3 *SEC. 17.* Section 25288 of the Health and Safety Code is
4 amended to read:

5 25288. (a) The local agency shall inspect every underground
6 tank system within its jurisdiction at least once every year. The
7 purpose of the inspection is to determine whether the tank system
8 complies with the applicable requirements of this chapter and the
9 regulations adopted by the board pursuant to Section 25299.3,
10 including the design and construction standards of Section
11 25290.1, 25291, or 25292, whichever is applicable, whether the
12 operator has monitored and tested the tank system as required by
13 the permit, and whether the tank system is in a safe operating
14 condition.

15 (b) After an inspection conducted pursuant to subdivision (a),
16 the local agency shall prepare a compliance report detailing the
17 inspection and shall send a copy of this report to the permitholder
18 and the owner or operator, if the owner or operator is not the
19 permitholder. Any report prepared pursuant to this section shall be
20 consolidated into any other inspection reports required pursuant to
21 Chapter 6.11 (commencing with Section 25404), the requirements
22 listed in subdivision (c) of Section 25404, and the regulations
23 adopted to implement the requirements listed in subdivision (c) of
24 Section 25404.

25 (c) In lieu of the annual local agency inspections, the local
26 agency may require the permitholder to employ a special inspector
27 to conduct the annual inspection. The local agency shall supply the
28 permitholder with a list of at least three special inspectors that are
29 qualified to conduct the inspection. The permitholder shall employ
30 a special inspector from the list provided by the local agency. The
31 special inspector's authority shall be the same as that of the local
32 agency as set forth in subdivision (a).

33 (d) Within 60 days after receiving a compliance report or
34 special inspection report prepared in accordance with subdivision
35 (b) or (c), respectively, the permitholder shall file with the local
36 agency a plan to implement all recommendations contained in the
37 compliance report or shall demonstrate, to the satisfaction of the
38 local agency, why these recommendations should not be
39 implemented. Any corrective action conducted pursuant to the



1 recommendations in the report shall be taken pursuant to Sections
2 25296.10 and 25299.36.

3 ~~SEC. 12.5.—~~

4 *SEC. 18.* Section 25290.1 is added to the Health and Safety
5 Code, to read:

6 25290.1. (a) Notwithstanding subdivision (o) of Section
7 25281, for purposes of this section, “product tight” means
8 impervious to the liquid and vapor of the substance that is
9 contained, or is to be contained, so as to prevent the seepage of the
10 substance from the containment.

11 (b) Notwithstanding Section 25291, every underground
12 storage tank installed on or after April 1, 2003, shall meet the
13 requirements of this section.

14 (c) The underground storage tank shall be designed and
15 constructed to provide primary and secondary levels of
16 containment of the hazardous substances stored in it in accordance
17 with the following performance standards:

18 (1) Primary containment shall be product tight and compatible
19 with stored product.

20 (2) Secondary containment shall be product tight and
21 constructed to prevent structural weakening as a result of contact
22 with any hazardous substances released from the primary
23 containment, and also shall be capable of storing the hazardous
24 substances for the maximum anticipated period of time necessary
25 for the recovery of any released hazardous substance.

26 (3) Secondary containment shall be constructed to prevent any
27 water intrusion into the system by precipitation, infiltration, or
28 surface runoff.

29 (4) In the case of an installation with one primary tank, the
30 secondary containment shall be large enough to contain at least
31 100 percent of the volume of the primary tank.

32 (5) In the case of multiple primary tanks, the secondary
33 containment shall be large enough to contain 150 percent of the
34 volume of the largest primary tank placed in it, or 10 percent of the
35 aggregate internal volume of all primary tanks, whichever is
36 greater.

37 (d) The underground tank system shall be designed and
38 constructed with a continuous monitoring system capable of
39 detecting the entry of the liquid- or vapor-phase of the hazardous
40 substance stored in the primary containment into the secondary



1 containment and capable of detecting water intrusion into the
2 secondary containment.

3 (e) The interstitial space of the underground storage tank shall
4 be maintained under constant vacuum or pressure such that a
5 breach in the primary or secondary containment is detected before
6 the liquid- or vapor-phase of the hazardous substance stored in the
7 underground storage tank is released into the environment.

8 (f) The underground storage tank shall be provided with
9 equipment to prevent spills and overfills from the primary tank.

10 (g) If different substances are stored in the same tank and in
11 combination may cause a fire or explosion, or the production of
12 flammable, toxic, or poisonous gas, or the deterioration of a
13 primary or secondary container, those substances shall be
14 separated in both the primary and secondary containment so as to
15 avoid potential intermixing.

16 (h) Underground pressurized piping that conveys a hazardous
17 substance shall be equipped with an automatic line leak detector.

18 (i) Before the underground storage tank is covered, enclosed,
19 or placed in use, the standard installation testing requirements for
20 underground storage systems specified in Section 2.4 of the
21 Flammable and Combustible Liquids Code, adopted by the
22 National Fire Protection Association (NFPA 30), as amended and
23 published in the respective edition of the Uniform Fire Code, shall
24 be followed.

25 (j) Before the underground storage tank is placed in use, the
26 underground tank system shall be tested ~~in operating condition~~
27 ~~using enhanced leak detection, to demonstrate that it is product~~
28 ~~tight.~~ *after installation using enhanced leak detection or a test*
29 *method deemed equivalent by the board in regulations adopted*
30 *pursuant to this chapter, to demonstrate that it is product tight. An*
31 *underground storage tank installed and tested in accordance with*
32 *this subdivision is exempt from the requirements of Section*
33 *25292.5.*

34 (k) Notwithstanding Section 25281.5, for any system installed
35 to meet the requirements of this section, *those portions of vent*
36 *lines, vapor recovery lines, and fill pipes that are beneath the*
37 *surface of the ground* are “pipe” as the term is defined in
38 subdivision (m) of Section 25281, and therefore part of the
39 underground storage tank system.

40 ~~SEC. 13.—~~



1 SEC. 19. Section 25292.3 of the Health and Safety Code is
2 repealed.

3 ~~SEC. 14.~~

4 SEC. 20. Section 25292.3 is added to the Health and Safety
5 Code, to read:

6 25292.3. (a) Upon the discovery of a significant violation of
7 any requirement in this chapter *that poses an imminent threat to*
8 *human health or safety or the environment* or of any regulation
9 adopted pursuant to this chapter, the local agency may affix a red
10 tag, in plain view, to the fill pipe of the noncompliant underground
11 storage tank system in order to provide notice that delivery of
12 petroleum into the system is prohibited.

13 (b) *Upon the discovery of a significant violation of any*
14 *requirement in this chapter or of any regulation adopted pursuant*
15 *to this chapter, the local agency may issue a notice of significant*
16 *violation to the owner or operator. The owner or operator who*
17 *receives a notice of significant violation shall, within seven days*
18 *from receipt of the notice, correct the violation to the satisfaction*
19 *of the local agency. If the owner or operator does not correct the*
20 *violation within seven days, the local agency may affix a red tag,*
21 *in plain view, to the fill pipe of the noncompliant underground*
22 *storage tank system to provide notice that delivery of petroleum*
23 *into the system is prohibited.*

24 (c) No owner or operator of a facility may deposit or allow the
25 deposit of petroleum into an underground storage tank system that
26 has a red tag affixed to the system’s fill pipe.

27 ~~(e)~~

28 (d) No person may deposit petroleum into an underground
29 storage tank system that has a red tag affixed to its fill pipe.

30 ~~(d)~~

31 (e) No person shall remove, deface, alter, or otherwise tamper
32 with a red tag so that the information contained on the tag is not
33 legible.

34 ~~(e)~~

35 (f) A red tag may not be removed until the local agency has
36 inspected the underground storage tank system and established
37 that it is no longer in significant violation. After making that
38 determination, the local agency shall remove the red tag within 24
39 hours or as soon thereafter as reasonably possible.

40 ~~(f)~~



1 (g) The board shall adopt regulations to define significant
2 violations for purposes of this section.

3 ~~SEC. 15.—~~

4 *SEC. 21. Section 25292.4 of the Health and Safety Code is*
5 *amended to read:*

6 25292.4. (a) On and after November 1, 2000, an owner or
7 operator of an underground storage tank system with a
8 single-walled component that is located within 1,000 feet of a
9 public drinking water well, as identified pursuant to the state ~~GIS~~
10 GIS mapping database, shall implement a program of enhanced
11 leak detection or monitoring, in accordance with the regulations
12 adopted by the board pursuant to subdivision (c).

13 (b) The board shall notify the owner and operator of each
14 underground storage tank system that is located within 1,000 feet
15 of a public drinking water well, as identified pursuant to the state
16 GIS mapping database, of the owner and operators'
17 responsibilities pursuant to this section. The board shall provide
18 each local agency with a list of tank systems within the local
19 agency's jurisdiction that are located within 1,000 feet of a public
20 drinking water well, as identified pursuant to the state GIS
21 mapping database.

22 (c) The board shall adopt regulations to implement the
23 enhanced leak detection and monitoring program required by
24 subdivision (a). Before adopting these regulations, the board shall
25 consult with the petroleum industry, local governments,
26 environmental groups, and other interested parties to assess the
27 appropriate technology and procedures to implement the enhanced
28 leak detection or monitoring program required by subdivision (a).
29 In adopting these regulations, the board shall consider existing
30 leak detection technology and external monitoring techniques or
31 procedures for underground storage tanks.

32 (d) *If the results of the enhanced leak detection test indicate that*
33 *any component of the underground storage tank system is leaking*
34 *liquid or vapor, the owner or operator shall take appropriate*
35 *actions to correct the leakage, and the owner or operator shall*
36 *retest the system using enhanced leak detection until the system is*
37 *no longer leaking liquid or vapor.*

38 *SEC. 22. Section 25292.5 is added to the Health and Safety*
39 *Code, to read:*



1 25292.5. (a) On or before January 1, 2005, the owner or
2 operator of an underground storage tank system that is located
3 within 1,000 feet of a public drinking water well, as identified
4 pursuant to the state GIS mapping database, and that is not
5 otherwise subject to subdivision (j) of Section 25290.1 or Section
6 25292.4, shall test the system once using an enhanced leak
7 detection test. The enhanced leak detection test shall meet the
8 requirements of subsection (e) of Section 2640 of, and Section
9 2644.1 of, Title 23 of the California Code of Regulations, as those
10 regulations read on January 1, 2003, except that the requirement
11 in those regulations to repeat the test every 36 months shall not
12 apply.

13 (b) On or before June 1, 2003, the board shall notify the owner
14 and operator of each underground storage tank system that is
15 located within 1,000 feet of a public drinking water well, as
16 identified pursuant to the state GIS mapping database, of the
17 owner's and operators' responsibilities pursuant to this section.
18 The board shall provide each local agency with a list of tank
19 systems within the local agency's jurisdiction that are within 1,000
20 feet of a public drinking water well, as identified pursuant to the
21 state GIS mapping database.

22 (c) Notwithstanding subdivision (a), if the results of the
23 enhanced leak detection test indicate that any component of the
24 underground storage tank system is leaking liquid or vapor, the
25 owner or operator shall take appropriate actions to correct the
26 leakage, and the owner or operator shall retest the system using
27 enhanced leak detection until the system is no longer leaking liquid
28 or vapor.

29 SEC. 23. Section 25296.10 is added to the Health and Safety
30 Code, to read:

31 25296.10. (a) Each owner, operator, or other responsible
32 party shall take corrective action in response to an unauthorized
33 release in compliance with this chapter and the regulations adopted
34 pursuant to Section 25299.3. In adopting corrective action
35 regulations, the board shall develop corrective action
36 requirements for health hazards and protection of the
37 environment, based on the severity of the health hazards and the
38 other factors listed in subdivision (b). The corrective action
39 regulations adopted by the board pursuant to Section 25299.77 to
40 implement Section 25299.37, as that section read on January 1,



1 2002, that were in effect before January 1, 2003, shall continue in
2 effect on and after January 1, 2003, until revised by the board to
3 implement this section and shall be deemed to have been adopted
4 pursuant to Section 25299.3.

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

16 (c) (1) When a local agency, the board, or a regional board
17 requires an owner, operator, or other responsible party to
18 undertake corrective action, including preliminary site assessment
19 and investigation, pursuant to an oral or written order, directive,
20 notification, or approval issued pursuant to this section, or
21 pursuant to a cleanup and abatement order or other oral or written
22 directive issued pursuant to Division 7 (commencing with Section
23 13000) of the Water Code, the owner, operator, or other
24 responsible party shall prepare a work plan that details the
25 corrective action the owner, operator, or other responsible party
26 shall take to comply with the requirements of subdivisions (a) and
27 (b) and the corrective action regulations adopted pursuant to
28 Section 25299.3.

29 (2) The work plan required by paragraph (1) shall be prepared
30 in accordance with the regulations adopted pursuant to Section
31 25299.3. The work plan shall include a schedule and timeline for
32 corrective action.

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



1 likelihood, adequate and necessary to meet the requirements of
2 this section, and the actions and elements that may be unnecessary.
3 If the local agency, board, or regional board disapproves the work
4 plan, it shall state the reasons for the disapproval.

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

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

19 (6) When the local agency, the board, or the regional board
20 requires a responsible party to conduct corrective action pursuant
21 to this ~~article~~ section, it shall inform the responsible party of its
22 right to request the designation of an administering agency to
23 oversee the site investigation and remedial action at its site
24 pursuant to Section 25262 and, if requested to do so by the
25 responsible party, the local agency shall provide assistance to the
26 responsible party in preparing and processing a request for that
27 designation.

28 (d) (1) This subdivision applies only to an unauthorized
29 release from a petroleum underground storage tank that is subject
30 to Chapter 6.75 (commencing with Section 25299.10).

31 (2) Notwithstanding Section 25297.1, the board shall
32 implement a procedure that does not assess an owner, operator, or
33 responsible party taking corrective action pursuant to this chapter
34 for the costs of a local oversight program pursuant to paragraph (4)
35 of subdivision (d) of Section 25297.1. The board shall institute an
36 internal procedure for assessing, reviewing, and paying those costs
37 directly between the board and the local agency.

38 (e) A person to whom an order is issued pursuant to subdivision
39 (c), shall have the same rights of administrative and judicial appeal



1 and review as are provided by law for cleanup and abatement
2 orders issued pursuant to Section 13304 of the Water Code.

3 (f) (1) If a person to whom an order is issued pursuant to
4 subdivision (c) does not comply with the order, the board, a
5 regional board, or the local agency may undertake or contract for
6 corrective action.

7 (2) The board, a regional board, or local agency shall be
8 permitted reasonable access to property owned or possessed by an
9 owner, operator, or responsible party as necessary to perform
10 corrective action pursuant to this subdivision. The access shall be
11 obtained with the consent of the owner or possessor of the property
12 or, if the consent is withheld, with a warrant duly issued pursuant
13 to the procedure described in Title 13 (commencing with Section
14 1822.50) of Part 3 of the Code of Civil Procedure. However, if
15 there is an emergency affecting public health or safety, or the
16 environment, the board, a regional board, or local agency may
17 enter the property without consent or the issuance of a warrant.

18 (3) The board, a regional board, or local agency may recover
19 its costs incurred under this subdivision pursuant to Section 13304
20 of the Water Code. If the unauthorized release is from an
21 underground storage tank that is subject to Chapter 6.75
22 (commencing with Section 25299.10), the board, a regional board,
23 or local agency may also recover its costs pursuant to Section
24 25299.70.

