

## Assembly Bill No. 1701

### CHAPTER 536

An act to amend Sections 25281, 25295, 25297.1, and 25299 of, to add Section 25297.01 to, and to repeal and add Section 25283 of, the Health and Safety Code, relating to underground storage tanks.

[Approved by Governor September 25, 2012. Filed with  
Secretary of State September 25, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1701, Wieckowski. Underground storage tanks: local agencies.

(1) Existing law requires the Secretary for Environmental Protection to 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 as a Certified Unified Program Agency (CUPA).

Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires the provisions to be implemented by the local agency that is authorized to implement the unified program and thus be certified as the CUPA. Existing law also defines the term "unified program agency" as meaning the CUPA, or its participating agencies, that is approved by the secretary to implement or enforce those underground storage tank requirements.

This bill would revise the term "local agency" for purposes of the underground storage tank requirements to mean the unified program agency with regard to the implementation of certain provisions regulating underground storage tanks and a city or county for purposes of provisions authorizing corrective action to releases from those tanks. The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the implementation of those requirements.

(2) Existing law requires the State Water Resources Control Board to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies and authorizes the board to enter into an agreement with a local agency to conduct that program.

This bill would revise those provisions to allow a city or county to apply to the board to be certified to implement the local oversight program and would provide, on and after July 1, 2013, that only a certified city or county is authorized to implement the local oversight program. The bill would authorize the board to certify a city or county that the board determines is qualified to oversee or perform the abatement and would require the board

to adopt procedures and criteria for certifying and withdrawing certification from cities and counties, which procedures and criteria would be exempt from the requirements and procedures for the adoption of regulations. The bill would require the board, if it does not, by July 1, 2013, certify a city or county that has been previously implementing a local oversight program, to assign the cases from that city or county to the appropriate regional board or a certified city or county. The board would be required to review, at least once every 3 years, the ability of the certified city or county to carry out the local oversight program and would be authorized, after conducting the review, to withdraw the certification of the city or county, pursuant to a specified procedure.

The bill would allow the board, on and after June 30, 2013, to enter into an agreement with a local agency to conduct the local oversight program only if the local agency is a certified city or county.

(3) The bill would incorporate amendments to Section 25281 of the Health and Safety Code proposed by both this bill and AB 1566, which would become operative only if both bills are enacted and become effective and this bill is enacted after AB 1566.

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

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

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

SECTION 1. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter, and unless otherwise expressly provided, the following definitions apply:

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

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

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

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

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

(3) “Unified Program Agency” or “UPA” means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

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

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

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

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

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

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

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

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

(2) Any regulated substance, as defined in subsection (7) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 2012, or as it may subsequently be amended or supplemented.

(i) “Local agency” means one of the following, as specified in subdivision (b) of Section 25283:

- (1) The unified program agency.
  - (2) Before July 1, 2013, a city or county.
  - (3) On and after July 1, 2013, a city or county certified by the board to implement the local oversight program pursuant to Section 25297.01.
- (j) “Operator” means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.
- (k) “Owner” means the owner of an underground storage tank.
- (l) “Person” means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. “Person” also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.
- (m) “Pipe” means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.
- (n) “Primary containment” means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.
- (o) “Product tight” means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.
- (p) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.
- (q) “Secondary containment” means the level of containment external to, and separate from, the primary containment.
- (r) “Single walled” means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.
- (s) “Special inspector” means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.
- (t) “Storage” or “store” means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. “Storage” or “store” does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or 25201.6 or granted interim status under Section 25200.5.
- (u) “Tank” means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

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

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

(x) “Unauthorized release” means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

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

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

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

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, and lined and unlined pits, sumps, and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

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

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

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

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

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

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

SEC. 1.5. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter and unless otherwise expressly provided, the following definitions apply:

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

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

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

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

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

(3) “Unified Program Agency” or “UPA” means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

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

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

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

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

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

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

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

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

(2) Any regulated substance, as defined in subsection (7) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 2012, or as it may subsequently be amended or supplemented.

(i) “Local agency” means one of the following, as specified in subdivision (b) of Section 25283:

(1) The unified program agency.

(2) Before July 1, 2013, a city or county.

