

Assembly Bill No. 358

CHAPTER 571

An act to amend Sections 25295, 25296.10, 25296.35, 25296.40, 25299.39.2, 25299.57, and 25299.58 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 2011. Filed with
Secretary of State October 8, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 358, Smyth. Hazardous substances: underground storage tanks: releases: reports.

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks, including requiring underground storage tanks that are used to store hazardous substances to meet certain requirements. Existing law requires tank owners and operators to report unauthorized releases to local agencies, which includes specified information, and requires the State Water Resources Control Board to continuously post and update on its Internet Web site reports of information concerning unauthorized releases.

This bill would instead require the owner or operator to transmit certain information regarding an unauthorized release to the local agency on a written form or using an electronic format developed by the board and approved by the Secretary for Environmental Protection. The bill would require additional information to be provided to the local agency. The bill would also instead require each regional board and local agency to submit a report to the board for all unauthorized releases using the board's Internet-accessible database, thereby imposing a state-mandated local program by imposing new duties upon local agencies. The bill would require the board to annually post and update on its Internet Web site the information in those reports concerning unauthorized releases.

The bill would authorize the board to adopt regulations to specify reporting requirements to implement these provisions, including electronic submission requirements for these reports. The bill would require the regulations to be adopted as emergency regulations and would exempt the adoption of these regulations from certain requirements regarding review by the Office of Administrative Law.

(2) Existing law requires a uniform closure letter to be issued to the owner, operator, or other responsible party taking corrective action at an underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the State Water Resources Control Board, upon a finding that the underground storage tank site is in compliance with

specified requirements and with any corrective action regulations adopted by the board and that no further corrective action is required at the site.

This bill would require that closure letters issued pursuant to the above-described provisions on or after January 1, 2012, include language notifying the owner, operator, or other responsible party of the filing deadline for claims for reimbursement of corrective action costs that are received by the board more than 365 days after the date of issuance of a closure letter or after the issuance or activation of a letter of commitment, whichever occurs later.

(3) Existing law authorizes the State Water Resources Control Board to close a tank case if that tank case is under the jurisdiction of a regional board or a local agency implementing a local oversight program and the board determines that the corrective action at the site complies with specified requirements. Existing law allows the board to recommend that a local agency close that tank case if the tank case is at a site of a local agency that is not implementing the local oversight program. Existing law also authorizes the manager of the Underground Storage Tank Cleanup Fund, with the approval of the tank owner or operator, to make a recommendation to the board for closure of any tank case.

This bill would instead authorize the board to require closure of any underground storage tank case where an unauthorized release has occurred and the board makes that determination. The bill would delete the board's authority to recommend closure to a local agency that is not implementing the local oversight program. The board would be required, before closing or requiring closure of an underground storage tank case, to provide an opportunity for reviewing and providing responses to the petition or the manager's recommendation to the applicable regional board, local agency, specified water district, or special act district with groundwater management authority.

This bill would, upon the manager of the fund recommending case closure, to limit reimbursement of subsequently incurred corrective action costs to \$10,000 per year, except as specified.

(4) Existing law allows a person required to perform corrective action pursuant to a specified provision to apply to the State Water Resources Control Board for payment of a claim for specified portions of the costs of the corrective action and third-party damages.

This bill would additionally authorize a person required to perform corrective action under certain federal laws to apply to the board for payment of a claim. The bill would also require that claims for reimbursement of corrective action costs that are received by the board more than 365 days after the date of issuance of a closure letter or after the issuance or activation of a letter of commitment, whichever occurs later, not be reimbursed unless one of 2 specified conditions apply. The bill would require the board, for cases that have been issued a closure letter prior to January 1, 2012, to notify claimants of the 365-day filing deadline on or before March 31, 2012, or upon issuance of a letter of commitment, whichever occurs later.

(5) The bill would declare that it is to take effect immediately as an urgency statute, but the changes made by the bill would only become operative if, and on the date that, AB 291 is chaptered.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 25295 of the Health and Safety Code is amended to read:

25295. (a) (1) An unauthorized release that escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes deterioration of the secondary containment of the underground tank system shall be reported by the owner or operator to the local agency designated pursuant to Section 25283 within 24 hours after the release has been detected or should have been detected. The owner or operator of the underground tank system shall transmit the information specified in this paragraph regarding the unauthorized release to the local agency no later than five working days after the date of the occurrence of the unauthorized release. The information shall be submitted to the local agency on a written form or using an electronic format developed by the board and approved by the Secretary for Environmental Protection as consistent with the standardized electronic format and protocol requirements of Sections 71060 to 71065, inclusive, of the Public Resources Code. Either reporting method shall include all of the following:

- (A) A description of the nature and volume of the unauthorized release.
- (B) The corrective or remedial actions undertaken.
- (C) Any further corrective or remedial actions, including investigative actions, that will be needed to clean up the unauthorized release and abate the effects of the unauthorized release.
- (D) A time schedule for implementing the actions specified in subparagraph (C).
- (E) The source and cause of the unauthorized release.
- (F) The underground storage tank system's record of compliance with this chapter, including data on equipment failures.
- (G) Any other information the board deems necessary to implement or comply with this chapter, Chapter 6.75 (commencing with Section 25299.10), or the federal act.

