

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 612

Introduced by Senator Jackson

February 27, 2015

An act to amend Sections ~~25117, 25141, 25270.2, 25270.4.1, 25270.4.5, 25270.5, 25270.6, 25281, 25404, 25500, 25503, 25505, 25507, 25507.2, 25508.1, and 25531.2~~ of, and to add Sections 25110.8.2 and ~~25143.15~~ to, 25531.2, and 118330 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 612, as amended, Jackson. Hazardous materials.

~~(1) Existing law requires the Department of Toxic Substances Control to establish programs for and regulate hazardous waste source reduction. Existing law requires the department to prepare, adopt, and revise, when appropriate, a listing of the wastes that are determined to be hazardous, and a listing of the wastes that are determined to be extremely hazardous. Existing law requires the department to develop, and adopt by regulation, criteria and guidelines for the identification of hazardous wastes and extremely hazardous wastes.~~

~~This bill would require the department to adopt regulations establishing criteria and guidelines by December 31, 2016, for determining onsite generation quantities to determine the California generator status, as defined, of a person who generates hazardous waste at an individual site. The bill would require a generator to determine the quantities of all hazardous waste generated onsite each calendar month and to use this quantity to determine his or her California generator status for proper management of those wastes, as specified.~~

~~(2)~~

(1) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. Existing law requires every county to apply to the secretary to be certified to implement the unified program and allows a city or local agency to implement the unified program as a unified program agency, or UPA. Existing law requires the Office of Emergency Services to adopt, after public hearing and consultation with the Office of the State Fire Marshal and other appropriate public entities, regulations for minimum standards for business plans and area plans, and requires all business plans and area plans to meet the standards adopted by the Office of Emergency Services. ~~Existing law requires a UPA, in consultation with local emergency response agencies, to establish an area plan for emergency response to a release or threatened release of a hazardous material within its jurisdiction. A UPA is required to submit a proposed area plan to the Office of Emergency Services, and the office is required to notify the UPA whether the area plan is adequate and meets the standards adopted by the office in regulations. Existing law requires a UPA to certify to the office every 3 years that it has conducted a complete review of its area plan and has made any necessary revisions and, if a substantial change is made to its area plan, to forward the changes to the office within 14 days after the changes have been made.~~

~~This bill would require the UPA to certify to the Office of Emergency Services every 3 years that it has conducted a review of its area plan and has made any necessary revisions or that no substantial changes have been made.~~

Existing law requires a business handling hazardous materials, as specified, to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted by the Office of Emergency Services. The business plan is required to contain specified information, including a site map that contains north orientation, loading areas, internal roads, adjacent streets, storm and sewer drains, access and exit points, emergency shutoffs, evacuation staging areas, hazardous material handling and storage areas, and emergency response equipment.

This bill would additionally require the site map to include additional map requirements required by the UPA pursuant to an ordinance.

Existing law makes the knowing violation of the business plan requirements a crime.

This bill, by expanding the requirements for a business plan, would impose a state-mandated local program by expanding the application of a crime.

This bill would make additional legislative findings and declarations relative to the unified program.

(3)

(2) The Aboveground Petroleum Storage Act defines, for purposes of the act, an “aboveground storage tank” as a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground and a tank in an underground area, as defined, except as specified.

This bill would revise the definition of “aboveground storage tank” to include a tank or container that has the capacity to store 55 gallons or more of petroleum, including drums, intermediate bulk containers, totes, mobile refuelers, oil-filled operational equipment, and oil-filled manufacturing equipment, and that is substantially or totally above the surface of the ground and a tank in an underground area.

Existing law requires the unified program agencies (UPAs) to implement the Aboveground Petroleum Storage Act in accordance with regulations adopted by the Office of the State Fire Marshal and authorizes the Office of the State Fire Marshal to adopt these regulations.

This bill would require the Office of the State Fire Marshal to adopt these regulations.

Except for certain tank ~~facility facilities~~ located on ~~a farm, nursery, logging site, or construction site, farms, nurseries, logging sites, or construction sites~~, the Aboveground Petroleum Storage Act requires each owner or operator of a storage tank at a tank facility to prepare a spill prevention control and countermeasure plan and to conduct periodic inspections of the storage tank.

This bill would revise the above-described exception to the plan and inspection requirements to instead require that the tank facility be operated by, instead of located on, the farm, nursery, logging site, or construction site. The bill would require that the plan address best management practices to prevent petroleum releases, as specified.

(4)

(3) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground storage tanks that are used to store hazardous substances and that are installed after January 1, 1984, to meet certain requirements and obtain a permit from the UPA.

This bill would revise the definition of “storage” and “store” for purposes of the regulation of the storage of hazardous substances in underground storage tanks, to exempt storage that is in compliance with specified alternative laws for the regulation of hazardous materials.

This bill would make other changes to the hazardous materials laws.

(4) The existing Medical Waste Management Act regulates the disposal of medical waste. Existing law authorizes a local agency to adopt a medical waste management program to, among other things, issue medical waste registrations and permits and inspect medical waste generators and treatment facilities, and requires the local agency, if it elects to do so, to notify the department. Under existing law, if the local agency chooses not to adopt a medical waste management program or if the department withdraws its designation, the department is the enforcement agency. Under existing law, whenever the enforcement agency determines that a violation or threatened violation of the act has resulted, or is likely to result, in a release of medical waste into the environment, the agency is authorized to issue an order to the responsible person specifying a schedule for compliance or imposing an administrative penalty of not more than \$1,000 per violation.

This bill would authorize the imposition of an administrative penalty of up to \$5,000. The bill would also establish a process for the enforcement agency to set the amount of the administrative penalty and would establish a process for a person who is assessed the administrative penalty to challenge the facts of the order and the amount of the penalty, including a hearing and appeal. The bill would require that a provision of an order, except the imposition of an administrative penalty, take effect upon issuance by the enforcement agency if the enforcement agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial danger to the public health or safety or the environment.

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 ~~SECTION 1. Section 25110.8.2 is added to the Health and~~
2 ~~Safety Code, to read:~~

3 ~~25110.8.2. (a) “California generator status” means the~~
4 ~~designation as a “large quantity generator” or a “small quantity~~
5 ~~generator” according to the quantity of hazardous waste generated~~
6 ~~in a calendar month for purposes of hazardous waste management~~
7 ~~pursuant to requirements in this chapter and Chapter 12~~
8 ~~(commencing with Section 66262.10) of Division 4.5 of Title 22~~
9 ~~of the California Code of Regulations. A generator will be~~
10 ~~designated as a “large quantity generator” or a “small quantity~~
11 ~~generator” according to the following:~~

12 ~~(1) “Large quantity generator” or “LQG” means a generator of~~
13 ~~more than one kilogram of acutely or extremely hazardous waste,~~
14 ~~or 1,000 kilograms or greater of nonacute hazardous waste in a~~
15 ~~month as described in Chapter 12 (commencing with Section~~
16 ~~66262.10) of Division 4.5 of Title 22 of the California Code of~~
17 ~~Regulations.~~

18 ~~(2) “Small quantity generator” or “SQG” means a generator of~~
19 ~~more than 100 kilograms of nonacute hazardous waste in a calendar~~
20 ~~month, but less than 1,000 kilograms of nonacute hazardous waste~~
21 ~~in a calendar month, as described in Chapter 12 (commencing with~~
22 ~~Section 66262.10) of Division 4.5 of Title 22 of the California~~
23 ~~Code of Regulations.~~

24 ~~(b) “Generator” has the same meaning as defined in Section~~
25 ~~25205.1.~~

26 ~~SEC. 2. Section 25117 of the Health and Safety Code is~~
27 ~~amended to read:~~

28 ~~25117. (a) Except as provided in subdivision (d), “hazardous~~
29 ~~waste” means a waste that meets any of the criteria for the~~
30 ~~identification of a hazardous waste adopted by the department~~
31 ~~pursuant to Section 25141.~~

32 ~~(b) “Hazardous waste” includes, but is not limited to, RCRA~~
33 ~~hazardous waste.~~

34 ~~(c) Unless expressly provided otherwise, “hazardous waste”~~
35 ~~also includes extremely hazardous waste and acutely hazardous~~
36 ~~waste.~~

37 ~~(d) Notwithstanding subdivision (a), in any criminal or civil~~
38 ~~prosecution brought by a city or district attorney or the Attorney~~

1 General for violation of this chapter, when it is an element of proof
2 that the person knew or reasonably should have known of the
3 violation, or violated the chapter willfully or with reckless disregard
4 for the risk, or acted intentionally or negligently, the element of
5 proof that the waste is hazardous waste may be satisfied by
6 demonstrating that the waste exhibited the characteristics set forth
7 in subdivision (c) of Section 25141.

8 SEC. 3. Section 25141 of the Health and Safety Code is
9 amended to read:

10 25141. (a) The department shall develop and adopt by
11 regulation criteria and guidelines for the identification of hazardous
12 wastes and extremely hazardous wastes.