(3) On and after July 1, 2013, a city or county certified by the board to implement the local oversight program pursuant to Section 25297.01.

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

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

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

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

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

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

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

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

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

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

(t) “Storage” or “store” means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. “Storage” or “store” does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or 25201.6 or granted interim status under Section 25200.5.

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

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

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

(x) “Unauthorized release” means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

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

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

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

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, and lined and unlined pits, sumps, and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

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

(E) A tank in an underground area, as defined in Section 25270.2, and associated piping, that is subject to Chapter 6.67 (commencing with Section 25270).

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

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

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

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

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

SEC. 2. Section 25283 of the Health and Safety Code is repealed.

SEC. 3. Section 25283 is added to the Health and Safety Code, to read:

25283. (a) This chapter shall be implemented by the board, by the regional board, and by the local agency, as defined in subdivision (b), pursuant to the regulations adopted by the board.

(b) For purposes of this chapter, “local agency” means the following:

(1) (A) A local agency means the unified program agency for purposes of implementing the unified program, as specified in paragraph (3) of subdivision (c) of Section 25404, including the requirements of this chapter and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) Consistent with paragraph (3) of subdivision (c) of Section 25404, for purposes of this chapter, a unified program agency does not implement those responsibilities assigned to the state board pursuant to Section 25297.1 or the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(2) Before July 1, 2013, a local agency means a city or county for purposes of implementing the corrective action requirements of all of the following:

(A) Sections 25296.10 to 25296.40, inclusive.

(B) Sections 25296.09, 25297, 25297.2, and 25298.5.

(C) Sections 25299 to 25299.3, inclusive, with regard to implementing those corrective action requirements.

(D) Any other provision of this chapter that relates to implementing a corrective action.

(3) On and after July 1, 2013, a local agency means a city or county that is certified by the board to implement the local oversight program pursuant to Section 25297.01 for purposes of implementing the corrective action requirements of all of the following:

(A) Sections 25296.10 to 25296.40, inclusive.

(B) Sections 25296.09, 25297, 25297.2, and 25298.5.

(C) Sections 25299 to 25299.3, inclusive, with regard to implementing those corrective action requirements.

(D) Any other provision of this chapter that relates to implementing a corrective action.

SEC. 4. 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 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 that 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. 5. Section 25297.01 is added to the Health and Safety Code, to read:

25297.01. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the

abatement of, unauthorized releases of hazardous substances from underground storage tanks by a local agency certified pursuant to this section.

(b) On and after July 1, 2013, only a city or county certified pursuant to subdivision (c) may implement a local oversight program. The board may enter into an agreement pursuant to Section 25297.1 with a certified city or county to implement the oversight program.

(c) The board may certify a city or county if the board determines that the city or county is qualified to oversee or perform the abatement of unauthorized releases of hazardous substances from underground storage tanks. The board shall consider, as criteria for determining whether a city or county is qualified, at a minimum, all of the following factors:

- (1) Adequacy of the technical expertise possessed by the city or county.
- (2) Adequacy of staff resources.
- (3) Adequacy of budget resources and funding mechanisms.
- (4) Training requirements.
- (5) Past performance in implementing and enforcing corrective action requirements.

- (6) Recordkeeping and accounting systems.

(d) The board shall adopt procedures and criteria for certifying and withdrawing certification from cities and counties pursuant to this section. The adoption of these procedures and criteria shall not be considered as regulations subject to, and shall be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) If the board does not, by July 1, 2013, certify a city or county that has been implementing a local oversight program pursuant to an agreement entered into with the board on or before January 1, 2013, the board shall assign the cases from that city or county to the appropriate regional board or to a city or county that is certified by the board. An order or directive issued by that uncertified city or county on or before July 1, 2013, shall remain in effect and may be enforced by the regional board or certified city or county that receives the case.

(f) The board shall review, at least once every three years, the ability of the certified city or county to carry out the local oversight program. When conducting this review, the board shall consider the certification criteria contained in paragraphs (1) to (6), inclusive, of subdivision (c) and the criteria adopted pursuant to subdivision (d). The board may, after conducting the review, withdraw the certification of the city or county. Upon making this withdrawal, the cases of the former certified city or county shall be transferred from the city or county and the orders and directives issued by the former certified city or county shall remain effective and enforceable in accordance with subdivision (e). The board shall not make the effective date for the withdrawal of a certification before the expiration date of the local oversight program agreement entered into between the board and the certified city or county pursuant to Section 25297.1, unless the certified city or county fails to comply with the agreement.