25 (g) 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 25299.3
32 and that no further corrective action is required at the site:

33

34 “[Case File Number]

35 Dear [Responsible Party]

36 This letter confirms the completion of a site investigation and
37 corrective action for the underground storage tank(s) formerly
38 located at the above-described location. Thank you for your
39 cooperation throughout this investigation. Your willingness and



1 promptness in responding to our inquiries concerning the former
2 underground storage tank(s) are greatly appreciated.

3 Based on information in the above-referenced file and with the
4 provision that the information provided to this agency was
5 accurate and representative of site conditions, this agency finds
6 that the site investigation and corrective action carried out at your
7 underground storage tank(s) site is in compliance with the
8 requirements of subdivisions (a) and (b) of Section 25296.10 of the
9 Health and Safety Code and with corrective action regulations
10 adopted pursuant to Section 25299.3 of the Health and Safety
11 Code and that no further action related to the petroleum release(s)
12 at the site is required.

13 This notice is issued pursuant to subdivision (g) of Section
14 25296.10 of the Health and Safety Code.

15 Please contact our office if you have any questions regarding
16 this matter.

17 Sincerely,

18 [Name of Board Executive Director, Regional Board Executive
19 Officer, or Local Agency Director]”

20

21 (h) Any order, directive, notification, or approval issued under
22 Section 25299.37 as that section read on January 1, 2002, that was
23 issued on or before January 1, 2003, shall be deemed to have been
24 issued pursuant to this section.

25 ~~SEC. 17.~~—

26 *SEC. 24.* Section 25296.20 is added to the Health and Safety
27 Code, to read:

28 25296.20. (a) The local agency, the board, or a regional
29 board shall not consider corrective action or site closure proposals
30 from the primary or active responsible party, issue a closure letter,
31 or make a determination that no further corrective action is
32 required with respect to a site upon which there was an
33 unauthorized release from an underground storage tank unless all
34 current record owners of fee title to the site of the proposed action
35 have been notified of the proposed action by the local agency,
36 board, or regional board.

37 (b) The local agency, board, or regional board shall take all
38 reasonable steps necessary to accommodate responsible
39 landowner participation in the cleanup or site closure process and



1 shall consider all input and recommendations from any
2 responsible landowner wishing to participate.

3 ~~SEC. 18.~~

4 *SEC. 25.* Section 25296.25 is added to the Health and Safety
5 Code, to read:

6 25296.25. (a) (1) Unless the board, in consultation with
7 local agencies and the regional board, determines that a site is an
8 emergency site, the board, at the request of a responsible party who
9 is eligible for reimbursement of corrective action costs under
10 Chapter 6.75 (commencing with Section 25299.10), may suspend
11 additional corrective action or investigation work at a site, based
12 on a preliminary site assessment conducted in accordance with the
13 corrective action regulations adopted by the board, but the board
14 shall not suspend any of the following activities pursuant to this
15 section:

16 (A) Removal of, or approved modifications of, existing tanks.

17 (B) Excavation of petroleum saturated soil or removal of
18 excess petroleum from saturated soil.

19 (C) Removal of free product from the saturated and unsaturated
20 zones.

21 (D) Periodic monitoring to ensure that released petroleum is
22 not migrating in an uncontrolled manner that will cause the site to
23 become an emergency site.

24 (2) For purposes of this subdivision, “emergency site” means
25 a site that, because of an unauthorized release of petroleum, meets
26 one of the following conditions:

27 (A) The site presents an imminent threat to public health or
28 safety or the environment.

29 (B) The site poses a substantial probability of causing a
30 condition of contamination or nuisance, as defined in Section
31 13050 of the Water Code, or of causing pollution of a source of
32 drinking water at a level that is a violation of a primary or
33 secondary drinking water standard adopted by the State
34 Department of Health Services pursuant to Chapter 4
35 (commencing with Section 116270) of Part 12 of Division 104.

36 (b) The suspension shall continue until one of the following
37 occurs:

38 (1) The board provides the eligible responsible party with a
39 letter of commitment pursuant to Chapter 6.75 (commencing with



1 Section 25299.10) that the party will receive reimbursement for
2 the corrective action.

3 (2) The responsible party requests in writing that the
4 suspension be terminated and that the work continue.

5 (3) The fund established pursuant to Article 6 (commencing
6 with Section 25299.50) of Chapter 6.75 is no longer in existence.

7 (c) The board shall adopt regulations pursuant to Section
8 25299.3 that specify the conditions under which a site is an
9 imminent threat to public health or safety or to the environment or
10 poses a substantial probability of causing a condition of
11 contamination, nuisance, or pollution as specified in paragraph (2)
12 of subdivision (a). The board shall not suspend corrective action
13 or investigation work at any site pursuant to this section until the
14 effective date of the regulations adopted by the board pursuant to
15 this subdivision.

16 ~~SEC. 19.—~~

17 *SEC. 26.* Section 25296.30 is added to the Health and Safety
18 Code, to read:

19 25296.30. (a) The board, in consultation with the State
20 Department of Health Services, shall develop guidelines for the
21 investigation and cleanup of methyl tertiary-butyl ether (MTBE)
22 and other ether-based oxygenates in groundwater. The guidelines
23 shall include procedures for determining, to the extent practicable,
24 whether the contamination associated with an unauthorized
25 release of MTBE is from the tank system prior to the system’s most
26 recent upgrade or replacement or if the contamination is from an
27 unauthorized release from the current tank system.

28 (b) The board, in consultation with the State Department of
29 Health Services, shall develop appropriate cleanup standards for
30 contamination associated with a release of methyl tertiary-butyl
31 ether.

32 ~~SEC. 21.—~~

33 *SEC. 27.* Section 25296.40 is added to the Health and Safety
34 Code, to read:

35 25296.40. (a) (1) Any owner or operator, or other
36 responsible party who has a tank case and who believes that the
37 corrective action plan for the site has been satisfactorily
38 implemented, but where closure has not been granted, may
39 petition the board for a review of the case.



1 (2) Upon receipt of a petition pursuant to paragraph (1), the
2 board may close the tank case or require closure, if the tank case
3 is at a site under the jurisdiction of a regional board or a local
4 agency that is implementing a local oversight program under
5 Section 25297.1 and if the board determines that corrective action
6 at the site is in compliance with all of the requirements of
7 subdivisions (a) and (b) of Section 25296.10 and the corrective
8 action regulations adopted pursuant to Section 25299.3. If a tank
9 case is at a site under the jurisdiction of a local agency that is not
10 implementing a local oversight program pursuant to Section
11 25297.1, the board may recommend to the local agency that the
12 tank case be closed.

13 (b) Any aggrieved person may, not later than 30 days from the
14 date of final action by the board, pursuant to subdivision (a), file
15 with the superior court a petition for writ of mandate for review of
16 the decision. If the aggrieved person does not file a petition for writ
17 of mandate within the time provided by this subdivision, a board
18 decision shall not be subject to review by any court. Section 1094.5
19 of the Code of Civil Procedure shall govern proceedings for which
20 petitions are filed pursuant to this subdivision. For purposes of
21 subdivision (c) of Section 1094.5 of the Code of Civil Procedure,
22 the court shall uphold the decision if the decision is based upon
23 substantial evidence in light of the whole record.

24 (c) The authority provided under this section does not limit a
25 person's ability to petition the board for review under any other
26 state law.

27 ~~SEC. 22.—~~

28 *SEC. 28.* Section 25297.1 of the Health and Safety Code is
29 amended to read:

30 25297.1. (a) In addition to the authority granted to the board
31 pursuant to Division 7 (commencing with Section 13000) of the
32 Water Code and to the department pursuant to Chapter 6.8
33 (commencing with Section 25300), the board, in cooperation with
34 the department, shall develop and implement a local oversight
35 program for the abatement of, and oversight of the abatement of,
36 unauthorized releases of hazardous substances from underground
37 storage tanks by local agencies. In implementing the local
38 oversight program, the agreement specified in subdivision (b)
39 shall be between the board and the local agency. The board shall
40 select local agencies for participation in the program from among



1 those local agencies which apply to the board, giving first priority
2 to those local agencies which have demonstrated prior experience
3 in cleanup, abatement, or other actions necessary to remedy the
4 effects of unauthorized releases of hazardous substances from
5 underground storage tanks. The board shall select only those local
6 agencies which have implemented this chapter and that, except as
7 provided in Section 25404.5, have begun to collect and transmit
8 to the board the surcharge or fees pursuant to subdivision (b) of
9 Section 25287.

10 (b) In implementing the local oversight program described in
11 subdivision (a), the board may enter into an agreement with any
12 local agency to perform, or cause to be performed, any cleanup,
13 abatement, or other action necessary to remedy the effects of a
14 release of hazardous substances from an underground storage tank
15 with respect to which the local agency has enforcement authority
16 pursuant to this section. The board may not enter into an agreement
17 with a local agency for soil contamination cleanup or for
18 groundwater contamination cleanup unless the board determines
19 that the local agency has a demonstrated capability to oversee or
20 perform the cleanup. The implementation of the cleanup,
21 abatement, or other action shall be consistent with procedures
22 adopted by the board pursuant to subdivision (d) and shall be based
23 upon cleanup standards specified by the board or regional board.

24 (c) The board shall provide funding to a local agency that enters
25 into an agreement pursuant to subdivision (b) for the reasonable
26 costs incurred by the local agency in overseeing any cleanup,
27 abatement, or other action taken by a responsible party to remedy
28 the effects of unauthorized releases from underground storage
29 tanks.

30 (d) The board shall adopt administrative and technical
31 procedures, as part of the state policy for water quality control
32 adopted pursuant to Section 13140 of the Water Code, for cleanup
33 and abatement actions taken pursuant to this section. The
34 procedures shall include, but not be limited to, all of the following:

35 (1) Guidelines as to which sites may be assigned to the local
36 agency.

37 (2) The content of the agreements which may be entered into
38 by the board and the local agency.

39 (3) Procedures by which a responsible party may petition the
40 board or a regional board for review, pursuant to Article 2



1 (commencing with Section 13320) of Chapter 5 of Division 7 of
2 the Water Code, or pursuant to Chapter 9.2 (commencing with
3 Section 2250) of Division 3 of Title 23 of the California Code of
4 Regulations, or any successor regulation, as applicable, of actions
5 or decisions of the local agency in implementing the cleanup,
6 abatement, or other action.

7 (4) Protocols for assessing and recovering money from
8 responsible parties for any reasonable and necessary costs incurred
9 by the local agency in implementing this section, as specified in
10 subdivision (i), unless the cleanup or abatement action is subject
11 to subdivision (d) of Section 25296.10.

12 (5) Quantifiable measures to evaluate the outcome of a pilot
13 program established pursuant to this section.

14 (e) Any agreement between the regional board and a local
15 agency to carry out a local oversight program pursuant to this
16 section shall require both of the following:

17 (1) The local agency shall establish and maintain accurate
18 accounting records of all costs it incurs pursuant to this section and
19 shall periodically make these records available to the board. The
20 Controller may annually audit these records to verify the hourly
21 oversight costs charged by a local agency. The board shall
22 reimburse the Controller for the cost of the audits of a local
23 agency's records conducted pursuant to this section.

24 (2) The board and the department shall make reasonable efforts
25 to recover costs incurred pursuant to this section from responsible
26 parties, and may pursue any available legal remedy for this
27 purpose.

28 (f) The board shall develop a system for maintaining a database
29 for tracking expenditures of funds pursuant to this section, and
30 shall make this data available to the Legislature upon request.

31 (g) (1) Sections 25355.5 and 25356 do not apply to
32 expenditures from the Hazardous Substance Cleanup Fund for
33 oversight of abatement of releases from underground storage tanks
34 as part of the local oversight program established pursuant to this
35 section.

36 (2) A local agency that enters into an agreement pursuant to
37 subdivision (b), shall notify the responsible party, for any site
38 subject to a cleanup, abatement, or other action taken pursuant to
39 the local oversight program established pursuant to this section,
40 that the responsible party is liable for not more than 150 percent



1 of the total amount of site-specific oversight costs actually
2 incurred by the local agency.

3 (h) Any aggrieved person may petition the board or regional
4 board for review of the action or failure to act of a local agency,
5 which enters into an agreement pursuant to subdivision (b), at a site
6 subject to cleanup, abatement, or other action conducted as part of
7 the local oversight program established pursuant to this section, in
8 accordance with the procedures adopted by the board or regional
9 board pursuant to subdivision (d).

10 (i) (1) For purposes of this section, site-specific oversight
11 costs include only the costs of the following activities, when
12 carried out by technical program staff of a local agency and their
13 immediate supervisors:

14 (A) Responsible party identification and notification.

15 (B) Site visits.

16 (C) Sampling activities.

17 (D) Meetings with responsible parties or responsible party
18 consultants.

19 (E) Meetings with the regional board or with other affected
20 agencies regarding a specific site.

21 (F) Review of reports, workplans, preliminary assessments,
22 remedial action plans, or postremedial monitoring.

23 (G) Development of enforcement actions against a responsible
24 party.

25 (H) Issuance of a closure document.

26 (2) The responsible party is liable for the site-specific oversight
27 costs, calculated pursuant to paragraphs (3) and (4), incurred by a
28 local agency, in overseeing any cleanup, abatement, or other action
29 taken pursuant to this section to remedy an unauthorized release
30 from an underground storage tank.

31 (3) Notwithstanding the requirements of any other provision of
32 law, the amount of liability of a responsible party for the oversight
33 costs incurred by the local agency and by the board and regional
34 boards in overseeing any action pursuant to this section shall be
35 calculated as an amount not more than 150 percent of the total
36 amount of the site-specific oversight costs actually incurred by the
37 local agency and shall not include the direct or indirect costs
38 incurred by the board or regional boards.

39 (4) (A) The total amount of oversight costs for which a local
40 agency may be reimbursed shall not exceed one hundred fifteen



1 dollars (\$115) per hour, multiplied by the total number of
2 site-specific hours performed by the local agency.

3 (B) The total amount of the costs per site for administration and
4 technical assistance to local agencies by the board and the regional
5 board entering into agreements pursuant to subdivision (b) shall
6 not exceed a combined total of thirty-five dollars (\$35) for each
7 hour of site-specific oversight. The board shall base its costs on the
8 total hours of site-specific oversight work performed by all
9 participating local agencies. The regional board shall base its costs
10 on the total number of hours of site-specific oversight costs
11 attributable to the local agency which received regional board
12 assistance.

13 (C) The amounts specified in subparagraphs (A) and (B) are
14 base rates for the 1990–91 fiscal year. Commencing July 1, 1991,
15 and for each fiscal year thereafter, the board shall adjust the base
16 rates annually to reflect increases or decreases in the cost of living
17 during the prior fiscal year, as measured by the implicit price
18 deflator for state and local government purchases of goods and
19 services, as published by the United States Department of
20 Commerce or by a successor agency of the federal government.