13 (b) By December 31, 2016, the department shall adopt
14 regulations establishing criteria and guidelines for determining
15 onsite generation quantities for purposes of determining a
16 generator's California generator status.

17 (c) The criteria and guidelines adopted by the department
18 pursuant to subdivision (a) shall identify waste or combinations
19 of waste, that may do either of the following, as hazardous waste
20 because of its quantity, concentration, or physical, chemical, or
21 infectious characteristics:

22 (1) Cause, or significantly contribute to an increase in mortality
23 or an increase in serious irreversible, or incapacitating reversible,
24 illness.

25 (2) Pose a substantial present or potential hazard to human
26 health or the environment, due to factors including, but not limited
27 to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative
28 properties, or persistence in the environment, when improperly
29 treated, stored, transported, or disposed of, or otherwise managed.

30 (d) Except as provided in Section 25141.5, any regulations
31 adopted pursuant to this section for the identification of hazardous
32 waste as it read on January 1, 1995, which are in effect on January
33 1, 1995, shall be deemed to comply with the intent of this section
34 as amended by this act during the 1995 portion of the 1995-96
35 Regular Session of the Legislature.

36 SEC. 4. Section 25143.15 is added to the Health and Safety
37 Code, to read:

38 25143.15. (a) Generators shall determine the quantities of all
39 hazardous waste generated onsite each calendar month. The
40 quantities of waste calculated within any calendar month shall be

1 used to determine the California generator status for proper
2 management of those wastes pursuant to Chapter 12 (commencing
3 with Section 66262.10) of Division 4.5 of Title 22 of the California
4 Code of Regulations.

5 (b) Quantities of the following wastes are not to be included in
6 the determination required of generators by subdivision (a), if they
7 are managed as specified:

8 (1) Universal wastes and electronic wastes managed in
9 compliance with Chapter 23 (commencing with Section 66273.1)
10 of Division 4.5 of Title 22 of the California Code of Regulations.

11 (2) Treated wood wastes managed in compliance with the
12 alternate management standards of Chapter 34 (commencing with
13 Section 67386.1) of Division 4.5 of Title 22 of the California Code
14 of Regulations.

15 (3) Spent lead-acid storage batteries sent for recycling and
16 managed in compliance with Article 10.5 (commencing with
17 Section 25215) of this code and Article 7 (commencing with
18 Section 66266.80) of Chapter 16 of Division 4.5 of Title 22 of the
19 California Code of Regulations.

20 (4) Recyclable oil filters and fuel filters managed in compliance
21 with Article 13 (commencing with Section 25250) of this chapter
22 and Article 6 (commencing with Section 66266.50) of Chapter 16
23 of Division 4.5 of Title 22 of the California Code of Regulations.

24 (5) Appliances managed in compliance with Article 10.1
25 (commencing with Section 25211). Hazardous wastes or other
26 materials that require special handling removed from an appliance
27 are subject to counting upon removal.

28 (6) Substances that are exempted from the definition of waste
29 by this article or by regulations adopted by the department.

30 (7) Hazardous waste that is produced from onsite treatment of
31 hazardous waste, provided the hazardous waste treated was already
32 counted.

33 ~~SEC. 5.~~

34 *SECTION 1.* Section 25270.2 of the Health and Safety Code
35 is amended to read:

36 25270.2. For purposes of this chapter, the following definitions
37 apply:

38 (a) “Aboveground storage tank” or “storage tank” means a tank
39 or container that has the capacity to store 55 gallons or more of
40 petroleum, including, but not limited to, drums, intermediate bulk

1 containers, totes, mobile refuelers, oil-filled operational equipment,
2 and oil-filled manufacturing equipment as defined in Section 112.2
3 of Title 40 of the Code of Federal Regulations and that is
4 substantially or totally above the surface of the ground, except
5 that, for purposes of this chapter, “aboveground storage tank” or
6 “storage tank” includes a tank in an underground area.
7 “Aboveground storage tank” does not include any of the following:
8 (1) A pressure vessel or boiler that is subject to Part 6
9 (commencing with Section 7620) of Division 5 of the Labor Code.
10 (2) A tank containing hazardous waste or extremely hazardous
11 waste, as respectively defined in Sections 25117 and 25115, if the
12 Department of Toxic Substances Control has issued the person
13 owning or operating the tank a hazardous waste facilities permit
14 for the storage tank.
15 (3) An aboveground oil production tank that is subject to Section
16 3106 of the Public Resources Code.
17 (4) Oil-filled electrical equipment, including, but not limited
18 to, transformers, circuit breakers, or capacitors, if the oil-filled
19 electrical equipment meets either of the following conditions:
20 (A) The equipment contains less than 10,000 gallons of dielectric
21 fluid.
22 (B) The equipment contains 10,000 gallons or more of dielectric
23 fluid with PCB levels less than 50 parts per million, appropriate
24 containment or diversionary structures or equipment are employed
25 to prevent discharged oil from reaching a navigable water course,
26 and the electrical equipment is visually inspected in accordance
27 with the usual routine maintenance procedures of the owner or
28 operator.
29 (5) A tank regulated as an underground storage tank under
30 Chapter 6.7 (commencing with Section 25280) of this division and
31 Chapter 16 (commencing with Section 2610) of Division 3 of Title
32 23 of the California Code of Regulations and that does not meet
33 the definition of a tank in an underground area.
34 (6) A transportation-related tank facility, subject to the authority
35 and control of the United States Department of Transportation, as
36 defined in the Memorandum of Understanding between the
37 Secretary of Transportation and the Administrator of the United
38 States Environmental Protection Agency, as set forth in Appendix
39 A to Part 112 (commencing with Section 112.1) of Subchapter D
40 of Chapter I of Title 40 of the Code of Federal Regulations.

1 (7) A tank or tank facility operated by a farm that is exempt
2 from the federal spill prevention, control, and countermeasure rule
3 requirements pursuant to Part 112 (commencing with Section
4 112.1) of Subchapter D of Chapter I of Title 40 of the Code of
5 Federal Regulations.

6 (b) “Board” means the State Water Resources Control Board.

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

11 (2) “Participating Agency” or “PA” means an agency that has
12 a written agreement with the CUPA pursuant to subdivision (d)
13 of Section 25404.3, and is approved by the secretary, to implement
14 and enforce the unified program element specified in paragraph
15 (2) of subdivision (c) of Section 25404, in accordance with Sections
16 25404.1 and 25404.2.

17 (3) (A) “Unified Program Agency” or “UPA” means the CUPA,
18 or its participating agencies to the extent that each PA has been
19 designated by the CUPA, pursuant to a written agreement, to
20 implement and enforce the unified program element specified in
21 paragraph (2) of subdivision (c) of Section 25404. The UPAs have
22 the responsibility and authority, to the extent provided by this
23 chapter and Sections 25404.1 to 25404.2, inclusive, to implement
24 and enforce the requirements of this chapter.

25 (B) After a CUPA has been certified by the secretary, the unified
26 program agency shall be the only agency authorized to enforce the
27 requirements of this chapter.

28 (C) This paragraph does not limit the authority or responsibility
29 granted to the office, the board, and the regional boards by this
30 chapter.

31 (d) “Office” means the Office of the State Fire Marshal.

32 (e) “Operator” means the person responsible for the overall
33 operation of a tank facility.

34 (f) “Owner” means the person who owns the tank facility or
35 part of the tank facility.

36 (g) “Person” means an individual, trust, firm, joint stock
37 company, corporation, including a government corporation,
38 partnership, limited liability company, or association. “Person”
39 also includes any city, county, district, the University of California,
40 the California State University, the state, any department or agency

1 thereof, and the United States, to the extent authorized by federal
2 law.

3 (h) “Petroleum” means crude oil, or a fraction thereof, that is
4 liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per
5 square inch absolute pressure.

6 (i) “Regional board” means a California regional water quality
7 control board.

8 (j) “Release” means any spilling, leaking, pumping, pouring,
9 emitting, emptying, discharging, escaping, leaching, or disposing
10 into the environment.

11 (k) “Secretary” means the Secretary for Environmental
12 Protection.

13 (l) “Storage” or “store” means the containment, handling, or
14 treatment of petroleum, for a period of time, including on a
15 temporary basis.

16 (m) “Storage capacity” means the aggregate capacity of all
17 aboveground storage tanks at a tank facility. The “storage capacity”
18 of a storage tank includes the shell capacity of the storage tank. If
19 a certain portion of the storage tank is incapable of storing
20 petroleum due to integral design, such as mechanical equipment
21 or other interior components, then the storage capacity is reduced
22 to the volume the storage tank can hold.

23 (n) “Tank facility” means one or more aboveground storage
24 tanks, including any piping that is integral to the tanks, that contain
25 petroleum and that are used by an owner or operator at a single
26 location or site. For purposes of this chapter, a pipe is integrally
27 related to an aboveground storage tank if the pipe is connected to
28 the tank and meets any of the following:

29 (1) The pipe is within the dike or containment area.

30 (2) The pipe is between the containment area and the first flange
31 or valve outside the containment area.