SEC. 6. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a) (1) For purposes of implementing, pursuant to Section 25297.01, the local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks, the board may enter into in an agreement specified in subdivision (b) with the local agency.

(2) A city or county that the board selected pursuant to this section, as it read on January 1, 2012, which entered into an agreement with the board before July 1, 2013, may apply to the board for certification pursuant to Section 25297.01. The city or county may continue to implement the oversight program until July 1, 2013, and after that date the city or county shall either be certified or be subject to subdivision (e) of Section 25297.01.

(3) On and after June 30, 2013, the board may enter into an agreement pursuant to this section only with a city or county certified pursuant to Section 25297.01.

(b) In implementing the local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks, the board may select a local agency to enter into an agreement with the board. When selecting a local agency, the board shall, from among those local agencies that apply to the board, give first priority to those local agencies that have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall enter into an agreement with only those local agencies that have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287. The agreement shall provide for the local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

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

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken by a

local agency with which the board has entered into an agreement pursuant to this section. The procedures shall include, but not be limited to, all of the following:

- (1) Guidelines as to which sites may be assigned to the local agency.
  - (2) The content of the agreements.
  - (3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.
  - (4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.
  - (5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.
- (e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:
- (1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.
  - (2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.
- (f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.
- (g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Toxic Substances Control Account for oversight of abatement of releases from underground storage tanks as part of the local oversight program conducted pursuant to an agreement entered into pursuant to this section.
- (2) A local agency that enters into an agreement pursuant to subdivision (b) shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.
- (h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency that enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established

pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by the staff of a local agency or the local agency's authorized representative, that are either technical program staff or their immediate supervisors:

- (A) Responsible party identification and notification.
- (B) Site visits.
- (C) Sampling activities.
- (D) Meetings with responsible parties or responsible party consultants.
- (E) Meetings with the regional board or with other affected agencies regarding a specific site.
- (F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.
- (G) Development of enforcement actions against a responsible party.
- (H) Issuance of a closure document.

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

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

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars (\$115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

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

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

Department of Commerce or by a successor agency of the federal government.

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

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

(B) Office furniture.

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

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

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

(j) The inoperation of former paragraph (1) of this subdivision does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(k) Notwithstanding subdivisions (a) and (b), any agreement entered into before January 1, 2013, between a regional board and a water district to oversee, coordinate, or implement a cooperative oversight program will remain in effect in accordance with the terms of that agreement or the terms of that agreement as may be amended from time to time.

SEC. 7. Section 25299 of the Health and Safety Code is amended to read:

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

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

(2) Violation of an applicable requirement of the permit issued for the operation of the underground tank system.

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

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

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

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

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

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

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

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

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

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

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

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

(5) Violation of an applicable requirement of this chapter or a regulation adopted by the board pursuant to Section 25299.3.

(6) Failure to permit inspection or to perform a monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(7) Making a false statement, representation, or certification in an application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

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

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

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

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

(f) (1) A person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in

the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) A person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

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

(h) (1) A civil penalty or criminal fine imposed pursuant to this section for a separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, except that no civil penalty shall be recovered under subdivision (d) for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code. The penalty or fine shall be paid to the unified program agency, the participating agency, or the state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action.

(2) Any penalties or fines paid to a uniform program agency or a participating agency pursuant to paragraph (1) shall be deposited into a special account and shall be expended only to fund the activities of the unified program agency or participating agency in enforcing this chapter within that jurisdiction pursuant, to the uniform program specified in Chapter 6.11 (commencing with Section 25404).

(3) All penalties or fines collected by the board or a regional board or collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

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

SEC. 8. Section 1.5 of this bill incorporates amendments to Section 25281 of the Health and Safety Code proposed by both this bill and Assembly Bill 1566. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 25281 of the Health and Safety Code, and (3) this bill is

enacted after Assembly Bill 1566, in which case Section 1 of this bill shall not become operative.

SEC. 9. 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.

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