21 (5) In recovering costs from responsible parties for costs
22 incurred under this section, the local agency shall prorate any costs
23 identifiable as startup costs over the expected number of cases
24 which the local agency will oversee during a 10-year period. A
25 responsible party who has been assessed startup costs for the
26 cleanup of any unauthorized release that, as of January 1, 1991, is
27 the subject of oversight by a local agency, shall receive an
28 adjustment by the local agency in the form of a credit, for the
29 purposes of cost recovery. Startup costs include all of the
30 following expenses:

31 (A) Small tools, safety clothing, cameras, sampling equipment,
32 and other similar articles necessary to investigate or document
33 pollution.

34 (B) Office furniture.

35 (C) Staff assistance needed to develop computer tracking of
36 financial and site-specific records.

37 (D) Training and setup costs for the first six months of the local
38 agency program.



1 (6) This subdivision does not apply to costs that are required to
2 be recovered pursuant to Article 7.5 (commencing with Section
3 25385) of Chapter 6.8.

4 ~~SEC. 23.~~

5 *SEC. 29.* Section 25299 of the Health and Safety Code is
6 amended to read:

7 25299. (a) Any operator of an underground tank system shall
8 be liable for a civil penalty of not less than five hundred dollars
9 (\$500) or more than five thousand dollars (\$5,000) for each
10 underground storage tank for each day of violation for any of the
11 following violations:

12 (1) Operating an underground tank system which has not been
13 issued a permit, in violation of this chapter.

14 (2) Violation of any of the applicable requirements of the
15 permit issued for the operation of the underground tank system.

16 (3) Failure to maintain records, as required by this chapter.

17 (4) Failure to report an unauthorized release, as required by
18 Sections 25294 and 25295.

19 (5) Failure to properly close an underground tank system, as
20 required by Section 25298.

21 (6) Violation of any applicable requirement of this chapter ~~or~~
22 ~~any requirement of this chapter~~ or any regulation adopted by the
23 board pursuant to Section 25299.3.

24 (7) Failure to permit inspection or to perform any monitoring,
25 testing, or reporting required pursuant to Section 25288 or 25289.

26 (8) Making any false statement, representation, or certification
27 in any application, record, report, or other document submitted or
28 required to be maintained pursuant to this chapter.

29 (9) Tampering with or otherwise disabling automatic leak
30 detection devices or alarms.

31 (b) Any owner of an underground tank system shall be liable
32 for a civil penalty of not less than five hundred dollars (\$500) or
33 more than five thousand dollars (\$5,000) per day for each
34 underground storage tank, for each day of violation, for any of the
35 following violations:

36 (1) Failure to obtain a permit as specified by this chapter.

37 (2) Failure to repair or upgrade an underground tank system in
38 accordance with this chapter.

39 (3) Abandonment or improper closure of any underground tank
40 system subject to this chapter.



1 (4) Knowing failure to take reasonable and necessary steps to
2 assure compliance with this chapter by the operator of an
3 underground tank system.

4 (5) Violation of any applicable requirement of the permit
5 issued for operation of the underground tank system.

6 (6) Violation of any applicable requirement of this chapter or
7 any regulation adopted by the board pursuant to Section 25299.3.

8 (7) Failure to permit inspection or to perform any monitoring,
9 testing, or reporting required pursuant to Section 25288 or 25289.

10 (8) Making any false statement, representation, or certification
11 in any application, record, report, or other document submitted or
12 required to be maintained pursuant to this chapter.

13 (c) Any person who intentionally fails to notify the board or the
14 local agency when required to do so by this chapter or who submits
15 false information in a permit application, amendment, or renewal,
16 pursuant to Section 25286, is liable for a civil penalty of not more
17 than five thousand dollars (\$5,000) for each underground storage
18 tank for which notification is not given or false information is
19 submitted.

20 (d) (1) Any person who violates any corrective action
21 requirement established by, or issued pursuant to, Section
22 25296.10 is liable for a civil penalty of not more than ten thousand
23 dollars (\$10,000) for each underground storage tank for each day
24 of violation.

25 (2) A civil penalty under this ~~section~~ *subdivision* may be
26 imposed in a civil action under this chapter, or may be
27 administratively imposed by the board or a regional board
28 pursuant to Article 2.5 (commencing with Section 13323) of
29 Chapter 5 of Division 7 of the Water Code.

30 (e) Any person who violates Section 25292.3 is liable for a civil
31 penalty of not more than five thousand dollars (\$5,000) for each
32 underground storage tank for each day of violation.

33 (f) (1) Any person who falsifies any monitoring records
34 required by this chapter, or knowingly fails to report an
35 unauthorized release, shall, upon conviction, be punished by a fine
36 of not less than five thousand dollars (\$5,000) or more than ten
37 thousand dollars (\$10,000), by imprisonment in the county jail for
38 not to exceed one year, or by both that fine and imprisonment.

39 (2) Any person who intentionally disables or tampers with an
40 automatic leak detection system in a manner that would prevent



1 the automatic leak detection system from detecting a leak or
2 alerting the owner or operator of the leak, shall, upon conviction,
3 be punished by a fine of not less than five thousand dollars
4 (\$5,000) or more than ten thousand dollars (\$10,000), by
5 imprisonment in the county jail for not more than one year, or by
6 both the fine and imprisonment.

7 (g) In determining both the civil and criminal penalties
8 imposed pursuant to this section, the board, a regional board or the
9 court, as the case may be, shall consider all relevant circumstances,
10 including, but not limited to, the extent of harm or potential harm
11 caused by the violation, the nature of the violation and the period
12 of time over which it occurred, the frequency of past violations,
13 and the corrective action, if any, taken by the person who holds the
14 permit.

15 (h) Each civil penalty or criminal fine imposed pursuant to this
16 section for any separate violation shall be separate, and in addition
17 to, any other civil penalty or criminal fine imposed pursuant to this
18 section or any other provision of law, except that no civil penalty
19 shall be recovered under subdivision (d) for violations for which
20 a civil penalty is recovered pursuant to Section 13268 or 13350 of
21 the Water Code. The penalty or fine shall be paid to the treasury
22 of the local agency or state, whichever is represented by the office
23 of the city attorney, district attorney, or Attorney General bringing
24 the action. All penalties or fines collected by the board or a
25 regional board or collected on behalf of the board or a regional
26 board by the Attorney General shall be deposited in the State Water
27 Pollution Cleanup and Abatement Account in the State Water
28 Quality Control Fund, and are available for expenditure by the
29 board, upon appropriation, pursuant to Section 13441 of the Water
30 Code.

31 (i) Paragraph (9) of subdivision (a) does not prohibit the owner
32 or operator of an underground storage tank, or his or her designee,
33 from maintaining, repairing, or replacing automatic leak detection
34 devices or alarms associated with that tank.

35 ~~SEC. 23.5.—~~

36 *SEC. 30.* Section 25299.4 of the Health and Safety Code is
37 amended to read:

38 25299.4. (a) (1) Any local agency may apply to the board for
39 authority to implement design and construction standards for the
40 containment of a hazardous substance in underground storage



1 tanks which are in addition to those set forth in this chapter. The
2 application shall include a description of the additional standards
3 and a discussion of the need to implement them. The board shall
4 approve the application if it finds, after an investigation and public
5 hearing, that the local agency has demonstrated by clear and
6 convincing evidence that the additional standards are necessary to
7 adequately protect the soil and the beneficial uses of the waters of
8 the state from unauthorized releases.

9 (2) The board shall make its determination within six months
10 of the date of application for authority to implement additional
11 standards. If the board's determination upholds the application for
12 authority to implement additional standards, the standards shall be
13 effective as of the date of the determination. If the board's
14 determination does not uphold the application, the additional
15 standards shall not go into effect.

16 (b) (1) Any permitholder or permit applicant may apply to the
17 regional board having jurisdiction over the location of the
18 ~~permitholder~~ *permitholder's* or applicant's facility for a
19 site-specific variance from Section 25290.1, 25291, or 25292. A
20 site-specific variance is an alternative procedure which is
21 applicable in one local agency jurisdiction. Prior to applying to the
22 regional board, the permitholder shall first contact the local agency
23 pursuant to paragraph (5).

24 (2) The regional board shall hold a public hearing 60 days after
25 the completion of any documents required by the California
26 Environmental Quality Act (Division 13 (commencing with
27 Section 21000) of the Public Resources Code).

28 (3) The regional board shall consider the local agency's and the
29 ~~city, county~~ *city's, county's,* or city and county's recommendations
30 in rendering its decision. Failure of the local agency or city, county,
31 or city and county to join in the variance application pursuant to
32 paragraph (5) shall not affect the request of the applicant to
33 proceed with the variance application.

34 (4) The regional board shall approve the variance if it finds,
35 after investigation and public hearing, that the applicant has
36 demonstrated by clear and convincing evidence either of the
37 following:

38 (A) Because of the facility's special circumstances, not
39 generally applicable to other facilities' property, including size,
40 shape, design, topography, location, or surroundings, the strict



1 application of Sections 25290.1, 25291, and 25292 is unnecessary
2 to adequately protect the soil and beneficial uses of the waters of
3 the state from an unauthorized release.

4 (B) Strict application of the standards of Sections 25290.1,
5 25291, and 25292 would create practical difficulties not generally
6 applicable to other facilities or property and that the proposed
7 alternative will adequately protect the soil and beneficial uses of
8 the waters of the state from an unauthorized release.

9 (5) Before applying for a variance, the applicant shall contact
10 the local agency to determine if a site-specific variance is required.
11 If the local agency determines that a site-specific variance is
12 required or does not act within 60 days, the applicant may proceed
13 with the variance procedure in subdivision (a).

14 (6) At least 30 days before applying to the appropriate regional
15 board, the applicant shall notify and request the city, county, or city
16 and county to join the applicant in the variance application before
17 the regional board.

18 (A) The city, county, or city and county shall provide notice of
19 the receipt of that request to any person who has requested the
20 notice.

21 (B) The local agency within the city, county, or city and county
22 which has the jurisdiction for land use decisions shall have 30 days
23 from completion of any documents required by the California
24 Environmental Quality Act (Division 13 (commencing with
25 Section 21000) of the Public Resources Code) to act on the
26 applicant's request to join the applicant.

27 (c) Applicants requesting a variance pursuant to subdivision
28 (b) shall pay a fee determined by the board to be necessary to
29 recover the reasonable cost of administering subdivision (b).

30 (d) The permit issued for any underground storage tank issued
31 a variance pursuant to subdivision (b) shall require compliance
32 with any conditions prescribed by the board or a regional board in
33 issuing the variance. The conditions prescribed by the board or
34 regional board in the permit shall include any conditions necessary
35 to assure compliance with any applicable requirements of the
36 federal act.

37 (e) This section does not apply to or within any city or county
38 which was exempt from implementing this chapter as of December
39 31, 1984.

40 ~~SEC. 24.~~—



1 *SEC. 31.* Section 25299.7 of the Health and Safety Code is
2 amended to read:

3 25299.7. (a) The board is designated as the lead agency in the
4 state for all purposes stated in the federal act and may exercise any
5 powers which a state may exercise pursuant to the federal act.

6 (b) The board may prepare, as part of any program application
7 submitted to the Environmental Protection Agency for state
8 program approval pursuant to Section 6991c of Title 42 of the
9 United States Code, any procedures and implementation plans
10 necessary to assure compliance with the requirements for a state
11 program implementing the federal act. These procedures and
12 implementation plans may include, but are not limited to,
13 procedures or implementation plans with respect to investigation,
14 compliance monitoring, enforcement, public participation, and
15 sharing of information among local agencies, the board, and the
16 Environmental Protection Agency. If the Environmental
17 Protection Agency approves of the state program, the board, the
18 regional boards, and each local agency shall administer this
19 chapter in accordance with these procedures and implementation
20 plans where required by the memorandum of agreement executed
21 by the board and the Environmental Protection Agency. These
22 procedures and implementation plans shall also apply to any
23 public agency or official who brings a civil enforcement action
24 pursuant to this chapter, and to any city or county specified in
25 Section 25299.1, to the extent required by the memorandum of
26 agreement. The board's approval of the program application and
27 memorandum of agreement is not subject to Chapter 3.5
28 (commencing with Section 11340) of Part 1 of Division 3 of Title
29 2 of the Government Code.

30 (c) The board shall adopt, pursuant to Section 25299.3, any
31 regulations necessary to obtain state program approval pursuant to
32 Section 6991c of Title 42 of the United States Code. The board
33 shall adopt these regulations as emergency regulations in
34 accordance with Chapter 3.5 (commencing with Section 11340) of
35 Part 1 of Division 3 of Title 2 of the Government Code, and for the
36 purposes of that chapter, including Section 11349.6 of the
37 Government Code, the adoption of these regulations is an
38 emergency and shall be considered by the Office of Administrative
39 Law as necessary for the immediate preservation of the public
40 peace, health and safety, and general welfare. Notwithstanding



1 Chapter 3.5 (commencing with Section 11340) of Part 1 of
2 Division 3 of Title 2 of the Government Code, any emergency
3 regulations adopted by the board in furtherance of this section shall
4 be filed with, but may not be repealed by, the Office of
5 Administrative Law and shall remain in effect until revised by the
6 board.

7 ~~SEC. 25.—~~

8 *SEC. 32.* Section 25299.8 is added to the Health and Safety
9 Code, to read:

10 25299.8. The repeal and addition of Section 25292.3 and the
11 amendment of Section 25284 by the act adding this section during
12 the 2002 portion of the 2001–02 Regular Session, to eliminate the
13 requirement to acquire and display an upgrade compliance
14 certificate, do not constitute a bar to any action, whether
15 administrative, civil, or criminal, brought for a violation of the law
16 that occurred prior to January 1, 2003.

17 ~~SEC. 26.—~~

18 *SEC. 33.* Section 25299.36 of the Health and Safety Code is
19 amended to read:

20 25299.36. The board, a regional board, or a local agency may
21 undertake or contract for corrective action in response to an
22 unauthorized release from an underground storage tank that is
23 subject to this chapter, pursuant to subdivision (f) of Section
24 25296.10 or if a situation exists that requires prompt action by the
25 board, a regional board, or local agency to protect human health
26 or the environment. At the request of the board or a regional board,
27 the Department of General Services may enter into a contract on
28 behalf of the board or a regional board and acting as the agent of
29 the board or a regional board. Notwithstanding any other provision
30 of law, if a situation requires prompt action by the board or a
31 regional board to protect human health or the environment, the
32 board or a regional board may enter into oral contracts for this
33 work, and the contracts, whether written or oral, may include
34 provisions for equipment rental and, in addition, the furnishing of
35 labor and materials necessary to accomplish the work. These
36 contracts for corrective action by the board or a regional board are
37 exempt from approval by the Department of General Services if
38 the situation requires prompt action to protect human health or the
39 environment.

40 ~~SEC. 27.—~~



1 *SEC. 34.* Section 25299.37 of the Health and Safety Code is
2 repealed.

3 ~~*SEC. 28.*~~

4 *SEC. 35.* Section 25299.37.1 of the Health and Safety Code
5 is amended and renumbered to read:

6 25296.15. (a) No closure letter shall be issued pursuant to
7 this chapter unless all of the following conditions are met:

8 (1) The soil or groundwater, or both, where applicable, at the
9 site have been tested for MTBE.

10 (2) The results of that testing are known to the regional board.

11 (3) The board, the regional board, or the local agency makes the
12 finding specified in subdivision ~~(h)~~ of ~~Section 25299.37~~ (g) of
13 *Section 25296.10.*

14 (b) Paragraphs (1) and (2) of subdivision (a) do not apply to a
15 closure letter for a tank case for which the board, a regional board,
16 or local agency determines that the tank has only contained diesel
17 or jet fuel.