32 (3) The pipe is connected to the first flange or valve on the
33 exterior of the tank, if state or federal law does not require a
34 containment area.

35 (4) The pipe is connected to a tank in an underground area.

36 (o) “Tank in an underground area” means a storage tank to
37 which all of the following apply:

38 (1) The storage tank is located in a structure that is at least 10
39 percent below the ground surface, including, but not limited to, a
40 basement, cellar, shaft, pit, or vault.

1 (2) The structure in which the storage tank is located, at a
2 minimum, provides for secondary containment of the contents of
3 the tank, piping, and ancillary equipment, until cleanup occurs.

4 (3) A storage tank in an underground area is not subject to
5 Chapter 6.7 (commencing with Section 25280) if the storage tank
6 is in compliance with the provisions of this chapter, the tank facility
7 owner or operator is implementing a plan to prevent and control
8 releases, and the regulations, specific to tanks in underground areas
9 and buried piping connected to tanks in underground areas, have
10 been adopted by the office pursuant to *Section 25270.4.1*.

11 (4) The storage tank meets one or more of the following
12 conditions:

13 (A) The storage tank contains petroleum to be used or previously
14 used as a lubricant or coolant in a motor engine or transmission,
15 oil-filled operational equipment, or oil-filled manufacturing
16 equipment, is situated on or above the surface of the floor, and the
17 structure in which the tank is located provides enough space for
18 direct viewing of the exterior of the tank except for the part of the
19 tank in contact with the surface of the floor.

20 (B) The storage tank does not meet the conditions in
21 subparagraph (A), (C), or (D), contains petroleum, is situated on
22 or above the surface of the floor, and the structure in which the
23 tank is located provides enough space for direct viewing of the
24 exterior of the tank, except for the part of the tank in contact with
25 the surface of the floor, and all piping connected to the tank,
26 including any portion of a vent line, vapor recovery line, or fill
27 pipe that is beneath the surface of the ground, and all ancillary
28 equipment, can either be visually inspected by direct viewing or
29 has both secondary containment and leak detection that meets the
30 requirements of the regulations adopted by the office pursuant to
31 *Section 25270.4.1*.

32 (C) The storage tank contains petroleum that is considered a
33 hazardous waste and complies with the hazardous waste tank
34 standards pursuant to Article 10 (commencing with Section
35 66265.190) of Chapter 15 of Title 22 of the California Code of
36 Regulations and the tank facility has been issued a unified program
37 facility permit pursuant to Section 25404.2 for generation,
38 treatment, accumulation, or storage of hazardous waste.

39 (D) The storage tank contains petroleum and is used for
40 emergency systems, is situated on or above the surface of the floor,

1 and the structure in which the tank is located provides enough
2 space for direct viewing of the exterior of the tank except for the
3 part of the tank in contact with the surface of the floor.

4 (E) The storage tank meets one of the conditions described in
5 subparagraphs (A) ~~through~~ *to* (D), inclusive and meets all of the
6 following:

7 (i) Is located at a facility with a storage capacity of less than
8 1,320 gallons of petroleum.

9 (ii) The tank facility owner or operator is monitoring the tank
10 in compliance with recognized industry standards.

11 (iii) The tank facility owner or operator is implementing a plan
12 to prevent and control releases to the environment.

13 (iv) The tank facility owner or operator is complying with the
14 provisions of this chapter and the regulations adopted by the office.

15 (p) “Viewing” means visual inspection, and “direct viewing”
16 means, in regard to a storage tank, direct visual inspection of the
17 exterior of the tank, except for the part of the tank in contact with
18 the surface of the floor, and the entire length of all piping and
19 ancillary equipment by a person or through the use of visual aids,
20 including, but not limited to, mirrors, cameras, or video equipment.

21 (q) “Waters of the state” means any surface water or
22 groundwater, including saline waters, within the boundaries of the
23 state.

24 ~~SEC. 6.~~

25 *SEC. 2.* Section 25270.4.1 of the Health and Safety Code is
26 amended to read:

27 25270.4.1. (a) The office shall adopt regulations implementing
28 this chapter. The office shall also provide interpretation of this
29 chapter to the UPAs, and oversee the implementation of this
30 chapter by the UPAs.

31 (b) The office shall establish an advisory committee that includes
32 representatives from regulated entities, appropriate trade
33 associations, fire service organizations, federal, state, and local
34 organizations, including UPAs, and other interested parties. The
35 advisory committee shall act in an advisory capacity to the office
36 in conducting its responsibilities.

37 (c) The office shall, in addition to any other requirements
38 imposed pursuant to this chapter, train UPAs, ensure consistency
39 with state law, to the maximum extent feasible, ensure consistency
40 with federal enforcement guidance issued by federal agencies

1 pursuant to subdivision (d), and support the UPAs in providing
2 outreach to regulated persons regarding compliance with current
3 local, state, and federal regulations relevant to the office’s
4 obligations under this chapter.

5 (d) Any regulation adopted by the office pursuant to this section
6 shall ensure consistency with the requirements for spill prevention,
7 control, and countermeasure plans under Part 112 (commencing
8 with Section 112.1) of Subchapter D of Chapter I of Title 40 of
9 the Code of Federal Regulations, and shall include any more
10 stringent requirements necessary to implement this chapter.

11 ~~SEC. 7.~~

12 *SEC. 3.* Section 25270.4.5 of the Health and Safety Code is
13 amended to read:

14 25270.4.5. (a) Except as provided in subdivision (b), each
15 owner or operator of a storage tank at a tank facility subject to this
16 chapter shall prepare a spill prevention control and countermeasure
17 plan prepared in accordance with Part 112 (commencing with
18 Section 112.1) of Subchapter D of Chapter I of Title 40 of the
19 Code of Federal Regulations. Each owner or operator specified in
20 this subdivision shall conduct periodic inspections of the storage
21 tank to ~~assure~~ ensure compliance with Part 112 (commencing with
22 Section 112.1) of Subchapter D of Chapter I of Title 40 of the
23 Code of Federal Regulations. In implementing the spill prevention
24 control and countermeasure plan, each owner or operator specified
25 in this subdivision shall fully comply with the latest version of the
26 regulations contained in Part 112 (commencing with Section 112.1)
27 of Subchapter D of Chapter I of Title 40 of the Code of Federal
28 Regulations. Tank facilities that are subject to this chapter shall
29 prepare a spill prevention control and countermeasure plan
30 addressing best management practices to prevent petroleum releases
31 using the same format required by Part 112 (commencing with
32 Section 112.1) of Subchapter D of Chapter I of Title 40 of the
33 Code of Federal Regulations, including tank facilities not subject
34 to the requirements of that part pursuant to that part’s general
35 applicability provisions in ~~Section 112.1. 112.1 of Title 40 of the~~
36 *Code of Federal Regulations.*

37 (b) A tank facility operated by a farm, nursery, logging site, or
38 construction site is not subject to subdivision (a) if no storage tank
39 at the location exceeds 20,000 gallons and the cumulative storage
40 capacity of the tank facility does not exceed 100,000 gallons.

1 However, notwithstanding paragraph (7) of subdivision (a) of
2 Section 25270.2, the owner or operator of a tank facility exempt
3 pursuant to this subdivision shall take the following actions:

4 (1) Conduct a daily visual inspection of any storage tank storing
5 petroleum. For purposes of this section, “daily” means every day
6 that contents are added to or withdrawn from the tank, but no less
7 than five days per week. The number of days may be reduced by
8 the number of state or federal holidays that occur during the week
9 if there is no addition to, or withdrawal from, the tank on the
10 holiday. The unified program agency may reduce the frequency
11 of inspections to not less than once every three days at a tank
12 facility that is exempt pursuant to this section if the tank facility
13 is not staffed on a regular basis, provided that the inspection is
14 performed every day the facility is staffed.

15 (2) Allow the UPA to conduct a periodic inspection of the tank
16 facility.

17 (3) If the UPA determines installation of secondary containment
18 is necessary for the protection of the waters of the state, install a
19 secondary means of containment for each tank or group of tanks
20 where the secondary containment will, at a minimum, contain the
21 entire contents of the largest tank protected by the secondary
22 containment plus precipitation.

23 ~~SEC. 8.~~

24 *SEC. 4.* Section 25270.5 of the Health and Safety Code is
25 amended to read:

26 25270.5. (a) Except as provided in subdivision (b), at least
27 once every three years, the UPA shall inspect each storage tank
28 or a representative sampling of the storage tanks at each tank
29 facility that has a storage capacity of 10,000 gallons or more of
30 petroleum. The purpose of the inspection shall be to determine
31 whether the owner or operator is in compliance with the spill
32 prevention control and countermeasure plan requirements of this
33 chapter.

34 (b) The UPA may develop an alternative inspection and
35 compliance plan, subject to approval by the secretary and the office.