(2) The local agency shall review the permit whenever there has been an unauthorized release or when it determines that the underground tank system is unsafe. In determining whether to modify or terminate the permit, the local agency shall consider the age of the tank, the methods of

containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(b) (1) Each regional board and local agency shall submit a report to the board for all unauthorized releases, indicating for each unauthorized release the responsible party, the site name, the hazardous substance, the quantity of the unauthorized release if known, the actions taken to abate the problem, the source and cause of the unauthorized release, the underground storage tank system's record of compliance with this chapter, data on equipment failures, and any other information that the board deems necessary to implement this chapter, Chapter 6.75 (commencing with Section 25299.10), or the federal act.

(2) The information required by this subdivision shall be submitted to the board and updated using the board's Internet-accessible database that accepts data pursuant to Section 13196 of the Water Code.

(3) On and before December 1, 2012, and not less than annually thereafter, the board shall post and update on its Internet Web site, the information concerning unauthorized releases in the reports submitted pursuant to this subdivision.

(4) The board may adopt regulations pursuant to Section 25299.3 that specify reporting requirements for the implementation of this section, including, but not limited to, requirements for the electronic submission of the information required in a report submitted pursuant to this subdivision. If the board adopts these regulations, the board shall adopt the regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary to avoid serious harm to the public peace, health, safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted pursuant to this subdivision shall be filed with, but shall not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the board.

(c) The reporting requirements imposed by this section are in addition to any requirements that may be imposed by Sections 13271 and 13272 of the Water Code.

SEC. 2. Section 25296.10 of the Health and Safety Code is amended to read:

25296.10. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this chapter and the regulations adopted pursuant to Section 25299.3. In adopting corrective action regulations, the board shall develop corrective

action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b). The corrective action regulations adopted by the board pursuant to Section 25299.77 to implement Section 25299.37, as that section read on January 1, 2002, that were in effect before January 1, 2003, shall continue in effect on and after January 1, 2003, until revised by the board to implement this section and shall be deemed to have been adopted pursuant to Section 25299.3.

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

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

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

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review a work plan prepared pursuant to paragraph (1) and either accept the work plan, if it meets the requirements of the section, or disapprove the work plan if it does not meet those requirements. If the local agency, board, or the regional board accepts the work plan, it shall indicate to the owner, operator, or other responsible party, the actions or other elements of the work plan that are, in all likelihood, adequate and necessary to meet the requirements of this section, and the actions and elements that may be unnecessary. If the local agency, board, or regional board disapproves the work plan, it shall state the reasons for the disapproval.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed action after the work plan has been submitted but before the work plan has received regulatory agency acceptance, except that

implementation of the work plan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted work plan.

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

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

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

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

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

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

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

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

a regional board, or local agency may also recover its costs pursuant to Section 25299.70.

(g) The following uniform closure letter shall be issued to the owner, operator, or other responsible party taking corrective action at an underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the board, upon a finding that the underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) and with any corrective action regulations adopted pursuant to Section 25299.3 and that no further corrective action is required at the site:

“[Case File Number]

Dear [Responsible Party]

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

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

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

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

Sincerely,

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

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

(i) On or after January 1, 2012, uniform closure letters issued pursuant to subdivision (g) shall include language notifying the owner, operator, or other responsible party of the 365-day claim filing deadline specified in paragraph (1) of subdivision (l) of Section 25299.57.

SEC. 3. Section 25296.35 of the Health and Safety Code is amended to read:

25296.35. (a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public and shall include the reports submitted to the board by regional boards or local agencies pursuant to

Section 25295. A site included in the data system shall be clearly designated as having no residual contamination if, at the time a closure letter is issued for the site pursuant to Section 25296.10 or at any time after that closure letter is issued, the board determines that no residual contamination remains on the site.