18 ~~*SEC. 29.*~~

19 *SEC. 36.* Section 25299.37.2 of the Health and Safety Code
20 is repealed.

21 ~~*SEC. 30.*~~

22 *SEC. 37.* Section 25299.38 is added to the Health and Safety
23 Code, to read:

24 25299.38. (a) The local agency, the board, or the regional
25 board shall advise and work with the owner, operator, or other
26 responsible party on the opportunity to seek preapproval of
27 corrective action costs pursuant to Section 2811.4 of Title 23 of the
28 California Code of Regulations or any successor regulation.
29 Regional board staff and local agency staff shall work with the
30 responsible party and fund staff to obtain preapproval for the
31 responsible party. The fund staff shall grant or deny a request for
32 preapproval within 30 calendar days after the date a request is
33 received. If fund staff denies a request for preapproval or fails to
34 act within 30 calendar days after receiving the request, an owner,
35 operator, or other responsible party who has prepared a work plan
36 that has been reviewed and accepted pursuant to paragraph (3) of
37 subdivision (c) of Section 25296.10, and is denied preapproval of
38 corrective action costs for one or more of the actions required by
39 the work plan, may petition the board for review of the request for
40 preapproval. The board shall review the petition pursuant to



1 Section 25299.56, and for that purpose the petition for review of
2 a request for preapproval of corrective action costs shall be
3 reviewed by the board in the same manner as a petition for review
4 of an unpaid claim.

5 (b) If the board receives a petition for review pursuant to
6 subdivision (a), the board shall review the request for preapproval
7 and grant or deny the request pursuant to this subdivision and
8 subdivision (c). The board shall deny the request for preapproval
9 if the board makes one of the following findings:

10 (1) The petitioner is not eligible to file a claim pursuant to
11 Article 6 (commencing with Section 25299.50).

12 (2) The petitioner failed to submit one or more of the
13 documents required by the regulations adopted by the board
14 governing preapproval.

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

19 (c) If the board does not deny the request for preapproval
20 pursuant to subdivision (b), the board shall grant the request for
21 preapproval. However, the board may modify the request by
22 denying preapproval of corrective action costs or reducing the
23 preapproval amount of those costs for any action required by the
24 work plan, if the board finds that the fund staff has demonstrated
25 either of the following:

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

31 (2) The action required in the work plan is, in all likelihood, not
32 necessary for the corrective action to comply with the
33 requirements of subdivisions (a) and (b) of Section 25296.10 and
34 the corrective action regulations adopted pursuant to Section
35 25299.3.

36 ~~SEC. 31.—~~

37 ~~SEC. 38.~~ Section 25299.38.1 of the Health and Safety Code
38 is repealed.

39 ~~SEC. 32.—~~



1 *SEC. 39.* Section 25299.39 of the Health and Safety Code is
2 repealed.

3 ~~*SEC. 33.*~~

4 *SEC. 40.* Section 25299.39.1 of the Health and Safety Code
5 is amended and renumbered to read:

6 25296.35. (a) The board shall develop, implement, and
7 maintain a system for storing and retrieving data from cases
8 involving discharges of petroleum from underground storage
9 tanks to allow regulatory agencies and the general public to use
10 historic data in making decisions regarding permitting, land use,
11 and other matters. The system shall be accessible to government
12 agencies and the general public. A site included in the data system
13 shall be clearly designated as having no residual contamination if,
14 at the time a closure letter is issued for the site pursuant to Section
15 ~~25399.37~~ 25296.10 or at any time after that closure letter is issued,
16 the board determines that no residual contamination remains on
17 the site.

18 (b) For purposes of this section, “residual contamination”
19 means the petroleum that remains on a site after a corrective action
20 has been carried out and the cleanup levels established by the
21 corrective action plan for the site, pursuant to subdivision (g) of
22 Section 2725 of Title 23 of the California Code of Regulations,
23 have been achieved.

24 ~~*SEC. 34.*~~

25 *SEC. 41.* Section 25299.39.2 of the Health and Safety Code
26 is amended to read:

27 25299.39.2. (a) The manager responsible for the fund shall
28 notify tank owners or operators who have an active letter of
29 commitment that has been in an active status for five years or more
30 and shall review the case history of their tank case on an annual
31 basis unless otherwise notified by the tank owner or operator
32 within 30 days of the notification. The manager, with approval of
33 the tank owner or operator, may make a recommendation to the
34 board for closure. The board may close the tank case or require the
35 closure of a tank case at a site under the jurisdiction of a regional
36 board or a local agency implementing a local oversight program
37 under Section 25297.1 if the board determines that corrective
38 action at the site is in compliance with all of the requirements of
39 subdivisions (a) and (b) of Section 25296.10 and the corrective
40 action regulations adopted pursuant to Section 25299.3. If a tank



1 case is at a site under the jurisdiction of a local agency that is not
2 implementing a local oversight program under Section 25297.1,
3 the board may recommend to the local agency that the case be
4 closed.

5 (b) Any aggrieved person may, not later than 30 days from the
6 date of final action by the board, pursuant to subdivision (a), file
7 with the superior court a petition for writ of mandate for review of
8 the decision. If the aggrieved person does not file a petition for writ
9 of mandate within the time provided by this subdivision, a board
10 decision shall not be subject to review by any court. Section 1094.5
11 of the Code of Civil Procedure shall govern proceedings for which
12 petitions are filed pursuant to this subdivision. For purposes of
13 subdivision (c) of Section 1094.5 of the Code of Civil Procedure,
14 the court shall uphold the decision if the decision is based upon
15 substantial evidence in light of the whole record.

16 (c) The authority provided under this section does not limit a
17 person's ability to petition the board for review under any other
18 state law.

19 ~~SEC. 35.—~~

20 *SEC. 42.* Section 25299.39.3 of the Health and Safety Code
21 is amended to read:

22 25299.39.3. The board, a regional board, or local agency shall
23 be permitted reasonable access to property owned or possessed by
24 an owner, operator, or responsible party as necessary to perform
25 corrective action pursuant to Section 25299.36. The access shall
26 be obtained with the consent of the owner or possessor of the
27 property or, if the consent is withheld, with a warrant duly issued
28 pursuant to the procedure described in Title 13 (commencing with
29 Section 1822.50) of Part 3 of the Code of Civil Procedure.
30 However, in the event of an emergency affecting public health or
31 safety, or the environment, the board, a regional board, or local
32 agency may enter the property without consent or the issuance of
33 a warrant.

34 ~~SEC. 36.—~~

35 *SEC. 43.* Section 25299.50.1 of the Health and Safety Code
36 is amended to read:

37 25299.50.1. (a) For purposes of this section, "fire safety
38 agency" means a city fire department, county fire department, city
39 and county fire department, fire protection district, a joint powers
40 authority formed for the purpose of providing fire protection



1 services, or any other local agency that normally provides fire
2 protection services.

3 (b) The Fire Safety Subaccount is hereby created in the
4 Underground Storage Tank Cleanup Fund, for expenditure by the
5 board to pay a claim described in paragraph (4) of subdivision (b)
6 of Section 25299.52 that was filed before January 1, 2000, by a fire
7 safety agency. Except as provided in subdivision (d), the board
8 shall pay a claim filed by a fire safety agency only from funds
9 appropriated from the Fire Safety Subaccount.

10 (c) The sum of five million dollars (\$5,000,000) of the moneys
11 in the fund derived from the sources described in paragraphs (1)
12 to (4), inclusive, of subdivision (b) of Section 25299.50 is hereby
13 transferred from the fund to the Fire Safety Subaccount, and
14 appropriated therefrom to the board, for expenditure pursuant to
15 this section for a claim filed by a fire safety agency specified in
16 subdivision (b).

17 (d) The unpaid amount of any claim filed by a fire safety
18 agency specified in subdivision (b), for which a closure letter has
19 not been issued pursuant to subdivision (g) of Section 25296.10 on
20 or before January 1, 2006, shall not be payable from the Fire Safety
21 Subaccount but shall revert to the priority ranking for claims
22 specified in Section 25299.52.

23 (e) The payment of claims pursuant to this section shall not
24 affect the board's payment of claims filed pursuant to paragraph
25 (1), (2), or (3) of subdivision (b) of Section 25299.52.

26 (f) Any funds remaining in the Fire Safety Subaccount on
27 January 1, 2006, shall be transferred to the fund.

28 (g) This section shall remain in effect only until January 1,
29 2006, and as of that date is repealed, unless a later enacted statute,
30 that is enacted before January 1, 2006, deletes or extends that date.

31 ~~SEC. 37.~~

32 *SEC. 44.* Section 25299.51 of the Health and Safety Code is
33 amended to read:

34 25299.51. The board may expend the money in the fund for
35 all the following purposes:

36 (a) In addition to the purposes specified in subdivisions (c), (d),
37 and (e), for the costs of implementing this chapter and for
38 implementing Section 25296.10 for a tank that is subject to this
39 chapter.



1 (b) To pay for the administrative costs of the State Board of
2 Equalization in collecting the fee imposed by Article 5
3 (commencing with Section 25299.40).

4 (c) To pay for the reasonable and necessary costs of corrective
5 action pursuant to Section 25299.36, up to one million five
6 hundred thousand dollars (\$1,500,000) per occurrence. The
7 Legislature may appropriate the money in the fund for expenditure
8 by the board, without regard to fiscal year, for prompt action in
9 response to any unauthorized release.

10 (d) To pay for the costs of an agreement for the abatement of,
11 and oversight of the abatement of, an unauthorized release of
12 hazardous substances from underground storage tanks, by a local
13 agency, as authorized by Section 25297.1 or by any other provision
14 of law, except that, for the purpose of expenditure of these funds,
15 only underground storage tanks, as defined in Section 25299.24,
16 shall be the subject of the agreement.

17 (e) To pay for the costs of cleanup and oversight of
18 unauthorized releases at abandoned tank sites. The board shall not
19 expend more than 25 percent of the total amount of money
20 collected and deposited in the fund annually for the purposes of
21 this subdivision and subdivision (h).

22 (f) To pay claims pursuant to Section 25299.57.

23 (g) To pay, upon order of the Controller, for refunds pursuant
24 to Part 26 (commencing with Section 50101) of Division 2 of the
25 Revenue and Taxation Code.

26 (h) To pay for the reasonable and necessary costs of corrective
27 action pursuant to subdivision (f) of Section 25296.10, in response
28 to an unauthorized release from an underground storage tank
29 subject to this chapter.

30 (i) To pay claims pursuant to Section 25299.58.

31 ~~SEC. 38.—~~

32 *(j) To pay for expenditures by the board associated with*
33 *discovering violations of, and enforcing, or assisting in the*
34 *enforcement of, the requirements of Chapter 6.7 (commencing with*
35 *Section 25280) with regard to petroleum underground storage*
36 *tanks.*

37 *SEC. 45.* Section 25299.53 of the Health and Safety Code is
38 amended to read:

39 25299.53. (a) A regional board or a local agency taking, or
40 contracting for, corrective action pursuant to subdivision (f) of



1 Section 25296.10 in response to an unauthorized release from an
2 underground storage tank subject to this chapter shall, before
3 commencing the corrective action, take both of the following
4 actions:

5 (1) The regional board or local agency shall notify the board of
6 the planned corrective action. If an owner, operator, or other
7 responsible party is taking the corrective action in accordance with
8 Section 25296.10, the regional board or local agency shall not
9 initiate a corrective action pursuant to this chapter or Chapter 6.7
10 (commencing with Section 25280).

11 (2) If an owner, operator, or other responsible party is not
12 taking or has not taken the action specified in paragraph (1), the
13 regional board or local agency shall submit the estimated cost of
14 the corrective action to the board, which shall approve or
15 disapprove the reasonableness of the cost estimate. The regional
16 board or local agency shall obtain approval of the corrective action
17 and the cost estimate before taking, or contracting for, any
18 corrective action.

19 (b) If the board approves the request of the regional board or
20 local agency made pursuant to paragraph (2) of subdivision (a), the
21 board shall, after making the determination specified in
22 subdivision (c), pay for the costs of corrective action performed by
23 a regional board, local agency, or qualified contractor.

24 (c) The board shall not make any payment pursuant to
25 subdivision (b) unless the board determines that the owner,
26 operator, or other responsible party of the tank has failed or refused
27 to comply with a final order for corrective action issued pursuant
28 to Section 25296.10 with respect to the unauthorized release of
29 petroleum from the tank.

30 (d) Upon making any payment to a regional board or local
31 agency pursuant to subdivision (b), the board shall recover the
32 amount of payment pursuant to Section 25299.70.

33 ~~SEC. 39.—~~

34 *SEC. 46.* Section 25299.54 of the Health and Safety Code is
35 amended to read:

36 25299.54. (a) Except as provided in subdivisions (b), (c), (d),
37 (e), (g), and (h), an owner or operator, required to perform
38 corrective action pursuant to Section 25296.10, or an owner or
39 operator who, as of January 1, 1988, is required to perform
40 corrective action, who has initiated this action in accordance with



1 Division 7 (commencing with Section 13000) of the Water Code,
2 who is undertaking corrective action in compliance with waste
3 discharge requirements or other orders issued pursuant to Division
4 7 (commencing with Section 13000) of the Water Code, or Chapter
5 6.7 (commencing with Section 25280), may apply to the board for
6 satisfaction of a claim filed pursuant to this article.

7 (b) A person who has failed to comply with Article 3
8 (commencing with Section 25299.30) is ineligible to file a claim
9 pursuant to this section.

10 (c) Any owner or operator of an underground storage tank
11 containing petroleum is ineligible to file a claim pursuant to this
12 section if the person meets both of the following conditions:

13 (1) The person knew, before January 1, 1988, of the
14 unauthorized release of petroleum which is the subject of the
15 claim.

16 (2) The person did not initiate, on or before June 30, 1988, any
17 corrective action in accordance with Division 7 (commencing with
18 Section 13000) of the Water Code concerning the release, or the
19 person did not, on or before June 30, 1988, initiate corrective
20 action in accordance with Chapter 6.7 (commencing with Section
21 25280) or the person did not initiate action on or before June 30,
22 1988, to come into compliance with waste discharge requirements
23 or other orders issued pursuant to Division 7 (commencing with
24 Section 13000) of the Water Code concerning the release.

25 (d) An owner or operator who violates Section 25296.10 or any
26 corrective action order, directive, notification, or approval order
27 issued pursuant to this chapter, Chapter 6.7 (commencing with
28 Section 25280), or Division 7 (commencing with Section 13000)
29 of the Water Code, is liable for any corrective action costs that
30 result from the owner's or operator's violation and is ineligible to
31 file a claim pursuant to this section.

32 (e) Notwithstanding this chapter, a person who owns a tank
33 located underground that is used to store petroleum may apply to
34 the board for satisfaction of a claim, and the board may pay the
35 claim pursuant to Section 25299.57 without making the findings
36 specified in paragraph (3) of subdivision (d) of Section 25299.57
37 if all of the following apply:

38 (1) The tank meets one of the following requirements:



1 (A) The tank is located at the residence of a person on property
2 used exclusively for residential purposes at the time of discovery
3 of the unauthorized release of petroleum.