36 (c) An inspection conducted pursuant to this section does not
37 require the oversight of a professional engineer. The person
38 conducting the inspection shall complete and pass the initial
39 aboveground storage tank inspector training program. The
40 curriculum of the aboveground storage tank inspector training

1 program shall focus on the spill prevention control and
2 countermeasure plan provisions and safety requirements for
3 aboveground storage tank inspections.

4 ~~SEC. 9.~~

5 *SEC. 5.* Section 25270.6 of the Health and Safety Code is
6 amended to read:

7 25270.6. (a) (1) On or before January 1, 2009, and on or
8 before January 1 annually thereafter, each owner or operator of a
9 tank facility subject to this chapter shall file with the statewide
10 information management system, a tank facility statement that
11 shall identify the name and address of the tank facility, a contact
12 person for the tank facility, the total storage capacity of the tank
13 facility, and the location and contents of each petroleum storage
14 tank that exceeds 10,000 gallons in capacity. A copy of a statement
15 submitted previously pursuant to this section may be submitted in
16 lieu of a new tank facility statement if no new or used storage tanks
17 have been added to the facility or if no significant modifications
18 have been made. For purposes of this section, a significant
19 modification includes, but is not limited to, altering existing storage
20 tanks or changing spill prevention or containment methods.

21 (2) Notwithstanding paragraph (1), an owner or operator of a
22 tank facility that submits a business plan, as defined in subdivision
23 (d) of Section 25501, to the statewide information management
24 system and that complies with Sections 25503, 25505, 25505.1,
25 25507, 25507.2, 25508, and 25508.1, satisfies the requirement in
26 paragraph (1) to file a tank facility statement.

27 (b) Each year, commencing in calendar year 2010, each owner
28 or operator of a tank facility who is subject to the requirements of
29 subdivision (a) shall pay a fee to the UPA, on or before a date
30 specified by the UPA. The governing body of the UPA shall
31 establish a fee, as part of the single fee system implemented
32 pursuant to Section 25404.5, at a level sufficient to pay the
33 necessary and reasonable costs incurred by the UPA in
34 administering this chapter, including, but not limited to,
35 inspections, enforcement, and administrative costs. The UPA shall
36 also implement the fee accountability program established pursuant
37 to subdivision (c) of Section 25404.5 and the regulations adopted
38 to implement that program.

1 ~~SEC. 10.~~

2 *SEC. 6.* Section 25281 of the Health and Safety Code is
3 amended to read:

4 25281. For purposes of this chapter and unless otherwise
5 expressly provided, the following definitions apply:

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

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

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

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

27 (2) “Participating Agency” or “PA” means an agency that has
28 a written agreement with the CUPA pursuant to subdivision (d)
29 of Section 25404.3, and is approved by the secretary to implement
30 or enforce the unified program element specified in paragraph (3)
31 of subdivision (c) of Section 25404, in accordance with Sections
32 25404.1 and 25404.2.

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

1 listed in paragraph (3) of subdivision (c) of Section 25404 and the
2 regulations adopted to implement those requirements. Except as
3 provided in Section 25296.09, after a CUPA has been certified by
4 the secretary, the UPA shall be the only local agency authorized
5 to enforce the requirements of this chapter listed in paragraph (3)
6 of subdivision (c) of Section 25404 within the jurisdiction of the
7 CUPA. This paragraph shall not be construed to limit the authority
8 or responsibility granted to the board and the regional boards by
9 this chapter to implement and enforce this chapter and the
10 regulations adopted pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

38 (1) The unified program agency.

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

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

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

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

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

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

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

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

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

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

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

33 (s) “Special inspector” means a professional engineer, registered
34 pursuant to Chapter 7 (commencing with Section 6700) of Division
35 3 of the Business and Professions Code, who is qualified to attest,
36 at a minimum, to structural soundness, seismic safety, the
37 compatibility of construction materials with contents, cathodic
38 protection, and the mechanical compatibility of the structural
39 elements of underground storage tanks.

1 (t) (1) “Storage” or “store” means the containment, handling,
2 or treatment of hazardous substances, either on a temporary basis
3 or for a period of years.

4 (2) “Storage” or “store” does not include the storage of
5 hazardous wastes in an underground storage tank if the person
6 operating the tank has been issued a hazardous waste facilities
7 permit by the department pursuant to Section 25200 or 25201.6
8 or granted interim status under Section 25200.5.

9 (3) “Storage” or “store” does not include the storage of
10 hazardous wastes in an underground storage tank if the facility has
11 been issued a unified program facility permit pursuant to Section
12 25404.2 for generation, treatment, accumulation, or storage of
13 hazardous waste in an underground area, as defined in Section
14 280.12 of Title 40 of the Code of Federal Regulations, that is
15 subject to Chapter 6.67 (commencing with *Section 25270*) and
16 complies with the hazardous waste tank standards pursuant to
17 Article 10 (commencing with Section 66265.190) of Chapter 15
18 of Title 22 of the California Code of Regulations.

19 (4) “Storage” or “store” does not include the storage of
20 hazardous wastes in an underground storage tank if all of the
21 following apply:

22 (A) The facility has been issued a unified program facility permit
23 pursuant to Section 25404.2 for generation, treatment,
24 accumulation, or storage of hazardous waste in a tank.

25 (B) The tank is located in a structure that is at least 10 percent
26 below the ground surface, including, but not limited to, a basement,
27 cellar, shaft, pit, or vault.

28 (C) The structure in which the tank is located, at a minimum,
29 provides for secondary containment of the contents of the tank,
30 piping, and ancillary equipment, until cleanup occurs.

31 (D) The tank complies with the hazardous waste tank standards
32 pursuant to Article 10 (commencing with Section 66265.190) of
33 Chapter 15 of Title 22 of the California Code of Regulations.

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

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

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

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

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

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

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

17 (C) Structures, such as sumps, separators, storm drains, catch
18 basins, oil field gathering lines, refinery pipelines, lagoons,
19 evaporation ponds, well cellars, separation sumps, and lined and
20 unlined pits, sumps, and lagoons. A sump that is a part of a
21 monitoring system required under Section 25290.1, 25290.2,
22 25291, or 25292 and sumps or other structures defined as
23 underground storage tanks under the federal act are not exempted
24 by this subparagraph.

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

28 (E) A tank in an underground area, as defined in Section
29 25270.2, and associated piping, that is subject to Chapter 6.67
30 (commencing with Section 25270).

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

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

39 (aa) (1) “Unified program facility” means all contiguous land
40 and structures, other appurtenances, and improvements on the land

1 that are subject to the requirements of paragraph (3) of subdivision
2 (c) of Section 25404.

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

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

8 ~~SEC. 11.~~

9 *SEC. 7.* Section 25404 of the Health and Safety Code is
10 amended to read:

11 25404. (a) For purposes of this chapter, the following terms
12 shall have the following meanings:

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

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

22 (C) “Unified Program Agency” or “UPA” means the CUPA, or
23 its participating agencies to the extent each PA has been designated
24 by the CUPA, pursuant to a written agreement, to implement or
25 enforce a particular unified program element specified in
26 subdivision (c). The UPAs have the responsibility and authority
27 to implement and enforce the requirements listed in subdivision
28 (c), and the regulations adopted to implement the requirements
29 listed in subdivision (c), to the extent provided by Chapter 6.5
30 (commencing with Section 25100), Chapter 6.67 (commencing
31 with Section 25270), Chapter 6.7 (commencing with Section
32 25280), Chapter 6.95 (commencing with Section 25500), and
33 Sections 25404.1 to 25404.2, inclusive. After a CUPA has been
34 certified by the secretary, the unified program agencies and the
35 state agencies carrying out responsibilities under this chapter shall
36 be the only agencies authorized to enforce the requirements listed
37 in subdivision (c) within the jurisdiction of the CUPA.

38 (2) “Department” means the Department of Toxic Substances
39 Control.

1 (3) “Minor violation” means the failure of a person to comply
2 with a requirement or condition of an applicable law, regulation,
3 permit, information request, order, variance, or other requirement,
4 whether procedural or substantive, of the unified program that the
5 UPA is authorized to implement or enforce pursuant to this chapter,
6 and that does not otherwise include any of the following:

7 (A) A violation that results in injury to persons or property, or
8 that presents a significant threat to human health or the
9 environment.

10 (B) A knowing, willful, or intentional violation.

11 (C) A violation that is a chronic violation, or that is committed
12 by a recalcitrant violator. In determining whether a violation is
13 chronic or a violator is recalcitrant, the UPA shall consider whether
14 there is evidence indicating that the violator has engaged in a
15 pattern of neglect or disregard with respect to applicable regulatory
16 requirements.

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

19 (E) A violation that enables the violator to benefit economically
20 from the noncompliance, either by reduced costs or competitive
21 advantage.

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

23 (G) A class II violation committed by a chronic or a recalcitrant
24 violator, as provided in Section 25117.6.

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

29 (4) “Secretary” means the Secretary for Environmental
30 Protection.