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

SEC. 4. Section 25296.40 of the Health and Safety Code is amended to read:

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

(2) Upon receipt of a petition pursuant to paragraph (1), the board may close any underground storage tank case or require closure of any underground storage tank case where an unauthorized release has occurred, if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3. Before closing or requiring closure of an underground storage tank case, the board shall provide an opportunity for reviewing and providing responses to the petition to the applicable regional board and local agency, and to the water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the underground storage tank case is located in the jurisdiction of that district.

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

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

SEC. 5. Section 25299.39.2 of the Health and Safety Code is amended to read:

25299.39.2. (a) (1) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by

the tank owner or operator within 30 days of the notification. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close any tank case or require the closure of any tank case where an unauthorized release has occurred if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3. Before closing or requiring closure of an underground storage tank case, the board shall provide an opportunity for reviewing and providing responses to the manager's recommendation to the applicable regional board and local agency, and to the water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the underground storage tank case is located in the jurisdiction of that district.

(2) Except as provided in paragraph (3), if the manager recommends closing a tank case pursuant to paragraph (1), the board shall limit reimbursement of subsequently incurred corrective action costs to ten thousand dollars (\$10,000) per year.

(3) The board may allow reimbursement of corrective action costs in excess of the ten thousand dollar (\$10,000) limit specified in paragraph (2) if the board determines that corrective action costs related to the closure will exceed this amount, or that additional corrective action is necessary to meet the requirements specified in subdivisions (a) and (b) of Section 25296.10.

(b) An aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to paragraph (1) of subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

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

SEC. 6. Section 25299.57 of the Health and Safety Code is amended to read:

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars (\$1,500,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective

action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. The board shall notify claimants applying for satisfaction of claims from the fund of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement shall follow the notice of eligibility as soon thereafter as possible.

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

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

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

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

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

(c) (1) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(2) If the claim is for reimbursement of costs incurred pursuant to a performance-based contract, Article 6.5 (commencing with Section 25299.64) shall apply to that claim.

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

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

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, under the federal act, or under Section 6973 of Title 42 of the United States Code, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B), (C), and (F), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required

by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with either subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

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

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

(D) (i) A claimant exempted pursuant to subparagraph (C) and who has complied, on or before December 22, 1998, either with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections, shall obtain a level of financial responsibility twice as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but not less than ten thousand dollars (\$10,000). All other claimants exempted pursuant to subparagraph (C) shall obtain a level of financial responsibility that is four times as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but not less than twenty thousand dollars (\$20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive,

of subparagraph (C) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on a site evaluation and tank tests at the time of permit application or in any other manner acceptable to the board.

(E) All claimants who file a claim before January 1, 2008, and who are not eligible for a waiver of the permit requirements pursuant to applicable statutes or regulations in effect on the date of the filing of the claim may resubmit a new claim pursuant to subparagraph (C) on or after January 1, 2008. The board shall rank all claims resubmitted pursuant to subparagraph (C) lower than all claims filed before January 1, 2008, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(F) The board shall waive the provisions of subparagraph (A) as a condition for payment from the fund for a claimant who filed his or her claim on or after January 1, 2008, and before July 1, 2009, but is not eligible for a waiver of the permit requirement pursuant to the regulations adopted by the board in effect on the date of the filing of the claim, and who did not obtain or apply for a permit required by subdivision (a) of Section 25284, if the board finds all of the following:

(i) The claim is filed pursuant to paragraph (2) of subdivision (h) of Section 25299.54 and the claim otherwise satisfies the eligibility requirements of that paragraph.

(ii) The claimant became the owner or de facto owner of an underground storage tank prior to December 22, 1998.

(iii) The claimant did not, and does not, operate the underground storage tank.

(iv) Within three years after becoming the owner or de facto owner of the underground storage tank but not after December 22, 1998, the claimant caused the underground storage tank to be removed and closed in accordance with applicable law, and commenced no later than December 22, 1998, to perform corrective action pursuant to Section 25296.10 of this code or pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(G) The board shall rank all claims submitted pursuant to subparagraph (F) in their respective priority classes specified in subdivision (b) of Section 25299.52 in the order in which the claims are received by the board, but subsequent to any claim filed on a previous date in each of those priority classes.

(H) For purposes of clauses (ii) and (iv) of subparagraph (F), “de facto owner of an underground storage tank” means a person who purchases or otherwise acquires real property, as defined in subparagraph (D) of paragraph (5) of subdivision (h) of Section 25299.54, and has actual possession of, and control over, an underground storage tank that has been abandoned by its previous owner.