4 (B) The tank owner demonstrates that the tank is located on
5 property that, on and after January 1, 1985, is not used for
6 agricultural purposes, the tank is of a type specified in
7 subparagraph (B) of paragraph (1) of subdivision (y) of Section
8 25281, and the petroleum in the tank is used solely for the purposes
9 specified in subparagraph (B) of paragraph (1) of subdivision (y)
10 of Section 25281 on and after January 1, 1985.

11 (2) The tank is not a tank described in subparagraph (A) of
12 paragraph (1) of subdivision (y) of Section 25281 and the tank is
13 not used on or after January 1, 1985, for the purposes specified in
14 that subparagraph.

15 (3) The claimant has complied with Section 25299.31 and the
16 permit requirements of Chapter 6.7 (commencing with Section
17 25280), or the claimant is not subject to the requirements of those
18 provisions.

19 (f) Whenever the board has authorized the prepayment of a
20 claim pursuant to Section 25299.57, and the amount of money
21 available in the fund is insufficient to pay the claim, the owner or
22 operator shall remain obligated to undertake the corrective action
23 in accordance with Section 25296.10.

24 (g) The board shall not reimburse a claimant for any eligible
25 costs for which the claimant has been, or will be, compensated by
26 another person. This subdivision does not affect reimbursement of
27 a claimant from the fund under either of the following
28 circumstances:

29 (1) The claimant has a written contract, other than an insurance
30 contract, with another person that requires the claimant to
31 reimburse the person for payments the person has provided the
32 claimant pending receipt of reimbursement from the fund.

33 (2) An insurer has made payments on behalf of the claimant
34 pursuant to an insurance contract and either of the following apply:

35 (A) The insurance contract explicitly coordinates insurance
36 benefits with the fund and requires the claimant to do both of the
37 following:

38 (i) Maintain the claimant's eligibility for reimbursement of
39 costs pursuant to this chapter by complying with all applicable
40 eligibility requirements.



1 (ii) Reimburse the insurer for costs paid by the insurer pending
2 reimbursement of those costs by the fund.

3 (B) The claimant received a letter of commitment prior to June
4 30, 1999, for the occurrence and the claimant is required to
5 reimburse the insurer for any costs paid by the insurer pending
6 reimbursement of those costs by the fund.

7 (h) (1) Except as provided in paragraph (2), a person who
8 purchases or otherwise acquires real property on which an
9 underground storage tank or tank specified in subdivision (e) is
10 situated shall not be reimbursed by the board for a cost attributable
11 to an occurrence that commenced prior to the acquisition of the
12 real property if both of the following conditions apply:

13 (A) The purchaser or acquirer knew, or in the exercise of
14 reasonable diligence would have discovered, that an underground
15 storage tank or tank specified in subdivision (e) was located on the
16 real property being acquired.

17 (B) Any person who owned the site or owned or operated an
18 underground storage tank or tank specified in subdivision (e) at the
19 site during or after the occurrence and prior to acquisition by the
20 purchaser or acquirer would not have been eligible for
21 reimbursement from the fund.

22 (2) Notwithstanding paragraph (1), if the claim is filed on or
23 after January 1, 2003, the board may reimburse the eligible costs
24 claimed by a person who purchases or otherwise acquires real
25 property on which an underground storage tank or tank specified
26 in subdivision (e) is situated, if all of the following conditions
27 apply:

28 (A) The claimant is the owner or operator of the tank that had
29 an occurrence that commenced prior to the owner's acquisition of
30 the real property.

31 (B) The claimant satisfies all eligibility requirements, other
32 than those specified in paragraph (1).

33 (C) The claimant is not an affiliate of any person whose act or
34 omission caused or would cause ineligibility for the fund.

35 (3) If the board reimburses a claim pursuant to paragraph (2),
36 any person specified in subparagraph (B) of paragraph (1), other
37 than a person who is ineligible for reimbursement from the fund
38 solely because the property was acquired from another person who
39 was ineligible for reimbursement from the fund, shall be liable for
40 the amount paid from the fund. The Attorney General, upon



1 request of the board, shall bring a civil action to recover the
2 liability imposed under this paragraph. All money recovered by
3 the Attorney General under this paragraph shall be deposited in the
4 fund.

5 (4) The liability established pursuant to paragraph (3) does not
6 limit or supersede liability under any other provision of state or
7 federal law, including common law.

8 (5) For purposes of this subdivision, the following definitions
9 shall apply:

10 (A) “Affiliate” means a person who has one or more of the
11 following relationships with another person:

- 12 (i) Familial relationship.
- 13 (ii) Fiduciary relationship.
- 14 (iii) A relationship of direct or indirect control or shared
15 interests.

16 (B) Affiliates include, but are not limited to, any of the
17 following:

- 18 (i) Parent corporation and subsidiary.
- 19 (ii) Subsidiaries that are owned by the same parent corporation.
- 20 (iii) Business entities involved in a reorganization, as defined
21 in Section 181 of the Corporations Code.
- 22 (iv) Corporate officer and corporation.
- 23 (v) Shareholder that owns a controlling block of voting stock
24 and the corporation.
- 25 (vi) Partner and the partnership.
- 26 (vii) Member and a limited liability company.
- 27 (viii) Franchiser and franchisee.
- 28 (ix) Settlor, trustee, and beneficiary of a trust.
- 29 (x) Debtor and bankruptcy trustee or debtor-in-possession.
- 30 (xi) Principal and agent.

31 (C) “Familial relationship” means relationships between
32 family members, including, and limited to, a husband, wife, child,
33 stepchild, parent, grandparent, grandchild, brother, sister,
34 stepbrother, stepsister, stepmother, stepfather, mother-in-law,
35 father-in-law, brother-in-law, sister-in-law, daughter-in-law,
36 son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

37 (i) The Legislature finds and declares that the changes made to
38 subparagraph (A) of paragraph (1) of subdivision (e) by Chapter
39 1290 of the Statutes of 1992 is declaratory of existing law.



1 (j) The Legislature finds and declares that the amendment of
2 subdivisions (a) and (g) by Chapter 328 of the Statutes of 1999 is
3 declaratory of existing law.

4 ~~SEC. 40.—~~

5 *SEC. 47.* Section 25299.55 of the Health and Safety Code is
6 amended to read:

7 25299.55. The board shall prescribe appropriate forms and
8 procedures for claims filed pursuant to Section 25299.54 that shall
9 include, at a minimum, all of the following:

10 (a) A provision requiring the claimant to make a sworn
11 verification of the claim to the best of the claimant’s knowledge.

12 (b) A full description, supported by appropriate evidence from
13 government agencies, of the unauthorized release of petroleum
14 into the environment from an underground storage tank claimed
15 to be the subject of the third-party judgment specified in Section
16 25299.58 or the corrective action performed pursuant to Section
17 25296.10.

18 (c) Certification by the claimant of all costs that have been, or
19 will be, incurred in undertaking corrective action after January 1,
20 1988.

21 ~~SEC. 41.—~~

22 *SEC. 48.* Section 25299.57 of the Health and Safety Code is
23 amended to read:

24 25299.57. (a) If the board makes the determination specified
25 in subdivision (d), the board may only pay for the costs of a
26 corrective action that exceeds the level of financial responsibility
27 required to be obtained pursuant to Section 25299.32, but not more
28 than one million five hundred thousand dollars (\$1,500,000) for
29 each occurrence. In the case of an owner or operator who, as of
30 January 1, 1988, was required to perform corrective action, who
31 initiated that corrective action in accordance with Division 7
32 (commencing with Section 13000) of the Water Code or Chapter
33 6.7 (commencing with Section 25280), and who is undertaking the
34 corrective action in compliance with waste discharge
35 requirements or other orders issued pursuant to Division 7
36 (commencing with Section 13000) of the Water Code or Chapter
37 6.7 (commencing with Section 25280), the owner or operator may
38 apply to the board for satisfaction of a claim filed pursuant to this
39 article. The board shall notify claimants applying for satisfaction
40 of claims from the fund of eligibility for reimbursement in a



1 prompt and timely manner and that a letter of credit or
2 commitment that will obligate funds for reimbursement shall
3 follow the notice of eligibility as soon thereafter as possible.

4 (b) (1) For claims eligible for reimbursement pursuant to
5 subdivision (c) of Section 25299.55, the claimant shall submit the
6 actual cost of corrective action to the board, which shall either
7 approve or disapprove the costs incurred as reasonable and
8 necessary. At least 15 days before the board proposes to
9 disapprove the reimbursement of corrective action costs that have
10 been incurred on the grounds that the costs were unreasonable or
11 unnecessary, the board shall issue a notice advising the claimant
12 and the lead agency of the proposed disallowance, to allow review
13 and comment.

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

18 (A) Auxiliary documentation is provided that documents to the
19 board's satisfaction that the invoice is for necessary corrective
20 action work.

21 (B) The costs of corrective action work in the claim are
22 reasonably commensurate with similar corrective action work
23 performed during the same time period covered by the invoice for
24 which reimbursement is sought.

25 (C) The invoices include a brief description of the work
26 performed, the date that the work was performed, the vendor, and
27 the amount.

28 (c) For claims eligible for prepayment pursuant to subdivision
29 (c) of Section 25299.55, the claimant shall submit the estimated
30 cost of the corrective action to the board, which shall approve or
31 disapprove the reasonableness of the cost estimate.

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

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

37 (2) The claimant is required to undertake or contract for
38 corrective action pursuant to Section 25296.10, or, as of January
39 1, 1988, the claimant has initiated corrective action in accordance



1 with Division 7 (commencing with Section 13000) of the Water
2 Code.

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

6 (B) All claimants who file their claim on or after January 1,
7 1994, and all claimants who filed their claim prior to that date but
8 are not eligible for a waiver of the permit requirement pursuant to
9 board regulations in effect on the date of the filing of the claim, and
10 who did not obtain or apply for any permit required by subdivision
11 (a) of Section 25284 by January 1, 1990, shall be subject to
12 subparagraph (A) regardless of the reason or reasons that the
13 permit was not obtained or applied for. However, on and after
14 January 1, 1994, the board may waive the provisions of
15 subparagraph (A) as a condition for payment from the fund if the
16 board finds all of the following:

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

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

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

29 (C) (i) A claimant exempted pursuant to subparagraph (B)
30 shall obtain a level of financial responsibility twice as great as the
31 amount which the claimant is otherwise required to obtain
32 pursuant to subdivision (a) of Section 25299.32.

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



1 (D) The board shall rank all claims resubmitted pursuant to
2 subparagraph (B) lower than all claims filed before January 1,
3 1994, within their respective priority classes specified in
4 subdivision (b) of Section 25299.52.

5 (4) The board has approved either the costs incurred for the
6 corrective action pursuant to subdivision (b) or the estimated costs
7 for corrective action pursuant to subdivision (c).

8 (5) The claimant has paid all fees, interest, and penalties
9 imposed pursuant to Article 5 (commencing with Section
10 29299.40) and Part 26 (commencing with Section 50101) of
11 Division 2 of the Revenue and Taxation Code for the underground
12 storage tank that is the subject of the claim.

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

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

19 (g) (1) Any claimant who submits a claim for payment to the
20 board shall submit multiple bids for prospective costs as
21 prescribed in regulations adopted by the board pursuant to Section
22 25299.77.

23 (2) Any claimant who submits a claim to the board for the
24 payment of professional engineering and geologic work shall
25 submit multiple proposals and fee estimates, as required by the
26 regulations adopted by the board pursuant to Section 25299.77.
27 The claimant's selection of the provider of these services is not
28 required to be based on the lowest estimated fee, if the fee estimate
29 conforms with the range of acceptable costs established by the
30 board.

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

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



1 (h) The board shall provide, upon the request of a claimant,
2 assistance to the claimant in the selection of contractors retained
3 by the claimant to conduct reimbursable work related to corrective
4 actions. The board shall develop a summary of expected costs for
5 common remedial actions. This summary of expected costs may
6 be used by claimants as a guide in the selection and supervision of
7 consultants and contractors.

8 (i) The board shall pay, within 60 days from the date of receipt
9 of an invoice of expenditures, all costs specified in the work plan
10 developed pursuant to Section 25296.10, and all costs that are
11 otherwise necessary to comply with an order issued by a local,
12 state, or federal agency.

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

17 (2) For the purposes of this subdivision, regulatory technical
18 assistance is limited to assistance from a person, other than the
19 claimant, in the preparation and submission of a claim to the fund.
20 Regulatory technical assistance does not include assistance in
21 connection with proceedings under Section 25296.40,
22 25299.39.2, or 25299.56 or any action in court.

23 (k) (1) Notwithstanding any other provision of this section, the
24 board shall pay a claim for the costs of corrective action to a person
25 who owns property on which is located a release from a petroleum
26 underground storage tank that has been the subject of a completed
27 corrective action and for which additional corrective action is
28 required because of additionally discovered contamination from
29 the previous release, only if the person who carried out the earlier
30 and completed corrective action was eligible for, and applied for,
31 reimbursement pursuant to subdivision (b), and only to the extent
32 that the amount of reimbursement for the earlier corrective action
33 did not exceed the amount of reimbursement authorized by
34 subdivision (a). Reimbursement to a claimant on a reopened site
35 shall occur when funds are available, and reimbursement
36 commitment shall be made ahead of any new letters of
37 commitment to be issued, as of the date of the reopening of the
38 claim, if funding has occurred on the original claim, in which case
39 funding shall occur at the time it would have occurred under the
40 original claim.



1 (2) For purposes of this subdivision, a corrective action is
2 completed when the local agency or regional board with
3 jurisdiction over the site or the board issues a closure letter
4 pursuant to subdivision (g) of Section 25296.10.

5 ~~SEC. 42.~~

6 *SEC. 49.* Section 25299.58 of the Health and Safety Code is
7 amended to read:

8 25299.58. (a) Except as provided in subdivision (d), if the
9 board makes the determination specified in subdivision (b), the
10 board may only reimburse those costs that are related to the
11 compensation of third parties for bodily injury and property
12 damages and that exceed the level of financial responsibility
13 required to be obtained pursuant to Section 25299.32, but not more
14 than one million dollars (\$1,000,000) for each occurrence.

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

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

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

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

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

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



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

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

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

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

21 (D) The board shall rank all claims resubmitted pursuant to
22 subparagraph (B) lower than all claims filed before January 1,
23 1994, within their respective priority classes specified in
24 subdivision (b) of Section 25299.52.

25 (4) The claimant is required to undertake or contract for
26 corrective action pursuant to Section 25296.10, or, as of January
27 1, 1988, the claimant has initiated corrective action in accordance
28 with Division 7 (commencing with Section 13000) of the Water
29 Code or Chapter 6.7 (commencing with Section 25280).

30 (5) The claimant has paid all fees, interest, and penalties
31 imposed pursuant to Article 5 (commencing with Section
32 29299.40) and Part 26 (commencing with Section 50101) of
33 Division 2 of the Revenue and Taxation Code for the underground
34 storage tank that is the subject of the claim.

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

37 (1) Medical expenses.

38 (2) Actual lost wages or business income.

39 (3) Actual expenses for remedial action to remedy the effects
40 of damage to the property of the third party caused by the



1 unauthorized release of petroleum from an underground storage
2 tank.