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

34 (6) “Unified program facility permit” means a permit issued
35 pursuant to this chapter. For the purposes of this chapter, a unified
36 program facility permit encompasses the permitting requirements
37 of Section 25284, and permit or authorization requirements under
38 a local ordinance or regulation relating to the generation or
39 handling of hazardous waste or hazardous materials, but does not
40 encompass the permitting requirements of a local ordinance that

1 incorporates provisions of the California Fire Code or the
2 California Building Code.

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

16 (c) The unified program shall consolidate the administration of
17 the following requirements and, to the maximum extent feasible
18 within statutory constraints, shall ensure the coordination and
19 consistency of any regulations adopted pursuant to those
20 requirements:

21 (1) (A) Except as provided in subparagraphs (B) and (C), the
22 requirements of Chapter 6.5 (commencing with Section 25100),
23 and the regulations adopted by the department pursuant thereto,
24 that are applicable to all of the following:

25 (i) Hazardous waste generators, persons operating pursuant to
26 a permit-by-rule, conditional authorization, or conditional
27 exemption, pursuant to Chapter 6.5 (commencing with Section
28 25100) or the regulations adopted by the department.

29 (ii) Persons managing perchlorate materials.

30 (iii) Persons subject to Article 10.1 (commencing with Section
31 25211) of Chapter 6.5.

32 (iv) Persons operating a collection location that has been
33 established under an architectural paint stewardship plan approved
34 by the Department of Resources Recycling and Recovery pursuant
35 to the architectural paint recovery program established pursuant
36 to Chapter 5 (commencing with Section 48700) of Part 7 of
37 Division 30 of the Public Resources Code.

38 (v) On and before December 31, 2019, a transfer facility, as
39 defined in paragraph (3) of subdivision (a) of Section 25123.3,
40 that is operated by a door-to-door household hazardous waste

1 collection program or household hazardous waste residential pickup
2 service, as defined in subdivision (c) of Section 25218.1. On and
3 after January 1, 2020, the unified program shall not include a
4 transfer facility operated by a door-to-door household hazardous
5 waste collection program.

6 (vi) Persons who receive used oil from consumers pursuant to
7 Section 25250.11.

8 (B) The unified program shall not include the requirements of
9 paragraph (3) of subdivision (c) of Section 25200.3, the
10 requirements of Sections 25200.10 and 25200.14, and the authority
11 to issue an order under Sections 25187 and 25187.1, with regard
12 to those portions of a unified program facility that are subject to
13 one of the following:

14 (i) A corrective action order issued by the department pursuant
15 to Section 25187.

16 (ii) An order issued by the department pursuant to Chapter 6.8
17 (commencing with Section 25300) or former Chapter 6.85
18 (commencing with Section 25396).

19 (iii) A remedial action plan approved pursuant to Chapter 6.8
20 (commencing with Section 25300) or former Chapter 6.85
21 (commencing with Section 25396).

22 (iv) A cleanup and abatement order issued by a California
23 regional water quality control board pursuant to Section 13304 of
24 the Water Code, to the extent that the cleanup and abatement order
25 addresses the requirements of the applicable section or sections
26 listed in this subparagraph.

27 (v) Corrective action required under subsection (u) of Section
28 6924 of Title 42 of the United States Code or subsection (h) of
29 Section 6928 of Title 42 of the United States Code.

30 (vi) An environmental assessment pursuant to Section 25200.14
31 or a corrective action pursuant to Section 25200.10 or paragraph
32 (3) of subdivision (c) of Section 25200.3, that is being overseen
33 by the department.

34 (C) The unified program shall not include the requirements of
35 Chapter 6.5 (commencing with Section 25100), and the regulations
36 adopted by the department pursuant thereto, applicable to persons
37 operating transportable treatment units, except that any required
38 notice regarding transportable treatment units shall also be provided
39 to the CUPAs.

1 (2) The requirements of Chapter 6.67 (commencing with Section
2 25270) concerning aboveground storage tanks.

3 (3) (A) Except as provided in subparagraphs (B) and (C), the
4 requirements of Chapter 6.7 (commencing with Section 25280)
5 concerning underground storage tanks and the requirements of any
6 underground storage tank ordinance adopted by a city or county.

7 (B) The unified program shall not include the responsibilities
8 assigned to the State Water Resources Control Board pursuant to
9 Section 25297.1.

10 (C) The unified program shall not include the corrective action
11 requirements of Sections 25296.10 to 25296.40, inclusive.

12 (4) The requirements of Article 1 (commencing with Section
13 25500) of Chapter 6.95 concerning hazardous material release
14 response plans and inventories.

15 (5) The requirements of Article 2 (commencing with Section
16 25531) of Chapter 6.95, concerning the accidental release
17 prevention program.

18 (6) The requirements of Sections 2701.5.1 and 2701.5.2 of the
19 California Fire Code, as adopted by the State Fire Marshal pursuant
20 to Section 13143.9 concerning hazardous material management
21 plans and inventories.

22 (d) To the maximum extent feasible within statutory constraints,
23 the secretary shall consolidate, coordinate, and make consistent
24 these requirements of the unified program with other requirements
25 imposed by other federal, state, regional, or local agencies upon
26 facilities regulated by the unified program.

27 (e) (1) The secretary shall establish standards applicable to
28 CUPAs, participating agencies, state agencies, and businesses
29 specifying the data to be collected and submitted by unified
30 program agencies in administering the programs listed in
31 subdivision (c).

32 (2) (A) The secretary shall establish a statewide information
33 management system capable of receiving all data collected by the
34 unified program agencies and reported by regulated businesses
35 pursuant to this subdivision, in a manner that is most cost efficient
36 and effective for both the regulated businesses and state and local
37 agencies. The secretary shall prescribe an XML or other compatible
38 Web-based format for the transfer of data from CUPAs and
39 regulated businesses and make all nonconfidential data available
40 on the Internet.

1 (B) The secretary shall establish milestones to measure the
2 implementation of the statewide information management system
3 and shall provide periodic status updates to interested parties.

4 (3) (A) (i) Except as provided in subparagraph (B), in addition
5 to any other funding that becomes available, the secretary shall
6 increase the oversight surcharge provided for in subdivision (b)
7 of Section 25404.5 by an amount necessary to meet the
8 requirements of this subdivision for a period of three years, to
9 establish the statewide information management system, consistent
10 with paragraph (2). The increase in the oversight surcharge shall
11 not exceed twenty-five dollars (\$25) in any one year of the
12 three-year period. The secretary shall thereafter maintain the
13 statewide information management system, funded by the
14 assessment the secretary is authorized to impose pursuant to
15 Section 25404.5.

16 (ii) No less than 75 percent of the additional funding raised
17 pursuant to clause (i) shall be provided to CUPAs and PAs through
18 grant funds or statewide contract services, in the amounts
19 determined by the secretary to assist these local agencies in meeting
20 these information management system requirements.

21 (B) A facility that is owned or operated by the federal
22 government and that is subject to the unified program shall pay
23 the surcharge required by this paragraph to the extent authorized
24 by federal law.

25 (C) The secretary, or one or more of the boards, departments,
26 or offices within the California Environmental Protection Agency,
27 shall seek available federal funding for purposes of implementing
28 this subdivision.

29 (4) No later than three years after the statewide information
30 management system is established, each CUPA, PA, and regulated
31 business shall report program data electronically. The secretary
32 shall work with the CUPAs to develop a phased in schedule for
33 the electronic collection and submittal of information to be included
34 in the statewide information management system, giving first
35 priority to information relating to those chemicals determined by
36 the secretary to be of greatest concern. The secretary, in making
37 this determination shall consult with the CUPAs, the California
38 Emergency Management Agency, the State Fire Marshal, and the
39 boards, departments, and offices within the California
40 Environmental Protection Agency.

1 (5) The secretary, in collaboration with the CUPAs, shall provide
2 technical assistance to regulated businesses to comply with the
3 electronic reporting requirements and may expend funds identified
4 in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

5 ~~SEC. 12.~~

6 *SEC. 8.* Section 25500 of the Health and Safety Code is
7 amended to read:

8 25500. (a) The Legislature declares that, in order to protect
9 the public health and safety and the environment, it is necessary
10 to establish business and area plans relating to the handling and
11 release or threatened release of hazardous materials. The
12 establishment of a statewide environmental reporting system for
13 these plans is a statewide requirement. Basic information on the
14 location, type, quantity, and health risks of hazardous materials
15 handled, used, stored, or disposed of in the state, which could be
16 accidentally released into the environment, is required to be
17 submitted to firefighters, health officials, planners, public safety
18 officers, health care providers, regulatory agencies, and other
19 interested persons. The information provided by business and area
20 plans is necessary in order to prevent or mitigate the damage to
21 the health and safety of persons and the environment from the
22 release or threatened release of hazardous materials into the
23 workplace and environment.

24 (b) The Legislature further finds and declares that this article
25 and Article 2 (commencing with Section 25531) do not occupy
26 the whole area of regulating the inventorying of hazardous
27 materials and the preparation of hazardous materials response plans
28 by businesses, and the Legislature does not intend to preempt any
29 local actions, ordinances, or regulations that impose additional or
30 more stringent requirements on businesses that handle hazardous
31 materials. Thus, in enacting this article and Article 2 (commencing
32 with Section 25531), it is not the intent of the Legislature to
33 preempt or otherwise nullify any other statute or local ordinance
34 containing the same or greater standards and protections.