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

(6) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing

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

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

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

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

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

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

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

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

(i) (1) To the extent funding is available, the board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25296.10, and all costs that are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(2) If corrective action costs, third-party compensation costs, or regulatory technical assistance costs submitted by a claimant are approved for reimbursement by the board but funding is not available for payment to the claimant at the time of approval, the board shall reimburse carrying costs incurred by the claimant after November 7, 2008, but before June 30, 2010, subject to all of the following limitations:

(A) The reimbursement for carrying costs shall not exceed the carrying costs actually incurred by the claimant from the date the corrective action costs, third-party compensation costs, or regulatory technical assistance

costs are approved for payment by the board until the date that a check for the reimbursement request is issued by the Controller.

(B) The reimbursement for carrying costs shall not exceed an amount equivalent to a maximum annual percentage rate of 7 percent as applied to the amount approved for reimbursement and for the period calculated pursuant to subparagraph (A).

(C) The board shall not reimburse carrying costs that amount to less than one hundred dollars (\$100) per reimbursement request.

(D) The board shall not reimburse carrying costs that exceed 9 percent of the total amount of costs approved for the reimbursement to which the carrying costs apply.

(E) A claimant may submit a request for reimbursement of carrying costs after receipt of fund reimbursement for the corrective action costs, third-party compensation costs, or regulatory technical assistance costs to which the carrying costs apply. Additional carrying costs associated with a reimbursement request for carrying costs submitted pursuant to this paragraph are not eligible for payment.

(F) This paragraph does not apply to tank owners or operators that are not described in paragraphs (1), (2), or (3) of subdivision (b) of Section 25299.52.

(3) For the purposes of paragraph (2), “carrying cost” means the interest expense incurred by a claimant to acquire money to pay costs approved for reimbursement by the board but for which reimbursement is delayed because funds are unavailable.

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

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

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been the subject of a completed corrective action and for which additional corrective action is required because of additionally discovered contamination from the previous release, only if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b), and only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by subdivision (a). Reimbursement to a claimant on a reopened site shall occur when funds are available, and reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if

funding has occurred on the original claim, in which case funding shall occur at the time it would have occurred under the original claim.

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

(l) (1) Claims for reimbursement of corrective action costs that are received by the board more than 365 days after the date of issuance of a closure letter issued pursuant to subdivision (g) of Section 25296.10 or after the issuance or activation of a letter of commitment, whichever occurs later, shall not be reimbursed unless either of the following applies:

(A) Claims for corrective action costs are submitted to the board pursuant to paragraph (1) of subdivision (k).

(B) The board finds that submission within the time period specified in this paragraph was beyond the claimant's reasonable control, ongoing work is required for closure that will result in submission of claims beyond that time period, or that under the circumstances of the particular case, it would be unreasonable or inequitable to impose the time period specified in this paragraph.

(2) This section does not limit or abrogate the rights of a claimant in disputing reimbursement determinations or suspension of claims.

(3) For cases that have been issued a closure letter pursuant to subdivision (g) of Section 25296.10 prior to January 1, 2012, the board shall notify claimants of the 365-day filing deadline specified in paragraph (1) on or before March 31, 2012, or upon issuance of a letter of commitment, whichever occurs later.

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

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

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

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

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

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B) and (C), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section

25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

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

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

(D) (i) A claimant who is exempted pursuant to subparagraph (C) and who has complied, on or before December 22, 1998, with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections, shall obtain a level of financial responsibility in an amount twice as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but in no event less than ten thousand dollars (\$10,000). All other claimants exempted pursuant to subparagraph (C) shall obtain a level of financial responsibility that is four times as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but in no event less than twenty thousand dollars (\$20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to any contamination having been caused. The demonstration may be made through a certification issued by the permitting agency based on a site evaluation and tank tests at the time

of permit application or in any other manner as may be acceptable to the board.

(E) All claimants who file a claim before January 1, 2008, and who are not eligible for a waiver of the permit requirements pursuant to applicable statutes or regulations in effect on the date of the filing of the claim may resubmit a new claim pursuant to subparagraph (C) on or after January 1, 2008. The board shall rank all claims resubmitted pursuant to subparagraph (C) lower than all claims filed before January 1, 2008, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(5) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, under the federal act, or under Section 6973 of Title 42 of the United States Code, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

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

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

- (1) Medical expenses.
- (2) Actual lost wages or business income.
- (3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.
- (4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

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

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 9. The changes made by this act to Sections 25295, 25296.35, 25296.40, 25299.39.2, 25299.57, and 25299.58 of the Health and Safety Code, shall only become operative if Assembly Bill 291 is chaptered on or before January 1, 2012, and that bill relates to underground storage tanks, and in that event, shall become operative on the date Assembly Bill 291 is chaptered.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify as soon as possible existing oversight authority regarding the remediation of releases from underground storage tanks, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately as an urgency statute.