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

6 (d) The board shall pay a claim submitted pursuant to
7 subdivision (e) of Section 25299.54 for the costs related to the
8 compensation of third parties for bodily injury and property
9 damages that exceed the level of financial responsibility required
10 to be obtained pursuant to paragraph (2) of subdivision (a) of
11 Section 25299.32, but not more than one million dollars
12 (\$1,000,000) for each occurrence.

13 ~~SEC. 43.—~~

14 *SEC. 50.* Section 25299.70 of the Health and Safety Code is
15 amended to read:

16 25299.70. (a) Any costs incurred and payable from the fund
17 pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall
18 be recovered by the Attorney General, upon request of the board,
19 from the owner or operator of the underground storage tank which
20 released the petroleum and which is the subject of those costs or
21 from any other responsible party.

22 (b) The liability of an owner or operator shall be the full and
23 total costs specified in subdivision (a) if the owner or operator has
24 not complied with the requirements of Article 3 (commencing
25 with Section 25299.30) or has violated Section 25296.10 or any
26 corrective action order, directive, notification or approval order
27 issued pursuant to this chapter, Chapter 6.7 (commencing with
28 Section 25280), or Division 7 (commencing with Section 13000)
29 of the Water Code. The liability of a responsible party who is not
30 an owner or operator shall be the full and total costs specified in
31 subdivision (a).

32 (c) The amount of costs determined pursuant to this section
33 shall be recoverable in a civil action. This section does not deprive
34 a party of any defense the party may have.

35 (d) All money recovered by the Attorney General pursuant to
36 this section shall be deposited in the fund.

37 (e) The amount of the costs constitutes a lien on the affected
38 property upon service of a copy of the notice of lien on the owner
39 and upon the recordation of a notice of lien, if the notice identifies
40 the property on which the condition was abated, the amount of the



1 lien, and the owner of record of the property, in the office of the
2 county recorder of the county in which the property is located.
3 Upon recordation, the lien shall have the same force, effect, and
4 priority as a judgment lien, except that it attaches only to the
5 property posted and described in the notice of lien, and shall
6 continue for 10 years from the time of the recording of the notice,
7 unless sooner released or otherwise discharged. Not later than 45
8 days from the date of receipt of a notice of lien, the owner may
9 petition the court for an order releasing the property from the lien
10 or reducing the amount of the lien. In that court action, the
11 governmental agency that incurred the cleanup costs shall
12 establish that the costs were reasonable and necessary. The lien
13 may be foreclosed by an action brought by the board for a money
14 judgment.

15 ~~SEC. 44.~~—

16 *SEC. 51.* Section 25404 of the Health and Safety Code is
17 amended to read:

18 25404. (a) For purposes of this chapter, the following terms
19 shall have the following meanings:

20 (1) (A) “Certified Unified Program Agency” or “CUPA”
21 means the agency certified by the secretary to implement the
22 unified program specified in this chapter within a jurisdiction.

23 (B) “Participating Agency” or “PA” means a state or local
24 agency that has a written agreement with the CUPA pursuant to
25 subdivision (d) of Section 25404.3, and is approved by the
26 secretary, to implement or enforce one or more of the unified
27 program elements specified in subdivision (c), in accordance with
28 Sections 25404.1 and 25404.2.

29 (C) “Unified Program Agency” or “UPA” means the CUPA,
30 or its participating agencies to the extent each PA has been
31 designated by the CUPA, pursuant to a written agreement, to
32 implement or enforce a particular unified program element
33 specified in subdivision (c). The UPAs have the responsibility and
34 authority to implement and enforce the requirements listed in
35 subdivision (c), and the regulations adopted to implement the
36 requirements listed in subdivision (c), to the extent provided by
37 Chapter 6.5 (commencing with Section 25100), Chapter 6.67
38 (commencing with Section 25270), Chapter 6.7 (commencing
39 with Section 25280), Chapter 6.95 (commencing with Section
40 25500), and Sections 25404.1 and 25404.2. After a CUPA has



1 been certified by the secretary, the unified program agencies and
2 the state agencies carrying out responsibilities under this chapter
3 shall be the only agencies authorized to enforce the requirements
4 listed in subdivision (c) within the jurisdiction of the CUPA.

5 (2) “Department” means the Department of Toxic Substances
6 Control.

7 (3) “Minor violation” means the failure of a person to comply
8 with any requirement or condition of any applicable law,
9 regulation, permit, information request, order, variance, or other
10 requirement, whether procedural or substantive, of the unified
11 program that the UPA is authorized to implement or enforce
12 pursuant to this chapter, and that does not otherwise include any
13 of the following:

14 (A) A violation that results in injury to persons or property, or
15 that presents a significant threat to human health or the
16 environment.

17 (B) A willful or intentional violation.

18 (C) A violation that is a chronic violation, or that is committed
19 by a recalcitrant violator. In determining whether a violation is
20 chronic or a violator is recalcitrant, the UPA shall consider whether
21 there is evidence indicating that the violator has engaged in a
22 pattern of neglect or disregard with respect to applicable
23 regulatory requirements.

24 (D) A violation that results in an emergency response from a
25 public safety agency.

26 (E) A violation that enables the violator to benefit
27 economically from the noncompliance, either by reduced costs or
28 competitive advantage.

29 (F) A class I violation as provided in Section 25117.6.

30 (G) A class II violation committed by a recalcitrant violator, as
31 provided in Section 25117.6.

32 (H) A violation that hinders the ability of the UPA to determine
33 compliance with any other applicable local, state, or federal rule,
34 regulation, information request, order, variance, permit, or other
35 requirement.

36 (4) “Secretary” means the Secretary for Environmental
37 Protection.

38 (5) “Unified program facility” means all contiguous land and
39 structures, other appurtenances, and improvements on the land
40 that are subject to the requirements listed in subdivision (c).



1 (6) “Unified program facility permit” means a permit issued
2 pursuant to this chapter. For the purposes of this chapter, a unified
3 program facility permit encompasses the permitting requirements
4 of Section 25284, and any permit or authorization requirements
5 under any local ordinance or regulation relating to the generation
6 or handling of hazardous waste or hazardous materials, but does
7 not encompass the permitting requirements of a local ordinance
8 that incorporates provisions of the Uniform Fire Code or the
9 Uniform Building Code.

10 (b) The secretary shall adopt implementing regulations and
11 implement a unified hazardous waste and hazardous materials
12 management regulatory program, which shall be known as the
13 unified program, after holding an appropriate number of public
14 hearings throughout the state. The unified program shall be
15 developed in close consultation with the director, the Director of
16 the Office of Emergency Services, the State Fire Marshal, the
17 executive officers and chairpersons of the State Water Resources
18 Control Board and the California regional water quality control
19 boards, the local health officers, local fire services, and other
20 appropriate officers of interested local agencies, and affected
21 businesses and interested members of the public, including
22 environmental organizations.

23 (c) The unified program shall consolidate the administration of
24 the following requirements, and shall, to the maximum extent
25 feasible within statutory constraints, ensure the coordination and
26 consistency of any regulations adopted pursuant to those
27 requirements:

28 (1) (A) Except as provided in subparagraphs (B) and (C), the
29 requirements of Chapter 6.5 (commencing with Section 25100),
30 and the regulations adopted by the department pursuant thereto,
31 applicable to hazardous waste generators, and persons operating
32 pursuant to a permit-by-rule, conditional authorization, or
33 conditional exemption, pursuant to Chapter 6.5 (commencing
34 with Section 25100) or the regulations adopted by the department.

35 (B) The unified program shall not include the requirements of
36 paragraph (3) of subdivision (c) of Section 25200.3, the
37 requirements of Sections 25200.10 and 25200.14, and the
38 authority to issue an order under Sections 25187 and 25187.1, with
39 regard to those portions of a unified program facility that are
40 subject to one of the following:



- 1 (i) A corrective action order issued by the department pursuant
2 to Section 25187.
- 3 (ii) An order issued by the department pursuant to Chapter 6.8
4 (commencing with Section 25300) or Chapter 6.85 (commencing
5 with Section 25396).
- 6 (iii) A remedial action plan approved pursuant to Chapter 6.8
7 (commencing with Section 25300) or Chapter 6.85 (commencing
8 with Section 25396).
- 9 (iv) A cleanup and abatement order issued by a California
10 regional water quality control board pursuant to Section 13304 of
11 the Water Code, to the extent that the cleanup and abatement order
12 addresses the requirements of the applicable section or sections
13 listed in this subparagraph.
- 14 (v) Corrective action required under subsection (u) of Section
15 6924 of Title 42 of the United States Code or subsection (h) of
16 Section 6928 of Title 42 of the United States Code.
- 17 (vi) An environmental assessment pursuant to Section
18 25200.14 or a corrective action pursuant to Section 25200.10 or
19 paragraph (3) of subdivision (c) of Section 25200.3, that is being
20 overseen by the department.
- 21 (C) The unified program shall not include the requirements of
22 Chapter 6.5 (commencing with Section 25100), and the
23 regulations adopted by the department pursuant thereto,
24 applicable to persons operating transportable treatment units,
25 except that any required notice regarding transportable treatment
26 units shall also be provided to the CUPAs.
- 27 (2) The requirement of subdivision (c) of Section 25270.5 for
28 owners and operators of aboveground storage tanks to prepare a
29 spill prevention control and countermeasure plan.
- 30 (3) The requirements of Chapter 6.7 (commencing with
31 Section 25280) concerning underground storage tanks, except for
32 the responsibilities assigned to the State Water Resources Control
33 Board pursuant to Section 25297.1, and the requirements of any
34 underground storage tank ordinance adopted by a city or county.
- 35 (4) The requirements of Article 1 (commencing with Section
36 25500) of Chapter 6.95 concerning hazardous material release
37 response plans and inventories.
- 38 (5) The requirements of Article 2 (commencing with Section
39 25531) of Chapter 6.95, concerning the accidental release
40 prevention program.



1 (6) The requirements of subdivisions (b) and (c) of Section
2 80.103 of the Uniform Fire Code, as adopted by the State Fire
3 Marshal pursuant to Section 13143.9 of the Health and Safety
4 Code, concerning hazardous material management plans and
5 inventories.

6 (d) To the maximum extent feasible within statutory
7 constraints, the secretary shall consolidate, coordinate, and make
8 consistent these requirements of the unified program with other
9 requirements imposed by other federal, state, regional, or local
10 agencies upon facilities regulated by the unified program.

11 (e) (1) The secretary shall establish standards applicable to
12 CUPAs, participating agencies, state agencies, and businesses
13 specifying the data to be collected and submitted by unified
14 program agencies in administering the programs listed in
15 subdivision (c). Those standards shall incorporate any standard
16 developed under Section 25503.3.

17 (2) The secretary shall establish an electronic geographic
18 information management system capable of receiving all data
19 collected by the unified program agencies pursuant to paragraph
20 (1). The secretary shall make all nonconfidential data available on
21 the Internet.

22 ~~SEC. 45.—~~

23 *SEC. 52.* Section 25404.1.1 is added to the Health and Safety
24 Code, to read:

25 25404.1.1. (a) If the unified program agency determines that
26 a person has committed, or is committing, a violation of any law,
27 regulation, permit, information request, order, variance, or other
28 requirement that the UPA is authorized to enforce or implement
29 pursuant to this chapter, the UPA may issue an administrative
30 enforcement order requiring that the violation be corrected and
31 imposing an administrative penalty, in accordance with the
32 following:

33 (1) Except as provided in paragraph (5), if the order is for a
34 violation of Chapter 6.5 (commencing with Section 25100), the
35 violator shall be subject to the applicable administrative penalties
36 provided by that chapter.

37 (2) If the order is for a violation of Chapter 6.7 (commencing
38 with Section 25280), the violator shall be subject to the applicable
39 civil penalties provided in subdivisions (a), (b), and (c) of Section
40 25299.



1 (3) If the order is for a violation of Article 1 (commencing with
2 Section 25500) of Chapter 6.95, the violator shall be subject to a
3 penalty that is consistent with the administrative penalties imposed
4 pursuant to Section 25514.5.

5 (4) If the order is for a violation of Article 2 (commencing with
6 Section 25531) of Chapter 6.95, the violator shall be subject to a
7 penalty that is consistent with the administrative penalties imposed
8 pursuant to Section 25540 or 25540.5.

9 (5) If the order is for a violation of Section 25270.5, the violator
10 shall be liable for a penalty of not more than five thousand dollars
11 (\$5,000) for each day on which the violation continues. If the
12 violator commits a second or subsequent violation, a penalty of not
13 more than ten thousand dollars (\$10,000) for each day on which
14 the violation continues may be imposed.

15 (b) In establishing a penalty amount and ordering that the
16 violation be corrected pursuant to this section, the UPA shall take
17 into consideration the nature, circumstances, extent, and gravity of
18 the violation, the violator's past and present efforts to prevent,
19 abate, or clean up conditions posing a threat to the public health or
20 safety or the environment, the violator's ability to pay the penalty,
21 and the deterrent effect that the imposition of the penalty would
22 have on both the violator and the regulated community.

23 (c) Any order issued pursuant to this section shall be served by
24 personal service or certified mail and shall inform the person
25 served of the right to a hearing. If the UPA issues an order pursuant
26 to this section, the order shall state whether the hearing procedure
27 specified in paragraph (2) of subdivision (e) may be requested by
28 the person receiving the order.

29 (d) Any person served with an order pursuant to this section
30 who has been unable to resolve any violation with the UPA, may
31 within 15 days after service of the order, request a hearing pursuant
32 to subdivision (e) by filing with the UPA a notice of defense. The
33 notice shall be filed with the office that issued the order. A notice
34 of defense shall be deemed filed within the 15-day period provided
35 by this subdivision if it is postmarked within that 15-day period.
36 If no notice of defense is filed within the time limits provided by
37 this subdivision, the order shall become final.

38 (e) Except as provided in subparagraph (B) of paragraph (2), a
39 person requesting a hearing on an order issued by the UPA under
40 this section may select the hearing officer specified in either



1 paragraph (1) or (2) in the notice of defense filed with the UPA
2 pursuant to subdivision (d). If a notice of defense is filed but no
3 hearing officer is selected, the UPA may select the hearing officer.
4 Within 90 days of receipt of the notice of defense by the UPA, the
5 hearing shall be scheduled using one of the following:

6 (1) An administrative law judge of the Office of Administrative
7 Hearings of the Department of General Services, who shall
8 conduct the hearing in accordance with Chapter 4.5 (commencing
9 with Section 11400) of Part 1 of Division 3 of Title 2 of the
10 Government Code, and the UPA shall have all the authority
11 granted to an agency by those provisions.

12 (2) (A) A hearing officer designated by the UPA, who shall
13 conduct the hearing in accordance with Chapter 4.5 (commencing
14 with Section 11400) of Part 1 of Division 3 of Title 2 of the
15 Government Code, and the UPA shall have all the authority
16 granted to an agency by those provisions. When a hearing is
17 conducted by a UPA hearing officer pursuant to this paragraph, the
18 UPA shall issue a decision within 60 days after the hearing is
19 conducted. Each hearing office designated by a UPA shall meet the
20 requirements of Section 11425.30 of the Government Code and
21 any other applicable restriction.