35 (c) The Legislature further finds and declares that the owners
36 and operators of stationary sources producing, processing, handling,
37 or storing hazardous materials have a general duty, in the same
38 manner and to the same extent as is required by Section 654 of
39 Title 29 of the United States Code, to identify hazards that may
40 result from releases using appropriate hazard assessment

1 techniques, to design and maintain a safe facility taking those steps
2 as are necessary to prevent releases, and to minimize the
3 consequences of accidental releases that do occur.

4 ~~SEC. 13. Section 25503 of the Health and Safety Code is~~
5 ~~amended to read:~~

6 ~~25503. (a) The office shall adopt, after public hearing and~~
7 ~~consultation with the Office of the State Fire Marshal and other~~
8 ~~appropriate public entities, regulations for minimum standards for~~
9 ~~business plans and area plans. All business plans and area plans~~
10 ~~shall meet the standards adopted by the office.~~

11 ~~(b) The standards for business plans in the regulations adopted~~
12 ~~pursuant to subdivision (a) shall do all of the following:~~

13 ~~(1) Set forth minimum requirements of adequacy, and not~~
14 ~~preclude the imposition of additional or more stringent~~
15 ~~requirements by local government.~~

16 ~~(2) Take into consideration and adjust for the size and nature~~
17 ~~of the business, the proximity of the business to residential areas~~
18 ~~and other populations, and the nature of the damage potential of~~
19 ~~its hazardous materials in establishing standards for paragraphs~~
20 ~~(3) and (4) of subdivision (a) of Section 25505.~~

21 ~~(3) Take into account the existence of local area and business~~
22 ~~plans that meet the requirements of this article so as to minimize~~
23 ~~the duplication of local efforts, consistent with the objectives of~~
24 ~~this article.~~

25 ~~(4) Define what releases and threatened releases are required~~
26 ~~to be reported pursuant to Section 25510. The office shall consider~~
27 ~~the existing federal reporting requirements in determining a~~
28 ~~definition of reporting releases pursuant to Section 25510.~~

29 ~~(c) A unified program agency shall, in consultation with local~~
30 ~~emergency response agencies, establish an area plan for emergency~~
31 ~~response to a release or threatened release of a hazardous material~~
32 ~~within its jurisdiction. An area plan is not a statute, ordinance, or~~
33 ~~regulation for purposes of Section 669 of the Evidence Code. The~~
34 ~~standards for area plans in the regulations adopted pursuant to~~
35 ~~subdivision (a) shall provide for all of the following:~~

36 ~~(1) Procedures and protocols for emergency response personnel,~~
37 ~~including the safety and health of those personnel.~~

38 ~~(2) Preemergency planning.~~

39 ~~(3) Notification and coordination of onsite activities with state,~~
40 ~~local, and federal agencies, responsible parties, and special districts.~~

- 1 ~~(4) Training of appropriate employees.~~
- 2 ~~(5) Onsite public safety and information.~~
- 3 ~~(6) Required supplies and equipment.~~
- 4 ~~(7) Access to emergency response contractors and hazardous~~
- 5 ~~waste disposal sites.~~
- 6 ~~(8) Incident critique and followup.~~
- 7 ~~(9) Requirements for notification to the office of reports made~~
- 8 ~~pursuant to Section 25510.~~

9 ~~(d) (1) The unified program agency shall submit to the office~~
10 ~~for its review a copy of the proposed area plan within 180 days~~
11 ~~after adoption of regulations by the office. The office shall notify~~
12 ~~the unified program agency as to whether the area plan is adequate~~
13 ~~and meets the area plan standards. The unified program agency~~
14 ~~shall submit a corrected area plan within 45 days of this notice.~~

15 ~~(2) The unified program agency shall certify to the office every~~
16 ~~three years that it has conducted a review of its area plan and has~~
17 ~~made any necessary revisions or that no substantial changes have~~
18 ~~been made. If a unified program agency makes a substantial change~~
19 ~~to its area plan, it shall forward the changes to the office within~~
20 ~~14 days after the changes have been made.~~

21 ~~(e) The inspection and enforcement program established~~
22 ~~pursuant to paragraphs (3) and (4) of subdivision (a) of Section~~
23 ~~25404.2, shall include the basic provisions of a plan to conduct~~
24 ~~onsite inspections of businesses subject to this article by the unified~~
25 ~~program agency. These inspections shall ensure compliance with~~
26 ~~this article and shall identify existing safety hazards that could~~
27 ~~cause or contribute to a release and, where appropriate, enforce~~
28 ~~any applicable laws and suggest preventative measures designed~~
29 ~~to minimize the risk of the release of hazardous material into the~~
30 ~~workplace or environment. The requirements of this subdivision~~
31 ~~do not alter or affect the immunity provided to a public entity~~
32 ~~pursuant to Section 818.6 of the Government Code.~~

33 ~~SEC. 14.~~

34 ~~SEC. 9.~~ Section 25505 of the Health and Safety Code is
35 amended to read:

36 25505. (a) A business plan shall contain all of the following
37 information:

38 (1) The inventory of information required by this article and
39 additional information the governing body of the unified program
40 agency finds necessary to protect the health and safety of persons,

1 property, or the environment. Locally required information shall
2 be adopted by local ordinance and shall be subject to trade secret
3 protection specified in Section 25512. The unified program agency
4 shall notify the secretary within 30 days after those requirements
5 are adopted.

6 (2) A site map that contains north orientation, loading areas,
7 internal roads, adjacent streets, storm and sewer drains, access and
8 exit points, emergency shutoffs, evacuation staging areas,
9 hazardous material handling and storage areas, emergency response
10 equipment, and additional map requirements the governing body
11 of the unified program agency finds necessary. Any locally required
12 additional map requirements shall be adopted by local ordinance
13 and the unified program agency shall notify the secretary within
14 30 days after those requirements are adopted. A site map shall be
15 updated to include the additional information required pursuant to
16 the local ordinance no later than one year after adoption of the
17 local ordinance.

18 (3) Emergency response plans and procedures in the event of a
19 release or threatened release of a hazardous material, including,
20 but not limited to, all of the following:

21 (A) Immediate notification contacts to the appropriate local
22 emergency response personnel and to the unified program agency.

23 (B) Procedures for the mitigation of a release or threatened
24 release to minimize any potential harm or damage to persons,
25 property, or the environment.

26 (C) Evacuation plans and procedures, including immediate
27 notice, for the business site.

28 (4) Training for all new employees and annual training,
29 including refresher courses, for all employees in safety procedures
30 in the event of a release or threatened release of a hazardous
31 material, including, but not limited to, familiarity with the plans
32 and procedures specified in paragraph (3). These training programs
33 may take into consideration the position of each employee. This
34 training shall be documented electronically or by hard copy and
35 shall be made available for a minimum of three years.

36 (b) A business required to file a pipeline operations contingency
37 plan in accordance with the Elder California Pipeline Safety Act
38 of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 1
39 of Division 1 of Title 5 of the Government Code) and the
40 regulations of the Department of Transportation, found in Part 195

1 (commencing with Section 195.0) of Subchapter D of Chapter I
2 of Subtitle B of Title 49 of the Code of Federal Regulations, may
3 file a copy of those plans with the unified program agency instead
4 of filing an emergency response plan specified in paragraph (3)
5 of subdivision (a).

6 (c) The emergency response plans and procedures, the inventory
7 of information required by this article, and the site map required
8 by this section shall be readily available to personnel of the
9 business or the unified program facility with responsibilities for
10 emergency response or training pursuant to this section.

11 ~~SEC. 15.~~

12 *SEC. 10.* Section 25507 of the Health and Safety Code is
13 amended to read:

14 25507. (a) Except as provided in this article, a business shall
15 establish and implement a business plan for emergency response
16 to a release or threatened release of a hazardous material in
17 accordance with the standards prescribed in the regulations adopted
18 pursuant to Section 25503 for any business that meets any of the
19 following conditions at a unified program facility:

20 (1) (A) The facility handles a hazardous material or a mixture
21 containing a hazardous material that has a quantity at any one time
22 during the reporting year that is equal to, or greater than, 55 gallons
23 for materials that are liquids, 500 pounds for solids, or 200 cubic
24 feet for compressed gas, as defined in subdivision (i) of Section
25 25501. The physical state and quantity present of mixtures shall
26 be determined by the physical state of the mixture as a whole, not
27 individual components, at standard temperature and pressure.

28 (B) For the purpose of this section, for compressed gases, if a
29 hazardous material or mixture is determined to exceed threshold
30 quantities at standard temperature and pressure, it shall be reported
31 in the physical state at which it is stored. If the material is an
32 extremely hazardous substance, as defined in Section 355.61 of
33 Title 40 of the Code of Federal Regulations, all amounts shall be
34 reported in pounds.

35 (2) The facility is required to submit chemical inventory
36 information pursuant to Section 11022 of Title 42 of the United
37 States Code.

38 (3) The facility handles at any one time during the reporting
39 year an amount of a hazardous material that is equal to, or greater

1 than the threshold planning quantity, under both of the following
2 conditions:

3 (A) The hazardous material is an extremely hazardous substance,
4 as defined in Section 355.61 of Title 40 of the Code of Federal
5 Regulations.

6 (B) The threshold planning quantity for that extremely hazardous
7 substance listed in Appendices A and B of Part 355 (commencing
8 with Section 355.1) of Subchapter J of Chapter I of Title 40 of the
9 Code of Federal Regulations is less than 500 pounds.

10 (4) (A) Except as provided in subparagraph (B), the business
11 handles at any one time during the reporting year a total weight
12 of 5,000 pounds for solids or a total volume of 550 gallons for
13 liquids, if the hazardous material is a solid or liquid substance that
14 is classified as a hazard for purposes of Section 5194 of Title 8 of
15 the California Code of Regulations solely as an irritant or sensitizer.

16 (B) If the hazardous material handled by the facility is a paint
17 that will be recycled or otherwise managed under an architectural
18 paint recovery program approved by the Department of Resources
19 ~~Recovery and Recycling~~ *Recycling and Recovery* pursuant to
20 Chapter 5 (commencing with Section 48700) of Part 7 of Division
21 30 of the Public Resources Code, the business is required to
22 establish and implement a business plan only if the business
23 handles at any one time during the reporting year a total weight
24 of 10,000 pounds of solid hazardous materials or a total volume
25 of 1,000 gallons of liquid hazardous materials.

26 (5) The facility handles at any one time during the reporting
27 year cryogenic refrigerated, or compressed gas in a quantity of
28 1,000 cubic feet or more at standard temperature and pressure, if
29 the gas is any of the following:

30 (A) Classified as a hazard for the purposes of Section 5194 of
31 Title 8 of the California Code of Regulations only for hazards due
32 to simple asphyxiation or the release of pressure.

33 (B) Oxygen, nitrogen, and nitrous oxide ordinarily maintained
34 by a physician, dentist, podiatrist, veterinarian, pharmacist, or
35 emergency medical service provider at his or her place of business.

36 (C) Carbon dioxide.

37 (D) Nonflammable refrigerant gases, as defined in the California
38 Fire Code, that are used in refrigeration systems.

39 (E) Gases used in closed fire suppression systems.

1 (6) The facility handles a radioactive material at any one time
2 during the reporting year in quantities for which an emergency
3 plan is required to be considered pursuant to Schedule C (Section
4 30.72) of Part 30 (commencing with Section 30.1), Part 40
5 (commencing with Section 40.1), or Part 70 (commencing with
6 Section 70.1), of Chapter 1 of Title 10 of the Code of Federal
7 Regulations, or pursuant to any regulations adopted by the state
8 in accordance with those regulations.

9 (7) The facility handles perchlorate material, as defined in
10 subdivision (c) of Section 25210.5, in a quantity at any one time
11 during the reporting year that is equal to, or greater than, the
12 thresholds listed in paragraph (1).

13 (b) The following hazardous materials are exempt from the
14 requirements of this section:

15 (1) Refrigerant gases, other than ammonia or flammable gas in
16 a closed cooling system, that are used for comfort or space cooling
17 for computer rooms.

18 (2) Compressed air in cylinders, bottles, and tanks used by fire
19 departments and other emergency response organizations for the
20 purpose of emergency response and safety.

21 (3) (A) Lubricating oil, if the total volume of each type of
22 lubricating oil handled at a facility does not exceed 55 gallons and
23 the total volume of all types of lubricating oil handled at that
24 facility does not exceed 275 gallons, at any one time.

25 (B) For purposes of this paragraph, “lubricating oil” means oil
26 intended for use in an internal combustion crankcase, or the
27 transmission, gearbox, differential, or hydraulic system of an
28 automobile, bus, truck, vessel, airplane, heavy equipment, or other
29 machinery powered by an internal combustion or electric powered
30 engine. “Lubricating oil” does not include used oil, as defined in
31 subdivision (a) of Section 25250.1.

32 (4) Both of the following, if the aggregate storage capacity of
33 oil at the facility is less than 1,320 gallons:

34 (A) Fluid in a hydraulic system.

35 (B) Oil-filled electrical equipment that is not contiguous to an
36 electric facility.

37 (5) Hazardous material contained solely in a consumer product,
38 handled at, and found in, a retail establishment and intended for
39 sale to, and for the use by, the public. The exemption provided for
40 in this paragraph shall not apply to a consumer product handled

1 at the facility which manufactures that product, or a separate
2 warehouse or distribution center of that facility, or where a product
3 is dispensed on the retail premises.

4 (6) Propane that is for on-premises use, storage, or both, in an
5 amount not to exceed 500 gallons, that is for the sole purpose of
6 cooking, heating employee work areas, and heating water within
7 that facility, unless the unified program agency finds, and provides
8 notice to the facility handling the propane, that the handling of the
9 on-premises propane requires the submission of a business plan,
10 or any portion of a business plan, in response to public health,
11 safety, or environmental concerns.

12 (c) In addition to the authority specified in subdivision (e), the
13 governing body of the unified program agency may, in exceptional
14 circumstances, following notice and public hearing, exempt a
15 hazardous material specified in subdivision (n) of Section 25501
16 from Section 25506, if it is found that the hazardous material would
17 not pose a present or potential danger to the environment or to
18 human health and safety if the hazardous material was released
19 into the environment. The unified program agency shall send a
20 notice to the office and the secretary within 15 days from the
21 effective date of any exemption granted pursuant to this
22 subdivision.

23 (d) The unified program agency, upon application by a handler,
24 may exempt the handler, under conditions that the unified program
25 agency determines to be proper, from any portion of the
26 requirements to establish and maintain a business plan, upon a
27 written finding that the exemption would not pose a significant
28 present or potential hazard to human health or safety or to the
29 environment, or affect the ability of the unified program agency
30 and emergency response personnel to effectively respond to the
31 release of a hazardous material, and that there are unusual
32 circumstances justifying the exemption. The unified program
33 agency shall specify in writing the basis for any exemption under
34 this subdivision.

35 (e) The unified program agency, upon application by a handler,
36 may exempt a hazardous material from the inventory provisions
37 of this article upon proof that the material does not pose a
38 significant present or potential hazard to human health and safety
39 or to the environment if released into the workplace or

1 environment. The unified program agency shall specify in writing
2 the basis for any exemption under this subdivision.

3 (f) The unified program agency shall adopt procedures to
4 provide for public input when approving applications submitted
5 pursuant to subdivisions (d) and (e).

6 ~~SEC. 16.~~

7 *SEC. 11.* Section 25507.2 of the Health and Safety Code is
8 amended to read:

9 25507.2. Unless required by a local ordinance, the unified
10 program agency shall exempt an unstaffed facility located at least
11 one-half mile from the nearest occupied structure from Sections
12 25508.2 and 25511, and shall subject the business to Sections
13 25505, 25506, and 25507 only as specified in this section, if the
14 facility is not otherwise subject to the requirements of applicable
15 federal law, and all of the following requirements are met:

16 (a) The types and quantities of materials onsite are limited to
17 one or more of the following:

18 (1) One thousand standard cubic feet of compressed inert gases
19 (asphyxiation and pressure hazards only).

20 (2) Five hundred gallons of combustible liquid used as a fuel
21 source.

22 (3) Corrosive liquids, not to exceed 500 pounds of extremely
23 hazardous substances, used as electrolytes, and in closed containers.

24 (4) Five hundred gallons of lubricating and hydraulic fluids.

25 (5) One thousand two hundred gallons of hydrocarbon gas used
26 as a fuel source.

27 (6) Any quantity of mineral oil contained within electrical
28 equipment, such as transformers, bushings, electrical switches,
29 and voltage regulators, if the spill prevention control and
30 countermeasure plan has been prepared for quantities that meet or
31 exceed 1,320 gallons.

32 (b) The facility is secured and not accessible to the public.

33 (c) Warning signs are posted and maintained for hazardous
34 materials pursuant to the California Fire Code.

35 (d) (1) Notwithstanding Sections 25505 and 25507, a one-time
36 business plan, except for the emergency response plan and training
37 elements specified in paragraphs (3) and (4) of subdivision (a) of
38 Section 25505, is submitted to the statewide information
39 management system. This one-time business plan submittal is
40 subject to a verification inspection by the unified program agency

1 and the unified program agency may assess a fee not to exceed the
2 actual costs of processing and for inspection, if an inspection is
3 conducted.

4 (2) If the information contained in the one-time submittal of the
5 business plan changes and the time period of the change is longer
6 than 30 days, the business plan shall be resubmitted within 30 days
7 to the statewide information management system to reflect any
8 change in the business plan. A fee not to exceed the actual costs
9 of processing and inspection, if conducted, may be assessed by
10 the unified program agency.