22 (B) A UPA, or a person requesting a hearing on an order issued
23 by a UPA may select the hearing process specified in this
24 paragraph in a notice of defense filed pursuant to subdivision (d)
25 only if the UPA has, as of the date the order is issued pursuant to
26 subdivision (c), selected a designated hearing officer and
27 established a program for conducting a hearing in accordance with
28 this paragraph.

29 (f) The hearing decision issued pursuant to paragraph (2) of
30 subdivision (e) shall be effective and final upon issuance by the
31 UPA. A copy of the decision shall be served by personal service
32 or by certified mail upon the party served with the order, or their
33 representative, if any.

34 (g) Any provision of an order issued under this section, except
35 the imposition of an administrative penalty, shall take effect upon
36 issuance by the UPA if the UPA finds that the violation or
37 violations of law associated with that provision may pose an
38 imminent and substantial endangerment to the public health or
39 safety or the environment. A request for a hearing shall not stay the
40 effect of that provision of the order pending a hearing decision.



1 However, if the UPA determines that any or all provisions of the
2 order are so related that the public health or safety or the
3 environment can be protected only by immediate compliance with
4 the order as a whole, the order as a whole, except the imposition
5 of an administrative penalty, shall take effect upon issuance by the
6 UPA. A request for a hearing shall not stay the effect of the order
7 as a whole pending a hearing decision.

8 (h) A decision issued pursuant to paragraph (2) of subdivision
9 (e) may be reviewed by a court pursuant to Section 11523 of the
10 Government Code. In all proceedings pursuant to this section, the
11 court shall uphold the decision of the UPA if the decision is based
12 upon substantial evidence in the record as a whole. The filing of
13 a petition for writ of mandate shall not stay any action required
14 pursuant to this chapter or the accrual of any penalties assessed
15 pursuant to this chapter. This subdivision does not prohibit the
16 court from granting any appropriate relief within its jurisdiction.

17 (i) All administrative penalties collected from actions brought
18 by a UPA pursuant to this section shall be paid to the UPA that
19 imposed the penalty, and shall be deposited into a special account
20 that shall be expended to fund the activities of the UPA in
21 enforcing this chapter.

22 (j) The UPA shall consult with the district attorney, county
23 counsel, or city attorney on the development of policies to be
24 followed in exercising the authority delegated pursuant to this
25 section as it relates to the authority of the UPA to issue orders.

26 (k) This section does not do any of the following:

27 (1) Otherwise affect the authority of a UPA to take any other
28 action authorized by any other provision of law, except the UPA
29 shall not require a person to pay a penalty pursuant to this section
30 and pursuant to a local ordinance for the same violation.

31 (2) Restrict the power of a city attorney, district attorney,
32 county counsel, or the Attorney General to bring, in the name of
33 the people of California, any criminal proceeding otherwise
34 authorized by law.

35 (3) Prevent the UPA from cooperating with, or participating in,
36 a proceeding specified in paragraph (2).

37 ~~SEC. 46.—~~

38 *SEC. 53.* Section 25404.1.2 is added to the Health and Safety
39 Code, to read:



1 25404.1.2. (a) (1) An authorized representative of the UPA,
2 who in the course of conducting an inspection, detects a minor
3 violation, shall take an enforcement action as to the minor
4 violation only in accordance with this section.

5 (2) In any proceeding concerning an enforcement action taken
6 pursuant to this section, there shall be a rebuttable presumption
7 upholding the determination made by the UPA regarding whether
8 the violation is a minor violation.

9 (b) A notice to comply shall be the only means by which a UPA
10 may cite a minor violation, unless the person cited fails to correct
11 the violation or fails to submit the certification of correction within
12 the time period prescribed in the notice, in which case the UPA
13 may take any enforcement action, including imposing a penalty,
14 as authorized by this chapter.

15 (c) (1) A person who receives a notice to comply detailing a
16 minor violation shall have not more than 30 days from the date of
17 the notice to comply in which to correct any violation cited in the
18 notice to comply. Within five working days of correcting the
19 violation, the person cited or an authorized representative shall
20 sign the notice to comply, certifying that any violation has been
21 corrected, and return the notice to the UPA.

22 (2) A false certification that a violation has been corrected is
23 punishable as a misdemeanor.

24 (3) The effective date of the certification that any violation has
25 been corrected shall be the date that it is postmarked.

26 (d) If a notice to comply is issued, a single notice to comply
27 shall be issued for all minor violations noted during the inspection,
28 and the notice to comply shall list all of the minor violations and
29 the manner in which each of the minor violations may be brought
30 into compliance.

31 (e) If a person who receives a notice to comply pursuant to
32 subdivision (a) disagrees with one or more of the alleged violations
33 listed on the notice to comply, the person shall provide the UPA a
34 written notice of disagreement along with the returned signed
35 notice to comply. If the person disagrees with all of the alleged
36 violations, the written notice of disagreement shall be returned in
37 lieu of the signed certification of correction within 30 days of the
38 date of issuance of the notice to comply. If the issuing agency takes
39 administrative enforcement action on the basis of the disputed



1 violation, that action may be appealed in the same manner as any
2 other alleged violation under Section 25404.1.1.

3 (f) This section may not be construed as doing any of the
4 following:

5 (1) Preventing the reinspection of a facility to ensure
6 compliance with this chapter or to ensure that minor violations
7 cited in a notice to comply have been corrected and that the facility
8 is in compliance with those laws and regulations within the
9 jurisdiction of the UPA.

10 (2) Preventing the UPA from requiring a person to submit
11 necessary documentation needed to support the person's claim of
12 compliance pursuant to subdivision (c).

13 (3) Restricting the power of a city attorney, district attorney,
14 county counsel, or the Attorney General to bring, in the name of
15 the people of California, any criminal proceeding otherwise
16 authorized by law.

17 (4) Preventing the UPA from cooperating with, or participating
18 in, a proceeding specified in paragraph (3).

19 ~~SEC. 47.—~~

20 *SEC. 54.* Section 25514.5 of the Health and Safety Code is
21 amended to read:

22 25514.5. (a) Notwithstanding Section 25514, any business
23 that violates this article is ~~civily~~ liable to an administering agency
24 for an administrative ~~civil~~ penalty, in an amount which shall be set
25 by the governing body of the administering agency, but not greater
26 than two thousand dollars (\$2,000) for each day in which the
27 violation occurs. If the violation results in, or significantly
28 contributes to, an emergency, including a fire or health or medical
29 problem requiring toxicological, health, or medical consultation,
30 the business shall also be assessed the full cost of the county, city,
31 fire district, local EMS agency designated pursuant to Section
32 1797.200, or poison control center as defined by Section 1797.97,
33 emergency response, as well as the cost of cleaning up and
34 disposing of the hazardous materials, or acutely hazardous
35 materials.

36 (b) Notwithstanding Section 25514, any business that
37 knowingly violates this article after reasonable notice of the
38 violation is ~~civily~~ liable for an administrative penalty, in an
39 amount which shall be set by the governing body of the



1 administering agency, but not greater than five thousand dollars
2 (\$5,000) for each day in which the violation occurs.

3 (c) When an ~~administrative~~ *administering* agency issues an
4 enforcement order or assesses an administrative penalty, or both,
5 for a violation of this ~~chapter~~ *article*, the administering agency
6 shall utilize the administrative enforcement procedures specified
7 in Sections 25404.1.1 and 25404.1.2.

8 ~~SEC. 48.—~~

9 *SEC. 55.* Section 25514.6 of the Health and Safety Code is
10 repealed.

11 ~~SEC. 49.—~~

12 *SEC. 56.* *Section 25540 of the Health and Safety Code is*
13 *amended to read:*

14 25540. (a) Any stationary source that violates this article
15 shall be civilly liable to the administering agency in an amount of
16 not more than two thousand dollars (\$2,000) for each day in which
17 the violation occurs. If the violation results in, or significantly
18 contributes to, an emergency, including a fire, the stationary
19 source shall also be assessed the full cost of the county or city
20 emergency response, as well as the cost of cleaning up and
21 disposing of the hazardous materials. *When an administering*
22 *agency issues an enforcement order or assesses an administrative*
23 *penalty, or both, for a violation of this chapter, the administering*
24 *agency shall utilize the administrative enforcement procedures*
25 *specified in Sections 25404.1.1 and 25404.1.2.*

26 (b) Any stationary source that knowingly violates this article
27 after reasonable notice of the violation shall be civilly liable to the
28 administering agency in an amount not to exceed twenty-five
29 thousand dollars (\$25,000) for each day in which the violation
30 occurs and upon conviction, may be punished by imprisonment in
31 the county jail for not more than one year.

32 *SEC. 57.* Section 33459 of the Health and Safety Code is
33 amended to read:

34 33459. For purposes of this article, the following terms shall
35 have the following meanings:

36 (a) “Department” means the Department of Toxic Substances
37 Control.

38 (b) “Director” means the Director of Toxic Substances
39 Control.



1 (c) “Hazardous substance” means any hazardous substance as
2 defined in subdivision (h) of Section 25281, and any reference to
3 hazardous substance in the definitions referenced in this section
4 shall be deemed to refer to hazardous substance, as defined in this
5 subdivision.

6 (d) “Local agency” means a single local agency that is one of
7 the following:

8 (1) A local agency authorized pursuant to Section 25283 to
9 implement Chapter 6.7 (commencing with Section 25280) of, and
10 Chapter 6.75 (commencing with Section 25299.10) of, Division
11 20.

12 (2) A local officer who is authorized pursuant to Section
13 101087 to supervise a remedial action.

14 (e) “Qualified independent contractor” means an independent
15 contractor who is any of the following:

16 (1) An engineering geologist who is certified pursuant to
17 Section 7842 of the Business and Professions Code.

18 (2) A geologist who is registered pursuant to Section 7850 of
19 the Business and Professions Code.

20 (3) A civil engineer who is registered pursuant to Section 6762
21 of the Business and Professions Code.

22 (f) “Release” means any release, as defined in Section 25320.

23 (g) “Remedy” or “remove” means any action to assess,
24 evaluate, investigate, monitor, remove, correct, clean up, or abate
25 a release of a hazardous substance or to develop plans for those
26 actions. “Remedy” includes any action set forth in Section 25322
27 and “remove” includes any action set forth in Section 25323.

28 (h) “Responsible party” means any person described in
29 subdivision (a) of Section 25323.5 of this code or any person
30 specified in subdivision (a) of Section 13304 of the Water Code
31 who is subject to an order issued pursuant to that section.

32 ~~SEC. 50.—~~

33 *SEC. 58. Section 116367 is added to the Health and Safety*
34 *Code, to read:*

35 *116367. (a) The Legislature finds and declares that*
36 *oxygenated gasoline has contaminated groundwater and surface*
37 *water used for drinking water purposes. The Legislature further*
38 *declares that it is in the public interest to provide funding to pay*
39 *for corrective action needed to protect public health and the*



1 *environment as a result of oxygenate contamination of drinking*
2 *water.*

3 *(b) For the purposes of this section, the following terms have*
4 *the following meanings:*

5 *(1) “Drinking water fund” means the Drinking Water*
6 *Treatment and Research Fund created pursuant to subdivision (c).*

7 *(2) “Financial hardship” means a public water system does*
8 *not have sufficient resources not otherwise dedicated for a*
9 *specified purpose, including, but not limited to, debt service*
10 *requirements, to pay for necessary treatment works, conduct an*
11 *investigation into the source of contamination, or acquire*
12 *alternate drinking water supplies and leave sufficient reserves*
13 *available to enable the system owner or operator to address*
14 *economic uncertainties to pay for contingencies.*

15 *(3) “Fund” means the Drinking Water Treatment and Research*
16 *Fund created pursuant to subdivision (c).*

17 *(4) “Oxygenate” has the same meaning as oxygenate as*
18 *defined in Section 25299.97.*

19 *(5) “Public water system” means a public water system, as*
20 *defined in Section 116275.*

21 *(6) “Drinking water supply” means a source of drinking water*
22 *that has been approved by the department.*

23 *(c) The Drinking Water Treatment and Research Fund is hereby*
24 *created in the State Treasury.*

25 *(d) Notwithstanding Section 13340 of the Government Code,*
26 *the money in the fund is hereby continuously appropriated to the*
27 *department for all of the following purposes:*

28 *(1) To make payments to a public water system for the*
29 *incremental costs of treating groundwater and surface water used*
30 *for drinking water purposes that has been contaminated by an*
31 *oxygenate if the level of contamination exceeds the lowest of any*
32 *primary or secondary drinking water standard adopted pursuant*
33 *to Section 116365 or 116610. Treatment for surface water shall be*
34 *for surface water that supplies water to a treatment facility for a*
35 *water supply system that serves domestic uses.*

36 *(2) To make payments to a public water system for the costs of*
37 *investigating the possible source and extent of contamination*
38 *when the department determines that an oxygenate is detected at*
39 *any level in groundwater supplies utilized by a public water system*
40 *for drinking water purposes. Costs eligible for payment under this*



1 paragraph may include the costs of acquiring alternate drinking
2 water supplies if the well is required by the department or a
3 California regional water quality control board to be shut down or
4 its use curtailed during the investigation. Cost eligible for payment
5 under this paragraph include the cost of connecting a public water
6 system to another public water system or constructing a new
7 drinking water well.

8 (3) To make payments to a public water system for the
9 incremental costs of acquiring alternate drinking water supplies
10 to replace supplies contaminated by an oxygenate at a level that
11 exceeds the lowest of any primary or secondary drinking water
12 standard adopted pursuant to Section 116365 or 116610. Costs
13 eligible for payment under this paragraph include the costs of
14 connecting a public water system to another public water system
15 or constructing a new drinking water well.

16 (4) To conduct research and develop cost-effective treatment
17 technologies to treat drinking water contaminated by an oxygenate
18 to meet primary or secondary drinking water standards and
19 effective strategies to protect drinking water sources from
20 contamination by oxygenates. The department shall not expend
21 more than one million dollars (\$1,000,000) annually for these
22 purposes and may enter into cooperative agreements with federal
23 and state agencies, local agencies, or other persons to conduct
24 research and development activities.

25 (5) To pay the administrative costs, not to exceed 5 percent, for
26 the department to administer this section.

27 (6) To make payments to a public water system for the
28 incremental costs of acquiring an alternate drinking water supply
29 where the department has determined that a drinking water supply
30 would become contaminated by an oxygenate at a level that
31 exceeds the lowest of any primary or secondary drinking water
32 standard if the public water system continues to use the drinking
33 water supply.

34 (e) The department shall report annually to the Governor and
35 to the Legislature on any money provided to a public water system
36 pursuant to this section.