11 ~~SEC. 17.~~

12 *SEC. 12.* Section 25508.1 of the Health and Safety Code is
13 amended to read:

14 25508.1. Within 30 days of any one of the following events,
15 a business subject to this article shall electronically update the
16 information submitted to the statewide information management
17 system:

18 (a) A 100 percent or more increase in the quantity of a
19 previously disclosed material.

20 (b) Any handling of a previously undisclosed hazardous material
21 subject to the inventory requirements of this article.

22 (c) Change of business address.

23 (d) Change of business ownership.

24 (e) Change of business name.

25 (f) (1) A substantial change in the handler's operations occurs
26 that requires modification to any portion of the business plan.

27 (2) For the purpose of this subdivision, "substantial change"
28 means any change in a facility that would inhibit immediate
29 response during an emergency by either site personnel or
30 emergency response personnel, or that could inhibit the handler's
31 ability to comply with Section 25507, change the operational
32 knowledge of the facility, or impede implementation of the business
33 plan.

34 ~~SEC. 18.~~

35 *SEC. 13.* Section 25531.2 of the Health and Safety Code is
36 amended to read:

37 25531.2. (a) The Legislature finds and declares that as the
38 state implements the federal accidental release prevention program
39 pursuant to this article, the Office of Emergency Services will play
40 a vital and increased role in preventing accidental releases of

1 extremely hazardous substances. The Legislature further finds and
2 declares that as an element of the unified program established
3 pursuant to Chapter 6.11 (commencing with Section 25404), a
4 single fee system surcharge mechanism is established by Section
5 25404.5 to cover the costs incurred by the office pursuant to this
6 article. It is the intent of the Legislature that this existing authority,
7 together with any federal assistance that may become available to
8 implement the accidental release program, be used to fully fund
9 the activities of the office necessary to implement this article.

10 (b) The Legislature further finds and declares that the owners
11 and operators of stationary sources producing, processing, handling,
12 or storing hazardous materials have a general duty, in the same
13 manner and to the same extent as is required by Section 654 of
14 Title 29 of the United States Code, to identify hazards that may
15 result from releases using appropriate hazard assessment
16 techniques, to design and maintain a safe facility taking those steps
17 as are necessary to prevent releases, and to minimize the
18 consequences of accidental releases that do occur.

19 (c) The office shall use any federal assistance received to
20 implement Chapter 6.11 (commencing with Section 25404) to
21 offset any fees or charges levied to cover the costs incurred by the
22 office pursuant to this article.

23 *SEC. 14. Section 118330 of the Health and Safety Code is*
24 *amended to read:*

25 118330. (a) Whenever the enforcement agency determines
26 that a violation or threatened violation of this part or the regulations
27 adopted pursuant to this part has resulted, or is likely to result, in
28 a release of medical waste into the environment, the agency may
29 issue an order to the responsible person specifying a schedule for
30 compliance or imposing an administrative penalty of not more
31 than ~~one~~ five thousand dollars ~~(\$1,000)~~ (\$5,000) per violation. ~~Any~~
32 A person who, after notice and an opportunity for hearing, violates
33 an order issued pursuant to this section is guilty of a misdemeanor.
34 ~~The department shall adopt regulations that specify the~~
35 ~~requirements for providing notice to persons to whom orders are~~
36 ~~issued and for administrative hearings and fines concerning these~~
37 ~~orders.~~

38 (b) (1) *In establishing the amount of the administrative penalty*
39 *and ordering that the violation be corrected pursuant to this*
40 *section, the enforcement agency shall take into consideration the*

1 nature, circumstances, extent, and gravity of the violation, the
2 violator's past and present efforts to prevent, abate, or clean up
3 conditions posing a threat to the public health or safety or the
4 environment, the violator's ability to pay the penalty, and the
5 deterrent effect that the imposition of the penalty would have on
6 both the violator and the regulated community.

7 (2) If the amount of the administrative penalty is set after the
8 person is served with the order pursuant to subdivision (c) or after
9 the order becomes final, the person may request a hearing to
10 dispute the amount of the administrative penalty and is entitled to
11 the same process as provided in subdivision (c), whether or not
12 the person disputed the facts of the violation through that process.

13 (3) An administrative penalty assessed pursuant to this section
14 shall be in addition to any other penalties or sanctions imposed
15 by law.

16 (c) (1) An order issued pursuant to this section shall be served
17 by personal service or certified mail and shall inform the person
18 served of the right to a hearing.

19 (2) A person served with an order pursuant to paragraph (1)
20 and who has been unable to resolve the violation with the
21 enforcement agency may, within 15 days after service of the order,
22 request a hearing by filing with the enforcement agency a notice
23 of defense. The notice shall be filed with the agency that issued
24 the order. A notice of defense shall be deemed filed within the
25 15-day period if it is postmarked within that 15-day period. If no
26 notice of defense is filed within the 15-day time period, the order
27 shall become final.

28 (3) Except as otherwise provided in paragraph (4), a person
29 requesting a hearing on an order issued pursuant to this section
30 may select the hearing officer specified in either subparagraph
31 (A) or (B) of paragraph (4) in the notice of defense filed with the
32 enforcement agency pursuant to paragraph (2). If a notice of
33 defense is filed, but no hearing officer is selected, the enforcement
34 agency may select the hearing officer.

35 (4) Within 90 days of receipt of the notice of defense by the
36 enforcement agency, the hearing shall be scheduled using one of
37 the following:

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

1 *Section 11400) of Part 1 of Division 3 of Title 2 of the Government*
2 *Code, and the enforcement agency shall have all the authority*
3 *granted to an agency by those provisions.*

4 *(B) (i) A hearing officer designated by the enforcement agency,*
5 *who shall conduct the hearing in accordance with Chapter 4.5*
6 *(commencing with Section 11400) of Part 1 of Division 3 of Title*
7 *2 of the Government Code, and the enforcement agency shall have*
8 *all the authority granted to an agency by those provisions. When*
9 *a hearing is conducted by an enforcement agency hearing officer*
10 *pursuant to this clause, the enforcement agency shall issue a*
11 *decision within 60 days after the hearing is conducted. Each*
12 *hearing officer designated by an enforcement agency shall meet*
13 *the requirements of Section 11425.30 of the Government Code*
14 *and any other applicable restriction.*

15 *(ii) An enforcement agency, or a person requesting a hearing*
16 *on an order issued by an enforcement agency, may select the*
17 *hearing process specified in this subparagraph in a notice of*
18 *defense filed pursuant to paragraph (2) only if the enforcement*
19 *agency has selected a designated hearing officer and established*
20 *a program for conducting a hearing in accordance with this*
21 *paragraph.*

22 *(5) The hearing decision issued pursuant to this subdivision*
23 *shall be effective and final upon issuance by the enforcement*
24 *agency. A copy of the decision shall be served by personal service*
25 *or by certified mail upon the party served with the order, or their*
26 *representative, if any.*

27 *(6) The person has a right to appeal the hearing decision if,*
28 *within 30 days of the date of receipt of the final decision pursuant*
29 *to paragraph (5), the person files a written notice of appeal with*
30 *the enforcement agency. The appeal shall be in accordance with*
31 *the Administrative Procedure Act (Chapter 3.5 (commencing with*
32 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
33 *Code).*

34 *(7) A decision issued pursuant to paragraph (6) may be reviewed*
35 *by a court pursuant to Section 11523 of the Government Code. In*
36 *all proceedings pursuant to this section, the court shall uphold the*
37 *decision of the enforcement agency if the decision is based upon*
38 *substantial evidence in the record as a whole. The filing of a*
39 *petition for writ of mandate shall not stay an action required*
40 *pursuant to this chapter or the accrual of any penalties assessed*

1 pursuant to this chapter. This subdivision does not prohibit the
2 court from granting any appropriate relief within its jurisdiction.

3 (d) A provision of an order issued under this section, except the
4 imposition of an administrative penalty, shall take effect upon
5 issuance of the order by the enforcement agency if the enforcement
6 agency finds that the violation or violations of law associated with
7 that provision may pose an imminent and substantial danger to
8 the public health or safety or the environment. A request for a
9 hearing or appeal, as provided in subdivision (c), shall not stay
10 the effect of that provision of the order pending a hearing decision.
11 If the enforcement agency determines that any or all provisions of
12 the order are so related that the public health or safety or the
13 environment can be protected only by immediate compliance with
14 the order as a whole, the order as a whole, except the imposition
15 of an administrative penalty, shall take effect upon issuance by
16 the enforcement agency. A request for a hearing shall not stay the
17 effect of the order as a whole pending a hearing decision.

18 (e) The enforcement agency shall consult with the district
19 attorney, county counsel, or city attorney on the development of
20 policies to be followed in exercising the authority delegated
21 pursuant to this section as it relates to the authority of the
22 enforcement agency to issue orders.

23 ~~SEC. 19.~~

24 SEC. 15. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.