37 (f) The department shall be reimbursed by a public water
38 system that has received funds pursuant to this section, to the extent
39 that the public water system receives payment from any source to
40 cover the costs for which it received funding under this section. The



1 *public water system shall aggressively pursue cost recovery from*
2 *responsible persons and upon recovery, or within five years of the*
3 *initial payment received, whichever occurs first, shall reimburse*
4 *the department for funds received pursuant to the section, unless*
5 *the public water system can demonstrate that despite all*
6 *reasonable efforts, recovery from a responsible party is not*
7 *possible, or that a responsible party cannot be identified. The*
8 *department shall transfer any reimbursements received from a*
9 *public water system into the fund or the Underground Storage Tank*
10 *Cleanup Fund, whichever provided the funds.*

11 *(g) The department may make payments pursuant to*
12 *paragraphs (1), (2), and (3) of subdivision (d) without regard to*
13 *when the contamination occurred or when costs for treating or*
14 *investigation the source of contamination or acquiring*
15 *replacement water were incurred, except that a public water*
16 *system may not receive more than three million dollars*
17 *(\$3,000,000) from the drinking water fund in any fiscal year unless*
18 *the public water system makes a showing of financial hardship.*

19 *(h) (1) The department may make payments pursuant to*
20 *paragraphs (1), (2), (3), and (6) of subdivision (d), without*
21 *requiring a public water system to first incur expenditures, if the*
22 *department determines that a situation exists that requires prompt*
23 *action by the public water system to protect human health or the*
24 *environment, or the public water system makes a showing of*
25 *financial hardship.*

26 *(2) Upon a showing of financial hardship, pursuant to*
27 *paragraph (1), the public water system shall present the*
28 *department with a work plan that specifies the estimated costs of*
29 *treatment, constructing a new drinking water well, or obtaining an*
30 *alternate water supply. The estimated costs of treatment or*
31 *constructing a new well to provide replacement water shall be*
32 *prepared by a registered civil engineer or other registered*
33 *professional. The estimated costs for acquiring an alternate water*
34 *supply, other than a new well, shall be substantiated by an*
35 *identification of necessary capital facilities to convey the water to*
36 *the public water system and a written offer by another entity to*
37 *provide the alternate water supply.*

38 *(3) The department shall prescribe forms and procedures for*
39 *claims filed pursuant to this section as necessary to ascertain*
40 *eligibility for payment and validity of incremental costs based on*



1 generally accepted accounting principles. The department shall
2 not require an applicant to prepare an economic feasibility study
3 regarding the acquisition of an alternate water supply. The
4 department may require a description of site-specific information,
5 including the origin of contamination, the petroleum products
6 released, and the status of cleanup and abatement activities at
7 potential leaking underground storage tank sites if that
8 information is available to the applicant.

9 (4) The department shall provide payment within 60 days of
10 receiving a claim filed pursuant to this section.

11 (5) A claim shall be deemed true and correct if not audited by
12 the department within three years of payment.

13 (i) The department, in evaluating claims submitted for payment
14 from the fund, shall consider the findings of the University of
15 California report regarding the assessment undertaken pursuant
16 to Section 3 of Chapter 816 of the Statutes of 1997, as those
17 findings relate to the assessment of the human health and
18 environmental risks and benefits, if any, associated with the use of
19 MTBE in gasoline. In particular, the department shall consider
20 findings in the report regarding the evaluations of the costs and
21 effectiveness of treatment technologies available to remove MTBE
22 from drinking water.

23 (j) Any funds transferred to the fund pursuant to Section
24 25299.99.1 may be used for the purposes of this section only if a
25 public drinking water well has been contaminated by an oxygenate
26 and there is substantial evidence that the contamination was
27 caused by a release from an underground storage tank.

28 (k) (1) This section shall remain in effect only until January 1,
29 2010, and as of that date is repealed, unless a later enacted statute,
30 which is enacted before January 1, 2010, deletes or extends that
31 date.

32 (2) The repeal of this section does not terminate any of the
33 following rights, obligations or authorities, or any provision
34 necessary to carry out these rights or obligations:

35 (A) The filing and payment of claims in the fund, until the
36 moneys in the fund are exhausted. Upon exhaustion of the fund,
37 any remaining claims shall be invalid.

38 (B) The resolution of any cost recovery action.

39 (l) Any commitment made by the department on or after
40 January 1, 2001, to expend funds pursuant to this section, as it read



1 on December 31, 2001, is hereby ratified. The department may
2 approve any expenses incurred by water systems pursuant to these
3 commitments.

4 *SEC. 59.* Section 13285 of the Water Code is amended to read:

5 13285. (a) Any discharge from a storage tank, pipeline, or
6 other container of methyl tertiary-butyl ether (MTBE), or of any
7 pollutant that contains MTBE, that poses a threat to drinking
8 water, or to groundwater or surface water that may reasonably be
9 used for drinking water, or to coastal waters shall be cleaned up to
10 a level consistent with subdivisions (a) and (b) of Section
11 25296.10 of the Health and Safety Code.

12 (b) (1) No public water system, or its customers, shall be
13 responsible for remediation or treatment costs associated with
14 MTBE, or a product that contains MTBE. However, the public
15 water system may, as necessary, incur MTBE remediation and
16 treatment costs and include those costs in its customer rates and
17 charges that are necessary to comply with drinking water standards
18 or directives of the State Department of Health Services or other
19 lawful authority. Any public water system that incurs MTBE
20 remediation or treatment costs may seek recovery of those costs
21 from parties responsible for the MTBE contamination, or from
22 other available alternative sources of funds.

23 (2) If the public water system has included the costs of MTBE
24 treatment and remediation in its customer rates and charges, and
25 subsequently recovers all, or a portion of, its MTBE treatment and
26 remediation costs from responsible parties or other available
27 alternative sources of funds, it shall make an adjustment to its
28 schedule of rates and charges to reflect the amount of funding
29 received from responsible parties or other available alternative
30 sources of funds for MTBE treatment or remediation.

31 (3) Paragraph (1) shall not prevent the imposition of liability on
32 any person for the discharge of MTBE if that liability is due to the
33 conduct or status of that person independently of whether the
34 person happens to be a customer of the public water system.

35 ~~SEC. 51.~~

36 *SEC. 60.* Section 13323 of the Water Code is amended to read:

37 13323. (a) Any executive officer of a regional board may
38 issue a complaint to any person on whom administrative civil
39 liability may be imposed pursuant to this article. The complaint
40 shall allege the act or failure to act that constitutes a violation of



1 law, the provision of law authorizing civil liability to be imposed
2 pursuant to this article, and the proposed civil liability.

3 (b) The complaint shall be served by certified mail or in
4 accordance with Article 3 (commencing with Section ~~415.10~~
5 *415.10*) of, and Article 4 (commencing with Section 416.10) of,
6 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, and
7 shall inform the party so served that a hearing shall be conducted
8 within 90 days after the party has been served. The hearing shall
9 be before a panel of the regional board, consisting of three or more
10 members of the regional board as it may specify, or before the
11 regional board. The person who has been issued a complaint may
12 waive the right to a hearing.

13 (c) After any hearing, the panel shall report its proposed
14 decision and order to the regional board and shall, at the time it
15 reports its decision to the regional board, supply a copy to the party
16 served with the complaint, the party issuing the complaint, and any
17 other person requesting a copy. Members of the panel may sit as
18 members of the board in deciding the matter. The regional board,
19 after making an independent review of the record and taking any
20 additional evidence as may be necessary and could not reasonably
21 have been offered before the hearing panel, may adopt, with or
22 without revision, the proposed decision and order of the panel.

23 (d) In proceedings under this article for imposition of
24 administrative civil liability by the state board, the executive
25 director of the state board shall issue the complaint and any hearing
26 shall be before the state board, or before a member of the state
27 board in accordance with Section 183.

28 (e) Orders imposing administrative civil liability shall become
29 effective and final upon issuance thereof, and are not subject to
30 review by any court or agency except as provided by Sections
31 13320 and 13330. Payment shall be made not later than 30 days
32 from the date on which the order is issued. The time for payment
33 is extended during the period in which a person who is subject to
34 an order seeks review under Section 13320 or 13330. Copies of
35 these orders shall be served by certified mail or in accordance with
36 Article 3 (commencing with Section 415.10) of, and Article 4
37 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part
38 2 of the Code of Civil Procedure upon the party served with the
39 complaint and shall be provided to other persons who appeared at
40 the hearing and requested a copy.



1 ~~SEC. 52.~~—

2 *SEC. 61.* Section 13365 of the Water Code is amended to read:

3 13365. (a) (1) For purposes of this article, unless the context
4 otherwise requires, “agency” means the state board or a regional
5 board.

6 (2) The terms used in this article shall have the same meaning
7 as the definitions specified in the statutory authority under which
8 the agency takes any action subject to this article, except that,
9 notwithstanding Section 25317 of the Health and Safety Code, for
10 purposes of this article, “hazardous substance” includes a
11 hazardous substance specified in subdivision (h) of Section 25281
12 of the Health and Safety Code.

13 (b) On or before July 1, 1997, the agency shall adopt a billing
14 system for the agency’s cost recovery of investigation, analysis,
15 planning, implementation, oversight, or other activity related to
16 the removal or remedial or corrective action of a release of a
17 hazardous substance that includes both of the following:

18 (1) Billing rates and overhead rates by employee job
19 classification.

20 (2) Standardized description of work tasks.

21 (c) Notwithstanding any other provision of law, after July 1,
22 1997, any charge imposed upon a responsible party by the agency,
23 to compensate the agency for some, or all, of its costs incurred in
24 connection with the agency’s investigation, analysis, planning,
25 implementation, oversight, or other activity related to a removal
26 or remedial action or a corrective action to a release of a hazardous
27 substance, shall not be assessed or collected unless all of the
28 following requirements are met:

29 (1) Except as provided in subdivision (f), prior to commencing
30 the work or service for which the charge is assessed, and at least
31 annually thereafter if the work or service is continuing, the agency
32 shall provide all of the following information to the responsible
33 party:

34 (A) A detailed estimate of the work to be performed or services
35 to be provided, including a statement of the expected outcome of
36 that work, based upon data available to the agency at the time.

37 (B) The billing rates for all individuals and classes of
38 employees expected to engage in the work or service.



1 (C) An estimate of all expected charges to be billed to the
2 responsible party by the agency, including, but not limited to, any
3 overhead assessments that the agency may be authorized to levy.

4 (2) (A) Invoices shall be issued not less than semiannually
5 with appropriate incentives for prompt payment.

6 (B) Invoices shall be mailed to the correct person or persons for
7 the responsible party or parties.

8 (C) Invoices shall provide a daily detail of work performed and
9 time spent by each employee and contractor employee using the
10 billing and overhead rates and the standardized description of
11 work tasks adopted pursuant to subdivision (b).

12 (D) Invoices shall include the source and amount of all other
13 charges.

14 (E) Invoices shall be supplemented with statements of any
15 changes in rates and a justification for any changes.

16 (F) Invoices shall be reviewed for accuracy and
17 appropriateness.

18 (3) Upon request and within a reasonable time, not to exceed
19 30 working days from the date of receipt of a request, the agency
20 shall provide the responsible party with copies of time records and
21 other materials supporting the invoice described in paragraph (2).
22 No fees or charges may be assessed for the preparation and
23 delivery of those copies pursuant to this section.

24 (4) The agency shall identify a party who is responsible for
25 resolving disputes regarding the charges subject to this section and
26 who is not responsible for, or performing, the work or service for
27 which the charges are assessed.

28 (d) The agency may adjust the scope of the work or service,
29 type of studies, or other tasks to be performed, based upon analyses
30 necessary to accommodate new information regarding the extent
31 of contamination of the site, and only after providing written
32 notice of the change to the responsible party containing the
33 information specified in paragraph (1) of subdivision (c).

34 (e) The agency may increase billing rates not more than once
35 each calendar year, to the extent authorized by law. Any increase
36 in billing rates or other charges, including, but not limited to,
37 overhead charges, shall operate prospectively only, and shall take
38 effect not sooner than 10 days from the date that written notice has
39 been provided to the responsible party.



1 (f) (1) Paragraph (1) of subdivision (c) shall not apply when a
2 situation exists that requires prompt action to protect human health
3 or safety or the environment.

4 (2) Paragraph (1) of subdivision (c) does not apply with respect
5 to those responsible parties who are not identified until after the
6 beginning of a removal or remedial action or corrective action to
7 a release of a hazardous substance.

8 ~~SEC. 53.—~~

9 *SEC. 62.* Section 13391.5 of the Water Code is amended to
10 read:

11 13391.5. The definitions in this section govern the
12 construction of this chapter.

13 (a) “Enclosed bays” means indentations along the coast which
14 enclose an area of oceanic water within distinct headlands or
15 harbor works. “Enclosed bays” include all bays where the
16 narrowest distance between the headlands or outermost harbor
17 works is less than 75 percent of the greatest dimension of the
18 enclosed portion of the bay. “Enclosed bays” include, but are not
19 limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake’s
20 Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach
21 Harbor, Upper and Lower Newport Bay, Mission Bay, and San
22 Diego Bay. For the purposes of identifying, characterizing, and
23 ranking toxic hot spots pursuant to this chapter, Monterey Bay and
24 Santa Monica Bay shall also be considered to be enclosed bays.

25 (b) “Estuaries” means waters, including coastal lagoons,
26 located at the mouths of streams which serve as mixing zones for
27 fresh and ocean waters. Coastal lagoons and mouths of streams
28 which are temporarily separated from the ocean by sandbars shall
29 be considered as estuaries. Estuarine waters shall be considered to
30 extend from a bay or the open ocean to a point upstream where
31 there is no significant mixing of fresh water and sea water.
32 Estuarine waters include, but are not limited to, the
33 Sacramento-San Joaquin Delta, as defined in Section 12220,
34 Suisun Bay, Carquinez Strait downstream to the Carquinez
35 Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo,
36 Russian, Klamath, San Diego, and Otay Rivers.

37 (c) “Health risk assessment” means an analysis which
38 evaluates and quantifies the potential human exposure to a
39 pollutant that bioaccumulates or may bioaccumulate in edible fish,
40 shellfish, or wildlife. “Health risk assessment” includes an



1 analysis of both individual and population wide health risks
2 associated with anticipated levels of human exposure, including
3 potential synergistic effects of toxic pollutants and impacts on
4 sensitive populations.

5 (d) “Sediment quality objective” means that level of a
6 constituent in sediment which is established with an adequate
7 margin of safety, for the reasonable protection of the beneficial
8 uses of water or the prevention of nuisances.

9 (e) “Toxic hot spots” means locations in enclosed bays,
10 estuaries, or any adjacent waters in the “contiguous zone” or the
11 “ocean,” as defined in Section 502 of the Clean Water Act (33
12 U.S.C. Sec. 1362), the pollution or contamination of which affects
13 the interests of the state, and where hazardous substances have
14 accumulated in the water or sediment to levels which (1) may pose
15 a substantial present or potential hazard to aquatic life, wildlife,
16 fisheries, or human health, or (2) may adversely affect the
17 beneficial uses of the bay, estuary, or ocean waters as defined in
18 water quality control plans, or (3) exceeds adopted water quality
19 or sediment quality objectives.

20 (f) “Hazardous substances” has the same meaning as defined
21 in subdivision (h) of Section 25281 of the Health and Safety Code.

22 ~~SEC. 54.—~~

23 *SEC. 63.* No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the costs that may be incurred by a local agency or school district
26 will be incurred because this act creates a new crime or infraction,
27 eliminates a crime or infraction, or changes the penalty for a crime
28 or infraction, within the meaning of Section 17556 of the
29 Government Code, or changes the definition of a crime within the
30 meaning of Section 6 of Article XIII B of the California
31 Constitution, or because a local agency or school district has the
32 authority to levy service charges, fees, or assessments sufficient to
33 pay for the program or level of service mandated by this act, within
34 the meaning of Section 17556 of the Government Code.



1		_____
2	CORRECTIONS	
3	Heading — Line 1.	
4	Title — Line 1.	
5	Digest — Page 2.	
6	Text — Pages 3,4.	
7		_____
8		

